

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Judge

Court of Common Pleas Case No. 2015-CP-08-00547
Appellate Case No. 2106-001156

COKERS COMMONS HOMEOWNER'S ASSOCIATION, INC.,

Respondent,

v.

PARK INVESTORS, LLC; CCT RESERVE, LLC, F/K/A HARRIS STREET, LLC; AND
WHIPPLE DEVELOPMENT CORPORATION,

Defendants.

Of which WHIPPLE DEVELOPMENT CORPORATION is the

Appellant.

RETURN TO MOTION FOR TAXATION OF COSTS

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN HAGOOD, LLC
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ATTORNEYS FOR APPELLANT

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Appellant Whipple Development Corporation (“Whipple”) submits this return in opposition to the Motion to Tax Costs filed by Respondent Cokers Common Homeowner’s Association, Inc. (“HOA”). The motion should be denied in whole and/or in part for the following reasons:

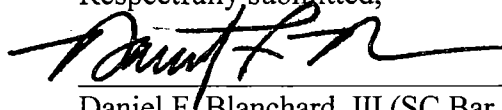
SCACR 222(d) mandates in pertinent part that “[a] party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule” and “[i]f costs are being sought under [SCACR 222(b)], the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules.” SCACR 222(d) (emphasis added).

The word “shall” is mandatory—not permissive—in nature. Williams v. Intier Automotive Interiors of America, Inc., 2011 WL 6965807, *11 (D.S.C. 2011); Conner v. City of Forest Acres, 348 S.C. 454, 464, 560 S.E.2d 606, 611 & n.4 (2002); Youngblood v. QualServe Corp., 2005 WL 7083483, *3 n.3 (S.C. Ct. App. 2005); Horton v. Darby Elec. Co., 360 S.C. 58, 599 S.E.2d 456, 461 n.7 (2004).

Respondent’s motion (at least the copy that was served on the parties and filed with the Court) is not accompanied by a sworn, itemized statement of costs. As such, Respondent has failed to timely submit a proper motion for costs pursuant to SCACR 222(d). The motion must be denied on that basis alone.

Whipple respectfully requests that the HOA’s motion for taxation of costs be denied.

Respectfully submitted,



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March 8, 2019.

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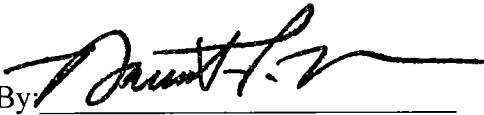
PROOF OF SERVICE

I certify that I have served the Brief of Appellant on the Respondent by mailing copies to its attorneys of record on March 8, 2019, via first-class mail, postage prepaid, and addressed as follows:

Brent S. Halversen, Esquire
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Thomas J. Rode, Esquire
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By: 

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ATTORNEYS FOR APPELLANT

March 8, 2019.

ROSEN | HAGOOD

Daniel F Blanchard, III
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843-266-8123

March 8, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Cokers Commons Homeowners Association, Inc. v. Park Investors, LLC, CCT Reserve, LLC, f/k/a Harris Street, LLC, and Whipple Development Corporation, Inc.
Case No. 2015-CP-08-0547
Appellate Case No. 2106-001156

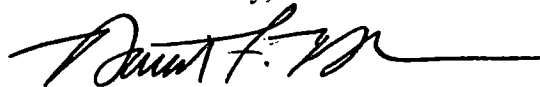
Dear Ms. Kitchings:

Enclosed for filing in the above-referenced case the original and seven copies of the Return to Motion for Taxation of Costs and the original and one copy of the Proof of Service.

We would greatly appreciate your filing these documents and returning date-stamped copies to us in the self-addressed return envelope.

With kindest regards, I am

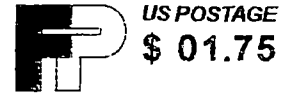
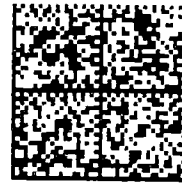
Sincerely,



Daniel F. Blanchard, III

DFB/db
Encls.

Cc: Brent S. Halversen, Esquire (w/ encls.)
Michael A. Timbes, Esquire (w/ encls.)
Thomas J. Rode, Esquire (w/ encls.)
R. Britton Kelly, Esquire (w/ encls.)



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