

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

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FEB - 7 2014

Case No. 2007-CP-38-0573
Order (S.C. Ct. App. filed July 1, 2011)
Appellate Case No. 2011-202866

S.C. Supreme Court

Junell W. Johnson, as Personal Representative
of the Estate of Woodrow C. Nelson, Respondent,

v.

Michael Lee Clemons, Petitioner.

MOTION FOR COSTS

Pursuant to Rules 222(a), 240 and 242(j), SCACR, Respondent Junell W. Johnson requests that the costs of this appeal be taxed against Michael Lee Clemons.

The Court of Appeals granted Respondent's Motion to dismiss an appeal by Mr. Clemons of an unappealable order from the circuit court. *Johnson v. Clemons*, Order (S.C. Ct. App. filed July 1, 2011). Rule 222(a), SCACR, provides "costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Thus, Respondent is entitled to an award of costs arising out of the disposition in the Court of Appeals.

Appellant petitioned this Court to review the Court of Appeals' order. This Court issued a writ of certiorari to review that decision, and following oral argument, the Court

affirmed the judgment of the Court of Appeals. *Williams v. Clemons and Johnson v. Clemons*, Op. No. 2014-MO-002 (S.C. Sup. Ct. filed January 8, 2014).

Rule 242(j) provides that unless the court orders otherwise or the parties agree otherwise, costs shall be taxed against the appellant when this Court's decision has the effect of affirming the judgment of the lower court that was reviewed by the Court of Appeals. The lower court's judgment denied a motion to compel settlement and a motion to reconsider that denial, and the subsequent judgment was entered by acceptance of an offer of judgment. The decision to affirm the Court of Appeals' dismissal has the effect of affirming those decisions as they remain unaltered in any way.

In accordance with the instructions of Rules 222(d) and 242(j)(4), an itemized statement of costs is attached to this motion.

February 7, 2014

Respectfully submitted,



John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado,
LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599

H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
Gooding and Gooding, PA
PO Box 1000
Allendale, SC 29810
(803) 584-7676

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

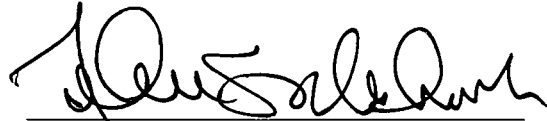
Junell W. Johnson, as Personal Representative of the Estate of Woodrow C. Nelson,)
)
Respondent,)
)
v.)
)
Michael Lee Clemons,)
)
Petitioner.)
)

The Appellate Court is requested to tax the following costs against

Michael Lee Clemons (Petitioner)				
COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief				
Cost of Printing or Copying Final Reply Brief				
Cost of Printing or Copying Record on Appeal				
Filing Fee Paid Under Rule 203(d), SCACR				
Cost of Court Reporter's Transcript				
Attorney's Fee Provided By Rule 222(b), SCACR			\$1,000.00	
Other (specify and explain):				
COSTS TAXABLE UNDER RULE 242(j), SCACR				

Cost of Printing or Copying Brief	756	\$56.15 (plus \$4.19 tax)	\$60.34	
Cost of Printing and Copying Reply Brief				
Cost of Printing or Copying Appendix				
Filing fee paid under Rule 242(c), SCACR				
Attorney's fee provided by Rule 242(j)(2), SCACR			\$1,000.00	
Other (specify and explain):				
		TOTAL	\$2,060.34	

I, John Nichols, do swear or affirm that the forgoing costs are correct and were necessarily incurred in this action. A copy of this statement was (mailed to/served upon) opposing counsel.

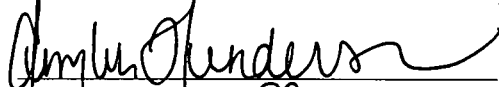


(Signature)

Attorney for

Respondent

Subscribed and sworn before me this 7th day of February, 2014.



