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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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MAR 02 2017

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Case No.: 2015-002255

Tommy J. BellamyAppellant

vs.

Horry County AssessorRespondent

**MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY
WITH THE SOUTH CAROLINA APPELLATE COURT RULES**

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Attorneys for Respondent

February 28, 2017

The Respondent, Horry County Assessor, respectfully moves the Court for an order dismissing Appellant's appeal in this matter for failure to comply with the South Carolina Appellate Court Rules ("SCACR"). Appellant has failed to include items designated by Respondent's counsel for inclusion in the Record on Appeal. Additionally, Appellant's Second Amended Record on Appeal does not contain any significant change; it contains the same documents, page by page, as those contained in his Amended Record on Appeal. The grounds for this motion are set forth in further detail below.

As background, Respondent served its Designation of Matter on the *pro se* Appellant on May 6, 2016. Appellant filed with the Court a Record on Appeal which contained only seven of the sixteen items designated by Respondent in its Designation of Matter. Of the seven items designated by Respondent that Appellant included in the May 6, 2016, Record, three items were incomplete in that they did not contain all of the pages and/or the attachments of the designated documents. Accordingly, on May 19, 2016, Respondent Horry County filed a motion requesting an extension of time to file its brief. Respondent's motion and letter to the Court provided a list of the documents which were either incomplete or omitted from the Record.

On June 7, 2016, Respondent's counsel received a copy of the Final Brief of Appellant with an undated letter to Jenny Abbott Kitchings, Clerk for the South Carolina Court of Appeals, in which Appellant attempted to correct some of the deficiencies in the Record on Appeal by placing his exhibits in the "Final Brief," with a request to the Clerk to "Please add to Record on Appeal in the perspective place." Appellant failed to comply with Rule 211(b), SCACR, in that Appellant revised his brief to include exhibits within its Final Brief, and failed to file a corrected Record on Appeal.

On June 14, 2016, Respondent's counsel received an envelope in the mail from Appellant

containing only the Record on Appeal title page and a Certificate of Counsel dated June 11, 2016; a corrected Record on Appeal was not received. On June 16, 2016, Respondent filed a motion requesting the Court dismiss the matter, or in the alternative, order Appellant to correct the deficiencies in the Record on Appeal. Respondent's motion provided a detailed list of items that were either incomplete or remained omitted from the Record on Appeal.

Appellant filed an Amended Record on Appeal with the Court on July 27, 2016. After reviewing the Amended Record on Appeal, Respondent's counsel furnished the Court with a letter, dated July 28, 2016, giving a detailed description of documents which were still not included or incomplete in the Amended Record on Appeal. A copy of this letter was mailed to the Appellant.

On August 23, 2016, Appellant filed a Motion to Substitute Respondent's Exhibit Number Two Page 39 and Motion to Approve Amended Record on File Under Rule 240, SCACR with the Court. In Appellant's Motion, and his two letters to the Court filed August 23, 2016, and August 24, 2016, Appellant asked the Court to make the actual substitution to the Record on Appeal; an amended Record on Appeal was not submitted.

Due to the fact that the Record on Appeal was not adequately amended to include the missing documents, on August 24, 2016, Respondent filed another motion requesting an extension of time to file its brief. In its motion, Respondent listed each of the documents at issue and provided an explanation of each item. On August 31, 2016, Appellant filed his Response in Opposition to Respondent's Second Motion for Extension of Time to File Final Brief and his Second Motion to Substitute Respondent's Exhibit on Amended Record on Appeal with the Court. With this Motion, Appellant attached three documents listed in Respondent's Designation of Matter which he had failed to include in the Record on Appeal. Appellant again requested

that this Court make the substitution and replace these documents in the actual Record on Appeal; Appellant did not provide an Amended Record on Appeal.

On October 25, 2016, the Court issued its Order granting Appellant's motion to substitute and amend the Record on Appeal. In the Order, the Court granted Appellant ten days in which to serve and file an amended record on appeal, and further stated, that the amended record was to include "...all pages..." of two specific documents which were incomplete in the previous Amended Record on Appeal. Appellant failed to serve and file an amended record on appeal and the Court issued an Order dismissing the matter on November 29, 2016.

Appellant then filed a letter with the Court on December 8, 2016, requesting a rehearing. The Court's Order, filed February 9, 2017, instructed Appellant to file a Second Amended Record on Appeal "that includes the correct and full matters designated by both parties."

