

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

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Case No.: 2018-CP-43-1583  
Appellate Case No. 2019-000873

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M.B. Hutson, Appellant,

v.

A. Paul Weissenstein, Respondent.

**RECEIVED**  
**Sep 28 2020**  
**SC Court of Appeals**

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**MOTION TO DISMISS APPEAL**

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Respondent A. Paul Weissenstein, by and through the undersigned counsel, hereby moves to dismiss the above-captioned appeal for Appellant Hutson's failure serve a Record on Appeal as required by this Court's prior order and the South Carolina Appellate Court Rules. This motion is brought pursuant to SCACR Rule 210 which requires service of the Record on Appeal within thirty (30) days of service of the last brief, and requires that the Record on Appeal conform with the requirements of the rule.

Appellant's Initial Reply Brief was served on February 26, 2020, making service of the Record on Appeal due on or before March 27, 2020. Pursuant to the Supreme Court of South Carolina's order related to appellate court operations during the coronavirus crisis, Appellant was

granted an automatic twenty (20) day extension, making service of the Record on Appeal due on or before April 16, 2020.

On April 22, 2020, Respondent moved this Court to dismiss this appeal pursuant to SCACR Rule 210 for Appellant's failure to serve the Record of Appeal within thirty (30) days of service of the last brief. On July 7, 2020, this Court ordered Appellant to "provide proof he has served the record on appeal on Respondent within twenty days of this order or this appeal may be dismissed," making a complete Record on Appeal due by July 27, 2020.

Thereafter, Appellant request two additional extensions, and this Court ordered Appellant to serve a record on appeal by September 8, 2020. Despite being granted extensions of time totaling over five months, Appellant has failed to serve a proper record on appeal upon Respondent.

Instead, on September 8, 2020, Appellant served what appears to be another copy of his initial brief, along with a list of documents. It appears that the list of documents is an attempt to submit a new designation of matter that is substantially different from the designation of matter initially filed by Appellant, although the purpose of this list is not entirely clear. For instance, sixteen of the entries on the list contain a line striking through the name and description of the document<sup>1</sup>. (Exhibit A).

Additionally, Appellant's initial brief was accompanied by a stack of documents labeled as exhibits. To the extent that Appellant purports that this stack of exhibits represents a record on appeal, the stack of exhibits is wholly noncompliant with SCACR Rule 210.

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<sup>1</sup> It appears that by striking through certain documents, Appellant seeks to unilaterally remove matters previously designated for the record on appeal, although no motion to strike was filed or granted. The stack of documents sent by Appellant does not include any documents with strikes through them, in addition to its omission of multiple documents designated by Respondent to be included in the record on appeal.

Rule 210(c) requires that a record on appeal include “all matter designated to be included by any party under Rule 209...[and] shall be arranged in the following order: the title page, index, orders, judgment, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate of appellant.” SCACR Rule 210(c). Furthermore, “each page of the record on appeal shall be numbered consecutively beginning with the index” *Id.*

Here, the documents served on Respondent’s counsel do not comply with Rule 210(c). As an initial matter, the stack of documents is not in the order mandated by Rule 210. It begins with a contractual agreement purported to have been executed between 2005-2009, and then has various orders, pleadings, motions, emails, agreements and letters scattered throughout the stack in no particular order.

Furthermore, the documents served on Respondent do not contain any consecutive page numbers. Thus, to the extent the stack of documents served on Respondent could be considered a record on appeal, Respondent is unable to cite to any such documents in his final brief, as there are no page numbers with which to cite.

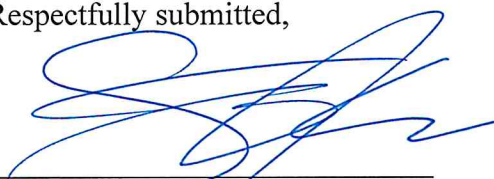
Moreover, the documents served upon Respondent do not include all matters designated by the parties. For instance, items 3, 12, 16, and 18 on Respondent’s designation of matter are not included in the stack of documents provided to Respondent. These documents include item 3: an order on pending Motions and ejecting Appellant from Property entered March 20, 2014 (an operative order in the underlying litigation that allegedly gave rise to this legal malpractice action); item 12: Respondent’s Opposition to Appellant’s “Motion to Reconsider” Exhibits A and B; item 16: Letter from Respondent’s Counsel to Circuit Court and Appellant dated January 29, 2019 enclosing Federal Court Orders (in response to the Circuit Court’s request for submission of the Federal Court orders); and item 18: the Notice of Appeal.

As Appellant has repeatedly failed to the comply with SCACR Rule 210, and did not comply with this Court's order requiring service and filing of proof of service of the Record on Appeal on Respondent's counsel, this appeal should be dismissed.

