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STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Case No. 2013-CP-43-153

Appellate Case No. 2018-001277

Donna Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

**RECEIVED**  
MAY 14 2020  
SC Court of Appeals

RESPONDENT'S MOTION TO STRIKE

Respondent Donna Erickson hereby moves to strike certain materials contained in Appellant's Designation of Matter to be Included in the Record on Appeal and certain portions of Appellant's Brief, filed November 19, 2019.

As an initial matter, Appellant has filed three separate Designations of Matter: one filed September 17, 2018; one filed January 15, 2019; and one filed November 19, 2019. Appellant also sent a Designation of Matter, dated December 19, 2019, to Respondent's trial counsel, who has never made an appearance in this court and is not counsel of record. This December 19, 2019 Designation does not appear to have been filed. Setting aside the impropriety of filing multiple

Designations, each of Appellant's documents contains matters not within the record and which should not be included in the Record on Appeal.

Rule 209, SCACR provides that the "Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, states that "The Record shall not, however, include matter which was not presented to the lower court or tribunal." Moreover, a party "shall not include any matter in his Designation which is not relevant to the appeal." Rule 209, SCACR. Several of the items designated by Appellant were not presented to the lower court and are irrelevant and thus, should not be included in the record. Each matter that Respondent seeks to strike or exclude is addressed herein.

**A. From the September 12, 2018 Designation (attached as Exhibit A):**

1. **Transcripts of Proceedings on November 8, 2011** (this designation also appears in the 1/15/19 designation): Appellant fails to identify the court in which this hearing was held or the parties involved. However, the case on appeal was initiated in the Court of Common Pleas on January 28, 2013, more than one year after this supposed hearing. As this designated document was not presented to the lower court and is irrelevant to this appeal, this designation should be struck.

2. **"Proof that I, the Appellant, have paid for the said property, in full."** First, Respondent does not sufficiently identify any documents that constitute the "proof" to which this designation refers. Furthermore, Respondent did not appear at the hearing before the Special Referee and did not submit any proof of payment. Thus, under Rule 201(c), none of these documents should be included in the Record on Appeal and this designation should be struck.

**B. From the January 15, 2019 attached as Exhibit B:**

1. **Order of November 2, 2011** (this designation also appears in the 11/19/19 designation). Appellant fails to identify the court that issued this order. However, the case on appeal was initiated in the Court of Common Pleas on January 28, 2013, more than one year after this unidentified order. As this designated document was not issued by the Circuit Court nor presented to the Circuit Court, it is irrelevant to this appeal and this designation should be struck.

2. **All receipts = proof of payment made by Ruff** (similar designations were made in the 11/19/19 and 12/19/19 versions). Respondent does not identify which receipts to which this designation refers. Furthermore, Respondent did not appear at the hearing before the Special Referee and did not submit any proof of payment. Thus, under Rule 201(c), none of these documents should be included in the Record on Appeal and this designation should be struck.

3. **Exhibit A = bank draft of certified cashier's checks** (proving Property taxes paid to Erickson)(similar designation made in 11/19/19 and 12/19/19 designations). Respondent does not identify a document to which this "Exhibit A" was attached. Furthermore, Respondent did not appear at the hearing before the Special Referee and did not submit any proof of taxes paid. Thus, under Rule 201(c), none of these documents should be included in the Record on Appeal and this designation should be struck.

4. **Several correspondences between Erickson and Ruff pertaining to proof of payment.** (similar designation in 12/19/19 document). First, this designation is too vague to identify the actual letters being designated. Moreover, Respondent did not appear at the hearing before the Special Referee and did not submit any correspondence as evidence. Thus, under Rule 201 (c), none of these documents should be included in the Record on Appeal and this designation should be struck.

5. **Bankruptcy documents (payments made)**(similar designations made in 11/19/19 and 12/19/19 designations). Respondent did not appear at the hearing before the Special Referee and did not submit bankruptcy documents. Thus, under Rule 201(c), none of the bankruptcy documents should be included in the Record on Appeal and this designation should be struck. The only bankruptcy documents submitted were attached to Respondent's Motion to Restore filed in the Court of Common Pleas (and that document would properly be included in the record as is noted by Respondent's Designation of Matter).

