

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

THE SPRIGGS GROUP, P.C.,..... Respondent,

v.

GENE R. SLIVKA, Petitioner.

REPLY TO OBJECTION TO MOTION FOR TAXATION OF COSTS
AND EXPENSES

James A. Bruorton IV
Timothy J.W. Muller
Rosen | Hagood
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

Attorneys for Respondent

RECEIVED
MAY 21 2015
S.C. Supreme Court

Petitioner Slivka has filed an opposition to Respondent Spriggs Revised Motion for Taxation of Costs and Expenses. Petitioner Slivka's response implies that the Supreme Court's dismissal of his Writ of Certiorari as being improvidently granted and order to the Court of Appeals to depublish its prior opinion is somehow favorable to Petitioner Slivka. See Supreme Court Order 27508. Those arguments are disingenuous.

Pursuant to SCACR 242(j), 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. (Emphasis added). In this case, the Supreme Court's dismissal of the Writ of Certiorari as being improvidently granted affirms the lower court and Court of Appeals decisions, which were favorable to Respondent Spriggs, not Petitioner Slivka. Petitioner has gained no benefit of the ruling to have the Court of Appeals' Opinion depublished. The effect of the depublication removes the precedential effect of the opinion on other cases, not this case. The Court of Appeals' Opinion is still the law of this case, which is negative to Petitioner Slivka.

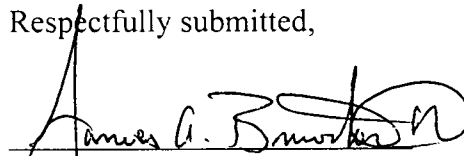
The two substantive legal issues appealed to the Supreme Court were as follows: (1) Are construction administrative services performed by an Architect considered labor under the mechanic's lien statute; and (2) whether a reasonable and fair investigation was performed pursuant to S.C. Code Ann. § 27-1-15 is a question for the jury. The Court of Appeals affirmed the trial court's ruling in favor of Respondent Spriggs on both of those substantive legal issues. The Supreme Court's dismissal of Petitioner Slikva's Writ of Certiorari as being improvidently granted, affirms the Court of Appeals ruling.

Respondent Spriggs has prevailed on Petitioner Slivka's appeal at the Appellate Court level at both the Court of Appeals and the Supreme Court. The trial court's award

of attorneys' fees is the only issue that was reversed and remanded by the Court of Appeals. It was remanded for clarification as to which statute attorneys' fees were to be awarded under, not that Respondent Spriggs was not entitled to attorneys' fees. That clarification hearing was held on May 7th in front of the Honorable William H. Seals, Jr. The authority of the appellate court to grant fees under appellate rules and the circuit court's authority to grant appellate fees under statutory authority are not mutually exclusive. Id at 199; see also McDowell v. South Carolina Department of Social Services, 304 S.C. 539 (1991); Muller v. Myrtle Beach Golf and Yacht Club, 313 S.C. 412 (1993)

For the reasons set forth above, costs should be taxed or assessed against Petitioner, Gene R. Slivka, in the total amount of \$3,034.42 as set forth in Respondent Spriggs' Revised Motion for Taxation of Costs and Expenses and more particularly set forth on the Revised Itemized Statement of Costs filed along therewith.

Respectfully submitted,



James A. Bruorton IV
Timothy J.W. Muller
Rosen | Hagood
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 577-6726
(843) 724-8036 (f)

Attorneys for Respondents

May 15, 2015
Charleston, SC

**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

THE SPRIGGS GROUP, P.C.,..... Respondent,

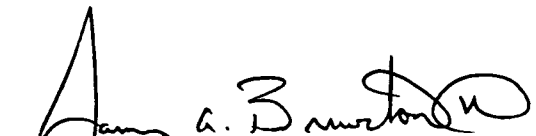
v.

GENE R. SLIVKA, Petitioner.

PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Objection to Motion for Taxation of Costs and Expenses by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2015, to Petitioner's attorney of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina, 29402.

May 15, 2015



James A. Bruorton, IV
Timothy J.W. Muller
Rosen Hagood
PO Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com
Attorneys for Respondent

ROSEN | HAGOOD

James A. Bruorton, IV
cbruorton@rrhlawfirm.com

May 15, 2015

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

RE: The Spriggs Group, P.C. v. Gene Slivka
C/A No.: 2009-CP-15-595
Appellate Case No.: 2013-000800

RECEIVED

MAY 21 2015

S.C. Supreme Court

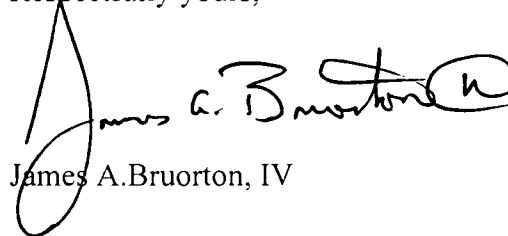
Dear Mr. Shearouse:

Enclosed, please find one original and six (6) copies of Respondent's Reply to Objection to Motion for Taxation of Costs and Expenses, along with our firm's check in the amount of \$25.00 regarding the above referenced matter. By copy of this letter, I am serving the same upon counsel of record.

Thank you in advance for your assistance.

With kindest regards, I am

Respectfully yours,



James A. Bruorton, IV

CAB/lsc
Enclosures as stated
cc: Robert T. Lyles, Jr., Esquire (w/ enc.)