

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership, Appellants,

v.

Parkview Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180666

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership, Appellants,

v.

Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180087

Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr., Hodge Land Company, Incorporated, and Anna Trotter, individually and in their capacities as the Limited Partners of Roosevelt Gardens, a South Carolina Limited Partnership, Appellants,

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S.C. Supreme Court

v.

Roosevelt Gardens, a South Carolina Limited Partnership, Apartment Investments and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180086

Carolina Management Corporation of Beaufort, James B. Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Pinewood Park Apartments, a South Carolina Limited Partnership, Appellants,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180088

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O. Mercy, individually and in their capacities as the Limited Partners of Orleans Gardens, a South Carolina Limited Partnership, Appellants,

v.

Orleans Gardens, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-176826

Appeal From Beaufort County
Doyet A. Early III, Circuit Court Judge

RETURN TO MOTIONS FOR COSTS

Petitioners submit this Return to Respondents' motion for costs¹, and the four (4) related appeals, and oppose Respondents' requests for costs and, in the alternative, seek a reduction of the amount of costs to be awarded.

For several reasons, Petitioners were required to bring this appeal. One, this entire appeal was brought about by Respondents' serving improper discovery requests seeking privilege communications between Petitioners and their lawyers in these matters. In other words, this appeal was necessary in order to respond to Respondents' efforts to obtain privilege documents and communications, not an appeal brought about by the actions of Petitioners.

Two, the issues in this appeal presented a novel question of law, that the act of filing a complaint puts the statute of limitations at issue, of which no South Carolina court had decided previous to the circuit court's ruling. Facing an undecided, novel question of law, Petitioners' appeal was necessary to protect their interests, especially given the extreme public policy importance of the lawyer-client privilege and the possibility that the production of privileged documents could have potentially waived all claims of privilege under the holding of *Marshall v. Marshall*. 285 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct.

¹ Petitioners submit one consolidated Return to the five individual Motions for Costs for reasons explained in this Return and in conformity with the Court's consolidated Opinion.

App. 1984) (holding “disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject.”).

Three, as the Court noted, “to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.” See Opinion at 13. See *Grosshuesch v. Cramer*, 377 S.C. 12, 31, 659 S.E.2d 112, 122 (2008) (holding a party can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt). An appeal from the specific rulings of the discovery order and the subsequent contempt sanctions was a necessary precaution. Petitioners’ appeal was neither frivolous nor optional and, therefore, under the discretionary authority of this Court, costs should not be taxed against Petitioners.

In addition, Respondents sought and obtained the Court’s permission to file one consolidated brief for all five individual matters. As Respondents told the Court, they believed that they could “more efficiently and more effectively address the issues presented in the 13 Orders on appeal and [Petitioners’] briefs, with respect to each of the five Appeals (noting the slight variations between them), if they are permitted to do so in one consolidated initial brief.” Respondents’ motion to file one consolidated brief and one consolidated designation of matter, dated July 5, 2011, at 13. Respondents filed one consolidated motion, one consolidated brief, one consolidated designation of matter, one consolidated appendix to the record and one consolidated opposition to the petition for rehearing. It is only now, when seeking costs and attorney’s fees, that Respondents have chosen to file five separate motions in an effort to seek five times the amount of

attorney's fees available under the Rule. See Rule 222(b), SCAR at fn 1 ("By order dated July 24, 1997, the amount of attorney's fees was set at \$1,000."). Petitioners respectfully request that the Court deny Respondents' motions for costs, but in the alternative, if the Court is inclined to grant their motions, Petitioners request that the Court limit the attorney's fees to \$1,000 to reflect the accurate manner in which Respondents treated this appeal as one consolidate matter.

Finally, Rule 222(d), SCAR, requires that "a party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion..." Rule 222(d), SCAR (emphasis added). The Remittitur for these five matters was issued on September 11, 2014. The Motion for Costs was required to be filed by September 26, 2014 and, in fact, it is our understanding that Respondents' five Motions for Costs were not filed until September 29, 2014, which was not timely per Rule 222(d), SCACR. Therefore, Respondents Motions for Costs were untimely filed and should be denied.

CONCLUSION

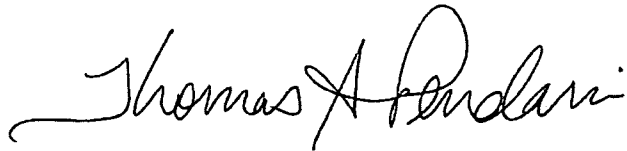
Based upon the foregoing, Petitioners respectfully request this Court to deny Respondents' Motion for Costs. However, if the Court is inclined to grant Respondents' Motions for Costs, Petitioners respectfully request the Court reduce the amount of costs to reflect that Respondents filed only one brief for the five related cases and treated this appeal as if it was a consolidated matter until the filing of their five individual Motions for Costs, therefore Respondents should be limited to one request for attorney's fees.

Respectfully submitted,

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and

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

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Lawyers for Appellants

Beaufort, South Carolina

October 3, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

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v.

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Appellate Case No. 2010-180666

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v.

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Appellate Case No. 2010-180087

Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr., Hodge Land Company, Incorporated, and Anna Trotter, individually and in their capacities as the Limited Partners of Roosevelt Gardens, a South Carolina

Limited Partnership, Appellants,
v.

Roosevelt Gardens, a South Carolina Limited Partnership, Apartment Investments and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180086

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Appellate Case No. 2010-180088

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Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-176826

Appeal From Beaufort County
Doyet A. Early III, Circuit Court Judge

PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of Appellants' RETURN TO MOTION FOR COSTS on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 3rd day of October, 2014, addressed to:

Ellis M. Johnston, II, J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

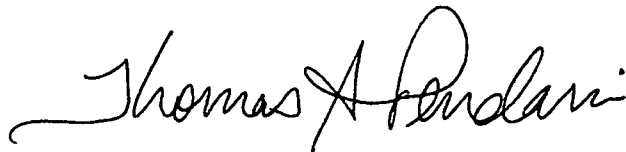
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Respectfully submitted,

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PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink that reads "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial 'T' and 'P'.

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October 3, 2014