

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No.: 2009-CP-42-00781
Appellate Case No.: 2013-002439

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Ray and Mary LongAppellants.
v.
Tuck and Howell, Inc.....Respondent.

RESPONDENT TUCK AND HOWELL, INC.'S MOTION TO DISMISS

Respondent Tuck and Howell, Inc. ("Respondent") hereby respectfully moves this Court for an Order Dismissing the Appellants' Appeal in the above-referenced matter. The basis of Respondent's Motion is that the Appellants have failed to raise any exceptions with the circuit court's rulings, orders and judgments which may be decided by this Court.

The Initial Brief of Appellants filed with the Court in this matter raise the following issues on appeal:

- 1) We were not fairly represented by our attorney. There were pieces of important evidence that were not presented by him.
- 2) Our attorney did not subpoena several important witnesses that he said he was going to subpoena to testify on our behalf.
- 3) There were false statements made by the witnesses for the opposing party with no objections by our attorney.
- 4) Mr. Bannister [Appellants' attorney] misrepresented us by dropping the first "cause of action" (which related to the

negligence against Tuck & Howell Inc.) and went only on the warranty.

See Initial Brief of Appellant at p. 1.

“Appeals are brought before this Court on exceptions which must raise the issues to be decided.” Town of Ridgeland v. Cleland, 284 S.C. 277, 278, 325 S.E.2d 587, 588 (Ct. App. 1985); citing Rules of Practice in the Supreme Court of South Carolina, Rule 4, sections 1 and 6. “In the absence of any exception, as here, there is nothing for us to decide.” Id.; citing Evans v. Bruce, 245 S.C. 42, 138 S.E.2d 643 (1964).

The sole thrust of Appellants’ Statement of Issues on Appeal, and their entire Initial Brief for that matter, is focused upon their attorney’s alleged shortcomings at trial.¹ However, this Court has held that attempts to transform dissatisfaction with trial counsel’s presentation of the case into a claim of legal error on the part of the trial court are improper. Divine v. Robbins, 385 S.C. 23, 44, 683 S.E.2d 286, 297 (Ct. App. 2009). Any dissatisfaction Appellants have with their trial counsel is not the proper subject of review on appeal from the circuit court’s decision. Id.; citing Lanier v. Lanier, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct.App.2005). Further, it is important to note that, unlike in Divine, supra, the Appellants in our case have not even attempted to transform dissatisfaction with their trial counsel’s presentation of the case into a claim of legal error on the part of the trial court. The Appellants have made no allegations

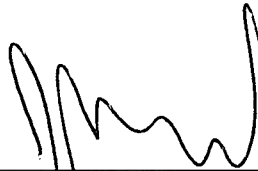
¹ For the record, the undersigned counsel holds Appellants’ trial counsel in high regard, believes him to be a very competent attorney and does not believe that he made any missteps during trial.

that the trial court erred in any fashion. Through their Initial Brief, they have merely aired their dissatisfaction with their trial counsel.

Due to the fact that the Appellants have failed to raise any exceptions with the circuit court's rulings, their Appeal should be dismissed. Dismissal at this stage is proper based upon a plain reading of the Appellants' Issues on Appeal. Further, dismissal at this stage is in the interest of judicial economy as it will avoid unnecessary legal fees, costs and expenses on behalf of both parties, including expenses associated with preparing the record on appeal and final briefs on issues that are not properly before this Court.

Respectfully submitted,

CLARKSON, WALSH, TERRELL & COULTER, P.A.



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ATTORNEYS FOR RESPONDENT

Date: _____

12/24/14

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

December 23, 2014

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

Re: Ray and Mary Long, Appellants v. Tuck and Howell, Inc., Respondent
Case No. 2009-CP-42-00781

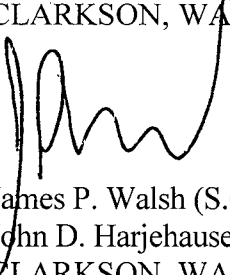
Dear Ms. Kitchings:

Enclosed for filing are an original and six (6) copies of the Respondent's Tuck and Howell, Inc.'s Motion to Dismiss and Proof of Service. Also enclosed is a check in the amount of \$25.00 for the filing fee.

Thank you for your kind consideration and assistance. Please feel free to call if you should have any questions regarding this matter.

Yours very truly,

CLARKSON, WALSH, TERRELL & COULTER, P.A.

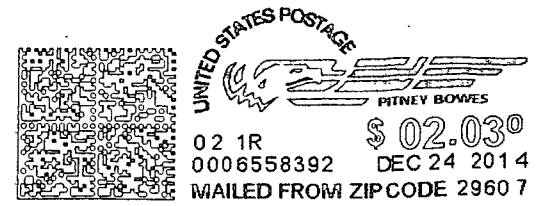
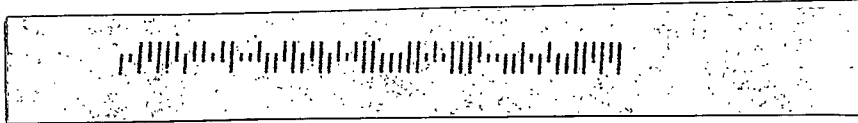


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JPW/jdh
Enclosure(s)
cc: Ray and Mary Long

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