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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

James O. Spence, Master-in-Equity

Appellate Case No. 2014-002710  
Common Pleas Case No. 2012-CP-32-2816

**RECEIVED**  
MAR 18 2015  
**SC Court of Appeals**

FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC,.....Appellant,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo Bank, N.A.; Branch Banking and Trust Company, Defendants,

Of whom Bryon J. Dolan and Lisa S. Dolan are the.....Respondents.

RESPONDENTS' MOTION FOR COSTS ON APPEAL AND ATTORNEY'S FEES

Respondents hereby move pursuant to Rules 222 and 269, SCACR, for the taxation of costs on appeal against the Appellant and the taxation of attorney's fees against the Respondent. The grounds for this motion are that the Appellant is entitled to the taxation of his costs on appeal against the Respondent, as the following shows:

1. Rule 222, SCACR, provides for the taxation of costs on appeal against an appellant when an appeal is dismissed.
2. This motion is timely. "A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule." Rule 222(d), SCACR. The remittitur was issued on March 3, 2015.

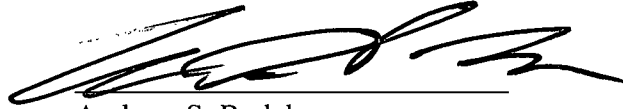
3. The Respondents have incurred costs taxable under Rule 22(b), SCACR, in the amount of \$1,095.20, as is shown on the attached itemized statement of costs.
4. The Respondents are entitled to an order taxing costs against the Appellant.
5. Rule 269, SCACR, provides that “[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, *or is not in compliance with these Rules*, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” (Emphasis added.)
6. The Appellant sought the same relief it sought in this appeal – to have the same order undone – by motion in an appeal brought by the Respondents. FV-I, Inc. v. Dolan, App. Case No. 2014-001384 (S.C. Ct. App. Order filed February 13, 2015). The Appellant sought to take two bites at the apple.
7. Rule 241(d)(7), SCACR, which governs the process by which a party seeks to have a court lift, impose, or modify an appellate stay, provides that “[a]ny party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision.” The use of the word “petition” is telling. Rule 240, SCACR, governs “all motions or petitions filed in the appellate court” and certainly seems to embrace petitions pursuant to Rule 241(d)(7), SCACR. It

specifically mentions that it applies to “petitions for supersedeas[.]” Rule 240(a), SCACR. The process of seeking review of an order that lifts, imposes, or modifies a stay, or declines to do so, is the process under Rule 240, SCACR. That is the sort of order that was the subject of this appeal.

8. This appeal was “not in compliance with” the Appellate Court Rules, which provide that a motion or petition, not an appeal, is the avenue to seek what the Appellant sought in this appeal.
9. As shown by the attached affidavit, because of the Appellant’s doubling up on its attempt to get that order undone, Respondents’ counsel spent 14 hours working on this appeal, time that never should have had to spent on this case at all.
10. An order providing for the Appellant to compensate Respondents’ counsel for his time, at \$4,200.00 (or such other amount as the court deems appropriate) would discourage such duplicative conduct as the Appellant’s in the future. That would be appropriate in this case.

WHEREFORE Respondents pray for an order taxing costs and attorney’s fees in the amount of \$4,295.20; in the alternative, for an order taxing costs in the amount of \$1,095.20; or, in the further alternative, for the taxation of costs and/or attorney’s fees in the amount deemed appropriate by the court, against the Appellant in this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew S. Radeker", written over a horizontal line.

Andrew S. Radeker  
Harrison & Radeker, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
Attorney for Respondents

March 18, 2015.

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ITEMIZED STATEMENT OF COSTS

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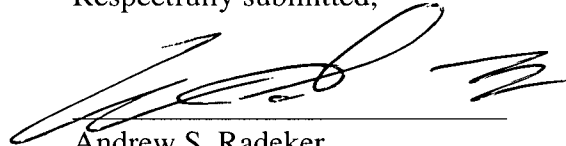
The appellate court is requested to tax the following costs against

**FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC**

Costs taxable under Rule 222, SCACR	No. of Pages	Rate	Requested	Allowed
Cost of court reporter's transcript of hearing	34	\$2.80/page	\$95.20	
Attorney's fee provided by Rule 222(b), SCACR	N/A	Per 1997 order	\$1,000.00	
<b>TOTAL</b>			<b>\$1,095.20</b>	

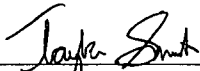
I, Andrew S. Radeker, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served by mail on opposing counsel with Respondents' motion for costs and attorney's fees.

