

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

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AUG 22 2018

SC Court of Appeals

Case No.: 2009-CP-26-620
Appellate Case No.: 2016-001075

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation Plaintiffs

v.

Arthur Wayne Vereen , Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, Defendants

And

Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc. and 29th Place Developers, Inc., Third-Party Plaintiffs

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually Third-Party Defendants

Of Whom Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust and 29th Place Developers, Inc. Appellants

and

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually Respondents.

**INITIAL BRIEF OF RESPONDENTS/THIRD-
PARTY DEFENDANTS E. SMITH AND SONS
CONSTRUCTION, LLC, EES CONSTRUCTION
AND CONSULTING, INC. AND ELLIS E.
SMITH, INDIVIDUALLY**

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STATEMENT OF THE CASE

Respondents/Third-Party Defendants E. Smith and Sons Construction, LLC (“E. Smith and Sons”), EES Construction and Consulting, Inc. (“EES”)¹ and Ellis E. Smith (“Smith”) incorporate by reference the Statement of the Case contained in the separate brief of the remaining Respondents.

ARGUMENT

Appellants Statement of the Case (Appellants Brief, pp. 1-4) makes no mention of the pleading filed by Appellants/Third-Party Plaintiffs Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc. and 29th Place Developers, Inc. on March 13, 2009 (R. pp. ____) asserting multiple claims against these Respondents/Third-Party Defendants. It likewise makes no mention of the Reply to these claims filed August 26, 2009 by the Respondents/Third-Party Defendants, (R. pp. ____).

The claims asserted by Appellants/Third-Party Plaintiffs against these Respondents/ Third-Party Defendants are as follows:

(1) A claim that Smith should account to Appellants/Third-Party Plaintiffs for “... all outstanding funds, liabilities, misappropriated opportunities or assets, materials or equipment, or monies inequitably retained by Smith or E. Smith and Sons, or EES.” (R. p. ____).

(2) An unrelated claim by 29th Place Developers, Inc. (a Vereen-owned entity) against Smith for the alleged breach of a land sale contract; and

¹ E. Smith and Sons and EES are entities owned by Smith.

(3) An unrelated claim by Appellants Vereen and Arthur Vereen Construction, Inc. against Smith for the alleged breach of an agreement to pay Appellants Vereen and Arthur Vereen Construction Company, Inc. (a Vereen-owned entity) for use of a contractor's license.

Judge Howe's Order filed March 24, 2015 granting judgment against the Appellants specifically provided that "[t]he Counterclaims of the Defendants and Third-Party complaints of the Third-Party Plaintiffs are hereby dismissed with prejudice." (Order of Judge Howe filed March 24, 2015, R. p. ____).

Appellants Brief makes no assignment of error specific to Judge Howe's dismissal of the counterclaims or the Third-Party complaints. Neither do any of Appellants stated Issues on Appeal (Brief of Appellants, p. iv) appear to involve the claims made against these Respondents/Third-Party Defendants. Rule 208(b)(B), SCACR, require a Statement of Issues on Appeal to be concise and direct as to said issues. Moreover, Appellants failure even to mention in its Statement of the Case the March 13, 2009 pleading by Appellants/Third-Party Plaintiffs asserting claims against these Respondents/Third-Party Defendants (R. p. ____) lends further support to the position that these claims are not a subject of this Appeal. Rule 208(b)(C) SCACR, requires the Appellants' Statement of the Case to contain, *inter alia*, "the nature of the action or matter" and "the nature of the defense or of the response."


To the extent any issue raised on appeal by Appellants may be deemed to relate to or involve these Respondents/Third-Party Defendants, the argument made by the remaining Respondents in their separate brief is incorporated by reference.

CONCLUSION

These Respondents/Third-Party Defendants respectfully submit the claims made against them by the Appellant/Third-Party Plaintiffs in their pleading filed March 13, 2009 (R. p. ___) are not issues under appeal and they should be dismissed as parties to the Appeal.

Respectfully submitted,

August 22, 2018



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Of Whom Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust and 29th Place Developers, Inc. Appellants

And

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually Respondents.

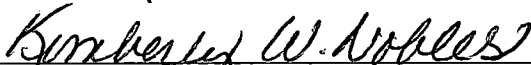
**RESPONDENTS/THIRD-PARTY DEFENDANTS
E. SMITH AND SONS CONSTRUCTION, LLC,
EES CONSTRUCTION AND CONSULTING, INC.
AND ELLIS E. SMITH, INDIVIDUALLY'S
PROOF OF SERVICE**

I, Kimberly W. Nobles, an employee of Thomas & Brittain, P.A., certify that I have served all counsel of record with a copy of the Initial Brief of Respondents/Third-Party Defendants E Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually in the above-referenced matter by depositing a copy in the United States Mail, first class postage pre-paid on August 22, 2018.

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VIA HAND DELIVERY AND FAX TRANSMISSION

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

Re: Appellate Case No.: 2016-001075
Ellis Smith v. Arthur Vereen, et al.

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Dear Ms. Kitchings:

Please find enclosed for filing the following documents in the above-referenced matter:

1. Initial Brief of Respondents/Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually
2. Proof of Service for the Initial Brief
3. Respondents/Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually's Designation of Matter to be Included in the Record on Appeal
4. Proof of Service for the Designation of Matter.

Please return a clocked copy of the documents to our office in the enclosed self-addressed stamped envelope. Please do not hesitate to contact our office if you have any questions or require additional information.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



J. Jackson Thomas

JJT/kwn

cc: Frank H. DuRant, Esquire
Julian W. DuRant, Esquire
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HAND DELIVERY

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