

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 26 2020

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Mikell Scarborough, Master in Equity

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Case No. 2010-CP-10-5449  
App. No. 2018-001888

Nathan Bluestein, Ettaleah Bluestein,  
Theodore Albenesius and Karen Albenesius,

Petitioners

v.

Town of Sullivan's Island and Town Council.

Respondents

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**Return to Motion for Costs**

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Attorneys for Petitioners

Other Counsel of Record:  
Robert Hood, Sr., James Hood,  
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Counsel for Respondents

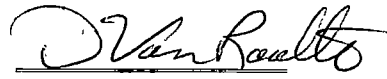
The Town, pursuant to Rule 222(e), opposes Petitioners' Motion for Costs. Though Rule 222(a) sets forth a default "loser pays" paradigm, that same rule leaves the Court discretion to direct otherwise in any particular case. In the instant case it would be equitable for each party to bear its own costs. *First*, the position advocated by the Town in this Court had support in the contract language in question. The underlying opinion in this case notes that the Town's positions had similar documentary support to those advanced by the Petitioners seeking costs here.<sup>1</sup> *Second*, the Opinion on which Petitioners base this demand for costs did not rule in their favor on the merits. To the contrary, the Opinion described the contract as "ambiguous" and determined that further proceedings might help clarify its meaning. The Town should not be faulted for confusion resulting from an ambiguous document. The Town should also not be faulted for seeking Summary Judgment. The Petitioners also moved for it. *Third*, equitably it bears notice that the Town prevailed at the Court of Appeals and did not seek costs against Petitioner. The Town's decision does not bind the Petitioners here, but it does show the Town respected the equitable considerations mentioned above when the shoe has been on the other foot. *Finally*, the Town is a taxpayer funded public entity diligently seeking to discharge its governmental duty. For the foregoing reasons the Town respectfully requests that the Petitioners' Motion be denied and that each party bear its own costs.

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<sup>1</sup> See Bluestein v. Town of Sullivan's Island, \_\_\_ SE2d \_\_\_, 2020WL810963, Op. No. 27947 (SC 2020)("While we acknowledge that both parties make compelling arguments when they are allowed to isolate deed provisions that support their respective provisions, the 1991 deed, when read in its entirety, is not a model of clarity.")

March 24, 2020

Respectfully submitted,

A handwritten signature in cursive script that reads "Derk Van Raalte". The signature is written in black ink and is positioned above a horizontal line.

Derk Van Raalte

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that I have served the Appellants and the Hon. Daniel E. Shearouse by depositing a copy of the following documents:

Opposition to Motion for Costs

In the care of the United States Postal Service, postage prepaid, addressed either directly or to their respective attorneys of record as follows:

Robert Hood, Sr.  
James Hood  
Deborah Sheffield, *Of Counsel*  
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(Copy)

Hon. Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

(6 Copies plus original)

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