

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Circuit Court Judge

Case No. 2015-000593

RECEIVED
APR 29 2016
SC Court of Appeals

Ronald J. Ferguson

Appellant,

v.

Mill Creek, LP,

Respondent.

APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DIRECT APPELLANT TO FILE A
PROPER, COMPLETE RECORD ON APPEAL AND ALLOW RESPONDENTS TO FILE THEIR
FINAL BRIEF AFTER A PROPER, COMPLETE RECORD ON APPEAL IS FILED

Ronald J. Ferguson, Appellant, having been informed of a Motion to Direct Appellant to File a Proper, Complete record on Appeal and Allow Respondents to File their Final Brief after a Proper, Complete Record on Appeal is Filed by counsel allegedly representing John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney (aka Michael C. Stehney, Junior), individually and as members of the Architectural Committee of Mill Creek Estates, and would proffer the following facts for the record before the Court:

FAILURE TO SERVE MILL CREEK, LP

Appellant herein takes issue with the assertion by opposing counsel that they are not required to serve Respondent, Mill Creek, LP "because the organization is no longer is in existence." Whether

Counselor Brown chooses to recognize the party is irrelevant. The South Carolina Secretary of State recognizes the party with a Certificate of Existence and allowed to conduct business within the State of South Carolina at the time the Complaint was filed in September 2013 (See Attached 1), then also acknowledged they were the lawful party to accept service. Again, at a hearing for the Default Judgment against Mill Creek, LP, in December 2014 the court found they were an active entity and directed judgment against such. A phone call to the South Carolina Secretary of State on April 22, 2016 again confirms the party is in existence and legally operating in the State (See Attached 2).

**RESPONDENT ARCHITECTURAL COMMITTEE OF MILL CREEK ESTATES
DOES NOT EXIST**

However, contrary to Brown's assertions, there is no entity known Architectural Committee of Mill Creek Estates that is recognized by the South Carolina Secretary of State in any organized or registered capacity to conduct business (See Attached 3) nor is such title recognized in the "Restrictive Covenants Mill Creek" which Brown alleges his clients self appointed themselves to dictate.

HATCHER, ET AL V. RON FERGUSON; 2013CP2301810

Appellant takes further issue with the characterization that "the Complaint in Hatcher, et al vs. Ronald J. Ferguson, Ronald E. Ferguson and Susan M. Ferguson being case number 2013-CP-23-01810" be included in the Record on Appeal. Opposing counsel did provide correspondence to the Clerk's office alleging the lack of such record. This appellant did provide a timely response – to which the Clerk or Court acknowledged receiving (See Attached 4). As evidenced in the correspondence, South Carolina Rules of Appellate Procedure limits the record to documents which were available to the lower court.

"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 the 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?" Quoting Appellant's correspondence dated February 6, 2016.

Not only was the Complaint from Civil Action Number 2013-CP-23-01810 not before the lower court, it is also does not name Ronald J. Ferguson, Ronald E. Ferguson or Susan M. Ferguson as Defendants as Brown claims. The sole defendant is "Ron Ferguson" (See Attached 5).

Moreover, as better developed in the record before the United States District Court, Ronald E. Ferguson and Susan M. Ferguson, who were out of state residents at the time 1810 was filed, have never been named in the complaint, nor served (See Attached 6), nor has there ever been an order allowing an amended complaint to name them or change the caption of such case. Appellant, Ronald J. Ferguson, was made a part of '1810' due to an order consolidating case 2013-CP-23-05908 (Ronald J. Ferguson v. Hatcher, et al) with '1810' in January 2014 (See Attached 7).

COURT ORDER DATED FEBRUARY 12, 2015

Regarding opposing counsel's assertion that Appellant failed to provide the "Court Order dated February 12, 2015" the response indicates he is not in possession of such item. While Appellant has not received such, an employee of Clerk Wickensimer's office has advised same that a Form 4 was filed on February 19, 2015 advising of a formal order to be filed. SCRAP, Rule 203(b) provides, "When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment." Appellant has knowledge of an Order dated March 18, 2015 and such is the Order on which the appeal is based and was included in the Designation of Matters and Record on Appeal.

