

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No.: 2011196386

RECEIVED

SEP 26 2014

SC Court of Appeals

Mark F. Teseniar and Nan M. Teseniar, on
Behalf of themselves and others similarly
Situated, and Twelve Oaks at Fenwick
Property Owners Association, Inc., Respondents,

v.

Professional Plastering & Stucco, Inc., Maria
Arias, and Miquel Rosales..... Defendants,

Of whom,
Professional Plastering & Stucco, Inc. are
the,..... Appellants,

Professional Plastering & Stucco, Inc.,..... Third-Party
Plaintiffs,

v.

Maria Arias, Miquel Rosales, and APS
Enterprises Unlimited, Inc.,..... Third Party
Plaintiffs,

RETURN OF
RESPONDENT APS ENTERPRISES UNLIMITED, INC.
TO APPELLANT'S MOTION FOR COSTS

This appeal stemmed from an order granting APS's motion for summary judgment based on language in S.C. Code Ann. Sections 40-11-270 and 40-11-370, which prevents unlicensed contractors from bringing suit to enforce provisions of a contract as well as rulings that occurred at trial.

This Court heard oral arguments October 17, 2013 and issued its ruling on January 8, 2014. Petitions for rehearing were denied on February 20, 2014. The Supreme Court denied the petitions for certiorari on August 25, 2014. Professional plastering has now filed motions for costs and attorneys fees against both APS and Tesinar/Homeowners Association. APS accordingly submits that the Court should use its discretion and deny the motion costs and attorneys fees based on the fact that the issue on appeal as to APS was a novel issue of law. Alternatively, Professional Plastering should not be allowed to recover an attorney fee from each respondent party.

Rule 220(a) of the South Carolina Appellate Court Rules provides "Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise." The rule then specifies what costs are recoverable and states, [i]n addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court. The allowance of additional costs will generally not be allowed except in the most

extraordinary of circumstances.” Rule 222(b), SCACR. The Rule notes that the attorney fee has been set by order of the Court at \$1,000.00

The only issue on appeal as to APS as to whether an unlicensed contractor could utilize the court system despite the provisions of S.C. Ann. Sections 40-11-270 and 40-11-370. This appeal presented a novel issue of law that had not previously been ruled upon by the Courts in South Carolina. In fact, in the Court’s discussion of the issue, the only case cited is the Kentucky Court of Appeals case, Kennoy v. Graves, 300 S.W.2d 568 (Ky. App. 1957). The Court should take into consideration the lack of South Carolina case law on the issue, and accordingly, should not assess costs against Respondent APS. Further respondent APS believes if this Court grants fees and costs on a party appealing a novel issue of law this will likely have a chilling effect on litigants from appealing important and novel issues in the future.

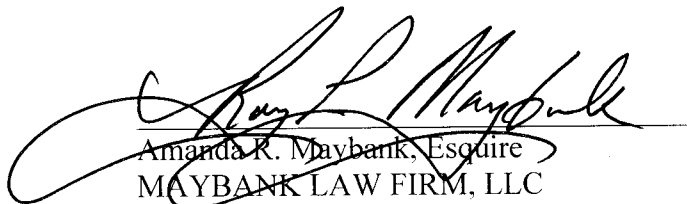
Alternatively, if the Court is inclined to grant the motion for fees and costs as to APS, Professional Plastering should not be allowed to recover a full \$1,000.00, attorney fee from each respondent party.

Professional Plastering has filed motions for fees and costs against both APS and Tesenair/Homeowners Association. These motions break out the costs related to the appeal as to each Respondent. However, Professional Plastering seeks to collect the full \$1,000.00 attorney fee from each Respondent for a total of \$2,000.00, in attorney’s fees.

Rule 220, SCACR, limits the attorney fee to \$1,000.00, and does not contain a provision which would allow a party to recover the full fee from multiple parties in

an appeal. Accordingly, the \$1,000.00 allowable attorney fee should be divided between APS and the Tesenair/Homeowner Respondents.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Amanda R. Maybank", is written over the typed name and firm name.

Amanda R. Maybank, Esquire
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Attorney for Respondent APS Enterprises
Unlimited, Inc.

