

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

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

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

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MAR 15 2019
SC Court of Appeals

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).¹ 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.²

¹ *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).

² Although not necessary, Respondent notes these fees were nonetheless incurred.

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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:

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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

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

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

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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



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S.C. Court of Appeals
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