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Oct 20 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Special Referee

Appeal No.: 2023-00173

Mark McAuley,..... Plaintiff/Respondent,

v.

Sunshine 11, LLC d/b/a Relax Inn, Usha Patel
And Anjan Patel,..... Defendants,
Of Whom

Sunshine 11, LLC d/b/a Relax Inn is the Appellant.

**REPLY TO RETURN TO
MOTION TO STRIKE PORTIONS OF
INITIAL BRIEF OF RESPONDENT AND
RESPONDENT’S DESIGNATION OF MATTER**

Pursuant to Rule 240, SCACR, Appellant Sunshine 11, LLC d/b/a Relax Inn (“Appellant”) hereby replies to Respondent Mark McAuley’s Return opposing Appellant’s Motion to Strike portions of the Initial Brief of Respondent (“Initial Brief”), and Respondent’s Designation No. 3. First, Respondent acknowledges that “the exhibit to the Motion to Remand filed in federal court was inadvertently omitted from the email to the special referee.” In other words, Respondent concedes that the exhibit never was presented to the lower tribunal. This is the very definition of material that may not be included in the Record on Appeal. The Record on

Appeal “shall not ... include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. This also bars him from substantively relying on that “exhibit” in his Brief. *See* Rules 208(b)(4) & 209(b), SCACR.

Next, Respondent suggests that the Summons and Complaint that were designated by both parties somehow included this exhibit to the federal district court filing. That is incorrect. The only Complaint designated by either Appellant or Respondent was the Complaint initiating this proceeding, filed on July 29, 2022. (Exh. C). That Complaint did not include any attachments or exhibits.

Respondent argues that he should be entitled to include material in the Record on Appeal that admittedly was never presented to the lower tribunal because the special referee found that “Northfield was made aware of the filed summons and Complaint.” The fact that the special referee made a finding of fact that is not supported by any material properly included in the Record on Appeal is no justification for inserting non-submitted materials into the Record in violation of Rule 210(c), SCACR.

Respondent next suggests that, because counsel for Appellant did not object to Respondent’s failure to include the attachment—despite the fact that Appellant’s counsel was not involved in the coverage action and had no means by which to know what Respondent’s counsel intended to submit—that somehow justifies his failure to present the exhibit to the special referee. As explained in the Motion to Strike, during the May 23, 2023 hearing, counsel for Respondent offered to submit the motion to remand along with an exhibit purportedly attached to that motion as an attachment. (*See* Exhibit A to Motion to Strike, Transcript at 5:5-5:17). Counsel for Respondent represented that he emailed the relevant document during the hearing. (*See* Exhibit A to Motion to Strike, Transcript at 46:3-46:19). The email to the Special Referee

advised that the attachment was “the exhibit referenced in the hearing.” (*See* Email dated May 23, 2023, attached to Motion to Strike as Exhibit B). However, the email’s only attachment was “Plaintiff’s Motion to Remand” and did not include any exhibits. *See id.*

Because Respondent admittedly did not provide the “Exhibit” to “Plaintiff’s Motion to Remand filed in Federal Court” to the lower tribunal, regardless of whether such failure was inadvertent or not, he cannot designate it for inclusion in the Record on Appeal. Nor can he substantively rely on the alleged content of any such “Exhibit” in his Brief.

CONCLUSION

Appellant respectfully renews its request that this Court strike Respondent’s Initial Brief and Designation of Matter, and order that they both be revised to omit any reference to the “Exhibit” contained in Designation No. 3 or any substantive argument based on the contents of the “Exhibit.” Appellant also requests that the deadline for filing its Reply Brief be suspended until ten days after this Court resolves this Motion.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

October 20, 2023

s/Helen F. Hiser

Helen F. Hiser

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Attorneys for Appellant Sunshine 11, LLC d/b/a Relax Inn

STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Mark McAuley,

Plaintiff,

vs.

Sunshine 11, LLC d/b/a Relax Inn, Usha
Patel and Anjan Patel,

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE FOURTH JUDICIAL CIRCUIT

Case No.: 2022-CP-17-_____

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

A lawsuit has been filed against you. You are hereby summoned and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the Complaint to said Plaintiff's attorney at the address listed below within thirty (30) days after the service hereof (exclusive of the day of such service). If you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint. You also must file your Answer or Motion with the court.

LAW OFFICE OF KENNETH E. BERGER, LLC

/s Kenneth E. Berger

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5205 Forest Drive

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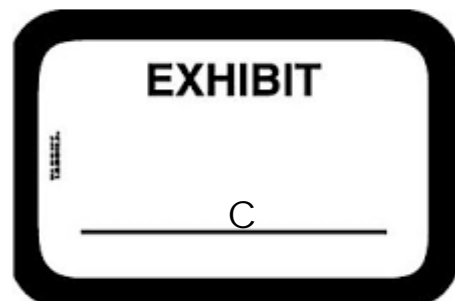
Telephone: (803) 790-2800

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Attorneys for the Plaintiff

July 29, 2022

Columbia, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Mark McAuley,

Plaintiff,

vs.

