

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

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SEP 27 2012

S.C. Supreme Court

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,.....

Respondents,

v.

SEL Properties, LLC and Stephen E. Lipscomb
of whom Stephen E. Lipscomb is the

Appellant.

**RESPONDENTS' RETURN ON APPELLANT'S MOTION FOR ASSESSMENT
OF COSTS**

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The Respondents respectfully request the Court deny the Appellant's Motion for Costs.¹ Under Rule 222(a) the Court has discretion as to whether to award costs to the Appellant when the judgment is reversed. Under the particular facts and circumstances of this case it would not be equitable to award attorney fees and costs. Mr. Lipscomb's conduct in this case, as outlined in the Respondents' Final Brief and Petition for Rehearing, can only be described as egregious in the extreme. The jury and trial court concluded that Mr. Lipscomb's conduct, both individually and on behalf of SEL Properties, LLC ("SEL") warranted the imposition punitive damages.² The jury would never have awarded \$1,000,000.00 in punitive damages against Mr. Lipscomb personally if they did not believe he did something very wrong. The jury's award of \$1,000,000.00 in punitive damages against SEL, based on Mr. Lipscomb's conduct on behalf of SEL, also shows the jury believed he did something very wrong.

Dutch Fork was required to expend significant time and expense in bringing this litigation in order to recover its development fees and profit sharing that it was wrongfully denied as a direct result of Mr. Lipscomb's conduct. Because of Mr. Lipscomb's conduct, Dutch Fork has waited over eight years and has still not been fully compensated for its damages. Mr. Lipscomb continued this same course of conduct following the trial. Mr. Lipscomb indicated on page 4 of his Final Brief that SEL settled its portion of the case with Dutch Fork on June 3, 2008 "by paying \$1.5 million to them." Mr. Lipscomb's Final Brief implied that Dutch Fork was paid \$1.5 million on June 3,

¹ The Proof of Service for Appellant's Motion for Assessment of Costs is dated September 14, 2012; however, the Motion for Costs was not received until September 25, 2012.

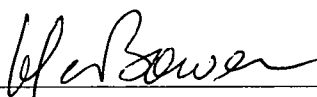
² See Judge Lee's analysis of the Gamble Factors (R. 1280 – 1285).

2008, which is not true. Mr. Lipscomb failed to disclose that SEL was paying by installments and, because of his conduct, SEL breached the settlement agreement on multiple occasions, e.g. scheduled payments were missed, the full amount due was not paid and payments ceased altogether for seven months in a row, which resulted in additional damage and hardship to Dutch Fork. Mr. Lipscomb engaged in this conduct even though he has extensive wealth, in the neighborhood of \$32,000,000.00, as indicated by his Personal Financial Statement (R. 3806- 3807).

The particular facts and circumstances of is case, including Mr. Lipscomb's egregious conduct and his vast personal wealth, would justify denial of his Motion for Assessment of Costs against Dutch Fork.

Respectfully submitted,

By:



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PROOF OF SERVICE

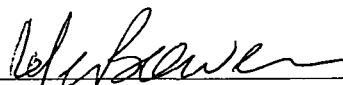
I HEREBY CERTIFY that a true and correct copy of Respondents' Return on Appellant's Motion for Assessment of Costs was served upon:

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By depositing the same in the United States Mail, postage prepaid, this the 26th Day of September 2012.



Glenn Bowens