6. **Documented proof of agreement made between Erickson and Ruff's bankruptcy attorney for continued payment.** Respondent did not appear at the hearing before the Special Referee and did not submit bankruptcy documents or any agreement between Erickson and Ruff. Thus, under Rule 201(c), any alleged proof of agreement should not be included in the Record on Appeal and this designation should be struck. The only bankruptcy documents submitted were attached to Respondent's Motion to Restore filed in the Court of Common Pleas (and that document would properly be included in the record as is noted by Respondent's Designation of Matter).

7. **Handwritten correspondence from Erickson requesting that 'she' Erickson pay taxes and Ruff pay 'her' Erickson, since taxes were in 'her' Erickson's name.** First, this designation is too vague to identify the actual letters being designated. Moreover, Respondent did not appear at the hearing before the Special Referee and did not submit any correspondence as evidence. Thus, under Rule 201(c), none of these documents should be included in the Record on Appeal and this designation should be struck.

**C. From the November 19, 2019 Designation:**

1. **Order of May 10th, 2018.** Appellant fails to identify the court that issued this order. However, the final order of the Circuit Court was May 22, 2018 and the Notice of Appeal was filed on July 9, 2018. Any subsequent case involving Appellant and Respondent is not a part of the record of this case and is irrelevant to this appeal. This designation should be struck.

2. **Transcripts of Proceedings held November 2, 2018.** Appellant fails to identify the court in which this hearing was held or the parties involved. However, the final order of the Circuit Court was May 22, 2018 and the Notice of Appeal was filed on July 9, 2018. Any subsequent case involving Appellant and Respondent is not a part of the record of this case and is irrelevant to this appeal. This designation should be struck.

3. **Proof of "extension" of contract of sale.** Respondent did not appear at the hearing before the Special Referee and did not submit any proof of extension of the contract of sale. Thus, under Rule 201(c), this document should not be included in the Record on Appeal and this designation should be struck.

With regard to the December 19, 2019 designation (attached as **Exhibit D**), the items numbered 2-6 were included, in various forms, in the previously filed Designations of Matter and should be struck as set forth above.

In addition to the limitations of the record on appeal, a party "should not include information that is not found in the record." Toal, Jean H. Appellate Practice in South Carolina, (2d Ed.) p. 213. "[Parties] often have much more information about a case than appears in the record; however, courts are bound by what is contained in the record." Id. Moreover, facts about the case "should liberally reference the record" because "when the court studies the briefs, it will refer to the record and will not just rely on the assertions of the parties." Id. at 214.

On page 3 of Appellant's brief, she includes references to a November 2 (presumably 2011, identified on one of the Designations) transcript and supposed instructions given to Appellant at that hearing. Since this case was not initiated until 2013 and that transcript, from an unidentified court, was never submitted as evidence, this portion of Appellant's brief (continuing on through the end of the paragraph on page 4) should be struck.

On page 4 of Appellant's brief, she states that she filed for bankruptcy in June 2013. That section later indicates that "a verbal agreement was entered into, between the plaintiff, and the Appellant's legal (bankruptcy) counsel and further details the supposed contents of this alleged agreement. Appellant also references payment or cashier's checks that were not submitted as evidence. There was no testimony or other evidence of any verbal agreement. The only bankruptcy documents submitted were attached to Respondent's Motion to Restore filed in the Court of Common Pleas (and that document would properly be included in the record as is noted by Appellant's Designation of Matter). Thus, this portion of Appellant's Brief should be struck.<sup>1</sup>

Finally, page 5 of Appellant's Brief (which appears to start in the middle of a sentence) contains Appellant's version of alleged phone call with an attorney for Respondent. There is no testimony or evidence in the record of this alleged phone call and this portion of Appellant's Brief should be struck.

