

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

170929

**RECEIVED**

JAN 13 2014

**SC Court of Appeals**

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

vs.

ARTHUR APPELLEGATE.....Appellant.

RESPONDENT'S MOTION TO EXCLUDE MATTER DESIGNATED BY  
APPELLANT

The Respondent, The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, seeks an Order of this Court striking certain matter designated by the Appellant, Arthur Applegate, to be included in the Record on Appeal. The items to be struck include (numbers correspond to Applegate's Designation of Matter):


- 10. Respondent's Motion to Alter or Amend the May 9, 2013, Order of Judge J. Ernest Kinard, Jr., dated May 15, 2013.
- 11. Order of Judge J. Ernest Kinard, Jr. dated June 28, 2013.
- 13. Filed Affidavit of William R. Hobson with Exhibits A through F dated June 2, 2011.
- 18. Appellant's Supplemental Memorandum in opposition to Respondent's Motion for Summary Judgment dated May 30, 2013.

Rule 210(c), SCACR, limits the Record on Appeal to matter presented to the lower court. As reflected by both parties' statements of the case, the motion to transfer to nonjury was heard by the trial court on May 13, 2013. Therefore, items 10, 11, and 18, all of which are dated post-May 13, 2013, could not have been (and were not) presented to the trial court. Therefore, those matters must be excluded from the Record. Additionally, item 13 is not referenced within either Applegate's initial brief or reply brief, the undersigned has no recollection of it being presented to or considered by the trial court, and there is no indication that the trial court reviewed or considered item 13 in making its decision. Therefore, because item 13 was not provided to the trial court, it is not properly included as a part of the Record on Appeal. Moreover, item 13 is irrelevant to the issue on appeal, as it does not bear any relation to determining whether the documents at issue are unambiguous.

For the reasons discussed hereinabove, CIMC respectfully requests the aforementioned matter be excluded from the Record on Appeal.

**SIGNATURE PAGE TO FOLLOW**

HOWELL, GIBSON & HUGHES, P.A.

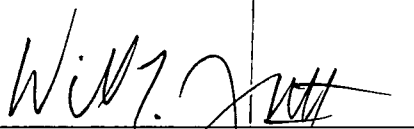
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Attorneys for Respondent

Beaufort, South Carolina  
January 6, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Exclude upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 8th day of January, 2014.

By:   
William T. Young III

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December 18, 2013

Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: The Callawassie Island Members Club, Inc. v. Arthur H. Applegate  
Appellate Case No. 2013-001812  
Civil Action No.: 2009-CP-07-05410  
Our File No: 10809 4 SPH

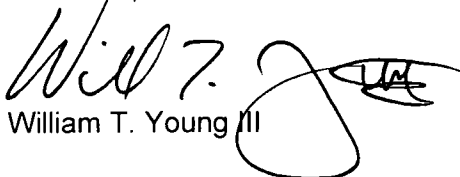
Dear Ms. Kitchings:

Please find enclosed herewith for filing an original and seven (7) copies of the Respondent's Motion to Exclude Matter Designated by Appellant with regard to the above referenced matter. Also enclosed please find the required \$25.00 motion fee. I would appreciate your filing the Motion and returning a clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy hereof to all counsel of record I am providing them with a copy of the same.

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

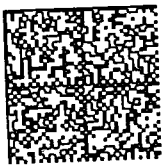
  
William T. Young III


WTY/cab  
Enclosure

cc: Brian McDaniel, Esquire - w/ enclosures  
Ehrick K. Haight, Jr., Esquire - w/ enclosures  
Jennifer I. Campbell, Esquire - w/ enclosures

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**SC Court of Appeals**