

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

69164

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III
Master in Equity/Circuit Court Judge
for Beaufort County

Case No. 2012-212486

Kenneth C. Arata and Madeline R. Arata..... Appellants,

v.

Village West Owners' Association, Inc.
d/b/a Village west Horizontal Property Regime..... Respondent.

MOTION TO DISMISS APPEAL

RECEIVED
JUL 22 2013
SC Court of Appeals

Respondent, Village West Owners' Association, Inc., d/b/a Village West Horizontal Property Regime ("Village West") hereby moves for the Court to dismiss the within appeal with prejudice. As grounds for this Motion, Village West would show that on March 26, 2013 the Court of Appeals issued its Order outlining the manner in which the Appellants; Kenneth C. Arata and Madeline R. Arata (collectively "Arata") should correct the Record on Appeal. The Court also indicated that the appeal was subject to being dismissed if Arata did not comply. Thereafter, the Court issued an Order giving Arata until July 1, 2013 to file and serve the Amended Record on Appeal.

On July 2, 2103 a thirty-two (32) page Supplemental Record on Appeal was hand delivered

to the undersigned's office.

Among other things, the Court's Order of March 26, 2013 required Arata to amend the Record on Appeal by including the Summons and Complaint dated December 17, 2008, the Affidavit of Ray Dowling dated March 23, 2012, the Affidavit of Thomas J. Carlson dated March 23, 2012, and all of the trial exhibits. Arata has failed to comply with this part of the March 26, 2013 Order in that Exhibits "A" and "B" to the Affidavit of Ray Dowling were not included, and of the eleven (11) trial exhibits only Defendant's trial exhibits 1, 7, 8, 9, and 10 were included -and these were in no order, but dispersed randomly throughout the Supplemental Record on Appeal.

Further, the Court's Order of March 26, 2013 requires Arata to amend the Record on Appeal by including "*only* those matters presented to the master-inequity and designated by the parties to be included". Arata has failed to file and serve an Amended Record on Appeal deleting the following items which were not presented to the master-in-equity in this case:

1. Plaintiffs' Motion to Reconsider and Amend Judgment and Notice of Motion (R. pp. 94-95);
2. Notice of Motion for Summary Judgment in Civil Action No. 05-CP-07-475 (R. p. 109); and
3. Pages 6 and 7 of Village West's Memorandum in Support of Motion for Summary Judgment (R. pp. 110, 111).

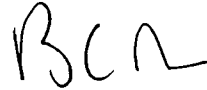
In addition, after discussion with Elizabeth Carpenter in the Office of the Clerk of Court for

The South Carolina Court of Appeals, it appears that the first three (3) pages of the Defendant's trial exhibit 1 were not included in the Supplemental Record on Appeal filed with the Court of Appeals.

SMOOT & PITTS

July 15, 2013

By:



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Madeline R. Arata

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, Master In Equity
and Special Circuit Court Judge for Beaufort County

Case No. 2012-212486

Madeline R. Arata and Kenneth C. Arata Appellants,

Village West Owner' Association, Inc.
d/b/a Village West Horizontal Property Regime..... Respondent,

CERTIFICATE OF SERVICE

I, Brian C. Pitts, Attorney with the Law Firm of Smoot & Pitts do hereby certify that on July 15, 2013, I sent a copy of the Motion to Dismiss Appeal to the person(s) named below by depositing same into the United States mail with sufficient postage affixed thereto to assure delivery as follows:

Jack D. Simrill, Esquire
5 Pine Field Road
Hilton Head Island, SC 29926

SMOOT & PITTS

By:



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July 15, 2013

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* A Professional Association
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July 15, 2013

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

Re: Madeline R. Arata and Kenneth C. Arata v. Village West Owners' Association, Inc. d/b/a
Village West Horizontal Property Regime; Case No. Case No. 2012-212486

Dear Ms. Kitchings:

In connection with the above referenced matter, enclosed please find the original and seven (7)
copies of the following:

1. Motion to Dismiss Appeal; and
2. Certificate of Service.

Please return a set of clocked copies in the return envelope.

Also, enclosed is my firm's check in the amount of \$25.00 to cover costs.

Thanking you in advance for your attention to this matter, I remain

Sincerely yours,


Brian C. Pitts

c/w/enc: Jack D. Simrill, Esq.
Village West Owners' Association, Inc.

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