

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Case No. 2008 - CP -10 - 1983
Hon. Mikell Scarborough, Master in Equity

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APR 24 2017

S.C. SUPREME COURT

Roosevelt Simmons.....Petitioner

Vs.

Berkeley Electric Cooperative, Inc.
and

St. John’s Water Company, Inc.....Respondents

**PETITIONER’S MOTION
TO TAX COSTS**

Petitioner Roosevelt Simmons files this Motion to Tax Costs against Respondent St. John’s Water Company, Inc. following this Court’s reversal of the Court of Appeals Decision affirming the affirming in part and reversing in part the dismissal of the Complaint against St. John’s Water Company by Decision dated November 2, 2016. Petitioner relies upon the following facts and circumstances contained in the Record on Appeal.

FACTS RELEVANT TO THIS MOTION

Petitioner filed a three Count Complaint against Respondents Berkeley Electric Cooperative Inc. (Berkeley Electric) and St. John’s Water Company, Inc. (St. John’s) for trespass and unjust enrichment arising out of their installation of power and water lines on Petitioner’s property designated as TMS 498 and 135. R. p. 32-35. Each Respondent filed a

separate Answer. See R.p. 36-39(St. John's); 40-44(Berkeley Electric). Each Respondent filed a separate Motion for Summary Judgment. See R.p. 43-56 (Berkeley Electric); 57-69 (St. John's). The Motions were heard together by the Master in Equity on November 22, 2010. R.p.187. The Master in Equity granted both Motions and separate Orders of Dismissal were entered for different reasons based upon the issues raised in the Motions. See R.p. 10 (St. John's); R.p. 13 (Berkeley Electric). Petitioner filed separate Motions for Reconsideration. See R.p. 167(St. John's); R.p.174 (Berkeley Electric). The Motions were heard on April 11, 2011.R.p. 224. The Master in Equity entered separate Orders denying Petitioner's Motions for Reconsideration on April 11, 2011. R.p.22, 23. Petitioner filed a single Notice of Appeal for both Orders.

Petitioner filed a combined Appellant's Brief and Reply Brief addressing the issues raised in both orders. The Court of Appeals issued an Opinion filed March 20, 2013 in which it affirmed the dismissal as to Berkeley Electric and reversed in part the dismissal as to St. John's. The Court of Appeals affirmed the Master in Equity's decision that St. John's water line installed on Petitioner's property in 1977-1978 was entitled to a prescriptive easement based upon a claim of right but reversed and remanded as to any water lines that may have been subsequently installed there. Appendix to Petition for Writ of Certiorari at p. 12. Petitioner filed a Petition for Writ of Certiorari for review of the Court of Appeals Decision as to both Berkeley Electric and St. John's.

In its Decision filed November 2, 2016, this Court ruled that the Court of Appeals "erred in affirming the master's grant of summary judgment in favor of St. John's Water on the issue of a claim of right " Opinion at page 8. This Court affirmed the ruling as to Berkeley

Electric. Opinion at page 12. Petitioner respectfully requests that this Court tax costs against St. Johns for the reasons set forth below.

MEMORANDUM OF LAW

R. 242 (j) (1), S.C.A.C.R. states: “When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part . . . the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.” The language of the first quoted sentence of R. 242 (j) (1), S.C.A.C.R, clearly contemplates a situation where this Court decides all of the issues against the Respondent which is exactly what happened here. This Court reversed the ruling of the Court of Appeals that St. John’s was entitled to a prescriptive easement and remanded the case to the Master in Equity. This Court’s Decision did not affirm any part of the Court of Appeals ruling as to St. John’s. Petitioner contends that he should be entitled to have costs taxed under these circumstances since he has prevailed on the appeal against St. John’s.