Counselor Brown, nor the Court provided any response to Appellant's correspondence of February 6, 2016, until the Clerk's Office provided notice that the briefs are to be filed or the appeal is subject to dismissal. Accordingly, Appellant filed the Record on Appeal, consistent with Rule 210(c) of

the Rules of Appellate Procedure and did not include the Complaint from 1810, which was not part of the underlying proceeding or before the lower court, and Appellant has provided Order from the February 12, 2015 hearing – dated and signed by the lower court on March 18, 2015 and filed by the Clerk on March 23, 2015.

Opposing counsel is merely pursuing manipulative attempts to dilute the matter with baseless assertions and misleading pleadings which are not based in reality, let alone presented to the lower court, in an attempt to get away from the core item. Brown wants to argue his clients actions in 1810 are premised on the contract created by Mill Creek, LP in 1974. Since the lower court has already issued a default judgment, a court order finding that Mill Creek, LP's contract is in part or whole, invalid, affects part of his clients' ability to show standing to pursue the complaint in 1810. Thus, his impetus to mislead this Court and argue intervention. It is still a hopeless cause.

**FRIVOLOUS MOTION TO INTERVENE AND HEARING VIOLATIVE OF
PROSCRIBED STANDARDS FOR INTERVENTION**

First, the lower court entered a default judgment against Mill Creek, LP on December 16, 2014, with a hearing to be scheduled in accordance with statute to determine damages. At that point the matter is settled. Plaintiff is entitled to damages from Defendant. (A judgment is final even though the court has not yet determined costs. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988) So, the order on appeal is not interlocutory. 692 S.E.2d at 894 *Brown v. Greenwood Mills, Inc.* 366 S.C. 379, 387, 622 S.E.2d 546, 551 (Ct. App. 2005) ("An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case."))

The record supports Brown contacting Master-in-Equity Charles B. Simmons, Junior, via email on October 28, 2014 in attempt to get this specific case transferred before him (See attached 8) – though 1810 was not. So, Brown had at least forty-nine (49) days notice of this matter pending prior to the December 16, 2014 hearing. Moreover, Brown's clients were present at both a status hearing on

this matter in November 2014 and at the hearing where Mill Creek, LP was found to be in default and subject to the order. Yet, Brown nor his clients had anything to say. It was only *after* a lower court entered the order of default against Mill Creek, LP and moved to have a damages hearing that Brown suddenly decided to pursue intervention.

South Carolina courts have adopted a four-part test for determining timeliness: (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. *Davis v. Jennings*, 304 S.C. 502, 504 405 S.E.2d 601, 603 (1991). **Failure to satisfy any one of the four requirements precludes intervention.** *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

Since opposing counsel is seeking to introduce records not before the lower court on appeal, Appellant would have the Court recognize the email from Brown to Master-in-Equity Simmons (See attached) - which was not before the lower court as that judiciary wholly failed to base the motion on applicable law or recognize the December 16, 2014 Order by Judge Letitcia Verdin against Mill Creek, LP. The tardiness of Respondent's motion to intervene and order granting such is the strongest reason supporting the underlying hearing and order are violations of due process. "[T]imely application" is required for both intervention as of right and permissive intervention. *Gould*, 883 F.2d at 286. See *Houston General*, 193 F.3d at 839 ("[T]imeliness is a cardinal consideration of whether to permit intervention.") (internal quotation marks omitted). The purpose of the timeliness requirement "is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *Scardelletti v. Debarr*, 265 F.3d 195, 202-03 (4th Cir. 2001) (quoting *United States v. South Bend Community Sch. Corp.*, 710 F.2d 394, 396 (7th Cir. 1983)), rev'd on other grounds , 536 U.S. 1 (2002).

CONCLUSION

Where, South Carolina Rules of Appellate procedure, Rule 210(c) limits the Record on Appeal to items presented to the lower court, this Appellant would assert Brown's Complaint from 1810 was not before the lower court and therefore, not subject to be included in the appellate record;

Where, Brown further alleges the Order from February 12, 2015 was not included in the Designation of Matters or Record on Appeal, Appellant asserts that pursuant to SCRAP, Rule 203(b), the Formal Order from February 12, 2015 is actually dated March 18, 2015 and part of the record at Page 3; and,

Where supporting documents provided by Appellant in response to the motion clearly controvert opposing counsel's version of fact, this Appellant would submit that respondents are not entitled to the relief requested in their motion.

