

RECEIVED

Apr 01 2021

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

**APPELLANT'S MOTION TO (1) STRIKE CERTAIN MATTER
FROM RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL, (2) REQUIRE
RESPONDENT TO AMEND HIS INITIAL BRIEF TO OMIT REFERENCE
TO SUCH MATTER, AND (3) EXTEND OR OTHERWISE HOLD IN
ABEYANCE THE TIME FOR APPELLANT'S INITIAL REPLY BRIEF
UNTIL RESPONDENT SERVES SUCH AN AMENDED INITIAL BRIEF**

CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

NOW COMES Appellant, William McFarland, by and through his undersigned counsel, pursuant to Rules 208, 209, 210, 240, and 263, SCACR, and moves this Honorable Court for an order (1) striking certain matter from Respondent's designation of matter to be included in the record on appeal, (2) requiring Respondent to amend his initial brief to omit reference to/discussion of such matter, and (3) extending or otherwise holding in abeyance the time for Appellant's initial reply brief until Respondent serves such an amended initial brief. The grounds for this motion are as follows:

1. As fully explained in the Initial Brief of Appellant, filed/served December 30, 2020, which is incorporated herein by reference, in simplest terms, this appeal arises in the context of litigation about the governance of the homeowners association for a residential subdivision in Summerville.

2. The lower court from which the appeal has been taken is the Master-in-Equity for Dorchester County (the "Master"), and all told, four of the Master's orders are on appeal (collectively, the "Appealed Orders"), the most recent of which was filed on **August 28, 2020** (the "Last Order Appealed") and duly appealed to this Court by notice of appeal filed/served on **September 14, 2020**. (*See Exhibit 1* [Defendant's Second Notice of Appeal, appealing orders filed August 13 and 28, 2020, the latter of which being the Last Order Appealed (attached orders omitted), filed/served September 14, 2020]; *see also Exhibit 2* [Notice of Appeal, appealing

orders filed June 11, 2019, and June 16, 2020 (attached orders omitted), filed/served July 16, 2020]; Exhibit 3 [Letter from the Court consolidating appeals, dated September 23, 2020].)

3. Pursuant to the Court's order filed March 22, 2021, the deadline for Appellant's initial reply brief is today, April 1, 2021.

4. It was not until the undersigned counsel for Appellant began preparing Appellant's initial reply brief that he discovered the following matter in Respondent's designation of matter to be included in the record on appeal to which he is now compelled to object:

3. Plaintiff Motion for Rule to Show Cause, filed **10.14.20** with attachments;
4. Certification of Jennifer McFarland, filed **11.30.20** with attachments;
5. Certification of Carlton Holcombe, filed **11.30.20** with attachments;
6. Order granting Plaintiff's Motion for Rule to Show Cause, filed **12.7.20**;
7. Appellant's Petition for Review of Lower Court Ruling regarding Automatic Stay under Rule 241, SCACR, filed **12.14.20**; and
8. Court of Appeals Order, filed **12.21.20**.

(collectively, the "Disputed Matter") (*see* Exhibit 4 [Respondent's Designation of Matter, filed/served March 1, 2021] (emphasis added).)

5. Pursuant to Rule 209(b), a party's designation of matter to be included in the record on appeal may only include materials that may be properly included in the record on appeal and may not include materials that are not relevant to the appeal.

6. Pursuant to Rule 210(c), the record on appeal shall not include matter that was not presented to the lower court.

7. All of the Disputed Matter *post-dates* the filing of the Last Order Appealed on August 28, 2020, and, for that matter, the appeal of that order on September 14, 2020.

8. The Disputed Matter was not even in existence, much less presented to the Master, at the time of any of the proceedings that resulted in any of the Appealed Orders, and having played no role in the issuance of the Appealed Orders, the Disputed Matter has no relevance to this appeal of those orders.

