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**Jul 01 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-07-1559

Charles E. Houston, Jr.....Appellant,

v.

Dean B. Bell, individually;  
Law Offices of Dean B. Bell, LLC; and  
B. Hammel Properties, LLC.....Respondents.

**RESPONDENT B. HAMMEL PROPERTIES, LLC'S  
MOTION TO CORRECT RECORD ON APPEAL**

The Respondent B. Hammel Properties, LLC (the "Respondent") moves the Court for an Order requiring Appellant to correct the Record on Appeal, submitted by Appellant on June 26, 2020, to address the following deficiencies:

1. The Record on Appeal does not include items designated by Respondent in its Designation of Matter to be Included in the Record on Appeal;
2. The Record on Appeal includes matters not included in any party's Designation of Matter;
3. The Record on Appeal includes a document not presented to the Lower Court; and
4. The Record on Appeal does not comply with Rule 210, SCACR.

**ARGUMENT**

1. The Record on Appeal does not include items designated by Respondent in its

Designation of Matter to be Included in the Record on Appeal.

The Respondent designated sixteen (16) items to be included in the Record on Appeal that Appellant failed to include. Specifically, Appellant did not include items numbered 4, 5, 6, 9, 11, 13, 14, 16, 18, 20, 23, 24, 25, 26, 27<sup>1</sup> and 30 in the Respondent's Designation of Matter to Be Included in the Record on Appeal.

Further, the Appellant included portions of some documents Respondent designated, rather than setting them out in their entirety. Specifically, Appellant included only portions of items numbered 1, 15 and 21. For example, Respondent's designated item number 1 by Respondent is "Order of Reference filed September 4, 2012 in Partition Action with Action Cover Sheet, Motion and Order Information Form and Coversheet and Shirley Ellis cover letter." Instead of including the (i) Action Cover Sheet, (ii) Order Information Form and Coversheet, and (iii) Shirley Ellis Cover Letter, Appellant only placed the Motion in the Record on Appeal.

All of the identified documentation that Appellant failed to include in the Record on Appeal is part of the record before the Lower Court.<sup>2</sup>

2. The Record on Appeal includes matter not included in any parties' Designation of Matter.

Appellant included documents that no party to this Appeal designated to be included in the Record. Specifically, the following documents were included but were not designated by any party:

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<sup>1</sup> Respondent's designation number 27 is selected portions of the Deposition of Appellant dated December 12, 2018. Appellant included the cover page for the designated deposition in the Record on Appeal at page 109, but what follows that page is a second copy of the Transcript of the June 10, 2019 Hearing that runs from page 110 to page 148. The Transcript of the June 10, 2019 Hearing is also produced at pages 67 through 108 of the filed Record on Appeal. Consequently the Record on Appeal contains two (2) copies of the June 10, 2019 Hearing Transcript and does not include any of the designated deposition.

<sup>2</sup> At Appellant's request, Respondent provided Appellant will full copies of all documents contained in its designation prior to Appellant's submission of the Record on Appeal.

- a) Affidavit in Reply to Affidavit of Dean B. Bell, filed December 11, 2018 including exhibits 1-3 (Record pgs. 189-200);
- b) Affidavit of Service filed December 13, 2011 in Partition Action re: Complaint (Record pg. 185); and
- c) Affidavit of Service filed March 29, 2012 in Partition Action re: discovery requests (Record pg. 186).

The Record on Appeal should not contain any material than that was not proposed to be included by any of the parties. Rule 210(g), SCACR.

3. The Record on Appeal includes a document not presented to the Lower Court.

Appellant designated and included in the Record on Appeal “Copy of material improperly inserted in file of the Court” (Record pp. 201). The designated document was not presented to the Lower Court and should not be included in the Record on Appeal. Rule 210 (c), SCACR.

