

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

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

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AUG 22 2018

SC Court of Appeals

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 Wayne 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, In. are the 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 are the Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

The Respondent designates the following materials to be included in the record on appeal pursuant to Rule 209 of the South Carolina Appellate Court Rules:

ORDERS

1. Judgment of the Honorable Judge Howe dated March 23, 2015 against the Appellants together with Form 4, recorded with the office of the Clerk of Court for Horry County.
2. March 24, 2015 Nunc Pro Tunc Amended Judgment of Judge Howe and Form 4 dated March 25, 2014, recorded with the office of the Clerk of Court for Horry County.
3. "Pre-Trial Order" of Judge Howe dated October 15, 2010 and recorded October 18, 2010.
4. Order Disposing of Post-Trial Motions signed by Judge Howe on April 25, 2016.
5. Order of Reference signed by Judge Larry B. Hyman dated June 23, 2009.
6. This Court's September 22, 2016 Order.
7. This Court's March 22, 2018 Order.

MOTIONS

1. Appellants Motion to Reconsider dated and filed April 20, 2015.
2. Appellants Motion to Reopen Hearing dated August 21, 2014.
3. Motion to Dismiss Appeal with attached exhibits evidencing service of Judgments and Form 4s.

PLEADINGS

1. Complaint of A&E against the Appellants.
2. Answer, Counterclaims and Third-Party Complaint filed by the Appellants.
3. Reply of Third Party Defendants to Counter Claims and Cross Claims

TRANSCRIPTS

1. Complete and entire trial transcript before the Honorable Cynthia Graham Howe, Master in Equity.
2. Transcript of Hearing on Appellants Motion to Reconsider dated May 11, 2015.

EXHIBITS

1. Plaintiff's Exhibit #1: 2004 Notebook by Susan Brady, CPA
2. Plaintiff's Exhibit #2: 2005 Notebook by Susan Brady, CPA
3. Plaintiff's Exhibit #3: 2006 Notebook by Susan Brady, CPA
4. Plaintiff's Exhibit #4: 2007 Notebook by Susan Brady, CPA
6. Plaintiff's Exhibit #6: Business Records of A&E, job ledgers, and index of job records
7. Plaintiff's Exhibit #7: Complete deposition of Carrie Drewett admitted into evidence and A&E's written general ledger.
8. Plaintiff's Exhibit #8: Incorporation Documents of A&E, Organizational Meeting, Sub S Election; Initial Deposit Ticket
9. Plaintiff's Exhibit #9: Demand Letter of Smith
10. Plaintiff's Exhibit #10: Licensing and Incorporation Documents for all parties
11. Plaintiff's Exhibit #11: List of Permits from the City of Myrtle Beach for A&E and Grand Strand Builders
12. Plaintiff's Exhibit #12: The Willoughby Job Documents
13. Plaintiff's Exhibit #13: The Kempe Job Documents
14. Plaintiff's Exhibit #14: Dr. Erol Lane Job Documents a/k/a South Strand Cardiology
15. Plaintiff's Exhibit #15: Park Place Properties, LLC Job, Pointe Marsh and Black Pearl Putt Job Documents
16. Plaintiff's Exhibit #16: Parkway Offices, LLC Job Documents
17. Plaintiff's Exhibit #17: Plantation Lakes Job Documents
18. Plaintiff's Exhibit #18 Financial Statements for Mr. & Mrs. Vereen from NBSC

- 19-A. Plaintiff's Exhibit #19A: Tax records of all Defendants
20. Plaintiff's Exhibit #20 Arthur Vereen Const. Company and A&E Business records
(contained in Box 20 as a group)
21. Plaintiff's Exhibit #21- bank checking account records for A&E from 12/31/07 to 12/31/09
22. Plaintiff's Exhibit #22: Banking Records for Park Place from June 2004 until Dec. 2009

