

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Judge

Case No.: 2011-CP-10-2028

RECEIVED

DEC 29 2014

SC Court of Appeals

Joseph M. Bettelli, Jr. and Susan B. BettelliAppellants

v.

Town of Awendaw Board of Zoning Appeals
and Berkeley Electric Cooperative, Inc.,Respondents

REPLY TO APPELLANTS' RETURN TO MOTION FOR COSTS

J. Jay Hulst
John B. Williams
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
JJH@WilliamsandHulst.com

Attorneys for the Respondent,
Berkeley Electric Cooperative, Inc.

Dated: December 22, 2014

MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO
APPELLANTS' RETURN TO RESPONDENT'S MOTION FOR COSTS.

Respondent, Berkeley Electric Cooperative, Inc. ("BEC") has asked that the Court tax costs against Appellants as allowed by Rule 222 (a) and (b) SCACR. Appellants filed a Return opposing the motion on various grounds. Appellants' Return fails to provide any valid basis whatsoever for denying BEC's motion.

I. APPELLANTS FAIL TO SUBSTANTIATE ANY OF THE
FACTUAL REPRESENTATIONS IN THEIR RETURN.

A party's return to a motion to tax costs is governed by Rule 240 SCACR. More specifically, subsection (c)(3) of Rule 240 SCACR requires:

Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

Appellants offer no support whatsoever for any of the factual representations asserted in their Return. There are no citations to the Record on Appeal. There are no accompanying affidavits. Appellant's Return is nothing but unsubstantiated argument and provides no basis for denying BEC's motion. Therefore, Appellants' Return should be disregarded.

II. APPELLANTS ARGUMENTS ARE NOT SUPPORTED BY
THE RECORD AND ARE CONTRARY TO THE RULES.

Appellants contend that BEC should be denied its right to recover costs on the ground that "the lower court substantially ruled in Appellants favor at every stage until the final order." BEC's application for the variance at issue was

unanimously approved by the Town of Awendaw's Board of Zoning Appeals (hereinafter, "BZA.") R. pp. 108-109. Appellants appealed that decision to the Honorable J. C. Nicholson, Jr., who remanded the matter back to BZA to provide factual findings underlying its decision. R. pp. 20-21. After a second hearing the Court upheld the granting of the variance by the BZA and denied Appellant's appeal. R. pp. 1-3. Appellants then filed this appeal. On November 5, 2014 this Court affirmed the Circuit Court's order in a one-page *per curiam* decision. Appellants have lost at every level in this matter.

Rule 222(a) SCACR provides that unless otherwise ordered or agreed, costs *shall* be taxed against the appellant when the appeal is affirmed. (Emphasis added.) There is no court order or agreement otherwise in this case. Appellants' contention that they should be relieved of their obligation to pay costs because they were winning—until they lost—is not only inaccurate, it is flatly contrary to the rule.

Appellants argue that they "bore substantial costs of printing the Record on Appeal," and that BEC's expenses were insignificant. The cost of printing the Record was a financial obligation assumed by the Appellants when they chose to pursue this appeal. The cost of the Record provides no basis for avoiding costs or fees under Rule 222 in the event the challenged decision is affirmed. As a prevailing party, BEC's printing costs are recoverable under Rule 222(b) SCACR. The fact that those costs amount to "less than \$100.00" does not render them any less recoverable.

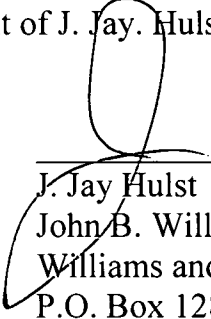
In support of their position, Appellants note that the appeal was decided by the Court of Appeals on the briefs and without argument “so the parties incurred no expenses in preparing for, traveling to and participating at Court.” BEC has not sought any recovery for those non-expenses. That the parties were able to save on certain costs probably says more about the nature and strength of the issues in this appeal. It certainly does not make the fees and expenses actually sought by BEC any less recoverable under Rule 222 SCACR.

