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Oct 26 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No.: 2020-001453

Stephan Shugart,.....Appellant,

v.

Historic Hospitality, LLC, Shah Investments, LLC,
and Southern Hotel Properties, LLC,.....Respondents.

MOTION TO DISMISS APPEAL

Pursuant to Rules 240 and 260 of the South Carolina Appellate Court Rules, Respondent Shah Investments, LLC (“Shah”), hereby notices its motion and moves for an order dismissing this appeal. The grounds for this motion are as follows:

1. The pro se Appellant filed a purported Record on Appeal on December 6, 2021. He served a copy of the purported Record on Appeal on December 1, 2021, although counsel for Shah did not receive that copy until more than a week later.

2. The purported Record on Appeal consisted of only seven pages. Although it contained an index listing various materials from the proceedings in the Circuit Court, the purported Record on Appeal did not include copies of those materials. Therefore, it did not comply

with Rule 210(c), SCACR, and it did not provide a sufficient basis for Shah to prepare its Final Respondent's Brief.

3. On December 20, 2021, counsel for Shah sent Appellant a letter notifying him that the purported Record on Appeal did not comply with the applicable rules.

4. Appellant responded to the letter with a telephone call to counsel for Shah on December 29, 2021. During that conversation, Appellant expressed his intention to seek the Court's permission to file and serve an Amended Record on Appeal.

5. Appellant filed a Motion to Amend the Record on Appeal on January 13, 2022. Shah did not oppose that motion.

6. The Court granted Appellant's motion in an Order filed on March 15, 2022 ("the Order").

7. In the Order, the Court gave Appellant thirty days to serve and file an Amended Record on Appeal that complied with Rules 210 and 267 of the South Carolina Appellate Court Rules.

8. Around the date that the Court filed the Order, Appellant mailed counsel for Shah a large set of documents that consisted of copies of materials from the Circuit Court proceedings, as well as copies of various legal authorities. The materials sent by Appellant did not contain a cover, an index, or any page numbering. Therefore, even if Appellant's mailing could be construed as satisfying the requirements of Rule 210, SCACR (which Shah disputes), it did not in any way comply with Rule 267, SCACR. Preparing a final brief based on that mailing was still not possible for Shah.

9. Furthermore, Appellant never filed the materials that he mailed to counsel for Shah.

10. Under the terms of the Order, Appellant's deadline for filing and serving an Amended Record on Appeal that complies with Rules 210 and 267, SCACR, was April 14, 2022. Appellant failed to meet that deadline. Appellant also did not submit any request for an extension of the deadline.

11. On or about May 16, 2022, Shah moved to dismiss the appeal based on Appellant's failure to file and serve a Record on Appeal, amended or otherwise, that complied with the applicable Appellate Court Rules. Appellant responded, in part, by requesting a further extension.

12. On September 6, 2022, the Court filed an Order that denied both Shah's motion to dismiss and Appellant's request for an extension. The Order stated, in part, "Appellant shall serve and file the amended record on appeal within thirty days of the date of this order or this appeal will be dismissed."

13. Based on the Order, Appellant's firm deadline for filing and serving the amended Record on Appeal (i.e. one that complies with the applicable rules) was October 6, 2022.

14. On or about October 6, 2022, Appellant mailed a document captioned "Designation of Matter to be Included in the Record on Appeal" to counsel for Shah. A copy of this document is attached as an exhibit to this motion. As the Court will see, this document in no way constitutes a Record on Appeal. Therefore, Appellant has failed to comply with the Court's Order of September 6, 2022, which stated that such failure would lead to dismissal of the appeal.

For these reasons, Shah moves for an order dismissing the appeal.

(Signature on next page)

Respectfully submitted,

s/ R. Hawthorne Barrett

R. Hawthorne Barrett (SC Bar #16973)

Turner Padget Graham & Laney, P.A.

P.O. Box 1473

Columbia, SC 29202

(803) 227-4219

tbarrett@turnerpadget.com

Attorney for the Respondents Shah Investments, LLC

October 26, 2022

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

· Courtney Clyburn Pope, Circuit Court Judge

Case No. 2019-CP-02-02426

Historic Hospitality, LLC,
Shah Investments,
Shah Enterprises, LLC,
Southern Hotel Properties

Respondent,

v.

