

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia Verdin, Circuit Court Judge

Case No. 2013-CP-23-5575

HHH Ltd. of Greenville, by
and through its Receiver,
Randy A. Skinner

Respondent,

v.

Randall S. Hiller, Robert E.
Hiller and Randall S. Hiller,
P.A.,

Appellant.

MEMORANDUM OF APPELLANT IN PARTIAL OPPOSITION TO RESPONDENT'S
MOTION FOR ORDER GRANTING PARTIAL RELIEF

Randall S. Hiller (SCB#2513)
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellants

Other Counsel of Record:
Randy A. Skinner
300 N. Main St., Ste. 201
Greenville, SC 29601

M. Stokely Holder
John T. Crawford
704 E. McBee Ave.
Greenville, SC 29601

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JUN 15 2015

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NOW COMES Appellants, by and through their undersigned counsel, and files this Memorandum in Partial Opposition to Respondent's Motion for Order Granting Partial Relief.

I. FACTS

Respondent sets forth seven and a half pages of "facts" all of which are simply allegations. The vast majority of the alleged "facts" are nowhere to be found in the record and many are simply false.

Although none of the alleged "facts" are in any way relevant to any issue raised by this appeal an example of the misrepresentations made, or incorrect representations, would be the failure to point out that Robert E. Hiller was dismissed from the Hollywoods lawsuit prior to trial and that Randall S. Hiller was never a party to that action, nor was he counsel of record, nor did he appear at any supplementary proceeding voluntarily or to represent his interest. The only "appearance" was the direct result of a subpoena to testify as a witness.

The most glaring misrepresentation of fact is the statement on page 8 by the Respondent that Judge Verdin denied the Appellant's Motion for Summary Judgment.

II. ARGUMENT

a. The Appellant consents to the Respondent's admission that the filing and arguing of its Motion for Reference was unfounded and improper and that this Court enter its order reversing the Order of Reference.

Notwithstanding the fact that Respondents claim that I "forgot" that they obtained permission to file this action other than before Judge Miller, and despite the fact that the entire action is based on Judge Miller's Order, the Respondents have apparently forgotten that they instituted the supplemental proceedings on or before October 16, 2012 and served upon Appellants Subpoenas and Subpoena *Duces Tecum*, on or around October 22, 2012 demanding production of documents on or before November 9, 2012. However, it was not until November 7, two days before the scheduled hearing, that any effort was made to contact Judge Miller, which contact misrepresented the facts and to which I promptly responded. (See attached). Moreover, contrary to the Respondent's position the Master in Equity only retained jurisdiction of the Receiver not any actions that the Receiver may bring or may have brought. Notably, none of the Appellants were voluntarily in attendance at the supplemental proceeding.

b. Order Granting Appellants Issue III

The Respondent mistakenly claims that Appellant's Motion for Summary Judgment was denied. No such Order exists.

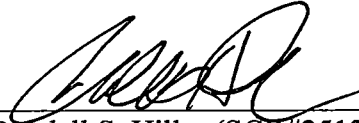
Accordingly, Appellant is not seeking that this court review the denial of summary judgment in a direct appeal, or for that matter, review the denial of a Motion for Summary Judgment at all.

The issue is not one of review of denial but rather it is an issue where the record before this Court mandates that the motion have been granted.

Respondents wrongly filed a motion to refer this case to the Master in Equity and have now admitted their error. The anticipated result of the relief requested by the Respondent at the time of the filing of the motion should have been that an Order granting it would, in fact, be immediately appealable. Given that the Respondent placed both parties where we are today by the filing and arguing of a motion that had no basis in law or fact and given that the record expressly reflects that

the Appellant was entitled to summary judgment as a matter of law, judicial economy would best be served by the Court recognizing that no defense to the Motion was presented as required by SCRCP Rule 56(e) and to correct the obvious error by the trial judge while at the same time correcting the oversight in not granting the Motion for Summary Judgment.

