

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

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

The Appellant (Applegate) pursuant to Rule 240(e), SCACR responding to the Motion of the Respondent seeking to exclude matters designated by the Appellant for the record on appeal.

In its motion the Respondent seeks to exclude Appellant's designations 10, 11 and 18 on the basis that those documents post-date the May 14, 2013 Order of the Court. The Appeal in this matter, however, is of both the May 14, 2013 Order and **the July 17, 2013 Order** which denied the Appellant's motion to alter but made new rulings far beyond the May 14, 2014 Order. Furthermore, all of the designated items, to which the Respondent is

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objecting, are indisputably part of the Beaufort County Clerk of Court file prior to the July 17, 2013 Order, and as such were available for review by Judge Miller prior to issuing that July 17, 2013 Order from which this Appeal is brought. Because they are part of the record, and have been identified in the record, it is proper for this court to review them in consideration of the current appeal. See e.g. South Carolina Dept't of Soc. Servs. v. Janice C., 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct.App. 2009) (finding family court could consider **any documents filed** with the family court because they were part of the court record) (emphasis added).

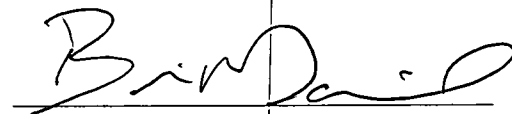
Additionally, given that the Appellant has argued that the ruling on the appealed Order of July 17, 2013 goes beyond the scope of the Respondent's original motion for a nonjury trial ¹and beyond the Appellant's motion to alter or amend that order, and because Respondent contends that the matter was properly before the court, these rebuttal documents should be included. In fact these three designations (Items 10, 11, 18) all arise in relation to a summary judgment motion of the Respondent, which was heard and denied by Judge Kinard – see the June 28, 2013 Order (Item 11). It is on some of these same issues that the July 17, 2013 Order of Judge Miller appears to rule.

As to Designation Item 13, the Appellant would again note that it is not disputed that this is a filed document include in the Court's records in this case as of June 2, 2011. The Respondent contends however, that they do not recall this document and that it was not considered by the trial court. However, the Item 13 designation was filed and referenced at a previous motion for summary judgment in the case, and the Appellant has appealed the July 17, 2013 Order on the grounds that it grants summary judgment on

¹ The July 17, 2013 Order of Judge Miller is titled as an Order Denying Defendant's (Appellant's) Motion to Alter or Amend, but does in fact makes rulings to alter the underlying Order and in doing so makes conclusions and findings not mentioned in the May 14, 2014.

issues, such as are addressed by this record, that were not before Judge Miller and which had been previously ruled upon, with those other summary judgment motions of the Respondent being denied on multiple occasions. Because the Judge in the instant appeal did not have an on-the-record hearing, and because the July 17, 2013 Order made rulings beyond the scope of the motions before the Court, this Item 13 designation is appropriate for review by the Court of Appeals. Moreover, the Item 13 designation is a direct rebuttal to some of the claims made by the Respondent in its Brief. For instance, the designation includes a fact witness affidavit that states that the Club documents required expulsion from membership after 4 months of unpaid dues, a fact which the Appellant has contended was also represented to him by the Respondent. These records further rebut the position of the Respondent and evidence why summary judgment motions of the Respondent in the case have been repeatedly denied.

The contested items are attached hereto for the court to make a more complete review and determination in this matter. For these reasons the Appellant asks the court to deny the Respondent's motion to exclude.



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Attorney for the Appellant

January 12, 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.

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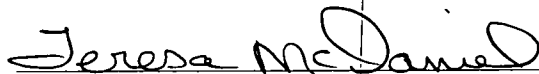
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PROOF OF SERVICE

I certify that I have served the Appellant's Return to Respondent Motion to Exclude Matters Designated by Appellant 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 14, 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 14, 2014



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VIA US MAIL

January 14, 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 Return to Respondent Motion to Exclude Matters Designated by Appellant From the Record on Appeal. Also enclosed is one copy of the Appellant's Return 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,

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SC Bar # 68618

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cc: **Minor, Haight & Arundell, P.C., Ehrick K. Haight, Esquire, P.O. Drawer 6067,
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