Appellants argue that they hold labor and clerical positions, are merely trying to protect the values and use of their property, and have already incurred significant expenses. BEC is also trying to protect the value and use of its property and has also incurred significant expense—far more than what it will ever be able to recover under Rule 222 SCACR. That Appellants work as laborers or clerks or that BEC is a utility cooperative is irrelevant to the analysis under Rule 222. Appellants clearly are not indigent: According to Charleston County’s tax records, they own a real property valued in the hundreds of thousands of dollars. See Charleston County property card print-outs, attached as Exhibit A to affidavit of J. Jay Hulst.

Appellants chose to pursue this appeal and knew or should have known that if the Circuit Court’s order was affirmed they would be responsible for BEC’s costs and fees as provided under Rule 222 SCACR. Appellants have failed to offer any valid grounds to avoid their obligations under that rule. BEC’s motion for costs should be granted.

CONCLUSION

Based on the foregoing, BEC respectfully requests that the Court award costs as set forth in the sworn statement of J. Jay Hulst.



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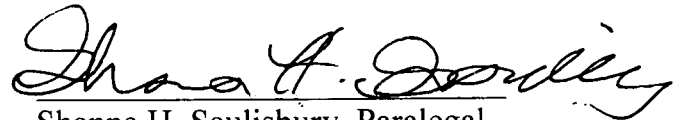
Joseph M. Bettelli, Jr. and Susan B. Bettelli.....Appellants

v.

Town of Awendaw Board of Zoning Appeals
and Berkeley Electric Cooperative, Inc.,.....Respondents

PROOF OF SERVICE

I certify that I have served a copy of Reply to Appellants' Return to Motion for Costs and Affidavit of J. Jay Hulst in Support of Motion for Costs with regard to the above cited matter on all parties by depositing a copy of said pleadings in the United States Mail, postage prepaid, on December 22, 2014, addressed to the attorney for the Appellants, Christopher McG. Holmes, 222 W. Coleman Blvd., Ste. 124, Mount Pleasant, South Carolina 29464 and to the attorney for the Town of Awendaw Board of Zoning Appeals, Dwayne M. Green, 602 Rutledge Avenue, Charleston, South Carolina, 29403.



Shanna H. Saulisbury, Paralegal
Williams and Hulst, LLC
209 East Main Street
Moncks Corner, SC 29461
(843) 761-8232 / 899-5834 FAX

December 22, 2014

John B. Williams
Jary J. Hulst
John O. Williams

209 E. Main Street
Moncks Corner, SC 29461

Phone 843.761.8232
Fax 843.899.5834

WILLIAMS AND HULST, LLC.

ATTORNEYS AT LAW



December 22, 2014

Appellate work
Aviation law
Business formation
Commercial disputes
Condemnation
Construction law
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Insurance coverage
Municipal law
Personal injury
Probate and estate matters
Real estate
Utility industry related matters
Wills
Wrongful death

The Honorable Jenny Abbott Kitchings
Clerk of Court SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

RE: Bettelli v. Town of Awendaw Board of Zoning Appeals, et al.
Appellate Case No.: 2013-001286

Dear Ms. Kitchings:

Enclosed is an original and seven (7) copies each of a Reply to Appellants' Return to Motion for Costs and Affidavit of J. Jay Hulst in Support of Motion for Costs. Also enclosed is an original and two (2) copies of a Certificate of Service. Please return a filed copy of the Motion and Affidavit to our office in the self-addressed stamped envelope provided.

By copy of this letter I have served counsel for the Appellants with copies of the Motion and Affidavit.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions.

With kindest regards, I remain

Sincerely,

WILLIAMS AND HULST, LLC

Jary J. Hulst

JJH:shs

Enclosures as stated

cc: Christopher McG. Holmes, Esq.
Dwayne M. Green, Esq.
(Both via U.S. mail w/o enclosure)

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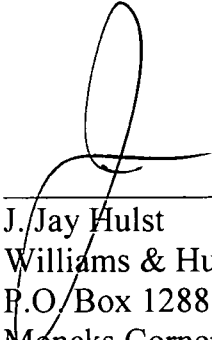
v.

