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Mar 22 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Circuit Case No. 2018-CP-10-00262

App. Case No. 2020-000921

Steeple Dorchester Ltd., and
Hamilton Management
Services Company, Inc.,

Appellants,

v.

Marsh Waterproofing, Inc.

Respondent.

APPELLANTS' MOTION TO AMEND RECORD ON APPEAL

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF
APPEALS:

COME NOW Appellants, Steeple Dorchester Ltd., and Hamilton Management Services Company, Inc., (hereinafter "Appellants"), by and through their undersigned counsel, pursuant to Rule 240, SCACR, move for leave to file their Motion to Amend the Record on Appeal (which is being conditionally filed/served contemporaneously herewith), and hereby states the following in support of Appellants' Motion:

1. On January 21, 2021, the undersigned timely filed an original Record on Appeal. (See Appellants' Motion to Amend Record on Appeal Ex. "A").
2. On January 22, 2021, counsel for Respondent notified the undersigned of certain documents were labeled in the Index of the originally filed Record on Appeal as "Defendants' Trial Exhibits 1-7", which were, upon further review, in fact not formally offered or admitted at trial and thus mistakenly included. (See Appellants' Motion to Amend Record on Appeal Ex. "B").
3. Several documents that were included in the documents labeled "Defendants' Trial Exhibits 1-7" were either documents discussed in its pre-trial brief which were referenced during the bench trial or identical documents likewise included in a portion of the "Respondents' Trial Exhibits 1-14," which were formally offered and admitted at trial by Respondent, and that the Appellant had referred to during trial instead of admitting duplicate trial exhibits.
4. Upon agreement and written consent from Respondents' counsel, on Monday, January 25, 2021, the undersigned filed an Amended Record on Appeal, removing the aforementioned "Defendants' Trial Exhibits 1-7" that were originally bates numbered as ROA 00578 – 00629, as well as revising the Index to reflect the same. (See Appellants' Motion to Amend Record on Appeal Ex. "C" and "D"; see also Record on Appeal Volume II, filed January 21, 2021).
5. The aforementioned Amended Record on Appeal further removed documents entailed within the original Record on Appeal labeled under Index section "Other Materials" and that were originally bates numbered ROA 639 – 672, ultimately in an effort to avoid confusion as these documents were simply duplicate materials that were already included as exhibits in various pleadings and or motions included in the Record on Appeal as part of the record of the lower court's pre-trial and/or post-trial proceedings. (See Record on Appeal Volume II, filed January 21, 2021).
6. The Amended Record on Appeal includes one other minor clerical revision in correcting the designation of one of Respondent's Trial Exhibits upon notification of the same by counsel for Respondent. (See Appellants' Motion to Amend Record on Appeal Ex. "C")
7. Other than revising the Index to reflect these changes, no other amendments have been made nor have there been any materials added in the Amended Record on Appeal.

8. The undersigned had communicated with opposing counsel its intention to file the Amended Record on Appeal with the aforementioned revisions, which opposing counsel consented to without objection.

9. As a result, Appellant was under the mistaken impression that it may file an Amended Record on Appeal under Rule 212 (B), SCACR, without the need for a written motion.

10. With apologies to this Honorable Court and opposing counsel for such inadvertence, the undersigned respectfully requests that the Appellants' Motion to Amend the Record on Appeal be accepted for service/filing and to be included on the Record on Appeal.

11. The undersigned humbly submits that there is good cause to grant the requested relief given that the Appellants' filing of an Amended Record on Appeal have been consented to by opposing counsel and that the Respondent and Appellant have since filed each of their Final Briefs utilizing the associated Amended Record on Appeal.

WHEREFORE, Appellants, by and through the undersigned, move this Honorable Court to grant leave to file/serve their Motion to Amend the Record on Appeal and respectfully ask this Court likewise grant said Motion.

