

STATE OF SOUTH CAROLINA.

RECEIVED

IN THE SUPREME COURT

JUN 01 2018

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Court Judge

S.C. SUPREME COURT

Appellate Case No. 2016-000707

Kiawah Development Partners, II,..... Respondent,

v.

South Carolina Department of Health and Environmental Control.....Appellant,

and

South Carolina Coastal Conservation League Appellant,

v.

South Carolina Department of Health and Environmental Control, and Kiawah Development Partners, II, of whom South Carolina Department of Health and Environmental Control is, Appellant, and Kiawah Development Partners, II, is Respondent.

**RESPONDENT’S RETURN TO MOTION FOR COSTS OF APPELLANT
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE**

Respondent, Kiawah Development Partners, II, opposes the Motion for Costs of Appellant South Carolina Coastal Conservation League (the League”), submitted without legal authority other than a reference to Rule 222 of the South Carolina Appellate Court Rules.

Rule 222 does not provide for the award of costs of appeal and attorneys’ fees in this instance. This Court’s opinion “affirmed, as modified.” This Court did not reverse.

This Court affirmed that portion of the order of the Administrative Law Court that allowed

a permit for a combined bulkhead-revetment for 270 feet adjacent to Beachwalker Park. The original permit issued by Appellant SC-DHEC in December 2008 included this erosion control structure. **R.p.1417; League Brief, pp. 22-23.** For almost ten years, the League opposed even this aspect of the permit that would protect the public's use of Beachwalker Park. The League did not succeed in its persistent efforts to unwind this portion of the permit that this Court ultimately upheld.

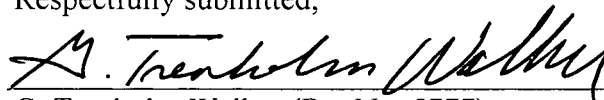
Rule 222(a) provides as follows:

- (a) To Whom Allowed.** 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.

Rule 222, SCACR.

Costs should not be taxed against the Respondent because the judgment of the ALC was not reversed. To the extent that this Court has the discretionary authority to award costs, Respondent requests that the Court leave the parties to bear their own respective costs and attorneys' fees. There are no extraordinary circumstances that warrant an award in this instance where this Court "affirmed, as modified."

Respectfully submitted,



G. Trenholm Walker (Bar No. 5777)

Thomas P. Gressette, Jr. (Bar No. 14065)

WALKER GRESSETTE FREEMAN & LINTON, LLC

Post Office Box 22167

Charleston, SC 29413-2216

Telephone: 843-727-2200

Fax: 843-727-2238

Walker@wgflaw.com

Gressette@wgflaw.com

RECEIVED

JUN 01 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Court Judge

Appellate Case No. 2016-000707

Kiawah Development Partners, II,..... Respondent,

v.

South Carolina Department of Health and Environmental Control.....Appellant,

and

South Carolina Coastal Conservation League Appellant,

v.

South Carolina Department of Health and Environmental Control, and Kiawah Development Partners, II, of whom South Carolina Department of Health and Environmental Control is, Appellant, and Kiawah Development Partners, II, is Respondent.

PROOF OF SERVICE

I, Nancy Jane Dennis, an employee of Walker Gressette Freeman & Linton, LLC, hereby certify that I have served this 30th day of May 2018, a copy of the **Respondent's Return to Motion for Costs of Appellant South Carolina Coastal Conservation League** on counsel of record by placing the same in the United States mail, first-class postage pre-paid, to:

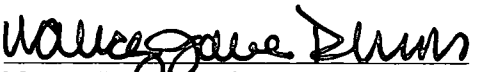
Bradley D. Churdar
Chief Counsel DHEC-OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Amy E. Armstrong
Jessie Allison White
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585

ATTORNEYS FOR SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE

Charleston, South Carolina


Nancy Jane Dennis