Town of Awendaw Board of Zoning Appeals
and Berkeley Electric Cooperative, Inc.,.....Respondents

AFFIDAVIT OF J. JAY HULST IN SUPPORT OF MOTION FOR COSTS

PERSONALLY appeared before me, the undersigned, who first being duly sworn, does state:

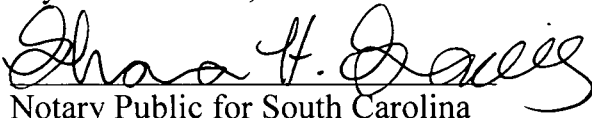
1. I am the attorney for Respondent, Berkeley Electric Cooperative, Inc.
2. Attached as Exhibit "A" Charleston County property cards reflecting the values of various properties owned by Appellants as of this date.



J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
Facsimile (843) 899-5834

Attorneys for the Respondent
Berkeley Electric Cooperative, Inc.

SWORN to before me this 22nd
day of December, 2014.



Notary Public for South Carolina
My Commission Expires: 12/20/2017

EXHIBIT A

Charleston County, South Carolina

generated on 12/22/2014 4:06:12 PM EST

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6830000066		1129 THAMES RD, AWENDAW	12/20/2014	2014	2014

Current Parcel Information

Owner	BETTELLI JOSEPH M JR BATTEN SUSAN D	Property Class Code	101 - RESID-SFR
		Acreage	.8500
Owner Address	1129 THAMES RD AWENDAW SC 29429-5927		
Legal Description	Description -LOT 5 OF PT TRACT B PlatSuffix CG-149 PolTwp 001		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2014	\$40,500	\$200,400	\$240,900	\$1,140.26	\$0.00
2013	\$40,500	\$200,400	\$240,900	\$1,104.11	\$1,104.11
2012	\$40,500	\$200,400	\$240,900	\$1,064.06	\$1,064.06
2011			\$240,900	\$1,053.43	\$1,053.43
2010			\$218,800	\$959.03	\$959.03

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HARBIN MARTHA A	B407 613	5/17/2002	G		\$225,000
THAMES RAY J I	E365 623	3/1/2001	G		\$105,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	2002	1.0	04	2,432	
R01	SWL	Residential Sewer Water Lands	1993	0	0		1
R01	SWL	Residential Sewer Water Lands	1993	0	0		1

Charleston County, South Carolina

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Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6830000067		THAMES RD, AWENDAW	12/20/2014	2014	2014

Current Parcel Information

Owner	BETTELLI JOSEPH M JR BATTEN SUSAN D	Property Class Code	101 - RESID-SFR
		Acreage	.6900
Owner Address	1129 THAMES RD AWENDAW SC 29429-5927		
Legal Description	Description -LOT 4 OF PT TRACT B PlatSuffix CG-149 PolTwp 001		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2014	\$39,500	\$45,900	\$85,400	\$1,227.86	\$0.00
2013	\$39,500	\$45,900	\$85,400	\$1,207.39	\$1,207.39
2012	\$39,500	\$45,900	\$85,400	\$1,164.42	\$1,164.42
2011			\$85,400	\$1,145.64	\$1,145.64
2010			\$77,600	\$1,037.58	\$1,037.58

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HARBIN MARTHA A	B407 613	5/17/2002	G		\$225,000
THAMES RAY J I	E365 623	3/1/2001	G		\$105,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1975	1.0	02	883	
R01	ICP	Integral Carport	0000	0	0		291
R01	UTLSHED	Residential Shed - Small Util	1970	0	0		100
R01	FLATCP	Carport	1990	0	0		600
R01	SWL	Residential Sewer Water Lands	1975	0	0		1
R01	SWL	Residential Sewer Water Lands	1975	0	0		1

Charleston County, South Carolina

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Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6830000068		THAMES RD, AWENDAW	12/20/2014	2014	2014