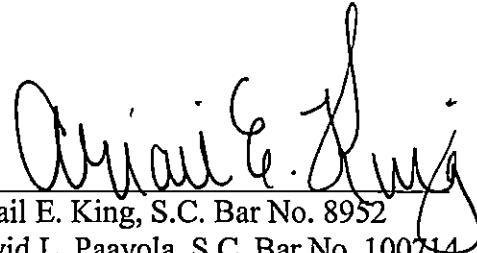
## CONCLUSION

Appellant has failed follow the South Carolina Appellate Court Rules by submitting multiple versions of the Designation of Matter and by including on those various filings material

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<sup>1</sup> Specifically, the portion to be struck begins with "A year later, when the bankruptcy chapter was dismissed..." and continues through the end of the paragraph.

that "was not presented to the lower court or tribunal" in violation of Rule 209. Appellant has also included material that is not relevant to the appeal in violation of Rule 209. Those materials, as set forth herein, should be struck. In addition, the portions of Appellant's brief that references those materials or that includes other evidence that was not presented to the Circuit Court should be struck or disregarded.



Ariail E. King, S.C. Bar No. 8952  
David L. Paavola, S.C. Bar No. 100744  
LEWIS BABCOCK L.L.P.  
Post Office Box 11208  
Columbia, South Carolina 29211  
(803)771-8000

Attorneys for Respondent Donna Erickson

May 1, 2020

FORM 14  
DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

RECEIVED

SEP 17 2018  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Thomas E. Payer, Jr.  
Sumter County

Case No. 2018-001277

Joseph K. Coffey, Esquire as  
Legal Representative of the  
Estate of Donna Erickson,

Respondent,

v.

Felicia D. Ruff

Appellant.

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2018 SEP 12 PM 2:45

RECORDED

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. ✓ Order of May 22, 2018
2. Transcripts of Proceedings on November 08, 2011
3. Complaint; January 28, 2013
4. Answer; February 26, 2013
5. Transcript of Proceedings (None found for the order on May 22, 2018)
6. Page one of Order of May 22, 2018, #6, which states "Defendant filed an Answer February 26, 2013."
7. Defendant's Exhibits, pages 1 and 2 in answer filed on February 26, 2013, proving direct contact information, which was not utilized by Respondent or their Legal Representative, was provided, including telephone number.
8. Defendants Exhibits, pages 1 and 2 in answer filed on February 26, 2013, establishing documented proof of equity in said address of 1455 Hidden Oaks Drive.
9. Proof that I, the Appellant, have paid for the said property, in full.

EXHIBIT

abbies

A

10.

Proof of agreement between Respondent and Appellant's Bankruptcy Attorney, made in April of 2014, allowing appellant continued payment of said property amid Bankruptcy dismissal.

11.

Proof of attempts to contact Respondent in effort to arrange a closing upon completion of payment of agreed upon \$18,000.00 for said property in 2016.

I certify that this designation contains no matter which is irrelevant to this appeal.

September 12, 2018

/s/ Felicia D. Ruff

Felicia D. Ruff

1455 Hidden Oaks Drive

Wedgefield, South Carolina 29168

(518) 542-2836

FORM 14  
DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

RECORDED

2018 JAN 11 PM 1:45

JAMES C CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY SC

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2018-001277

RECEIVED

JAN 15 2019

SC Court of Appeals

Joseph K. Coffey, as Personal  
Representative of the Estate of  
Donna Erickson,

Respondent,

v.

Felicia D. Ruff,

Appellant.

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order of May 22, 2018; (including hand written note attached to order)
2. Order of November 2, 2011
3. All receipts = proof of payment made by Ruff;
4. Exhibit A= bank-draft of certified cashier's checks (proving Property taxes paid to Erickson
5. Transcript of Proceedings held on November 2, 2011 pp. All
6. Several correspondences between Erickson and Ruff pertaining to proof of payment
7. Bankruptcy documents. (payments made)
8. Documented proof of agreement made between Erickson and Ruff's bankruptcy attorney for continued payment
9. Hand written correspondence from Erickson requesting that 'she' Erickson pay taxes and Ruff pays 'her' Erickson, since taxes were in 'her' Erickson's name.

I certify that this designation contains no matter which is irrelevant to this appeal.

