

IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO.: 2020-CA-00520

INTERNATIONAL ASSOCIATION OF CERTIFIED
HOME INSPECTORS and NICK GROMICKO

APPELLANTS

VS.

HOMESAFE INSPECTIONS, INC.

APPELLEE

MOTION TO RETAX COSTS

COMES NOW, the International Association of Certified Home Inspectors (hereinafter “InterNACHI”) and files this Motion to Retax Costs, and would state unto the Court as follows:

I.

On March 22, 2022, the Court entered the Mandate in this case which stated that this case was “Reversed and Rendered in Part; Reversed and Remanded in Part. Appellants and appellee taxed with costs of appeal.”

II.

First, the Mandate is not clear as to apportionment of costs – whether the Court found that the costs of appeal are divided equally between the parties or whether the parties bear their own costs. InterNACHI respectfully requests clarification of the Court’s assessment of costs.

III.

Notwithstanding the need for clarification of the Court’s assessment of costs, InterNACHI respectfully requests that the Court retax costs to the Appellee, HomeSafe Inspections, Inc. pursuant to Miss. R. App. P. 36(d).

IV.

As the Court is well aware, there was a judgment in favor of the appellee at the trial level. InterNACHI did not appeal the finding of liability for breach of contract, so that issue was

not before the Court. InterNACHI did appeal the amount of the judgment ordered by the trial court against InterNACHI and Nick Gromicko. This Court reversed and rendered the portion of that judgment as to Nick Gromicko and reversed and remanded the remainder of the case for a trial as to nominal damages against InterNACHI. In other words, the judgment of the trial court on appeal was entirely reversed; no portion of the judgment that was on appeal withstood appellate review. This was the exact relief sought by the appellant in its appeal.

V.

Miss. R. App. P. 36(a) states in pertinent part: “If a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered.” The Supreme Court has held that “Our rules clearly create a presumption favoring the award of costs to the prevailing party.” *N. Elec. Co. v. Phillips*, 673 So. 2d 1384, 1385 (Miss. 1996) (citing Miss. R. App. P. 36). Further, “[r]arely has a prevailing party been denied costs in the absence of a showing of vexatious conduct on their part or that the losing party is incapable of paying the costs.” *Id.* (citations omitted). Since the only portion of the judgment on appeal was entirely reversed, InterNACHI was clearly the prevailing party and all costs should be assessed against the appellee, HomeSafe Inspections, Inc.

VI.

This motion is timely in that it is filed within 14 days of issuance of the Mandate.

WHEREFORE, PREMISES CONSIDERED, InterNACHI respectfully requests that the Court first clarify its assessment of costs contained in the Mandate. Further, InterNACHI respectfully requests that all costs on appeal in this matter be retaxed to HomeSafe Inspections, Inc.

DATED: March 25, 2022.

RESPECTFULLY SUBMITTED,

INTERNATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTIONS and
NICK GROMICKO

BY: /s/ Goodloe T. Lewis

GOODLOE T. LEWIS, MSB #9889

LAWRENCE J. TUCKER, JR., MSB #100869

Hickman, Goza & Spragins, PLLC

Post Office Drawer 668

Oxford, MS 38655-0668

(662) 234-4000 telephone

(662) 234-2000 facsimile

glewis@hickmanlaw.com

ltucker@hickmanlaw.com

CERTIFICATE OF SERVICE

I, GOODLOE T. LEWIS, attorney for Appellants, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the MEC system which sent notification of such filing to all counsel of record, including:

Stephan McDavid
McDavid & Associates, P.C.
P.O. Box 1113
Oxford, MS 38655
smcdavid@mcdavidlaw.com

Timothy C. Davis
Heninger, Garrison & Davis, LLC
2224 1st Avenue North
Birmingham, AL 35203
tim@hgdllawfirm.com

DATED: March 25, 2022.

/s/ GOODLOE T. LEWIS
GOODLOE T. LEWIS