Notary Public for SC

My Commission Expires: 4/1/2021

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2007-CP-38-0573
Order (S.C. Ct. App. filed July 1, 2011)

Appellate Case No. 2011-202866

Junell W. Johnson, as Personal Representative
of the Estate of Woodrow C. Nelson, Respondent,

v.

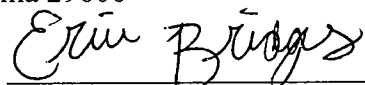
Michael Lee Clemons, Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with the *Motion for Costs* and *Itemized Statement of Costs* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Stephen P. Groves, Sr., Esquire
Bradish J. Waring, Esquire
Paul A. Dominick, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401

James P. Walsh, Esquire
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Greenville, South Carolina 29606



Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

February 7, 2014

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S.C. Supreme Court



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt
Kenneth Henry Dojaquez
John Clarke Newton

OF COUNSEL
O. Eugene Powell, Jr.

February 7, 2014

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S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Junell W. Johnson v. Michael Lee Clemons
Case Tracking No. 2011-202866

Eddie Williams v. Michael Lee Clemons
Case Tracking No. 2011-202847

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of each Respondents' *Motion for Costs* along with an itemized statement of costs in regards to the above referenced matters. I have also enclosed a Proof of Service upon counsel of record along with a check in the amount of \$25.00 for filing each motion. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

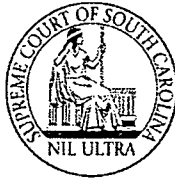
Sincerely,

Erin Bridges

Paralegal to John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/emb

cc: Steven P. Groves, Sr., Esquire
James P. Walsh, Esquire
Mark B. Tinsley, Esquire



The Supreme Court of South Carolina

John S. Nichols
1614 Taylor St.
Columbia SC 29201

02/07/2014

RECEIPT #71226

Case No: 2011-202866
Case Short Title: Junell Johnson v. Michael Lee Clemons
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 2818
Check/Money Order Date: 02/07/2014
Comments:

Sent

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Eddie Williams, as Conservator for Catina W. Nelson,
Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202847

Junell W. Johnson, as Personal Representative of the
Estate of Woodrow C. Nelson, Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202866

Appeal From Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Memorandum Opinion No. 2014-MO-002
Heard November 19, 2013 – Filed January 8, 2014

AFFIRMED

Stephen P. Groves, Sr., Bradish J. Waring, and Paul A.
Dominick, all of Nexsen Pruet, LLC, of Charleston, and

James P. Walsh and Amy Miller Snyder, both of
Clarkson, Walsh, Terrell, & Coulter, P.A., of Greenville,
for Petitioner.

John S. Nichols, of Bluestein, Nichols, Thompson &
Delgado, LLC, of Columbia, and H. Woodrow Gooding
and Mark B. Tinsley, both of Gooding & Gooding, P.A.,
of Allendale, for Respondents.

PER CURIAM: This Court granted certiorari to review the court of appeals' decisions dismissing Petitioner's appeals on the ground that consent judgments are not appealable. Petitioner argues an acceptance of an offer of judgment does not prevent appellate review of that judgment or of intermediate orders underlying that judgment. We disagree and affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: *Belton v. State*, 339 S.C. 71, 74 n.4, 529 S.E.2d 4, 5 n.4 (2000) (stating that "[a] case resolved by acceptance of an offer of judgment is considered 'settled'"); *Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993) (stating that absent fraud or mistake, where an attorney of record for a party agrees to settle a case, the party cannot later rescind the settlement); *S.C. State Highway Dep't v. McKeown Food Store No. 9*, 254 S.C. 180, 183, 174 S.E.2d 342, 343-44 (1970) (finding where a case has been "settled," the settlement ends the litigation and renders moot an appeal of an intermediate order concerning pretrial procedures); *Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (stating that generally, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties by direct appeal); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (recognizing that "important benefits are achieved by the preservation of final judgments").

AFFIRMED.

TOAL, CJ., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.