R. 242 (j) (2), S.C.A.C.R. states that the prevailing party “may recover all those costs specified in Rule 222(b) to include the attorney’s fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 226(c); (2) the cost of printing the Appendix under Rule 226(e) and (i); and (3) the cost of printing the party’s brief(s) under Rule 226(i). The party may also recover an additional attorney’s fee in an amount which shall be set by order of the Supreme Court. ”

Petitioner has submitted an Itemized Statement of Costs in which Petitioner’s Counsel has certified that the amount of \$2000.00 has been actually expended for legal fees in the

appeal before the Court of Appeals and before this Court on the Petition for Certiorari. See Itemization of Costs. Petitioner's Counsel has also certified that the costs for the Briefs, transcripts and Record on Appeal before the Court of Appeals and the Briefs and Appendix before this Court has been apportioned against St. John's according to the page length of the materials directed as to it. Therefore, Petitioner respectfully requests that the Court award him Counsel fees in the amount of \$2000.00 as established by the Supreme Court and costs in the amount of \$754.46. Taylor by Taylor v. Medenica, 332 S.C. 324, 504 S.E.2d 590 (1998).

CONCLUSION

Petitioner respectfully requests that pursuant to R. 242 (j) (2), S.C.A.C.R. Taxed Costs of \$2754.46 be awarded against Respondent, St. John's Water Company, Inc.

Respectfully submitted,

By: 

Edward A. Bertele, Esq.

S.C. Bar No 72521

1812 Pierce Street

Charleston, SC 29492

843-471-2082

Attorney for Petitioner, Roosevelt Simmons

Dated: April 17, 2017
Charleston, SC

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In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Case No. 2008 - CP -10 - 1983

Hon. Mikell Scarborough, Master in Equity

S.C. SUPREME COURT

Roosevelt Simmons.....Petitioner

Vs.

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and

St. John's Water Company, Inc.....Respondents

ITEMIZED STATEMENT OF COSTS


The Supreme Court is requested to tax the following costs against Respondent , St.

John's Water Company.

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief	17	\$1.78/pg	\$30.26	
Cost of Printing or Copying Final Reply Brief	16	\$1.78/pg	\$28.48	
Cost of Printing or Copying Record on Appeal	85	\$1.52/pg	\$129.20	

Filing Fee Paid Under Rule 203(d), SCACR			\$100.00	
Cost of Court Reporter's Transcript	15	\$2.60/pg	\$39.00	
Attorney's Fee Provided By Rule 222(b), SCACR			\$1000.00	
Other (specify and explain):				
COSTS TAXABLE UNDER RULE 242(j), SCACR				
Cost of Printing or Copying Brief	22	\$3.40/pg	\$74.80	
Cost of Printing or Copying Reply Brief	15	\$3.00/pg	\$45.00	
Cost of Printing or Copying Appendix	132	\$1.57/pg	\$207.72	
Filing fee paid under Rule 242(c), SCACR			\$100.00	
Attorney's fee provided by Rule 242(j)(2), SCACR			\$1000.00	
Other (specify and explain):				
TOTAL			\$2754.46	

I, Edward A. Bertele, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was (mailed to/served upon) opposing counsel.



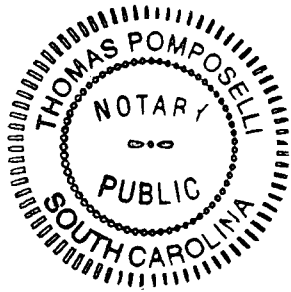
Edward A. Bertele
Attorney for Petitioner, Roosevelt Simmons

Subscribed and sworn to before me this 18 day of April, 2017.

Notary Public for SC

My Commission Expires: 6/26/24

(Seal)



THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Hon. Mikell Scarborough, Master in Equity

Appellate Case. No. 2013-001477

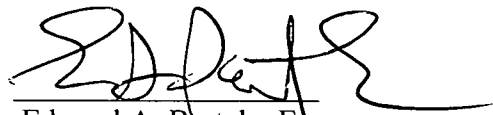
Roosevelt Simmons..... Petitioner

Vs.

Berkeley Electric Cooperative, Inc.
and
St. John's Water Company, Inc..... Respondents

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the Petitioner's Motion to Tax Costs as to St. John's Water Company, Inc. and the Itemized Statement of Costs was served upon the Respondents' attorneys, John B. Williams, Esq. and Gaines Smith, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

April 18, 2017
Charleston, SC