

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR 11 2013

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2011-CP-46-000179

EnerSys Delaware, Inc.Appellant,

v.

Tammy HopkinsRespondent.

RETURN TO MOTION FOR TAXATION OF COSTS

Pursuant to S.C.A.C.R. 242(j)(4), Plaintiff/Appellant EnerSys Delaware, Inc. (“EnerSys”) respectfully submits the following Return to Defendant/Respondent Tammy Hopkins’ (“Respondent”) Motion for Taxation of Costs.

EnerSys opposes the Respondent’s Motion on the following grounds:

1. On February 27, 2013, this Court dismissed EnerSys’ appeal as interlocutory, holding that EnerSys’ Motion to Disqualify Respondent’s counsel was not immediately appealable and must be pursued instead at the conclusion of this case.

2. Respondent now seeks taxation of the costs of appeal pursuant to S.C.A.C.R. 222, which sets forth the rules for taxation of costs for matters decided in the Court of Appeals. Pursuant to Rule 222(e), the taxation of costs is governed instead by

S.C.A.C.R. 242(j) when this Court assumes jurisdiction over a case by grant of a writ of certiorari. Only when this Court declines to hear a matter does the taxation of costs remain governed by Rule 222.

3. On July 25, 2012, this Court certified this matter for review pursuant to S.C.A.C.R. 204(b) while this matter was pending before the Court of Appeals. Pursuant to Rule 204(b), by certifying this matter for review, this Court assumed jurisdiction over this case for all purposes. Indeed, Respondent's Motion was filed in this Court and not the Court of Appeals. Therefore, EnerSys submits that Respondent's Motion is properly governed by S.C.A.C.R. 242(j).

4. S.C.A.C.R. 242(j)(1) provides that costs are to 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." As this Court certified this appeal for review and dismissed it as interlocutory, this Court's decision did not have the effect of affirming the lower court, but instead grants EnerSys leave to re-file this appeal at the conclusion of the case. Therefore, Respondent's Motion for Taxation of Costs is premature and inappropriate based on the effect of this Court's decision.

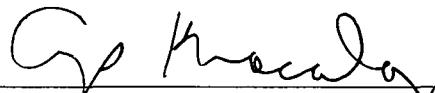
5. Moreover, the taxation of costs against EnerSys in this matter is inappropriate, as EnerSys' appeal related to a novel legal issue of major importance, as reflected by the Court's certification of this issue pursuant to Rule 204(b).

6. Finally, because this appeal sought to resolve the nature of Respondent's counsel's professional responsibility and ethical obligations to EnerSys as its former attorney, it would be inequitable and inappropriate to tax the costs of his attorneys' fees

on this appeal to EnerSys based solely on the Court's holding that the appeal was interlocutory.

For these reasons, Plaintiff/Appellant EnerSys Delaware, Inc. respectfully requests that Respondent Tammy Hopkins' Motion for Taxation of Costs be denied.

April 11, 2013



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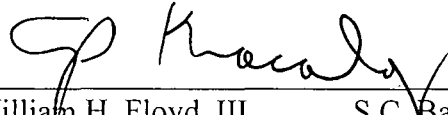
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PROOF OF SERVICE

I hereby certify that I have served the foregoing Return to Respondent's Motion for Taxation of Costs by causing to be hand-delivered a copy of the same on April 11, 2013, at the office of Respondent's Counsel of Record, George Harper, Esq., 1229 Lincoln Street, Columbia, South Carolina 29201.

April 11, 2013



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