

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Hon. J.C. Nicholson, Jr., Circuit Court Judge

CASE NO. 2016-000474

RECEIVED

AUG 28 2018

SC Court of Appeals

C. GORDON LOVINGOOD, JR., C3 INVESTMENTS, INC., and PPC12, LLC

Appellants,

v.

VICTOR APAT, ANTHONY MCALLISTER, J. ERIC WADE d/b/a CT TOURING,
and PEARL CO. SC, LLC, Defendants, of whom,

ANTHONY MCALLISTER; J. ERIC WADE d/b/a CT TOURING;
and PEARL CO. SC, LLC are

Respondents.

APPELLANTS' RETURN TO RESPONDENTS' MOTION
FOR COSTS AND FEES ON APPEAL

Appellants, through undersigned counsel, hereby offer this brief return to Respondents' Motion for Costs on Appeal, pursuant to Rules 222 and 240, SCACR. In accordance with the provisions of Rule 222, SCACR, Appellants hereby respectfully request that this Honorable Court issue an Order setting the Attorneys' Fee at \$1,000, rather than the \$2,500 sought by the

Respondents.¹ The undersigned hereby certifies that he consulted with Respondents' counsel prior to the filing of this Return, and was unable to reach a consensus or compromise.

In support of this Motion, Appellants respectfully aver that this the Notice of Appeal in this matter was filed on March 7, 2016, and briefing was complete on November 14, 2016. When the Notice of Appeal was filed, the attorney's fee provided by Rule 222 was \$1,000. The Supreme Court raised the amount of the attorney's fee to \$2,500 on January 17, 2018. Re: Attorney's Fees Under Rules 222 and 242 of the South Carolina Appellate Court Rules, S.C. Sup. Ct. Order dated January 17, 2018. That Order states that the "increased fee shall apply to any appeal where a decision is filed on or after the date of this order".

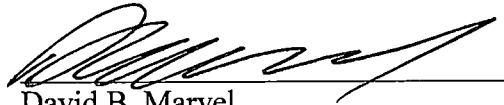
Appellant submits that it would be inequitable to assess the higher attorney's fee to a meritorious appeal that was filed and fully briefed more than one year prior to the issuance of the Supreme Court's order. When the undersigned first reviewed the Order in January 2018, he erroneously read it to apply to cases where the decision to be appealed was issued after the effective date. As the Order is more correctly read, it applies to appellate final decisions issued any time after January 17, 2018. Under that reading, an Appellant could not have even voluntarily dismissed a pending appeal after January 17, 2018, whether briefed, argued, or otherwise, without incurring the increased fee. Therefore, to the extent the attorney's fee is intended to be a deterrent to the filing of a non-meritorious appeal, any pending appeal on the effective date of the Supreme Court's Order would not have the rightful benefit of that consideration. Further, in multi-party cases, the exponential difference caused by a 150% fee increase could be substantial.

Rule 222(a), SCACR gives this Court the discretion to reduce or deny costs on appeal. Appellant submits that this Honorable Court should read the Supreme Court's January 17, 2018

¹ Appellant does not contest the costs sought by the Respondents, or the Respondents' right to an attorney's fee award under Rule 222.

order within that discretion, and to award the previously authorized \$1000 attorneys fee to appeals that were, at least, substantially completed prior to January 2018.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'David B. Marvel', written over a horizontal line.

David B. Marvel
P.O. Box 22734
Charleston, South Carolina 29413
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Fax (843) 380-3025
Email: dave@marvel.lawyer
ATTORNEY FOR THE APPELLANTS

Charleston, South Carolina
August 24, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
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The Hon. J.C. Nicholson, Jr., Circuit Court Judge

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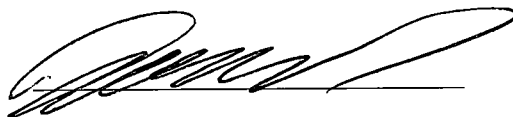
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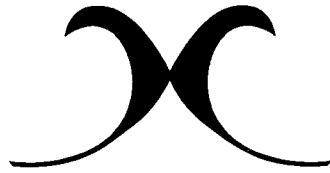
ANTHONY MCALLISTER; J. ERIC WADE d/b/a CT TOURING;
and PEARL CO. SC, LLC are

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of August, 2018, I served respondents' counsel with Appellants Return to Respondents' Motion for Costs and Fees on Appeal by mailing a copy addressed to their counsel, Trudy H. Robertson and Brandon Gaskins, Moore & Van Allen, PLLC, P.O. Box 22828, Charleston, South Carolina 29413, by U.S. Mail, postage prepaid.





DAVID B. MARVEL

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Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

www.marvel.lawyer

August 24, 2018

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AUG 28 2018

SC Court of Appeals

Via Fedex

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

Re: C. Gordon Lovingood, Jr. v. Victor Apat
Case No. 2016-000474

Dear Ms. Kitchings,

I hope this letter finds you well. I have enclosed an Original and six copies of Appellants' Return to Respondents' Motion for Costs and Fees on Appeal. Please file this in your usual prompt and efficient manner. I will retrieve a file stamped copy from the Appellate Case Management System.

Thank you as always for your assistance with this matter.

With best regards, I remain

Sincerely,



David B. Marvel

cc: Trudy H Robertson
Brandon Gaskins

ORIGIN ID:RBWA (843) 853-4877
DAVID MARVEL
MARVEL ET AL., LLC
220 CHURCH STREET

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UNITED STATES US

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(803) 734-1080

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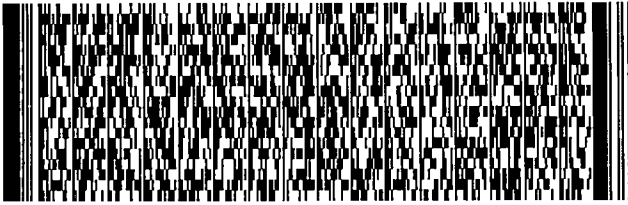
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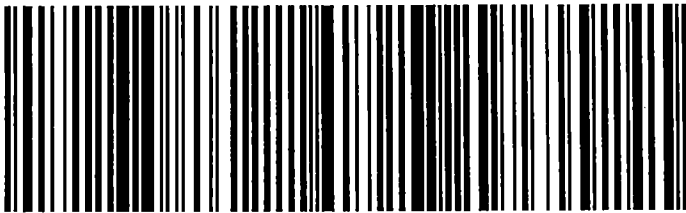
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SC Court of Appeals

8/24/2018