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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Circuit Court Judge

Case No.: 2013-CP-10-6019

Jack Powell,Appellant,

v.

Knology of Charleston, Inc.,Respondent.

**MOTION TO STRIKE PORTIONS OF
APPELLANT’S INITIAL BRIEF AND ATTACHMENTS
AND FOR SANCTIONS**

Pursuant to Rule 240, SCACR, Respondent Knology of Charleston, Inc. moves to strike portions of Appellant’s Initial Brief and attachments thereto. Respondent also moves for sanctions pursuant to Rule 267(b), SCACR.

First, Appellant substantively relies on portions of hearing transcripts that are not part of the record. The transcripts identified below are transcripts of hearings in other cases Appellant brought against other defendants but are not part of the above-captioned case. Specifically, Appellant refers to alleged statements made by Judge Dennis in an “MSJ hearing on 7-30-14” (Initial Br. p. 10, ¶ 9; p. 13, ¶ 17; p. 15, ¶ 21); however, the transcript of the July 30, 2014 hearing in this case on that date does not reveal any such statement. (Att. A). In addition, Appellant refers to a statement Judge Dennis allegedly made in another, unrelated case. (Initial Br. p. 14, ¶ 18; p. 24, ¶ 42). Whatever

statements Judge Dennis may or may not have made to Appellant in hearings in other cases Appellant had pending against other defendants has no relevance whatsoever to the record in this case. Appellant's references to and assertions about statements made in other hearings, as identified herein, should be stricken from Appellant's Initial Brief.

Second, Appellant relies on and has attached materials to his Initial Brief that are not part of the record below. Specifically, Exhibits A, D and F were never entered into the record below. Respondent cannot discern whether Exhibits B and C were part of the record below because those two exhibits were omitted from the copy of Appellant's Initial Brief that was served on Respondent. Appellant refers to these non-Record attachments on page 7, ¶ 2; 40 of his Initial Brief. Because these materials were never presented to the Circuit Court, all references to Exhibits A, D, F and, unless they were submitted to the Circuit Court, Exhibits B and C, should be stricken from his Initial Brief. In addition, because it is improper to attach exhibits or record material to an initial brief, Rules 208(b) and 211(b), SCACR, Exhibits A – F should be removed from his Initial Brief.

Third, Appellant wrongfully accuses defense counsel and Judge Dennis of improper conduct. In particular, Appellant accuses defense counsel of:

- “improper misconduct, misrepresentation, [and] fraud” (Initial Br. pp. 11-12, ¶ 13);
- “improper discovery tactic” (Initial Br. p. 16, ¶ 24);
- “intentional failure to return the discovery” (Initial Br. p. 18 ¶ 29);
- “misrepresentation and misconduct” (Initial Br. p. 20, ¶ 33);
- submitting information to the Court in “bad faith” and employing “intentional fraudulent tactic” (Initial Br. p. 21, ¶ 34);
- lying to the court, “misconduct & fraudulent tactic” (Initial Br. p. 26, ¶ 47);

- “intentionally submitted an untruth by changing the date during their response” (Initial Br. p. 27, ¶ 49);
- Improper and “fraudulent tactic of misrepresentation and misconduct” (Initial Br. p. 28, ¶ 52);
- “fraud” (Initial Br. p. 36, ¶ 65);
- “misconduct and fraudulent tactics” (Initial Br. p. 38);
- “intentionally submitted an untruth” (Initial Br. p. 39);
- Exercising “misconduct, misrepresentation” and withholding “relevant evidence from the court” (Initial Br. p. 40); and,
- “fraud, false statements, ... misconduct, misrepresentation ...” (Initial Br. p. 41).

In addition, Appellant repeatedly accuses Judge Dennis of bias, contempt, badgering and unfair treatment, (Initial Br. pp. 4, 15, 17, 18, 34, 35, 38), and of making “a continuous, aggressive & personal attack on the Pro se Plaintiff by insulting him.” (Initial Br. p. 10, ¶ 9; p. 13, ¶ 17). “Abusive language toward opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by *Rule 11*.” Coats v. Pierre, 890 F.2d 728, 734 (5th Cir. 1989). Rule 11(a), SCRCF, provides, in pertinent part, that every pleading must contain the signature of an attorney or pro se litigant, which “constitutes a certificate by him that he has read the pleading ...; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.” Rule 267(b), SCACR, is substantively the same. Appellant’s unsubstantiated and unwarranted attacks on defense counsel and Judge Dennis should be removed from his Initial Brief, and Appellant should be sanctioned for leveling such unsupported and unjustified attacks on the professional standing of opposing counsel and the bench.

