

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master in Equity

RECEIVED
JUN 18 2019
SC Court of Appeals

Case No. 2014-CP-07-0052
Appellate Case No. 2018-001969

Lady Beaufort, LLC & Tideland Realty, Inc.,..... Respondents/Appellants,

v.

Hird Island Investments, Inc., Sherwood N. Fender, Addison D. Fender, Martha B. Fender,
William B. Bowen, Lady Kemmerlin, LLC, Brickyard Holdings, Inc., and A&K Holding Co.,
LLC, Defendants,

AND

William M. Bowen, Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps, Third-Party Defendants,

*Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the
Appellants/Respondents.*

RESPONDENTS/APPELLANTS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO
FILE AND SERVE AN AMENDED DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Pursuant to Rule 240(f),¹ Respondents/Appellants (“Lady Beaufort”) reply in support of their motion for leave to file an Amended Designation of Matter to be included in the Record on Appeal as follows.

Lady Beaufort’s motion is not an attempt to sneak additional material into the record. The undersigned made a clerical error in failing to include a transcript in its Designation of Matter. The transcript in question was cited (in bold type) in Lady Beaufort’s Initial Brief as Respondent, served February 27, 2019. The error was caught only when preparing final briefs and attempting to update the citation in the brief to reference the appropriate page of the Record on Appeal.

The Rules of Appellate Procedure provide safeguards to prevent errors like this one. Rule 210(a) requires that, “[w]ithin thirty (30) days after service of the last brief, the appellant shall *serve* a copy of the Record on Appeal on each party who has served a brief” (emphasis added). Within twenty days after the Record on Appeal has been served, the parties prepare, serve, and file their final briefs. Rule 211(a). At the same time, *i.e.* twenty days after the Record on Appeal has been served on the parties, the Record on Appeal is filed with the Court. Rule 210(b).

The purpose of these Rules is to prevent exactly the situation before the Court by ensuring that all parties have the opportunity to review the Record on Appeal and finalize their briefs (and the Record on Appeal) prior to copying expenses being incurred.

Appellants/Respondents (“Fender”) did not follow the procedure set forth in the Rules; rather, Fender filed the Record on Appeal with the Court without having first served it upon Lady Beaufort. Accordingly, Lady Beaufort did not discover the inadvertent omission of the

¹ All rule citations herein are to the South Carolina Rules of Appellate Procedure.

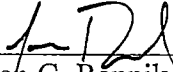
November 11, 2017 transcript from the designation of matter until after the Record on Appeal had been copied, bound, and filed.

In any event, Fender would not be prejudiced by this Court allowing Lady Beaufort to correct its clerical error. There is no lack of notice, as the transcript was cited to in Lady Beaufort's brief. Moreover, the material to be included in the Record is a transcript of a hearing in open court before the Master, at which Fender and counsel were present. Rule 212(a) even contemplates that this Court may itself require that copies of all transcripts be provided to the Court and become part of the Record on Appeal.

The error is the undersigned's, but it is not prejudicial. Lady Beaufort requests that the Court allow an appendix to the Record on Appeal consisting solely of the November 11, 2017 hearing transcript be compiled, served, and filed pursuant to Rule 212(c).

This 17th day of June, 2019
Charleston, South Carolina

Respectfully submitted,



Jaah G. Rannik, Esquire
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ATTORNEYS FOR RESPONDENTS/APPELLANTS

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AND

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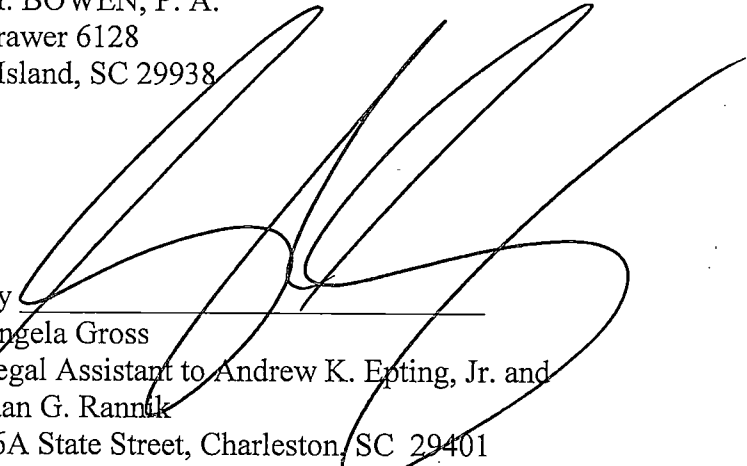
PROOF OF SERVICE

