

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

MAY 17 2017

SC Court of Appeals

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

Tommy J. BellamyAppellant

vs.

Horry County Assessor.....Respondent

**MOTION TO DISMISS THE APPEAL AND DISMISS APPELLANT'S
PETITION TO REINSTATE THE APPEAL**

Emma Ruth Brittain, Esquire
S.C. Bar No. 5298
THOMAS & BRITTAIN, P.A.
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Attorneys for Respondent

May 17, 2017

The Respondent, Horry County Assessor, respectfully moves the Court for an order dismissing Appellant's appeal and Appellant's petition to reinstate the appeal in this matter for failure to comply with the South Carolina Appellate Court Rules ("SCACR"). Appellant has again, failed to include items designated by Respondent's counsel for inclusion in the Record on Appeal.¹ Additionally, the Court issued an Order filed April 27, 2017, ordering the Appellant to "...serve and file a supplemental record on appeal that includes the following documents:

- (1) Notice of Intent to Appeal and Request for Contested Case Hearing with Administrative Law Judge;
- (2) Request for Refund from Tommy J. Bellamy Submitted March 20, 2015;
- (3) Deed dated February 10, 2010, recorded March 4, 2010, in Deed Book 3448, Page 3341;
- (4) Letter from Dana B. Fogner to Tommy Bellamy dated October 8, 2014; and
- (5) Letter from Tommy Bellamy to Horry County Assessor's Office dated March 3, 2010."

Appellant has failed to comply with the Court's Order in the particulars described below. On May 8, 2017, the Supplemental Record on Appeal was hand-delivered to counsel for the Respondent. A comparison of the Supplemental Record on Appeal with the Respondent's Designation of Matter dated May 6, 2016, and the Court's Order dated April 27, 2017, reveals that the following documents are not included in the Amended Record on Appeal:

- (1) Request for Refund from Tommy J. Bellamy Submitted March 20, 2015; and

¹ Respondent filed its first Motion to Dismiss Appeal for Failure to Comply with the South Carolina Appellate Court Rules on June 16, 2016, noting that the Record on Appeal was incomplete and did not contain all of the items designated by Respondent in its Designation of Matter. A second Motion to Dismiss Appeal for Failure to Comply with the South Carolina Appellate Court Rules was filed on February 28, 2017, noting Appellant's Second Amended Record on Appeal still did not include documents noted in the Respondent's Designation of Matter and it was almost identical to the original incomplete Record on Appeal.

(2) The letter from Dana B. Fogner (Horry County Assistant Assessor) to Tommy Bellamy dated October 8, 2014, is incomplete. The final page, which contains Horry County's findings of Law, Facts and Conclusion, is not included in the Supplemental Record on Appeal.

Appellant has again failed to include all matters listed in the Court's Order and the Designations of Matter. 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." A review of Appellant's most recent filing reveals that he has, once again, failed to comply with the South Carolina Appellate Court Rules as set forth above.

In summary, although provided with notice of the governing SCACR requirements, Appellant has repeatedly failed to comply with the requirements of the Rules in that he has 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 deny the Appellant's petition to reinstate the appeal and dismiss the appeal.

Respectfully submitted,



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Attorneys for Respondent

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MAY 17 2017

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

SC Court of Appeals

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 Motion to Dismiss the Appeal and Dismiss Appellant's
Petition to Reinstate the Appeal by depositing a copy of it in the United States mail, postage
prepaid, on May 17, 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



Kimberly W. Nobles

Thomas & Britain, P.A.

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May 17, 2017

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SC Court of Appeals

Fax Cover Sheet**From the Office of Emma Ruth Brittain, Esquire**

DATE: May 17, 2017

TO: Honorable Jenny Abbott Kitchings
Clerk for the S.C. Court of Appeals

FAX: (803) 734-1839

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

Pages: 7 (including cover sheet)

MESSAGE:

Attached please find the Respondent's Motion to Dismiss the Appeal and Dismiss Appellant's Petition to Reinstate the Appeal and the Proof of Service. The original and the filing fee are being placed in the mail to you today.

The information contained in this facsimile message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Thomas & Brittain, P.A.

Attorneys at Law

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EMMA RUTH BRITTAIN*
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Mailing Address:
Post Office Box 1290
Myrtle Beach, SC 29578

May 17, 2017

Via Fax Transmission and U.S. MailThe Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211**RECEIVED**

MAY 17 2017

SC Court of Appeals

Rc: 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 the Motion to Dismiss the Appeal and Dismiss Appellant's Petition to Reinstate the Appeal. Also enclosed is our check in the amount of \$25.00 for the filing fee.

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