RANDALL S. HILLER, P.A.



Randall S. Hiller (SCB#2513)
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
864-242-4692 Fax
Attorney for Appellants

RANDALL S. HILLER, P.A.
ATTORNEY AT LAW
850 WADE HAMPTON BLVD.
GREENVILLE, SOUTH CAROLINA 29609

(864) 232-0026
Fax: (864) 242-4692
rsh@rshpa.org

November 8, 2012

Via Facsimile & Electronic Mail

(864) 233-4173

The Hon. Edward W. Miller
Administrative Judge, 13th Circuit

emillerj@sccourts.org

Re: Hollywoods Association of Residence Owners v. Joe W. Hiller, et al

Dear Judge Miller:

I am replying to the copy of a letter from Kenison Dudley and Crawford, LLC which I received last evening.

As Mr. Holder should be, and you are no doubt, aware I was not counsel of record for any party in the above referenced litigation. I was not present nor did I participate in any of the hearings referenced in the letter, have not seen or read the motions nor have I seen or read any of the orders referenced therein. I am most certainly not "opposing counsel" as stated in the letter.

My "involvement" is the result of, and only because, the service of an improper and unauthorized Subpeona *Duces Tecum* upon me personally, and my siblings, and a Subpoena to appear and give testimony at a supplemental proceeding pursuant to 15-39 of the South Carolina Code scheduled to be heard by Judge Simmons tomorrow morning. I have objected on behalf of myself and 2 of my brothers to the propriety of the issuance of the Subpoenas *Duces Tecum* in the first instance, their violation of S.C.R.C.P. Rules 11 and 45 and will be seeking sanctions against Plaintiff and/or Plaintiff's counsel at the hearing in the morning.

Yours very truly,


Randall S. Hiller

RSH/ak

Cc: The Hon. Charles B. Simmons
M. Stokely Holder, Esq.

KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS

PHONE: 864-242-4899 * FAX: 864-242-4844

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

Honorable Edward W. Miller 233-4173
Honorable Charles B. Simmons, Jr.
467-8401
Randall S. Hiller 242-4692

M. Stokely Holder

COMPANY:

DATE:

11/7/2012

TOTAL NO. OF PAGES INCLUDING
COVER: 6

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

HollyWoods Association of Residence
Owners, Inc. vs. Joe W. Hiller, Sr.,
HHH Ltd. Of Greenville, et al.
CA No.: 2005-CP-23-2852

Urgent For Review Please Comment Please Reply Please Recycle

Please reference the attached correspondence regarding the above-referenced matter.

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704 EAST MCBEE AVENUE
GREENVILLE * SC * 29601

KENISON, DUDLEY & CRAWFORD, I.L.C.

A T T O R N E Y S A T L A W

KEVEN K. KENISON
Practicing Attorney in South Carolina and Georgia
THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina
JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina
M. STOKELY HOLDER
Practicing Attorney in South Carolina
TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina
F. LEE PRICKETT, III
Practicing Attorney in South Carolina

November 7, 2012

Via Email (emillerj@sccourts.org) & Facsimile 864-233-4173

Honorable Edward W. Miller
Administrative Judge, 13th Judicial Circuit
Clerk of Court for Greenville County
305 East North Street
Greenville, SC 29601

Re: Holly Woods Association of Residence Owners, Inc., vs. Joe W. Hiller, Sr., HHH Ltd. of
Greenville, et al.
C.A. No.: 2005-CP-23-2852

Dear Judge Miller:

As you probably recall, this firm represents the Plaintiff in the above-referenced matter. Upon the recent conclusion of the Defendants' unsuccessful appeal of the judgment that Plaintiff obtained in this matter, we made a post-trial motion for supplemental proceedings, which included, *inter alia*, a request for the appointment of a receiver. A hearing on our Motion has been scheduled in front of Judge Simmons for this Friday, November 9, 2012 at 9:00 a.m.