Respectfully submitted,



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

Piedmont, South Carolina
April 27, 2016

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence, Limited Partnership

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

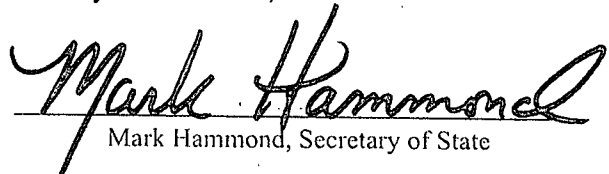
MILL CREEK,

a Limited Partnership organized under the laws of the State of South Carolina on June 27th, 1974, and doing business in South Carolina under the name of:

MILL CREEK

has, as of the 31st day of October, 2013, filed all reports due this office, paid all fees due, is in existence and authorized to do business in the State of South Carolina.

Given under my Hand and the Great Seal of the State of South Carolina this 31st day of October, 2013.


Mark Hammond, Secretary of State



MILL CREEK

*Note: This online database was last updated on 4/22/2016 3:06:52 AM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SC Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:

ADDRESS:

CITY:

STATE:

ZIP:

SECOND ADDRESS:

FILE DATE:	09/07/1973
EFFECTIVE DATE:	06/27/1974
DISSOLVED DATE:	//

Corporation History Records

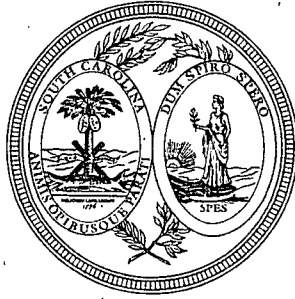
CODE	FILE DATE	COMMENT	Document
Limited Partnership	06/27/1974	LP	Film

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

2

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

The State of South Carolina



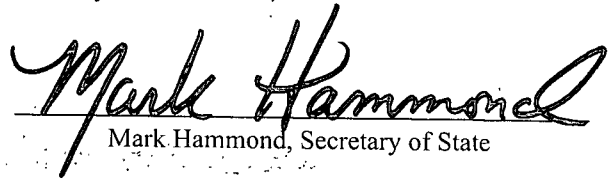
Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

At this time, this office can find no record of a corporation using the name:
Architectural Committee of Mill Creek Estates

Given under my Hand and the Great
Seal of the State of South Carolina this
31st day of October, 2013.


Mark Hammond, Secretary of State

Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673

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:

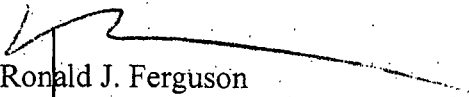
I am in receipt of your correspondence dated February 3, 2016 which alleges material is missing from the Record on Appeal.

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 the 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

RECEIVED

FEB 10 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 John D. Hatcher, Rachel Shaluly,)
 James F. Gilbert, Molly A. Miller)
 and Michael Stehney, individually)
 and as members of the)
 Architectural Committee of Mill)
 Creek Estates,)
)
 Plaintiffs,)
)
 vs.)
)
 Ron Ferguson,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

2013-CP-23-01810

COMPLAINT

2013 APR -1 A 11:4
 FILED CLERK OF COURT
 GREENVILLE DISTRICT
 PAUL B. WICKENSHER

WLL

The Plaintiffs would allege unto this Court as follows:

1. The parties are all citizens and residents of the County and State aforesaid.
2. The Plaintiffs are all long time homeowners of Mill Creek Estates and are members of the Architectural Committee appointed pursuant to the Restrictive Covenants of Mill Creek Estates.
3. The Defendant is a citizen and resident of the County and State aforesaid and is presently building a house in Mill Creek Estates.
4. There have been Restrictive Covenants filed which constitute a public record in Deed Book 1002 at Page 75 governing Mill Creek Estates.
5. The Defendant is aware of these Restrictive Covenants and submitted plans according to the Restrictive Covenants for the construction of a house.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

John D. Hatcher, Rachel Shaluly,)
James F. Gilbert, Molly A. Miller, and)
Michael Stehney, individually and as)
members of the Architectural)
Committee of Mill Creek Estates,)

FILED CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENS
M

JUDICIAL CIRCUIT

2013 APR 11 A 9:03

Plaintiff(s))

vs.)

