

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
J. Michael Baxley, Circuit Court Judge

Case Nos. 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham and Vickie B. Graham, Appellants,

v.

Town of Latta, South Carolina, Respondent.

**REPLY TO APPELLANTS' RETURN TO
MOTION TO CORRECT RECORD ON APPEAL**

The Respondent Town of Latta has moved for an Order requiring the Appellants to file and serve a corrected Record on Appeal that fully complies with the South Carolina Appellate Court Rules and includes only documents designated

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by the parties for inclusion in the Record on Appeal. The Appellants have now filed a return to which a brief reply is warranted.

The Town challenges the inclusion of the Affidavit of Reynolds Williams filed July 29, 2013, with exhibits, in the Record on Appeal. A review of the designations filed by both parties reflects that neither party designated that affidavit or any of the exhibits attached thereto. In addition, a review of the initial briefs filed show that neither party cited to the affidavit or any of the exhibits. As a result, the affidavit and attached exhibits should not have been included in the Record on Appeal.

In response, the Appellants do not refute these salient points. Instead, the Appellants argue that the Plaintiff's Rule 59(e) Motion was designated for inclusion in the Rule 59(e) motion and that the affidavit was filed contemporaneously with and referenced in that motion. While that may be true, the affidavit was still not designated – that is clear and undisputed -- and the Town relied on the fact that the affidavit was not designated when it prepared its Initial Brief. Moreover, the motion and affidavit are separate documents. The Clerk of Court below treated them as separate documents – each was separately filed-stamped and docketed. (See attached docket sheet). As separate documents, the motion and affidavit should have been separately designated if the Appellants'

intention was to include both documents in the Record on Appeal. That was not done.

Additionally, the Appellants have not shown the necessity of that affidavit and exhibits. They were never cited in any briefs. That is unrefuted. The Appellants argue that the affidavit was cited in Judge Baxley's Form Order filed December 10, 2013. That is not the case. There is no reference to the affidavit in that Form Order and Judge Baxley's description of the issues in that Form Order is contained in the motion itself, which was properly designated for inclusion in the Record on Appeal. The affidavit and exhibits were never designated and are immaterial to this appeal – as evidenced by the fact that neither party referenced the affidavit or exhibits in their briefs.

Strangely, the Appellants also argue that the affidavit was filed in the lower court and offer a letter confirming that from the Dillon County Clerk of Court. Frankly, that is changing the argument: the Town has never contended that the affidavit was not part of the lower court record. The Town only contends that the affidavit should not be part of the appellate record because it was not designated or cited.

In sum, the Town respectfully requests that the Court order that the Record on Appeal be corrected to extract the affidavit and exhibits that were never designated and are unnecessary to the adjudication of the appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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July 18, 2014



Dillon County Fourth Judicial Circuit Public Index



Dillon County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Claude W Graham VS Town Of Latta

