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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

**RECEIVED**  
AUG 28 2015  
SC Court of Appeals

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

Ray and Mary Long .....Appellants.  
v.  
Tuck and Howell, Inc.....Respondent.

RESPONDENT TUCK AND HOWELL, INC.'S MOTION TO DISMISS  
APPEAL OR ALTERNATIVELY TO STRIKE APPELLANT'S RECORD ON  
APPEAL

Respondent Tuck and Howell, Inc. ("Moving Respondent") hereby respectfully moves this Court for an Order dismissing the Appellants' appeal or alternatively to strike all matters included in the Record on Appeal not presented to the Circuit Court. As discussed below, Appellants have failed to properly prepare or serve Respondent's counsel with the Record on Appeal as required by the South Carolina Appellate Court Rules.

Respondent previously moved this court to strike the Appellants' designation of matters to be included in the Record on Appeal. On July 22, 2015, this court issued an Order stating: "Respondent's motion is granted to the extent

that the record on appeal shall not contain any matter that was not presented to the circuit court. See Rule 210(c), SCACR. Appellant shall serve Respondent with the record on appeal within twenty days or this appeal may be dismissed."

After the court issued its Order dated July 22, 2015, Appellants apparently filed and served Respondent with the following documents:

(a) "RECORDS ON APPEAL NOVEMBER 1, 2013." (hereinafter referred to as "Document 1").

This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(b) "SUMMARY OF WHAT HAPPENED IN TRIAL COURT. SUMMARY OF INFORMATION I PREPARED FOR MR. BANNISTER TO HELP HIM PREPARE OUR CASE AND EVIDENCE FOR TRIAL. QUOTES FROM GLENN BELL AND JERRY TUCK'S DEPOSITIONS. RECORDS ON APPEAL MAY 11, 2014." (hereinafter referred to as "Document 2"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(c) "RECORDS REQUESTING TO FILE AN APPEAL FOR A NEW TRIAL DUE TO THE FACT WE DID NOT HAVE A FAIR TRIAL AND ALSO DUE TO THE FACT WE DID NOT EVEN HAVE A TRIAL BECAUSE OUR LAWSUIT AGAINST TUCK AND HOWELL WAS DROPPED AT THE END OF THE TRIAL. RECORDS ON APPEAL MAY 29, 2015." (hereinafter referred to as "Document 3"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(d) "RECORDS REQUESTING THAT THIS SUMMARY OF CHIEF POINTS TAKEN FROM RECORDS ALREADY BE INCLUDED IN OUR DESIGNATION OF MATTER AND INTIAL BRIEF. RECORDS ON APPEAL MAY 29, 2015." (hereinafter referred to as "Document 4"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(e) "REBUTTAL OF THINGS IN THE TRIAL TRANSCRIPT THAT HAPPENED AT OUR TRIAL. INCLUDED ARE THE FOLLOWING: EVIDENCE CONCERNING THINGS WE ARE REBUTTING, & RECORDS EXPLAINING WHAT HAPPENED WITH OUR FIRST ATTORNEY, CHARLES HODGE WITH HODGE LAW FIRM OF SPARTANBURG, SOUTH CAROLINA. RECORDS ON APPEAL SEPTEMBER 17, 2014." (hereinafter referred to as "Document 5"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(f) "DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL. RECORDS ON APPEAL NOVEMBER 26, 2014." "INITIAL BRIEF OF APPELLANT TO BE INCLUDED IN RECORDS ON APPEAL NOVEMBER 26, 2014." (hereinafter referred to as "Document 6"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(g) "RECORDS FROM THE COURT OF COMMON PLEAS IN SPARTANBURG COUNTY, SOUTH CAROLINA. RECORDS ON APPEAL SEPTEMBER 17, 2014." (hereinafter referred to as "Document 7"). This

document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(h) "TRIAL TRANSCRIPT RECORD. RECORDS ON APPEAL SEPTEMBER 17, 2014." (hereinafter referred to as "Document 8"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(i) "LETTER REGARDING NEW COPIES OF RECORDS ON APPEAL WITH CORRECTIONS IN COMPLIANCE WITH RULE 267. RECORDS ON APPEAL JUNE 15, 2015." (hereinafter referred to as "Document 9"). This document was served pursuant to a Proof of Service by Mail dated August 7, 2015.

(j) "RECORDS IN RESPONSE TO LETTER STATING 'RESPONDENT HAS FILED A MOTION TO STRIKE ITEMS FROM OUR DESIGNATION OF MATTER' AUGUST 4, 2015." (hereinafter referred to as "Document 10"). This document was served pursuant to a Proof of Service by Mail dated August 10, 2015.

Respondent moves the court to dismiss the Appellant's appeal because (1) Documents 1-10 do not comply with the South Carolina Appellate Court Rules; (2) they contain arguments and/or materials not presented at trial or considered by the Circuit Court or jury in violation of the Order dated July 22, 2015; and (3) the Appellants have not timely served Respondent with a Record on Appeal sufficient for Respondent to meaningfully respond to the Appellants' arguments in

their Initial Brief with appropriate citations to testimony or evidence admitted at trial.