Accordingly, Respondent respectfully requests an order dismissing this appeal.

This 28<sup>th</sup> Day of September 2020

Respectfully submitted,



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Steven R. Kropki (S.C. Bar # 101441)  
David W. Overstreet (S.C. Bar# 16965)  
Ryan M. Gunther (S.C. Bar# 104141)  
Earhart Overstreet LLC  
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(843) 972-9404  
Attorneys for Respondent Paul A. Weissenstein

NEW Appellate # <sup>1</sup>	Prev. Appellate # <sup>2</sup>	Lower Court Ref. # <sup>3</sup>	Date of Original Document <sup>4</sup>	Title of Document/ page #(s)
1	4	"D"	Var. 2005-2009	(RMAs) Retail Membership Agreement sample (750+ for 1 yr. to 2 lifetimes)
2	2	"B"	December, 2010	LPA - Lease Purchase Agreement
3	3	"C"	December, 2010	MIPA - Membership Interest Purchase Agreement
4	19	"T"	Feb. 16, 2011	TLC's S. Lovell Deposition re BWR losses
5	25	"Z"	March 15, 2011	Title Search pp. 1-2;
6	1	"A"	Oct., 25, 2011	Attorney Retainer Agreement: Hutson - Weissenstein
7	7	"G"	Nov. 9, 2011	Respondent Weissenstein's Answer to Application for Eviction for Hutson
8	15	"P"	1/6/2012 thru 9/11/2013	Payments from Hutson to "Sellers" via check and/or wire transfer
9	16	"Q"	Mar. 31, 2012	Email from Respondent Weissenstein to Tom Harper, Esq., for "Seller"
10	26	"AA"	April 3, 2012	Email from Respondent Weissenstein to Appellant re: County Planning Meetings/Deadlines for development
11	27	"BB"	April 12, 2012	Email from Respondent Weissenstein to Wells Fargo Bank re: project financing for development at BWR
12			April 12, 2012	Weissenstein, Respondent, co-signs application to Clarendon County Planning Board for BWR development.
13	8	"H"	April 13, 2012	Settlement Agreement
14	9	"I"	April 13, 2012	Consent Order
15	28	"CC"	June 18, 2012	Respondent's email to Harper Esq. re: letter to county Planning Commission for project approval; also #16 PLAT
16	5	"E"	June 18, 2012	PLAT (see Respondent's continued actions to move development forward #s 12,15,16.)
NEW Appellate # <sup>5</sup>	Prev. Appellate # <sup>6</sup>	Lower Court Ref. # <sup>7</sup>	Date of Original Document <sup>8</sup>	Title of Document/ page #(s)

<sup>1</sup> Renumbered to honor Chronological guidelines of the Appellate Court

<sup>2</sup> Former submission to Appellate Court without chronological consideration

<sup>3</sup> Lettered Reference Designation used in the Circuit Court

<sup>4</sup> Used to Order Documents per Rule 209-210

<sup>5</sup> Renumbered to honor Chronological guidelines of the Appellate Court

<sup>6</sup> Former submission to Appellate Court without chronological consideration



17	29	"DD"	June 29, 2012	Respondent's email to Harper, Esq. re: approval delays and request for additional extensions
18	14	"O"	Feb., 27, 2014	Affidavit of Equitable Interest
18a	?		March 20, 2014	Order on pending Motions and ejecting appellant from Property <sup>^3</sup>
19	10	"K"	March 18, 2015	Clark Deposition: "Big Water Resort had NO LEASE to operate"
20	11	"L"	October 2, 2015	Stewart Title Letter: 'cloud on the title'
21	21	"V"	November 9, 2015	Appellant's Notice Letter to Respondent, Weissenstein
22	13	"N"	Feb. 12, 2016	Motion to Suppress 3 <sup>rd</sup> Party Deposition
23	6	"F"	May 20, 2016	Federal Judge Norton's Order
24	23	"X"	July 22, 2016	Envelope to SLED for opinion
25	24	"Y"	July 22, 2016	Documents listed of items sent to SLED
26	12	"M"	August 7, 2018	Hutson Email to Kropski (3 pp.)
27	22	"W"	August 8, 2018	AFFADAVIT of Mark Hardee, Esq.
28	20	"U"	Sept. 4, 2018	Appellant filed: #2018-CP-430-1583 Summons and Complaint <sup>^4</sup>
28-A			Oct. 3, 2018	Respondent's Motion to Dismiss or for Summary Jdgmt. <sup>^6</sup>
28-B			Oct. 3, 2018	Respondent's Ans. To Amended Complaint <sup>^7</sup>
28-C			Oct. 3, 2018	Amended Summons and Complaint w/ Exhibits 1 and A-U <sup>^5</sup>
28-D			Oct. 18, 2018	Appellant's Resp to Respondent's Motion to Dismiss/Summary Jdgmt. <sup>^8</sup>
28-E			Dec. 6/7, 2018	<p><b>Resp's Memo in Support of Motion to Dismiss/Summary Judgment.</b></p> <p><b><u>EXHIBITS:</u></b></p> <p><u>"E-mail Roark to 'Claudia in Coffee's office' – no reply (11/11/2010) "B"</u></p> <p><u>"Lease-Purchase Agreement. (LPA) (Dec. 2010)" ..... "A" (#2 above)</u></p> <p><u>Appl. 4 Ejectment(11/29/11)... "C"</u></p> <p><u>Settlement Agreement April 13, 2012... "D" (#13 above) <sup>^9</sup></u></p>
28-F			Dec. 10, 2018	TRANSCRIPT of Dec. 10, 2018 <sup>^13</sup>