The action from which this appeal arises is a collateral attack on a judgment entered in a partition action. The Appellant claimed extrinsic fraud supported in part by allegations that the Respondent Dean B. Bell (“Bell”) improperly inserted “materials consisting of his notes, argumentative memorandums and calculations” in the Lower Court’s file in the Partition Action.<sup>3</sup> When asked to identify the materials during his deposition, Appellant indicated that he had a copy of the materials and that he would supplement discovery responses to provide them.<sup>4</sup> Following the Appellant’s deposition, counsel for the Respondent made three requests by email for the promised documents<sup>5</sup> and Appellant again promised to provide the documentation on which he

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<sup>3</sup> Complaint dated July 23, 2018, ¶ 23, Record, p. 53.

<sup>4</sup> Deposition of Appellant, December 12, 2018, p. 47, l. 21 to p. 51, l. 17, attached as Exhibit 1.

<sup>5</sup> Electronic mail from W. Cliff Moore, III, attorney for the Respondent to Appellant dated December 19, 2018, February 5, 2019 and February 6, 2019 attached as Exhibit 2.

based his argument.<sup>6</sup> Appellant argued that the materials were improperly included in the court's record of the partition action at the hearing that resulted in the Orders Appellant challenges in this appeal, but he did not provide the documents to the Court.<sup>7</sup> After all parties filed Initial Briefs, Appellant finally produced a single page as the identified "materials" on June 18, 2020.<sup>8</sup> He did this in an electronic email to opposing counsel and included it at page 201 in the Record on Appeal.

In addition to Appellant's failure to present these "materials" for consideration by the Lower Court, he failed to identify them before Bell died. Appellant argues that Bell improperly inserted the document in the court's record of the partition action. The document that Appellant has now identified is not dated and does not indicate who prepared it. Although this new document is certified to be a true copy by the Beaufort County Clerk of Court, there is no indication of exactly where it was filed and if it is in fact part of the case file for the partition action. Appellant requests that this Court rely on his representation as to the source of the document, where it is located, and how it landed in that location. Further, because of Appellant's delay in providing the document, Bell and Respondent have no opportunity to challenge its authenticity or relevance.

4. The Record on Appeal does not comply with Rule 210, SCACR.

Appellant failed to organize the proposed Record on Appeal as required by Rule 210, SCACR and did not provide a title page, index or Certificate of Counsel. By way of example, Respondent's designation number 19 is "Complaint filed July 13, 2018, with Exhibit 1." The filed Record on Appeal locates the Complaint at pages 49 through 63, but Exhibit 1 was separated and is located at pages 182 through 184.

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<sup>6</sup> Electronic mail from Appellant to W. Cliff Moore, III dated December 21, 2018 attached as Exhibit 3.

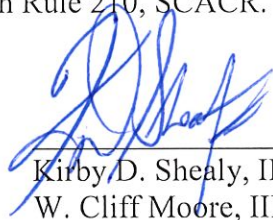
<sup>7</sup> Appellant's Affidavit in Opposition to Motion for Summary Judgment dated June 6, 2019, ¶ 21, Record, p. 45, and Transcript of Hearing, June 10, 2019, p. 27, l. 21 to p. 28, l. 3 and p. 29, l. 22 to p. 30, l. 4, Record pgs. 93-96.

<sup>8</sup> Electronic mail from Appellant to W. Cliff Moore, III dated June 18, 2020, with attachment, attached as Exhibit 4.

## CONCLUSION

Prior to filing this Motion, Respondent addressed the concerns outlined in this Motion to Appellant and Appellant failed to respond. The Respondent B. Hammel Properties, LLC respectfully requests an Order of this Court requiring the Appellant to correct the Record on Appeal to include the omitted documents, exclude improper records, correct improperly presented records and prepare the Record in compliance with Rule 210, SCACR.

July 1, 2020.



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Kirby D. Shealy, III  
W. Cliff Moore, III  
Adams and Reese LLP  
Post Office Box 2285  
Columbia, S.C. 29202  
P: 803-254-4190  
Thomas C. Taylor  
Law Offices of Thomas C. Taylor, LLC  
PO Box 5550  
Hilton Head Island, SC 29938

Attorneys for Respondent  
B. Hammel Properties, LLC

Exhibit 1

1 other matters.