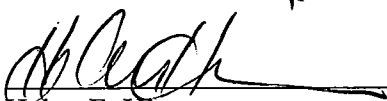
Finally, Respondent requests that the briefing schedule in this appeal be suspended while the Court considers this Motion.

CONCLUSION

For all the reasons stated herein, Respondent moves this Court to strike the portions of Appellant's Initial Brief and attachments thereto as identified herein. In addition, this Court should strike the unsubstantiated and unwarranted attacks on defense counsel and Judge Dennis, and sanction Appellant pursuant to Rule 267(b), SCACR. Respondent also requests that the briefing schedule be stayed while the Court considers this Motion

McANGUS GOUDELOCK & COURIE, LLC

October 31, 2016



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S.C. Bar No.: 76124
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P.O. Box 650007
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Attachment A

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

2013-CP-10-6019

3

4 JACK POWELL

) TRANSCRIPT OF RECORD

5 VS.

6 KNOLOGY OF CHARLESTON, INC.

) JULY 30, 2014
) CHARLESTON, SC

7

8

9 B E F O R E:

10 HONORABLE R. MARKLEY DENNIS, JR.

11

A P P E A R A N C E S:

12

JACK POWELL
Appearing Pro Se

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14 BENJAMIN DAVIS, ESQUIRE
Attorney for Knology

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Ruth L. Mott, RPR, CRR
Certified Court Reporter

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1 THE COURT: All right. According to the listing, Mr.
2 Jones, not to bump you back, but Mr. Davis is actually listed
3 ahead of you on this matter so -- and thank you, Mr. Powell,
4 as well as Mr. Davis, for allowing me to go through the
5 docket and get that resolved because I knew these were going
6 to take a little bit longer.

7 MR. DAVIS: Certainly, Your Honor.

8 THE COURT: But I appreciate your patience with the
9 Court. Okay. Let me get the file first.

10 MR. DAVIS: Your Honor, if I may, I don't want to
11 interrupt you while you're reading, but maybe to cut out half
12 of your work, Mr. Powell and I did reach an agreement as to
13 his motion to compel, request for production. He has agreed
14 to submit some revised requests for production as to a couple
15 of his requests and make them a little more specific.

16 THE COURT: All right. So why don't we just say this,
17 the present motion to compel is withdrawn without prejudice,
18 and then you can submit another one, Mr. Powell.

19 MR. POWELL: Okay.

20 THE COURT: Okay?

21 MR. POWELL: Yes, sir.

22 THE COURT: That way that takes that off the table.
23 What's the next motion?

24 MR. DAVIS: Your Honor, may it please the Court, I
25 believe that what's left now, at least in the Knology case,

1 is Mr. Powell's motion for -- motion to amend with regards to
2 the requests for admission we responded with.

3 THE COURT: Is it similar to what you answered, denying,
4 basically asserting that --

5 MR. DAVIS: Yes, Your Honor, and so he filed a motion to
6 compel, calling a number of the answers evasive, and so I
7 assume he's asked for a more definitive answer on that.

8 THE COURT: Which ones do you take issue with? I have
9 that before me.

10 MR. POWELL: Okay. On No. 1, where I asked him to admit
11 the cable lines were connected to the commercial building and
12 running through the front yard, up across the pedestrian
13 runway.

14 THE COURT: Yes.

15 MR. POWELL: Of course they admit that the lines were
16 connected to the building, but they deny that they have
17 insufficient, I guess information, to answer whether it was
18 running through the front yard.

19 THE COURT: Front yard of who?

20 MR. POWELL: Of the property at 930 Folly Road.

21 THE COURT: Is it running through -- the property that
22 you're talking about, is that property they own or someone
23 else owns?

