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Apr 20 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

Roger L. Couch, Circuit Court Judge
R. Keith Kelly, Circuit Court Judge

Cases No. 2012-CP-42-04733 and -04915
Appellate Case No. 2023-000506

Jonathan Bryant,

Petitioner,

v.

Kevin Fountain,

Respondent.

In re:

Southern Wholesale, Inc.,

Plaintiff,

v.

Chad Kerr and Jonathan Bryant,

Defendants,

and

Jonathan Bryant,

Third-Party Plaintiff,

v.

Southern Wholesale, Inc. and Kevin Fountain,

Third-Party Defendants.

Of whom Kevin Fountain, Southern Wholesale, Inc.,
and Speciality Equipment Leasing, Inc., are the

Appellants,

and Jonathan Bryant is the

Respondent.

MOTION FOR LEAVE TO ORDER ADDITIONAL TRANSCRIPT

**Counsel identified on the following page*

Russell G. Hines (SC Bar No. 72100)
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-and-

W. Westbrook Wills III (SC Bar No. 76681)
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Attorneys for Appellants

NOW COME Appellants, Kevin Fountain, Southern Wholesale, Inc., and Specialty Equipment Leasing, Inc., by and through their undersigned counsel, pursuant to Rule 263(b), SCACR (providing that, but for certain exceptions irrelevant here, “[t]he time prescribed by these Rules for performing any act . . . may be extended . . . by the appellate court, or by any judge or justice thereof”), and, on the grounds set forth below, hereby move this Honorable Court for leave to order an additional transcript that may be relevant to this matter.

Appellants served/filed their notice of appeal on March 27, 2023. Appellants’ notice of appeal appeals the following orders of the Honorable Roger L. Couch, Circuit Court Judge (collectively, the “Judge Couch Orders”):

- **Form 4 Order Attaching Formal Order Denying Motion to Remove and Replace Arbitrator**, filed October 9, 2015;
- **Formal Order Denying Motion to Remove and Replace Arbitrator**, filed October 9, 2015; and
- **Order on Motion to Reconsider Order Denying Motion to Remove and Replace Arbitrator**, filed February 12, 2016; and

Appellants’ notice of appeal also appeals the following orders of the Honorable R. Keith Kelly, Circuit Court Judge (collectively, the “Judge Kelly Orders”):

- **Form 4 Order Granting Motion to Affirm the Award of the Arbitrator**, filed October 3, 2022;
- **Formal Order Granting Motion to Confirm the Award of Arbitrator**, filed February 1, 2023, as well as the **Judgment entered pursuant thereto and, out of an abundance of caution, insofar as Appellants may be aggrieved or adversely affected by the same, any other intermediate orders or decrees necessarily affecting the Judgment**;
- **(Original) Order on Respondent and Third-Party Defendant’s Notice of Motion and Motion to Alter, Amend or Reconsider**, filed February 24, 2023; and
- **(Re-filed) Order on Respondent and Third-Party Defendant’s Notice of Motion and Motion to Alter, Amend or Reconsider**, filed March 2, 2023.

When Appellants served/filed their notice of appeal on March 27, 2023, they had already ordered and received the transcript of the hearing (held before Judge Kelly on September 23, 2022) that immediately preceded the Judge Kelly Orders, but had not yet ordered the transcripts with respect to the Judge Couch Orders, which transcripts were of hearings held before Judge Couch on July 7, 2015, and January 6, 2016, respectively. Due to the length of time since these proceedings took place before Judge Couch, Appellants did not know if transcripts of the proceedings were available to be ordered, and Appellants were in need of additional time to attempt to answer this question. Accordingly, on April 6, 2023, Appellants moved to extend the time to order transcripts by ten (10) days, to Monday, April 17, 2023; the Court granted Appellants' motion by order filed April 11, 2023; and on April 12, 2023, Appellants ordered the transcripts of the hearings held before Judge Couch on July 7, 2015, and January 6, 2016, the receipt of which Appellants' counsel is awaiting as of the date of the instant motion.

Appellants' counsel has now identified an additional hearing transcript that may be relevant to this matter, namely, the transcript of a hearing before Judge Kelly on January 20, 2021, and Appellants counsel respectfully submits that there is good cause for the Court to grant Appellants leave to order it, as doing so is in furtherance of the interests of justice and will not cause any undue prejudice to Respondent or delay. **And, in the interest of time, Appellant's counsel is conditionally ordering this transcript contemporaneously with making this motion. A copy of this transcript order is attached hereto as Exhibit 1.**

WHEREFORE, Appellants ask that the Court grant them leave to order the transcript of the aforementioned hearing before Judge Kelly on January 20, 2021. ADDITIONALLY, and on the grounds already stated, in the event that the transcripts of the hearings held before Judge Couch on July 7, 2015, and January 6, 2016, should be received before the Court acts on the

instant motion, Appellants ask that the Court hold their briefing deadline in abeyance at least until it acts upon this motion, and then, provided the Court grants the instant motion, until the transcript of the hearing before Judge Kelly on January 20, 2021, is received.

