

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2018-000707
Circuit Court No. 2016-CP-07-00602

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SC Court of Appeals

Marc Haas; Susan Haas; Melissa Star; Rob StarAppellants,

v.

Oldfield Club; Oldfield Club Board of Directors;
Oldfield Community Association;
SF Operations, LLC; TI Oldfield Operations, LLC.....Respondents.

**RESPONDENTS' RETURN TO APPELLANTS' MOTION TO STRIKE
RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Pursuant to Rule 209 of the South Carolina Appellate Court Rules, a party to an appeal shall set forth in its Designation of Matter all those materials that it *proposes* to include in the Record on Appeal. The Appellants herein have now moved to strike all matter proposed by Respondents to be included in the Record, with the exception of the first item, which is: "All materials included in Appellants' designation of matter." This Court should deny Appellants' Motion to Strike.

This is an appeal from an Order granting summary judgment to the Respondents as to all of Appellants' causes of action. According to Rule 56(c), SCRCP, summary judgment is based upon "the pleadings, depositions, answers to interrogatories, and

admissions on file, together with [any] affidavits.” As Appellants point out, the Record on Appeal should only include matter that is relevant to the appeal and that was presented to the lower court. *See* Rules 209 and 210, SCACR. Contrary to the Appellants’ contentions, all of the items listed in Respondents’ Designation of Matter were indeed presented to the lower court and were proposed in good faith to be included in the Record on Appeal.

Because the Appellants make particular arguments as to each of the items that they seek to strike, Respondents will respond to Appellants’ Motion by briefly listing each contested item and the reason that it should properly be included in the Record on Appeal:

2. Oldfield Club’s and Oldfield Club Board of Directors’ Memorandum in Support of Motion for Summary Judgment on Counterclaims and Opposition to Plaintiffs’ Motion for Sanctions, dated June 19, 2018 including all exhibits...

Response: Although it *was* filed with and presented to the lower court, Respondents do not object to this Memorandum being removed from inclusion in the Record. However, the exhibits to the Memorandum, each of which was separately and previously submitted to the lower court, should not be removed, as set forth below:

- a. Exhibit 1, Protective Order dated December 27, 2016.

Response: This item was filed with the lower court on December 27, 2016; it was referred to by both Respondents and Appellants at the hearing on the Motion for Summary Judgment that is the subject of this appeal, as

well as by Judge Dickson. Respondents can submit a file-stamped copy for inclusion in the Record on Appeal. (See Ex. A, Hearing Transcript, pp. 12-13).

- b. Exhibit 2, Termination and Release Agreement, dated Sept 17, 2009;

Response: This is item No. 24 on the Appellants' own Designation of Matter to be Included in the Record on Appeal. It is referred to in Appellants' Initial Brief on p. 15.

- c. Exhibit 3, Transcript of Rob Star deposition dated January 25, 2017 (excerpts)

Response: This is item No. 25 on Appellants' own Designation of Matter. Also, the entire transcript of Rob Star's January 25, 2017 deposition was given to Judge Dickson at the motions hearing as to the Order that is the subject of this appeal. (See Ex. B, Hearing Transcript, pp. 59-60).

- d. Exhibit 4, Transcript of Court hearing on Defendants' Motion for Summary Judgment dated September 9, 2017.

Response: This transcript (of the motions hearing on the Order that is the subject of this appeal) is item No. 1 on Appellants' own Designation of Matter.

- e. Exhibit 5, Affidavit of Steve Massas

Response: Although it was filed with and presented to the lower court, Respondents do not object to this affidavit not being included in the Record.

3. Counterclaims of Oldfield Club and Oldfield Board of Directors filed January 13, 2017;

Response: This item was filed in this case, and it was properly before the lower court when it considered the parties' arguments as to the summary judgment order that is the subject of this appeal. Respondents can submit a file-stamped copy for inclusion in the Record on Appeal.

