

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED

AUG 24 2015

S.C. Supreme Court

Appellate Case No. 2014-001167

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
Of Whom Stanley E. Alexander is the.....Respondent,

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

RETURN TO PETITIONER'S MOTION FOR COSTS

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TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA:

FACTS/PROCEDURAL BACKGROUND

In July 2011, the Circuit Court found as a matter of law Respondent Stanley Alexander breached his duty to Petitioner Amber Johnson and proximately caused her damages in connection with a real estate closing. Accordingly, the Circuit Court granted partial summary judgment in Johnson's favor. Alexander appealed to the Court of Appeals, which reversed and remanded. Johnson filed a petition for writ of certiorari to this Court that was granted in December 2014. The parties submitted briefs, and the Court held oral argument. This Court issued an opinion reversing the Court of Appeals and affirming the Circuit Court's grant of partial summary judgment.

Pursuant to Rules 222(a), 240, and 242(j), of the South Carolina Appellate Court Rules, Johnson has filed a motion requesting costs of the appeal. Alexander respectfully requests this Court deny Johnson's motion for costs.

LAW/ANALYSIS

Rule 242(j) governs award of costs in cases where a petition for writ of certiorari is granted. Under Rule 242(j)(1), SCACR, costs may be assessed "against the appellant if the Supreme Court's decision has the effect of affirming the judgment of the lower court, which was reviewed by the Court of Appeals," unless this Court orders otherwise. Rule 242(j)(2), SCACR, provides a list of allowable costs while the appeal is before the Supreme Court, including (1) the filing fee for the a petition for writ of certiorari; (2) the costs of printing the appendix; (3) the costs of printing the party's brief(s); (4) a \$1,000 attorney's fee; and (5) any allowable costs under Rule 222(b), SCACR.

Rule 222(b), SCACR, provides for costs while the appeal is before the Court of Appeals.

Rule 222(b) provides:

Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxes against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.

The party entitled to recover costs must recover (1) the filing fee; (2) the costs of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds; (4) the costs of printing the record on appeal; (5) the costs of printing the final brief; and (6) the \$1,000 attorney's fees. Rule 222(b), SCACR.

Alexander respectfully requests this Court deny the motion for costs because this case presented a novel issue. There was no established precedent in South Carolina of whether an attorney was liable for negligence in tasks he delegates. Under these circumstances, the parties should each bear their own respective costs on appeal.

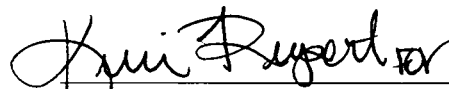
Alternatively, if this Court taxes costs against Alexander, the costs should be reduced to \$2,221.60 for only those costs related to expenses while the appeal was pending before this Court. Costs should not be taxed against Alexander while the appeal was pending before the Court of Appeals. Under Rule 222(a), when a judgment is reversed by the Court of Appeals, costs shall be taxed against the respondent. The Court of Appeals found in Alexander's favor and reversed the circuit court's grant of partial summary judgment. Because Rule 222 governs costs while the appeal is before the Court of Appeals and that Court reversed the Circuit Court, Johnson should not be permitted costs from the appeal to the Court of Appeals.

Further, the \$43.40 expense for "Enlargement/Blow Up used in Oral Argument" is not an allowable cost. Generally, the allowance of additional costs are not allowed except "in the most

extraordinary of circumstances.” Johnson did not present any circumstances justifying this additional cost.

Accordingly, considering the novel issue presented before the Court, Alexander respectfully requests this Court deny Johnson’s motion for costs. In the alternative, the costs should be reduced to \$2,221.60 because Johnson did not prevail before the Court of Appeals.

Respectfully Submitted:



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Columbia, South Carolina
August 24, 2014

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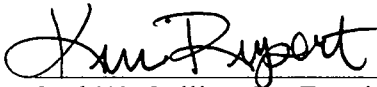
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below the following individuals were served with a copy of the *Return to Petitioner's Motion for Costs* by depositing a copy of the same in the United States Mail, postage prepared, to the following addresses:

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August 24, 2015