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Feb 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge
Charleston County

Appellate Case No. 2023-001575
Trial Court Case No. 2020-CP-10-4076

Atlantic International, Inc. d/b/a Coldwell
Banker Commercial Atlantic, John W. True,
and Aaron B. Rowley,

Appellants,

v.

IBYDIT, LLC, 1537 Ben Sawyer Blvd., LLC,
Curt Nesbitt, Richard M. McColl, East Island
Real Estate, Inc., and Ashley Haynes,
individually and as an agent of East Islands Real
Estate, Inc.,

Respondents,

**RESPONDENTS IBYDIT, LLC AND CURT NESBITT'S MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

Ellis R. Lesemann
Michelle A. Stewart
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418 King Street, Suite 301
Charleston, South Carolina 29403
(843) 724-5155

Attorneys for Respondents IBYDIT, LLC and Curt Nesbitt

Respondents IBYDIT, LLC (“IBYDIT”) and Curt Nesbitt (“Nesbitt”) (collectively, “Respondents”), by and through their undersigned counsel, and hereby move pursuant to Rule 212(b) of the South Carolina Appellate Court Rules to supplement the Record on Appeal to include all matters contained in Respondents’ Designation of Matter to be Included in the Record on Appeal. The grounds for this Motion are set forth below and in the Affidavit of Ellis R. Lesemann, attached hereto as Exhibit A:

1. Respondents seek to supplement the Record on Appeal to include all matters designated by Respondents in their Designation of Matter to be Included in the Record on Appeal filed with this Court on December 4, 2023.

2. The Record on Appeal does not contain all materials proposed by Respondents in Respondents’ Designation of Matter to be Included in the Record on Appeal.

3. The Affidavit of Curtis B. Nesbitt was proposed to be included by Respondents in their Designation of Matter. The Affidavit of Curtis B. Nesbitt is relevant to this appeal in accordance with Rule 209(b), SCACR. The Affidavit of Curtis B. Nesbitt was filed with the lower court on May 30, 2023, in connection with Respondents’ Motion for Summary Judgment from which this appeal was taken.

4. In addition, the Record on Appeal omits page 2 of the Order Granting Summary Judgment dated September 7, 2023, which was identified in Respondents’ Designation of Matter. Rule 210 provides, in pertinent part, that “[w]hen a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record.” *See* Rule 210(c), SCACR.

5. The Record on Appeal “shall include all matter designated to be included by any party under Rule 209.” *See* Rule 210(a), SCACR.

6. Respondents respectfully ask that the Court grant Respondents leave to supplement the Record on Appeal to include the Affidavit of Curtis B. Nesbitt and the Order Granting Summary Judgment in its entirety.

Respectfully submitted,

By: *s/Ellis R. Lesemann*
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Attorneys for Respondents IBYDIT, LLC and Curt Nesbitt

February 2, 2024
Charleston, South Carolina

Exhibit A

Affidavit of Ellis R. Leemann, Esq.

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**AFFIDAVIT OF ELLIS R. LESEMAN, ESQ., IN SUPPORT OF
RESPONDENTS IBYDIT, LLC AND CURT NESBITT'S MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

PERSONALLY appeared before me, Ellis R. Lesemann, Esq., who being first duly sworn deposes and states as follows based on his own personal knowledge:

1. My name is Ellis R. Lesemann, Esq. I am the attorney for Respondents IBYDIT, LLC ("IBYDIT") and Curt Nesbitt ("Nesbitt") (collectively, "Respondents") in connection with the above-referenced matter.

2. This Affidavit is submitted in support of Respondents' Motion to Supplement the Record on Appeal to include all matters contained in Respondents' Designation of Matter to be Included in the Record on Appeal filed with the Court on December 4, 2023.

3. The Affidavit of Curtis B. Nesbitt was proposed to be included by Respondents in their Designation of Matter. The Affidavit of Curtis B. Nesbitt is relevant to this appeal. The Affidavit of Curtis B. Nesbitt was filed with the lower court on May 30, 2023, in connection with Respondents' Motion for Summary Judgment from which this appeal was taken.

4. In addition, the Record on Appeal omits page 2 of the Order Granting Summary Judgment dated September 7, 2023, which was identified in Respondents' Designation of Matter.

5. The Record on Appeal, as filed with this Court, is deficient because it does not include "all matter designated to be included by any party under Rule 209." See Rule 210(a), SCACR.

FURTHER AFFIANT SAYETH NOT.



Ellis R. Lesemann, Esq.

SWORN to and subscribed before me
this 2 day of February, 2024



Notary Public for the State of South Carolina

My commission expires: Aug 10, 2031



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PROOF OF SERVICE

I certify on this date that I have served a copy of Respondents IBYDIT, LLC and Curt Nesbitt's Motion to Supplement the Record on Appeal on the following counsel of record via electronic mail dated February 2, 2024, to the following:

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Nesbitt***

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Charleston, South Carolina