

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas**

**MAR 13 2019  
SC Court of Appeals**

**The Honorable J.C. Nicholson, Jr., Circuit Court Judge**

Appellate Case No. 2016-001156  
Circuit Case No. 2015-CP-08-00547

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.....Appellant.

**RESPONDENT'S REPLY TO ITS  
MOTION FOR TAXATION OF COSTS  
&  
ITEMIZED STATEMENT OF COSTS**

Pursuant to Rule 222, SCACR, on February 28, 2019, within fifteen (15) days of the issuance of the remittitur, the above-named Respondent moved this Honorable Court for an order taxing costs and awarding attorney fees against Appellant. On March 11, 2019, Respondent received Appellant's Return to the same. Pursuant to Rule 222, SCACR, Respondent herein replies.

Specifically, Appellant complains that the instant motion is defective for lack of being in the form a sworn statement as set out in Rule 222(d), SCACR. Respondent's counsel concedes he inadvertently omitted an affirmation and notarization. However, this is not fatal to its motion.

Through this Reply, Respondent asserts the affirmation contained herein that the “itemized statement of costs incurred” is true and correct should relate back to the filing of its motion.

To the extent the affirmation contained herein does not relate back to Respondent’s timely motion, the inadvertent omission of the sworn “statement of costs incurred” does not affect Respondent’s right to recover the “attorney’s fee” in the fixed amount established by Order of the Supreme Court. (emphasis added to differentiate between “costs” and “fee”).

Rule 222(b), SCACR, sets forth five different costs for which a prevailing party is entitled to recover but “only to the extent the party actually incurred these costs.” Separately, and “[i]n addition, the party shall be entitled to recover an attorney’s fee in an amount which shall be set by order of the Supreme Court.” Rule 222(b), SCACR. Unlike costs which are recoverable only to the extent “actually incurred,” the permitted attorney’s fee is recoverable in the amount established by the Supreme Court without regard to what fees were actually incurred. *Accord* Order No. 2018-01-17-02 (S.C. Jan. 17, 2018).

Accordingly, Rule 222(d), SCACR, directs that a party seeking costs must submit a sworn statement of “costs incurred”—not fees. (emphasis added). Attorney’s fees are fixed in all matters under Rule 222. The sworn “statement of costs incurred” is necessary only to confirm the costs a prevailing party seeks were “actually incurred” as required by Rule 222(b).<sup>1</sup> Therefore, to the extent this Court finds this Reply does not cure counsel’s inadvertent omission of a sworn “statement of costs incurred,” this Court should only strike the costs requested, not the attorney’s fee which is permitted regardless of fees actually incurred.<sup>2</sup>

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<sup>1</sup> *Accord*, App. C, Form 17, SCACR (establishing the language necessary for the affirmation required by Rule 222 as “the foregoing costs are correct and were necessarily incurred in this action.”) (emphasis added).

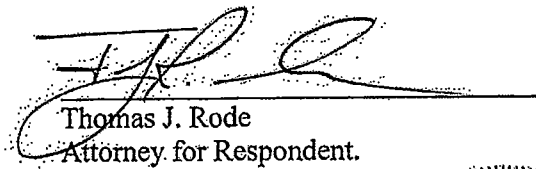
<sup>2</sup> Although not necessary, Respondent notes these fees were nonetheless incurred.

The Court of Appeals is hereby requested to tax the following costs against:


The Appellant, Whipple Development Corporation

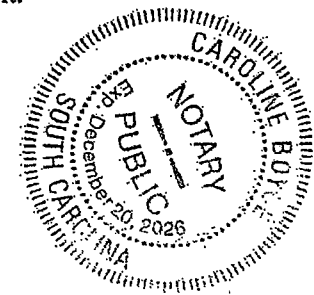
<u>COSTS TAXABLE UNDER</u> <u>RULE 222 SCACR.</u>	<u>No. OF</u> <u>PAGES</u>	<u>RATE</u>	<u>REQUESTED</u>	<u>ALLOWED</u> Court use only
Costs of Printing and Copying Final Brief	384	\$0.32	\$123.47	
Costs of Printing and Copying Final Reply Brief	N/A	N/A	\$0.00	
Costs of Printing and Copying Record on Appeal	N/A	N/A	\$0.00	
Filing Fee Paid Under Rule 203(d), SCACR	N/A	N/A	\$0.00	
Costs of Court Reporter's Transcript	N/A	N/A	\$0.00	
Attorney Fees Provided By Rule 222(b), SCACR	N/A	Limited to \$2,500.00 by Rule.	\$2,500.00 <sup>3</sup>	
<b><u>TOTAL</u></b>			<b><u>\$2,623.47</u></b>	

I, Thomas J. Rode, do swear and affirm that the foregoing costs which were presented to this Court on February 28, 2019, were correct then, and remain correct now, and were necessarily incurred in this action. A copy of this statement was mailed to opposing counsel in this matter.

  
Thomas J. Rode  
Attorney for Respondent.

Sworn to and subscribed before me this 13 day of March, 2019.

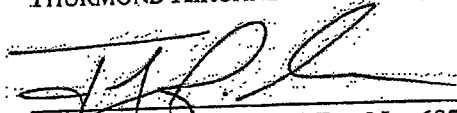
  
Notary Public  
My commission expires. 12/20/26



<sup>3</sup> Pursuant to order of the supreme court of South Carolina this amount is capped at \$2,500.00.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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Thomas J. Rode, SC Bar No. 77480

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*Attorneys for Respondent*

**THE STATE OF SOUTH CAROLINA  
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The Honorable J.C. Nicholson, Jr., Circuit Court Judge

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Development Corporation.....Defendants,

Of which Whipple Development Corporation.....Appellant.

**AFFIDAVIT OF SERVICE**

I, Caroline Boyce, an employee of Thurmond Kirchner & Timbes, P.A., attorneys  
for Respondents, do hereby certify that I have on this date, served via U.S. Mail the  
enclosed upon the following counsel of record:

**FOR APPELLANT:**  
Daniel F. Blanchard, Esquire  
Rosen, Rosen & Hagood, LLC  
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SC Court of Appeals

-and-

R. Britton Kelly, Esquire  
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*Caroline Boyce*

Caroline Boyce  
Paralegal to Michael A. Timbes and  
Thomas J. Rode.

This 13 day of March, 2019  
Charleston, South Carolina

**THURMOND KIRCHNER**  
 **& TIMBES, P.A.**  
 ATTORNEYS AT LAW

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March 13, 2019

**VIA US MAIL & FAX**

The Hon. Jenny A. Kitchings  
 S.C. Court of Appeals  
 PO Box 11629  
 Columbia, SC 29211  
 803-734-1839

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MAR 13 2019

SC Court of Appeals

*Re: Cokers Commons HOA v. Park Investors, et al.*  
*Circuit Case No. 2015-CP-08-00547*  
*Appellate Case No. 2016-001156*

Dear Mrs. Kitchings,

Enclosed please find an original and seven (7) copies of Respondent's Reply to its Motion for Taxation of Costs and Itemized Statement of Costs in the above referenced matter, as well as payment for filing. Please file the original and return a stamped copy to me in the self-addressed stamped envelope also enclosed for your convenience.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact me.

With best regards, I remain

Very truly yours,

*Caroline Boyce*

Caroline Boyce  
 Paralegal to Thomas J. Rode

Ceb/TJR

CC: Michael A. Timbes, Esquire  
 Brent S. Halversen, Esquire  
 R. Britton Kelly, Esquire  
 Daniel Blanchard, III, Esquire

Charleston | Aiken | Summerville