24 MR. POWELL: No, it's their account. It's someone
25 else's. I've got pictures of it.

1 THE COURT: So it's not their property.

2 MR. POWELL: Right. It's one of their accounts.

3 THE COURT: I'm not going to require them to be any more
4 specific than that. They don't know.

5 MR. POWELL: Well, actually, they do.

6 THE COURT: No, they don't. Mr. Powell, as I told you,
7 one of the things you have to understand, there's a world of
8 difference between a request to admit and what you're doing
9 from your knowledge and then testimony in a deposition. You
10 can take their depositions. You can ask them any questions
11 you want. You can ask them, how did the line get there; did
12 they service the lines. But right now that's a sufficient
13 answer, and you're entitled to explore that if it becomes
14 necessary, should you choose to, by taking depositions. But
15 that's another matter. That doesn't have anything to do with
16 requests to admit, so that one I would deem to be a
17 sufficient answer. What's the next one?

18 MR. POWELL: If Knology had been contacted about the two
19 unburied cable lines, these lines would have been properly
20 buried by Knology or subcontractor, and they denied.

21 THE COURT: That's not a question. That's a statement
22 that you're making that you're asking them to agree to.
23 They're not required to do that.

24 MR. POWELL: I said if they had been contacted.

25 THE COURT: What's your position there, Mr. Davis?

1 MR. DAVIS: Sorry, which one are we on?

2 MR. POWELL: No. 4.

3 THE COURT: Basically said, if you had been contacted,
4 would you have done something to correct the problem.

5 MR. DAVIS: Our response to No. 4 was denied. We
6 reserved the right to supplement, but we denied based on the
7 idea that --

8 THE COURT: He's asking what would be your procedure if
9 somebody called you, would you have done something, is the
10 way he's read it. What's the number?

11 MR. DAVIS: Number --

12 THE COURT: Excuse me, no. You didn't phrase it that
13 way. I agree with you. I'm reading, and I quote: If
14 Knology had been contacted about a two-inch unburied cable --
15 it's not what would you have done -- these lines would have
16 been properly buried by Knology or subcontractor. That's
17 just a statement that you're making that's argumentive, and
18 I'm not going to require them to do that.

19 Again, Mr. Powell, I appreciate this, but that's not
20 what they're there to do. They're there to answer data, not
21 to agree with your position or disagree or challenge your
22 position. That's what the court proceeding's for, okay?

23 MR. POWELL: Yes, sir.

24 THE COURT: All right. What else?

25 MR. POWELL: No. 7, at least one of these unburied cable

1 lines was lying on top of the ground for at least two months.

2 THE COURT: And they denied that.

3 MR. POWELL: Right.

4 THE COURT: Okay. That's a fair response. Nothing
5 wrong with that. Now, you can prove otherwise.

6 MR. POWELL: They've already proved otherwise in their
7 own statement on 13.

8 THE COURT: Again, Mr. Powell, they've denied that. If
9 they come into Court and you prove that they were there and
10 they knew it, then you impeach them using this admission.
11 That's what this is for. I don't think you understand the
12 purpose that these are used. Thank you, sir. It's an
13 appropriate answer. They denied it.

14 MR. POWELL: Okay. Yes, sir. Admit the unburied cable
15 lines running through the front yard of one of your customers
16 and across the pedestrian right-of-way could be hazardous to
17 their customers and pedestrians.

18 THE COURT: They don't have to -- did they deny that?
19 They don't have to admit it.

20 MR. POWELL: They said they'd made a reasonable inquiry.

21 MR. DAVIS: I'm sorry, which number?

22 THE COURT: No. 8.

23 MR. DAVIS: No. 8. I'm sorry. Your Honor, my
24 understanding is that was -- by responding that way we
25 effectively denied that.

1 THE COURT: I would expect you to.

2 Mr. Powell, these are just -- their answers, based on
3 the phraseology and based on what you're submitting, are the
4 reasonable response to your submissions, so I find those
5 would be reasonable.

6 MR. POWELL: Your Honor, No. 12 is concerning local
7 laws.

8 THE COURT: They're not required to make statements of
9 law, sir. They don't have to agree what local laws are.
10 That's the Court's position. What they say about it doesn't
11 have a thing in the world to do with it. Just like the
12 cable. If they said it's not hazardous, that's what we will
13 determine. That's what the lawsuit is.