4. Letter from the South Carolina Court of Appeals to Denise Savage, Esq. dated April 19, 2018;

Response: Because this item was issued by the Clerk of the Court of Appeals with reference to this appeal, it is relevant to the appeal. However, Respondents do not object to it being not included in this Record.

5. Transcript of Deposition of Marc Haas (cited pages);

Response: Respondents have cited a few pages from the Deposition of Marc Haas in their Initial Brief for the sole purpose of demonstrating that Mr. Haas deferred to Rob Star's views on the matter that is the subject of this appeal. Respondents made this same assertion to Judge Dickson at the hearing on this matter, and it was not contested by Appellants. This item was thus before the lower court and is relevant to the appeal. (Ex. C, Hearing Transcript, p. 16)

6. Transcript of Deposition of Susan Haas (cited pages);

Response: Respondents have cited a few pages from the Deposition of Susan Haas in their Initial Brief for the sole purpose of demonstrating that Mrs. Haas deferred to Rob Star's views on the matter that is the subject of this appeal. Respondents made this same assertion to Judge Dickson at the hearing on this

matter, and it was not contested by Appellants. This item was thus before the lower court and is relevant to the appeal. (*See Ex. C*).

7. Transcript of Deposition of Melissa Star (cited pages);

Response: Respondents have cited a few pages from the Deposition of Melissa Star in their Initial Brief for the sole purpose of demonstrating that Mrs. Star deferred to her husband Rob Star's views on the matter that is the subject of this appeal. Respondents made this same assertion to Judge Dickson at the hearing on this matter, and it was not contested by Appellants. This item was thus before the lower court and is relevant to the appeal. (*See Ex. C*).

8. To the extent not identified above, all exhibits to the Motions for Summary Judgment and related Memoranda, including those filed post-hearing.

Response: Judge Dickson left the record open after the motion hearing, the Order on which is the subject of this appeal, so as to allow the parties to make additional filings. Appellants argued fervently for this allowance. Additional filings were indeed submitted, and they were before the Circuit Court when it considered the motion and drafted its order. Because the subject of this appeal is Judge Dickson's Order Granting Summary Judgment to Defendants, it follows that the exhibits to those summary judgment motions and related memoranda are relevant to this appeal. Respondents can submit file-stamped copies for inclusion in the Record on Appeal. (*See Ex. D, Hearing Transcript, pp. 8-10, 69*).

9. To the extent not identified above, Materials cited in Respondents' Initial Brief.

Response: While this is admittedly a catch-all phrase, Appellants have not argued that Respondents have cited any irrelevant materials in their Initial Brief. Respondents can provide file-stamped copies of all items that would fall into this category so that Appellants do not have the burden of collecting these documents.

10. To the extent not identified above, Governing Documents including as defined in Respondents' Initial Brief.

Response: The Governing Documents were at issue in the summary judgment motions and referred to in the Order which is the subject of this appeal. They are also discussed and cited in Appellants' Initial Brief. In fact, Appellants specifically urge this Court "[to view] all of the Governing Documents and Property Report together in their entirety...." (Appellants' Initial Brief, p. 21, ¶ 55, emphasis added). Appellants cannot now contend that the Governing Documents are not relevant to this appeal.

For the reasons set forth above, Respondents respectfully request that this Court would deny Appellants' Motion to Strike those relevant items designated by Respondents to be included in the Record on Appeal, all of which were filed with the lower court, and which were proposed in good faith for inclusion in the Record.

Respectfully submitted,

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Circuit Court Reporter

1 judgement. We're a third-party defendant, but we are the
2 subject Ms. Savage's motion to amend.

3 THE COURT: Okay. Okay.

4 MR. FORD: If I, if I could hand up a copy of our
5 brief if you want it? We did file it on Thursday online.
6 It's got a file stamp, and just for ---

7 THE COURT: And you knew how to do this?

8 MR. FORD: Every first, every first-year associate in
9 South Carolina knows how to do this.

10 THE COURT: Well, okay.

11 MR. FORD: And I'm also going to -- for the record,
12 there is a termination or release agreement in dispute
13 that's subject to a confidentiality order, so no one has
14 filed it online, but I do have a copy or copies for you and
15 your law clerk.

