

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

---

Appellate Case No. 2013-001812

---

Callawassie Island Members Club, Inc., Respondents

v.

Arthur Applegate, Appellant

---

**RECEIVED**  
DEC 4 7 2013  
**SC Court of Appeals**

**APPELLANT'S MOTION TO EXCLUDE MATTERS DESIGNATED BY  
RESPONDENT FROM THE RECORD ON APPEAL**

---

Now Comes the Appellant in this matter, Arthur Applegate, by and through his counsel of record Brian D. McDaniel, Esquire of the Law Office of Brian McDaniel, LLC of Beaufort, South Carolina. The Appellant (Applegate) pursuant to Rule 240(a), SCACR requests that items (j), (k), (l), (m), and (n) in the Respondent's Designation of Matter to be included in the Record on Appeal be excluded and that Designation (o) be modified as set forth herein. The grounds for this motion are as follows:

1. Per Rule 210(c), SCACR the Record on Appeal, may not include matter which was not presented to the lower court or tribunal. The Respondent's Designation of Matter is hereby incorporated by reference into this motion and is attached here to. The

following designations of the Respondent are not cited to any filing in the record and/or were not presented to the lower court not during the pretrial conference before The Honorable Edward W. Miller, Circuit Court Judge from which this appeal arises:

1. Designation (i). – Callawassie Island Property Owners Association Declaration of December 1, 2001
2. Designation (j). - Deposition of Harman Switzer, as 30(b)(6) designee of CIMC, p.99 l.1-22
3. Designation (k). - Deposition of Arthur Applegate, p.8, l. 10-24; p. 9, l. 6-20; p. 20, l. 15-20
4. Designation (l). - Sales Contracts between Applegate and Callawassie Island Company
5. Designation (m). - CIMC Plan for Offering of Membership
6. Designation (n). - CIMC Bylaws
7. Designation (o). – CIMC General Club Rules

All of the above Designations are believed to reference materials which were not presented at the pre-trial conference from which the appealed order arises. Further the Respondent fails to cite or reference any filed document by which the above have been submitted to the lower court for review. Upon review of the record in this matter the Appellant further argues the following:

As to Designation (i), only excerpts of this proposed designation are believed to be found in any filings to the lower court, and that the designation of the entire document should therefore be excluded.

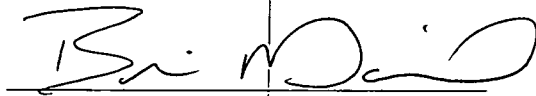
As to Designation (j) it is believed to reference deposition testimony not presented to the lower court and should therefore be excluded.

As to Designations (k) is believed, in part, to reference deposition testimony not presented to the lower court. It is believed that Applegate deposition p.8 was included in previous court filings but all other excerpts designated were not and that none of said deposition was presented or argued in the pretrial conference Order from which this appeal arises.

As to Designation (l) it is vague in referencing an unspecified number and date of "Sales Contracts" but that the record of the lower tribunal does not include these materials, nor was such presented to the Honorable Judge Edward Miller in the pre-trial conference from which the Order on appeal arises.

As to Designations (m), (n), and (o) they are vague in referencing CIMC Plan of Offering of Membership, Bylaws and General Club Rules, without specifying the date or version of the same, as those documents are believed to have been altered, modified and revised numerous times during the times alleged in the Complaint in this matter. Further, while it is believed that the CIMC General Club Rules of 2001 have been included in documents filed in this case, it is contended that neither the CIMC Bylaws nor the CIMC Plan of Offering of Membership have been filed in their entirety. Again, the Respondent does not cite a filed document for its inclusion of this material.

For these reasons the Appellant seeks to have the matters addressed above excluded from the matter designated by Respondent for the Record on Appeal.



Brian D. McDaniel  
Law Office Of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, South Carolina 29901  
SC Bar # 68618  
(843) 379-5117

Attorney for the Appellant

December 21, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

CASE NO: 2009-CP-07-05410

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC..... Respondent,

vs.

ARTHUR APPELATE.....Appellant.

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE  
RECORD ON APPEAL

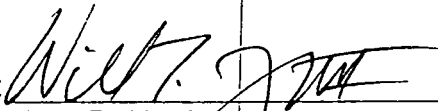
The Respondent, The Callawassie Island Members Club, Inc. (CIMC), designates the following matter to be included in the Record on Appeal:

- a. Summons and Complaint
- b. Answer to Complaint
- c. Stipulation of dismissal of Applegate's counterclaims
- d. CIMC Motion to transfer to nonjury
- e. Form 4 Order transferring matter to nonjury
- f. Applegate motion to alter or amend
- g. Order denying Applegate motion to alter or amend
- h. Notice of Intent to Appeal
- i. Callawassie Island Property Owners Association Declaration of December 1, 2001
- j. Deposition of Harman Switzer, as 30(b)(6) designee of CIMC, p. 99, l. 1-22
- k. Deposition of Arthur Applegate, p. 8, l. 10-24; p. 9, l. 6-20; p. 20, l. 15-20
- l. Sales contracts between Applegate and Callawassie Island Company

- m. CIMC Plan for Offering of Membership
- n. CIMC Bylaws
- o. CIMC General Club Rules
- p. Order of the Honorable Carmen T. Mullen denying summary judgment
- q. Form 4 Order of the Honorable J. Ernest Kinard, Jr. denying summary judgment

I certify that this designation contains no matter which is irrelevant to this appeal.

HOWELL, GIBSON & HUGHES, P.A.

By:   
Stephen P. Hughes  
William T. Young III  
Post Office Box 40  
Beaufort, SC 29901  
(843) 522-2400  
Attorneys for Respondent

Ehrick K. Haight, Jr.  
Stacey S. Collins  
MINOR, HAIGHT & ARUNDELL, P.C.  
Post Office Drawer 6067  
Hilton Head Island, SC 29938  
(843) 785-8040  
Attorneys for Respondent

Beaufort, South Carolina  
December 18, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-07-05410

The Callawassie Island  
Members Club, Inc.,

Respondent,

v.

Arthur H. Applegate

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Exclude matters designated by Respondent from the Record on Appeal on The Callawassie Island Members Club, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2013, addressed to its attorneys of record, Ehrick K. Haight, Jr., Esquire, P.O. Drawer 6067, Hilton Head Island, SC 29938; Howell, Gibson & Hughes, P.A., Stephen P. Hughes, Esquire, William T. Young, Esquire, P. O. Drawer 40, Beaufort, SC 29901-0040.

December 23, 2013



Brian D. McDaniel  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, South Carolina 29901  
(843) 379-5117  
Attorney for Appellant

**RECEIVED**  
DEC 27 2013  
**SC Court of Appeals**

Other Counsel of Record:

Minor, Haight & Arundell, P.C.  
Ehrick K. Haight, Jr., Esquire  
P.O. Drawer 6067  
Hilton Head Island, SC 29938  
Attorney for the Plaintiff/ Respondent

Howell, Gibson & Hughes, P.A.  
Stephen P. Hughes, Esquire  
William T. Young, Esquire  
P. O. Drawer 40  
Beaufort, SC 29901-0040  
Attorney for the Plaintiff / Respondent

Jennifer I Campbell, Esquire  
2008 Spectable Street  
Beaufort, South Carolina 29902  
Attorney for the Defendant/ Appellant