

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 17 2016

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

J. Cordell Maddox, Jr, Circuit Court Judge

Case No. 2015-000593

Ronald J. Ferguson

Appellant,

v.

Mill Creek, LP,

Appellees.

MOTION TO ACCEPT BRIEFS OUTSIDE OF FILING DEADLINES

Ronald J. Ferguson
103 Mill Creek Rd
Piedmont, SC 29673
(864) 509-0169
Appellant pro-se

COMES NOW, Ronald J. Ferguson, appellant, and having received written notification from the Deputy Clerk of the South Carolina Court of Appeals that the final briefs were not received in a timely manner, moves of this Court for permission to serve and file the appellant's final brief and appellant's final reply brief in the above styled matter. In support thereof the movant would show unto the court the following facts:

This appeal is premised on the fact a lower court granted default judgment, followed by a third party seeking intervention to overturn the judgment against the unrelated first party– which was granted by another lower court contrary to *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991), *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

The appellate process in this matter has been substantially drawn out with transcripts taking nearly five months to obtain. Followed by an extension of time for opposing counsel to complete their initial briefs and include references to material not before the lower court.

Movant dropped off the Record on Appeal for binding and subsequent filing before going out of town on a business trip.

Shortly after service opposing counsel sent correspondence taking issue with the Record on Appeal.

The Appellant promptly responded, with copy to the Clerk, denoting that SCACR, Rule 210(c) limits the record to only items before the lower court. (Attached)

As this process was going on the Clerk sent notice the binding was not in compliance with the rules. Upon receiving the notice of defect for the binding, this movant learned the filing date provided by him regarding the original filing was incorrect and then corrected the issues raised by the Clerk through a new filing. This filing had the original date as well as the new filing date for the corrections.

At that point a lack of clarity existed as to whether the Court would again allow opposing counsel to have materials not before the lower court to be included on the Record On Appeal and

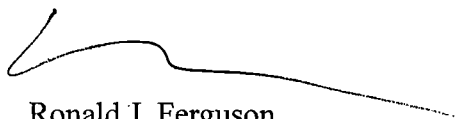
neither side submitted their final briefs as we awaited guidance from the Court.

Since the Clerk's office has provided notice that the briefs are now past due one can only surmise the Court is not going to address the issue of whether we are now going to follow the rules or opposing counsel will be allowed to have additional records not before the lower court to be added to the Record on Appeal.

In view of the foregoing the Appellant moves of this Honorable Court to grant him permission to file and serve the Appellant's Final Brief as well as the Appellant's Final Reply Brief for consideration by the Court.

Respectfully submitted,

March 17, 2016



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Piedmont, SC 29673
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FEB 10 2016

SC Court of Appeals

February 6, 2016

Rodney M. Brown, P.A.
210 S. Main Street
Fountain Inn, SC 29644

RE: Ronald J. Ferguson vs. Mill Creek, LP
2015-000593

Dear Mr. Brown:

I am in receipt of your correspondence dated February 3, 2016 which alleges material is missing from the Record on Appeal.

While I might be mistaken, there was no Order of February 13, 2015, to include in the record. My records indicate a hearing was held on February 12, 2015 and the actual order on appeal was signed on March 18, 2015. If there is a question I would make arrangements to forward such for your review by facsimile or email to speed things along?

You reference the Complaint from civil action number 2013-CP-23-1810 as a document to be provided in the record. I would direct your attention to South Carolina Rules of Appellate Procedure, Rule 210(c) which states, in part, "The Record shall not, however, include matter which was not presented to the lower court or tribunal." I am unaware from either the hearing transcript, exhibits filed that day, or other document available on February 12, 2015, that the Court viewed or accepted such exhibit for consideration. Since I am required to certify to the Court of Appeals the documents being introduced are limited to those before the lower court, perhaps you can provide a beacon to where this item being included would not be a violation?

Again, the Notice of Appeal in Case Number 2013-CP-23-01810 is not something for which I am familiar as related to this appeal. That case is actually before the U.S. District Court and, if related to this action, would prevent this appeal. The case at bar is 2013-CP-23-05102. It is not consolidated with any other pending matters nor does it involve the parties from 1810. Referring back to Rule 210(c), if you could provide some legal basis for the inclusion of such in the record I would be glad to address it.

Respectfully,


Ronald J. Ferguson

cc: South Carolina Court of Appeals

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CERTIFICATE OF SERVICE

I certify, that on this date, I served a copy of the Motion to Accept briefs Outside of Filing Deadlines, dated 03/17/2016 on Appellees' Attorney of record by

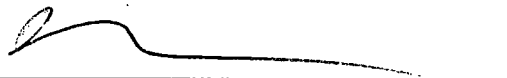
 delivering it to him/her personally; or,

 mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows; or,

 X mailing it to the address indicted by their counsel of record in the Summons as follows:

Rodney M. Brown
210 S Main St
Fountain Inn, SC 29644

This the 17 day of March, 2016.



Ronald J. Ferguson