

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Carl E. Pierce, II, Special Referee

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APPELLATE CASE NO. 2019-000927

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Christopher and Ann Marie May, Respondents,

v.

Ferrara Buist, LLC, John Does 1-50, and Jane Does 1-50, Appellants.

Ferrara Buist, LLC, Third Party Plaintiff,

v.

MDJ Construction, Inc., Third-Party Defendants.

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RETURN TO APPELLANT'S MOTION TO ORDER TRANSCRIPT

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Respondents Christopher and Ann Marie May, through their undersigned counsel, hereby respectfully submit this Return to Appellant's *Motion to Order Transcript*, dated July 18, 2019.

Appellant's Motion should be denied for the following reasons:

**1. Appellant's Motion to allow late ordering of the transcript from the December 14, 2018 hearing before the Special Referee should be denied because the transcript no longer serves any purpose: Appellant has failed to raise any issues on appeal with regard to this hearing or the resulting orders.**

Although Appellant lists the Special Referee's orders in its Notice of Appeal, Appellant's Initial Brief does not present any arguments as to the Special Referee's orders or the December 14, 2018 hearing. Instead, Appellant's Initial Brief focuses exclusively on an earlier Circuit Court order

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issued by Judge Daniel D. Hall on April 17, 2018, which it did not include in its Notice of Appeal. See Respondent's *Motion to Dismiss Appeal*, dated July 16, 2019.

"Rule 207(b) governs contents of the briefs, and requires 'references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 209(c)] to support the salient facts alleged.'" *Forner v. Butler*, 319 S.C. 275, 276 n.1, 460 S.E.2d 425, 426 n.1 (Ct. App. 1995). Appellant's Initial Brief does not make a single reference to any portion of the December 14, 2018 hearing transcript. The Initial Brief also fails to identify any issues or present any argument with regard to the December 14, 2018 hearing or resulting orders. Accordingly, Appellant's Motion to allow late ordering of the transcript should be denied because the transcript no longer serves any purpose: Appellant has failed to raise any issues on appeal with regard to the December 14, 2018 hearing or either of the resulting orders.

**2. Appellant's Motion to allow late ordering of the transcript from the December 14, 2018 hearing before the Special Referee should be denied because the Motion fails to follow the instructions set forth in the Deputy Clerk's deficiency letter, dated June 17, 2019.**

On June 17, 2019, the Deputy Clerk of Court mailed a deficiency letter to Appellant's counsel, notifying them that the time for ordering the transcript had expired. (Exhibit A) The deficiency letter stated:

Our records reflect that the time for ordering the transcript has expired. Within ten days of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. **If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.**

**Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript.** [Emphasis added]

Despite the clear instruction from the Deputy Clerk of Court, Appellant did not enclose a copy of a letter addressed to the court reporter with its Motion. As of the date of this Response, Counsel for

Respondent has not received any correspondence indicating that Appellant has ordered the transcript from the Court Reporter or that it has copied the Office of Court Administration with any such request.

Appellant has had more than ample time and opportunity to order a transcript: Appellant's time for ordering the transcript expired on June 10, 2019. The deficiency letter was sent on June 17, 2019, instructing Appellant that it had until June 27<sup>th</sup> to file a letter showing that it had timely ordered the transcript from the Court Reporter. Appellant then waited until July 8<sup>th</sup> to send a letter to the Clerk of Court, incorrectly stating that no transcript existed. As of the date of this Return, forty-seven (47) days have passed since Appellant was supposed to request the transcript under Rule 207. To Counsel's knowledge, Respondent has still not ordered a transcript from the court reporter. In *Laser Supply v. Orchard Park Associates*, 676 S.E.2d 139, 143, 382 S.C. 326 (Ct. App. 2009), the South Carolina Court of Appeals noted:

[Appellant] appealed the circuit court's summary judgment order; however, this court dismissed the appeal because of [Appellant's] failure to comply with Rule 207, SCACR. n.1 [...]

Rule 207, SCACR, requires the appellant to make satisfactory arrangements in writing with the court reporter for furnishing the transcript and to order the transcript within ten days after the date of service of the notice of appeal. [...]

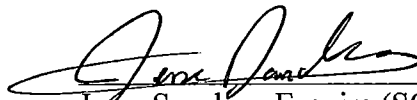
As the Supreme Court advised the bar in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review."

Appellant has failed to make satisfactory arrangements to order the transcript under Rule 207, SCACR or pursuant to the Deputy Clerk's deficiency letter. Accordingly, Appellant's *Motion to Order Transcript* should be denied. In addition, this Appeal should be dismissed for the reasons set forth in Respondent's *Motion to Dismiss Appeal*, dated July 16, 2019.

CONCLUSION

Respondents respectfully request that this Court deny Appellant's *Motion to Order Transcript*. The December 14, 2018 hearing transcript no longer serves any purpose because Appellant has failed to raise any issues on appeal with regard to this hearing or either of the resulting orders. In addition, Appellant has repeatedly failed to make satisfactory arrangements to order the transcript as required by Rule 207, SCACR and as instructed by the Deputy Clerk of Court.

Respectfully submitted,



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**ATTORNEYS FOR RESPONDENTS**

July 27, 2019  
Charleston, South Carolina

Other Counsel of Record:

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APPELLATE CASE NO. 2019-000927

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Proof of Service

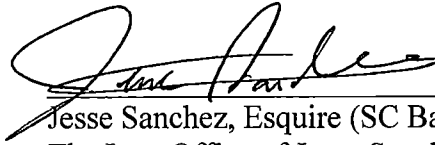
I, the undersigned, certify that I have served Respondents' *Return to Appellant's Motion to Order Transcript* on Appellant Ferrara Buist, LLC and Third-Party Defendant MDJ Construction, Inc., by depositing copies of it in the United States Mail, postage prepaid, on July 27, 2019, addressed to their respective attorneys:

Paul B. Ferrara, III, Esquire  
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N. Charleston, SC 29406-0603

S. Markley Stubbs, Esquire  
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Columbia, SC 29202  
**Attorney for Third-Party Defendant**

Alex Sami Fadoul, Esquire  
35 Folly Rd. Blvd. Apt. 126  
Charleston, SC 29407  
**Attorneys for Appellant**

[Signature on Following Page]



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**ATTORNEYS FOR RESPONDENTS**



July 27, 2019

**VIA US PRIORITY MAIL EXPRESS AND FAX (803) 743-1839**

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

RE: Christopher and Anne Marie May, Respondents v. Ferrara Buist, LLC, John Does 1-50, Appellants; Ferrara Buist, LLC, Third Party Plaintiff v. MDJ Construction, Inc., Third-Party Defendant Appellate Case No. 2019-000927

Dear Ms. Kitchings:

Enclosed for filing, please find the following:

- (1) One (1) original and six (6) copies of Respondents' *Return to Appellant's Motion to Order Transcript*.
- (2) Proof of Service.

For purposes of this Appeal, please also allow this letter to serve as my Notice of Appearance as an Attorney of Record for the below-listed Respondents. Thank you for your time and attention to this matter. Please do not hesitate to contact me at 843-814-8181 with any questions or concerns.

Sincerely,

Jesse Sanchez (SC Bar #: 101906)  
**Attorney for Respondents**  
**Christopher and Anne Marie May**

cc: Attorneys of Record (Via First Class Mail Only):  
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**Attorney for Respondents Christopher and Anne Marie May**

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**Attorneys for Third-Party Defendant MDJ Construction, Inc.**

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