

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

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullin, Circuit Court Judge

APPELLATE CASE NO. 2016-001278

Opinion No. 5632

Mildred Anne Kinghorn as Trustee for the Mildred Anne
Kinghorn Trust, Dated April 28, 2004, Respondent,

v.

George C. Sakakini, Appellant.

REPLY TO APPELLANT'S RETURN TO MOTION FOR COSTS ON APPEAL RULE (222)

C. Scott Graber, Esquire
SC Bar No. 2193
605 Carteret Street
Beaufort, SC 29902
843-524-8204
Attorney for Respondent

Other Attorney of Record:
M. Richardson Hyman, Jr.
SC Bar No. 64865
Post Office Box 127
Charleston, South Carolina 29402
Attorney for Appellant

RECEIVED
APR 11 2019
SC Court of Appeals

BACKGROUND

Respondent filed a Motion for Costs, dated 27 March 2019. Appellant responded on April 6, 2019, saying that because Respondent failed to include a "sworn, itemized statement of costs" the Motion fails.

DISCUSSION

Respondent would assert that South Carolina Appellate Rule 222(b) defines what are deemed to be costs. The Rule reads as follow:

The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. In 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. The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

Costs are specified. They are the filing fee; the cost of the court reporter's transcript; premiums paid for bonds and the costs of printing the Record on Appeal and the final briefs.

Rule 222(b) then says, *"In addition, the party shall be entitled to an attorney's fee in an amount which shall be set by Order of the Supreme Court."*

In short Rule 222(b) distinguishes between the five "costs" and the follow-up "attorney's fee". The language of 222(b) makes it clear that an "attorney's fee" is not a "cost" and should be considered a separate and distinct entity.

Then, we look to Rule 222(d) for further guidance. *If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the appendix to these rules . . .*

In the instant case, none of the five "costs" as defined in Rule 222(b), are being sought by Respondent. In the instant case the five "costs" that are defined as being the filing fee; the cost

of the court reporter's transcript; premiums paid for bonds and the costs of printing the Record on Appeal and the final briefs are specified, itemized or sought. In the instant case only the "attorney's fee" is sought by the Respondent Kinghorn.

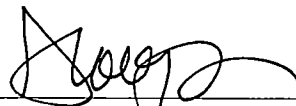
If one chooses to seek the "attorney's fee" the amount is mandated to be \$2,500. That being the case, there is no reason for the attorney to swear that it is "correct" or that it was "necessarily incurred". However, Appellant argues that these words must be used and must be sworn to by me.

Appellant's suggestion that Counsel make an oath is nonsensical - - that Counsel swear that costs "are correct and necessarily were incurred". Attorney's fees are not a cost, and were not necessarily incurred; rather they are dictated by the SC Supreme Court. Dictated and specified as \$2,500. To say that the attorney's fee is "correct" is not necessary; to say that it is "necessarily incurred" is not accurate; to use this oath relative to "costs" is not necessary.

CONCLUSION

For the reasons stated above Appellant asserts she is entitled to an attorney's fee of \$2,500.

Respectfully Submitted,



C. Scott Graber, Esquire
SC Bar #2193
Attorney for Plaintiff
605 Carteret Street
Beaufort, SC 29902
843-524-8204

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullin, Circuit Court Judge

APPELLATE CASE NO. 2016-001278

Opinion No. 5632

RECEIVED
APR 11 2019
SC Court of Appeals

Mildred Anne Kinghorn as Trustee for the Mildred Anne
Kinghorn Trust, Dated April 28, 2004, Respondent,

v.

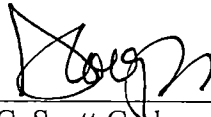
George C. Sakakini, Appellant.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2019, a copy of the foregoing Reply to Appellant's Return to Motion for Costs on Appeal Rule (222) was mailed with the proper prepaid postage through the United States postal Service to:

M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, SC 29402

RESPECTFULLY SUBMITTED,



C. Scott Graber, Esquire
SC Bar No. 2193
Attorney for the Defendants
605 Carteret Street
Beaufort, SC 29902
843-524-8204

Beaufort, South Carolina
April 9, 2019

GRABER LAW FIRM
605 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902

C. SCOTT GRABER
ATTORNEY AT LAW

TELEPHONE (843) 524-8204
FAX (843) 524-2354
EMAIL cscottgraber@gmail.com

April 9, 2019

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
APR 11 2019
SC Court of Appeals

RE: Kinghorn v. Sakakini; Appellant Case #2016-001278; Opinion #5632

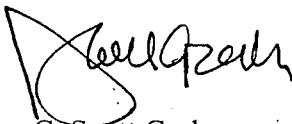
Dear Mrs. Kitchings:

I have attached the Reply to Appellant's Return to Respondent's Motion for Costs on Appeal along with six (6) copies and the Certificate of Service for the above captioned matter.

Thank you for your attention to this matter.

With kindest regards, I am

Very Truly Yours,



C. Scott Graber
CSG/scr

Enclosure

cc: M. Richardson Hyman, Jr.



Scott Graber
GRABER LAW FIRM

605 CARTERET STREET
BEAUFORT, SC 29902
USA

TO: *Honorable Jenny Abbott Kitchings*
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
APR 11 2019
SC Court of Appeals