Sunshine 11, LLC d/b/a Relax Inn, Usha
Patel and Anjan Patel,

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE FOURTH JUDICIAL CIRCUIT

Case No.: 2022-CP-17-_____

**COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff Mark McAuley (hereinafter referred to as “Mr. McAuley”) alleges the following:

1. Mr. McAuley is a citizen and resident of the State of Florida.
2. Defendant Sunshine 11, LLC d/b/a Relax Inn (hereinafter referred to as “Relax Inn”) is a South Carolina corporation with its principal place of business in Dillon County, South Carolina.
3. Defendant Usha Patel (hereinafter referred to as “Usha”) is a citizen and resident of Dillon County, South Carolina, and at all times referenced in this Complaint was an employee of Relax Inn and acting within the course and scope of her employment with Relax Inn.
4. Defendant Anjan Patel (hereinafter referred to as “Anjan”) is a citizen and resident of Dillon County, South Carolina, and at all times referenced in this Complaint was an employee of Relax Inn and acting within the course and scope of his employment with Relax Inn.
5. The events complained of below giving rise to this action occurred in Dillon County, South Carolina.
6. Venue is proper in Dillon County and this Court has jurisdiction over this matter.
7. On or about October 17, 2021, Mr. McAuley stopped at the Relax Inn, a hotel located at 2337 301 North, Dillon, South Carolina, to see if they had any available rooms.

8. Mr. McAuley was checked in as a guest and given a room key by Usha who was working at the front desk.

9. Unfortunately, the key given to Mr. McAuley was for a room that was already rented out and occupied.

10. Anjan had earlier rented the same room to a guest named Roderick Drawhorn.

11. Anjan reported to law enforcement that his mother, Usha, had accidentally rented the room to Mr. McAuley.

12. After receiving the key from Usha, Mr. McAuley walked to the room and attempted to open the door.

13. Mr. Drawhorn was inside the room as Mr. McAuley attempted to open the door.

14. Upon information and belief, Mr. McAuley's attempt to open the door scared Mr. Drawhorn who fired his weapon at the door in self-defense.

15. A bullet fired by Mr. Drawhorn – from inside the room that Relax Inn and its employees had accidentally rented to both Mr. Drawhorn and Mr. McAuley – struck Plaintiff.

16. As an invitee and patron at the Relax Inn, Defendants owed a duty of care to Plaintiff to refrain from renting him a room that was already rented out and occupied.

17. It is foreseeable that a patron could be injured by another guest if the patron is given a key to a room that is already rented to and occupied by another guest.

18. Defendants, jointly and severally liable, were negligent, grossly negligent, and reckless in the below particulars:

- a. Failing to create adequate policies and procedures;
- b. Failing to follow Relax Inn's own internal policies and procedures;

- c. Renting a room to a guest when that room has already been rented to and occupied by a different guest;
 - d. Issuing a room key to a new guest when that room is already rented to and occupied by a different guest;
 - e. Failing to exercise due care in checking in and renting a room to a guest;
 - f. Failing to act as a reasonable hotel and staff would under similar circumstances;
 - g. Failing to properly train its staff; and
 - h. In such other particulars to be identified in discovery.
19. Defendants' actions were in reckless disregard of Plaintiff's safety.
20. As a result of the negligence, gross negligence, and recklessness of Anjan, Usha, and Relax Inn, as outlined above, Mr. McAuley sustained serious past, present, and future injuries, including but not limited to:
- a. Pain and suffering;
 - b. Mental anguish;
 - c. Loss of enjoyment of life;
 - d. Humiliation;
 - e. Embarrassment;
 - f. Reduced life-expectancy; and
 - g. Permanent physical impairment.

WHEREFORE, Plaintiff prays this Court issue judgment for actual and punitive damages against the Defendants. Plaintiff further prays for all costs incurred in prosecuting this action and for such other and further relief as the Court deems appropriate.

[SIGNATURE PAGE FOLLOWS.]

LAW OFFICE OF KENNETH E. BERGER, LLC

/s Kenneth E. Berger

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Attorneys for the Plaintiff

July 29, 2022

Columbia, South Carolina

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And Anjan Patel,..... Defendants,
Of Whom

Sunshine 11, LLC d/b/a Relax Inn is the Appellant.

PROOF OF SERVICE

I certify that I have served the **Reply to Return to Motion to Strike Portions of Initial Brief of Respondent and Respondent’s Designation of Matter** on Mark McAuley by emailing a copy to his attorneys of record, as follows:

Kenneth E. Berger, Esquire
Bradley L. Lanford, Esquire
The Law Office of Kenneth E. Berger, LLC
5205 Forest Drive, Suite 2
Columbia, South Carolina 29206
Email: kberger@bergerlawsc.com
Email: blanford@bergerlawsc.com

Attorneys for Respondent Mark McAuley

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

MCANGUS GOUDELICK & COURIE, LLC

October 20, 2023

s/Jake Markland

Jake Markland

Legal Assistant to Helen F. Hiser

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Relax Inn*

mgc

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SC Court of Appeals

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

October 20, 2023

Via S.C. Courts E-filing & U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Mark McAuley vs Sunshine 11, LLC d/b/a Relax Inn, Usha Patel and
Anjan Patel
Civil Action No.: 2022CP1700356 (Dillon)
Date of Incident: October 17, 2021
Carrier Claim No.: F3D6620
MGC File No.: 21027.22023
Appeal No.: 2023-00173

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Reply to Return to Motion to Strike Portions of Initial Brief of Respondent and Respondent's Designation of Matter in the above-referenced matter, along with the Proof of Service. We are serving counsel of record via email.

Please let us know if you have any questions. Thanking you in advance for your assistance, I am

Yours truly,



Helen F. Hiser

cc: Bradley L. Lanford, Esquire (via E-mail only)
Kenneth E. Berger, Esquire (via E-mail only)