

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-40-1643

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FEB 09 2015

SC Court of Appeals

Samuel T. Brick, Appellant,

v.

Richland County Planning Commission and
Fairways Development, LLC, Intervenor, Respondents.

**REPLY TO APPELLANT'S RETURN TO
MOTION TO CORRECT RECORD ON APPEAL**

The Respondent Richland County Planning Commission filed a motion seeking an order requiring the Appellant to file a corrected Record on Appeal in certain particulars. The Appellant Samuel T. Brick filed a return opposing the Planning Commission's motion. The following points are made in reply:

1. In correction Version of Complaint Included

The Complaint filed October 31, 2012 in Civil Action Number 2012-CP-40-7337 (the FOIA action) was designated for inclusion in the Record on Appeal; yet, the Appellant included the Amended Complaint in the Amended Record on Appeal that he filed. The Amended Complaint was not designated. The Planning Commission cited to the Complaint – not the Amended Complaint – in its brief, and as a result, needs the proper version of the Complaint to be included in the Record on Appeal.¹

The Appellant opposes that relief on several bases, none of which has merit. First, the Appellant argues that the Complaint in the FOIA action was designated by Fairways Development rather than the Planning Commission. It is, however, immaterial which party designates a document. If a document is designated by *any* party, it must be included in the Record on Appeal. Rule 210(c) provides "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209." Rule 210(c), SCACR. Moreover, when the Planning Commission prepared its designations, those designations specifically stated that they were "in addition to matters previously designated." The designations by

¹ The Appellant Brick complains that the Respondent Planning Commission has not yet filed its Final Brief; yet, this is precisely why the Planning Commission has not done so. The Planning Commission cited to the Complaint in the FOIA action and needs that Complaint to be included in the Record on Appeal so that a proper citation may be included in the Final Brief, as required by Rule 211(b)(1), SCACR. Without the Record on Appeal being complete, the filing of the Planning Commission's Final Brief is not possible.

Fairways Development (dated September 19, 2014) pre-dated the Planning Commission's designation. Those prior designation therefore were included by reference.

Second, the Appellant argues that the Amended Complaint was the operative pleading that was "heard" in the FOIA case. The Planning Commission, however, specifically cited to the original Complaint in the FOIA case because of the date of that document – the Complaint was filed October 12, 2012, and therefore pre-dated the Circuit Court appeal at issue in this appeal. The timing is significant, and that Complaint shows that the Appellant was aware in October 2012 that Fairways Development, LLC was the owner of the subject development. The Planning Commission does not need the version of the Complaint that was "heard" in the FOIA action because the ultimate ruling in the FOIA action is not at issue. Rather, the Complaint is cited to show notice/knowledge at a particular point in time.

2. Documents that Post-Date the Appeal

The Planning Commission further pointed out that the Appellant included documents that were not even in existence when this appeal was filed. The Notice of Appeal was filed March 11, 2014. But, pages 222 through 233 in the Amended Record on Appeal are documents that were filed with respect to a Motion to Lift Automatic Stay that has not been appealed. Those documents are not properly in

this record because they were filed after Judge DeAndrea Benjamin issued the orders on appeal and after this appeal was filed.

In response, the Appellant argues that the Court should take judicial notice of the challenged documents because the Planning Commission "opened the door to this issue" by asking the Court to take judicial notice of the Complaint in the FOIA action. The reason that the Complaint in the FOIA action was included in the first place was because the Appellant made a "collateral estoppel" argument in his opening brief based on the dismissal of Fairways Development as a party in the FOIA action. Thus, it was actually the Appellant who made the FOIA action an issue. There is, however, simply no basis for the Court to consider documents that were filed *after* Judge Benjamin issued her rulings that are on appeal. Rule 210(c), SCACR, provides that the record on appeal "shall not ... include matter which was not presented to lower court." The Appellant argues that Rule 210 does not expressly prohibit the inclusion of matter filed with the lower court *after* the ruling was made. That, however, is the intent and spirit of that rule. Otherwise, a losing litigant could "supplement" the appellate record by filing whatever he chose after the court ruled and then ask the appellate court to consider those materials because they are in the lower court record, despite the fact that they were not presented to or considered by the lower court judge in making the rulings on appeal.

Finally, the Appellant argues that the Planning Commission's objection is "dilatatory." However, counsel for the Planning Commission raised this issue and

others regarding the Record on Appeal to the Appellant by email dated December 30, 2014. (See attached email). The Appellant simply disregarded that email and refused to voluntarily correct the various deficiencies with the Amended Record on Appeal.

Based on the foregoing discussion, the Respondent Richland County Planning Commission respectfully renews its request that the Court require the Appellant to file a corrected Record on Appeal to correct the errors and deficiencies raised in its motion.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
MICHAEL B. WREN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent
Richland County Planning Commission*

Columbia, South Carolina

February 9, 2015

Andrew Lindemann

From: Andrew Lindemann
Sent: Tuesday, December 30, 2014 12:52 PM
To: 'Sam Brick'
Cc: 'Derrick Jackson'
Subject: RE: Appeal--Brick v. Richland County Planning Commission, etc

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Mr. Brick:

I have reviewed your recent email to me as well as the Amended Record on Appeal that was served on December 19, 2014.