9. Because the Disputed Matter is not properly a part of the record on appeal, Appellant contends Respondent's reference/discussion thereof in his initial brief (*see, e.g.*, Initial Brief of Respondent p. 5 n.2) is not proper (*see* Rule 210(h) (providing that, "[e]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2),” which do not apply here, “the appellate court will not consider any fact which does

not appear in the Record on Appeal”) and should be excised from Respondent’s initial brief before Appellant replies thereto.¹

WHEREFORE, Appellant asks the Court to (1) strike the Disputed Matter from Respondent’s designation of matter to be included in the record on appeal, (2) require Respondent to amend his initial brief to omit reference to/discussion of such matter, and (3) extend or otherwise hold in abeyance the time for Appellant’s initial reply brief until Respondent serves such an amended initial brief. ADDITIONALLY, Appellant asks the Court to hold the present deadline for his initial reply brief in abeyance until it acts on this motion.

<SIGNED ON THE FOLLOWING PAGE>

¹ For that matter, Appellant submits that there is at the least a genuine and good faith question about whether the Designated Matter should be included in the record on appeal/discussed in the parties’ briefs, such that, even assuming, *arguendo*, the Designated Matter is properly included in the record on appeal/discussed in the parties’ briefs, it is prudent for this question to be resolved now, in advance of the submission of Appellant’s initial reply brief.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorney for Appellant

Charleston, South Carolina

April 1, 2021

92976

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812

RECEIVED
JUL 20 2020
SC Court of Appeals

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

Other Counsel of Record:

James B. Hood (SC Bar No. 70212)
Virginia Rogers Floyd (SC Bar No. 101849)
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, South Carolina 29401
P.O. Box 1508 (29402)
(843) 722-1630

Attorneys for Respondent



Appellant, William McFarland, the defendant in this case, hereby appeals the following orders of the Honorable James E. Chellis, Master-in-Equity, Dorchester County:

- **Order (Pendente Lite) filed June 11, 2019**, enjoining operation of § 3(B) of the By-laws of Live Oak Village Homeowners Association, Inc., and
- **Form 4 Order filed June 16, 2020**, denying Defendant's motion for reconsideration of the Order (Pendente Lite) filed June 11, 2019.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on June 16, 2020.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:



Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

Charleston, South Carolina

Dated:

7/16/20

RECEIVED

JUL 20 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

I, Russell G. Hines, of Young Clement Rivers, LLP, attorney for Appellant, hereby certify that the foregoing **NOTICE OF APPEAL** was served on all other parties to this matter by depositing a copy of the same in the U.S. Mail on July 16, 2020, properly posted for delivery to the following addressees:

James B. Hood, Esquire
Virginia Rogers Floyd, Esquire
Hood Law Firm, LLC
P.O. Box 1508
Charleston, SC 29402

Attorneys for Respondent

I further certify that a copy of this **NOTICE OF APPEAL** is this day, July 16, 2020, being E-Filed with the lower court (which will also, i.e., in addition to service by mail, effect service of the notice electronically on all counsel of record).

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Russell G. Hines (SC Bar No. 72100)

Attorney for Appellant

Charleston, South Carolina

Dated: 7/16/20

**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
SC Court of Appeals

Case No. 2016-CP-18-01812

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

DEFENDANT'S SECOND NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

Other Counsel of Record:

James B. Hood (SC Bar No. 70212)
Virginia Rogers Floyd (SC Bar No. 101849)
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, South Carolina 29401
P.O. Box 1508 (29402)
(843) 722-1630

Attorneys for Respondent



Appellant, William McFarland, the defendant in this case, hereby appeals the following orders of the Honorable James E. Chellis, Master-in-Equity, Dorchester County:

- **Order filed August 13, 2020**, granting Plaintiff's motion for summary judgment and denying Defendant's motion for partial summary judgment, and
- **Order filed August 28, 2020**, denying Defendant's motion for reconsideration of the Order filed August 13, 2020.¹

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on August 28, 2020.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorney for Appellant

Charleston, South Carolina

September 14, 2020

¹ Hoping to help avoid confusion in the record, Defendant has titled this his "second" notice of appeal, because this case is in fact already before this Court on appeal (Appellate Case No. 2020-001029), pursuant to Defendant's *first* notice of appeal, served/filed July 16, 2020. The orders now appealed via this "second" notice of appeal are additional appealable orders filed after Defendant's *first* notice of appeal was served/filed.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812

