

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**SC Court of Appeals**

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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JRC Properties, LLC ..... Respondent,

v.

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

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**FINAL REPLY BRIEF OF APPELLANTS**

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S. Jahue Moore, Esquire  
John C. Bradley, Jr., Esquire  
MOORE TAYLOR LAW FIRM, P.A.  
P.O. Box 5709  
West Columbia, South Carolina 29171  
(803) 796-9160

ATTORNEYS FOR THE 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 attorney's 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 attorney's 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 attorney's 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 Appellants. The Court awarded Respondent the four (4) month's rent that Appellants 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 Appellants 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 Appellants assert 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 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 and his Order awarding Respondent attorney's fees and costs in the amount of \$32,110.00 is clearly erroneous and should be reversed by this Court.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

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S. Jahue Moore  
John C. Bradley, Jr.  
1700 Sunset Boulevard  
P. O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160  
ATTORNEY FOR APPELLANTS

West Columbia, South Carolina

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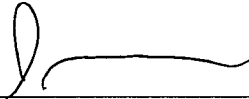
v.

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

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Appellants certifies that the Final Reply Brief of Appellants complies with Rule 211(b) SCAR.

Respectfully submitted,



S. Jahue Moore  
MOORE TAYLOR LAW FIRM, P.A.  
P.O. Box 5709  
West Columbia, South Carolina 29171  
Telephone: 803-796-9160  
Attorney for Appellants

West Columbia, South Carolina  
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