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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

The Honorable Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2022-001359

Maybank Holding's, LLC, Appellant,

v.

James Island Center, LLC, Respondent,

AND

James Island Center, LLC, Respondent,

v.

Richard D. Tuorto, Chandler Frierson,
Natalie Myers, John R. Hibbits, Jr. and
Elizabeth A. Hibbits, Appellants.

**APPELLANTS' DESIGNATION OF MATTER
FOR INCLUSION IN THE RECORD ON APPEAL**

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Chandler Frierson, Natalie Myers, John R.
Hibbits, Jr., and Elizabeth A. Hibbits*

July 5, 2023

Pursuant to Rule 209, SCACR, Appellants Maybank Holding's, LLC, Richard D. Tuorto, Chandler Frierson, Natalie Myers, John R. Hibbits, Jr., and Elizabeth A. Hibbits ("Appellants") hereby designate the following materials to be included in the Record on Appeal. Each item designated **is to include all attachments or exhibits** to the original of the referenced item. Appellants intend to designate each and every item from the record that it cites in its Initial Brief of Appellant in this matter. Appellant expressly reserves the right to seek supplementation of the record pursuant to Rules 209 and 212, SCACR. Appellant designates the following matters for inclusion in the Record on Appeal (including any and all exhibits or attachments thereto):

ORDERS, JUDGEMENTS, AND DECREES

1. July 18, 2018 Order of Reference
2. September 19, 2018 Order to Pay Arrearage
3. April 9, 2019 Order of Reference (CHS 18-1489)
4. July 16, 2020 Order to Consolidate Cases
5. December 30, 2021 Order Granting Partial Summary Judgment
6. February 2, 2022 Order Granting Partial Summary Judgment on Fraud Causes of Action
7. July 27, 2022 Order of Judgment
8. August 1, 2022 Form 4 Order regarding Judgment
9. September 9, 2022 Form 4 Order denying Appellant's Motion to Reconsider
10. September 22, 2022 Form 4 Order regarding Attorney's Fees
11. October 20, 2022 Form 4 Order Denying Motion for a Rule to Show Cause and to Reconsider the Amended Order of Judgment

PLEADINGS, MOTIONS, AND OTHER FILINGS

12. November 29, 2017 Complaint, Maybank Holding's, LLC ("Appellant") (CHS 17-6111)
13. February 7, 2018 Answer and Counterclaim, Respondent (CHS 17-6111)

14. March 12, 2018 Answer to Respondent's Counterclaim (CHS 17-6111)
15. March 22, 2018 Complaint, Respondent (CHS 18-1489)
16. May 17, 2018 Answer, Appellant (CHS 18-1489)
17. July 12, 2018 Plaintiff's Memorandum in Opposition to Defendant's Motion for Order of Ejectment
18. July 22, 2018 Memorandum, Notice of and Motion for Order of Ejectment (CHS 18-1489)
19. August 9, 2018 Amended Summons and Complaint, Appellant (CHS 17-6111)
20. September 17, 2018 Answer to Appellant's Amended Complaint, Respondent (CHS 17-6111)
21. October 12, 2018 Appellant's Answer to Respondent's Counterclaims filed October 12, 2018
22. October 18, 2019 Respondent's Motion to Compel Against Valley Proteins, Inc.
23. October 28, 2019 Proof of Service of Valley Proteins, Inc.
24. November 18, 2019 Attorney Grittins Letter to Edward Buckley, Esq. dated November 14, 2019
25. June 30, 2021 Respondent's Motion for Partial Summary Judgment as to Appellant's Fraud and Other Related Causes of Action and Memorandum in Support
26. June 30, 2021 Respondent's Motion for Partial Summary Judgment as to Appellant's Claim for Damages and Memorandum in Support
27. June 30, 2021 Respondent's Motion for Partial Summary Judgment as to Appellant's Remaining Causes of Action and Memorandum in Support
28. November 19, 2021 Appellant's Memorandum in Opposition to Respondent's Motions for Summary Judgment filed June 30, 2021; Ex. T to Appellant's Memorandum in Opposition to Respondent's Motion for Summary Judgment
29. November 19, 2021 Letter from Attorney Novak to the Court
30. November 22, 2021 Respondent's Reply to Appellant's Memorandum in Opposition to Respondent's Motion for Summary Judgment filed June 30, 2021
31. November 22, 2021 Letter from Attorney Novak to the Court
32. December 29, 2021 Respondent's Supplemental Memorandum in Support of its Motion for Summary Judgment filed June 30, 2021