16 THE COURT: Okay.

17 MR. FORD: And I apologize. Did not bring copies for
18 everyone. Everyone does have a copy; that's no in dispute.

19 MS. SAVAGE: Well, speaking of the non -- or the
20 confidentiality nature of that agreement, we do have a
21 courtroom full of people, and if we're going to discuss the
22 agreement, do they have to leave?

23 THE COURT: No.

24 MS. SAVAGE: Okay. So ---

25 THE COURT: I feel sure most of them are trying to

1 look at their cell phones and to figure out whatever else
2 they got to do and why this case isn't getting over so we
3 can move on to their case.

4 MS. SAVAGE: But doesn't that constitute a breach of
5 the confidential provisions because the public -- it's
6 aired to the public?

7 THE COURT: Well, you know, I'm not going to make them
8 go stand in the hall. You know, you're concerned about
9 them. Turn around. You think any of these people care?

10 MS. SAVAGE: No. It's not about people who care.
11 It's how you determine whether or not something remains
12 confidential, and once there's a public airing of it, there
13 is no confidentiality anymore. But putting that aside,
14 we've been accused -- not me, but my -- the former counsel
15 to plaintiffs has been accused of violating the agreement
16 because he took one paragraph and put it in the complaint,
17 and that's ---

18 THE COURT: Let me ask you something.

19 MS. SAVAGE: Yes.

20 THE COURT: So, this is their confidentiality
21 agreement?

22 MS. SAVAGE: Correct.

23 THE COURT: Do y'all want me to clear the courtroom?

24 MR. FORD: We don't care. We would ask this. People
25 -- I don't think anyone here cares. I would ask this.

1 We, yes, we, the plaintiffs, received the 2015
2 financial statements on December 26th from the OC -- or
3 from, yeah, the OC December 26, 2016. Mr. Star, whose
4 deposition is being bandied about here, was deposed on
5 January 25th. It wasn't until March 2nd that the rest of
6 the documents that were, that were requested in his
7 affidavit for line-item information for all the general and
8 administrative expenses was actually produced. So, to rely
9 on the affidavit in the absence of a multitude of documents
10 that weren't produced until March is totally erroneous.

11 Not only that. The deposition doesn't even have the
12 context of the beginning of the argument or the beginning
13 of the section. So, Mr. Ford reads and, and were they
14 hiding anything and were they -- well, I'm sorry. So,
15 where is the previous page that actually tells you what
16 they're talking about? That wasn't included.

17 Okay, so it's all great to take this all out of
18 context, and it's all great to try to look at a January
19 25th deposition when the majority of documents that even
20 attempted to explain the financials, assuming they're
21 honest and accurate, were produced March 2nd.

22 Well, in January, on January 17th a few days before
23 Mr. Star's deposition, the auditors came out with a letter,
24 which is Exhibit 2 to our motion, basically saying there's
25 incompetence, there's misappropriation. So, now the 2015

EXHIBIT**B**

tabbles

1 financials that were turned over to us are actually wrong,
2 and we have not received restated 2015 financials, and we
3 haven't gotten the 2016 financials because we know this is
4 a continuing event, and that it not only violates this
5 agreement, but it does violate the governing documents.
6 So, I would ask that the court disregard any reference to
7 the deposition in as much as it was not entirely produced
8 to the court so the court can get context as to what the
9 testimony was about.

