

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master-In-Equity

RECEIVED

Sep 14 2020

Appellate Case No. 2020-001127

SC Court of Appeals

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

MOTION FOR PERMISSION NOT TO ORDER TRANSCRIPT

John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

Appellant files this Motion as a result of the attached correspondence from the Clerk's Office of the Court of Appeals (Exhibit A). In that letter, dated September 2, 2020, the Deputy Clerk indicates that it will be necessary for Appellant to order a full transcript of the motion hearing in the court below, unless opposing counsel consents to ordering less than the full transcript. Appellant's undersigned counsel has communicated with opposing counsel on September 2, 2020 via email prior to the filing of this Motion in an attempt to get Respondent to agree to Appellant not ordering the motion hearing transcript, but without success, as Respondent has on September 11, 2020 filed a motion to dismiss the appeal in part based on their objection to Appellant's intention not to order the transcript of this hearing, for which reason Appellant seeks the court's permission not to order that transcript.

Appellant believes that the Deputy Clerk's letter takes the position that an appellant must always order a full transcript of the proceedings in the court below, unless the other party agrees to order less than the full transcript. However, this interpretation of Rule 207(a)(1), SCRCPC ignores Rule 208(a), SCRCPC which begins by stating that

“(a) Time for Serving and Filing Initial Briefs.

(1) Brief of Appellant. Within thirty (30) days after receiving the transcript or, **if no transcript is ordered**, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.” (emphasis added)

The SCRCPC, when viewed as a whole, clearly contemplate a situation where the Appellant does not always have to order a transcript of the proceeding below. Indeed, even Rule 207(a)

(1), SCRCF appears to contemplate that very same situation, since it says in pertinent part

“(a) Appeals From a Lower Court.

(1) Ordering the Transcript. Where a transcript of the proceeding must be prepared by the court reporter, ...”.

This appears to contemplate a situation where the transcript does not have to be prepared by the court reporter, and Appellant believes that this includes more than just those times when the other party does not agree to ordering less than the full transcript of the hearing below. Although Rule 207(a)(1), SCRCF does state that “[u]nless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below”, note that this language follows the language cited above in that same rule, which conditions that whole paragraph on situations where the transcript must be prepared by the court reporter. Appellant does not believe that this appeal involves one of those situations where the transcript must be ordered. Therefore, for the reasons that follow, Appellant respectfully requests that the court permit Appellant to proceed without ordering the transcript of the hearing below:

(1) Appellant does not believe that a transcript of the hearing below is necessary to prosecute this appeal. The burden of proof is on Appellant to prove that the lower court's ruling regarding the law cited by the lower court in the appealed order should be reversed. If Appellant does not believe that the transcript from the lower court is necessary for him to meet his burden on appeal, then he should be given discretion not to have to order that

transcript, since he has the most to lose if the transcript were necessary to his appeal, in the event that he did not order it to be prepared for the court's review.

(2) Appellant does not believe that the transcript of the hearing below is relevant to his appeal. A party should not be required to incur unnecessary expenses to order an irrelevant transcript. (Rule 1, SCRCP) As can be seen from the email attached as Exhibit B from Judge Chellis dated April 7, 2020, at the hearing on the summary judgment motion, the lower court orally ruled in favor of Appellant on the counterclaim issue that is the subject of this appeal. It was only after the hearing that the judge changed his mind, and he did so on his newly announced view of the law that the alleged false representation of the amount due from Appellant to Respondent was privileged, since that representation occurred in the filed Complaint. Therefore, a transcript of the summary judgment hearing would be irrelevant, since the legal theory upon which this appeal is based was not announced by the judge until this April 7, 2020 email, well after the summary judgment hearing on March 5, 2020. This also means that Appellant did not have an opportunity to argue against this legal theory until the filing of Appellant's Rule 59 motion, which arguments were preserved for review as a result of that motion, even though the court summarily denied it with a Form 4 order. Since the lower court transcript is not relevant to this appeal, Appellant also believes that it is not a necessary part of the record on appeal, and asks that this court so find.