33. January 10, 2022 Appellant's Motion to Alter, Amend, Modify, and Correct the Order Granting Partial Summary Judgment to Respondent
34. January 20, 2022 Appellant's Response to Supplemental Reply Memorandum of Respondent
35. January 28, 2022 Respondent's Memorandum in Opposition to Appellant's Motion to Alter, Amend, Modify, and Correct the Order Granting Partial Summary Judgment
36. February 11, 2022 Respondent's Motion Pursuant to Rules 56(d) and 59(e), Regarding Order Granting Partial Summary Judgment Filed February 2, 2022
37. February 14, 2022 Appellant's Motion to Alter, Amend, and Reconsider Order Granting Partial Summary Judgment to Respondent on Appellant's Fraud Causes of Action
38. February 17, 2022 Respondent's Memorandum in Opposition to Appellant's Motion to Alter, Amend, Modify, and Correct the Order Granting Partial Summary Judgment
39. August 5, 2022 Respondent's Affidavit of Attorney's Fees (Edward Buckley, Esq.)
40. August 5, 2022 Respondent's Transactions Listing (Clement Rivers, LLP)
41. August 5, 2022 Motion to Reconsider the Order of Judgment Against Appellant and the Grant of Respondent's Motions for Partial Summary Judgment
42. September 2, 2022 Respondent's Memorandum in Opposition to Petitioner's Motion to Reconsider
43. September 6, 2022 Memorandum in Support of Appellant's Motion to Reconsider the Order of Judgment Against Appellant and the Grant of Respondent's Motions for Partial Summary Judgment
44. September 6, 2022 Appellant's Objection to Request for Attorney's Fees and Affidavit of Attorney's Fees and Motion to Compel
45. September 13, 2022 Respondent's Reply to Appellant's Objections to Respondent's Request for Attorneys' Fees and Affidavit in Support
46. September 27, 2022 Appellant's Motion for a Rule to Show Cause and for Reconsideration of the Amended Order of Judgment
47. September 27, 2022 Affidavit of Justin P. Novak, Esq.

48. September 28, 2022 Notice of Appeal of Partial Summary Judgment Orders and Orders of Judgment
49. October 11, 2022 Transcript of Judgment
50. October 26, 2022 Notice of Appeal of Order Denying Appellant's Motion for Rule to Show Cause and to Reconsider the Amended Order of Judgment
51. November 10, 2022 Motion to Consolidate
52. November 22, 2022 Amended Transcript of Judgment

TRIAL EXHIBITS

53. Appellants Exhibit 6 (Avison Young 118-123)
54. Appellants Exhibit 12 (Avison Young 73)
55. Appellants Exhibit 16 (Avison Young 110)
56. Appellant's Exhibit 18 (Avison Young 186-189)
57. Appellant's Exhibit 20 (CBRE 258)
58. Appellant's Exhibit 21 (CBRE 284-286)
59. Appellant's Exhibit 22 (CBRE 303)
60. Appellant's Exhibit 25 (CBRE 521)
61. Appellant's Exhibit 28 (Cullum 1343-1348)
62. Appellant's Exhibit 29 (Cullum 1349-1354)
63. Appellant's Exhibit 31 (Cullum 1372-1374)
64. Appellant's Exhibit 34 (Cullum 1398-1448)
65. Appellant's Exhibit 36 (JIC 356-361)
66. Appellant's Exhibit 40 (JIC 468-473)
67. Appellant's Exhibit 49 (JIC 3327)
68. Appellant's Exhibit 50 (JIC 3473-3536)
69. Appellant's Exhibit 61 (Lee & Assoc. 186-188)
70. Appellant's Exhibit 66 (Lee & Assoc. 151-155)
71. Appellant's Exhibit 68 (Lee & Assoc. 157-161)
72. Appellant's Exhibit 90 (WillisSubpoena 40-41)
73. Appellant's Exhibit 93 (Willis Subpoena 332-334)
74. Appellant's Exhibit 97 (WillisSubpoena 120-133)

75. Appellant's Exhibit 103 (Tecta 13-17)
76. Appellant's Exhibit 105 (September 28, 2018, Correspondence from M. Dawes Cooke, Jr. to Respondent's Counsel)
77. Appellant's Exhibit 108 (WRS 314)
78. Appellant's Exhibit 109 (WillisSubpoena 431-432)
79. Appellant's Exhibit 112 (WRS 285)
80. Appellant's Exhibit 113 (CBRE 295)
81. Appellant's Exhibit 114 (JIC 998-1018)
82. Appellant's Exhibit 116 (WRS 287-288)
83. Appellant's Exhibit 121 (10/11/19 E-Mail from Hagar to Welch)
84. Appellant's Exhibit 122 (10/17/19 E-Mail Walker to Hagar)
85. Appellant's Exhibit 123 (10/28/19 E-Mail Welch to Walker)
86. Appellant's Exhibit 125 (1/24/20 E-Mail Walker to Hagar)
87. Appellant's Exhibit 126 (1/24/20 Walker re: Letter of Intent)
88. Appellant's Exhibit 127 (11/30/21 My Father's Mustache Lease)
89. Appellant's Exhibit 128 (8/29/21 Hagar to Walker regarding Letter of Intent)
90. Appellant's Exhibit 130 (BMC 373)
91. Appellant's Exhibit 132 (BMC 2260)
92. Appellant's Exhibit 133 (BMC 3296)
93. Appellant's Exhibit 134 (BMC 3298)
94. Appellant's Exhibit 135 (BMC 3309)
95. Appellant's Exhibit 137 (BMC 3328)
96. Appellant's Exhibit 138 (BMC 3335)
97. Appellant's Exhibit 146 (10/25/19 Walker Subpoena Response)
98. Appellant's Exhibit 151 (11/5/29 E-Mail Hagar to Welch)
99. Appellant's Exhibit 152 (11/4/19 E-Mail Hagar to Welch)
100. Appellant's Exhibit 155 (Maybank 1606-1615)
101. Respondent's Exhibit 3 (Original Lease)
102. Respondent's Exhibit 6 (JIC 1455-1456)
103. Respondent's Exhibit 14 (JIC 767-769)

