

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-002464
Op. No. 27594 (S.C. Sup. Ct. filed Dec. 2, 2015)

Scott F. Lawing and Tammy R. Lawing, Petitioners/Respondents,

v.

Univar, USA, Inc., Trinity Manufacturing Inc.,
and Matrix Outsourcing, LLC, Defendants,

Of Whom

Trinity Manufacturing, Inc. and Matrix
Outsourcing, LLC are Respondents/Petitioners.

REPLY

Pursuant to Rules 240(f) and 242(j), SCACR, Scott F. Lawing and Tammy R. Lawing file the following Reply to the Return filed by Respondents/Petitioners Trinity Manufacturing, Inc. and Matrix Outsourcing, LLC to the Lawings' Motion for Costs.

Trinity and Matrix acknowledge that this Court's opinion has the effect of reversing the trial court on both issues the Lawings appealed so that the Lawings prevailed as to both. (Return, p. 2, second paragraph). Trinity and Matrix do not ask this Court to deny the award, but instead assert that because the Court was "divided," there were "detailed and persuasive" dissents by two members, "rehearing was nearly had," and

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this Court modified the Court of Appeals' ruling on the "user and consumer" issue (but still affirmed to the Lawings' benefit on the arguments the Lawings made), then the Court should reduce the costs recoverable. Trinity and Matrix sum up their argument:

Simply stated, Respondents/Petitioners' pursuit of a reduction of costs is premised on credit being given to them based on: the fact that the case at bar was an extremely complex dispute possessing substantial novelty; the zealous advocacy at all levels of the dispute demonstrated by Respondents/Petitioners; and the fact that the ultimate disposition of this matter can be fairly characterized as a "split" decision of this Court.

(Return, p. 3). The Court should not find these arguments persuasive. Instead, the Court should apply the plain language of the Rules and grant the Petition in full.

The Result of This Court's Decision Drives the Decision on Costs

The Court affirmed in part and reversed in part the circuit court's decision. Both of these decisions had the effect of reversing the trial court's ruling on both issues to the Lawings' benefit. There was no "split" decision, as Trinity and Matrix contend. The Court's mandate was plain.

Rule 242(j)(1) provides that costs "shall" be assessed against Trinity and Matrix, and Rule 242(j)(2) outlines those costs the prevailing party may recover. There is no provision for an equitable reduction because the case was especially difficult, the case involved novel questions, or the opinion was not unanimous. Furthermore, this Court has never decided whether to reimburse costs and award fees pursuant to Rule 242 based on the zealousness of the losing party's advocate. That view diminishes the zealousness of the advocates for the party who prevails in these "complex" cases.

This Court's Modification of the Court of Appeals is Irrelevant

Trinity and Matrix point out that this Court modified the Court of Appeals' discussion regarding "user and consumer," and contends this somehow should give Trinity and Matrix a reduction of costs and fees awarded. The Court should not be persuaded.

In seeking this Court's review of the "user and consumer" issue, Trinity and Matrix sought an outright reversal of the finding that Mr. Lawing was a "user" or "consumer" of the product. Trinity and Matrix argued that the Court of Appeals' definition was too broad, but contended that the definition should not include Mr. Lawing at all. Trinity and Matrix did argue for a modification of the Court of Appeals' ruling, but in such a way that would exclude Mr. Lawing and permit Trinity and Matrix to prevail on this issue.

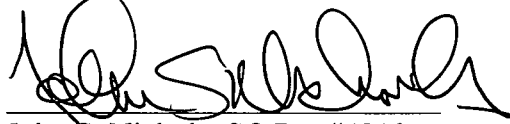
This Court disagreed with them that Mr. Lawing should not be considered a "user" or "consumer" of the product warning, but agreed that the Court of Appeals' analysis was too broad. The Court modified the decision but not as Trinity and Matrix contended. Instead, the Court modified the Court of Appeals' ruling in a manner that would not include mere bystanders. The Court's modification was not contrary to the arguments the Lawings made to the Court of Appeals and to this Court, and does not affect the way this issue will be presented on retrial. As the Court observed, Mr. Lawing was more than a mere bystander – he was a user or consumer of the product's warning which could not be severed from the product itself.

CONCLUSION

Trinity and Matrix did not prevail in any meaningful way before this Court on any issue germane to this case. Instead, the Lawings prevailed fully as to both issues. The Rules of Appellate Procedure provide “costs *shall* be assessed against” Trinity and Matrix under these circumstances. (Emphasis added). The Lawings respectfully request that the Court adhere to these Rules.

March 24, 2016

Respectfully submitted,



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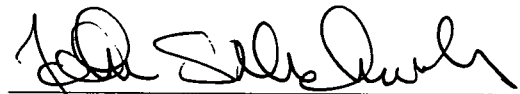
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Trinity Manufacturing, Inc. and Matrix
Outsourcing, LLC are Respondents/Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies on the date indicated below, he served counsel for the Respondents/Petitioners with a copy of the *Reply* to the Return to the Motion for Costs by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Christian Stegmaier, Esquire
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March 24, 2016
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