Respectfully submitted,

/s C. Clay Olson
C. Clay Olson, SC Bar No. 17007
Gordon & Rees, LLP
40 Calhoun Street, Ste. 350
Charleston, SC 29401
843-224-6676
colson@grsm.com

March 22, 2021

cc:
Albert Lacour
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
alacour@clawsonandstaubes.com
Attorney for Respondent

EXHIBIT A



Jim Saxton <jim@harperlittlelaw.com>

Marsh Waterproofing v. Steeple Dorchester, et al. // Case # 2018-CP-10-00262 - Appellate Case No.: 2020-00092

Jim Saxton <jim@harperlittlelaw.com>

Thu, Jan 21, 2021 at 11:49 PM

To: ctappfilings@sccourts.org

Cc: "Albert A. Lacour, III" <ALacour@clawsonandstaubes.com>, Clay Olson <clay@harperlittlelaw.com>, Mandy Dunaway <mandy@harperlittlelaw.com>, Kellie Hunt <khunt@clawsonandstaubes.com>

Case No.: 2018-CP-10-00262

Appellate Case No.: 2020-000921

Good evening,

Please find the attached *Record on Appeal Volumes 1 & 2* in regard to the matter referenced above.

Counsel is copied above.

Thank you,

Jim Saxton

--

James W. Saxton, Esq.

Harper Little, PLLC

164 Market Street, Suite 139 (MAILING ONLY)

43 Broad Street Suite 202 (PHYSICAL)

Charleston, South Carolina 29401

p: 843.779.5829

f: 662.259.8464

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PLEASE SEND PAYMENTS TO:

Harper Little, PLLC

P. O. Box 3150

Oxford, Mississippi 38655

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4 attachments



ROA - Vol. 1.pdf

7273K



ROA - Vol. 2 .pdf

7481K



Proof of Service -- Record on Appeal 1.21.20..pdf

69K



Appellant's Certificate of Counsel -- Record on Appeal 1.21.20..pdf

14K

EXHIBIT B



Jim Saxton <jim@harperlittlelaw.com>

Marsh ROA

Clay Olson <clay@harperlittlelaw.com>

Fri, Jan 22, 2021 at 3:02 PM

To: Andy Lacour <ALacour@clawsonandstaubes.com>

Cc: Jim Saxton <jim@harperlittlelaw.com>, Mandy Dunaway <mandy@harperlittlelaw.com>, "Kellie C. Hunt" <khunt@clawsonandstaubes.com>

Andy:

I will look at it and, obviously, maintain compliance with the rules. I would take the position that all pleadings and motions are within the record as well as your exhibits 1-14

Harper Little PLLC
Clay Olson, Attorney
164 Market Street, Suite 139
Charleston, South Carolina 29401
p: [843.224.6676](tel:843.224.6676)
f: 662.259.846

On Jan 22, 2021, at 2:46 PM, Andy Lacour <ALacour@clawsonandstaubes.com> wrote:

Clay,

I know you are tied up right now, but this is to make record of my call just now to you to advise that upon reviewing the ROA you prepared and certified, there are documents at ROA 578 to 672 that are presented as "Defendants trial exhibits", which were not, in fact, offered or admitted at the trial and were not before the Court at trial.

My 14 exhibits were admitted at ROA 471 L 25 to 472 L6. There is no record you marked any or offered any at trial. If you have information otherwise, please share it with me.

If he pages were improperly included, they need to be removed asap. The clerk may know of an easy way to accomplish this.

Please advise.

Andy

<image001.png>

[Quoted text hidden]

EXHIBIT C



Jim Saxton <jim@harperlittlelaw.com>

Re: Amended ROA 1.25.21.pdf

Jim Saxton <jim@harperlittlelaw.com>

Mon, Jan 25, 2021 at 10:01 AM

To: Andy Lacour <ALacour@clawsonandstaubes.com>

Cc: Clay Olson <clay@harperlittlelaw.com>, "Kellie C. Hunt" <khunt@clawsonandstaubes.com>

Defendant's exhibits and the documents listed under "other materials" were removed other than Plaintiff's pre-trial brief... Also thank you for pointing that out! Will change and file shortly.

