

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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OCT 02 2017

SC Court of Appeals

Case Nos. 2008-CP-17-0376
2008-CP-17-0377
Appellate Case No. 2013-000752

Claude W. Graham, Respondent-Appellant,

v.

Town of Latta, South Carolina, Appellant-Respondent.

AND

Vickie B. Graham, Respondent-Appellant,

v.

Town of Latta, South Carolina, Appellant-Respondent.

**RETURN TO RESPONDENTS-APPELLANTS'
MOTION FOR COSTS ON APPEAL**

By published opinion filed March 30, 2016, the South Carolina Court of Appeals affirmed the judgment issued in the lower court in its entirety, including an affirmance of the directed verdict issued by the trial judge in favor of the Appellant-Respondent Town of Latta on the causes of action for inverse condemnation and trespass. The Respondents-Appellants Claude W. Graham and Vickie B. Graham have, nonetheless, filed a motion for costs on appeal pursuant to Rule 222, SCACR. The Town of Latta opposes that motion.

The Town submits that the Grahams do not qualify as a prevailing party under Rule 222(a), SCACR. In their Motion for Costs on Appeal and supporting memorandum, the Grahams have used an incorrect caption and have also referred to themselves incorrectly as the "Respondents." That is not the case. This appeal involved the Town's appeal of the denial of post-trial motions as well as the Grahams' cross-appeal of the grant of a directed verdict on the inverse condemnation and trespass causes of action. Consequently, in this appeal, the Grahams have been the Respondents-Appellants. While the Grahams prevailed on a portion of the appeal issues, they also lost on all of the issues raised by their cross-appeal. As a result, it was a split decision, and neither side achieved complete relief.

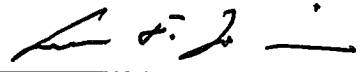
Rule 222(a), SCACR, governs the award of costs on appeal, but it does not address who is the prevailing party in a case with cross-appeals where the lower court's judgment is affirmed in total. The Town submits that, under these circumstances, neither party is deemed a prevailing party to the extent that costs on appeal may be awarded. Otherwise, by the strict reading of Rule 222(a), both parties are prevailing parties -- namely the Respondent-Appellant on the appeal and the Appellant-Respondent on the cross-appeal. Under that scenario, both sides would be entitled by Rule 222(a) to recover their costs on appeal, which essentially results in a wash. This demonstrates why Rule 222(a) does not envision both "respondents" in a cross-appeal scenario being able to recover their costs on appeal, including particularly the \$1,000 in attorney's fees. It makes the filing for costs on appeal under this scenario futile and a waste of time for the Court to even have to adjudicate.¹

Based on the foregoing, it is respectfully submitted that the Grahams' motion for costs on appeal should be denied in its entirety. In the alternative, the Court should award both sides their costs on appeal as claimed.

¹ In the event that the Court disagrees with this interpretation of Rule 222(a) and rules that all of the "Respondents" are entitled to recover costs as the prevailing party -- whether on the appeal or on the cross-appeal -- the Town will be filing a Motion for Costs on Appeal to recover its costs in prevailing in total on the Grahams' cross-appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  _____

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*Counsel for Appellant-Respondent
Town of Latta*

Columbia, South Carolina

September 28, 2017

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant-Respondent Town of Latta, does hereby certify that service of the **Return to Respondents-Appellants' Motion for Costs on Appeal** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 28th day of September 2017:

Reynolds Williams, Esquire
Willcox, Buyck & Williams
Post Office Box 1909
Florence, South Carolina 29503-1909



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SC Court of Appeals

DAVIDSON & LINDEMANN, P.A.

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Writer's Email: alindemann@dml-law.com

Of Counsel
Kenneth P. Woodington

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

RE: Claude W. Graham and Vickie B. Graham v. Town of Latta, South Carolina
Appellate Case Number: 2016-001959
Civil Action Numbers: 2008-CP-17-0376 and 2008-CP-17-0377
Claim Number: 690001C05341
Our File Number: 321.7974

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Return to Respondents-Appellants' Motion for Costs on Appeal** with regard to the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

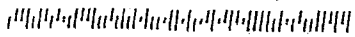
DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Reynolds Williams, Esquire (w/ Enclosure)



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