THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brian L. Boger, Special Referee

Case No. 2016-CP-40-1373

Trenholm Building Company,

Respondent,

v.

Rajarathnam S. Aluri, Trustee,
The Aluri Family Trust,
UTD May 3, 2012,

Appellant.

RETURN TO MOTION FOR TAXATION OF COSTS

Rajarathnam S. Aluri, Trustee, The Aluri Family Trust, UTD May 3, 2012, appeals the Order and Judgment of the Special Referee dated and received February 13, 2018.

November 20, 2020

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BACKGROUND

The Court of Appeals issued its Per Curiam opinion in this matter on April 1, 2020 and filed the same on May 27, 2020. Appellant timely petitioned this Court for rehearing suggesting such rehearing be en banc on June 11, 2020. Respondent filed its return on June 18, 2020. The Court filed its Order denying reconsideration on September 10, 2020 and remitted the matter back to the lower court on November 5, 2020 along with the original May 27, 2020 opinion which was unmodified from its original version. Appellant moved for taxation of costs on October 28, 2020 seeking $3184.98. Appellant opposes this Motion for Taxation of Costs for the following reasons:

ARGUMENT

South Carolina Appellate Rule 222(a) states in part that "[u]nless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Given the "unless otherwise ordered by the appellate court" language in the rule, the awarding of costs is a matter of discretion in South Carolina. There is no South Carolina case law setting out when, why, or how such discretion is to be used.

In New York, however, their rules of procedure state that on appeal one of the grounds for denying costs on appeal might exist where "questions of law involved are complicated or unsettled." See e.g., CPLR § 8107(A)(3)(b)(i). The Second Circuit Court of Appeals has noted that "while an award of costs to a prevailing party is the norm and not the exception, Rule 39 [of the Federal Rules of Appellate Procedure] nonetheless affords this Court discretion to deny costs even if otherwise properly taxable." Moore v. County of Delaware, 586 F.3d 219, 221 (2d Cir. 2009). The

Second Circuit went on to describe its discretion as being equitable in nature and that it should look to certain factors, including but not limited to, misconduct by the prevailing party, the public importance of the case, the complexity of the issues, or limited financial resources. Id.

Real estate law in South Carolina is difficult and inconsistent at best. Easements by necessity even more so. As Richard M. Unger, writes in his Treatise on the Law of Easements in South Carolina, "[t]he South Carolina courts recognized the existence of easements in cases reported as early as 1818. Since that time, thousands of cases have been reported and the law of easements continues to evolve." Id. at p. 1. Thousands of cases in South Carolina and there is not a case close to the instant case where one half of the property cannot be accessed without excavating thousands of tons of dirt. Moreover, Appellant has been using the common driveway since 2003 without issue and it has been used Appellant's property owners since at least 1976.

None of these facts are an effort to relitigate the issues before the court but simply to point out the factual scenario under which this case arises is not one of aggressiveness or cavalierness about an area of the law which is well settled. In fact, this area of the law is confusing factually and legally on every front. In the end Appellant has not only now has lost use of half his property without expending thousands of dollars to do so, but he is facing punishment by having to pay Respondent's costs in the most complex area of law there is.

One law review author has noted that "The law of easements, real covenants, and equitable servitudes is the most complex and archaic body of American property law remaining in the twentieth century. French, Toward a Modern Law of Servitudes: Reweaving the Ancient Strands (1982) 55 So.Cal.L.Rev. 1261. Another

commentator uses stronger language: "The law in this area is an unspeakable quagmire. The intrepid soul who ventures into this formidable wilderness never emerges unscarred. Some, the smarter ones, quickly turn back to take up something easier like the income taxation of trusts and estates. Others, having lost their way, plunge on and after weeks of effort emerge not far from where they began, clearly the worse for wear. On looking back they see the trail they thought they broke obscured with foul smelling waters and noxious weeds. Few willingly take up the challenge again." Rabin, Fundamentals of Modern Real Property Law (1974) p. 489.

CONCLUSION

In conclusion, Appellant respectfully moves that this Court use its equitable powers to deny taxation of costs sought by Respondent. Such a ruling would recognize the complexity of the area of law in which this matter arose. Finally, it would avoid a punitive result for Appellant who has already lost access to half of the back of his property unless he excavates thousands of tons of Earth. This Court has and should use it discretion. If this is not a case, where both parties initially sought a declaratory judgment to establish their respective rights it being unclear to either, for each side to carry their own costs, it is unclear what kind of case would be.

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Court of Common Pleas

Brian L. Boger, Special Referee

Appellate Case No. 2018-000450

Trenholm Building Company, Respondent,

v.

Rajarathnam S. Aluri, Trustee,
The Aluri Family Trust,
UTD May 3, 2012, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies on this 20th day of November 2020 he has filed and served Appellant's Return to Motion for Taxation of Costs in accordance with the South Carolina Rules of Appellate Procedure.

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November 20, 2020

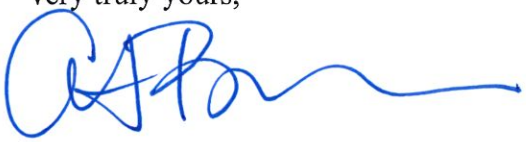
VIA EMAIL ONLY
The Honorable Jenny Abbott Kitchings
ATT: Shelby
Post Office Box 11629
Columbia, South Carolina 29211

RE: Trenholm Building Company v. Rajarathnam S. Aluri, Trustee, The Aluri Family Trust,
UTD May 3, 2012
Appellate Case No. 2018-000450
AJB File No. 7018-1502

Dear Ms. Kitchings:

Attached please find Appellant's Return to Motion for Taxation of Costs. I am also filing a certificate of counsel indicated that I am also serving Respondent's Counsel who I am serving by email as well.

Very truly yours,



Allen Jackson Barnes

Attachments
cc: James B. Richardson, Jr., Esquire (via email only with attachemnts)