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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Commons Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-10-9305

Cambridge Lakes HOA..... Respondent,

v.

Johnson Koola.....Appellant.

RESPONDENT'S MOTION TO STRIKE

Respondent, by and through its undersigned counsel, hereby moves this Court to enter an Order striking certain improper material from Appellant's Designation of Matter, filed with this Court on September 16, 2013 (attached as "Exhibit A"), and requiring Appellant to amend his Initial Brief to likewise omit the stricken materials. This Motion is based on the fact that Appellant's Designation of Matter and Initial Brief include materials that were not presented to the lower court.

Analysis

Rules 209(a) and (b), South Carolina Appellate Court Rules ("SCACR"), require that the materials included in the Designation of Matter be set forth with "specificity" and that the Designation "clearly identify" what the party desires to

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SC Court of Appeals

have included. Further, Rule 209(b), SCACR incorporates the content requirements of Rule 210(c), SCACR, which provides that the record shall not include matter which was not presented to the lower court.

Respondent attempted to resolve this matter without involving the Court by requesting that Appellant clarify certain exhibits listed in his Designation of Matter (see letter of December 23, 2013, attached as "Exhibit B"). Appellant responded on January 10, 2014 (attached as "Exhibit C"), clarifying the exhibits at issue, but he failed to show where certain exhibits were presented to the lower court in compliance with the Rules. Accordingly, Respondent asks that the following items be stricken from Appellant's Designation of Matter:

- i. Item No. 6, Summons on Crossclaims of HOA, December 15, 2010 - This is a pleading filed in a lawsuit (Case No. 2010-CP-10-6060, Charleston County Common Pleas) separate from the one that is the subject of this appeal.
- ii. Item No. 7, President's Report 2011 at 3 - Appellant states that "Respondent/HOA, in response to Appellant/Defendant's Request for Production produced a few of the President's Reports." Respondent does not deny that it produced said reports in response to Appellant's discovery requests. However, these discovery responses were not submitted to the lower court.
- iii. Item No. 9, Koola, Answer and Counterclaim, Case No: 2010-CP-10-6060, March 3, 2011- This is also a pleading filed in a different lawsuit.

- iv. Item No. 21, Minutes of the meetings of the BOA April 2008, May 2008 and June 2008 - This refers to documents produced in discovery but not presented to the lower court, except for the April 2008 minutes only, which may be part of the record.
- v. Item No. 22, Notice of Condominium Conversion and Offer to Purchase— Appellant states this became “available only during the preparation of the [Appellant’s] Initial Brief,” but regardless, it was not presented to the lower court.
- vi. Item No. 23, Cambridge Lakes HOA Annual Budgets 2007, 2009, 2010, 2011 and 2013 – These documents were produced in discovery but were not presented to the lower court.¹
- vii. Item No. 24, Certificate of Insurance - This was never presented to the lower court, and is inadmissible in any event.

These items are incorporated throughout Appellant’s Initial Brief. Pursuant to Rule 210(c), SCACR, these materials should not be included in the Designation of Matter or Appellant’s Initial Brief.

Conclusion

For the reasons stated above, Respondent respectfully requests that this Court grant Respondent’s Motion and enter an Order striking Items No. 6, No.7, No. 9, No. 21, No. 22, No. 23 and No. 24 from Appellant’s Designation of Matter and requiring Appellant to file an amended Designation of Matter and Initial Brief, omitting any

¹ Appellant argues that “these annual budgets... were presented to the Court in Appellant/Defendant’s ‘Reply to Plaintiff’s Motion for Summary Judgment filed on Jan. 2, 2013’ at pp 22, 23 and 24.” Attached as Exhibit D are the pages relied upon by Appellant. Only the limited information contained therein was presented to the lower court. The documents themselves simply were not part of the record.

references to the stricken materials. Further, Respondent requests that the Court extend the deadline for Respondent's Initial Brief and Designation of Matter to thirty (30) days after the later date that this Motion is ruled upon or following any amended filings by Appellant.

Respectfully submitted,



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January 24, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Commons Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-10-9305

Cambridge Lakes HOA..... Respondent,

v.

Johnson Koola.....Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing **RESPONDENT'S MOTION TO STRIKE** on all parties of record by depositing a copy of it in the United States Mail, postage prepaid, on January 24, 2014, addressed to their attorneys of record as follows:

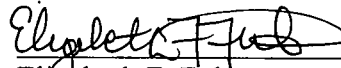
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[SIGNATURE PAGE TO FOLLOW]



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