Produced by Defendants
24. Plaintiff's Exhibit #24: HUD-1 statements from Park Place Pointe Marsh closings
25. Plaintiff's Exhibit #25: Check from daughter Elizabeth Sisson dated 10-28-08 in the amount of \$35,803.10 payable to and deposited into Park Place Properties
26. Plaintiff's Exhibit #26: Letters regarding 2006 Worker's Comp. audit of A&E; refund check of \$49,221.00 payable to A&E and deposit record of deposit of check into account of Park Place Properties.
27. Plaintiff's Exhibit #27: wages paid to Arthur Vereen and Linda Vereen as reported on personal tax returns showing payment of wages from A&E: \$30,000.00 in 2004; \$52,000 in 2005; \$70,800 in 2006; \$70,800 in 2007; \$96,566.40 from 1-2008 until 3-18-09 from Company payroll record;
28. Plaintiff's Exhibit #28: Defendants' Answer to Plaintiff's Interrogatories
30. Plaintiff's Exhibit #30: Deposition of Linda C. Vereen
31. Plaintiff's Exhibit #31: Business checks
32. Plaintiff's Exhibit #32 Single check from Whitley for \$11,533.00 payable to A&E and deposited into Park Place Properties acct
33. Plaintiff's Exhibit #33: Settlement Statement Lot 20, Point Marsh
34. Plaintiff's Exhibit #34: Settlement Statement Lot 21, Point Marsh
35. Plaintiff's Exhibit #35: Smith Sapp's A&E accounts receivable as of 12/31/2005
36. Plaintiff's Exhibit #36: Smith Sapp's A&E accounts receivable as of 12/31/2004
37. Plaintiff's Exhibit #37 construction check from First Palmetto for \$79,855.06 payable to A&E and Park Place Properties
38. Plaintiff's Exhibit #38: A&E jobs outstanding as of 12-31-06

39. Plaintiff's Exhibit #39 Invoice from Stock Builders and A&E check payable for \$22,000 for material for Park Place Properties,
40. Plaintiff's Exhibit Number #40 Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants prepared by Susan Brady, CPA (Has been called Plaintiff's Exhibit 5, contains "Consented Amounts").
- 40-A "Amended Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants with Amended Proposed Statement of Assets, Liabilities and Equity as of 12.31.2007" reducing Defendants' accounts receivables and Ms. Brady's bill of \$142,268.00 from Brady. Sent post-trial at direction of Court and served on all parties (no original exhibit number, mentioned in the Final Judgment)
41. April 16, 2015 letter from Attorney Cook to Judge Howe re missing page 37 (no exhibit number)
42. Exhibit 1 to May 2015 Transcript: Joint Post Trial Brief sent to Judge Howe as Ordered
43. Letter from DuRant, attorney for Respondents, dated March 25, 2015 serving Form 4 and Judgment upon the Appellants, with attachments
46. Letter from DuRant to Appellants dated March 27, 2015 serving Form 4 and Nunc Pro Tunc Order upon Appellants with attachments
47. Affidavit from DuRant dated July 20, 2015 with attached certificates of service, filed with Court of Appeals supporting Motion to Dismiss Appeal
48. Letter from Cook, attorney for Appellants, dated April 6, 2015, serving Respondents with attached Motion for Reconsideration
49. Defendants' Exhibit #102: Mr. Vereen's Application to be A&E's Qualifying Party signed Oct. 2, 2017.
50. Defendants' Exhibit #70: \$1,500 permit for Site Address 4310 S Ocean Boulevard
51. Defendants' Exhibit #71: \$8,800 permit for Site Address 1705 Madison Dr.
52. Defendants' Exhibit #55: 9-24-03 Permit Application by Perez

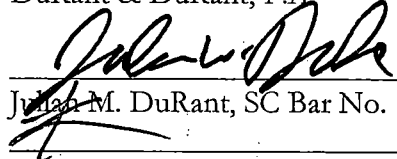
A&E objects to including Appellants' Exhibits 92-94 in the record or the Court's consideration of those exhibits as they were not admitted and there has been no exception to the Court's Order excluding them.

CERTIFICATION

I certify that this Designation contains no matter which is irrelevant to this Appeal.

Respectfully submitted,

DuRant & DuRant, P.A.



Julian M. DuRant, SC Bar No. 102420

Frank H. DuRant, SC Bar No. 1802

2107 Farlow Street

Myrtle Beach, SC 29577

T.: 843-448-1541

Attorneys for the Respondent

PROOF OF SERVICE

I, Kimberly Moore, an Employee of DuRant & DuRant, PA, attorneys for the Respondent, certify that I have served the Initial Brief of Respondents, Designation of Matter to be Included in the Record on Appeal, and Proof of Service on counsel of record in this matter by hand delivery to their respective offices, on the 22nd day of August 2018, as follows:

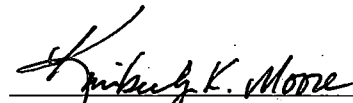
J. Jackson Thomas, Esq.
Thomas & Brittain, PA
PO Box 1290
Myrtle Beach, SC 29578
Attorney for E. Smith and Sons Construction, LLC,
EES Construction and Consulting, Inc.
Ellis E. Smith, Individually

Henrietta U. Golding
James K. Gilliam, Sr.
McNair Law Firm, PA
PO Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
Attorneys for the Appellants

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Kimberly K. Moore