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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2014-002587
Common Pleas Case No. 2012-CP-40-6974

RECEIVED
AUG 08 2016
SC Court of Appeals

S. Coley Brown,.....Appellant,

v.

Spring Valley Homeowners Association, Inc.....Respondent.

RETURN TO RESPONDENT'S MOTION FOR COSTS

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
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(803) 779-2211
Attorney for Appellant

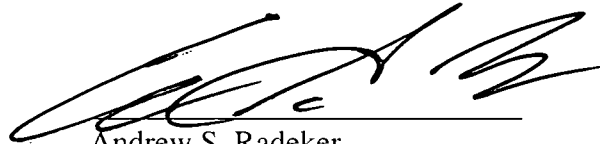
Appellant hereby submits this return to the Respondent's motion to tax costs in this case. Appellant opposes the motion being granted or, alternatively, opposes the motion being granted in full, as more particularly discussed below:

1. Rule 222(a), SCACR, expressly contemplates that an award of attorney's fees and costs to the party prevailing in an appeal may not be appropriate in every case.
2. Here, such an award is not appropriate.
3. This case involved a novel issue, never before addressed by a South Carolina court. The balance of authority was against the Respondent prevailing on that issue. While the court ultimately sided with the Respondent's position on that issue, it is telling that the court did so in an unpublished opinion, which has no precedential value. Rule 268(d)(2), SCACR.
4. In reading the court's opinion in this case, it is worth noting that the court disagreed with the Respondent and the lower court on many points. A cogent reading of this opinion would be to say that this court ruled that the Respondent and the lower court were wrong on many points, just not wrong enough to require reversal of the lower court's decision.
5. When an appeal requires the decision of a novel issue, the court should be cautious in assessing the \$1,000.00 "attorney's fee" against the party who does not prevail in the appeal, since this essentially amounts to a penalty.

6. Accordingly, even if the court taxes the copying and binding costs against the Appellant, the court should decline to tax the \$1,000.00 attorney's fee.

WHEREFORE Appellant asks that the court deny Respondent's motion for costs or, alternatively, deny it in part.

Respectfully submitted,



Andrew S. Radeker
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(803) 779-2211
Attorney for Appellant

August 8, 2016

(Handwritten mark)

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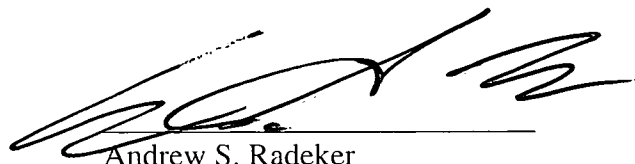
PROOF OF SERVICE

I certify that I served the foregoing return to motion for costs by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Ely O. Grote, Esq.
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202

Charles A. Krawczyk, Esq.
Finkel Law Firm LLC
P.O. Box 1799
Columbia, SC 29202

August 8, 2016



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AS

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* Mediator/Arbitrator

August 8, 2016

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SC Court of Appeals

VIA HAND DELIVERY

The Hon. Jenny Abbott Kitchings
Clerk of Court, Court of Appeals of South Carolina
1220 Senate Street
Columbia, South Carolina 29201

Re: S. Coley Brown v. Spring Valley Homeowners Association, Inc.
Appellate Case No. 2014-002587

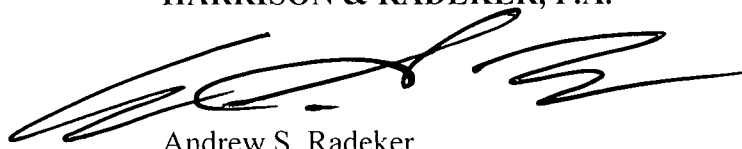
Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced case are an original and seven copies of a return to the respondent's motion for costs, with attached proof of service thereof.

Kindly file these documents and return a file-stamped copy to the bearer of this letter. Of course, if you or your staff have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.



Andrew S. Radeker

ASR/

Enclosures

cc: Ely O. Grote, Esq.
Charles A. Krawczyk, Esq.