2 Q When they filed their amended  
3 complaint, did they include those things in it?

4 A I'd have to look at the amended  
5 complaint again.

6 Q All right, we'll do that in a minute.  
7 You also said that Judge Kinard ruled  
8 as to the final relief in this matter as to what  
9 was going to happen and how the sale would be  
10 conducted?

11 A No, I only alleged to the extent that  
12 he said he had ordered the position pertaining  
13 with the by public sale.

14 Q Okay. So he ruled that the plaintiff  
15 had the ability to amend their complaint but if  
16 they were successful and they won, they had to  
17 do a public sale?

18 A Right.

19 Q That was his ruling?

20 A Right.

21 Q You allege that the Court considered  
22 matters that are not in the pleadings. What did  
23 the Court consider that was not in the  
24 pleadings?

25 A After the final hearing opposing



1 counsel put materials in the file that had not  
2 been marked as exhibits to the hearing.

3 Q All right. What are those?

4 A His notes, points of arguments.

5 Q And those are in the Court's file right  
6 now?

7 A Should be, yes.

8 Q All right. Have you seen them in the  
9 Court's file?

10 A Yes, I got a copy of them out.

11 Q When?

12 A At the same time when I went to --

13 Q When you were preparing the matter for  
14 an appeal?

15 A Right.

16 Q All right. And so what kind of notes  
17 were they?

18 A Notes like you would make for a  
19 pretrial brief, there were certain, I think,  
20 mathematical calculations.

21 Q Were they handwritten?

22 A I think they were both.

23 Q Handwritten and typed?

24 A Right.

25 Q And what did they say?



1           A     I couldn't given you specifics right  
2     now.

3           Q     Did you see them at the time they were  
4     put into the court record, or did you see them  
5     first later?

6           A     I only saw them later.

7           Q     Were they presented at the hearing?

8           A     No.

9           Q     Were they argued at the hearing?

10          A     That would be conjecture on my part. I  
11     don't remember.

12          Q     You were there, right?

13          A     I was there, right.

14          Q     Do you know whose notes they are?

15          A     They were Attorney Bell's notes.

16          Q     How do you know that?

17          A     He was the counsel for the plaintiffs.

18          Q     Are the notes in the records that you  
19     claim are improper, are they in any way  
20     referenced in the final order in the case?

21          A     No, because the final order doesn't  
22     relate to Exhibit 1, Exhibit 2, Exhibit 3 et  
23     cetera; do you follow me? The only thing that  
24     final order says is that testimony was given,  
25     testimony was given, testimony was given, and



1 there's no documentation as to the exhibits or  
2 the testimony that was given.

3 As a matter of fact, the order doesn't  
4 even say that the master-in-equity had an order  
5 of reference. The order doesn't have any  
6 statement of facts or any discussion or findings  
7 of facts.

8 Q And you have not ordered that  
9 transcript from that final hearing?

10 A No.

11 Q Have you considered ordering it in the  
12 context of this litigation?

13 A Yeah.

14 Q Have you ordered it?

15 A No, I haven't.

16 Q What steps have you taken to order it?

17 A I haven't taken any as of yet.

18 Q You just thought about it?

19 A It's part of my strategy to do so; that  
20 and the transcript from the hearing.

21 Q Did you retain copies of those  
22 handwritten notes and the typed notes that you  
23 claim to be improperly included in the record?

24 A Yes, I think I do have them.

25 Q But you have not provided those to us



1 in discovery yet?

2 A No, because they're in the court file.

3 Q Okay. But why did you withhold them  
4 from discovery?

5 A Because, as I mentioned, they were in  
6 the file, you know, they're available to all  
7 parties.

8 Q How are they listed on this transcript,  
9 the Court's transcript of this file, which is  
10 Exhibit Number 1 to your complaint; are they  
11 contained in there?

12 A No, no.

13 Q They're just in the file?

14 A Right.

15 Q Will you provide me with a copy of  
16 those that you made?

17 A Yes, I will.

18 Q You allege that Mr. Bell presented  
19 orders as proposed orders without a request from  
20 the Court. What do you have to support that  
21 allegation?