Case Number:	2008CP1700376	Court Agency:	Common Pleas	Filed Date:	11/19/2008
Case Type:	Common Pleas	Case Sub Type:	Contract/Other 199	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Jury Trial	Disposition Date:	10/11/2012	Disposition Judge:	Lee, Alison Renee
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:	2008CP1700376	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Graham, Claude W	Notice/Notice of appeal	Filing		02/07/2014-11:32		
Graham, Claude W	Order/Form 4/Denial of Motion	Order		12/10/2013-15:05		
Graham, Claude W	Certificate/Certificate of service	Filing		07/29/2013-10:34		
Graham, Claude W	Affidavit/Affidavit of Reynolds Williams	Filing		07/29/2013-10:34		
Graham, Claude W	Motion/Motion to alter judgment	Motion		07/29/2013-10:33	12/10/2013-10:33	
Town Of Latta	Certificate/Certificate of service	Filing		07/26/2013-12:33		
Town Of Latta	Order/Order Granting Leave to Deposit Funds Into Court	Order		07/26/2013-12:33		
Graham, Claude W	Certificate/Certificate of service	Filing		04/26/2013-09:05		
Graham, Claude W	Other/Plaintiffs brief in opposition to def's request for an	Filing		04/26/2013-09:02		
Town Of Latta	Notice/Notice	Filing		04/23/2013-09:30		
Town Of Latta	Certificate/Certificate of Service	Filing		04/16/2013-08:52		
Town Of Latta	Motion/Motion For Leaveof Court to Deposit Funds	Motion		04/16/2013-08:48	04/16/2013-08:48	
Town Of Latta	Certificate/Certificate of Service	Filing		04/12/2013-10:02		
Town Of Latta	Notice/Notice of Appeal	Filing		04/12/2013-10:02		
Town Of Latta	Certificate/Certificate of Service	Filing		04/12/2013-09:49		
Town Of Latta	Notice/Notice of Appearance	Filing		04/12/2013-09:49		
Graham, Claude W	Order/Order	Order		03/08/2013-15:46		
Graham, Claude W	Order/Order	Order		03/08/2013-15:43		
Graham, Claude W	Certificate/Certificate of Service	Filing		10/30/2012-09:50		
Graham, Claude W	Notice/Notice/Plaintiff's Opposition to Motion for Judgement	Filing		10/30/2012-09:49		
Town Of Latta	Motion/New Trial	Motion		10/26/2012-11:41	03/08/2012-11:41	
Town Of Latta	Motion/Judgment notwithstanding verdict, or alternatively	Motion		10/26/2012-11:40	03/08/2013-11:40	
Town Of Latta	Notice/Notice of motion	Filing		10/26/2012-11:40		
Graham, Claude W	Judgment/Judgment	Judgment		10/11/2012-09:26	10/11/2012-09:26	
Town Of Latta	Judgment/Judgment	Judgment		10/11/2012-09:26	10/11/2012-09:26	
Graham, Claude W	Order/Form 4/Jury Verdict	Order		10/11/2012-09:22	10/11/2012-09:22	
Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		09/06/2012-14:28	10/11/2012-14:28	
Plyler, Daniel Clifton	Roster/Notice of Case Roster Publication Sent	Action		09/06/2012-14:28	10/11/2012-14:28	
Greene, A. Glenn Jr.	Roster/Notice of Case Roster Publication Sent	Action		09/06/2012-14:28	10/11/2012-14:28	
Greene, A. Glenn Jr.	Roster/Notice of Case Roster Publication Sent	Action		07/26/2012-09:09	10/11/2012-09:09	
Plyler, Daniel Clifton	Roster/Notice of Case Roster Publication Sent	Action		07/26/2012-09:09	10/11/2012-09:09	
Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		07/26/2012-09:09	10/11/2012-09:09	
Graham, Claude W	Certificate/Certificate of Service	Filing		03/19/2012-09:24	10/11/2012-09:24	
Graham, Claude W	Motion/Restore Case	Motion		03/19/2012-09:23	06/20/2012-09:23	
Graham, Claude W	Order/Consent Order Striking Case	Order		10/05/2011-12:21	10/05/2011-12:21	
Plyler, Daniel Clifton	Roster/Notice of Case Roster Publication Sent	Action		09/08/2011-10:05	10/05/2011-10:05	

Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		09/08/2011-10:05	10/05/2011-10:05
Greene, A. Glenn Jr.	Roster/Notice of Case Roster Publication Sent	Action		09/08/2011-10:05	10/05/2011-10:05
Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		08/02/2011-10:09	10/05/2011-10:09
Plyler, Daniel Clifton	Roster/Notice of Case Roster Publication Sent	Action		08/02/2011-10:09	10/05/2011-10:09
Greene, A. Glenn Jr.	Roster/Notice of Case Roster Publication Sent	Action		08/02/2011-10:09	10/05/2011-10:09
Graham, Claude W	Order/Form 4/Case Continued	Order		04/18/2011-09:16	10/05/2011-09:16
Rice, Katy	Roster/Notice of Case Roster Publication Sent	Action		03/21/2011-14:27	10/05/2011-14:27
Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		03/21/2011-14:27	10/05/2011-14:27
Graham, Claude W	Order/Form 4/Motion amend granted	Order		01/19/2011-09:43	10/05/2011-09:43
Williams, Reynolds	Roster/Notice of Case Roster Publication Sent	Action		01/14/2011-15:18	10/05/2011-15:18
Rice, Katy	Roster/Notice of Case Roster Publication Sent	Action		01/14/2011-15:18	10/05/2011-15:18
Williams, Reynolds	Order/Substitution Of Counsel	Order		12/21/2010-10:31	10/05/2011-10:31
Williams, Reynolds	Roster/Notice of Motions Roster Publication Sent	Action		12/21/2010-10:24	10/05/2011-10:24
Rice, Katy	Roster/Notice of Motions Roster Publication Sent	Action		12/21/2010-10:24	10/05/2011-10:24
Rushton, James III	Roster/Notice of Motions Roster Publication Sent	Action		12/21/2010-10:24	10/05/2011-10:24
Graham, Claude W	Notice/Notice of Representation	Filing		12/21/2010-10:23	10/05/2011-10:23
Rushton, James III	Motion/Substitution of Counsel	Motion		12/21/2010-10:29	12/21/2010-10:29
Williams, Reynolds	Motion/Substitution of Counsel	Motion		12/21/2010-10:29	12/21/2010-10:29
Rice, Katy	Certificate/Certificate of service	Filing		12/16/2010-09:23	10/05/2011-09:23
Williams, Reynolds	Motion to Amend pleadings	Motion		12/16/2010-09:16	01/19/2011-09:16
Graham, Claude W	Certificate/Certificate of Service	Filing		12/15/2010-10:12	10/05/2011-10:12
Graham, Claude W	Notice/Notice of Appearance	Filing		12/15/2010-10:11	10/05/2011-10:11
Graham, Claude W	Order/Amended Consent Scheduling Order	Order		08/24/2010-15:25	10/05/2011-15:25
Graham, Claude W	Order/Consent Scheduling Order	Order		05/04/2010-10:15	10/05/2011-10:15
Graham, Claude W	Motion/Motion For Amended Consent Scheduling Order	Motion		05/04/2010-09:47	05/04/2010-09:47
Graham, Claude W	Certificate/Certificate Of Mailing	Filing		03/17/2010-09:12	10/05/2011-09:12
Graham, Claude W	Motion/Motion For Amended Consent Scheduling Order	Motion		03/17/2010-09:17	04/08/2010-09:17
Graham, Claude W	ORDER CONSOLIDATED W/08-377SCHEDULING ORDER JULY 1, 2010	Filing		12/18/2009-00:00	12/18/2009-00:00
Town Of Latta	ANSWER/CERTIFICATE SERVICE	Filing		12/22/2008-00:00	12/22/2008-00:00
Graham, Claude W	AFFIDAVIT SERVICE	Filing		12/12/2008-00:00	12/12/2008-00:00
Graham, Claude W	Filing Fee	Filing		11/19/2008-00:00	11/19/2008-00:00
Graham, Claude W	SUMMONS/COMPLAINT	Filing		11/19/2008-00:00	11/19/2008-00:00

THE STATE OF SOUTH CAROLINA
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APPEAL FROM DILLON COUNTY
J. Michael Baxley, Circuit Court Judge

Case Nos. 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham and Vickie B. Graham, Appellants,

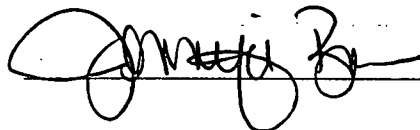
v.

Town of Latta, South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent Town of Latta, does hereby certify that service of the **Reply to Appellants' Return to Motion to Correct Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 18th day of July 2014:

Reynolds Williams, Esquire
Willcox, Buyck & Williams
Post Office Box 1909
Florence, South Carolina 29503-1909



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SC Court of Appeals

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July 18, 2014

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

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

RE: Claude W. Graham and Vickie B. Graham v. Town of Latta, South Carolina
Appellate Case Number: 2014-000208
Civil Action Numbers: 2008-CP-17-0376 and 2008-CP-17-0377
Claim Number: 690001C05341
Our File Number: 321.7974

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Reply to Appellants' Return to Motion to Correct Record on Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

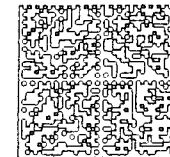
AFL/jmb
Enclosures

cc: Reynolds Williams, Esquire (w/ Enclosure)

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The Honorable Jenny Abbott Kitchings
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