

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2005-CP-10-4101

Appellate Case No.: 2012-212136

RECEIVED

DEC 16 2013

SC Court of Appeals

The Milton P. Demetre Family Limited Partnership.....Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley Atkinson.....Respondents.

RETURN TO APPELLANT'S MOTION FOR EQUITABLE RELIEF

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INTRODUCTION

Respondents filed their Designation of Matter to be Included in the Record on Appeal on December 14, 2012, which included a reference to “1786 Grant and Plat”, as item “16”. When Appellant served the Record on Appeal in this matter, on May 29, 2013, Appellant’s counsel improperly omitted the document designated by Respondents to be included in the Record on Appeal, described hereinabove, (*Exhibit “2”*). Respondents’ counsel complained to Appellant’s counsel about the omission of a designated item, to no avail. As a result, Respondents’ counsel filed a Motion styled as, “Respondents’ Motion to Compel Inclusion of Material Omitted from Record on Appeal”, with this Court on June 20, 2013. Appellant’s counsel returned to Respondents’ Motion, arguing that the omitted item, “1786 Grant and Plat”, should not be included in the Record on Appeal. In addition to Appellant’s Return, Appellant’s counsel filed three additional Motions. This Court’s Order followed on October 3, 2013, (*Exhibit “3”*). **This Court granted Respondent’s Motion and denied all three of Appellant’s Motions**, without specific comment thereon. This Court’s Order further stated, “Within twenty days, Appellant shall serve a supplemental record on appeal that includes the 1786 Grant and Plat. **The parties shall serve and file their final briefs within twenty days of service of the supplemental record on appeal.**” Appellant’s counsel filed a Supplemental Record on Appeal, with the omitted item. **Appellant however, declined to revise its Final Brief and Final Reply Brief** and instead, Appellant’s counsel filed a formal document styled as, “Appellant’s Notice of Reliance on Appellant’s Final Briefs”, indicating therein that counsel was not revising Appellant’s Final Brief and Final Reply Brief, therefore, there was no correction of the potentially misleading statements to this Court. In response to the Court’s Order of October 3, 2013, **Respondents revised** their Final Brief to include references to the “1786 Grant and Plat”, which this Court had ordered to be made part of the Record on Appeal, in this case in its Order, above. Respondents’ counsel then corresponded with Appellant’s counsel, indicating that Respondents’ counsel felt that Appellant’s counsel was required to revise its Final Briefs, to avoid misleading the Court. Appellant’s counsel’s current pending “Motion for Equitable Relief”, followed. Respondents’ Return to Appellant’s Motion follows:

ARGUMENT IN RETURN

After this Court issued its Order of October 3, 2013, (*Exhibit "3"*), granting the relief sought by Respondents, Appellant's counsel had a choice to make. Appellant could comply with this Court's Order to file a Supplemental Record on Appeal, including the item, the "1786 Grant and Plat" that Appellant's counsel had unilaterally decided not to include in the Record on Appeal and revise Appellant's Final Brief and Final Reply Brief, consistent with this Court's Order requiring Appellant's counsel to include the designated item.

Although Appellant's counsel provided a Supplemental Record on Appeal with the omitted item, Appellant's counsel did not revise Appellant's Final Brief and Final Reply Brief, which included the following statements, which are presently before this Court:

"The 1786 Plat the Master cites was not presented at trial, is not in the record, and the Master erred by considering evidence not presented at trial or in the record."
(Final Brief of Appellant, p.23).

"The 1786 Plat, which the Master cited in his Order on Remand at page 4, was not in evidence."
(Final Reply Brief of Appellant, p.1, n.1).

Respondents' counsel believes that these statements are misleading to this Court, because the "1786 Grant and Plat" is now in the Record in this Appeal, after this Court's Order of October 3, 2013, (*Exhibit "3"*). Appellant's counsel makes, what is at best a nuanced argument, on page "3" of Appellant's Motion that a reader will understand, that the "1786 Grant and Plat" is in the Record on Appeal. Appellant's counsel further argues on the same page, that this Court is so familiar with, "...the issue of the 1786 Grant and Plat...", that it will not be misled. Note the reference in Appellant's statement above, **referring to both the trial and the record**. After the fact, Appellant's counsel argues that this is not misleading, but note the disjunctive "or" in Appellant's statement above.

ARGUMENT IN RETURN, (Cont.)

Appellant's counsel references Respondents' counsel's correspondence to him. Respondents' counsel's correspondence did no more than ask Appellant's counsel to revise Appellant's statements referenced above, consistent with this Court's Order of October 3, 2013.

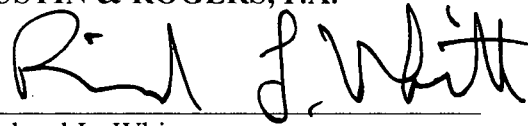
Finally, Appellant requests in Appellant's Motion on page "5", in the alternative, to modify the two statements in question, by including references to "the trial" and "at trial". That request does not remove the misleading aspect of Appellant's two statements. Appellant's request does not acknowledge the import of this Court's Order of October 3, 2013. Appellant's counsel's attempt, to avoid stating that the **"1786 Grant and Plat" is in the Record of this Appeal**, is inapposite. Appellant's counsel asks this Court to find that its statements are not misleading, or in the alternative, allow counsel to modify its statements without making it clear that the "1786 Grant and Plat" is in the Record of this Appeal. Therefore, both of Appellant's counsel's requests should be denied.

