

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

JUN 23 2015

Court of Common Pleas

SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-001273

South Carolina Public Interest Foundation and Waring S. Howe, Jr., individually, and on behalf of all others similarly situated, Appellants,

v.

James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, Hugh K. Leatherman, in his official capacity as President of the South Carolina Senate, Representative Peter M. McCoy, Jr., Senator George E. "Chip" Campsen, and the State of South Carolina, Respondents.

**APPELLANTS' REPLY IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES UNDER SC CODE ANN. § 15-77-300**

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Respondents oppose the Appellants' Motion for Attorneys' Fees, contending that the Appellants are not prevailing parties. Appellants respectfully suggest that pursuant to the case law set out in their Motion for Attorneys' Fees, particularly *Sloan v. Friends of the Hunley* 393 S.C. 152, 157-159, 711 S.E.2d 895, 897-898 (2011), Appellants are the prevailing parties.

Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. Accordingly, ***Sloan prevailed and is entitled to an award of attorney's fees.***

* * *

We affirm the trial court's finding that Sloan is a prevailing party under FOIA and is thus entitled to an award of his attorney's fees.

Id. 393 S.C. 152, 158-159, 711, S.E.2d 895, 898 (2011) (emphasis added). The Supreme Court held that a plaintiff can be a prevailing party, and entitled to attorneys' fees even in the absence of an actual court ruling.

In a similar case, the Supreme Court again ruled that Mr. Sloan was a prevailing party, even when his case was **dismissed on mootness.**

Sloan is the prevailing party. See *Sloan v. Friends of the Hunley, Inc. (Friends II)*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) (“When a public body frustrates a citizen’s FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed.”(citations omitted)). As the prevailing party under these circumstances, the trial court erred in not awarding Sloan his reasonable attorney’s fees and costs. **Sloan is entitled to recover his reasonable attorney’s fees and costs in this action.** See *Litchfield Plantation Co. v. Georgetown Cnty. Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) (“A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.”).

Sloan v. South Carolina Department of Revenue, 409 S.C. 551, 555-56, 762 S.E.2d 687, 698 (2014) (footnote omitted).

Just as the Supreme Court ruled in the *Friends of the Hunley* case, and in *Sloan v. South Carolina Department of Revenue*, this Court should also rule that the Appellants are prevailing parties, because the Respondents made a unilateral change in position (repealing Act 130) long after suit was filed, and thereby provided the Appellants the very relief they sought through litigation.

All Respondents were sued in their official capacities, as representatives of the body in which they serve, the South Carolina General Assembly. The General Assembly repealed the offending act. Respondents admit, “[T]he General Assembly enacted legislation that moots this appeal.” Return, p. 3. All Respondents litigated this case in their official capacities, with lawyers paid for by the State. Appellants achieved their goal of invalidating the Act at issue through the unilateral action of the Respondents.

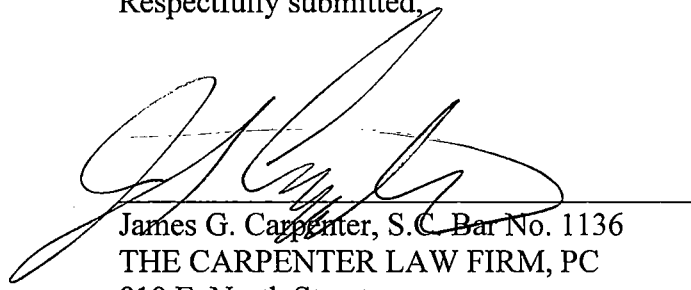
Respondents suggest in footnote 1 of their Return that Appellants’ Motion is premature, under Rule 222(d). Rule 222(d) **does not address** attorneys’ fees awarded under South Carolina Code Ann. § 15-77-300, but rather only those costs listed in and governed by Rule 222.

Through May 23, 2015, Appellants incurred \$148,931.25 in attorneys’ fees and \$4,756.38 in costs pursuing this matter, for a total of \$153,687.63. Respondents did not contest the amount of the attorneys’ fees listed in the affidavit of the Appellants’ counsel. With all of the different teams of attorneys arrayed on the Respondents’ side of the courtroom, Appellants suggest that the amount of Appellants’ fees pale in comparison to what was most likely paid by or for the Respondents. The Court should find that Appellants’ actual attorneys’ fees and costs were reasonable, and that Appellants are entitled to a full award of attorney’s fees and costs as the prevailing parties in this action.

CONCLUSION

Appellants are prevailing parties. The Respondents were not substantially justified in pressing their claims. No other factors make an award of attorneys' fees unjust. Wherefore, Appellants pray the Court for an award of actual and reasonable attorneys' fees and costs from the Respondents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

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June 18, 2015

Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Reply in Support of Motion for Attorneys' Fees on counsel for Respondents by email and US Mail, postage prepaid, on Thursday, June 18, 2015 addressed as follows:

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June 18, 2015

V. Claire Allen, Deputy Clerk
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: *South Carolina Public Interest Foundation et al. vs. Harrell, et al*
Court of Appeals Case No. 2013-001273

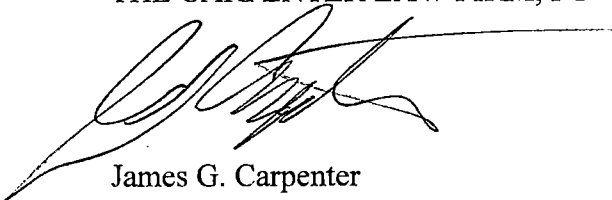
Dear Ms. Allen:

I enclose the original and seven copies of Appellants' Reply in Support of Motion for Attorneys' Fees under SC Code Annotated § 15-77-300.

Please file the originals and return a clocked in copy to me in the enclosed, postage paid envelope.

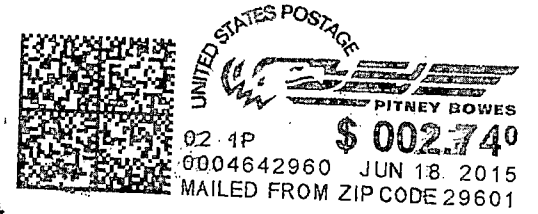
Thank you very much.

Sincerely yours,
THE CARPENTER LAW FIRM, PC



James G. Carpenter

Enclosure
CC w/encl: all opposing counsel



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