Current Parcel Information

Owner	BETTELLI JOSEPH M JR BATTEN SUSAN D	Property Class Code	101 - RESID-SFR
		Acreage	.7300
Owner Address	1129 THAMES RD AWENDAW SC 29429-5927		
Legal Description	Description -LOT 3 OF PART TRACT B PlatSuffix CG-149 PolTwp 001		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2014	\$39,700	\$51,001	\$90,701	\$1,298.47	\$0.00
2013	\$39,700	\$51,001	\$90,701	\$1,276.71	\$1,276.71
2012	\$39,700	\$51,001	\$90,701	\$1,231.04	\$1,231.04
2011			\$90,700	\$1,211.08	\$1,211.08
2010			\$82,300	\$1,095.46	\$1,095.46

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HARBIN MARTHA A	B407 613	5/17/2002	G		\$225,000
THAMES RAY J I	E365 623	3/1/2001	G		\$105,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1978	1.0	02	720	
R01	ICP	Integral Carport	0000	0	0		240
R01	UTLSHED	Residential Shed - Small Util	1970	0	0		100
R01	FLATCP	Carport	1980	0	0		192
R01	SWL	Residential Sewer Water Lands	1978	0	0		1
R01	SWL	Residential Sewer Water Lands	1978	0	0		1
R01	MISC	Miscellaneous	2002	0	0		288
R01	MACHINE	General Purpose Bldg x Other	2002	0	0		720
R01	MISC	Miscellaneous	2002	0	0		144
R01	MISC	Miscellaneous	2002	0	0		288

Charleston County, South Carolina

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Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6830000069		THAMES RD, AWENDAW	12/20/2014	2014	2014

Current Parcel Information

Owner	BETTELLI JOSEPH M JR BATTEN SUSAN D	Property Class Code	101 - RESID-SFR
Owner Address	1129 THAMES RD AWENDAW SC 29429-5927	Acreage	.8400
Legal Description	Description -LOT 2 OF PART TRACT B PlatSuffix CG-149 PolTwp 001		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2014	\$34,400	\$39,500	\$73,900	\$1,075.72	\$1,075.72
2013	\$34,400	\$39,500	\$73,900	\$1,058.01	\$1,058.01
2012	\$34,400	\$39,500	\$73,900	\$1,020.83	\$1,020.83
2011			\$73,900	\$1,004.59	\$1,004.59
2010			\$67,200	\$907.26	\$907.26

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HARBIN MARTHA A	B407 613	5/17/2002	G		\$225,000
THAMES RAY J I	E365 623	3/1/2001	G		\$105,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1960	1.0	02	520	
R01	ICP	Integral Carport	0000	0	0		180
R01	UTLSHED	Residential Shed - Small Util	1970	0	0		140
R01	SWL	Residential Sewer Water Lands	1960	0	0		1
R01	SWL	Residential Sewer Water Lands	1960	0	0		1

Charleston County, South Carolina

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Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6830000070		THAMES RD, AWENDAW	12/20/2014	2014	2014

Current Parcel Information

Owner	BETTELLI JOSEPH M JR BATTEN SUSAN D	Property Class Code	905 - VAC-RES-LOT
		Acreage	1.5100
Owner Address	1129 THAMES RD AWENDAW SC 29429-5927		
Legal Description	Description -LOT 1-A PlatSuffix CG-149 PolTwp 001		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2014	\$46,100		\$46,100	\$610.88	\$610.88
2013	\$46,100		\$46,100	\$599.80	\$599.80
2012	\$46,100		\$46,100	\$576.51	\$576.51
2011			\$46,100	\$566.34	\$566.34
2010			\$41,900	\$518.94	\$518.94

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HARBIN MARTHA A	B407 613	5/17/2002	G		\$225,000
THAMES RAY J I	E365 623	3/1/2001	G		\$105,000
NOT SUPPLIED	R178 632	10/11/1988	G		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	SWL	Residential Sewer Water Lands	1999	0	0		1
R01	SWL	Residential Sewer Water Lands	1999	0	0		1