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Apr 27 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Supreme Court Case No. 2020-001050
Appellate Case No. 2019-002081
Case No. 2018-CP-18-1960

Carl Michael Funny, Respondent,

v.

Waffle House, Inc. and Christopher Heithaus, Appellants.

RESPONDENT’S MOTION FOR ATTORNEY FEES PURSUANT TO SCACR 222

On January 6, 2020, this Court for the first time dismissed an appeal by Appellants Waffle House, Inc. and Christopher Heithaus as an interlocutory appeal of a discovery order. Appellants then filed a petition for rehearing on January 21, 2020 making new arguments. Respondent filed a return as instructed by this Court, and Appellant filed a Reply. On July 1, 2020, this Court dismissed Appellants’ petition for rehearing.

Appellant then petitioned for a writ of certiorari to the Supreme Court of South Carolina on July 31, 2020. Respondent filed a return on August 31, 2020. The Supreme Court of South Carolina voted to deny the petition for writ of certiorari and the case was remanded to this Court on April 19, 2021.

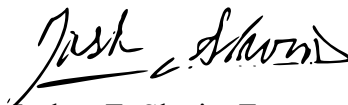
This Court issued a remittitur on April 20, 2021, making this motion timely. SCACR 222(d).

The original motion to compel discovery from which this interlocutory appeal saga arose was filed on February 16, 2019. The trial court originally ordered full discovery responses be produced and costs and fees paid by Appellants on May 31, 2019. Appellants never complied with the trial court's order. Ultimately, Appellants delayed prosecution of this case for over two years and cost Respondent and the Courts countless hours—all over a basic interlocutory discovery order.

Respondent now moves, pursuant to SCACR 222 and Supreme Court of South Carolina Order 2018-01-17-02, for an Order assessing attorney's fees. Rule 222(a) states that, "[u]nless otherwise ordered...costs *shall* be taxed against the appellant when the appeal is dismissed." Rule 222(e) states that "[i]f a petition for a writ of certiorari is sought under Rule 22, the Court of Appeals *shall* tax costs only in those cases in which the petition for a writ of certiorari is denied." Here, the Court of Appeals has twice dismissed Appellants' interlocutory appeal and the Supreme Court has denied certiorari. Respondent therefore requests attorney fees in the amount of \$7,500.00.

Respectfully,

THE LAW OFFICES OF JOSHUA E. SLAVIN, LLC



Joshua E. Slavin, Esq.

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Attorney for the Respondent Carl Michael Funny

July 2, 2020
Mount Pleasant, SC

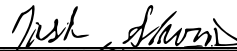
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CERTIFICATE OF SERVICE

The undersigned, Joshua E. Slavin, counsel for the Respondents, hereby certifies that service of Respondent's Motion for Costs was made upon all counsel of record by email to Andrew@ldlawsc.com on April 27, 2021



Joshua E. Slavin

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Via Fax only: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals

Re: Carl M. Funny v. Waffle House, Inc.
Appellate Case No. 2019-002081

Dear Ms. Kitchings:

Please find enclosed for filing **Respondent's Motion for SCACR 222 Costs** in the above-referenced matter. The Court of Appeals issued the remittitur of this case on April 20, 2021, making this motion timely.

I understand from Court staff that filings are still being accepted by email. If this is incorrect, please advise so I may file by other means. Appellants' counsel is served with this filing by email.

Respectfully,
THE LAW OFFICES OF JOSHUA E. SLAVIN, LLC


Joshua Slavin

Enclosures

cc: Andrew Lindemann, Esq.