

RECEIVED

Apr 08 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2019-000413

Karl & Terri Hager, Robert Singleton & Teresa Singleton,
Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle
LLC, derivatively and on behalf of Caravelle Resort
Association, Inc. and on behalf of themselves and those
similarly situated..... Appellants,

v.

McCabe, Trotter & Beverly, PC and Gold Crown
Management Company, Inc.,

Of Which McCabe, Trotter & Beverly, PC is the..... Respondent.

RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR COSTS

Pursuant to Rules 240, 222, and other applicable Rules of the Appellate Court, Respondent McCabe, Trotter & Beverly, P.C. ("MTB") submits this Return to Appellants' Motion for Costs. MTB opposes the Motion and asks the Court to deny it. Further, if the Court is inclined to award costs on this appeal, it should do so in favor of Respondent.

BACKGROUND

Appellants are owners of condominium units at the Caravelle Resort, a high-rise complex in Myrtle Beach. As owners of units at Caravelle, Appellants are members of the Caravelle Resort

Owners' Association ("HOA"). MTB is a law firm that represented the HOA at times pertinent to this matter.

Appellants filed the subject action in the Horry County Court of Common Pleas in 2018. Appellants' claims arise out of issues they have with how MTB advised the HOA following damage the Caravelle sustained in Hurricane Matthew in 2016.

Appellants' claims sound in legal malpractice and are share the common basis in that the owners allege the firm gave the HOA inaccurate advice in helping it navigate repairing Caravelle following Hurricane Matthew. Appellants' claims were twofold. They purported to sue MTB on their own behalf (as owners) for damage to personal property taken out of their individual units and stored in a parking garage during Caravelle's repair. This element of the owners' claim included claims by the named Plaintiffs, as well as class action allegations on behalf of all owners of units at Caravelle.

Appellants also professed to bring derivative claims against MTB on behalf of the HOA. Respondent argued the Amended Complaint failed to allege the HOA incurred any actual damages because of anything MTB did or failed to do. This Court disagreed and noted the Amended Complaint does allege, albeit very generally, the HOA suffered damaged because of the advice MTB provided during the repair process. Objectively, the owners' individual claims are more valuable and have more "teeth" than the derivative claims. This is largely because of the sheer number of owners and potential damages they could claim compared to the "general" and nebulous damages Appellants claim the HOA incurred.

The trial court granted MTB's Motion to Dismiss all claims against MTB, and Appellants appealed the dismissal. The Court of Appeals issued an Opinion on February 23, 2022, upholding

the dismissal of the individual claims and reversing the dismissal of the derivative claims. That means the following individual (and class claims) remain dismissed: (a) legal malpractice; (b) fraud; and (c) conversion. The derivative claims for legal malpractice and breach of fiduciary duty have been remitted to the lower court for litigation. Following the issuance of the Remittitur, Appellants filed the subject Motion for Costs.

ARGUMENT

SCRAC 222 governs costs on appeal. Pursuant to it: (a) costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed; (b) when a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise; and (c) when an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court. Whether to award costs and fees under Rule 222 is in the Court's discretion. Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 750 S.E.2d 78 (2013).

This Court's Opinion affirmed in part and reserved in part, the lower court's decision. Thus, costs shall only be allowed as this Court orders in its discretion. Counsel for Respondent was surprised to see Appellants' Motion for Costs because if either party has a basis for asking for costs, it is MTB. Counsel for Respondent did not file a Motion for Costs since the Court's Opinion affirmed in part and reversed in part. Seeking costs in that situation seemed fruitless and petty.

Appellants' Motion contains little explanation of their basis for seeking costs. It says only the appeal "succeeded in significant part, as significant claims of theirs [Appellants] were reversed and remanded." At best, this is a mischaracterization of the Court's opinion.

The result of the appeal was to affirm the dismissal of the owners' individual claims against MTB, which included class action allegations, for legal malpractice, fraud and conversion. Appellants

based these claims on the theory the owners suffered damages resulting from lost/damaged property improperly handled in the aftermath of the storm. The gravamen of the owners' complaint(s) is their individual claims (including class action allegations), and this Court affirmed the dismissal of those claims.