Stephan Shugart,

Appellant.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Answer;
2. Motion for Summary Judgement;
3. Order of Granting Summary Judgement;
4. Notice of Appeal;
5. Deposition of Stephan Shugart;
6. Request to Charge;
7. Appellant's Exhibits 1-13;
8. Case Citing's.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 6, 2022

s/ Stephan Shugart
Stephan Shugart
546 Gates Court
Philadelphia, PA 19128
(215) 509-1088
Pro Se Petitioner

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Exhibit 1- CMS Medicare Health Care list of medical providers related to the care and treatment of medical care related to the accident billed directly to the client. Moneys due if any amount is paid by the Defendant's Nationwide Insurance provider.

Exhibit 2- Pictures of Hotel Aiken Annex of rooms showing severely pruned back shrubbery branches and limbs ordered by the Hotel Aiken manager shortly after the accident date of September 29, 2016 that were taken by Petitioner on return from the Aiken County Hospital Emergency Room September 30, 2016 Note the fresh cuttings of branches and limbs that were removed after reporting that Petitioner incurred injury while staying at the Hotel Aiken Annex of rooms.

Exhibit 3- Pictures of Hotel Aiken Annex of rooms showing current conditions of shrubbery as of March 03, 2020 taken where Petitioner's accident occurred. Note the weathered branches and limbs depicted in Exhibit 2 after cuttings were aged and weathered.

Exhibit 4- Chart notes from treating physician dated 12/05/2016 showing Petitioner sought medical treatment for injuries received while staying at Hotel Aiken on September 29, 2016. Additional medical treatment is available after 12/05/2016 from different medical providers in records upon request.

Exhibit 5- Request by Petitioner to Respondent's Attorney James Knox of Turner and Paget requesting dates for mediation. The 300 day rule expired and Respondent's Attorney did not answer Petitioner by said date of August 10, 2020.

Exhibit 6- Petitioner's answer to Respondent's Attorney in regards to Respondent's motion to dismiss dated July 18, 2020 heard via Zoom virtual hearing August 30, 2020.

Exhibit 7- Final Reply of Appellants

Exhibit 8- Notice of Appeal from Common Pleas regarding Conviction in Magistrates or Municipal Court

Exhibit 9- Proof of Service of Notice of Appeal served to all involved parties.

Exhibit 10- Transcript of Record 2019-CP-02-02426 Held August 31, 2020 held before Honorable Courtney Clyburn-Pope, Judge. held via Zoom with no Exhibits attached by the court.

Exhibit 11- Picture of my South Native Carolina Service dog Layla, may she rest in peace, was with me at all times while staying in Hotel Aiken.

Exhibit 12- Deposition of Petitioner conducted at the offices of James Knox of Turner and Paget, attorney for the Respondent.

Exhibit 13- Answer by Petitioner to Respondent's Attorney submission of Notice of Motion and Motion for Summary Judgment in the matter Stephan Shugart v. Shah Investments LLC., Please note all Examples listed have already been put into Discovery prior to Appeal to the South Carolina Court of Appeals.

Exhibit 14- Video taken at Hotel Aiken's annex of hotel rooms, showing enclosed breezeway, steps leading from second floor to covered breezeway. Showing concrete block pillars that support breezeway of the second floor. Showing planting of shrubbery on parking lot side of concrete pillars.

Exhibit 15- Copy of Order filed September 6, 2022

Mail body:

Sent from my TCL 20 Pro 5G

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PROOF OF SERVICE

The undersigned, attorney in this matter for Respondent Shah Investments, LLC, certifies that I have this **26th day of October, 2022**, served a copy of Shah's **Motion to Dismiss Appeal** upon the pro se Appellant by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Stephan Shugart; 546 Gates Court; Philadelphia, PA 19128.

s/ R. Hawthorne Barrett

R. Hawthorne Barrett (SC Bar #16973)

Turner Padget Graham & Laney, P.A.

P.O. Box 1473

Columbia, SC 29202

(803) 227-4219

tbarrett@turnerpadget.com

Attorney for the Respondents Shah Investments, LLC

October 26, 2022