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Feb 07 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No.: 2020-001335

Genevieve Stratos,Respondent,

v.

Charleston County Sheriff's Office and Karmatic,
LLC,.....Defendants.

of which

Karmatic, LLC, is the.....Appellant.

**APPELLANT'S RETURN TO RESPONDENT'S
MOTION FOR COSTS PURSUANT TO RULE 222, SCACR**

SPITZ & NEVILLE, LLC
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ATTORNEYS FOR APPELLANT

This matter is before the Court on Respondent's Motion for Costs Pursuant to Rule 222, following the dismissal of this appeal on January 4, 2022, by agreement of the parties. Appellant objects to certain costs requested by Respondent that are not properly taxed against Appellant. Specifically, Appellant submits that Respondent's requests for the costs of: (1) obtaining a transcript; (2) for filing a Motion to Dismiss; and (3) for obtaining the injunction bond required by the lower court are improper.

Respondent filed this action seeking a declaration that a deficiency judgment Appellant Karmatic, LLC, sought to enforce against the Respondent was stale, and a preliminary and permanent injunction restraining any enforcement efforts. By Order entered September 16, 2020, the circuit court entered a temporary restraining order, restraining Appellant from making collection efforts. Pursuant to Rule 65(c), SCRCF, the circuit court required Appellant to obtain an injunction bond.

Appellant appealed, arguing that the circuit court erred by granting Respondent's Motion for Temporary Restraining Order. While this appeal was pending, the proceedings below continued pursuant to S.C. Code Ann. § 14-3-450 (providing that in the case of an appeal of a lower court's interlocutory order granting an injunction, "the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.>"). By order entered December 16, 2021, Appellant's Motion for Summary Judgment was denied. While that order did not result in the termination of the lawsuit, it did essentially resolve the primary issue of the lawsuit, making it impractical to pursue the appeal further. As such, Appellant requested that Respondent consent to the dismissal of the appeal, which she did. Respondent's Motion for Costs followed.

Respondent's Motion seeks to tax Appellant with \$106.25 for the "Cost of Court Reporter's Transcript". However, pursuant to Rule 207(a)(1), it was Appellant that was required to order, and did order, the transcripts of the relevant proceedings below for inclusion in the Record on Appeal.

Respondent's Motion seeks to tax Appellant with \$50.00 for the "Motion to Dismiss Filing Fee". However, pursuant to Rule 222(b), SCACR, the only filing fee that may be recovered is the filing fee paid under Rule 203(d), which is the filing fee for the Notice of Appeal and which was paid by Appellant. There is no provision allowing for the recovery of other filing fees.

Finally, Respondent seeks to recover \$2,025.00 for the costs of the injunction bond required by the circuit court pursuant to Rule 65(c). While Rule 222(b)(3), SCACR, permits the recovery of "premiums paid for costs of supersedeas bonds or other bond obtained to preserve rights pending appeal", it does not allow the costs sought by Respondent. The injunction bond was required by the lower court at the time it issued a temporary injunction. It is not a supersedeas bond and was not obtained to preserve rights pending appeal. It was required prior to any appeal being filed and without regard to whether or not an appeal followed. Additionally, because Respondent has not yet dismissed her lawsuit, is presumably still in place and unaffected by the dismissal of the appeal.

Appellant objects to these costs and would respectfully request that this Court omit the same from any award of costs to Respondent.

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PROOF OF SERVICE

I do hereby certify that on February 7, 2022, I have served all counsel in this action with
a copy of the documents herein below specified via email:

Documents: **Appellant’s Return to Respondent’s Motion for Costs**

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