

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas

Marvin H. Dukes, Presiding Judge

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Case No. 2016-000767

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**RECEIVED**  
OCT 27 2016  
SC Court of Appeals

JRC Properties, LLC.....Respondent,

v.

Dennis Corporation, a South Carolina Corporation,  
and Daniel R. Dennis, III ..... Appellants.

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**INITIAL REPLY BRIEF OF APPELLANTS**

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## ARGUMENT

### 1. THE RESPONDENT WAS NOT THE PREVAILING PARTY ENTITLING IT TO AN AWARD OF ATTORNEYS' FEES

The Respondent is not entitled to an award of attorney's fees as it was not the "prevailing party" at trial to justify and warrant an award of attorney's fees under South Carolina Law, certainly not an award of Thirty-two Thousand One Hundred Ten and No/100 (\$32,110.00) dollars. The Respondent was not the prevailing party at the trial of this case. As argued by Appellant in its Brief, a "prevailing party" has been defined as, "... [t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964) A court determines the prevailing party by evaluating the degree of success obtained. *Commissioner, Immigration and Naturalization, et al. v. Marie Lucie Jean*, 496 U.S. 154, 110 S. Ct. 2316, 110 L.Ed.2d 134 (1990); *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990).

The Respondent argues that because its attorneys' fees award was made pursuant to the lease agreement between the parties and not pursuant to statute, any evaluation as to the "prevailing party" by this Court is unnecessary. The fact that attorneys' fees are awarded pursuant to a contract or statute should play no part in determining whether or not a party was the "prevailing party" entitling it to an award of attorneys' fees. *Buza Columbia Lumber Company*, 395 P.2d. 511 (1964); *Sheets v. Castle*, 263 Va. 407, 599 S.E.2d. 616 (2002); *Westmont Mirador, LLC v. Shartliff*, 333 P2d. 369 (2014); *Parkway Dental Associates P.A. v. Ho and Huang Properties, LP*, 391 S.W.2d. 596 (2002); *Dan J. Sheehan Co. v. McCrory Const. Co., Inc.* 643 S.E.2d. 546 (2007); *Flamingo Pools, Spa and*

*Sunrooms and More, Inc. v. Penrod*, 993 S.W.2d. 588 (1999). Therefore, the South Carolina Court's analysis in *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 483 S.E.2d. 775 (Ct. App. 1997) is applicable to this case.

Evaluating the degree of success obtained by the Respondent, it is patently obvious that the Respondent was not the prevailing party for purposes of its suit against Appellant. The Court awarded Respondent the four (4) month's rent that Appellant already conceded was due. With respect to the claimed amount for damage to the property, the Lower Court awarded Respondent a figure far less than the figure claimed at trial. Finally, the Court found for Appellant with respect to the Conversion and Unfair Trade Practices causes of action. Therefore the Respondent is not the "prevailing" party under South Carolina Law for purposes of an award of attorney's fees and costs in this action and is not entitled to an award of attorney's fees and costs.

**2. THE AMOUNT OF ATTORNEYS FEES AWARDED TO RESPONDENT IS EXCESSIVE AND NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL.**

Even if the Respondent is entitled to an award of attorney's fees and costs as the "prevailing party" (which the Appellant asserts it is most definitely not), applying the applicable factors for the Court to consider in awarding attorney's fees and costs, the Respondent failed to establish its entitlement to \$32,110.00 dollars in attorney's fees based on a professional rate of \$300.00 an hour under the relevant factors set forth under South Carolina Law.

Respondent's counsel failed to present evidence of a fee agreement with the Respondent. None of the arguments set forth by Respondent overcome this failure of proof. The question of whether or not Respondent was not asked to produce one pursuant to

discovery does not relieve its burden at trial. Further the mere testimony that a fee agreement exists, does not relieve Respondent's burden to present it and introduce it into evidence at trial.

Finally, contrary to the arguments of Respondent, the amount of Attorney's fees and costs awarded to Respondent is excessive under the factors set forth by the South Carolina Courts in evaluating Attorney's fees and costs. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Sexton v. Sexton*, 310 S.C. 501, 427 S.E.2d 665 (1993), appeal after remand, 321 S.C. 487, 469 S.E.2d 608 (Ct. App. 1996).

### CONCLUSION

The Master's award of Attorney's fees in this case was excessive and not based upon the evidence presented at trial. The Master erred as a matter of law in awarding Respondent Attorney's fees and costs in the amount of \$32,110.00 dollars and his Order awarding Respondent Attorney's Fees and Costs in the amount of \$32,110.00 dollars is clearly erroneous and should be reversed by this Court.

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BY: 

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October 27, 2016

THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

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I certify that I have served the Initial Reply Brief of Appellants by US Mail, postage prepaid, upon counsel for the Respondent at the address listed below:

Sean Michael Bolchoz, Esquire  
Post Office Box 828  
Bluffton, South Carolina 29910



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John C. Bradley, Jr.

October 27, 2016

October 27, 2016

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

Re: JRC Properties, LLC v. Dennis Corporation, a South Carolina Corporation  
and Daniel R. Dennis, III, C/A No. 2013-CP-07-02131

Dear Ms. Kitchings:

I trust this letter finds you well. Enclosed please find the original and two copies of the Initial Reply Brief of Appellants regarding the above-referenced matter. Please return the clocked-in copies via our courier.

Thank you in advance for your assistance in this matter.

Respectfully,  


John C. Bradley, Jr.

/gmn

Enclosures

cc: Sean M. Bolchoz, Esquire (w/enclosures)

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