

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Apr 08 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.

**RESPONDENT'S RETURN TO
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**

Respondent David Hannemann submits this Return objecting to each and all portions of the Appellant's motion on the grounds set forth below.

Objection to the Motion for a Further (Third) Extension: Respondent served and filed his initial brief and designation of matter on March 1, 2021. In accordance with Rule 208(a)(3) of the South Carolina Appellate Court Rules ("SCACR"), Appellant had 10 days to serve a reply brief and the due date was March 11, 2021. Appellant filed a motion for extension which was

granted, by order of March 11, 2021, setting a new due date of March 22, 2021. Appellant filed a second motion for extension which was granted by order of March 22, 2021, setting a new due date of April 1, 2021, with the additional proviso that: “No further extension will be granted absent extraordinary circumstances.” Instead of filing a reply brief on April 1, 2021, however, Appellant served and filed a motion to strike certain of Respondent’s designations and seeking yet a further extension in the nature of a motion to hold the briefing deadline in abeyance. Respondent objects to the motion to strike as set forth below and opposes any further extension of time.

Respondent submits that the Appellant’s failure to review Respondent’s initial brief and designations prior to the last day of the extended deadline does not constitute extraordinary circumstances to justify granting Appellant yet another extension.¹ Respondent submits that the request for a third extension under the guise of a motion to strike his designations amounts to yet another unnecessarily delay in this appeal. As the Court’s record will reflect, in addition to the numerous extensions requested by Respondent for his reply, Respondent previously filed six motions for extension of time to file and serve his initial brief and designations.

Objection to the Motion to Strike Designations: Respondent designated certain matters including:

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;

¹ In his Motion to Strike, Appellant states, “It was not until the undersigned counsel for Appellant began preparing Appellant’s initial reply brief that he discovered [the “Disputed Matter”].” Mtn. Strike ¶ 4, April 1, 2021. Since this Motion was not filed prior to April 1st, Respondent can only conclude that Appellant had not reviewed Respondent’s initial brief and designations until the eve of Appellant’s reply deadline. Such a delay is not an “extraordinary circumstance” which might justify a further extension.

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.

Appellant moves to strike these designations and compel Respondent to amend its brief to omit any references to these matters. Respondent submits that the motion to strike is not well founded on Rule 209 or Rule 210, SCACR.

Rule 210, SCACR provides that: "The Record shall not, however, include matter which was not presented to the lower court or tribunal." Items 3-6 were presented in the lower court as evidenced by the lower court's filing marks and the circuit court docket sheet attached hereto. In addition, these matters already were presented in this appeal by Appellant himself in the Appendix which he filed in this Court along with Designation Item 7, Appellant's Petition for Review. Designation Item 8 is the order of this Court ruling upon the Petition for Review and it was filed in the circuit court as evidenced on the docket sheet. To the extent that the Petition for Review was not filed in the circuit court, it exists as a part of the appellate record and as such it is proper for reference in Respondent's brief and designation in the Record on Appeal.

Appellant argues that none of these matters should be included in the Record on Appeal or referenced in Respondent's brief because these matters were filed after the date of the orders on appeal, citing to Rule 209, SCACR. Rule 209 provides that: "A party shall not include any matter in his Designation which is not relevant to the appeal." However, Rule 208, SCACR, provides that the Statement of the Case should contain "a concise history of the proceedings, insofar as necessary to an understanding of the appeal" and reference "the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may

have affected the appeal, or may throw light upon the questions involved in the appeal.” Respondent maintains that the designation of and the reference to his Rule to Show Cause and Appellant’s counter Petition for Review are legitimate points for a presentation of the complete procedural history, and, even if they arguably may not be controlling on the precise legal issues presented on appeal, at least they “throw light” on upon the questions involved in the appeal regarding Appellant’s stubborn, protracted actions in wrongfully refusing to relinquish control of the HOA management and business records.

To the extent that Appellant contends that these post-judgment proceedings are irrelevant to the issues he raises on appeal, he could challenge and argue their relevancy in his Reply Brief, but he should not be allowed to prevent Respondent from designating and referencing those matters in the Statement of the Case in his brief. Ultimately, any available remedy for designation of irrelevant matters lies in Rule 222 SCACR. Accordingly, the motion to strike should be denied subject to the post-appeal options available under Rule 222 at the conclusion of this appeal.