September 25, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Enterprises Unlimited, Inc.,..... Third Party
Plaintiffs,

PROOF OF SERVICE

I certify that I have served APS Enterprise Unlimited, Inc.'s Return to Appellant's

Motion for Costs by depositing a copy in the U.S. Mail, postage paid on September 25, 2014

addressed to Appellant's attorneys and Co-Counsel as set forth below:

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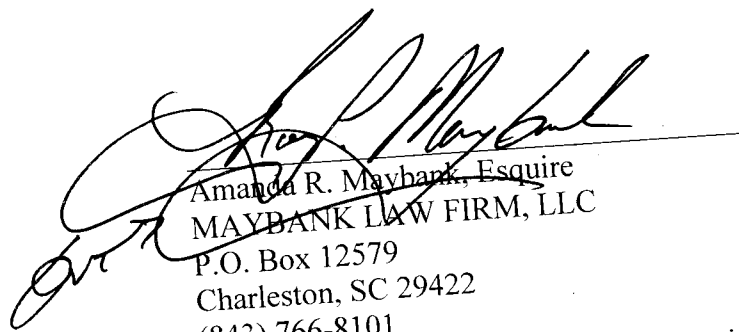
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September 25, 2014

BY FEDERAL EXPRESS
OVERNIGHT DELIVERY

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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SEP 26 2014

SC Court of Appeals

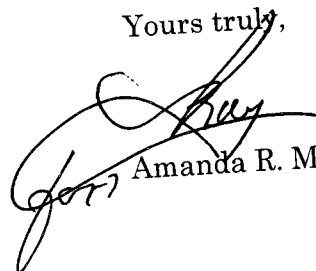
Re: Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc. v. Professional Plastering & Stucco, Inc., et. al.
v. APS Enterprises Unlimited, Inc., et, al.
Case No. 2009-CP-10-0049
Appeal Case No.: 2011196386
Opinion No.: 5188
Claim No.: 72-1148-10
MLF File No. 104.094

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent, APS Enterprise Unlimited, Inc.'s Return to Appellant's Motion for Cost, along with the original and one copy of the Proof of Service regarding the above referenced matter. Please file the original and return a clocked-in copy for our file in the enclosed self-addressed, prepaid envelope.

With kind regards, I am

Yours truly,


Amanda R. Maybank

ARM/tgw
Enclosures
cc: All Counsel of Record



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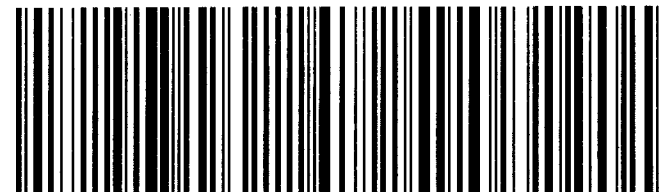
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FedEx
TRK# 8024 6261 1821
0215

**FRI - 26 SEP 10:30A
PRIORITY OVERNIGHT**

28 USCA

29211
SC-US
CAE



FID 666494 25SEP14 CHSA 522C1/CD84/65DD

FedEx Package
Express US Airbill

FedEx
Tracking
Number

8024 6261 1821

1 From

Date

Sender's Name Phone

Company

Address Dept./Floor/Suite/Room

City State ZIP

2 Your Internal Billing Reference

3 To

Recipient's Name Phone

Company

Address Dept./Floor/Suite/Room
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address
Use this line for the HOLD location address or for continuation of your shipping address.

City State ZIP

HOLD Weekday
FedEx location address
REQUIRED. NOT available for
FedEx First Overnight.

HOLD Saturday
FedEx location address
REQUIRED. Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

4 Express Package Service

* To most locations.
NOTE: Service order has changed. Please select carefully.

Packages up to 150 lbs.
For packages over 150 lbs. use the
FedEx Express Freight US Airbill.

Next Business Day

- FedEx First Overnight**
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Priority Overnight**
Next business morning. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Standard Overnight**
Next business afternoon. Saturday Delivery NOT available.

2 or 3 Business Days

- FedEx 2Day A.M.**
Second business morning. Saturday Delivery NOT available.
- FedEx 2Day**
Second business afternoon. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Express Saver**
Third business day. Saturday Delivery NOT available.

5 Packaging * Declared value limit \$500.

- FedEx Envelope*
- FedEx Pak*
- FedEx Box
- FedEx Tube
- Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

- No
- Yes As per attached Shipper's Declaration.
- Yes Shipper's Declaration not required.
- Dry Ice Dry ice, 9, UN 1845 _____ x _____ kg
- Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

- Sender** Acct. No. in Section I will be billed.
- Recipient**
- Third Party**
- Credit Card**
- Cash/Check**

Total Packages Total Weight lbs. Credit Card Auth.

Your liability is limited to US\$100 unless you declare a higher value. See the current FedEx Service Guide for details.



Insert shipping document here.

1 A
RT 104
1821
09.26
FZ



8024 6261 1821