

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

APR 29 2014

Larry B. Hyman, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 2008-CP-22-1598

On *Certiorari* to the Court of Appeals of South Carolina
Opinion No. 4874 (S.C.Ct.App. filed Aug. 24, 2011)

Wachovia Bank, National Association, Petitioner,

v.

William E. Blackburn; Judith Blackburn; Tammy S. Winner; Watson E.
Felder; Gary F. Ownbey; and South Island Plantation Association, Inc. are, ... Defendants,

Of Whom William E. Blackburn; Judith Blackburn, are, Respondents,

v.

Winyah Bay Holdings, LLC; Source One Properties, LLC; and Waterpointe
Realty, LLC, Third-Party Defendants.

**RESPONDENTS' RETURN TO PETITIONER'S
MOTION FOR ASSESSMENT OF COSTS**

Respondents William E. Blackburn and Judith Blackburn file this Return to
Petitioner's Motion for Assessment of Costs, and respectfully request that the Court deny
the Motion. Petitioner Bank seeks recovery of costs both under SCACR 222 (appeals)
and SCACR 242(j) (writs of certiorari).

SCACR 222(a) provides that when an appeal is affirmed, costs shall be allowed only as ordered by the appellate court. Rule 222(b) indicates that the party “may...recover” costs – again the assessment of costs is not mandatory. SCACR 242(j) provides that when the Supreme Court orders otherwise, costs need not be assessed. Respondents are asking that the Court use its discretion provided in these Rules to deny costs in this case. Respondents requested a jury trial on multiple claims, and made good faith arguments to the circuit court in response to the Petitioner Bank’s motion to strike the jury trial request. After that motion was granted, Respondents filed an appeal, and the Court of Appeals reversed the lower court. Thus, it is clear the appeal was not frivolous and in fact was meritorious in the eyes of the Court of Appeals. That this Honorable Court disagreed with the Court of Appeals indicates that keen judicial minds could disagree over the issues raised. Since the Respondents are individuals with limited resources in the midst of a foreclosure action as compared to the status of Wachovia Bank, a national bank with massive resources, Respondents would ask that the Court consider the relative disparity of resources in making its order to deny the Bank’s motion for costs.

In the alternative, if the Court is not inclined to deny costs in their entirety or reduce the costs due based on good faith merit of the appeal and/or the financial disparity of the parties, Respondents would ask that the Court exclude from any assessment the costs sought by the Bank pursuant to SCACR 222. Respondent believes it would be improper to award the Bank costs for the Court of Appeals proceeding in which it was the losing party. It is important to note that the appeal (which should govern the SCACR 222 request for costs) to the Court of Appeals resulted in a finding to reverse the trial court.

Under such circumstances, it would seem unfair to tax costs against the successful party and Respondents would therefore request the Court deny that request since SCACR 222 provides for such costs against the appellant (here, the Respondents) “when the appeal is dismissed or judgment affirmed.” Since the judgment was reversed by the Court of Appeals, such costs should not be assessed. If anything, fairness would dictate that if the Bank were entitled to recover costs for the proceedings at the Supreme Court where it was successful, the Blackburns should be entitled to recover costs for the proceeding at the Court of Appeals where they were successful. In essence, the costs would be a wash and the Blackburns would respectfully request that the Court deny the Bank’s motion and essentially allow the parties to bear their own costs and attorney’s fees to accomplish that “wash”. If the Court is not inclined to do so, the Blackburns would respectfully request the Court consider this Return a Cross-Motion for taxation of costs and assess costs and attorney’s fees against the Bank for the costs incurred by the Blackburns to print/copy the Briefs, Record on Appeal, Filing Fee, Cost of Transcript, and Attorney’s Fee. If the Court is so inclined, Respondents will gladly provide an itemized statement of costs, but at a minimum the \$1,000 attorney’s fee would be due.

In summary, Respondents would initially request that the Bank’s motion for costs be denied based on the good faith merit of the appeal, the Court of Appeal’s decision against the Bank, the financial disparity of the parties, and the equities in the case. If the Court is inclined to award costs in spite of these arguments, Respondents would alternatively request that since the Bank did not obtain a favorable result in the Court of Appeals that an equal setoff of the Blackburns’ costs in the Court of Appeals be applied against any Bank costs in the Supreme Court, such that the end result is a wash with no

costs being ordered since it would be unfair for the Bank to collect under those circumstances. As a final alternative, Respondents would request that the Bank be denied any of the costs requested pursuant to SCACR 222 in its itemized statement (a reduction of \$1,114.00 from its itemized statement) since those costs would only have been recoverable if the Court of Appeals had affirmed the lower court.

Respectfully submitted,



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April 28, 2014

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Realty, LLC, Third-Party Defendants.

PROOF OF SERVICE

I certify that I have served one (1) copy of the Respondent's Return to Petitioner's Motion for Assessment of Costs on each other party, by depositing copies of same in the United States Mail, postage prepaid, on April 28, 2014, addressed at the addresses set forth on the attached page.

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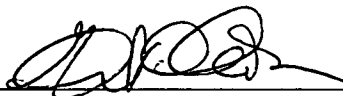
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