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

April 8, 2021



Dorchester County First Judicial Circuit Public Index









































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David Hannemann , plaintiff, et al VS William Mcfarland					
Case Number:	2016CP1801812	Court Agency:	Common Pleas	Filed Date:	09/09/2016
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Chellis, James E.		
Disposition:	Judgment	Disposition Date:	08/13/2020	Disposition Judge:	Chellis, James E.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties								
Click the icon to show associated parties.								
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated	
<input checked="" type="checkbox"/> Floyd, Virginia Rogers	172 Meeting Street PO Box 1508 Charleston SC 29401				Plaintiff Attorney		05/16/2019	
<input checked="" type="checkbox"/> Hannemann, David					Plaintiff		12/04/2020	
Harrell, John Davis Sr. (Inactive)	2000 Sam Rittenberg Blvd Suite 2001 Charleston SC 29407				Mediator		12/10/2019	
<input checked="" type="checkbox"/> Hines, Russell Grainger	PO Box 993 Charleston SC 294020993				Defendant Attorney		11/28/2016	
Holmes, Christopher M. (Inactive)	222 W. Coleman Blvd. Suite124 Mt. Pleasant SC 29464				Alternate Mediator		07/25/2019	
<input checked="" type="checkbox"/> Hood, James Bernard	PO Box 1508 Charleston SC 294021508				Plaintiff Attorney		09/09/2016	
<input checked="" type="checkbox"/> Live Oak Village Homeowners Association Inc					Plaintiff		09/12/2016	
<input checked="" type="checkbox"/> Mcfarland, William					Defendant		12/14/2020	

Associated Cases								
Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Master In Equity	2016CP1801812	N	MIETR	Master in Equity Case Transfer to agency 18003: Master In Equity	08/18/2017	07/13/2020	Appeal	Ended by Non Jury

Actions							
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents	
Mcfarland, William	NEF(12-21-2020 04:45:32 PM) Order/Other	Filing		12/21/2020-16:45			
Mcfarland, William	Order/Court of Appeals/Conditional Stay of RTSC	Order		12/21/2020-16:45	12/21/2020-16:45		
Mcfarland, William	NEF(12-14-2020 02:12:27 PM) Motion/Continuance	Filing		12/14/2020-16:15			
Mcfarland, William	Motion/Continuance	Motion		12/14/2020-14:12	12/14/2020-14:12		
Hannemann, David	NEF(12-07-2020 11:00:56 AM) Order/Rule To Show Cause	Filing		12/07/2020-11:01			
Hannemann, David	Order/Rule To Show Cause	Order		12/07/2020-11:00	12/07/2020-11:00		
Hannemann, David	NEF(12-04-2020 09:03:44 AM) Proposed Order/Rule To Show ...	Filing		12/04/2020-10:02			
Hannemann, David	Order/Order Cover Sheet \$25.00	Filing		12/04/2020-09:03			
Mcfarland, William	NEF(11-30-2020 01:17:05 PM) Affidavit/Affidavit of	Filing		11/30/2020-13:49			
Mcfarland, William	Certification of Tobias Guarino	Filing		11/30/2020-13:17			
Mcfarland, William	Certification of Carlton Holcombe	Filing		11/30/2020-13:17			
Mcfarland, William	Certification of Jennifer McFarland	Filing		11/30/2020-13:17			
Mcfarland, William	Certification of Lynn Myers	Filing		11/30/2020-13:17			
Mcfarland, William	NEF(11-13-2020 04:39:34 PM) Memo/Memo in Opposition	Filing		11/13/2020-16:53			
Mcfarland, William	Memo/Memo in Opposition to Rule to Show Cause	Filing		11/13/2020-16:39			
Hannemann, David	NEF(10-14-2020 02:29:18 PM) Motion/Rule to Show Cause	Filing		10/14/2020-14:59			