14 MR. POWELL: Yes, sir.

15 THE COURT: Whether they think it's hazardous or not is
16 really not that significant, okay?

17 MR. POWELL: Yes, sir.

18 THE COURT: All right. So what else?

19 MR. POWELL: When Knology or subcontractor leaves a
20 cable line unburied running through the front yard of one of
21 your customers across pedestrian right-of-way, Knology is
22 responsible.

23 THE COURT: That's a statement by you. That's not a
24 question. Their response is appropriate, whatever it is.
25 That's just an improper statement. It's just you making an

1 argument.

2 MR. POWELL: It's the same thing in my complaint.

3 THE COURT: Sir, I hate to tell you this, but you really
4 and truly are going to have a lot of problems when you try
5 this case because that's totally improper, so thank you, sir.
6 You can say that to your jury. You can argue that, but it's
7 based on proof, not what they say, okay? And they don't have
8 to admit that. They don't have to admit that they hurt you.
9 They may have. They don't have to admit that. You prove it,
10 okay? That's what lawsuits are about. That's what it's all
11 about.

12 I practiced law for 21 years, and I had more clients
13 come in, and they got so bent out of shape about the
14 pleadings. How could they say that? And I said, wait until
15 you see yours, and wait until they see that because it's the
16 complete opposite. They're called football -- I call them
17 the sidelines of a football field. One pleading on this
18 side, one pleading on that; the ball game's played in
19 between, and that's exactly -- all it does is frame the
20 issues. You have to prove your case.

21 Thank you, sir. Okay. What other motion do we have in
22 Knology?

23 MR. DAVIS: Your Honor, Knology does not have any
24 motions.

25 THE COURT: Any others that we haven't addressed?

1 MR. DAVIS: I believe there were only two with regards
2 to the Knology case.

3 THE COURT: Thank you, sir. All right. Now Mr. Jones
4 is back.

5 MR. DAVIS: Thank you, Your Honor.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF CHARLESTON

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 July 11, 2016

16

17 *Ruth L. Mott, RPR, CRR*

18 Certified Court Reporter

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Circuit Court Judge

Case No.: 2013-CP-10-6019

Jack Powell,Appellant,

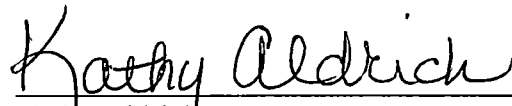
v.

Knology of Charleston, Inc.,Respondent.

PROOF OF SERVICE

I certify that on the 31st day of October 2016, I served the Respondent's **Motion to Strike Portions of Appellant's Initial Brief and Attachments and for Sanctions** on Jack Powell, *pro se*, by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Jack Powell, *pro se*
1402 Camp Road Unit 8-A
Charleston, SC 29412



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*Attorneys for Respondent Knology of
Charleston, Inc.*

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

October 31, 2016

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Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Jack Powell v. Knology of Charleston Inc.
Civil Action No.: 2013-CP-10-6019 (Charleston)
Date of Incident: June 21, 2012
Carrier Claim No.: YVC KL 99682
MGC File No.: 2071.13109
Appellate Tracking No.: 2016-001035

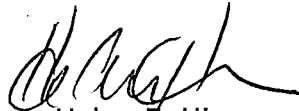
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's Motion to Strike Portions of Appellant's Initial Brief and Attachments and for Sanctions, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Jack Powell, *pro se*

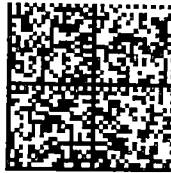
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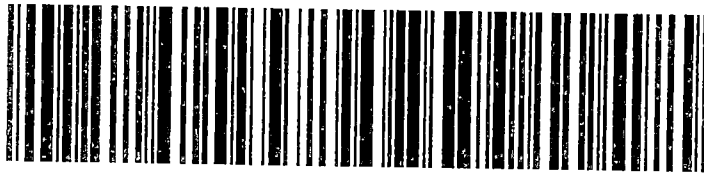
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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