

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
Alison R. Lee, Circuit Court Judge

Appellate Case No: 2012-212896

RECEIVED
DEC 31 2013
SC Court of Appeals

Charles Taylor,

Appellant

v.

Thomas Davis and State Farm Mutual
Automobile Insurance Company,

Respondents

RESPONDENT STATE FARM'S REPLY TO APPELLANT'S MOTION FOR
CLARIFICATION AND SPECIFICATION DATED DECEMBER 17, 2013

JAMES B. LYBRAND, JR.
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Respondent State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") responds to Appellant's Motion dated December 17, 2013 seeking Clarification and Specification. For background purposes Appellant has filed multiple Records on Appeal which have been challenged by Respondent State Farm. Appellant's first initial purported Record on Appeal was dated December 14, 2012. Thereafter, Appellant filed a Record on Appeal dated April 23, 2013. Appellant next filed a purported "Amended Record on Appeal" dated August 1, 2013. Most recently, Appellant filed a "Second Amended Record on Appeal" dated December 17, 2013. In addition to the multiple Records on Appeal Appellant has also filed initial and amended designated matters to be included in the Record and has also filed multiple amended initial briefs along with a final brief. By contrast Respondent State Farm has filed its initial brief along with a Motion for Extension of Time to file a final brief based upon the confusing multiple filings by Appellant.

Respondent State Farm contends that without requesting or obtaining permission from the Court, Appellant has amended his designation of matter several times and then incorporated the changes into his purported amended Records on Appeal. Respondent State Farm contends that such multiple amended designations are not only confusing but also and more importantly, untimely and impermissible under the South Carolina Appellate Court Rules and this Court's Order of November 19, 2013. Any final Record on Appeal should be limited to the initial designations of matter submitted by Appellant and Respondent State Farm unless Appellant had sought and obtained permission from the Court to supplement his initial designations. As an example of Appellant's cavalier treatment of his designations of matter to be included in the record, Appellant's initial designations dated November 15, 2012 do not include any reference to a "transcript" of the hearing held before Judge Allison Lee on May 7, 2012. However, subsequent/amended designations submitted by Appellant contain references to such transcript along with additional matters which

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were not previously designated. In his most recent Second Amended Record On Appeal (dated December 17, 2013) Appellant includes only two pages from that hearing transcript, namely pages two and eight, and omits the remainder. (See, Second Amended Record On Appeal, pages 38-39). Moreover, Appellant's Second Amended Record On Appeal includes several matters not before the Court and matters not included in his initial designation. For example, pages 41-42 in Plaintiff's Second Amended Record On Appeal include a document which upon information and belief was not a matter before the Court as is the case with pages 53-54 which appear to be a pre-trial settlement demand letter/affidavit from Respondent Davis dated November 30, 2009. Finally, it appears that Plaintiff's Second Amended Record on Appeal omits item number 11 in Respondent State Farm's Designation Of Matter.

Conclusion

Respondent State Farm submits that throughout the appeal process it has been unable to timely and orderly submit its initial and final briefs because of the confusing nature of the multiple filings of both the designated matter and purported Records on Appeal of Appellant. Respondent State Farm contends that this Court should issue an Order limiting the Record on Appeal to Appellant's and Respondent State Farm's initial designation of matter. Once that record on appeal is complete, accurate and finalized, that will allow Respondent State Farm to determine whether its initial brief needs to be amended and/or whether its final brief can now be prepared for submission. Alternatively, should the Court allow Appellant to supplement to any extent his initial designations, Respondent State Farm should be advised as to what amended designations shall allowed by the Court so that Respondent State Farm may determine whether it needs to supplement its initial designation based upon the amendments allowed Appellant. This should and must be resolved prior to the preparation of the Record on Appeal and Appellant filing any Final Brief.

Respectfully submitted,



JAMES B. LYBRAND, JR.

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Attorney for State Farm Mutual Automobile
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December 30, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent State Farm's Reply to Appellant's Motion For Clarification And Specification Dated December 17, 2013 was served upon the following by depositing said papers in the United States Mail, Columbia, South Carolina, on the 30th day of December, 2013, with the first class postage duly affixed and a return address clearly indicated on the envelope, addressed as follows:

Charles Taylor
P. O. Box 3652
Sumter, SC 29151

Thomas Davis
P. O. Box 773
Manning, SC 29102



Bernadette Gebhardt
Legal Assistant to James B. Lybrand, Jr.

Columbia, South Carolina
December 30, 2013

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December 30, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1205 Pendleton Street
Columbia, SC 29201

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SC Court of Appeals

Re: Charles Taylor, Appellant vs. Thomas Davis and State Farm Mutual
Automobile Insurance Company, Respondents
Appellate Case No: 2012-212896

Dear Ms. Kitchings:

I enclose for filing an original and seven copies of Respondent State Farm's Return and Response to Appellant's Motion For Clarification And Specification Dated December 17, 2013. Please return a clocked copy of response to me in envelope provided.

By copy of this letter I am serving a copy of response on Appellant and Respondent Thomas Davis.

Should you require anything further please let me know.

With kind regards,

McDonald, McKenzie, Rubin,
Miller and Lybrand, LLP

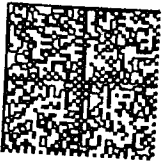

James B. Lybrand, Jr.

JBLjr/bg

Enclosures

cc: Charles Taylor
Thomas Davis

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