AFFIDAVIT OF SERVICE

Ron Ferguson)

FILE NO: 2013-CP-23-01810

Defendant(s).)

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn

says that (s)he served the C. Action Coversheet, Complaint, and Summons for Relief in this action
(Describe document(s) served)

on Ron Ferguson, by delivery to
(Name of party served)

Ron Ferguson personally;
(Name of party served)

_____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

_____ the _____ of _____
(Name of person served) (Title) (Name of corporate party served)

and leaving with (him) (her) a copy at 103 Mill Creek Road
(Street address)

in Piedmont Greenville County, South Carolina,
(City or Town) County

on April 2, 2013 at 6:01 o'clock PM

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Unable to locate and serve the above process on the defendant after diligent efforts to do so.

The process is returned unexecuted.

Sworn to and Subscribed before me
this 5 day of April, 2013

Shirley A. Coulter
Notary Public for South Carolina

Paul B. Wickens
Signature of Deponent

My Commission expires May 23, 2016

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2301810

John D Hatcher
 James F Gilbert
 Michael Stehney

Rachel Shaluly
 Molly A Miller
 Architectural Committee Of
 Mill Creek Estates

Ron Ferguson

FILED-CLERK
 GREENVILLE COUNTY S.C.
 PAUL B. WICK
 2014 FEB 4 PM 4:11
 DEFENDANT(S)

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Defendant filed a petition for rehearing with the Court of Appeals on January 24, 2014. Should the Court of Appeals deny the request, the Defendant has 15 days from date of denial in order to comply with Judge Hayes' order and to provide everything he ordered. Additionally, the Plaintiffs also have 15 days from date of denial to answer the Defendant's discovery requests. The Motion for Sanctions is DENIED.

Case number 2013-CP-23-05908 has been joined and consolidated with case number 2013-CP-23-01810 with case number 2013-CP-23-01810 being the surviving case number. Therefore, Defendant's Motion for Intervention and Joinder and Ronald J Ferguson's Motion to Amend the Complaint are resolved. *The pleadings of docket No 2013-CP-23-05908 are merged into docket No 2013-CP-23-01810. ul*

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

RCVD VIA USPS

10/30/14

Ronald J. Ferguson vs. Mill Creek, LP; 2013-CP-23-05102

Monday, October 27, 2014 9:52 AM

From: "Annette Butts" <aprdaisy36@yahoo.com>

To: csimmons@greenvillecounty.org

Cc: jdh_1@att.net

Judge Simmons-

I just wanted to let you know that there is another Ronald Ferguson case that is pending in Greenville County Common Pleas Court. I am not sure there is an actual Defendant or if it has ever been served. However, it was found when one of my clients were looking at the docket. The case is entitled Ronald J. Ferguson vs. Mill Creek, LP; 2013-CP-23-05102. It is supposedly on the trial roster for the week of November 3rd.

I would ask that this case be joined with the rest of the cases in your Court so you can have all the cases and the total picture of what Mr. Ferguson is attempting to do.

Therefore, I request that this case be joined with the other cases with jurisdiction being in your Court.

I am providing Mr. Ferguson with a copy of this letter and ask that he provide whatever information he has about this case to you.

Your time and consideration is appreciated.

Rodney M. Brown
210 S. Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

8

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Circuit Court Judge

Case No. 2015-000593

Ronald J. Ferguson

RECEIVED

Appellant,
APR 29 2016

SC Court of Appeals

v.

Mill Creek, LP,

Respondents.

CERTIFICATE OF SERVICE

I certify, that on this date, I served a copy of the Reply Brief of Appellant, dated 4/27/2015 on Respondents' 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 27th day of April, 2016.



Ronald J. Ferguson

Ronald Ferguson
103 Mill Creek Road
Piedmont, SC 29673-8622

COLUMBIA SC 292

THU 28 APR 2016 AM



U.S. POSTAGE
PAID
SIMPSONVILLE SC
29681
APR 27 16
AMOUNT
\$3.46
R2305K137364-04

RECEIVED

APR 29 2016

SC Court of Appeals

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