SCACR 210(c) governs the content required for the Record on Appeal. It is to be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents." The above referenced Documents 1-10 do not contain an index, orders of the court, exhibits, charges, or even the trial transcript. See also SCACR 210(e) and (f). In fact, Appellants admit "[w]e did not send the trial transcript to attorney James Walsh because he had already gotten a copy of the transcript for himself." See Document 8. The Record on Appeal is also to "be numbered consecutively beginning with the index." Id. Further, "[w]here witness testimony is included in the Record on Appeal, the first page of each witness's direct, cross, redirect and recross examination must show the name of the witness, the phase of examination and the name of the counsel conducting the examination." Here, the Appellants have not numbered the Record on Appeal as required by SCACR 210(c). Further, because the Appellants have not provided Respondent with a Record on Appeal in compliance with SCACR 210, it is unclear what portions of the transcript, if any, have been designated for inclusion. SCACR 210(g) also requires a Certificate of Counsel which certifies that the Record on Appeal "contains all material proposed to be included by any of the parties and not any other material." Appellants have not produced such a Certificate of Counsel. They have neither included the materials designated by Respondent for inclusion in the Record on Appeal nor certified that it contains only materials designated for

inclusion "by any of the parties and not any other material. In fact, despite the Order dated July 22, 2015, Documents 1-10 submitted by the Appellant improperly reference numerous arguments and materials not previously considered by the Circuit Court. Below is a brief summary of the documents filed by Appellants with this court:

Document 1: Includes an explanation of the anticipated testimony of witnesses who did not testify at trial, some of whom were deposed, as well as alleged medical records documenting Appellants' alleged health problems that also were never introduced into evidence;

Document 2: As the title suggests, it consists of "Information [Appellants] prepared for Mr. Bannister [their trial attorney] to help him prepare our case" as well as "Quotes from Glenn Bell and Jerry Tuck's depositions." This testimony and alleged evidence was not introduced at trial;

Document 3: This document consists almost entirely of arguments not presented to the Circuit Court including inflammatory and unsubstantiated allegations by Appellants that "[t]here was a lot of negligence, senior abuse, and legal malpractice throughout our trial by Judge Cole, attorneys Bill Bannister, James Walsh and John Harjehausen." The only record attached to this document is a copy of the Verdict Form;

Document 4: Consists entirely of unsubstantiated arguments and allegations similar to those in Document 3;

Document 5: As the title suggests, it pertains to "What happened with our first attorney, Charles Hodge, and contains arguments concerning the alleged

impropriety of the attorneys and judge involved in the trial. Attached to Document 5 are numerous documents that were never admitted into evidence at trial. Accordingly, the attempted inclusion of these materials into the Record on Appeal is clearly improper;

Document 6: Contrary to this Court's Order dated July 22, 2015, this document consists of a list of all of the witnesses and evidence that the Appellants allegedly wanted to offer at trial. It does not include any testimony or evidence that actually was presented at trial;

Document 7: Consists of Appellants' Complaint, Respondent's Answer, an Order for the Substitution of Counsel for Appellants, an Order for a Civil Rule 40(j) Dismissal, a Consent Order to Restore, and the Verdict Form;

Document 8: Is a letter to the Clerk of the Court of Appeals indicating Appellants did not send the trial transcript to Respondent;

Document 9: Is a letter to the Clerk of the Court of Appeals from Appellants forwarding "an additional copy of the transcript" and asserting alleged compliance with "Rule 267(2) of the SCACR."

Document 10: Consists entirely of arguments including allegations similar to those in Document 3.

In short, none of the documents filed by Appellants purporting to consist of the Record on Appeal were ever introduced at trial or presented to the Circuit Court. Further, the Appellants have not served Respondent with a Record on Appeal which complies with SCACR 210, or which includes any materials designated by Respondent. As a result, the Respondent is unable to respond in a

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meaningful manner to Appellants' allegations and arguments on appeal. For all of these reasons, Respondent respectfully requests that Appellant's Record on Appeal be stricken and this appeal dismissed.

Dated this 25<sup>th</sup> day of August, 2015.

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



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James P. Walsh (S.C. Bar No. 15180)

John D. Harjehausen (S.C. Bar No. 76194)

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

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ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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J. Derham Cole, Circuit Court Judge

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Ray and Mary Long .....Appellants.

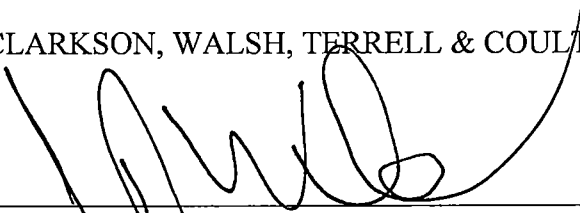
v.

Tuck and Howell, Inc.....Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent Tuck and Howell, Inc.'s Motion to Dismiss Appeal of Alternatively to Strike Appellant's Record on Appeal and Proof of Service, by mailing a copy, postage prepaid, to appellants Ray and Mary Long, at 131 Taylor Road, Greer, South Carolina, 29651, on August 26, 2015.

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



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James P. Walsh (S.C. Bar No. 15180)

John D. Harjehausen (S.C. Bar No. 76194)

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ATTORNEYS FOR RESPONDENT

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

ATTORNEYS AT LAW

August 26, 2015

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AUG 28 2015

SC Court of Appeals

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 Tuck and Howell, Inc.'s Motion to Dismiss Appeal of Alternatively to Strike Appellant's Record on Appeal 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,

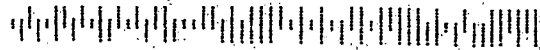
CLARKSON, WALSH, TERRELL & COULTER, P.A.

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ATTORNEYS FOR RESPONDENT

JPW/jdh

Enclosure(s)

cc: Ray and Mary Long



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

ATTORNEYS AT LAW

POST OFFICE BOX 6728 • GREENVILLE, SC 29606

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