

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2013-000712

RECEIVED

OCT 07 2015

SC Court of Appeals

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc. Plaintiffs,

v.

South Bay Properties, LLC, Stantec Consulting Services, Inc. f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewskiu, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers) Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, and Joyce M. Owens, Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa Lynn Ridgeway and Georgetown County Forfeited Land Commission Defendants,

Of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants,

and

Bonnie N. Charlton, Ronald L. Charlton, Bayside Property, Inc., South Bay Properties, LLC, Stantec Consulting Services, Inc. f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., Patrick A. DiAngelo, Deborah A. DiAngelo, and Georgetown County Forfeited Land Commission are Respondents.

REPLY IN SUPPORT OF MOTION FOR COSTS

Charles T. Smith
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc. moved that costs be assessed against Appellants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens pursuant to Rule 222, SCRAP. The Order filed August 12, 2015 dismissed this appeal because the order being appealed was not appealable. At the time the circuit court ruled to deny reconsideration of the order of reference, the right to a jury trial did not exist because there were no causes of action for which a jury trial could have been demanded.

Appellants' Return to Motion for Costs does not object to the specific costs that have been requested. Instead Appellants' Return objects to any costs being allowed. Rule 222(a), SCRAP, establishes a simple standard for determining when, and to whom, costs are allowed:

To Whom Allowed. Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed 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. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.

This appeal was dismissed. The appellate court did not order that costs be taxed contrary to Rule 222, SCRAP. The parties did not agree that costs be taxed contrary to Rule 222, SCRAP.

Appellants' Return to Motion for Costs argues Appellants were the prevailing parties because:

“The Respondents’ recognition for the first time at Oral Argument on Appeal, that this ruling was limited to the status of the pleadings as they existed at the time Respondents’ Motion for Order of Reference was granted, was clearly not articulated in the order, nor by Respondents prior to oral argument. Had such stipulation been made by the Respondents at any time prior to oral argument, the necessity of this Appeal would have been obviated. In this sense, therefore, Appellants were the ‘prevailing parties’.” Appellants’ Return p.6-7

Appellants’ argument relies on a false premise. The Order of Reference states:

“On the day of the motion hearing the Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens filed and served Motions to Amend their Answer, and to Reinstate and Consolidate their prior action (C/A No. 2009-CP-22-1045), with the present action. Since the time required by Rule 6(d), SCRCF, had not run, these Motions were not considered by the undersigned. The Goodwins’ and Owens’ Motion to Amend may be considered by the Master in Equity. *Based upon the present pleadings in this action*, it appears that this is a proper matter to refer to the Honorable Joe M. Crosby, as Master in Equity for Georgetown County.”(emphasis added) Order of Reference p.2, R.p.176

The Order of Reference further states:

“Nothing herein should be construed as ruling on the Defendants’ Goodwins and Owens recently filed Motions referred to above. These Motion are to be heard and ruled upon by the appropriate Court.” Order of Reference p.3, R.p.177

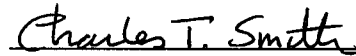
The Respondents’ Brief states:

“The Circuit Court’s ruling on the motion for reconsideration, like the Circuit Court’s ruling on the motion for an order of reference, was, ‘[b]ased upon the present pleadings in this action....’” Respondents Brief p.10

The Respondents’ Brief further states:

“Obviously, if the pleadings change in the future so as to raise an issue triable of right by a jury, a party may then demand a trial by jury by serving a demand in writing not later than ten days after the service of the last pleading directed to such issue.” Respondents Brief p. 11

Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc. respectfully request that the costs set forth in the motion for costs and the itemized statement of costs be assessed against Appellants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens.



Charles T. Smith
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

October 2, 2015

CHARLES T. SMITH

ATTORNEY AND COUNSELOR AT LAW
608 CYPRESS STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 545-6578

charles.smith@scbar.us

October 2, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Bonnie N. Charlton, et al. v. South Bay Properties, LLC, et al.
Appellate Case Number 2013-000712

RECEIVED
OCT 07 2015
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of a Reply in Support of Motion for Costs under Rule 222, SCRAP and Proof of Service. By copy of this letter copies of the Reply are being served on opposing counsel.

Sincerely,

Charles T. Smith

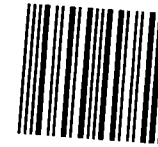
Charles T. Smith

Enclosures

cc: Bonnie N. Charlton
K. Douglas Thornton, Esquire
John M. Leiter, Esquire
John W. Davidson, Esquire
Bryon L. Saintsing, Esquire
Donald G. Hunt, Jr., Esquire
Wesley P. Bryant, Esquire
Patrick A. DiAngelo
Deborah A. DiAngelo



1000



29211

U.S. POSTAGE
PAID
GEORGETOWN, SC
29440
OCT 02 15
AMOUNT
\$2.08
R2305K142038-12

Charles T. Smith
608 Cypress Street
Georgetown, SC 29440

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

OCT 07 2015

SC Court of Appeals