Respectfully submitted,

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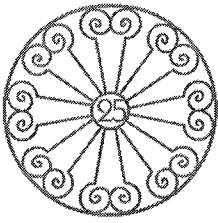
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Attorneys for Appellants

Charleston, South Carolina

April 20, 2023



CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

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April 20, 2023

VIA EMAIL ONLY

Linda D. Moffitt
800 Belcher Road
Spartanburg, SC 29316
lmoffitt@sccourts.org



Re: Jonathan Bryant, Petitioner v. D. Kevin Fountain, Respondent; In re: Southern Wholesale, Inc., Plaintiff v. Chad Kerr and Jonathan Bryant, Defendants and Jonathan Bryant, Third-Party Plaintiff v. Southern Wholesale, Inc., and D. Kevin Fountain, Third-Party Defendants
Appeal Case No.: 2023-000506
Underlying Case No.: 2012-CP-42-4733; 2012-CP-42-4915
YCR File: 17720-20230287

Dear Linda:

This law firm represents the Appellants in the above-referenced matter. In that regard, pursuant to the attached transcript request form, I would like to request a hearing transcript. The hearing was held on January 20, 2021 in front of the Honorable R. Keith Kelly.

Please inform me if you require a deposit prior to mailing us a copy and we will send it immediately, otherwise we will remit payment upon receipt of your invoice. If you have any questions, please contact me at the telephone number listed above. With best wishes and kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

Aimee M. Justman
Legal Assistant

/amj

cc: Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals
South Carolina Court Administration
W. Westbrook Wills, III, Esquire, Law Office of W. Westbrook Wills III
Scott F. Talley, Esquire, Talley Law Firm, P.A.

Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Russell G. Hines</u>	Phone Number <u>(843) 720-5488</u>	Email Address <u>ajustman@ycrlaw.com</u>	
Mailing Address <u>25 Calhoun Street, Suite 400</u>	City <u>Charleston</u>	State <u>SC</u>	Zip Code <u>29401</u>
Transcript Information			
Docket Number <u>2012-CP-42-4733</u> <u>2012-CP-42-4915</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Southern Wholesale Inc. v. Chad Kerr, et al.</u> <u>Jonathan Bryant v. Kevin Fountain, et al.</u>		
Date(s) of Proceeding <u>January 20, 2021</u>	Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/>	County <u>Spartanburg</u>	
Presiding Judge <u>R. Keith Kelly</u>	Expedited Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Court Reporter(s) <u>Linda D. Moffitt</u>	Opposing Counsel <u>Scott F. Talley</u>		

Requestor's Signature: s/Russell G. Hines
(Typed name will serve as signature)

Date: April 20, 2023

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	Date Received _____	Email Address _____	
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
Mailing Address for Payment _____	City _____	State _____	Zip Code _____

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
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Roger L. Couch, Circuit Court Judge
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Of whom Kevin Fountain, Southern Wholesale, Inc.,
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PROOF OF SERVICE

**Counsel identified on the following page*

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Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **MOTION FOR LEAVE TO ORDER ADDITIONAL TRANSCRIPT** was served on Respondent on April 20, 2023, by emailing (see attached service email) a copy of the same to Respondent's counsel of record:

Scott F. Talley, Esquire
TALLEY LAW FIRM, P.A.
scott@talleylawfirm.com
Attorneys for Respondent

W. Westbrook Wills III, Esquire
THE LAW OFFICE OF
W. WESTBROOK WILLS III
wwills@wwillslaw.com
Additional Counsel for Appellants

Respectfully submitted,

By: s/Russell G. Hines
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CLEMENT RIVERS, LLP
Attorneys for Appellants

Charleston, South Carolina

April 20, 2023

Bell, Pollyana (Polly)

From: Bell, Pollyana (Polly)
Sent: Thursday, April 20, 2023 10:35 AM
To: W. Westbrook Wills III; scott@talleylawfirm.com
Cc: Justman, Aimee; Hines, Russell
Subject: Bryant v. Fountain ; 2023-000506 (CR 230287)
Attachments: Bryant v. Fountain (2023-000506) -- Motion for Leave to Order Additional Transcript.pdf; Bryant v. Fountain (2023-000506) -- Ex. 1 to Motion for Leave to Order Additional Transcript.pdf

Enclosed please find Appellants' Motion for Leave to Order Additional Transcript which will be filed today in the above-referenced matter.

Thank you,

Pollyana Bell
Project Assistant
Commercial Litigation Practice Group
Phone:(843)720-5488 | Fax:(843)579-1369



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