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SC Court of Appeals

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

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

v.

Greg S. Hackney Appellant

**RESPONDENT’S RETURN TO APPELLANT’S MOTION
FOR IMMEDIATE DISMISSAL**

**I. APPELLANT’S IMPROPER “PROVISIONAL AND CONTESTED” RECORD
ON APPEAL**

This Court, on May 22, 2020, issued its clear and unequivocal Order requiring Appellant to serve an Amended Record on Appeal that must: (1) include all documents designated by both parties; and (2) omit all documents not presented to the lower court.¹

Appellant has served Respondent with a “Provisional and Contested Record on Appeal” five months later which fails to comply with Rule 210, SCACR. The “Provisional Record”

¹ A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive procedural requirements of the law. *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9, n.5 (2003).

contains more than 700 unnumbered pages.² Appellant argues that the Jasper County Clerk omitted 27 pages of documents submitted at the October 31, 2018 hearing.³ The “Provisional Record” appears to contain all the pages Appellant contends in his Motion are missing from the lower court record (the pages Appellant identifies as containing the exhibits to the response he submitted at the October 31st hearing are consecutively numbered 1-178 in the “Provisional Record”, See unnumbered page 329 of the “Provisional Record”).⁴ Appellant has additionally included 10 pages of documents in the “Provisional Record” from an unrelated case, which he admits were never before the lower court. (unnumbered pages 664-673)

Appellant appears to have included the exhibits to Respondent’s motions and memoranda, however, they have been separated from the pleadings with which they were originally filed. (unnumbered pages 469-549; 550-592; 594-663). Additionally, the exhibits filed October 31, 2018 with Respondent’s Memorandum in Support of Partial Summary Judgment appear twice in the “Provisional Record”. This, combined with the fact the pages are unnumbered makes it difficult to determine whether there are additional errors in the “Provisional Record”.

Appellant has again made it impossible for Respondent to prepare its Final Brief. Respondent agrees that the appeal should be dismissed, but not for the purpose of giving Appellant another bite at the apple. Instead, Respondent respectfully requests the Appeal be

² Appellant numbered the pages in the Record on Appeal previously filed, indicating that he is aware of the requirement.

³ Appellant has failed to establish that the filing in the Jasper County Clerk’s Office is not an accurate reflection of the Exhibit he handed to the lower court. Appellant emphasizes the lower court’s Order references a 220 page submission from Appellant. Appellant claims in his Motion to Dismiss that the clerk’s office shows a 38 page Response plus exhibits with the last numbered page being 183. Upon receiving this submission, it would be reasonable, without counting the pages presented, for the lower court to assume it had received 220 pages.

⁴ Appellant does not appear to know what he actually submitted to the lower court. It should be noted that the “key” Victim Notification Form that Appellant claims was omitted by the Jasper County Clerk does not appear in the “missing” pages Appellant improperly included in the Record.

dismissed: "Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal. . . ." Rule 260, SCACR.

II. APPELLANT'S REQUEST FOR A NEW HEARING

Appellant has also asked this Court to order a new hearing in the lower court, in a different county, of Respondent's Motion for Partial Summary Judgment. This matter was commenced by the filing of a Complaint on September 22, 2017. The lower court heard Respondent's Motion for Partial Summary Judgment more than a year later on October 31, 2018. Appellant was not denied an opportunity to present his defenses nor did he ask for a continuance. Rather, he has been able to submit hundreds of pages of documents in the underlying case and to argue his case at the October 31st hearing.

Appellant claims he was not given adequate time to call witnesses for the hearing. However, he stated at the October 31st hearing that he lacked evidence because the Jasper County Sheriff's office had not responded to his requests for information, not that he did not have adequate time to issue a subpoena or otherwise seek to compel their testimony in the two months after the August 23, 2018 Motion was filed. (Transcript, p. 44, ll. 18-20). Therefore, even if this Court could order a new hearing, there is no adequate ground presented for doing so.

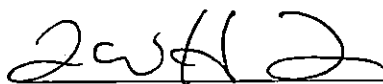
Conclusion

Respondent respectfully requests this Court to enforce its May 22, 2020 Order. Appellant's case is required to be dismissed since he refuses to provide a proper Record on Appeal. Rule 260, SCACR.

Respondent also respectfully requests this Court to deny Appellant's Motion for a New Trial. Appellant had a full and fair opportunity to present his case at the October 31st hearing and should not be allowed a second bite at the apple two years later.

Respectfully submitted,

Nov. 2, 2020



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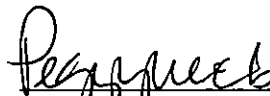
v.

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 Return to Appellant's Motion for Immediate Dismissal by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on November 2, 2020, addressed to Greg S. Hackney, 6125 Roswell Road, #503, Sandy Springs, GA, 30328.

November 2, 2020.



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November 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 of Respondent's Return to Appellant's Motion for Immediate Dismissal and a Proof Service 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.

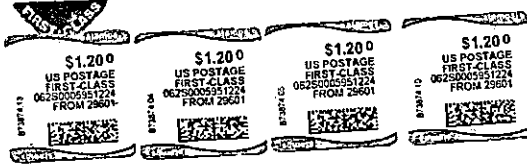
Sincerely,



Laura W.H. Teer

BNM/pm
cc: Greg Hackney

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