

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

JAN 14 2014

SC Court of Appeals

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

The Appellant (Applegate) pursuant to Rule 240(f), SCACR responding to the Return made by the Respondent in regard to the Appellant's motion to exclude matters designated for the record on appeal.

In its Return the Respondent contends that the "governing documents" and the sales contracts have been previously submitted to the record by way of CIMC Memorandum in support of Summary Judgment dated April 26, 2013. However, the cited documents are not found upon a review of the Beaufort County Clerk of Court's file on this case.

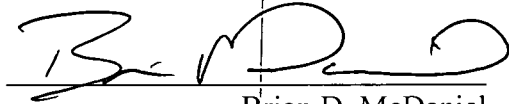
However, assuming arguendo this document was in fact presented, it would have been shown at the presentation of the Plaintiff's motion for summary judgment in the case to which it references. That motion was argued before, and denied by, Judge Kinard, **not Judge Miller** from whose Orders denying a jury trial the current appeal arises. However, if the Respondent intends to reference the particular exhibits attached to a memorandum the Appellant requests that those references be specific to the filed record and as to the particular Exhibits which the Respondent is requesting be part of the Record on Appeal.

Moreover, the Respondent contends in its Return that referencing a list of documents in the pleadings and motions in this matter would necessitate that the trial Judge had actually reviewed the listed documents. This assumption, however, is not supported by the record in the case and it fails to account for the fact that the parties are in a dispute as to what documents actually encompass the "governing documents", and what version of the documents is applicable to the case. The Respondent again, does not designate a year, nor a specific exhibit when citing to "the Plan", for instance. All of the documents cited are believed to have been revised, some numerous times. For instance, "the Plan" as it is understood has been modified or revised at least four times since the Appellant is alleged to have purchased a membership in the Defendant Club, and the Respondent does not specify which version it contends was submitted to the lower court.

Respondent contends in its Return that its most important argument is that Order of Judge Miller references the "documents at issue" therefore they had to be presented to the trial judge. However, it is exactly the fact that these documents and issues were in fact not presented to Judge Miller, and beyond the scope of the motion before Judge Miller,

which the Appellant has appealed as set forth in the current appeal in this case (see the Appellant's Initial Brief pp. 8 through 12).

In conclusion, simply referencing documents in a motion is insufficient basis for inclusion of those documents in the Record on Appeal if there is no evidence that the documents were presented, or even available, to the trial judge. This position is particularly appropriate where the Respondent fails to cite specific Exhibits of the filed record and where the Appellant contends that such a review was not argued before the trial judge and that the Order referenced in the Respondent's return is in fact a basis for the current appeal. Also, the Respondent's failure to cite to specific references for inclusion to the record makes identifying the requested documents particularly difficult. For these reasons and as set forth in the Motion to Exclude the Appellant seeks to have the specified matters designated by Respondent for the Record on Appeal excluded.



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

January 9, 2013
Beaufort, South Carolina

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 Reply to Return of Respondent Regarding Appellant's Motion to Exclude Matters Designated by Respondent From the Record on Appeal upon The Callawassie Island Members Club, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2014, 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.

January 10, 2014



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

RECEIVED

JAN 14 2014

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



Law Office of
BRIAN McDANIEL, LLC

bmcdaniel@attorneymcdaniel.com

VIA US MAIL

January 10, 2014

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Callawassie Island Members Club, Inc. v. Arthur H. Appelgate
Appellate Case No. 2013-001812

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of the Appellant's Reply to Return of Respondent Regarding Appellant's Motion to Exclude Matters Designated by Respondent From the Record on Appeal. Also enclosed is one copy of the Appellant's Reply and proof of service with a stamped, self-addressed envelope, which I would appreciate your filing and returning to me for my records.

By copy of this letter I am also serving all counsel of record.

Sincerely,

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

RECEIVED

JAN 14 2014

SC Court of Appeals

cc: **Minor, Haight & Arundell, P.C., Ehrick K. Haight, Esquire, P.O. Drawer 6067, Hilton Head Island, SC 29938;**
William T. Young, Esquire & Stephen Hughes, Esquire, Howell Gibson and Hughes, PA, PO Box 40, Beaufort, SC 29901;
Jennifer I. Campbell, Esquire, 2008 Spectable Street, Beaufort, SC 29901.

1

\$1.92

US POSTAGE FIRST-CLASS MAIL

062S0007463448
FROM 29902



stamps.com
01/10/2014

USPS FIRST CLASS MAIL®

LAW OFFICE OF BRIAN MCDANIEL LLC
PO BOX 2085
BEAUFORT SC 29901

SHIP

TO:

The Honorable Jenny Abbot Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia SC 29211-1629



RECEIVED

JAN 14 2014

SC Court of Appeals