EXHIBIT

tabbles

B

January 11, 2018

/s/ Felicia D. Ruff  
Felicia D. Ruff  
1455 Hidden Oaks Dr.  
Wedgfield, South Carolina 29168  
(803) 468-5364

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTERCOUNTY  
Court of Common Pleas

The Honorable Thomas E. Player, Jr.

Case No. 2018-001277

Joseph K. Coffey, as legal  
Representative of Donna  
Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

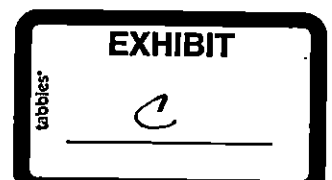
**RECEIVED**  
NOV 19 2019  
SC Court of Appeals

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

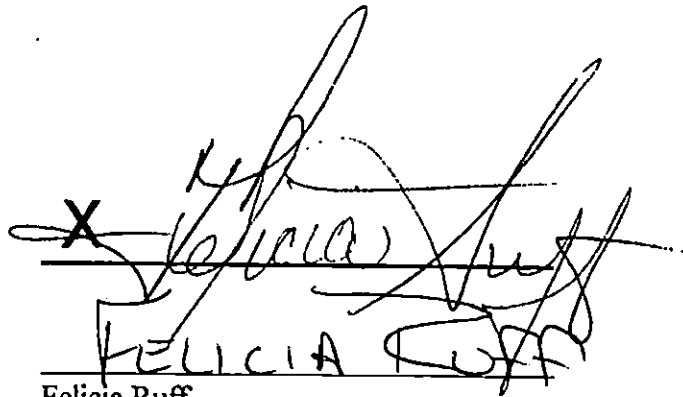
Appellant proposes the following be included in the Record on Appeal:

- a. Order of May 10<sup>th</sup>, 2018
- b. Order of November 2<sup>nd</sup>, 2011;
- c. All receipts =proof of payment
- d. Answer;
- e. Transcript of Proceedings held November 2<sup>nd</sup>, 2018 pp. All
- f. Bank drafts of certified cashier's checks proving taxes paid
- g. Bankruptcy documents (payments made)
- h. Proof of "extension" of contract of sale

I certify that this designation contains no matter which is irrelevant to this appeal.



November 07, 2019

~~X~~   
FELICIA RUFF

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield, S.C. 29168  
(803)468-5364

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Thomas E. Player, Jr.

**RECEIVED**  
NOV 19 2019  
SC Court of Appeals

Case No. 2018-001277

Joseph K. Coffey, legal  
Representative of  
Donna Erickson,

Respondent,

v.

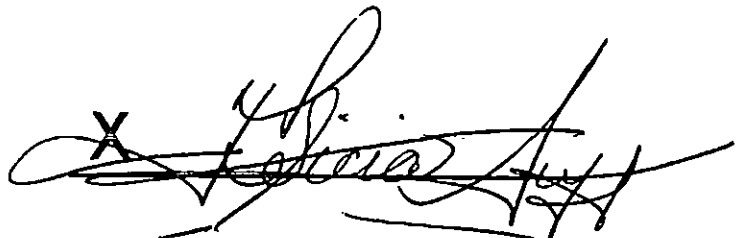
Felicia Ruff,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Donna Erickson. by depositing a copy of it in the United States Mail, postage prepaid, on November 14<sup>th</sup>, 2019, addressed to his attorney of record, Joseph K. Coffey, Post Office Box 1252, Manning, South Carolina 29102.

November 07, 2019



FELICIA RUFF

Felicia Ruff  
1455 HIDDEN Oaks Drive  
Wedgfield, South Carolina 29168  
(803) 468-5364  
Appellant

**LETTER TO THE APPELLATE COURT CLERK  
FILING THE NOTICE OF APPEAL**

November 07, 2019

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
NOV 19 2019  
SC Court of Appeals

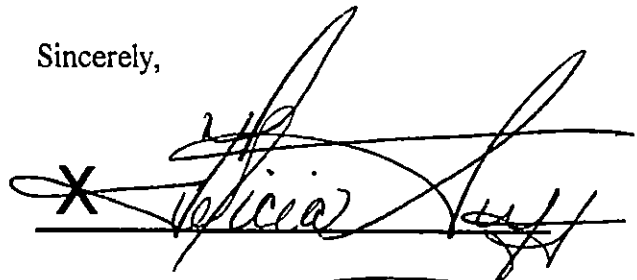
RE: Joseph K. Coffey, Legal Representative for Donna Erickson v. Felicia Ruff

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.
- (3) Designation of Matter

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Ruff", written over a horizontal line. The signature is stylized and includes a large "X" at the beginning.