(3) Appellant cannot afford to order the transcript. At first, Appellant was uncertain of the correct court reporter to whom to address a transcript request, so the email attached as Exhibit C was sent to Yvestre Torres, who is the regular court reporter for Dochester County Common Pleas cases, which email requested that she prepare a full transcript of the summary judgment hearing. However, she responded by indicating that she did not handle hearings in the Master-in-Equity court, so she could not prepare the transcript. Afterwards, Appellant located the correct court reporter, who is a private court reporter that doesn't work for the state of South Carolina, and the fee quoted to prepare the transcript was estimated at \$700.00, which is much more than it would have cost for a state court reporter to prepare the transcript. Since Appellant is a 100% disabled veteran, with income limited to Social Security and VA disability, he is unable to afford to order this more expensive than anticipated transcript, which he also believes to be unnecessary to the prosecution of his appeal, as indicated above.

Also attached as Exhibit D to this Motion is Appellant's Declaration in Support of Motion, which Appellant incorporates herein by reference.

WHEREFORE, Appellant respectfully requests that the court take the following actions:

A. Order that it is not necessary for Appellant to order the transcript of the summary judgment hearing in the court below,

- B. Find that the transcript of the summary judgment hearing is not a necessary part of the record on appeal,
- C. Grant Appellant at least 30 days from notice of entry of any order as a result of this Motion to file Appellant's initial brief, and
- D. For such other relief as may seem appropriate to the court.

Dated this September 14, 2020

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

EXHIBIT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 02, 2020

Mr. John R Cantrell, Jr., Esquire
PO Box 1276
Goose Creek SC 29445-1276

Re: 1st Franklin Financial Corporation v. Roby A. Adams
Appellate Case No. 2020-001127

Dear Counsel:

Appellant has notified the Court that he unable to afford the transcripts in this appeal and wishes to rely on other evidence. Pursuant to Rule 207(a)(1), SCACR, where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript). Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings.

Very truly yours,

V. Claire Allen

CLERK

cc: Robert Crum Osborne, III, Esquire
Robert Hope Jordan, Esquire

EXHIBIT B



John Cantrell <johncantrelljr@gmail.com>

1st Franklin v. Adam- Proposed Order

James Chellis <JChellis@dorchestercountysc.gov>

Tue, Apr 7, 2020 at 3:11 PM

To: "Osborne, Robert C." <robertosborne@parkerpoe.com>, John Cantrell <johncantrelljr@gmail.com>

Cc: "Jordan, Robert H." <robertjordan@parkerpoe.com>, "Norman, Karen D." <karennorman@parkerpoe.com>

Gentlemen,

One advantage that I have is the season of time and contemplation.

Re: 1st Franklin is Not Entitled to Summary Judgment on Defendant's Claim that it Falsely Represented the Amount Owed by Defendant.

As my comments at the hearing reflect, and after considering this while reviewing the proposed order, I am changing my mind. I do not think despite the \$9 difference alleged in the separate cases that this is a false representation as contemplated under the SCCPC.

I ask Mr. Osborne to redraft this section granting partial SJ on this point. The stated difference is in a complaint filed in a lawsuit. The pleadings of a lawsuit are mere allegations. They must be proven. Following the logic of Mr. Cantrell's position to its extreme result would mean that if any amount alleged due were proven incorrect, then that would open a flood gate to litigation on this point, including separate lawsuits after entry of a judgment in favor of a creditor who alleged an incorrect amount due. Moreover, this argument has a chilling effect on creditors who have found themselves owed a debt. I cannot find myself supporting Mr. Cantrell's position that pleading the wrong amount gives rise to a cause of action for a false representation. The pleading is a privileged document.

I understand Mr. Cantrell will be disappointed. In drafting the modification please set out Mr. Cantrell's argument fairly and plainly. I believe my decision is correct now. Nonetheless, should he want to pursue an appeal, I'd like the record to fairly set out his position.

Mr. Osborne, please add supporting case law that a pleading is privileged. That the cause of action including the amount of the damages must be proven by a preponderance of the evidence. The fact finder must decide the damages, et. cet. Also, you should add the policy argument that I express in this email.

Best Regards,

Judge James E. Chellis

Master in Equity

First Judicial Circuit

Dorchester County

South Carolina

jchellis@dorchestercountysc.gov

[Quoted text hidden]

EXHIBIT C



John Cantrell <johncantrelljr@gmail.com>

Appeal from Dorchester County, Case # 2017-CP-18-00819, 1st Franklin v. Adams

Torres, Yvestre <ytorres@sccourts.org>
To: John Cantrell <johncantrelljr@gmail.com>

Tue, Aug 25, 2020 at 9:30 AM

Good morning, Mr. Cantrell

I hope all is well. In reviewing my notes, I was not the court reporter who covered Judge Chillis on March 5, 2020. I don't personally know who the court reporter was that day, but if you contact Court Administration, I'm sure they will direct you to the correct person. Have a wonderful and safe week.