22 A Because I never -- because at the end  
23 the hearing, the judge said he advised the  
24 parties of his ruling, and Judge Dukes' normal  
25 procedure is when he's ready to -- if he doesn't



Exhibit 2

**From:** Cliff Moore <Cliff.Moore@arlaw.com>  
**Sent:** Wednesday, December 19, 2018 5:00 PM  
**To:** charlesehouston@icloud.com  
**Cc:** dbell@deanbell-law.com; Tom Taylor (tom@thomastaylorlaw.com); Jennifer Shirey  
**Subject:** FW: Courtesy NEF 2018CP0701559  
**Attachments:** 2018-12-19 Notice of Hearing re Response in Opposition and Motion for Protective Order.nrl; 2018-11-30 Ltr from Houston to Court filing Pltf\_s Resp to Def\_s Motion ....nrl

Mr. Houston:

I received the attached notice from the Court. I believe that this has been resolved or is moot. Can you please advise the Court. I would be happy to speak with the Court about it, but I do not think they will take it off of the docket until you tell them it is resolved.

Can you supplement your production responses by forwarding the copy of the Court file that you have in your possession? You identified these documents during your deposition and agreed to produce them.

**From:** Cliff Moore <Cliff.Moore@arlaw.com>  
**Sent:** Tuesday, February 5, 2019 5:36 PM  
**To:** Charles Houston  
**Cc:** Jennifer Shirey  
**Subject:** RE: Houston v. Bell

I have not checked.

You were also going to send additional documentation identified during your deposition. Where are you on this?

**From:** Cliff Moore <Cliff.Moore@arlaw.com>  
**Sent:** Wednesday, February 6, 2019 10:03 AM  
**To:** Charles Houston  
**Cc:** Jennifer Shirey  
**Subject:** RE: Houston v. Bell

Thank you. Where are the documents that you promised during deposition?

Exhibit 3

**From:** Charles Houston <charlesehouston@icloud.com>  
**Sent:** Friday, December 21, 2018 10:44 PM  
**To:** Cliff Moore  
**Cc:** dbell@deanbell-law.com; Tom Taylor (tom@thomastaylorlaw.com); Jennifer Shirey  
**Subject:** Re: Courtesy NEF 2018CP0701559  
**Attachments:** 2018-12-19 Notice of Hearing re Response in Opposition and Motion for Protective Order.nrl; 2018-11-30 Ltr from Houston to Court filing Pltf\_s Resp to Def\_s Motion ....nrl

Atty. Moore:

1 I agree that all issues and matters pertaining to the taking of my deposition were amicable resolved between us when I appeared and was deposed for the taking of my deposition on December 12, 2018 on Hilton Head Island and that all issues and objections pertaining to the initial notice of deposition have been amicable resolved between the opposing parties. Therefore all motions filed in reference to the taking of my deposition are moot and should be entered as voluntarily settled by the court.

2 I did describe without identifying the general contents that were in the court's file and will supplement my responses to your request for production by furnishing you with the copies of these materials from my file.

3 I have been informed that prior to the filing of this lawsuit that there was a transfer of the title to the Marshland property from your client to another party who was not cited in the Les Pendens or as a defendant in this action. I intend to file a motion for an order permitting the filing of an amended les pendens, summons and complaint. Please advise me of your consent or opposition to this proposed motion.

I wish and extend to all of you and your families a merry peaceful and safe Christmas and joyful New Year.  
Charles Houston

Exhibit 4

**From:** Charles Houston <charlesehouston@icloud.com>  
**Sent:** Thursday, June 18, 2020 11:15 PM  
**To:** Cliff Moore  
**Cc:** 'dbell@deanbell-law.com'; Tom Taylor; Jennifer Shirey  
**Subject:** Re: Houston v. Bell  
**Attachments:** ltr to clerk 6-17-20-2020 RE Bell deceased.docx.pdf; Document placed in Court's file.pdf

Cliff, I was able to gain access to the clerk of Court's Office this week and obtained a copy of your referenced document that had been placed in their file that is attached along with a letter that I sent to the Court of Appeals to day referencing the death of Dean.