Respectfully submitted,



Andrew S. Radeker  
 Harrison & Radeker, P.A.  
 Post Office Box 50143  
 Columbia, South Carolina 29250  
 (803) 779-2211  
 Attorney for Respondents

SWORN to before me this  
 18th day of March, 2015.

  
 \_\_\_\_\_ (L.S.)  
 Notary Public for South Carolina  
 My Commission Expires: 6/10/2024



Southern Reporting, Inc.

Phone: 803-749-8100

701 Gervais Street  
Suite 150-285  
Columbia, SC 29201

Fax: 803-749-9991

Andrew S. Radeker  
Harrison & Radeker, PA  
923 Calhoun Street (29201)  
Post Office Box 50143  
Columbia, SC 29250

# INVOICE

<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Job No.</b>
19678	10/20/2014	11919
<b>Job Date</b>	<b>Case No.</b>	
9/24/2014	12-CP-32-2816	
<b>Case Name</b>		
FV-I, Inc. vs. Dolan, et al.		
<b>Payment Terms</b>		
Due upon receipt		

### Hearing

Hearing/Meeting - Transcript Copy	34.00 Pages	@	2.80	95.20
Condensed Transcript			0.00	0.00
Electronic Transcript			0.00	0.00
Delivery			0.00	0.00
<b>TOTAL DUE &gt;&gt;&gt;</b>				<b>\$95.20</b>

A 2.4% processing fee will be added to all credit card payments, unless paid within 7 business days.

Thank you for your trust!

**Tax ID: 13-4211219**

*Please detach bottom portion and return with payment.*

Andrew S. Radeker  
Harrison & Radeker, PA  
923 Calhoun Street (29201)  
Post Office Box 50143  
Columbia, SC 29250

Job No. : 11919 BU ID : 1-MAIN  
Case No. : 12-CP-32-2816  
Case Name : FV-I, Inc. vs. Dolan, et al.  
Invoice No. : 19678 Invoice Date : 10/20/2014  
**Total Due : \$ 95.20**

Remit To: **Southern Reporting, Inc.**  
**701 Gervais Street**  
**Suite 150-285**  
**Columbia, SC 29201**

### PAYMENT WITH CREDIT CARD



Cardholder's Name: \_\_\_\_\_  
Card Number: \_\_\_\_\_  
Exp. Date: \_\_\_\_\_ Phone#: \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
Zip: \_\_\_\_\_ Card Security Code: \_\_\_\_\_  
Amount to Charge: \_\_\_\_\_  
Cardholder's Signature: \_\_\_\_\_

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AFFIDAVIT OF ANDREW S. RADEKER

Personally appeared before me Andrew S. Radeker, who, first being duly  
sworn, deposes and says as follows:

1. I represent Bryon J. Dolan and Lisa S. Dolan in the above-captioned  
action.
2. I am an attorney admitted to practice law in South Carolina. I practice  
with the law firm of Harrison & Radeker, P.A., in Columbia, South  
Carolina, where I practice largely in the areas of real property litigation,  
debt collection (representing both creditors and debtors), consumer  
litigation, general (i.e., personal injury and death-related) plaintiff's  
litigation, false arrest and civil rights cases, appeals, and foreclosure

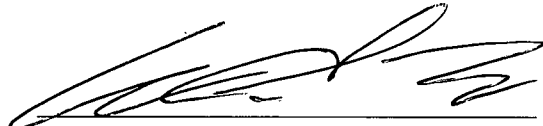
defense. I have been engaged in the private practice of law at this firm since my admission to the South Carolina Bar in 2005, at which time the firm was named James C. Harrison, Jr., P.A. The firm's name changed when I became a shareholder and officer in 2009.

3. I have represented parties in various types of litigation, including achieving successful results at trial and on appeal.
4. My curriculum vitae is attached hereto and incorporated herein by reference.
5. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).
6. The contingency of compensation is a factor in this case, as my clients pay our firm a flat monthly rate for their representation.
7. I wish I had known of this court's decision to dismiss this appeal before I wrote the Respondents' brief in this case; however, I learned of the dismissal of this appeal only after I had finished writing the brief.
8. I spent at least 14 hours working on the above-captioned appeal. Almost all of that work was spent researching the law on the issues presented by this appeal and in drafting the Respondents' brief in this appeal.

9. My regular hourly rate is \$300.00 per hour. This hourly rate is normal and customary for attorneys' services in the Columbia area and this state for the type of litigation involved in this case and this appeal.

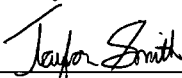
10. At my hourly rate, the amount of work I spent on this appeal represents \$4,200.00.

FURTHER AFFIANT SAYETH NOT.