10 Now, going ---

11 MS. DETERS: Your Honor, I do have a copy of the
12 deposition, if you'd like me to approach the court with
13 one.

14 THE COURT: I'll let you do that.

15 MR. FORD: And it was taken two days, one in January
16 and then in March it was resumed.

17 MS. DETERS: I just have the first ---

18 MS. SAVAGE: But that's the January one that you're
19 reading from.

20 MR. FORD: And in the March one he said I agree with
21 ---

22 MS. SAVAGE: Objection.

23 MR. FORD: --- everything I said before.

24 MS. SAVAGE: Excuse me. You can't ---

25 THE COURT: Okay.

1 MR. FORD: But Mr. Star clearly is pre-retirement age,
2 so it's a mixed community.

3 THE COURT: Okay.

4 MR. FORD: And Oldfield has a homeowners association,
5 the association. It has an amenities club which is the
6 Club Me, and it's got some developers, some of whom have
7 exited and some who have not. Mr. Star, the plaintiff,
8 lives there. He's a member of the association and the
9 club. Then you see the number of plaintiffs, the Haases
10 and the Stars. The Haases are the Stars' inlaws and Ms.
11 Star is obviously his wife, and they essentially said in
12 deposition they defer to Mr. Star. So, I'm going to refer
13 to Mr. Star just colloquially on behalf of all the
14 plaintiffs. He's the, you know, the head of the spear, so
15 to speak, for the four of them.

16 THE COURT: This is Mr. Star?

17 MR. STAR: yes.

18 THE COURT: Hey, Mr. Star.

19 MR. STAR: Hi.

20 MR. FORD: We're happy to have him there.

21 THE COURT: Glad to have you here.

22 MR. FORD: He's also from, from New York or ---

23 MS. SAVAGE: He's from New York as well.

24 MR. FORD: Yeah.

25 THE COURT: Where?



1 provides that only the opposing party has the right to file
2 opposing papers -- the adversary party they call it in the
3 rule -- within forty-eight hours of the hearing.

4 MR. FORD: It only says affidavits, Your Honor.
5 Affidavits have to be filed within two days, as everyone
6 here knows.

7 THE COURT: Right. I mean, do you have an affidavit
8 that you, that you want to submit?

9 MS. SAVAGE: No. We've not had an opportunity to
10 respond to these papers; I got served with them on Thursday
11 night.

12 THE COURT: Well, okay.

13 MS. SAVAGE: Don't -- I didn't think we had, that we
14 had the right to file additional responsive papers
15 according to the rule.

16 THE COURT: Well, if -- okay.

17 MS. SAVAGE: And according to the court's notification
18 that everything had to be filed forty-eight hours in
19 advance ---

20 THE COURT: That's just so, that is so the clerk can
21 put it -- e-file it and put it in this thing for me, but if
22 you'll notice, if you've been sitting out here, people hand
23 me stuff, okay, that's, that's what I'm going to get today.

24 MS. SAVAGE: Well, we, because we were not provided
25 with the entire memoranda of law with all the underlying

EXHIBIT**D**

tabbles

1 cases and the factual allegations, plus their exhibits to
2 their memoranda of law which were served on Thursday
3 evening ---

4 THE COURT: Y'all have been taking -- have y'all been
5 taking depositions in this?

6 MR. FORD: Yes, Your Honor.

7 MS. SAVAGE: We started. Yes, we've been taking
8 depositions; there's actually another deposition that is
9 supposed to go forward.

10 THE COURT: Okay.

11 MS. SAVAGE: As in between the third-party defendant
12 and third-party plaintiffs.

13 THE COURT: And, Ms. Savage, you should have had some
14 idea of what they were getting at.

15 MS. SAVAGE: And I filed responsive papers. What the
16 problem is -- and, and I feel as a matter of law I
17 responded to what their legal allegations were. What the
18 problem is we need to respond to the context and
19 allegations that they have created with the exhibits they
20 filed because these are the things that raise genuine
21 issues of fact in dispute, which is what summary judgment
22 ---

23 THE COURT: Well, if ---

24 MS. SAVAGE: --- rises or falls upon.

25 THE COURT: If they hand me up affidavits or any

1 evidence that creates an issue of fact, then they're not
2 going to get summary judgment, okay?