RECEIVED

Sep 14 2020

SC Court of Appeals

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

I, Russell G. Hines, of Young Clement Rivers, LLP, attorney for Appellant, hereby certify that **DEFENDANT'S SECOND NOTICE OF APPEAL** was served on Respondent on September 14, 2020, via email (see attached) to Respondent's following counsel of record:

James B. Hood, Esquire
Virginia Rogers Floyd, Esquire
Hood Law Firm, LLC
P.O. Box 1508
Charleston, SC 29402

Attorneys for Respondent

I further certify that a copy of **DEFENDANT'S SECOND NOTICE OF APPEAL** is this day, September 14, 2020, being E-Filed with the lower court (which will also, i.e., in addition to the email service above referenced, effect service of the notice electronically on all counsel of record via the E-Filing System).

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)

Attorney for Appellant

Charleston, South Carolina

September 14, 2020

From: [Hines, Russell](#)
To: "Jamie Hood"; "Virginia Floyd"
Cc: "Deborah Sheffield"; Bell, Pollyana (Polly); Justman, Aimee
Subject: Hannemann v. McFarland (Appellate Case No. 2020-001029) -- Def.'s 2d Notice of Appeal
Date: Monday, September 14, 2020 4:26:10 PM
Attachments: [image002.png](#)
[Hannemann v. McFarland \(App. Case No. 2020-001029\) -- Def.'s 2d Notice of Appeal -- d. 91420.pdf](#)
[Hannemann v. McFarland \(App. Case No. 2020-001029\) -- Appealed Order No. 1 -- Def.'s 2d Notice of Appeal -- d. 91420.pdf](#)
[Hannemann v. McFarland \(App. Case No. 2020-001029\) -- Appealed Order No. 2 -- Def.'s 2d Notice of Appeal -- d. 91420.pdf](#)

Jamie and Virginia (and Deborah),

Attached please find **Defendant's Second Notice of Appeal**, along with copies of the two (2) appealed orders referenced therein.

I'm going to send this to the Court of Appeals for filing via separate email.

Russ

Russell G. Hines
YOUNG CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
Phone: (843) 720-5488
Fax: (843) 579-1327
Email: rhines@ycrlaw.com

RECEIVED
Sep 14 2020
SC Court of Appeals





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 23, 2020

Mr. Russell Grainger Hines, Esquire
PO Box 993
Charleston SC 29402-0993

Re: David Hannemann v. William McFarland
Appellate Case No. 2020-001029



Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. The times for perfecting this appeal will run from the service of the last notice of appeal.

Very truly yours,


CLERK

cc: James Bernard Hood, Esquire
Virginia Rogers Floyd, Esquire

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Mar 01 2021
SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas
James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029



David Hannemann, As President of the
Live Oak Village Homeowner's Association, Inc.,

Respondent

v.

William McFarland,

Appellant.

DESIGNATION OF ADDITIONAL MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL
ON BEHALF OF RESPONDENT DAVID HANNEMANN

Pursuant to Rule 209, SCACR, Respondent designates the following items for inclusion in the Record on Appeal in addition to those matters designated by the Appellant:

1. Trial Docket Entries/Index;
2. Hines email, Thursday, May 16, 2019 3:33 PM [as cited in TRO order];
3. Plaintiff Motion for Rule to Show Cause, filed 10.14.20 with attachments;
4. Certification of Jennifer McFarland, filed 11.30.20 with attachments;
5. Certification of Carlton Holcombe, filed 11.30.20 with attachments;
6. Order granting Plaintiff's Motion for Rule to Show Cause, filed 12.7.20;

7. Appellant's Petition for Review of Lower Court Ruling regarding Automatic Stay under Rule 241, SCACR, filed 12.14.20; and
8. Court of Appeals Order, filed 12.21.20.

The undersigned certifies that this Designation contains no material which is irrelevant to the appeal.

