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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No.: 2014-CP-07-02670
Appellate Court Case No. 2016-001113

RECEIVED

MAY 23 2019

SC Court of Appeals

Benjamin C. Gecy, River City Developers, LLC and River City Real Estate, LLCAppellants,

v.

Somerset Point at Lady’s Island Homeowners Association, Inc., f/k/a Coosaw River Estates Homeowners Association, LLC, Hilton C. Smith, Jr., Coosaw Investments, LLC, Hilton C. Smith, Jr., Inc. of South Carolina, and Manorhouse Builders of South Carolina, LLCDefendants,

Of which Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr., Inc. of South Carolina areRespondents.

RESPONDENTS HILTON C. SMITH, JR., COOSAW INVESTMENTS, LLC, AND HILTON C. SMITH, JR., INC. OF SOUTH CAROLINA’S NOTICE OF MOTION AND MOTION FOR COSTS OF APPEAL PURSUANT TO RULE 222, SCACR

PLEASE TAKE NOTICE the Respondents, Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr. of South Carolina (“Respondents”), by and through their undersigned counsel, hereby move this Court for an Order granting them attorney’s fees and costs incurred in the defense of the above-captioned appeal pursuant to Rule 222 of the South Carolina Appellate Court Rules. Rule 222(a), SCACR, states, in pertinent part, that “[u]nless otherwise ordered by the appellate court or agreed to by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.” Rule 22(b), SCACR, further provides that the party entitled to recover costs may, to the extent actually incurred, recover the following costs:

- (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 general not be allowed except in the most extraordinary of circumstances.

Id. Rule 222(b) "provides an automatic attorney's fee award . . . for the prevailing party on appeal 'which is taxed in the appellate court.'" Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993). By order dated January 17, 2018, the Supreme Court set the amount of attorney's fees to be awarded pursuant to Rule 222(b) at \$2,500.00. See Order Re: Attorney's Fees Under Rules 222 and 242 of the South Carolina Appellate Court Rules, dated Jan. 17, 2018 ("January 17, 2018 Order"). Pursuant to Rule 222(d), SCACR, a party desiring costs to be taxed shall serve and file a motion requesting that costs be assessed under this Rule within fifteen days of the issuance of the remittitur.

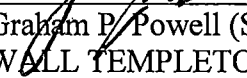
The Court affirmed the trial court decision granting Respondents summary judgment by way of a withdrawn, substituted, and refiled opinion dated April 24, 2019. The remittitur was thereafter issued on May 14, 2019. Accordingly, this appeal is final and the time for a motion pursuant to Rule 222, SCACR, is ripe and presented timely. To that end, Respondents seek an Order granting the following relief: (1) an award of \$2,500.00 for attorney's fees as prescribed by Rule 222(b) and the January 17, 2018 Order; and (2) costs incurred in the amount of \$117.89, which is supported by Appendix A to this motion as prescribed by Rule 222(d), SCACR. Respondents also crave reference to the Affidavit of undersigned counsel in furtherance of this motion, attached hereto as Appendix B.

WHEREFORE, Respondents Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton

C. Smith, Jr. of South Carolina respectfully request this Court grant their request for attorney's fees and costs pursuant to Rule 222 of the South Carolina Appellate Court Rules which total \$2,617.89.

Dated this 21st day of May, 2019.

Respectfully submitted,



Graham P. Powell (S.C. Bar No. 68280)
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
Attorneys for Respondents
Hilton C. Smith, Jr., Coosaw Investments, LLC,
and Hilton C. Smith, Jr., Inc. of South Carolina

APPENDIX A

Date	Invoice #
11/8/2017	CHS148691

Bill To
Sarah Schrodetzki WALL TEMPLETON & HALDRUP P.A. 145 King Street, Suite 300 Charleston, SC 29401

Job #: CHS20014

Client Ref. #	Terms	Rep	Ordered By
005381-094	Net 30	CDavis	Sarah Schrodetzki

Description	Qty	Rate	Amount
Copying:Legal Brief Copies	456	\$0.110	\$50.16T
Binding:Card Covers	20	\$1.000	\$20.00T
Binding:Spiral Bind 1 in.	19	\$2.000	\$38.00T

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Thank You for Your Business!

Unless written notice to the contrary is given to ProLegal Discovery Solutions, Inc. within 7 days of the receipt of invoice, all services delivered to customer are deemed to have been performed in a satisfactory manner and are accepted by customer.

