

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

D. Garrison Hill, Circuit Court Judge

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

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.

RESPONSE OF PETITIONERS JOHN GANDIS AND ANDREA COMEAU-SHIRLEY IN OPPOSITION TO
RESPONDENT DAVID WILSON'S MOTION FOR COSTS

Petitioners John Gandis and Andrea Comeau-Shirley (collectively, “Petitioners”), by and through their undersigned counsel, oppose the Motion for Costs filed by Respondent David Wilson (“Respondent”). 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’s ownership interest in CCC be purchased by ordering CCC to purchase Respondent’s interest and holding Petitioners liable for purchasing that interest only if CCC could not. Otherwise, the Court affirmed the Circuit Court’s order. Respondent filed the instant motion on July 2, 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 Respondent’s interest in CCC and making Petitioners secondarily liable

for that judgment, the Court should exercise its discretion to deny Respondent's Motion for Costs.

Respectfully submitted,



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