104. Respondent's Exhibit 56 (WillisSubpoena 56-58)

105. Respondent's Exhibit 64 (CBRE 445)
106. Respondent's Exhibit 153 (Beatty 5548-5584)
107. Respondent's Exhibit 213 (JIC 4584-4590)

TRANSCRIPTS

108. Excerpt from Deposition of Burt Ault (205:10-22)
109. Excerpts from Deposition of Joyce Beach (14:02-17:04; 79:01-14; 81:01-19; 129:05-21; 133:03-10; 153:01-20; 154:01; 155:14-25)
110. Excerpts from Deposition of Joseph Fabie (29:01-16; 30:01-06; 75:14-76:16; 92:14-93:06; 102:01-24; 103:01-09; 107:01-107:12; 114:11-25; 116:25-117:23; 127:01-128:12; 130:06-21; 155:-01-16; 156:01-156:21; 158:14-159:05; 159:01-160:07; 169:12-23; 183:20-22; 190:01-02-197:15; 202:11-17; 210:01-17; 211:01-18; 212:01-18; 213:14; 228:12-229-04; 236:16-238:17)
111. Excerpts from Deposition of Jack Frye (98:01-99:03; 105:04-19; 233:16-236:04)
112. Excerpts from Deposition of Kenneth E. Miller (79:17-80:03; 120:11-122:20; 128:06-19; 134:17-24; 138:17-18; 143:20-150:23; 164:11-166:07; 134:17-24; 166:01-07; 176:05-177:07; 197:07-21; 214:09-216:04)
113. Excerpts from Deposition of Anne Marie Smallwood (105:17-106:20; 131:21-132:12; 144:05-23; 153:10-21; 157:09-163:18; 158:13-23; 159:18-23; 159:24-161:20; 160:23-161:12; 167:15-169:15; 188:03-11; 192:01-25; 192:24-193:22)
114. Excerpts from Deposition of Richard Tuorto (39:01-40:15)
115. Excerpts from Deposition of Heath Verner (41:22-42:09; 57:07-23; 144:19-145:11; 147:06-22)
116. Excerpts from Deposition of Robert Walker (23:24-24:02; 35:12-18; 43:02-14; 49:01-25; 76:16-78:07; 86:22-87:06, 88:06-90:19; 107:04:108:16; 138:13-139:24; 143:01-143:25; 144:12-145:14; 145:15-146:22; 157:08-158:02; 168:01-25; 173:01-175:25; 197:02-21; 207:19-209:02; 209:04-210:02; 222:08-223:04; 224:06-225:04; 228:12-229:04; Ex. 14, 15, and 18)
117. Excerpts from Deposition of John Beatty (104:15-21; 124:01-128:25); Exhibit 31
118. Transcript of Hearing before Hon. Mikell Scarborough held September 7, 2022
119. Trial Transcript pp. 1-65

120. Trial Transcript pp. 617-629
121. Trial Transcript pp. 765-767
122. Trial Transcript pp. 822-862
123. Trial Transcript pp. 867-1073
124. Trial Transcript pp. 1335-1339
125. Trial Transcript pp. 1381-1472
126. Trial Transcript pp. 1481-1583

Appellants certify, pursuant to SCACR, Rule 209(c), that the designations set forth above are relevant to the appeal in this matter, and that it has not designated any matter that is irrelevant to the issues before the Court.

July 5, 2023

BARNWELL WHALEY PATTERSON &
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By: /s/ Justin P. Novak

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Appellants.

PROOF OF SERVICE

I certify that I have served the Appellant's Designation of Matter for Inclusion on the Record on Appeal on the above-referenced Respondent and all other parties by email and by depositing a copy of it in the United States Mail, on July 5, 2023, addressed to its attorney of record as follows:

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