FELICIA RUFF

1455 Hidden Oaks Drive  
Wedgefield, South Carolina 29168  
(803) 468-5364  
Appellant

cc: Joseph K. Coffey  
Post Office Box 1252  
Manning, South Carolina 29102  
Attorney for Respondent

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Thomas E. Player, Jr.

Case No. 2018-001277

Joseph K. Coffey, Jr, as Legal  
Representative of Donna  
Erickson,

Respondent,

v.

Felicia Ruff

Appellant.

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Order of May 22, 2018;
2. Transcripts from hearing held November 2011 pp all;
3. Bankruptcy documents pp all;
4. All proof of payment(receipts);
5. Bank drafts of cashier's checks (proof of taxes paid)
6. Correspondence between plaintiff and Appellant pp;
7. Original Contract of Sale

I certify that this designation contains no matter which is irrelevant to this appeal.

~~X~~  
~~Felicia Ruff~~  
FELICIA RUFF

December 19, 2019

EXHIBIT

tabbles®

D

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgfield, South Carolina 29168  
(803) 468-5364

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Thomas E. Player, Jr., Special Referee  
Case No. 2013-CP-43-153  
Appellate Case No. 2018-001277

**RECEIVED**  
MAY 14 2020  
SC Court of Appeals

Donna Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

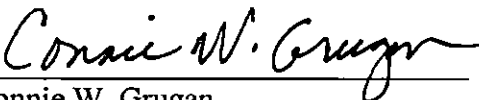
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PROOF OF SERVICE

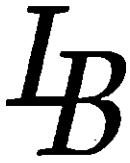
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I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served Respondent's Motion to Strike by mailing a copy of same, postage prepaid and return address clearly indicated, to the following address:

Ms. Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield, South Carolina 29168

  
\_\_\_\_\_  
Connie W. Grugan

This 7<sup>th</sup> day of May, 2019



LAW OFFICES OF  
**LEWIS  
BABCOCK**  
L.L.P.

**ARIAIL E. KING**  
ATTORNEY AT LAW  
1513 Hampton Street  
Post Office Box 11208  
Columbia, South Carolina 29211  
o. 803-771.8000 f. 803-733-3534  
Ariail.King@lewisbabcock.com

May 7, 2020

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
MAY 14 2020  
SC Court of Appeals

Re: Donna Erickson v. Felicia Ruff, Appellate Case No. 2018-001277  
Our File No. 19-116

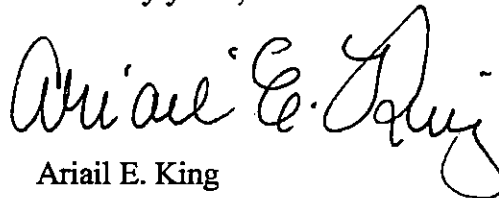
Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included on Appeal in regard to the above-referenced matter for filing with your office.

Also enclosed is the original and seven copies of Respondent's Motion to Strike, along with a \$50.00 filing fee.

By copy of this letter, we are hereby serving a copy of same upon the Appellant. Please return clocked copies in the envelope provided.

Sincerely yours,



Ariail E. King

AEK:cg  
Enclosure  
cc: Ms. Felicia Ruff, *pro se*

UNITED STATES  
POSTAL SERVICE

USPS TRACKING #



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1000-14-0001 Mail



U.S. POSTAGE & METRIC DIMENSIONS

2020 \$008.70<sup>0</sup>  
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0001371960 MAY 07 2020

**LB**

Lewis Babcock L.L.P.  
P.O. Box 11208  
Columbia, SC 29211

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MAY 14 2020

SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211