

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jan 15 2021

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellant Case No. 2020-00904

Mary Earle,.....Respondent,

v.

Boulder LP,..... Appellant,

MOTION TO INCLUDE RESPONDENT'S
DESIGNATED MATTER IN RECORD ON APPEAL

Mary Earle, the Respondent, by and through her undersigned counsel, herby moves the Court for an order requiring Appellant to include in the Record on Appeal, all matter properly designated by Respondent under Rules 209(b) and 210(c), SCACR.

Without properly filing a motion to exclude Respondent’s designated matter with the South Carolina Court of Appeals and under the objections of counsel for the Respondent, Appellant’s counsel has intentionally omitted the following documents from the Record on Appeal that are properly designated under Rules 209(b) and 210(c), SCACR:

1. Lease Agreement with all attachments - Including Owner’s Certification of Compliance with HUD Tenant Eligibility and Rent Procedures
2. Self-Affidavit of Mary Earle
3. Tenant File Notes

4. Notice dated August 1, 2019
5. Notice to Vacate
6. Letters to Boulder, Fax Coversheets, and Mary Earle Earning Information sent to Boulder
7. Application for Ejectment
8. Demand for Payment

Appellant's counsel has failed to acknowledge the documents designated as items 1-8, simply because they were not filed as exhibits. Rule 209(b) very clearly states, "The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation **may only propose to include** portions of the transcript, pleadings, orders, exhibits, **or other materials** which may be properly included in the Record on Appeal [See Rule 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal.**" (emphasis added). Under the reference made in Rule 209(b), Rule 210(c), SCACR states, "The Record **shall not, however, include matter which was not presented to the lower court or tribunal.**" (emphasis added).

While document's designated as 1-8 were not physically presented as exhibits, without the majority of them, this case could not exist. Matters 1-8 are the very foundation on which Respondent's eviction dispute arose. The omitted documents relevance is outlined below:

1. Lease Agreement with all attachments - Including Owner's Certification of Compliance with HUD Tenant Eligibility and Rent Procedures .

This is the very Lease Agreement the Respondent is alleged to have violated that led to the eviction process that this appeal derived from. Appellant's counsel leads the "Facts" outlined in their initial brief with a description of this document. (Initial Brief of Appellant p. 3). Additionally, Appellant's counsel even makes references to the HUD regulations on page 3 of her Reply Brief.

Without this document, the court is deprived of discerning both Respondent's and Appellant's arguments and the alleged facts of this case. It is not possible to both state it as factual support in their brief and declare "we determined that several items included in your Designation of Matter for the Record on Appeal were not presented to either the magistrate court or the court of common pleas. As such, we did not include them in this compilation." (See Exhibit A - January 5, 2021, Letter from Emily Bridges). This matter is clearly properly before the Court under Rule 209(b), Rule 210(c), SCACR as it is the foundation of the underlying eviction and should not be omitted.

2. Self-Affidavit of Mary Earle

and

6. Letters to Boulder, Fax Coversheets, and Mary Earle Earning Information sent to Boulder

Both Respondent's counsel and Appellant's counsel should be in possession of all the mentioned documents as they were provided during the course of the Eviction action.

In the Magistrates hearing, Respondent's counsel references her attempted communications with the Appellant and the documents that were sent to the Appellant. (See Magistrate's Hearing Transcript, R. p. 32, l. 4-25 and R. p. 33, l. 1-5). Those matters mentioned would be contained in items 2 and 6 in Respondent's Designation of Matter. Both matters were referenced and properly before the court and should be included in the Record on Appeal under Rule 209(b), Rule 210(c), SCACR.

3. Tenant File Notes

In the Honorable Perry H. Gravely's Form 4 Order of May 15, 2020, he references that there was a "disputed rent arrearage" and that the Magistrate has ordered the Ms. Earle to "keep her rent of \$282/month". (R. p. 3) The disputed arrearage and the amount of rent that the

Respondent was ordered to pay was allegedly originally derived by the Appellant's from their files, ledgers, etc. (See Magistrate's Hearing Transcript, R. p. 29, l. 14-21). The documentation mentioned would be contained in and derived from "3. Tenant File Notes." This matter was properly before the Court under Rule 209(b), Rule 210(c), SCACR and should not be omitted.

4. Notice dated August 1, 2019
5. Notice to Vacate
7. Application for Ejectment
and
8. Demand for Payment

Appellant's counsel describes these documents in the "Facts" portion of their initial brief. Under B. Ejectment Action, specifically describing the Application for Ejectment. (Initial Brief of Appellant p. 3). Under C. Bond Hearing, specifically describing the Notice to Vacate. (Initial Brief of Appellant p. 3). A history of the compilation of the above-mentioned documents is also referenced in the "Memorandum in Support of Appellant's Motion" filed by the now Respondents on May 14, 2020 and currently included in the Record on Appeal at pages 5- 13. These matters are clearly, properly and unquestionably admissible for inclusion in Record on Appeal under Rules 209(b) and 210(c), SCACR.

To omit any of the Respondent's properly designated matter is completely without reasonable merit. Therefore, for the foregoing reasons, and pursuant to 209(b) and 210(c), SCACR, the undersigned counsel moves for an order requiring the Appellant to amend or supplement the Record on Appeal to include all of the Respondent's designated matter that has been improperly excluded. Respondent also requests under Rule 263(b), an extension of time to serve and file the final briefs as the excluded matter is required to properly update their references.

Respectfully Submitted,

Greenville, South Carolina

January 15, 2021

s/Vanessa Cason

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January 5, 2021

VIA EMAIL & U.S. MAIL

Vanessa Cason, Esq.
Attorney at Law
P.O. Box 2842
Greenville, SC 29602

RE: *Mary Earle v. Boulder LP*
Case No. 2020-CP-23-00631
Appellate Case No. 2020-000904

Vanessa:

Pursuant to Rule 210 of the *South Carolina Rules of Appellate Procedure*, we have compiled the Record on Appeal, which we have included for your review. As we discussed in our correspondence of December 17, 2020, we determined that several items included in your Designation of Matter for the Record on Appeal were not presented to either the magistrate court or the court of common pleas. As such, we did not include them in this compilation.

We will be filing the Record on Appeal on January 15, 2021. If you have any questions or objections to the Record on Appeal, we would ask you notify of us as such by January 11, 2021.

Sincerely,

A handwritten signature in cursive script that reads 'Emily Bridges'.

Emily I. Bridges
Fox Rothschild LLP

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PROOF OF SERVICE

I certify that on this January 15, 2021, I have served the Respondent's MOTION TO INCLUDE RESPONDENT'S DESIGNATED MATTER IN RECORD ON APPEAL on the Appellant's counsels of record via electronic service to the email address listed below:

Emily I Bridges: ebridges@foxrothschild.com

M. Kevin McCarrell: kmccarrell@foxrothschild.com

Greenville, South Carolina

January 15, 2021

s/ Vanessa Cason

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