

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Honorable Doyet A. Early, III, Circuit Court Judge, 2nd Judicial Circuit**

**Case No. 2009-CP-02-2460
Appellate Case No.: 2012-211915**

Julie Tuten, Respondent,

v.

**David Charles Joel, individually
and doing business as Joel &
Associates P.A., and/or Joel
& Associates,
and Heather A. Glover, Defendants,**

of whom

**David Charles Joel, individually
and doing business as Joel &
Associates, P.A., and/or Joel
& Associates, Appellants.**

**RETURN
TO APPELLANTS' MOTION TO
SUPPLEMENT RECORD ON APPEAL
AND
FOR EXTENSION OF TIME BY WHICH TO FILE FINAL BRIEF**

**Tom G. Woodruff, Jr.
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Phone: 803-649-1910
ATTORNEY FOR RESPONDENT**

INTRODUCTION

The respondent Julie Tuten, by and through her undersigned counsel, hereby files this Return to the appellants' Motion to Supplement Record on Appeal and for Extension of Time by which to file Final Briefs.

The Final Briefs of both the appellants and the respondent, were due on May 28, 2013. The respondent timely filed their Final Brief; the appellants filed a motion, to which this Return is in response. The appellants filed the original final Record on Appeal on May 7, 2013.¹

The respondent agrees to allow the late filing of the appellants' Final Brief, and further agrees to allow the Record on Appeal, to be supplemented with pages 213 and 333 of the transcript.

The respondent is opposed to this Court granting the appellants' portion of their motion, which seeks to include in the final Record on Appeal, pages 65-66, 87-88, 123-125, 130-133 and 321-328, of the transcript.

DISCUSSION OF FACTS RELATING TO RECORD ON APPEAL

The appellants' Initial Designation of Matter (to be included in the Record on Appeal), was provided to counsel for the respondent on December 7, 2012, along with the appellants' Initial Brief. At that time, counsel for the respondent had his assistant, copy all documents designated in the appellants' Initial Designation of Matter. Counsel for the respondent, then

¹ The Record on Appeal was originally due on May 1, 2013; however, counsel for the respondent agreed to allow the appellants to seek an additional seven (7) days to prepare and file the final Record on Appeal.

used these copies (as designated by the appellants), to prepare his Initial Brief. Counsel for the respondent then filed and served the respondent's Initial Brief on January 7, 2013. The appellants' then served a Reply to the Initial Brief of the respondent, but did not designate any additional matter to be included in the final Record on Appeal.

Counsel for the respondent was contacted on Thursday afternoon, May 23, 2013, by the paralegal² for appellants' counsel, and gave verbal and written permission for the inclusion of matter, which was referenced in the appellants' Reply Brief (but, never designated by appellants' counsel for inclusion in the final Record on Appeal). This consisted of two pages, being pages 213 and 333 of the transcript. Then, after business hours on Thursday, May 23, 2013, counsel for the respondent received an email from appellants' counsel, indicating the appellants wanted to include pages 65-66, 87-88, 123-125, 130-133 and 321-328 of the transcript.

Counsel for the respondent then contacted his client, and explained the methodology he used in preparing the Initial Brief of the Respondent. This mythology consisted of having copies made of all items indicated in the appellants' Initial Designation of Matter (to be included in the Record on Appeal). Counsel for the respondent did indicate to his client, had the appellants' correctly designated the matter in December of 2012, he most probably would have written the respondent's Initial Brief differently, and would have most probably designated either different or additional matter to

be included in the respondent's Designation of Matter (to be included in the Record on Appeal). Based upon respondent's counsel discussion with his client Ms. Tuten, counsel for the respondent, did send counsel for the appellants, an email at approximately 10:00 pm on the night of Thursday, May 23, 2013, which stated as follows:

May 23, 2013 (at 10:00 pm)

Stephanie,

I have discussed your request to adding a "Volume Two" to the Record on Appeal on the Tuten v. Joel, et al. case, with my client. We also discussed the Appellants Initial Designation of Matter to be included (which I would note was given to us in December of last year - six months ago), and how my office used this designation (as well as our procedure) to prepared our Reply Brief.