Andrew S. Radeker

SWORN to before me this  
18th day of March, 2015.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: June 10, 2024

**Andrew Sims Radeker**

*Curriculum vitae*

Employment:

Jan. 2009-Present: Attorney, Partner – Harrison & Radeker, P.A. – Columbia, S.C.  
Nov. 2005-Dec. 2008: Attorney, Associate – James C. Harrison, Jr., P.A. – Columbia, S.C.

Practice emphases: Real Property Lawsuits  
Debt Collection (representing both plaintiffs and defendants)  
Foreclosure Defense  
False Arrest/Civil Rights  
Appeals

Education: Juris Doctor, 2005, University of South Carolina School of Law  
Bachelor of Arts, magna cum laude, English, 2001, College of Charleston

Bar Admissions: South Carolina Bar, 2005  
U.S. District Court for South Carolina, 2007  
U.S. 4<sup>th</sup> Circuit Court of Appeals, 2013

Organization Membership: Consumer Law Section, S.C. Bar Association (past section council member)  
S.C. Bar Practice & Procedure Committee  
Richland County Bar Association  
South Carolina Association for Justice – Real Estate Section Chair

Publications: Contributing author, Foreclosure Law Manual (3d. ed. & 2014 Supp.)

Some CLE Presentations: August 2014 – Consumer Law 101 (presented on foreclosure defenses and counterclaims)

June 2013 – Foreclosure Law in South Carolina (on general foreclosure panel, also presented on defenses and counterclaims)

February 2013 – Installment Land Sale Contracts

August 2012 – Collecting Judgments

January 2012 – Panel member, discussion of Matrix case & HAMP orders  
S.C. Bar Convention, Consumer Law Section

January 2012 – Defending Foreclosure Actions  
(co-presenter with James C. Harrison, Jr.)

August 2011 – S.C. Annual Judicial Conference,  
Masters-in-Equity Session (co-presenter with James C. Harrison, Jr.)

September 2009 – Home Affordable Modification Program  
Presentation to South Carolina Legal Services attorneys  
\* materials included in 2009 Master-in-Equity Bench/Bar materials

October 2008 - Master-in-Equity Bench/Bar  
Pleading Special Property Matters: A New Look at Old Stuff

October 2007 – Installment Land Sale Contracts, presented to  
S.C. Legal Services attys. (co-presenter with James C. Harrison, Jr.)  
\* materials cited by Prof. Stephen Spitz in Property Law textbook

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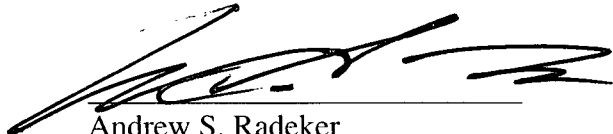
Of whom Bryon J. Dolan and Lisa S. Dolan are the.....Respondents.

PROOF OF SERVICE

I certify that I served the foregoing motion for costs on appeal and attorney's fees by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Charles S. Gwynne, Jr., Esq.  
Rogers Townsend & Thomas, PC  
P.O. Box 100200  
Columbia, SC 29202

March 18, 2015



Andrew S. Radeker  
Harrison & Radeker, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
Attorney for Respondents

LAW OFFICES  
**HARRISON & RADEKER, P.A.**  
923 CALHOUN STREET  
COLUMBIA, SOUTH CAROLINA 29201

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**SC Court of Appeals**

James C. Harrison, Jr.\*  
Andrew S. Radeker  
Taylor M. Smith IV

P.O. Box 50143  
Columbia, SC 29250

(803) 779-2211  
(803) 779-6700 (FAX)

\* Mediator/Arbitrator

March 18, 2015

**VIA HAND DELIVERY**

The Hon. Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals of South Carolina  
Edgar Brown Building  
1205 Pendleton Street  
Columbia, South Carolina 29201

Re: **FV-I, Inc., etc. v. Bryon J. Dolan, et al.**  
**Common Pleas Case No.: 2012-CP-32-2816**  
**Appellate Case No.: 2014-002710**

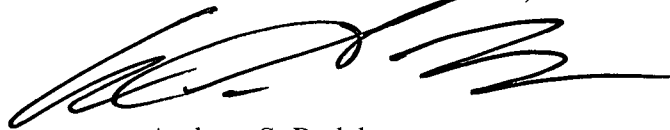
Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced case are an original and seven copies of a motion for costs on appeal and attorney's fees, with attached proof of service thereof. Also enclosed is this firm's check in the amount of \$25.00 as the fee for this motion.

Kindly file these documents and return a file-stamped copy to this office in the stamped and addressed envelope enclosed. Of course, if you or your staff have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,  
**HARRISON & RADEKER, P.A.**



Andrew S. Radeker

ASR/

Enclosures

cc: Charles S. Gwynne, Jr., Esq.