CONCLUSION

Based on the foregoing and this Court's Order of October 3, 2013, this Court should order Appellant to remove or modify the offending statements from Appellant's Final Brief and Appellant's Final Reply Brief.

Respectfully Submitted,
AUSTIN & ROGERS, P.A.

By:



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December 16, 2013
Columbia, South Carolina

TIMELINE

- Respondents filed their Designation of Matter to be Included in the Record on Appeal on December 14, 2012, which included a reference to “1786 Grant and Plat”, as item “16”.
- When Appellant served the Record on Appeal in this matter, on May 29, 2013, Appellant improperly omitted the document designated by Respondents to be included in the Record on Appeal, described hereinabove, (*Exhibit “2”*).
- Respondents’ counsel complained to Appellant’s counsel about the omission of a designated item, to no avail.
- As a result, Respondents’ counsel filed a Motion styled as, “Respondents’ Motion to Compel Inclusion of Material Omitted from Record on Appeal”, with this Court on June 20, 2013.
- Appellant’s counsel returned to Respondents’ Motion, arguing that the omitted item, “1786 Grant and Plat”, should not be included in the Record on Appeal.
- In addition to Appellant’s Return, Appellant’s counsel filed three additional Motions.
- This Court’s Order followed on October 3, 2013, (*Exhibit “3”*). **This Court granted Respondent’s Motion and denied all three of Appellant’s Motions**, without specific comment thereon. This Court’s Order further stated, “Within twenty days, Appellant shall serve a supplemental record on appeal that includes the 1786 Grant and Plat. **The parties shall serve and file their final briefs within twenty days of service of the supplemental record on appeal.**”
- Appellant’s counsel filed a Supplemental Record on Appeal, with the omitted item. **Appellant however, declined to revise its Final Brief and Final Reply Brief** and instead, Appellant’s counsel filed a formal document styled as, “Appellant’s Notice of Reliance on Appellant’s Final Briefs”, indicating therein that counsel was not revising Appellant’s Final Brief and Final Reply Brief, therefore, there was no correction of the potentially misleading statements to this Court.
- In response to the Court’s Order of October 3, 2013, **Respondents revised** their Final Brief to include references to the “1786 Grant and Plat”, which this Court had ordered to be made part of the Record on Appeal, in this case in its Order, above.
- Respondents’ counsel then corresponded with Appellant’s counsel, indicating that Respondents’ counsel felt that Appellant’s counsel was required to revise its Final Briefs, to avoid misleading the Court.
- Appellant’s counsel’s current pending “Motion for Equitable Relief”, followed.



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May 29, 2013

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Re: The Milton P. Demetre Family Limited Partnership vs.
Harry Beckmann, III et al
Case No. 2005-CP-10-4101
Appellate Case No.: 2012-212136

Dear Gentlemen:

As far as I know, the 1786 Plat was not in the record below, so, per Rule 210(c), I did not include it in the Record on Appeal. Please advise if this is incorrect.

Best wishes.

Very truly yours,

Cain Denny

Cain Denny

c.c. John Hughes Cooper, Esquire
Mr. Milton P. Demetre



The South Carolina Court of Appeals

The Milton P. Demetre Family Limited Partnership,
Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth
Hilton Crowley, Raymond Moody Crowley, Donald
William Crowley, Harris L. Crowley, Jr., and Annie Ruth
Crowley Atkinson, Respondents.

Appellate Case No. 2012-212136

ORDER

Respondents have filed a motion to compel Appellant to supplement the record on appeal. Specifically, Appellant failed to include in the record the following document Respondents listed in its Designation of Matter: "16. 1786 Grant and Plat." Appellant filed a return and also made various motions related to the record on appeal.

After careful consideration, Respondents' motion to compel is granted and Appellant's motions are denied. Within twenty days, Appellant shall serve a supplemental record on appeal that includes the 1786 Grant and Plat. The parties shall serve and file their final briefs within twenty days of service of the supplemental record on appeal.



FOR THE COURT

Columbia, South Carolina

FILED
10/31/13



cc: Cain Denny
John Hughes Cooper
John Townsend Cooper
Jeff D. Griffith, III
Richard Lee Whitt

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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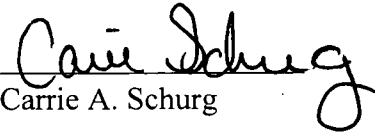
Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley Atkinson.....Respondents.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused copies of Respondents' Return to Appellant's Motion for Equitable Relief and this Proof of Service to be served, via U.S. Mail on December 16, 2013, as addressed below.

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Carrie A. Schurg

December 16, 2013
Columbia, South Carolina

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December 16, 2013

VIA, HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals

- Re: • The Milton P. Demetre Family Limited Partnership vs. Harry Beckmann, III, *et al.*
• Appellate Case No.: 2012-212136

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the following:

1. Return to Appellant's Motion for Equitable Relief, and the required six (6) copies of the Return; and
2. Proof of Service.

Please accept these documents for filing and acknowledge receipt of the same by file-stamping the copies enclosed and returning them to me, via our courier. Please don't hesitate to contact the undersigned if you have any questions or concerns. With best regards, we are,

Respectfully Yours,

AUSTIN & ROGERS, P.A.



Richard L. Whitt

Jefferson D. Griffith, III

RLW/cas

Enclosures

cc: John Hughes Cooper, Esquire
Cain Denny, Esquire