

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**Jul 13 2020**  
S.C. SUPREME COURT

D. Garrison Hill, Circuit Court Judge

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App. Case No. 2018-001140  
Opinion No. 2018-UP-078 (S.C. Ct. App. Filed Feb. 7, 2018)

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DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA  
CUSTOM CONVERTING, LLC, ..... Plaintiff,

v.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA  
CUSTOM CONVERTING, LLC, ..... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ..... Third-Party Plaintiffs,

v.

CAROLINA CUSTOM CONVERTING, LLC,  
..... Third-Party Defendant and Counterclaim Plaintiff,

v.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH  
WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems,  
Inc., are the..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM  
CONVERTING, LLC, are the..... Petitioners.

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RESPONSE OF PETITIONERS JOHN GANDIS AND ANDREA COMEAU-SHIRLEY IN OPPOSITION TO  
RESPONDENT NEOLOGIC DISTRIBUTION, INC.'S AND FRESH WATER SYSTEMS, INC.'S MOTION FOR  
COSTS

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Petitioners John Gandis and Andrea Comeau-Shirley (collectively, “Petitioners”), by and through their undersigned counsel, oppose the Motion for Costs filed by Respondents Neologic Distribution, Inc. and Fresh Water Systems, Inc. (collectively, “Respondents”). This matter was before the Court upon the Court’s granting certiorari to Petitioners and Third-Party Defendant and Counterclaim Plaintiff Carolina Custom Converting, LLC (“CCC”). Petitioners sought reversal of the Circuit Court’s order that they were personally liable for violating the South Carolina Uniform Limited Liability Corporation Act of 1996, S.C. Code Ann. § 33-44-101 *et seq.*, among other issues. By Order entered June 3, 2020, the Court modified the Circuit Court’s order as to the method by which Respondent David Wilson’s ownership interest in CCC be purchased by ordering CCC to purchase Wilson’s interest and holding Petitioners liable for purchasing that interest only if CCC could not. Otherwise, the Court affirmed the Circuit Court’s order. Respondents filed the instant motion on June 30, 2020.

Rule 222(a) of the South Carolina Rules of Appellate Procedure provides, in relevant part, “When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.” Whether to award fees and costs under Rule 222 of the South Carolina Rules of Appellate Procedure is a question within the Court’s discretion. *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013). Indeed, in similar circumstances, the Court has denied costs under Rule 222(a) where it has modified a lower court’s damages award. *See, e.g., Erickson v. Winner*, 2010 S.C. Unpub. LEXIS 4 (S.C. Mar. 1, 2010) (holding parties shall bear their own appellate fees and costs after vacating lower court’s punitive damages award but otherwise affirming lower court’s judgment). *See also Miller v. Miller*, 293 S.C. 69, 72, 358 S.E.2d 710, 712 (1987) (denying costs to either party after affirming in part and reversing in part lower court’s judgment). Because the Court modified the Circuit Court’s order by requiring CCC, not

Petitioners, to purchase Wilson's interest in CCC and making Petitioners secondarily liable for that judgment, the Court should exercise its discretion to deny Respondents' Motion for Costs.

Respectfully submitted,



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July 13, 2020