Send only your payment to the payment address indicated on this invoice. All payments are due within your terms upon receipt of this invoice. All late payments may be subject to finance charges or other late charge fees assessable against you; provided, however, that such amount shall automatically reduced to the maximum amount permitted by law if such amount is deemed to be usurious or unlawful. If payments are not received within your terms after invoiced, financing charges and/or late fees may begin to accrue at our option. Please be advised that the person or entity indicated in the Bill To block of this invoice (i.e. you) is/are responsible for any and all payments herein referenced, irrespective of whether such amounts are ultimately posted to the account of your client or other third party.

Subtotal:	\$108.16
Tax(0.09):	\$9.73
Total:	\$117.89

Customer Signature: _____ **Date:** _____

APPENDIX B

River City Developers, LLC and River City Real Estate, LLC (“Appellants”).

2. Respondents were the successful parties on this appeal, which upheld the dismissal of the malicious prosecution claim brought against them by this Court’s withdrawn, substituted, and refiled opinion dated April 24, 2019.

3. The Court issued a remittitur to the Clerk of Court for the Beaufort County Court of Common Pleas on May 14, 2019.

4. Pursuant to Rule 222, SCACR, Respondents seek an award of attorney’s fees in the amount of \$2,500.00 in addition to the taxable costs incurred in the amount of \$117.89 for the printing of Respondents’ final brief.

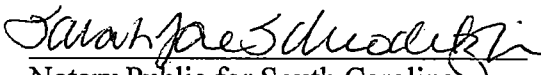
5. I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which the fees have been charged were actually and necessarily performed.

WHEREFORE, Respondents pray for an Order awarding \$2,617.89 in costs against Appellants and in favor of Respondents as provided by Rule 222, SCACR.

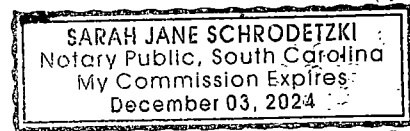


Graham P. Powell

Sworn to me before this 21 day of
May, 2019.



Notary Public for South Carolina



My Commission Expires: 12-3-2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
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Carmen T. Mullen, Circuit Court Judge

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Case No.: 2014-CP-07-02670
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Benjamin C. Gecy, River City Developers, LLC and River City Real Estate, LLCAppellants,

v.

Somerset Point at Lady's Island Homeowners Association, Inc., f/k/a Coosaw River Estates Homeowners Association, LLC, Hilton C. Smith, Jr., Coosaw Investments, LLC, Hilton C. Smith, Jr., Inc. of South Carolina, and Manorhouse Builders of South Carolina, LLCDefendants,

Of which Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr., Inc. of South Carolina areRespondents.

PROOF OF SERVICE

I, Graham P. Powell, of Wall Templeton & Haldrup, do hereby certify that I have served Respondents' Notice of Motion and Motion for Costs and Respondents' Itemized Statement of Costs on all counsel of record by depositing the same in the United States Mail, properly posted on May 21, 2019 addressed as follows to counsel of record:

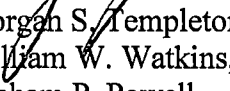
William G. Jenkins, Jr.
Jenkins, Esquivel & Fuentes, PA
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Hilton Head Island, South Carolina 29925

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Jeffrey J. Wiseman
Young Clement Rivers
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Kelly Dennis Dean
Griffith Sharp & Liipfert, LLC
Post Office Box 570
Beaufort, South Carolina 29901

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



Morgan S. Templeton
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*Attorneys for Respondents Hilton C. Smith, Jr.,
Coosaw Investments, LLC, and
Hilton C. Smith, Jr., Inc. of South Carolina*



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ATTORNEYS

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Facsimile: 843.329.9501

May 21, 2019

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Benjamin Gecy, Rover City Developers, LLC and River City Real Estate vs. Somerset Point at Lady's Island HOA, et al*
Appellate Case No. 2016-001113

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of Respondents' Notice of Motion and Motion for Costs of Appeal and Respondents' Itemized Statement of Costs in the above referenced matter. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to all counsel, I am serving them with the enclosed.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Graham P. Powell

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MAY 23 2019
SC Court of Appeals

GPP/sds

Enclosures

cc: Via U.S. Mail:
William G. Jenkins, Jr.
Duke R. Highfield
Jeffrey J. Wiseman
E. Mitchell Griffith
Kelly D. Dean

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145 King Street, Suite 300
Charleston, South Carolina 20401

The Honorable Jenny Abbott Kitchings
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