Hannemann, David	Motion/Rule to Show Cause	Motion		10/14/2020-14:29	10/14/2020-14:29	
Mcfarland, William	Appeal/Notice of Second Appeal to Court of Appeals	Action		09/16/2020-09:10		
Mcfarland, William	NEF(09-15-2020 09:10:30 AM) Appeal/Notice of Appeal to C...	Filing		09/15/2020-09:48		
Mcfarland, William	Service/Certificate Of Service	Filing		09/15/2020-09:10		
Hannemann, David	NEF(08-28-2020 10:26:46 AM) Order/Other	Filing		08/28/2020-10:26		
Hannemann, David	Order Denying Defendant's Motion For Reconsideration	Order		08/28/2020-10:26	08/28/2020-10:26	
Hannemann, David	NEF(08-27-2020 03:30:00 PM) Order/Order Cover Sheet \$25....	Filing		08/27/2020-16:03		
Hannemann, David	Order/Order Cover Sheet \$25.00	Filing		08/27/2020-15:30		
Mcfarland, William	NEF(08-24-2020 10:49:47 PM) Motion/Reconsider	Filing		08/25/2020-08:29		
Mcfarland, William	Motion/Reconsider	Motion		08/24/2020-22:49	08/24/2020-22:49	
Hannemann, David	NEF(08-13-2020 04:41:39 PM) Order/Other	Filing		08/13/2020-16:41	08/13/2020-16:41	
Hannemann, David	Order/Granting Summary Judgment	Order		08/13/2020-16:41	08/13/2020-16:41	
Mcfarland, William	Appeal/Notice of Appeal to Court of Appeals	Action		07/17/2020-15:55	08/13/2020-15:55	
Mcfarland, William	NEF(07-16-2020 03:55:16 PM) Appeal/Notice of Appeal to C...	Filing		07/16/2020-15:59	08/13/2020-15:59	
Mcfarland, William	Service/Certificate Of Service	Filing		07/16/2020-15:55	08/13/2020-15:55	
Mcfarland, William	Letter/Letter	Filing		07/16/2020-15:55	08/13/2020-15:55	
Hannemann, David	NEF(07-15-2020 04:57:06 PM) Memo/Memo in Opposition	Filing		07/16/2020-08:50	08/13/2020-08:50	
Hannemann, David	Memo/Memo in Opposition	Filing		07/15/2020-16:57	08/13/2020-16:57	
Mcfarland, William	NEF(07-14-2020 04:23:49 PM) Memo/Memo in Opposition	Filing		07/14/2020-16:41	08/13/2020-16:41	
Mcfarland, William	Memo/Memo in Opposition	Filing		07/14/2020-16:23	08/13/2020-16:23	
Mcfarland, William	NEF(07-13-2020 12:02:46 PM) Memo/Memo in Opposition	Filing		07/13/2020-12:11	08/13/2020-12:11	
Mcfarland, William	Memo/Memo in Opposition	Filing		07/13/2020-12:02	08/13/2020-12:02	
Hannemann, David	NEF(07-13-2020 10:41:22 AM) Order/Order Cover Sheet \$25....	Filing		07/13/2020-10:56	08/13/2020-10:56	
Hannemann, David	Order/Order Cover Sheet \$25.00	Filing		07/13/2020-10:41	08/13/2020-10:41	
Hannemann, David	NEF(06-16-2020 03:40:40 PM) Order/Electronic Form 4	Filing		06/16/2020-15:40	08/13/2020-15:40	
Hannemann, David	Order/Electronic Form 4/Denying Motion for Reconsideration	Order		06/16/2020-15:40	06/16/2020-15:40	
Mcfarland, William	NEF(06-12-2020 09:47:28 PM) Certification/Certification	Filing		06/15/2020-08:45	08/13/2020-08:45	
Mcfarland, William	Certification/Certification of William McFarland	Filing		06/12/2020-21:47	08/13/2020-21:47	
Hannemann, David	NEF(05-14-2020 10:04:30 AM) Motion/Summary Judgment	Filing		05/14/2020-10:13	08/13/2020-10:13	
Hannemann, David	Motion/Summary Judgment	Motion		05/14/2020-10:04	05/14/2020-10:04	
Hannemann, David	NEF(11-08-2019 04:33:50 PM) Request/Request	Filing		11/08/2019-16:38	08/13/2020-16:38	
Hannemann, David	Request/To be Placed on the next NJ Trial Roster	Filing		11/08/2019-16:33	08/13/2020-16:33	
Hannemann, David	NEF(07-15-2019 12:49:46 PM) Response	Filing		07/15/2019-13:59	08/13/2020-13:59	
Hannemann, David	Response to Motion to Reconsider	Filing		07/15/2019-12:49	08/13/2020-12:49	
Mcfarland, William	NEF(06-21-2019 05:08:33 PM) Motion/Reconsider	Filing		06/24/2019-08:34	08/13/2020-08:34	
Mcfarland, William	Motion/Reconsider	Motion		06/21/2019-17:08	06/24/2019-17:08	
Hannemann, David	NEF(06-14-2019 02:37:35 PM) Motion/Injunction	Filing		06/14/2019-14:44	08/13/2020-14:44	
Hannemann, David	Motion/Injunction or Alternative for TRO	Motion		06/14/2019-14:37	06/14/2019-14:37	
Hannemann, David	NEF(06-11-2019 08:54:26 AM) Order/Relief	Filing		06/11/2019-08:54	08/13/2020-08:54	
Hannemann, David	Order/Pendent Lite Relief	Order		06/11/2019-08:54	06/11/2019-08:54	

Motion/Order Filing Fee \$25	MOTION	\$25.00	\$25.00
Motion/Order Filing Fee \$25	MOTION	\$25.00	\$25.00

Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
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10/14/2020	103867	C18MBATES	PY	\$25.00
08/27/2020	103148	C18MBATES	PY	\$25.00
08/25/2020	103098	C18RSTEVEN	PY	\$25.00
07/13/2020	102408	C18MBATES	PY	\$25.00
05/14/2020	101648	C18RSTEVEN	PY	\$25.00
06/24/2019	96469	C18RSTEVEN	PY	\$25.00
06/14/2019	96323	C18RSTEVEN	PY	\$25.00
06/05/2019	96119	C18MBATES	PY	\$25.00
05/16/2019	95735	C18MBATES	PY	\$25.00
04/22/2019	95231	C18RSTEVEN	PY	\$25.00
11/27/2018	92639	C18MBATES	WV	\$25.00
08/24/2018	91084	C18MBATES	PY	\$25.00
08/18/2017	86002	c18mbates	PY	\$25.00
09/09/2016	81783	c18rbaldwi	PY	\$150.00

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SC Court of Appeals

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Certificate of Service

The undersigned certifies that on this **8th** day of **April, 2021**, a copy of the Respondent's Return to 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 by emailing a copy, on the following counsel at the addresses listed below:

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