In preparing for the motion hearing, we realized that you had executed a post-trial Order in this case on March 15, 2007, which was based on the Plaintiff's prior post-trial Motion for Attachment, Motion for Appointment of a Receiver, and Motion for a Temporary and Permanent Restraining Order. If you recall, this prior motion and your subsequent Order were based on the Defendants' wrongful attempt to transfer property in frustration of the Plaintiff's (judgment lien) rights thereto. In your Order, which I have attached hereto for your reference, you specifically retained jurisdiction over "this matter and all related matters." You also made clear that you would hold under advisement the Plaintiff's Motion for Attachment and Motion for the Appointment of a Receiver until "final disposition of all post-trial motions."

By copy of this letter to opposing counsel, Randall S. Hiller, and to Judge Simmons, the Plaintiff hereby requests your presiding over the subject post-trial motion in accordance with the aforementioned order; or, in the alternative, providing the parties guidance on how to proceed. We will be glad to organize a conference call to discuss.

GREENVILLE
704 East McBee Avenue • Greenville, South Carolina 29601
Phone 864.242.4899 • Fax 864.242.4844

COLUMBIA
1201 Main Street • Suite 1980 • Columbia, South Carolina 29201
Phone 803.748.1329 • Fax 803.748.1248

CHARLESTON
534 B Oristo Ridge • Edisto Beach, South Carolina 29438
Phone 843.869.1000

ATLANTA
1130 Hurricane Shoals Road • Suite 600 • Lawrenceville, Georgia 30043
Phone 770.513.6400 • Fax 770.518.6577

I certainly apologize for the late notice and any inconvenience this may cause the Court. I appreciate your consideration in this matter and should you have any questions please do not hesitate to contact me.

With kind regards,

KENISON, DUDLEY & CRAWFORD, LLC



M. Stokely Holder

Enclosures
MSH

cc: Randall S. Hiller, Esq.
The Honorable Charles B. Simmons, Jr.

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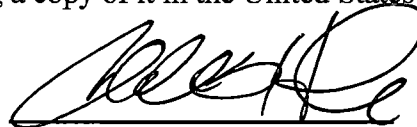
Randall S. Hiller, Robert E.
Hiller and Randall S. Hiller
P.A.,

Appellant.

PROOF OF SERVICE

I certify that I have served the Memorandum of Appellant in Partial Opposition to Respondent's Motion for Order Granting Partial Relief on M. Stokely Holder, Esq., John T. Crawford and Randy A. Skinner, Esq. by depositing a copy of it in the United States Mail, postage prepaid, on June 11, 2015.

June 11, 2015



Randall S. Hiller (SCB#2513)
850 Wade Hampton Blvd.
Greenville, South Carolina 29009
Attorney for Appellant

M. Stokely Holder, Esq.
John T. Crawford, Esq.
704 E. McBee Ave.
Greenville, SC 29601

Randy A. Skinner, Esq.
300 N. Main St., Ste. 201
Greenville, SC 29601

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

June 10, 2015

SC Court of Appeals
Attn: Clerk
1015 Sumter St.
Columbia, SC 29201

Re: HHH Ltd. of Greenville, et al v. Randall S. Hiller, et al
C.A. No.: 2013-CP-23-5575
Ct. Appeals No.: 2015-000159

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JUN 15 2015

SC Court of Appeals

Dear Madam Clerk:

Please find enclosed one original and six copies of Memorandum of Appellant in Partial Opposition to Respondent's Motion for Order Granting Partial Relief and Proof of Service regarding the above. Please file the original and five copies and return a stamped copy to me in the envelope provided.

By copy of this letter I am providing opposing counsels with same.

Yours very truly,



Alison H. Kelley
Paralegal to Randall S. Hiller

/ak

Enclosures.

Cc: M. Stokely Holder, Esq.
Randy A. Skinner, Esq.
John T. Crawford, Esq.



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RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

SC Court of Appeals
Attn: Clerk
1015 Sumter St.
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