

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas\
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2013-000800

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APR 14 2015

S.C. Supreme Court

THE SPRIGGS GROUP, P.C.,Respondent,

v.

GENE R. SLIVKA,Petitioner.

RESPONSE TO REVISED MOTION FOR TAXATION OF COSTS AND EXPENSES

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Charleston, SC 29401
(843) 577-7730

The Respondent, The Spriggs Group, P.C., is not entitled to costs under South Carolina Rule of Appellate Procedure 242(j). SCACR 242(j) **Costs When a Writ of Certiorari Has Been Granted** (emphasis in original), provides as follows:

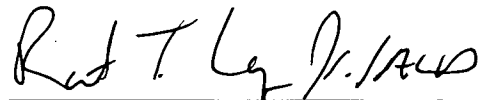
- (1) *To Whom Awarded.* Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.

First, SCACR 242(j) does not apply in this instance, as certiorari was dismissed. The Supreme Court granted certiorari on July 14, 2014. Briefs were submitted and oral arguments made. Following said arguments, the Supreme Court issued Opinion 27508, filed on March 18, 2025. In said opinion the Supreme Court directed the Court of Appeals to depublish its opinion. Next, it dismissed as “improvidently granted” the writ of certiorari. SCACR makes no provision for awarding costs when certiorari is dismissed. The order did not award costs to either party. As certiorari was dismissed, SCACR 242(j) does not apply.

Second, Order 27508 had a negative impact on Respondent Spriggs, while having no impact on Petitioner Slivka. The Supreme Court had the option of affirming the Court of Appeals decision but expressly refused to do so. Instead, the Court ordered that the Court of Appeals depublish the opinion and ordered that said the opinion would no longer have any precedential effect. The ruling of the Supreme Court therefore had a negative impact on Spriggs, while Slivka gained the benefit of having the ruling against him unpublished. This ruling therefore had more of an effect of affirming in part and reversing in part the ruling of the lower court, in which case no party is allowed costs under SCACR 242(j)(1). Therefore, Spriggs is not entitled to costs.

Additionally, the costs expended in the Court of Appeals requested in Respondent's Revised Itemized Statement of Costs and Expenses are clearly not recoverable. Under SCACR 222, unless otherwise ordered by the appellate court or agreed by the parties when an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court. In this matter, the Court of Appeals affirmed in part and reversed and remanded the lower court's award of attorney's fees in its Opinion filed February 26, 2013. No costs were allowed by the Court of Appeals to any party. Therefore neither party is entitled to costs.

Respectfully submitted,



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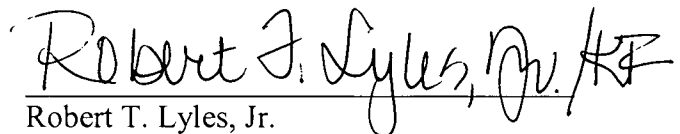
v.

GENE R. SLIVKA,Petitioner.

PROOF OF SERVICE

I certify that I have served Petitioner's Response to Revised Motion fir Taxation of Costs and Expenses on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to their attorneys of record, James A. Bruorton, IV, and Timothy J.W. Muller, Esquire, Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Post Office Box 893, Charleston, S.C. 29402.

April 10, 2015



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April 10, 2015

Daniel E. Shearouse, Clerk of Court
The Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re: *The Spriggs Group, P.C. vs. Slivka*
Appellate Case Number: 2013-000800

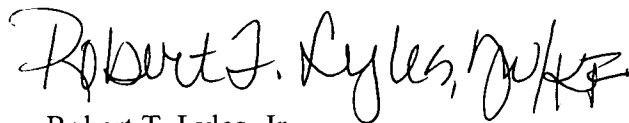
Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of Petitioner's Response to Revised Motion for Taxation of Costs and Expenses in the above referenced matter. By copy of this letter, I am serving the same upon counsel of record.

Please do not hesitate to contact us should you have any questions.

Very truly yours,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/kf
Enclosure

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