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Nov 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in
Equity and Special Circuit Court Judge
Case No. 2020-CP-07- 00977

BOKF Real Estate Holding, LLC

Respondent,

v.

T &S Management, Inc. and
Turan Strange

Appellants.

OPPOSITION TO MOTION TO CORRECT
RECORD ON APPEAL

Appellants T & S Management, Inc. and Turan Strange, through undersigned counsel, respectfully oppose the Respondent's Motion to Correct Record on Appeal in part, and aver as follows:

Appellant included affidavits from Edward Kubec and Warren Hill in the Record on Appeal, as provided by counsel for Respondent and which existed in the case docket. The Record includes Affidavits from Mr. Kubec and Mr. Hill and also Amended Affidavits from Mr. Kubec and Mr. Hill. If there are additional or omitted affidavits that were filed in the case from Mr. Kubec and Mr. Hill that were inadvertently not incorporated in the Record on Appeal, Appellant, through counsel requests leave to Amend the Record accordingly.

Appellant included in the Record the Lease and Guaranty documents as Exhibits to

the Complaint in the matter, as requested by the Respondent, and these documents are in the record at pages 224 and 261 of the Record.. Counsel avers that adding these same documents to a second location, which are voluminous, will result in a unnecessary duplication and expense.

Appellant opposes Respondent's request to exclude transcripts from the deposition testimony of Turan Strange on the argued basis these documents were not referred to in Appellant's original designation. In fact, both the Affidavit of Mr. Kubec, and the Amended Affidavit of Mr. Kubec, which Respondent's counsel has designated for the Record, refer specifically to Mr. Strange's deposition in the statements and averments made therein. Since the Affidavits are part of the record, the testimony that Mr. Kubec refers to in making his argument by affidavit, being Mr. Strange's deposition testimony, is also necessary component of the Record, the exclusion of which the Court would impede the Court's review of the veracity and content of of Mr. Kubec's affidavit.

Respondent also argues that the Amended Affidavit of Mr. Strange should be excluded. Appellant served the Amended Affidavit prior to the hearing on the Rule 59 Motion and requested that the Court admit the amended affidavit, which addressed a damages calculation, into the Record. Counsel does not recall that the Court specifically denied the request or ruled on the matter, which was reviewed by the Court and parties during the telephone hearing in the matter. To the extent that the Trial Court's short form Order denying Appellant's Rule 59 motion is interpreted as denying Appellant's request to include the Amended Affidavit of Mr. Strange in the record, Appellant requests leave to incorporate the Amended Affidavit in the Record for review by this Honorable Court.

WHEREFORE, Appellant(s) request that the Court permit Appellants to amend the Record of Appeal to include all affidavits filed by Mr. Kubec and Mr. Hill, grant leave to file and include the Amended Affidavit of Mr. Strange, and to deny the remaining requests made in Respondent's Motion.

November 9, 2024

Respectfully Submitted,

Mogil Law Firm

/s/ Michael W. Mogil

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PROOF OF SERVICE

On this 9th day of November 2024 he undersigned did serve an electronic copy of the Appellant's Opposition to Motion to Correct Record on Appeal, by email to

Edward Kubec Esq.
Novit & Scarminach
52 New Orleans Road
Hilton Head Island, SC
29928

November 9, 2024

Respectfully Submitted,

Mogil Law Firm

/s Michael W. Mogil

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