Yvestre Torres

From: John Cantrell <johncantrelljr@gmail.com>
Sent: Monday, August 24, 2020 9:55:50 PM
To: Court Of Appeals Filings; Transcripts; Torres, Yvestre
Cc: Jordan, Robert H.; Osborne, Robert C.
Subject: Re: Appeal from Dorchester County, Case # 2017-CP-18-00819, 1st Franklin v. Adams

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Attached please find a letter ordering a transcript in this case, along with a completed transcript order form for filing with the court.

Sincerely,
John R. Cantrell, Jr.
Cantrell Legal, PC
PO Box 1276
Goose Creek, SC 29445-1276
843-797-2454 voice
309-213-0922 fax
Dist. SC (4th Cir)
johncantrelljr@gmail.com<mailto:johncantrelljr@gmail.com>
www.defenderofdebt.com<https://urldefense.com/v3/_http://www.defenderofdebt.com_/!JHVHxrUang!DmJ7;jsOzR7KSHvBD21GVxUQgkE4iaQl_ElcVHNYEsE4C8ht0uJXhw5A84GT6N8\$>

On Mon, Aug 24, 2020 at 8:26 AM Court Of Appeals Filings <ctappfilings@sccourts.org<mailto:ctappfilings@sccourts.org>> wrote:
Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

From: John Cantrell [mailto:johncantrelljr@gmail.com<mailto:johncantrelljr@gmail.com>]
Sent: Friday, August 21, 2020 4:51 PM
To: Court Of Appeals Filings <ctappfilings@sccourts.org<mailto:ctappfilings@sccourts.org>>
Cc: Jordan, Robert H. <robertjordan@parkerpoe.com<mailto:robertjordan@parkerpoe.com>>; Osborne, Robert C. <robertosborne@parkerpoe.com<mailto:robertosborne@parkerpoe.com>>
Subject: Re: Appeal from Dorchester County, Case # 2017-CP-18-00819, 1st Franklin v. Adams

As instructed by the court based on the recent deficiency letter, attached for filing please find a copy of the email

referenced in the previously filed certificate of service of the notice of appeal showing service on opposing counsel.

Sincerely,

John R. Cantrell, Jr.

Cantrell Legal, PC

PO Box 1276

Goose Creek, SC 29445-1276

843-797-2454 voice

309-213-0922 fax

Dist. SC (4th Cir)

johncantrelljr@gmail.com <<mailto:johncantrelljr@gmail.com>>

www.defenderofdebt.com <[https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Gh3uIK-x4-C5HkIL_7A4FqK0Jp2i!_DzeRMsqfgd2_10aJuizAim9fx1hJTzgpN94a\\$](https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Gh3uIK-x4-C5HkIL_7A4FqK0Jp2i!_DzeRMsqfgd2_10aJuizAim9fx1hJTzgpN94a$)>

On Fri, Aug 21, 2020 at 4:01 PM John Cantrell <johncantrelljr@gmail.com <<mailto:johncantrelljr@gmail.com>>> wrote:
Attached for filing please find the cover letter that has been mailed to the court with the filing fee for the appeal.

Sincerely,

John R. Cantrell, Jr.

Cantrell Legal, PC

PO Box 1276

Goose Creek, SC 29445-1276

843-797-2454 voice

309-213-0922 fax

Dist. SC (4th Cir)

johncantrelljr@gmail.com <<mailto:johncantrelljr@gmail.com>>

www.defenderofdebt.com <[https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Gh3uIK-x4-C5HkIL_7A4FqK0Jp2i!_DzeRMsqfgd2_10aJuizAim9fx1hJTzgpN94a\\$](https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Gh3uIK-x4-C5HkIL_7A4FqK0Jp2i!_DzeRMsqfgd2_10aJuizAim9fx1hJTzgpN94a$)>

On Fri, Aug 14, 2020 at 4:55 PM Court Of Appeals Filings <ctappfilings@sccourts.org <<mailto:ctappfilings@sccourts.org>>> wrote:

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

From: John Cantrell [<mailto:johncantrelljr@gmail.com> <<mailto:johncantrelljr@gmail.com>>]

Sent: Friday, August 14, 2020 3:06 PM

To: Court Of Appeals Filings <ctappfilings@sccourts.org <<mailto:ctappfilings@sccourts.org>>>; Jordan, Robert H.