I certify that I have served the Respondents/Appellants' Reply in Support of Motion for Leave to File and Serve an Amended Designation of Matter to Be Included in the Record on Appeal by depositing a copy in the United States Mail, Postage prepaid, on June 17 2019, addressed to Appellants/Respondents' attorneys of record as follows:

H. Fred Kuhn, Jr., Esquire
P.O. Drawer 507
Beaufort, SC 29901

and

William M. Bowen, Esquire
WILLIAM M. BOWEN, P. A.
P.O. Drawer 6128
Hilton Head Island, SC 29938



By _____
Angela Gross
Legal Assistant to Andrew K. Epting, Jr. and
Jaan G. Rannik
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ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

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JAAN G. RANNIK · JGR@EPTING-LAW.COM

January 8, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

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JUN 18 2019

SC Court of Appeals

RE: *Lady Beaufort, LLC & Tidelands Realty, Inc. v. Hird Island Investments, Inc. and Sherwood Fender*

Case No.: 2014-CP-07-0052

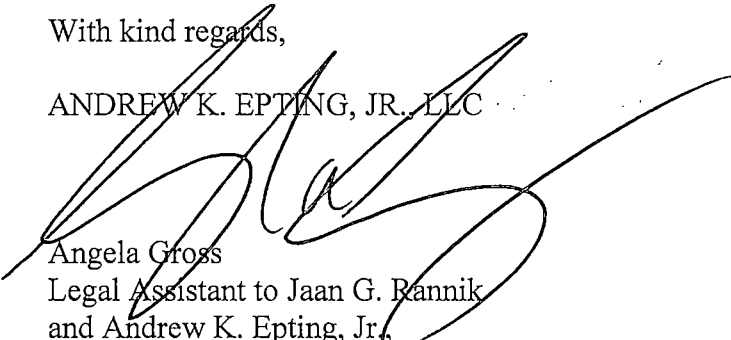
Appellate Case No.: 2018-001969

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the Respondents/Appellants' Reply in Support of Motion for Leave to File and Serve an Amended Designation of Matter to Be Included in the Record on Appeal, together with a Proof of Service in the above-referenced appeal. I have also enclosed our firm's check in the amount of \$50.00. I would greatly appreciate your filing the original Motion and returning a file-stamped copy in the self-addressed, stamped envelope provided.

With kind regards,

ANDREW K. EPTING, JR., LLC


Angela Gross
Legal Assistant to Jaan G. Rannik
and Andrew K. Epting, Jr.

/agg

Enclosures – as stated

cc: William M. Bowen, Esquire
Fred H. Kuhn, Jr., Esquire

ORIGIN ID:RBWA (843) 377-1871
ANDREW K. EPTING, JR.
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46A STATE STREET

SHIP DATE: 17JUN19
ACTWGT: 1.00 LB
CAD: 1931300/NET4100

CHARLESTON, SC 29401
UNITED STATES US

BILL SENDER

TO **JENNY ABBOTT KITCHINGS**
SC COURT OF APPEALS
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SC Court of Appeals

COLUMBIA SC 29201

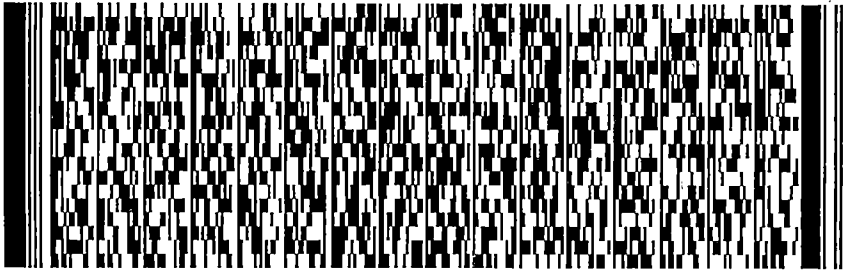
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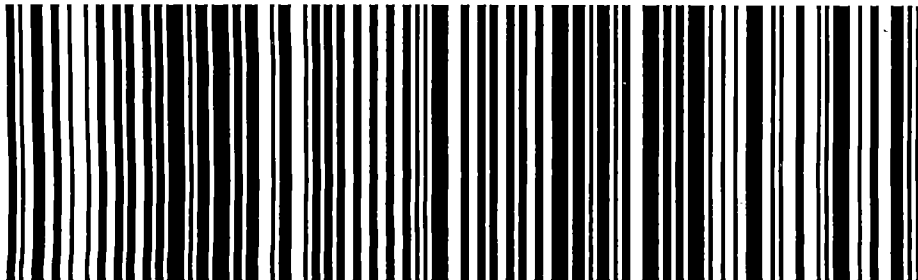
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