Based upon my discussion as to the approach my office took in preparing our Initial Brief, my client will NOT authorize my agreeing to this 'supplemental' "Volume Two" of the Record on Appeal.

Further, the Final Brief of Respondent is due to be filed with the Court of Appeals, in two business days.

Also, my client is concerned that Mr. Joel has hidden millions of dollars of his assets in anticipation of being sued (as he admitted in his deposition), and now claims to be basically insolvent.

Sorry I can not agree to accommodate you; however, I do believe my client is justified in her position.

I did agree with Malory, to allow the Record on Appeal to be supplemented with two pages, and I will of course honor my agreement as to those two pages (being pages 213 and 333 of the Transcript).

Hope you are well.

Tom Woodruff

² The paralegal for counsel for the appellants is Malory L. Hogg.

REQUIREMENTS OF RULE 209, SCACR

Rule 209, SCACR, sets forth the requirements as to the Designation of Matter (to be included in the Record on Appeal), and further requires each party to file and serve the designation on the opposing side.

In this instance, counsel for the appellants, filed and served this Designation of Matter on December 7, 2012. Counsel for the respondent, relied on the designation in preparing his Initial Brief, and well as in providing his Designation of Matter.

Counsel for the appellants did file a Reply Brief, and apparently made reference to two pages which were not included in the appellants' Initial Designation. Counsel for the respondent agreed to allow these two pages (i.e., pages 213 and 333 of the transcript) to be supplemented, into the final Record on Appeal (notwithstanding they were never designated).

However, the appellants' are now, seven months after serving and filing the appellants' Initial Designation, seeking to include a large amount of testimony they never designated.

The methodology used by respondent's counsel in preparing his Initial Brief and respondent's Designation of Matter, based upon respondent's counsel's reliance that appellants would "play by the rules," and are now seeking to change those rules, would allow an unfair tactical advantage to the appellants.

To allow the appellants to supplement the final Record on Appeal, would operate as an injustice to the respondent, and have the effect of giving

the appellants an unfair advantage based upon actions over which they had complete control

CONCLUSION

For the reasons set forth above, the respondent agrees to allow the late filing of the appellants' Final Brief, and further agrees to allow the Record on Appeal to be supplemented, with pages 213 and 333 of the transcript.

The respondent is opposed to this Court granting the portion of appellants' motion which seeks to supplement the Record on Appeal, with the pages 65-66, 87-88, 123-125, 130-133 and 321-328 of the transcript.

If the appellants are allowed to now include matter, which should have been designated in December of 2012 and was not, it gives the appellants an unfair advantage, and by the appellants' "not playing by the rules." This places the respondent in an unfair position.

For the reasons set forth above, the respondent would respectfully request this Court to decline the portion of the appellants' motion to supplement the Record on Appeal with the inclusion of pages 65-66, 87-88, 123-125, 130-133 and 321-328 of the transcript.

Respectfully submitted,

WOODRUFF LAW OFFICES, LLC



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June 7, 2013

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Honorable Doyet A. Early, III, Circuit Court Judge, 2nd Judicial Circuit

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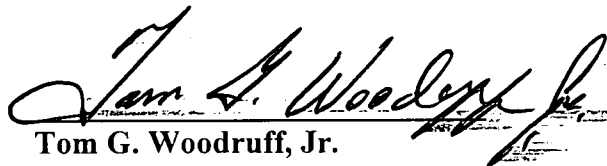
of whom

**David Charles Joel, individually
and doing business as Joel &
Associates P.A., and/or Joel
& Associates, Appellants.**

PROOF OF SERVICE

I certify that I have served the REPLY to the appellants' Motion for Extension of Time, on counsel for the appellants, by depositing a copy in the United States Mail, postage prepaid, on June 7, 2013, addressed to appellants' attorneys of record, being Desa Ballard, Stephanie Weissenstein and Harvey M. Watson, III, all of Post Office Box 6338, West Columbia, South Carolina 29171.

June 7, 2013

A handwritten signature in black ink, reading "Tom G. Woodruff, Jr.", written over a horizontal line.

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