

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2017-CP-27-0386
Appellate Case No. 2018-002186

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MAR 04 2020
SC Court of Appeals

First Team Hyundai, LLC d/b/a Hilton Head HyundaiRespondent

v.

Greg S. HackneyAppellant

**MOTION AND MEMORANDUM FOR CORRECTION OF THE RECORD ON APPEAL
AND
FOR EXTENSION OF TIME TO FILE AND SERVE RESPONDENT’S FINAL BRIEF**

Appellant served his Record on Appeal on February 14, 2020, which was received by Respondent’s counsel on February 21, 2020. The Record on Appeal is incomplete and contains a number of errors. As the Supreme Court has held:

Because court rules require the appealing party to prepare the record on appeal, see Rule 210(a), SCACR, South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review.

Johnson v. S.C. Dep't of Probation, Parole, & Pardon Servs., 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007). Further, this Court has held "the appellant has the burden of providing an adequate record on appeal." *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 214, 723 S.E.2d 597, 608 (Ct. App. 2012).

Respondent's Designation of Matter, as required by Rule SCACR 209, contained documents that were requested to be included in the Record.¹ However, Appellant's Record on Appeal does not contain the following documents:

1. Answer and Counterclaims dated October 23, 2017.
2. Reply to Defendant's Counterclaims December 20, 2017.
3. Respondent's Response in Opposition to Motion to Stay dated June 19, 2018.
4. Respondent's Motion for Partial Summary Judgment is included, however, Exhibits A through I, and excerpts of the Transcript of the October 24, 2017 hearing dated August 23, 2018 are not included.
5. Respondent's Memorandum in Support of Motion for Partial Summary Judgment and Exhibits A through U dated October 30, 2018.
6. Respondent's Memorandum in Opposition to Motion for Requests to Admit to be Included in Discovery dated October 30, 2018.
7. Appellant's Response in Opposition to Motion for Partial Summary Judgment and Exhibits introduced at October 31, 2018 hearing.

The Record on Appeal also contains the following errors:

1. Appellant lists the Summons as appearing at R. 32; this document is not the Summons, it is the Verification for the Complaint. The Summons has not been included and should be added.
2. Appellant lists Interrogatories to Defendant (R.71-87) under Pleadings. This document was only submitted to the Court in Respondent's Memorandum in Support of its Summary Judgment Motion, Ex. D and should appear in that document when is included in the Record on Appeal.
3. The documents listed as Partial Motion for Summary Judgment response Documents 10/31/19 (R.129-314) were submitted by Appellant as Exhibits at the October 31, 2018 hearing and are not Pleadings. These documents should appear in the Record as Exhibits.
4. Appellant has added text to the first page "Response to Partial Motion for a Summary Judgment." This text should be removed.

¹ See Court Docket containing designated documents.

Rule 210(c) prohibits any matter in the Record which was not presented to the lower court. The following documents are not in the lower court record and should not be included in the Record on Appeal:

1. Jasper County Sheriff's Office Summary (R. 279-280).
2. Jasper County Victim Notification Information Form (R. 281).
3. April 2, 2018 note from Scott Henthorn (R. 282).
4. Order Denying Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (R. 283).

Respondent requests these documents be removed from the Record.

Appellant includes "Jasper County Clerk of Court multiple Data Entry Errors" (R. 374-377) and incorporates correspondence with the Court (R.378-381) in the Record that were not listed in his Designation of Matter. Respondent requests these documents be removed from the Record.

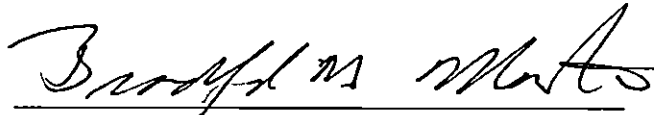
Appellant's Record does not contain the Certification of Counsel as required by Rule 209.

Conclusion

Respondent is unable to complete its Final Brief as the Record on Appeal is not correct. Respondent respectfully requests the Court require Appellant to correct the Record on Appeal as noted above, and for an additional 20 days once the Record is corrected for Respondent to file its Final Brief. Respondent has attempted to consult with Appellant but has been informed that he is out of the country until March 1st.

Dated: 2/11/20

Respectfully submitted,



Bradford N. Martin, Esq.

Laura W. H. Teer, Esq.

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

Attorneys for Respondent

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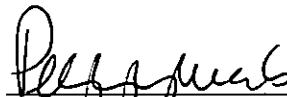
v.

Greg S. Hackney Appellant

PROOF OF SERVICE

I, Peggy McComb, Legal Assistant to attorneys for Respondent, First Team Hyundai, LLC d/b/a Hilton Head Hyundai, certify that I have served a copy of Respondent's Motion and Memorandum for Correction of the Record on Appeal and for an Extension of Time to file its Final Brief by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on March 2, 2020, addressed to Greg S. Hackney, 6125 Roswell Road, #503, Sandy Springs, GA, 30328.

March 2, 2020



Peggy McComb, Legal Assistant to
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March 2, 2020

The Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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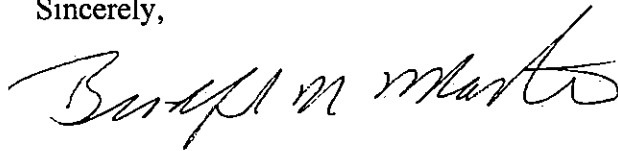
Re: *First Team Hyundai, LLC dba Hilton Head Hyundai v. Greg S. Hackney*
C.A. No. 2017-CP-27-0386
Appellate Case No. 2018-002186

Dear Ms. Kitchings:

Enclosed for filing is an original and seven (7) copies Respondent's Motion and Memorandum for Correction of the Record on Appeal and for an Extension of Time to file its Final Brief, a Proof Service, and our firm's check in the amount of \$50.00 in the above captioned matter. Please file the original with your Court and return a clocked copy to me in the enclosed envelope.

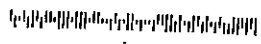
Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Bradford N. Martin

BNM/pm
Enclosures
cc: Greg Hackney



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 GREENVILLE, SC 29601

TO:

The Hon. Jenny Abbott Kitchings
 South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

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