

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin S. Dukes, III, Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island,.....Respondent,

v.

Kigre, Inc.,.....Appellant.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO AMEND
FINAL BRIEF; MOTION TO SUPPLEMENT RECORD ON APPEAL;
MOTION TO AMEND RESPONDENT'S DESIGNATION OF MATTER TO
BE INCLUDED IN RECORD ON APPEAL; AND, MOTION FOR
EXTENSION OF TIME TO FILE FINAL BRIEF

Pursuant to Rule 240 SCACR, the Appellant Kigre, Inc. responds as follows to the Respondent's multiple Motions that were served by U.S. Mail upon the Appellant on May 20, 2013:

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A. As to the Motion To Amend Final Brief, the Appellant requests the Motion be denied because the Appellant's Final Reply Brief has already been finished, printed and filed. It was filed by depositing same into the U.S. Mail on May 16, 2013 in compliance with this Court's Rules. The Respondent sought and was granted an original extension to file its Initial Respondent's Brief, and then sought and was granted an Order allowing the Respondent to file an Amended Initial Brief some three weeks later. That was an appropriate opportunity to address any mistakes. To allow the Respondent an additional "bite at the apple" would be inequitable and would result in the Appellant not having the opportunity to fully reply to the Respondent's Brief because the Appellant's Final Reply Brief was filed prior to this Motion being served upon the Appellant.

Appellant urges the Court to deny the Motion to Amend Final Brief.

B. As to the Motion To Supplement Record on Appeal, the Appellant requests the Motion be denied because the Respondent seeks to add to the Record On Appeal, portions of a deposition not put into evidence at trial of the case and a letter that was generated after the trial of the case. Both are, under Rule 210, properly to be excluded from the Record on Appeal.

Under Rule 210, SCACR, "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." The Deposition of Jeffrey Myers, not a party to the action, was not tendered at trial

and is not marked nor admitted as an Exhibit in the trial transcript. None of the portions of the deposition sought to be added to the Record On Appeal herein were even used for attempted impeachment purposes, thereby arguably becoming part of the trial transcript. This is the reason why the Appellant objected to the Respondent's prior designation of portions of that deposition into the original Record On Appeal. See Appellant's Final Reply Brief, p. 5-6: "The attempt to insert such evidence in this record via citations to a deposition that was not admitted into evidence at trial is inappropriate."

The Respondent also seeks this Court's permission to add as a part of the Record on Appeal, a letter from the Appellant's counsel to the Respondent's counsel discussing the draft Order Judge Dukes asked Respondent's counsel to draw up. The letter is dated January 30, 2012 and was generated well after the case had been tried. It clearly is barred by the prohibition against matter "which was not presented to the lower court or tribunal." (Rule 210, SCACR)

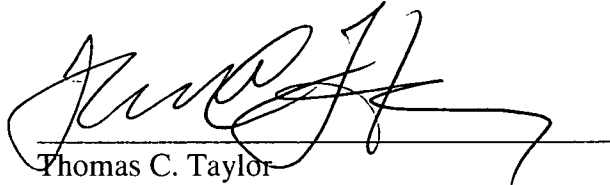
Appellant urges the Court to deny the Motion To Supplement the Record On Appeal, and to take the opportunity to advise the parties that the portions of the Myers' deposition early denominated by the Respondent in its Designation Of Matter To Be Included In The Record On Appeal and thus printed in the Record On Appeal, shall be ignored by the Court in its consideration of the case as same was inappropriate to be designated as matter to be included originally.

C. As to the Respondent's Motion To Amend Respondent's Designation of Matter To Be Included in the Record on Appeal, the Appellant requests the Motion be denied because the Respondent seeks to add to the Designation of Matter To Be Included in the Record on Appeal, portions of a deposition not put into evidence at trial of the case and a letter that was generated after the trial of the case. Both are, under Rule 210, properly to be excluded from the Record on Appeal. For the sake of brevity, the Appellant refers the Court to the legal argument made above in subsection B.

The Appellant urges the Court to deny the Motion To Amend Respondent's Designation of Matter To Be Included in the Record On Appeal, and to take the opportunity to advise the parties that the portion of the Myers' deposition earlier denominated by the Respondent in its previous Designation Of Matter and thus printed in the Record On Appeal, shall be ignored by the Court in its consideration of the case as same was inappropriate to be designated as matter to be included originally.

D. The Appellant does not object to the Respondent's Motion for Extension to File Final Brief until the Court rules on the pending Motions addressed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Taylor', written over a horizontal line.

Thomas C. Taylor
PO Box 5550, Hilton Head, SC 29938
(843) 785-5050
Attorney for Appellant Kigre, Inc.

Hilton Head Island, South Carolina
May 23, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin S. Dukes, III, Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island,

Respondent

v.

Kigre, Inc.,

Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Return of Appellant to Respondent's Motion to Amend Final Brief; Motion to Supplement the Record on Appeal; Motion to Amend Respondent's Designation of Matter To Be Included in the Record on Appeal; and Motion for Extension to File Final Brief, on the Appellant Town of Hilton Head Island by depositing a copy of it in the United States Mail, first class postage prepaid, on May 23, 2013, addressed to its attorney of record, Gregory M. Alford, P.O. Drawer 8008, Hilton Head Island, SC, 29938-8008.

This, the 23rd day of May, 2013.



Thomas C. Taylor
P.O. Box 5550
Hilton Head Island, SC 29938
(843) 785-5050
Attorney for Appellant

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CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

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29938

May 23, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Town of Hilton Head Island v. Kigre, Inc., Case No. 2012-213239;
Appellant's Return to Motions of Respondent and Proof of Service**

Dear Ms. Kitchings:


As the record will indicate, I represent the Appellant Kigre, Inc. in this matter. On May 22, 2013, I received a U.S. Mail package from the Respondent that was postmarked May 20, 2013, containing my service copies of the Respondent's earlier filed Motion to Amend Final Brief; Motion to Supplement the Record on Appeal; Motion to Amend Respondent's Designation of Matter To Be Included in the Record on Appeal; and, Motion for Extension to File Final Brief.

It is my pleasure to enclose herein for filing, the following documents:

- a. An original and seven (7) copies of the Appellant's Return to Respondent's Motion to Amend Final Brief, Motion To Supplement the Record on Appeal, Motion to Amend Respondent's Designation of Matter To Be Included in the Record on Appeal, and Motion for Extension to File Final Brief; and,
- b. An original and one copy of the Proof of Service reflecting the date of service of a copy of the Return upon the Respondent Town of Hilton Head Island.

Would you please stamp one of the copies of the Return and the copy of the Proof of Service "filed" and return those to me in the self-addressed stamped envelope. Thank you.

Sincerely,



Thomas C. Taylor
P.O. Box 5550, Hilton Head Island, SC 29938
(843) 785-5050
Attorney for Appellant Kigre, Inc.

cc: Gregory M. Alford
P.O. Drawer 8008
Hilton Head Island, SC 29938-8008
Attorney for Respondent

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