

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Hon. R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2020-000462

Grange Mutual Casualty and Trustgard Insurance
Company,..... Respondents,

v.

20/20 Auto Glass, LLC..... Appellant.

**RESPONDENTS' REPLY TO
APPELLANT'S OBJECTION TO RESPONDENTS' MOTION FOR COSTS**

Pursuant to South Carolina Appellate Court Rules 222 and 242(j), Respondents Grange Mutual Casualty and Trustgard Insurance Company filed a Motion for Costs to tax allowable costs incurred by Respondents in: (1) opposing the Appellant's appeal to the South Carolina Court of Appeals; and (2) opposing Appellant's Petition for a Writ of Certiorari to this Court. On June 7, 2021, Appellant 20/20 Auto Glass, LLC ("20/20") filed a Return to the Motion objecting to the part of the Motion related to the costs incurred in opposing Appellant's Petition for Writ of Certiorari in this Court.¹ As explained below, the plain language of the Appellate Court Rules allow for costs in this case, and Appellant's argument to the contrary is without merit.

¹Appellant's Return does not address Respondents' request for costs incurred in opposing Appellant's appeal to the South Carolina Court of Appeals. "Failure of a party to timely file a

Rule 222 of the South Carolina Appellate Court Rules states: “**In all cases in which a writ of certiorari is granted**, costs **shall** be awarded in the manner provided by Rule 242(j).” Rule 222(e), SCACR (emphasis added). Here, the writ of certiorari was granted. On March 13, 2020, the Appellant filed a Petition for Writ of Certiorari. On February 10, 2020, this Court granted Appellant’s Petition for Writ of Certiorari. Thereafter, the parties fully briefed the issues for this Court and presented oral arguments on May 6, 2021.

Rule 242(j) of the South Carolina Appellate Court Rules provides in pertinent part:

Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court **has the effect of** affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals.

Rule 242(j)(1), SCACR. On May 12, 2021, this Court unanimously dismissed the Writ as improvidently granted. The Court’s decision to dismiss the Writ as improvidently granted “ha[d] the effect of affirming the judgment of the lower court...which was reviewed by the Court of Appeals.” *See* Rule 242(j)(1), SCACR. The Circuit Court previously entered judgment in favor of Respondents, and the Court of Appeals affirmed. Therefore, all the requirements for awarding Respondents costs in this case are met.

Appellant’s sole argument for why Respondents should not be awarded costs is that dismissal of the Writ as improvidently granted “is procedurally identical to a denial of the writ in the first instance.” (Appellant’s Return, p. 1). This argument is without merit for two reasons. First, the South Carolina Appellate Court Rules for costs make no distinction between: (1) writs that are granted and then dismissed as improvidently granted; and (2) writs that are granted and then result in an opinion. The plain language of the Rule applies “[i]n all cases in which a writ of certiorari is

return may be deemed a consent by that party to the relief sought in the motion or petition.” Rule 240(e), SCACR.

granted,” which was the case here. Rule 222(e), SCACR; *see Fairchild v. South Carolina Dep't of Transp.*, 398 S.C. 90, 108, 727 S.E.2d 407, 416 (2012) (“[W]here the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning without resort to forced construction to limit or expand the rule.” (citation omitted)). Moreover, in the context of costs, no South Carolina case law makes the distinction on which Appellant bases its argument.

Furthermore, in the context of costs – the issue before the Court – denial of the writ in the first instance and dismissal of a writ as improvidently granted are not “procedurally identical.” *See* (Appellant’s Return, p. 1). This is particularly true where, as here, the Court granted the Writ and required the parties to fully brief the issues and present oral arguments on those issues before dismissing the Writ. Under the Appellate Court Rules, the prevailing party is allowed to recover certain costs actually incurred, including “the cost of printing the party's brief(s)” and certain “attorney’s fees” incurred in defending its position. Rule 242(j)(2), SCACR. If a writ is denied in the first instance, the parties do not incur these costs. The parties do not prepare, copy and file briefs with the Supreme Court. Their attorneys do not spend time preparing to defend their position before this Court. As this case demonstrates, where a writ is granted and then is later dismissed as improvidently granted, some or all of these costs may have already been incurred by the parties.²

In terms of costs to the parties, dismissal of a writ in the first instance is not “procedurally identical” to a granted writ that is later dismissed as improvidently granted. Rather, in terms of costs to the parties, such an improvidently granted writ can be “procedurally identical” to a providently granted writ. Placed in its proper context, Appellant’s argument lacks merit.

² The Appellate Court Rules provide for all eventualities on this spectrum by allowing costs “[i]n all cases in which a writ of certiorari is granted” but limiting costs that may be recovered to those “actually incurred.” Rules 222(e) & 242(j)(2), SCACR.

Lastly, the very title of the Court’s Order disposing of this case disproves Appellant’s point. The May 12, 2021, Order is titled: “Certiorari Dismissed as Improvidently Granted.” (emphasis added). When this Court declines to grant a writ in the first instance, it’s orders state that Court will “deny” the petition. The Writ here was not denied, it was dismissed after having been improvidently granted. It is impossible to dismiss the Writ as improvidently granted if the Writ was not first granted. Logically, Appellant’s argument is simply unsupportable.

CONCLUSION

From Appellant’s Return, it appears Appellant concedes that Respondents are entitled to costs incurred in opposing Appellant’s appeal to the South Carolina Court of Appeals. With respect to Respondents’ costs incurred in opposing Appellant’s Petition for Writ before this Court, the plain language of the Appellate Court Rules allows for costs. This Court granted the Writ, and the Court’s subsequent dismissal of the Writ as improvidently granted had the effect of affirming the judgment of the lower court in Respondents’ favor. Therefore, Respondents respectfully request that their Motion for Costs be granted.

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