<robertjordan@parkerpoe.com <<mailto:robertjordan@parkerpoe.com>>>; Osborne, Robert C.

<robertosborne@parkerpoe.com <<mailto:robertosborne@parkerpoe.com>>>

Subject: Appeal from Dorchester County, Case # 2017-CP-18-00819, 1st Franklin v. Adams

Attached for filing please find a notice of appeal in the above case, which is also being served via email simultaneously upon counsel for the Respondents as is noted in the attached certificate of service. As is required by the current coronavirus appellate court rules, a check for the filing fee will be mailed to the court within 5 days. Also attached are copies of the orders being appealed.

Sincerely,

John R. Cantrell, Jr.

Cantrell Legal, PC

PO Box 1276

Goose Creek, SC 29445-1276

843-797-2454 voice

309-213-0922 fax

Dist. SC (4th Cir)

johncantrelljr@gmail.com <<mailto:johncantrelljr@gmail.com>>

www.defenderofdebt.com <[https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Hu2ggg-KL6M8rzNpgLqrH3vXv0ukG8yDC_!J!-exTQShBJCjZWzSllaB1MLuHhNYKmTwz3\\$](https://urldefense.com/v3/http://www.defenderofdebt.com/!UHVHxrUang!Hu2ggg-KL6M8rzNpgLqrH3vXv0ukG8yDC_!J!-exTQShBJCjZWzSllaB1MLuHhNYKmTwz3$)>

[Quoted text hidden]

CANTRELL LEGAL, PC
PO BOX 1276
GOOSE CREEK SC 29445-1276
843-797-2454 (voice) 309-213-0922 (fax)
Email: lawyer@comcast.net

August 24, 2020

Yvestre Torres
Via email address ytorres@sccourts.org

RE: 1st Franklin Financial Corporation v Roby A. Adams, Appellant,
Common Pleas Case No. 2018-CP-18-00819
Appellate Case No.: 2020-001127

Dear Miss Torres:

On March 5, 2020, a summary judgment motion in the above case was heard before the Hon. James Chellis in Dorchester County. Although I haven't been able to determine whom the correct court reporter for this hearing might be, I know that you are the normal court reporter in this county. If you were not the reporter for this hearing, then please advise to whom I should direct this request.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr.
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, South Carolina 29445-1276
(843) 797-2454
Attorney for Appellant

cc: Robert C. Osborne III (via email)
Robert H. Jordan (via email)
S.C. Court Administration (via email)
Clerk, Court of Appeals (via email)

EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CASE NO.: 2020-001127

1st FRANKLIN FINANCIAL)
CORPORATION)
))
Respondent,)
))
v.)
))
ROBY A. ADAMS,)
))
Appellant.)
_____)

**DECLARATION IN SUPPORT OF
MOTION FOR PERMISSION NOT
TO ORDER TRANSCRIPT**

Comes now the undersigned John R. Cantrell, Jr., and certifies that the following facts are true based on his personal knowledge:

1. I am the attorney for the Appellant in the above matter.
2. Exhibits A, B, & C, which are attached to Appellant's Motion For Permission Not To Order Transcript are accurate and complete copies of the originals of those documents, and it is the undersigned's intention to authenticate them.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Dated this September 14, 2020

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Motion For Permission Not To Order Transcript on all parties of record by emailing it today to Respondent's attorneys of record Robert C. Osborne III at his email address of robertosborne@parkerpoe.com and Robert H. Jordan at his email address of robertjordan@parkerpoe.com.

Dated this September 14, 2020

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

RECEIVED
Sep 14 2020
SC Court of Appeals

CANTRELL LEGAL, PC
PO BOX 1276
GOOSE CREEK SC 29445-1276
843-797-2454 (voice) 309-213-0922 (fax)
Email: lawyer@comcast.net

RECEIVED

Sep 14 2020

SC Court of Appeals

September 14, 2020

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

RE: 1st Franklin Financial Corporation v. Roby A. Adams
Appellate Case No. 2020-001127

Dear Miss Kitchings:

Enclosed for filing via email only is Appellant's Motion for Permission Not To Order Transcript, along with Exhibits A-D, and a Certificate of Service. A copy of this cover letter is also being sent by regular mail, along with a firm check in the amount of \$50.00 for the motion filing fee.

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr.
Cantrell Legal, PC
PO Box 1276
Goose Creek, South Carolina 29445-1276
(843) 797-2454
Attorney for Appellant

cc : Robert C. Osborne III and Robert H. Jordan via email only