Appellant's Second Amended Record on Appeal, received on February 21, 2017, however, does not include: (1) the three additional documents he attached to his Second Motion for Extension of Time filed with the Court on August 31, 2016; or, (2) complete copies of the two documents specifically named in the Court's Order filed October 25, 2016¹. Additionally, the Second Amended Record on Appeal is almost identical to the Amended Record on Appeal filed July 27, 2016 (which was deficient as noted above), the only difference being the Certificate of Appellant found on page 78 of both of the Records. The documents included in the Second Amended Record on Appeal are identical, page by page, to those documents included in the Amended Record on Appeal, and the ordered changes were not made.² Accordingly, Appellant has failed to correct the Amended Record on Appeal in accordance with Rule 210(c)

¹ The letter from Dana B. Fogner (Horry County Assistant Assessor) to Tommy Bellamy dated October 8, 2014, and the letter from Tommy Bellamy, BC Fund, LLC, to Horry County Assessor's Office dated March 3, 2010.

² The Amended Record on Appeal contains 79 pages; the Second Amended Record on Appeal also contains the same 79 pages; no additional documents have been included or supplemented in the Record.

in that Appellant, after repeated requests and opportunities, has failed to include all of the items omitted from the Respondent's Designation of Matter and failed to supplement the incomplete items as ordered by the Court.

As noted in Respondent's previous motion, Rule 210(c), SCACR, provides: "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267." It is clear from these filings that Appellant has, again, failed to comply with the South Carolina Appellate Court Rules.

Rule 210, SCACR, is unequivocal in its requirement that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267 [SCACR]. Moreover, it is well established that "[a] *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9 n.5 (2003).³ Moreover, "the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794 (1992).

In this matter, Appellant has failed to include all matters listed in the Designations of Matter. Further, in the Court's Order filed February 9, 2017, the Court informed the Appellant that the Court is unable to place substitutions in the Record and noted that "...Appellant is required to make the required substations himself..." Appellant, although provided with notice

³ In a letter of November 4, 2015, the Court advised the Respondent of the requirement that all briefs filed with the Court must comply with Rule 267, SCACR, and advised him of the website upon which he could locate the information online.

of the governing SCACR requirements, has repeatedly failed to comply with the requirements of the Rules. Appellant has repeatedly failed to include the matter designated by Respondent, a repeated violation of Rule 210(c). Rule 210(g) requires that "Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials."

Based on the above, Respondent Horry County Assessor respectfully requests the Court to dismiss the appeal.

Respectfully submitted,



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Attorneys for Respondent

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APPEAL FROM THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC Court of Appeals

Honorable H. W. Funderburk, Jr., Administrative Law Judge

Docket No.: 15-ALJ-17-0462-CC

Tommy J. Bellamy.....Appellant

vs.

Horry County Assessor.....Respondent

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal for Failure to Comply with the South Carolina Appellate Court Rules by depositing a copy of it in the United States mail, postage prepaid, on February 28, 2017, addressed to the *pro se* Appellant as follows:

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River, South Carolina 29566

And a copy served on:

Arrigo P. Carotti, Esquire
Horry County Attorney
Post Office Box 1236
Conway, South Carolina 29528

February 28, 2017

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February 28, 2017

Via Fax Transmission and U.S. Mail

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

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SC Court of Appeals

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Ms. Kitchings:

Our firm represents the Horry County Assessor in the above-referenced matter. Please find enclosed for filing the original and seven (7) copies of Respondent's Motion to Dismiss Appeal for Failure to Comply with the South Carolina Appellate Court Rules. Also enclosed is our filing fee in the amount of \$25.00.

Please do not hesitate to contact our office if you have any questions.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



Emma Ruth Brittain

ERB/kwn
Enclosures

cc: Mr. Tommy J. Bellamy
Arrigo P. Carotti, Esquire, Horry County Attorney



UNITED STATES POSTAGE



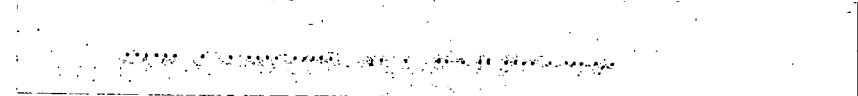
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The Honorable Jenny Abbott Kitchings
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