

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

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NOV 22 2017

SC Court of Appeals

Appellate Case No. 2014-001633

Civil Action No. 2011-CP-32-1929

Rose Electric, Inc.,

Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a Dunlap Services, Defendants

Of Whom

Southern Produce, Inc. and S2P, LLC are

Respondents

RESPONDENT SOUTHERN PRODUCE, INC.'S RETURN TO APPELLANT'S
RULE 222, SCACR MOTION FOR COSTS

Pursuant to Rules 222 and 240, SCACR, Respondent Southern Produce, Inc. respectfully submits this return to Appellant Rose Electric Inc.'s motion to be awarded appeal cost and attorney fees of \$2,727.79. Respondent Southern Produce, Inc. submits that under the facts, law, procedural posture, ruling of the S.C. Court of Appeals, and the practical effect of that ruling in this case, justice and equity will be best served by denying the award sought by Appellant Rose.

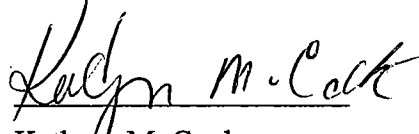
Rule 222(a), SCACR allows the appellate court discretion in determining when to tax appellate cost against a respondent when the appellate court reverses and remands a matter to the trial court. In this mechanic's lien and quantum meruit case, the South Carolina Court of Appeals reversed the trial court's finding that Appellant Rose was not entitled to judgment against Respondent Southern Produce, and ruled Rose is entitled to a judgment of \$17,703.63 based on quantum meruit. The trial court had ruled that since Respondent Southern Produce had made an offer of judgment of \$18,000.00 to Appellant Rose and offered to pay Appellant that sum prior to trial, which Appellant Rose refused

opting instead to try to recover \$65,094.52, there was no unjust enrichment entitling Rose to a judgment. With the South Carolina Court of Appeal's reversal and remand on that issue, instructing the trial court to enter a judgment for \$17,703.63 in favor of Rose, the practical effect is to **make Rose take the \$18,000.00 offered by Respondent Southern Produce more than 5 years ago and many thousands of dollars in attorney fees later** incurred by Respondents Southern Produce and S2P in defending Appellant Rose's mechanic's lien filed on March 4, 2011, trial in February, 2013, Trial Court Order of January 30, 2014, Rose's Motion to Amend and Amended Trial Court Order of June 16, 2014, Rose's appeal to the S.C. Court of Appeals and that September 28, 2016 Order, Rose's petition for rehearing denied by the South Carolina Court of Appeals in 2017, and Rose's Petition for Writ of Certiorari to the South Carolina Supreme Court which was denied on October 19, 2017.

Last, but certainly not least, Appellant Rose again failed to differentiate between Respondent Southern Produce, Inc. and Respondent S2P, LLC. The order of the South Carolina Court of Appeals did not reverse any finding as to Respondent S2P and did not order any relief against Respondent S2P in favor of Appellant Rose. Thus, there is no basis to tax any costs against Respondent S2P, pursuant to Rule 222, SCACR.

Based on the forgoing, Respondent Southern Produce, Inc. for itself and on behalf of Respondent S2P, LLC respectfully ask this Court to deny the taxing of appeal cost in favor of Appellant Rose pursuant to the discretion allowed in Rule 222, SCACR.

Respectfully submitted.



Kathryn M. Cook
306 Calhoun Road
Myrtle Beach, South Carolina 29577
(843) 222-2116
Attorney for Respondent Southern Produce, Inc.
S.C. Bar # 1371

November 18, 2017

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Opinion No. 5444

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Appellate Case No. 2014-001633

Civil Action No. 2011-CP-32-1929

Rose Electric, Inc.,

Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a Dunlap Services, Defendants

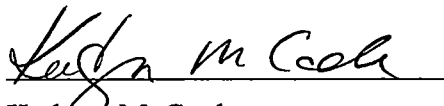
Of Whom

Southern Produce, Inc. and S2P, LLC are

Respondents

CERTIFICATE OF SERVICE

I hereby certify that I have served the Respondent Southern Produce, Inc.'s Return to Appellant Rose Electric's Motion for Costs under Rule 222, SCACR by depositing copies of it in the United States Mail, postage prepaid, on November 18, 2017 to William E. Booth, III, attorney for Appellant at 3231 Sunset Blvd., Suite A, West Columbia, S.C. 29169 and J. Robin Turner, attorney for Respondent S2P, LLC at P.O. Box 11646, Columbia, S.C. 29211 along with a copy of this Certificate of Service.



Kathryn M. Cook
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(843) 449-1396/(843) 222-2116
Attorney for Respondent Southern Produce, Inc.

November 18, 2017

KATHRYN M. COOK, P.A.

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November 18, 2017

Honorable Jenny Abbott Kitchings
Clerk of S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

Re: Rose Electric v. Coolers Erectors of Atlanta et al.

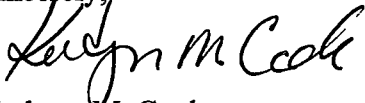
Appellate Case No. 2014-001633

Dear Ms. Kitchings:

I represent Respondent Southern Produce, Inc. in the above captioned appeal. Enclose you will find the original and 6 copies of Respondent Southern Produce, Inc.'s Return to Appellant Rose's Rule 222 Motion. I am also enclosing the original Certificate of Service verifying service on all counsel of record. I am also enclosing one extra copy of the Return and a self-addressed stamped envelope. I would appreciate it if you could forward back to me a filed copy of this Return.

If you need anything further from me, please let me know. Thank you for your attention in this matter.

Sincerely,



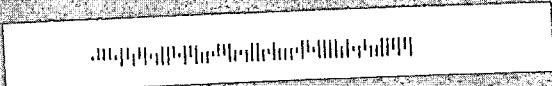
Kathryn M. Cook

Cc: William E Booth, III, Esquire

J. Robin Turner, Esquire

Southern Produce, Inc.

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S. C. Court of Appeals
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