3 MS. SAVAGE: Agreed.

4 THE COURT: Okay, but if there are facts that are not
5 contested and the law is clear, then they could possibly
6 get summary judgment.

7 MS. SAVAGE: Right. We haven't had a chance to
8 contest the facts that they allege are not in dispute
9 because we didn't know what exhibits they were going to
10 append or what their factual underpinnings were going to be
11 for the relief in this motion.

12 THE COURT: All right. Well.

13 MS. SAVAGE: If Your Honor allows us to argue but
14 allows us to submit a further memorandum of law and
15 affidavit, et cetera, afterwards ---

16 THE COURT: Well.

17 MS. SAVAGE: --- and reserve decision, we're fine with
18 that.

19 THE COURT: Well, first of all, I'm going to hear from
20 them. Then I'll hear from you, and then I'll decide what
21 I'm going to do about that, okay?

22 MS. SAVAGE: Thank you so much.

23 THE COURT: Okay. Thank you, ma'am.

24 All right. So, to keep it ---

25 MR. FORD: Yes, Judge.

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your patience.

THE COURT: Thank you.

All right, anything from anybody else?

MR. ABNEY: Nothing more, Your Honor.

THE COURT: All right, I'll go back and I'll read over stuff. I'll get back with you. I know there's the motion to amend the complaint.

MS. SAVAGE: May we have permission to file a responsive memorandum, Your Honor, on the summary judgment with supporting affidavit and documents?

THE COURT: How long do you want, Ms. Savage?

MS. SAVAGE: Could I get two weeks?

THE COURT: Sure.

MS. SAVAGE: Thank you, Your Honor.

THE COURT: Okay.

Okay, now regarding the amendment, it is a quarter of 1. I'm going to eat lunch, okay, so ---

MS. SAVAGE: Quick argument.

THE COURT: Well, no. It's going to be a quick argument because if you want to send me something in writing, you can do that about it.

MS. SAVAGE: On -- oh, I'm sorry, on which?

THE COURT: On the amendment.

MS. SAVAGE: I already filed the motion.

THE COURT: Okay. No, no. I'm saying if you want to

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Edgar W. Dickson, Circuit Court Judge

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Marc Haas; Susan Haas; Melissa Star; Rob StarAppellants,

v.

Oldfield Club; Oldfield Club Board of Directors;
Oldfield Community Association;
SF Operations, LLC; TI Oldfield Operations, LLC.....Respondents.

PROOF OF SERVICE

I HEREBY CERTIFY that on October 2, 2018, I have served the **RESPONDENTS' RETURN TO APPELLANTS' MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

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Ian Ford

October 2, 2018

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

October 2, 2018

VIA FEDEX:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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OCT 03 2018

SC Court of Appeals

RE: *Marc Haas, et al. v. TI Oldfield Operations, LLC, et al.*
Appellate Case No.: 2018-000707
FWT File No.: 0722

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Respondents' Return to Appellants' Motion to Strike Respondents' Designation of Matter to Be Included in the Record on Appeal in the above referenced matter.

Should you have any questions or concerns, please do not hesitate to contact my office.

Very truly yours,



Ian S. Ford

ISF/smb
Enclosure - as stated

cc: Denise L. Savage, Esq.
R. Michael Ethridge, Esq.
Merritt G. Abney, Esq.
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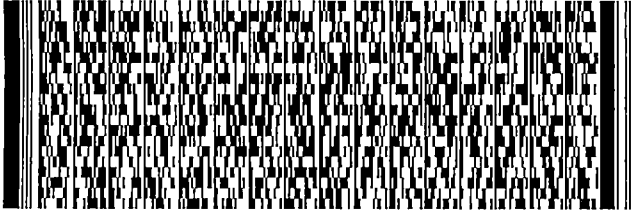
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