<sup>7</sup> Lettered Reference Designation used in the Circuit Court

<sup>8</sup> Used to Order Documents per Rule 209-210

· 28-G			Dec. 12, 2018	AP resp 2 Respond's Motion to Dismiss/Sum Jdgmt. ^10
· 28-H			January 24, 2019	Circuit Ct. Ltr requesting complete copy of Federal Court Order ^15
28-I		<b>Not Found</b>	January 29, 2019	Ltr. fr. Respondent's Counsel 2 Cir. Ct. & Appellant encl. Fed Ct. Orders ^16
· 28-J	30	"EE"	February 4, 2019	JUDGE CURTIS' letter granting Summary Judgment ^17
· 29-A			February 13, 2019	AP's "Motion to Reconsider" w/ Exhibits J, Q, Z, AA, BB, CC, DD ^11
· 29-B			February 19, 2019	Plaintiff/Appellant's Response Objecting to the Order of the Court
· 30	32	"GG"	Signed 23 <sup>rd</sup> , filed 25 <sup>th</sup> of Feb., 2019	Order Granting Respondent/Defendant's Motion for Summary Judgment ^1
· 30-A			April 4, 2019	Def. Memo Opp Mot. 2 Reconsider ^12
· 31	31	"FF"	April 22, 2019 hearing	TRANSCRIPT; see pp. 20, 22 ^14
· 32	----	----	April 22, 2019	Order Denying Appellant's Motion to Reconsider ^2
· 33			May 17, 2019	Notice of Appeal Served ^18

I certify, to the best of my ability that this designation contains no matter which is irrelevant to this appeal.

This 8th day of September, 2020.

Respectfully Submitted,



M. B. Hutson, Pro Se Appellant  
Post Office Box 2755  
Orangeburg, SC 29116-2755  
(803) 308 - 2714

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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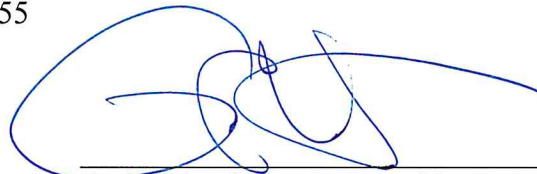
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**PROOF OF SERVICE**

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I certify that I have served Respondent's Motion to Dismiss Appeal on all parties to this appeal by depositing a copy in the United States Mail, postage prepaid, on September 28, 2020 addressed to *pro se* Appellant as follows:

M.B. Hutson, PRO SE  
Post Office Box 2755  
Orangeburg, South Carolina 29116-2755



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Paralegal to Steven R. Kropski

September 28, 2020

**VIA EMAIL FILING**

Jenny Abbott Kitchings, Clerk  
V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
(803) 734-1839

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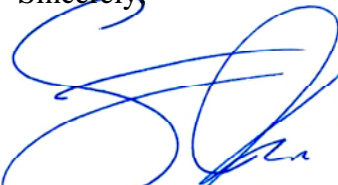
Re: M.B. Hutson, Appellant v. A. Paul Weissenstein, Respondent  
Appellate Case No.: 2019-000873

Dear Ms. Kitchings and Ms. Allen:

Enclosed please find a copy of *Respondent A. Paul Weissenstein's Motion to Dismiss Appeal* for failure to comply with Rule 210, SCACR. The corresponding motion fee check has been mailed today and is forthcoming. Please do not hesitate to contact me with any questions or concerns.

With kind regards, I am

Sincerely,

  
STEVEN R. KROPSKI

SRK/shb  
Enclosure

cc: M.B. Hutson, Pro Se (via U.S. Mail; Post Office Box 2755, Orangeburg, SC 29116-2755)