

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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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.

**REPLY OF PETITIONER TO RESPONDENTS' RETURN AND RESPONSE TO
RESPONDENTS' CROSS-MOTION FOR COSTS**

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SC Court of Appeals

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ARGUMENT

Respondents have asked this Court to deny Petitioner's Motion for Assessment of Costs or, in the alternative, to grant the Respondent's fees and costs for the portion of the appeal before the Court of Appeals "where they were successful". Respondents misunderstand the law as it applies to the taxation of costs on appeal, and Petitioner respectfully requests that its Motion be granted and the Respondents' apparent cross-motion be denied.

Because this is a case in which a Writ of Certiorari was granted, Rule 242(j), SCACR applies. Subsection (1) of Rule 242(j) provides that "[u]nless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals." Since the Supreme Court reversed the only portion of the Court of Appeals's decision in Respondents' favor and instead affirmed the ruling of the Circuit Judge, costs "shall be" assessed against the Blackburns unless otherwise ordered by this Court.

Subsection (2) of Rule 242(j) sets forth what costs are allowed by the Petitioner in this situation, and states that the Petitioner may recover all the costs specified in Rule 222(b), including the \$1,000 attorney's fee. The Rule goes on to state that the Petitioner may recover "an additional [\$1,000] attorney's fee", since an additional level of appeal was required.

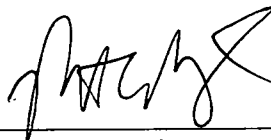
The rules regarding taxation of costs do not turn on whether the Respondents' arguments were made in good faith. Instead, taxation rules simply depend on which party ultimately prevailed. The Respondents' statement that they were successful at the Court of Appeals level misapprehends what happened in this appeal, since this Court

ultimately determined that the only portion of the decision issued by the Court of Appeals in Respondents' favor should be reversed. *Miller v. Springs Cotton Mills*, 225 S.C. 326, 82 S.E.2d 458 (1954) (explaining that once a judgment is reversed, it becomes "of no effect" and is "no longer in existence").

This Court certainly has the discretion to deny the Petitioner's Motion, but the facts and circumstances of this case do not warrant a deviation from the established procedures, set forth fully in Rule 242(j), SCACR. There is no basis for awarding the Respondents' costs, and the Respondents' Cross-Motion has no basis in law or fact.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that its Motion be GRANTED and Respondents' Cross-Motion be DENIED.



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May 1, 2014

Charleston, South Carolina

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v.

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

PROOF OF SERVICE

I certify that I have served the **Reply of Petitioner** on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on May 2, 2014, to the following addresses:

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