First, as for the Plaintiff's Motion for Amended Pleading in Civil Action Number 2012-CP-400-7337, which had been designated by the Respondent Fairways Development, I have no objection to that that motion being included in the Record on Appeal. I also have no objection to including that document by way of a Supplemental ROA.

Second and more importantly, I see a number of deficiencies with the Amended Record on Appeal. Those are as follows:

- (a) The page numbers are very confusing. I am not certain why you did not use sequential page numbering but rather used hyphenated page numbers in numerous places. That makes no sense to me, and frankly, I am not sure that will be accepted by the Court. In addition, given the placement of the handwritten page numbers and the poor copying job, there are numerous places where the page numbering is cut off the page.
- (b) It appears that all of the documents in the Amended ROA that were filed by you are unsigned.
- (c) As for the Appellant's Notice of Appeal filed in the Circuit Court, I do not understand why the various exhibits to that document are scattered all throughout the Amended ROA rather than in sequential order immediately after the Notice of Appeal.
- (d) I also object to the inclusion of pages 222 through 233 of the Amended ROA because those documents were filed with the Circuit Court after this appeal to the Court of Appeals was filed and were not available to Judge Benjamin when she ruled on the various motions that are on appeal.

If you have any questions, please advise.

Andrew Lindemann

From: Sam Brick [<mailto:sbrick2011@gmail.com>]
Sent: Tuesday, December 30, 2014 11:37 AM
To: Andrew Lindemann
Subject: Re: Appeal--Brick v. Richland County Planning Commission, etc

I understand and thank you for the reply. I also have been ill over the holidays. The Court gave me thirty days to provide the ROA and I feel compelled to meet that with the appendix even though the rules do not state that nor does the Order specify it. The period for the ROA to be in is Friday. I will need some time to bind the appendix so please let me know by tomorrow afternoon. If you do not think you can do that, let me know and I will proceed with the motion. I do not want to bother the court unless it is absolutely necessary and tomorrow is really pressing it.

Many regards and I hope you feel better.

Sam

Sam Brick
803 546 4895

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On Dec 30, 2014, at 11:11 AM, Andrew Lindemann <alindemann@dml-law.com> wrote:

Mr. Brick:

I am out sick today. But I will try to get back to you shortly. I need to review the latest version of the ROA to see if there are any deficiencies that need to be corrected. You may want to hold your motion until I have that opportunity, but do as you wish.

Andrew Lindemann

From: Sam Brick [<mailto:sbrick2011@gmail.com>]
Sent: Tuesday, December 30, 2014 9:43 AM
To: Andrew Lindemann
Subject: Appeal--Brick v. Richland County Planning Commission, etc

I have requested your no objection to my inclusion of the attached item in an appendix to the record. Please advise if you object. If I do not hear from you by noon today I am forced to file the motion I have prepared with the court. I attached that and the Motion requested by Fairways. Fairways does not object to the inclusion; they asked for it. Obviously, I will serve whatever I am have to do.

ST Brick

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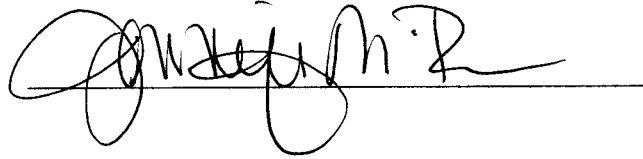
Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent Richland County Planning Commission, does hereby certify that service of the **Reply to Appellant's Return to Motion to Correct Record on Appeal** was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 9th day of February 2015:

Mr. Samuel T. Brick
124 Runneymede Drive
Blythewood, South Carolina 29016

Tobias G. Ward, Jr., Esquire
J. Derrick Jackson, Esquire
Tobias G. Ward, Jr., P.A.
Post Office Box 6138
Columbia, South Carolina 29260

A handwritten signature in black ink, appearing to read "Tobias G. Ward, Jr.", is written over a horizontal line. The signature is stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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*Also Admitted In North Carolina
†Certified Mediator

February 9, 2015

Of Counsel
Kenneth P. Woodington

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

Hand Delivered

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

RE: Samuel T. Brick v. Richland County Planning Commission and
Fairways Development, LLC
Appellate Case Number: 2014-000583
Civil Action Number: 2013-CP-40-1643
Our File Number: 314.9169

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Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies **Reply to Appellant's 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 by way of my courier.

By copy of this letter, I am serving copies on the *pro se* Appellant and all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
February 9, 2015
Page Two

cc: (w/ Enclosure)

Mr. Samuel T. Brick
124 Runneymede Drive
Blythewood, South Carolina 29016

Tobias G. Ward, Jr., Esquire
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