The Court's Opinion also reversed the dismissal of the derivative claims, which will proceed in the trial court. The derivative claims are based on nebulous "damages" the HOA incurred because of MTB's allegedly inaccurate advice. The Court's Opinion notes the general nature of the allegations of damages on the derivative claims and allowed those claims to proceed in an exercise of restraint. Comparatively, the owners' individual claims provided significantly greater potential exposure than their derivative claims. Thus, to the extent either party "prevailed" on the appeal, that party is the Respondent, MTB.

CONCLUSION

The Court should deny Appellants' request for costs. Further, to the extent the Court is inclined to award costs, it should do so in favor of MTB. Respondent includes an itemized Statement of Costs with this Return for the Court's consideration.

[signature page to follow]

ROGERS, TOWNSEND & THOMAS, P.C.
Robert P. Wood
1221 Main St., 14th Floor
P.O. Box 100200
Columbia, SC 29202-3200
Lawyer for Respondent

Respectfully submitted,

/s/ Andrew W. Countryman
COUNTRYMAN LAW FIRM
State Bar No.: 72700
321 Wingo Way, Ste. 102
Mt. Pleasant, SC 29464
Lawyer for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY COURT OF COMMON PLEAS

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2019-000413

Karl & Terri Hager, Robert Singleton & Teresa Singleton,
Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle
LLC, derivatively and on behalf of Caravelle Resort
Association, Inc. and on behalf of themselves and those
similarly situated..... Appellants,

v.

McCabe, Trotter & Beverly, PC and Gold Crown
Management Company, Inc.,

Of Which McCabe, Trotter & Beverly, PC is the..... Respondent.

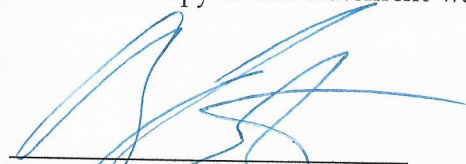
RESPONDENT'S ITEMIZED STATEMENT OF COSTS

Respondent requests the Court to tax the following costs against Appellants pursuant to
SCRAC 222:

Costs taxable	No. of pages	Rate	Requested	Allowed (for court use only)
Attorney's fee			\$2,500	
Transcript of trial court hearing(s)	93	\$1.00	\$93.00	
Final brief printing	738	\$.11	\$81.81	


Binding final brief (hard cover)	18	\$1.00	\$18.00	
Binding final brief (spiral)	18	\$2.00	\$36.00	
TOTAL			\$2,728.81	

I, Andrew W. Countryman, counsel for the Respondent, do swear or affirm the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was/will be served upon opposing counsel.



Andrew W. Countryman

Sworn and subscribed to before me this 7th day of April, 2022.



Notary Public for South Carolina
My Commission Expires
06/22/2024
REBECCA A. [unreadable]
STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY COURT OF COMMON PLEAS

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2019-000413

RECEIVED
Apr 08 2022
SC Court of Appeals

Karl & Terri Hager; Robert Singleton & Teresa Singleton;
Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle
LLC; derivatively on behalf of Caravelle Resort
Association, Inc. and on behalf of themselves and those
similarly situated..... Appellants,

v.

McCabe, Trotter & Beverly, PC and Gold Crown
Management

Of which McCabe, Trotter & Beverly, PC is
the..... Respondent.

RESPONDENT'S PROOF OF SERVICE

I certify I have served Respondent's Return to Motion for Costs (with Respondent's Itemized Statement of Costs) on counsel for Appellants by email addressed as follows:

Andrew S. Radeker
Sarah M. Larabee
Harrison, Radeker & Smith, PA
drew@harrisonfirm.com
sarah@harrisonfirm.com
rhonda@harrisonfirm.com
Counsel for Appellants

This 8th day of April, 2022.

/s/ Andrew W. Countryman

State Bar No. 72700

COUNTRYMAN LAW FIRM

321 Wingo Way, Ste. 102

Mt. Pleasant, SC 29464

843-253-4477

awc@countrymanlawfirm.com

Counsel for Respondent