Respondent has no objection to Appellant's proposal to void printing duplicative matters which are attached to multiple pleadings/motions/memoranda; however, Respondent would request that the index to the Record on Appeal identify the matters that were attached each pleading/motion/memorandum.

HOOD LAW FIRM, LLC

James B. Hood (SC #70212)
Virginia R. Floyd (SC #101849)
Deborah Harrison Sheffield, *Of Counsel* (SC # 2757)
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

/s/James B. Hood

Attorneys for Respondent
David Hannemann, as President of the Live Oak
Village Homeowner's Association, Inc.

March 1, 2021

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Mar 01 2021

SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas
James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann, As President of the
Live Oak Village Homeowner's Association, Inc.,

Respondent

v.

William McFarland,

Appellant.

Certificate of Service

The undersigned certifies that on this **1st** day of **March, 2021**, a copy of the Initial Brief and Designations on behalf of Respondent David Hannemann, As President of the Live Oak Village Homeowner's Association, Inc were served by emailing a copy of each, on the following counsel at the addresses listed below:

Russell G. Hines
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400 (29401)
Post Office Box 993
Charleston, SC 29402
Ph (843) 720-5488 / Fax (843) 579-1327
E: rhines@yctrlaw.com

HOOD LAW FIRM, LLC

/s/James B. Hood

James B. Hood (SC #70212)

Virginia R. Floyd (SC #101849)

Deborah Harrison Sheffield, *Of Counsel* (SC #
2757)

172 Meeting Street

Post Office Box 1508

Charleston, SC 29402

Phone: (843) 577-4435

Facsimile: (843) 722-1630

Email: Info@hoodlaw.com

Attorneys for Respondent

David Hannemann, as President of the Live Oak
Village Homeowner's Association, Inc.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

Apr 01 2021

SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

PROOF OF SERVICE

CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

I, Russell G. Hines, of Clement Rivers, LLP, attorney for Appellant, hereby certify that the **APPELLANT’S MOTION TO (1) STRIKE CERTAIN MATTER FROM RESPONDENT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, (2) REQUIRE RESPONDENT TO AMEND HIS INITIAL BRIEF TO OMIT REFERENCE TO SUCH MATTER, AND (3) EXTEND OR OTHERWISE HOLD IN ABEYANCE THE TIME FOR APPELLANT’S INITIAL REPLY BRIEF UNTIL RESPONDENT SERVES SUCH AN AMENDED INITIAL BRIEF** was served on Respondent on April 1, 2021, via email (see attached) to Respondent’s following counsel of record:

James B. Hood, Esquire
james.hood@hoodlaw.com
Virginia Rogers Floyd, Esquire
virginia.floyd@hoodlaw.com
Deborah Harrison Sheffield, Esquire
deborah.sheffield@hoodlaw.com
Hood Law Firm, LLC
P.O. Box 1508
Charleston, SC 29402
Attorneys for Respondent

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorney for Appellant

Charleston, South Carolina

April 1, 2021

From: [Hines, Russell](#)
To: "[Jamie Hood](#)"; "virginia.floyd@hoodlaw.com"; "deborah.sheffield@hoodlaw.com"
Cc: [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#)
Subject: 2020-001029 (Hannemann v. McFarland) -- Appellant's Motion to Strike Certain Designated Matter etc.
Date: Thursday, April 1, 2021 10:03:42 PM
Attachments: [image001.png](#)
[2020-001029 \(Hannemann v. McFarland\) -- Motion to Strike Certain Designated Matter.pdf](#)
[Exhibit 1 to Motion to Strike.pdf](#)
[Exhibit 2 to Motion to Strike.pdf](#)
[Exhibit 3 to Motion to Strike.pdf](#)
[Exhibit 4 to Motion to Strike.pdf](#)

Attached regarding the above-referenced appeal please find **Appellant's Motion to Strike Certain Designated Matter etc.** and the **Exhibits** thereto.

Russell G. Hines
CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
Phone: (843) 720-5488
Fax: (843) 579-1327
Email: rhines@ycrlaw.com



CLEMENT RIVERS, LLP
25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com