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Mar 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-42-02072

Donald and Carlee Simmons, Respondents,

v.

Benson Hyundai, LLC, Appellant.

RESPONDENTS' MOTION FOR ATTORNEY'S FEES

Respondents moves this Court as follows for attorney's fees arising from Appellant's appeal.

I. INTRODUCTION

This is a auto-dealer fraud case. Respondents requested a jury trial. Appellant demanded that the case be arbitrated. However, the circuit judge agreed with Respondents and denied Appellant's request for an arbitration. The auto-dealership/Respondent appealed, and this Court affirmed the circuit judge.

Having prevailed in the appeal before this Court, Respondents now move for attorney's fees and costs to be taxed against Appellant. An *Itemized Statement of Costs* is attached as Exhibit A to this Motion.

II. ARGUMENT

South Carolina Rule of Appellate Procedure 222(a) provides

that attorney's fees and costs shall be taxed against the Appellant when an appeal is dismissed.¹ Respondents ask that this be done.

Respondents also bring to the Court's attention that Benson itself has pursued attorney's fees, costs, punitive damages, and prejudgment interest against the Simmonses in Appellant's Arbitration Complaint.²

III. AUTHORITIES

- (A) S.C. App. Ct. R. 222(a)
- (B) S.C. App. Ct. R. 240
- (C) Re: Attorney's Fees under Rules 222 and 242 of the South Carolina Appellate Court Rules, S.C. Sup. Ct. Order dated January 17, 2018. ("The attorney's fee under Rule 222(b) of the South Carolina Appellate Court Rules is hereby increased to \$2,500. This increased fee shall apply to any appeal where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 222.")
- (D) Record on Appeal at p.30.

IV. CONCLUSION

Respondents have traveled to Spartanburg and Columbia for a motion hearing and to Columbia to argue before the Court of Appeals. They have incurred significant costs for a young married couple. Respondents have yet to move past this initial stage and get into discovery. Thus, reimbursement for attorney's fees and costs are not unreasonable in this consumer case.

Respondents request that \$2,500.00 in attorney's fees be awarded to them.

————— SIGNATURE PAGE TO FOLLOW —————

¹ The appeal was affirmed as modified by the Court of Appeals.

² Record on Appeal at p. 70 (Appellant's Complaint in Arbitration).

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ATTORNEYS FOR THE RESPONDENTS

Dated: March 17, 2022

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[In The Supreme Court]

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v.

Benson Hyundai, LLC, Appellant.

CERTIFICATE OF SERVICE

The undersigned does certify that Respondents' Motion for Attorney Fees was served on the below named parties and/or their respective counsel and/or agents by depositing a true and accurate copy of the same in the U.S. mail, first class, properly addressed, with sufficient postage affixed, on the date below.

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Date: March 18, 2022