On Mon, Jan 25, 2021 at 9:57 AM Andy Lacour <ALacour@clawsonandstaubes.com> wrote:

Thank you! – do you want to correct the missing trial exhibit #7 before you re-file?

Andy

From: Clay Olson <clay@harperlittlelaw.com>

Sent: January 25, 2021 9:48 AM

To: Andy Lacour <ALacour@clawsonandstaubes.com>; Jim Saxton <jim@harperlittlelaw.com>

Subject: Re: Amended ROA 1.25.21.pdf

Removed all exhibits with exception of yours. Jim can you confirm?

Harper Little PLLC

Clay Olson, Attorney

164 Market Street, Suite 139

Charleston, South Carolina 29401

p: 843.224.6676

f: 662.259.846

On Jan 25, 2021, at 9:19 AM, Andy Lacour <ALacour@clawsonandstaubes.com> wrote:

Thanks Clay!

What did you change?

Andy

From: Clay Olson <clay@harperlittlelaw.com>
Sent: January 24, 2021 8:36 PM
To: Andy Lacour <ALacour@clawsonandstaubes.com>; Jim Saxton <jim@harperlittlelaw.com>
Subject: Amended ROA 1.25.21.pdf

Andy:

See attached

Harper Little PLLC

Clay Olson, Attorney

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--

James W. Saxton, Esq.

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EXHIBIT D



Jim Saxton <jim@harperlittlelaw.com>

Marsh Waterproofing v. Steeple Dorchester, et al. // Case # 2018-CP-10-00262 - Appellate Case No.: 2020-00092

Andy Lacour <ALacour@clawsonandstaubes.com>

Mon, Jan 25, 2021 at 11:11 AM

To: Jim Saxton <jim@harperlittlelaw.com>, Court Of Appeals Filings <ctappfilings@sccourts.org>

Cc: Clay Olson <clay@harperlittlelaw.com>, Mandy Dunaway <mandy@harperlittlelaw.com>, "Kellie C. Hunt" <khunt@clawsonandstaubes.com>

Clay and Jim,

Thank you both for addressing this quickly.

Andy

From: Jim Saxton <jim@harperlittlelaw.com>

Sent: January 25, 2021 11:07 AM

To: Court Of Appeals Filings <ctappfilings@sccourts.org>

Cc: Andy Lacour <ALacour@clawsonandstaubes.com>; Clay Olson <clay@harperlittlelaw.com>; Mandy Dunaway <mandy@harperlittlelaw.com>; Kellie C. Hunt <khunt@clawsonandstaubes.com>

Subject: Marsh Waterproofing v. Steeple Dorchester, et al. // Case # 2018-CP-10-00262 - Appellate Case No.: 2020-00092

Case No.: 2018-CP-10-00262

Appellate Case No.: 2020-000921

Good morning,

Please find the attached Cover Letter and *Amended Record on Appeal* in regard to the matter referenced above.

Counsel is copied above.

Thank you,

Jim Saxton

--

James W. Saxton, Esq.

Harper Little, PLLC

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Steeple Dorchester, Ltd. and
Hamilton Management
Services Company, Inc., Appellants,

v.

Marsh Waterproofing, Inc., Respondent.

PROOF OF SERVICE

I, C. Clay Olson, on behalf of Appellants, Steeple Dorchester, Ltd. and Hamilton Management Services Company, Inc., hereby certify that a copy of *Appellant's Motion to Amend the Record on Appeal*, was sent to all counsel of record on March 22, 2021, via counsel's designated AIS E-Mail address at ALacour@clawsonandstaubes.com.

/s C. Clay Olson
C. Clay Olson, SC Bar No. 17007
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Charleston, South Carolina
March 22, 2021