Thanks,  
Charles

We will use October 1, 2010 as the beginning date for monies due:

1. Office Rent- Let's go with David Bachelder's lowest suggestion of **\$150.**
2. Tenant Rent-**\$300.**(He sleeps on a couch)
3. Charles' Rent-**\$350.**

Total through 5/31/2013=**\$25,600.**(\$800 X 32 months)

#### **Beaufort County Taxes**

2010-Paid from Dad's Account

2011-\$4300. Paid for by Dad's Educational Fund-We are each to pay back **\$1,075** before distribution. Charles will not do this unless court-ordered so please include as part of the package.

2012-\$2447.39/4=**\$611.85** Charles will not pay this unless forced to by court. It is overdue now and Annette, Jeanne and I will have to pay it soon to avoid sale. I will bring a copy of assessor's statement tomorrow showing that the tax exceeded what dad paid by \$2400 in 2011 and \$1000 in 2012 due to some homestead exemption paper work Charles still has not completed.

#### **Allstate House Insurance**

**2010-Paid for by Dad's Account**

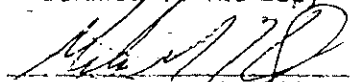
**January, 2011-May, 2013**

Paid for by Mary Annette Houston-10 months @**\$71/month**; 2 months @**\$87**. Paid for by Cornelia Hall-12 months-10 months@**\$71/month**;2 months @**\$87**. Paid for by Jeanne Hampton-5 months @**\$71/month**;

Total Due thus far from Charles: **\$2123/4=\$537.24**

**TOTAL OWED BY CHARLES TO BE PAID FROM HIS SHARE OF CLOSING PROCEEDS: \$27,824.09**

Certified - True Copy

  
Jean Ann Rosarneau - Clerk of Court  
Beaufort County, SC - Melissa Kilby

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**Jul 01 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-07-1559

Charles E. Houston, Jr.....Appellant,

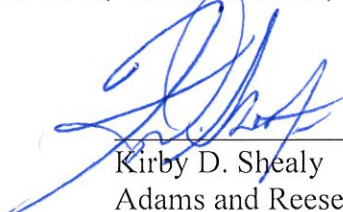
v.

Dean B. Bell, individually;  
Law Offices of Dean B. Bell, LLC; and  
B. Hammel Properties, LLC.....Respondents.

**PROOF OF SERVICE**

I certify that I have caused to have served the foregoing Motion to Correct Record on Appeal on the Appellant, Charles E. Houston, Jr. by having a copy deposited in the United States Mail, postage prepaid, on July 1, 2020 addressed to Mr. Charles E. Houston, Jr., 100 Shady Brooke Walk, Fayetteville, Georgia 30214.

I further certify that I caused to have served the foregoing Motion to Correct Record on Appeal on the Respondent Dean B. Bell, individually and the Respondent the Law Offices of Dean B. Bell, LLC by having a copy deposited in the United States Mail, postage prepaid, on July 1, 2020, addressed to 4747 Research Forest Dr. Ste. 108 #242, The Woodlands, Texas 77381.

  
\_\_\_\_\_  
Kirby D. Shealy  
Adams and Reese LLP



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**Jul 01 2020**

**SC Court of Appeals**

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July 1, 2020

Via OneDrive

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals

RE: *Charles E. Houston, Jr. v. Dean B. Bell, et al.*  
Appellate Case No. 2019-001676  
A&R File No. 050168-000411

Dear Ms. Kitchings:

I am hereby filing the Respondent B. Hammel Properties, LLC's Motion to Correct Record on Appeal and Proof of Service in the referenced case. Under separate cover, I will submit a check in the amount of \$50.00 to cover the filing fee for this Motion.

Thank you for your assistance with this matter.

Sincerely,

Kirby D. Shealy III

KDSIII/jas

Enclosure(s)

cc: *via U.S. Mail and E-Mail w/encl.*  
Mr. Charles E. Houston, Jr.  
Dean B. Bell, Esq.

cc: *via E-Mail w/encl.*  
Thomas C. Taylor, Esq.