

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2015-000263

Oak Pointe Homeowners' Association, Inc.,

Respondent,

v.

Mackenzie E. Peffley,

Appellant.

RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR COSTS

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SC Court of Appeals

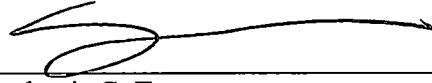
The respondent, Oak Pointe Homeowners' Association, Inc. (Oak Pointe), respectfully requests that the Court of Appeals deny the motion for costs filed by the appellant, Mackenzie E. Peffley (Peffley). In this case, Peffley's appeal alleged that the circuit court erred in granting Oak Pointe summary judgment as to six of Peffley's counterclaims. The Court of Appeals, in its decision, held that the circuit court did err in granting summary judgment as to Peffley's claims for negligent misrepresentation, breach of contract, slander of title, and libel. Therefore, the Court reversed the circuit court's granting of summary judgment as to these counterclaims. However, the Court affirmed the circuit court's decision to grant Oak Pointe summary judgment as to Peffley's counterclaims for breach of contract accompanied by a fraudulent act and violation of the Unfair Trade Practices Act. Thus, the Court affirmed the circuit court's decision in part and reversed the circuit court's decision in part.

Rule 222(a) of the South Carolina Appellate Court Rules provides:

Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. *When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.*

(emphasis added). Rule 222(a) basically provides that, unless the appellate court orders otherwise, the party that wins on appeal has their appellate costs paid by the party that loses the appeal. However, if the appeal is affirmed in part and reversed in part, Rule 222, although still providing the appellate court with discretion as to the granting of costs, does not provide for either party being granted costs. Since the Court affirmed the circuit court's decision in part and reversed the circuit court's decision in part, each party to this appeal should bear its/their own costs. Therefore, the respondent, Oak Pointe, respectfully requests that the Court deny the motion for costs filed by the appellant, Peffley.

Respectfully submitted,



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PROOF OF SERVICE

I certify that, on May 10, 2018, I served a copy of Respondent's Return to Appellant's Motion for Costs by depositing the copy in the United States Mail, postage prepaid, addressed as follows:

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