

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Honorable Bentley Price

CASE NO. 2020-000551

RECEIVED

Dec 04 2020

SC Court of Appeals

Craig Chappell, on behalf of himself and others similarly situated, Appellant,

v.

Ladles Soups - James Island LLC; Ladlessoups, LLC; Ladles Soups at Cane Bay LLC; Ladles Soups at Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen; Tray Allen; Steve Traeger; Erik Dyke; Julie Dyke; Stan Sutton; Carol Sutton; Jason Dalter; Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel), Defendants,

Of Which Ladles Soups Coosaw LLC, Ladles Soups Downtown Charleston, LLC, Traeger Unlimited d/b/a Ladlessoups Fresh Fields, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soups Moncks Corner LLC, Ladles Franchise Development, LLC, Ladles Fort Mill, LLC, Ladles Knightsville LLC, Ladles West Ashley, Steve Traeger, Stan Sutton, Carol Sutton, and Kellie Henderson are the Respondents.

**MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE MOTION TO STRIKE
APPELLANT'S BRIEF**

Respondents, Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Fort Mill, LLC; Ladles West Ashley; Steve Traeger; Stan Sutton; and Carol Sutton; hereby move this Honorable Court, by and through their undersigned counsel, to dismiss this appeal in its entirety or in the alternative strike the Brief of Appellant.

The Supreme Court of South Carolina has held that when an appellant fails to comply with the statutory and appellate authority, dismissal of the appeal can be an appropriate remedy. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). Appellant has failed to comply with the rules of the Appellate Court on two parts: 1) statement of facts and 2) presentation of matters not included in the record below.

1. Appellant’s Statement of the Case is in fact a statement of contested facts.

Specifically, South Carolina Code Section § 62-1-308 (e) provides that Appellant’s Brief must comply with the provisions of Rule 208 (b)(1), SCACR. Rule 208(b)(1)(C), SCACR, requires the Statement of the Case “shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement **shall not contain contested matters....**” Rule 208 ((b)(1)(c), SCACR (emphasis added).

Appellant’s Brief, filed on September 14, 2020, violates the South Carolina Appellate Court Rule 208 (b) (1)(c) because the Statement of the Case is filled with contested facts.

Respondents contest many of the facts contained in the Statement of the Case, particularly regarding the service of discovery on Respondents and the answer of discovery. Appellant’s violation of this standard of appellate briefing is prejudicial to the above-referenced Respondents and is grounds for dismissing the Appellant’s appeal in its entirety.

2. Appellant's Brief is full of references to issues that are not preserved for appeal.

In Section II of Appellant's Brief, Appellants argue that the trial court order denying Appellant's Motion to Deem Requests for Admission Admitted was an error. However, that Order from the Trial Court dated January 7, 2020 has not been appealed. Additionally, In Section III of Appellant's Brief, Appellants argue that the trial court erred in denying Appellant's Motion for Class Certification by order dated January 30, 2020. This order was not appealed either.

Furthermore, Appellants have designated matters that were not preserved in the record. Specifically, the following matters were not presented to the court below and thus are not properly preserved for appeal: Items 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 50 and 51 of the Appellant's Designation of Matter to be Included in the Record on Appeal. Item 55 of the Appellant's Designation of Matter to be Included in the Record on Appeal includes deposition testimony of Sue E. Allen at pages 13, 32, 34, 43, 44, 81, and 82 that were not presented to Judge Price in the record below. Likewise, the Appellant's Designation of Matter to be Included in the Record on Appeal includes deposition testimony of Corey Paul at pages 12 and 66 that were not presented in the record below.

Therefore, as all of the above matters were not preserved for appeal but were still improperly included in the Appellant's Initial Brief, Reply Brief, and Designation of Matter to be Included in the Record on Appeal, Appellant's Brief should be dismissed; or in the alternative, these matters and any reference thereto, should be stricken from the Appellant's Brief,

Appellant's Reply Brief and Appellant's Designation of Matter to be Included in the Record on Appeal.

November 30, 2020

/s Paul B. Ferrara, III
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PROOF OF SERVICE

I certify that I have served a copy of the Motion to Dismiss Appeal or in the Alternative Motion to Strike Appellant's Brief by depositing a copy of it in the United States Mail, postage prepaid, on December 4, 2020, addressed to:

Mr. Benjamin Scott Whaley Le Clercq, Esquire
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and

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December 4, 2020

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Paul B. Ferrara, III*
Janel K. Ferrara*

*(also Admitted in N.C.)

December 4, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Craig Chappell v. Ladles Soups
Appellate Case No.: 2020-000551
Our File No.: 20-532

Dear Ms. Kitchings:

Please find an original Motion to Dismiss Appeal or in the Alternative Motion to Strike and Affidavit of Service for filing. Additionally, I have enclosed a check in the amount of \$50.00 for the filing fee.

Please file the originals and return a clocked copy to our office in the self-addressed, stamped envelope which is enclosed.

Sincerely,

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III

Enclosures

cc: Benjamin Scott Whaley Le Clercq, Esq.
David D. Ashley, Esq.