

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morpew, Appellant,

v.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First
Federal, Michael Scarafite, Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, Woody Law Firm, Respondents

APPELLANT'S RESPONSE TO RESPONDENT'S JOINT RETURN TO APPELLANT'S
MOTION TO STRIKE

Molly M. Morpew, pro se
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Appellant Molly Morphew (herein “Appellant”), respectfully responds to Respondents’ Stephen Dudek, Doreen Cross, Allison Williams, First Federal, Michael Scarafale, Susan Nicholson, Carolina One Real Estate, Carrie Boyer and Woody Law Firm (herein “Respondents”¹) joint return to appellant’s motion to strike and respectfully requests this court STRIKE Respondents’² motion to dismiss and their initial briefs as non-compliant therefore untimely. As an alternate, Appellant would respectfully request this court to STRIKE, DISMISS or DENY with prejudice their joint motion to dismiss and for an order compelling Respondents to comply in accordance with SCACR Rule 208, 209 and 210, and the current Record served.

Previously, Appellant filed a motion to amend Respondents Designation, specifically “*to clearly identify what they desire to have included in the Record on Appeal, and only include portions of the transcripts, depositions, pleadings, orders, exhibits, or other materials that can be properly included in the Record...*” 1) Appellant presents they failed to clearly identify their matter as required in Rule 209(b) and requested further clarification, such as providing the dates of the documents proposed. Such clarification, for example, would identify which of 2 documents with the same name they are proposing to include in the Record. It is the brief’s/Designation’s author who is responsible for preventing ambiguity and speculation in their filings. At the same time, it is not the responsibility of the Appellant to guess or speculate which one or what a party’s proposed designations are. 2) Appellant presents Respondents substantially failed to contain references to their designations in their briefs to support their salient facts alleged, making their brief(s) non-compliant and untimely and most if not all their ‘generalized’ designation improper or irrelevant; Appellant presents their designation was not set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials

¹ Does not include all Respondents in this case.

² Id.

which they proposed to include in the record, and contains non-existent matter, also making that matter improper or irrelevant, and most importantly, impossible to include in the Record.

(*Reference* Appellant's Motion to Strike, Exhibit A pg. 2 para. 1 and pg. 5 para. 1). Neither do the Respondents' brief(s) comply with Rule 208(b)(4)³ nor does their designation(s) comply with Rule 208 and Rule 209(a)⁴, (b)⁵. (*Reference* Appellant's Motion to Strike, Exhibit A pg. 3 para. 1, 2 and 3; pg. 2 para. 3 and pg. 4, para. 2).

This Court issued an order that solely and specifically denied Appellant's request for Respondents to provide clarification of their Designations. Due that no reasoning, findings of fact, standard of review or law analysis was included in the Order to support its ruling, and the fact the Respondents provided no case law, rules or precedents to support their argument, Appellant can only assume its ruling was based on the Respondents' own reasoning set out in their response that they identified their matter and [that specificity in its' matter is not required here since] Appellant should know what they are proposing as she is a litigant familiar with the case. In other words, this Court ruled Respondents complied in-part with Rule 209(b) that they 'clearly identified' their Designations they desire to have included in the Record on Appeal and that clarification was not required.

³ The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. SCACR Rule 208(b)(4)

⁴ At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. SCACR Rule 209(a).

⁵ 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. SCACR Rule 209(b).

“The Designation must clearly identify what the party desires to have included in the Record on Appeal, and....” SCACR Rule 209(b).

This Court’s order denying Appellant’s request for clarification and the Respondents’ refusal to *clarify* their Designation places Appellant in a position where it would be required to ‘guess’ what is intended, therefore severely prejudicing itself or possibly waiving its due process. Since ‘guessing’ is not within the scope of the rules compiling the Record, Appellant is left with no choice but to disregard that proposed matter. Additionally, any proposed matter that does not exist, matter not presented in this case to the lower court, or matter in which the brief contains no specific reference to the proposed matter to support its facts alleged is improper or irrelevant and pursuant Rule 210 shall not be included. Rule 208(b)(4)⁶. Rule 210(c) [Rule 209].

It further ordered Appellant to “*serve the Record on Appeal on all respondents and file proof of service with this Court within 30 days of the date of the order, stating “Failure of Appellant to comply may result in dismissal of this appeal.”* Appellant complied with the order by serving the Record within 30 days and filing proof of service with this Court. Pursuant SCACR Rule 210(a) and Rule 210(c), and the order of this Court, Appellant served a timely Record.

Respondents then filed and served a joint motion to dismiss, arguing Appellant’s alleged failure to comply with this Court’s Order. Generally, the Appellant failed to serve a Record containing all their proposed designations.

⁶ Rule 208 The brief *shall contain references* to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231.

Appellant then filed a Motion to Strike the joint motion as improper or argument irrelevant. Again, Respondents argued in their motion the Court order denied Appellant's request to *limit* the record pursuant Rule 208 and Rule 209, therefore Appellant failed to comply with the Order. First, the Order denied Appellants request for Respondents to *clarify* their Designation by clearly identifying what they propose to include in the record⁷. The Order plainly did not deny Appellant's request to *limit* their Designation as required by the rules. There is a vast difference between 'limiting' and 'clarifying'. Limiting is to restrict or reduce, while clarifying is to elucidate or make (something) clear or explain. Further, clarifying doesn't necessarily limit.

Second, the only action required by Appellant in this Court's Order was *to serve the Record* in the time specified. Appellant served the Record in that time. Regardless, under this Court's rules, Appellant compiles and serves the Record in compliance with Rule 210 to include matter designated *under Rule 209*, and shall not, however, include matter which was not presented to the lower court or tribunal. Appellant raised issue the Respondents failed to comply with Rule 208 and Rule 209 as stated herein by proposing non-existent transcripts, invalid documents or propose to include generally whole depositions or entire transcripts in their designation when Rule 209(b) states the *Designation may only propose to include portions* of the transcripts, pleadings, orders, exhibits or other materials which may be properly included in the Record. Additionally, Respondents brief(s) fail to reference those portions of that matter (i.e. page number, line number, paragraph, etc.) to support their salient facts alleged [SCACR Rule 208], further rendering that designation improper.

⁷ One Respondent attempted to clarify its matter, but its matter still substantially contained issues (see Appellant's motion to strike or dismiss).

Taking just the fact the Respondents designate unspecified and alleged transcripts outside the proceedings in which the Orders, and their applicable issues were decided and appealed, transcripts they neither requested or required nor ordered or presented to the lower court prior to filing their initial brief(s), is a violation of the rules. Such transcripts do not exist, therefore considered inappropriate and irrelevant matter, leaving Appellant, regardless of any other issue, with the inability or, in this case, the *impossibility* to build the record and its content based entirely on their proposed designation.

Finally, this Court did not make any ruling or present any indication the Respondents were not required to comply with Rule 208, to specifically reference their matter in their brief(s) such as page numbers, paragraphs and/or line numbers. This Court did not make any ruling or present any indication the Respondents were not required to comply with Rule 209(a), their Designation(s) of Matter are required to set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which they propose to include in the record on appeal. This Court did not make any ruling or present any indication the Respondents were not required to comply with Rule 209(b), their Designation(s) may only propose to include those portions of their matter (i.e., transcript, pleadings, orders, exhibits, or other materials referenced) which may be properly included in the Record on Appeal [See Rule 210(c)], and *shall not* include any matter in his Designation which is not relevant to the appeal.

As stated in Appellant's motion to strike or dismiss, the Respondents violate the rules of the Court and attempt to severely prejudice and harass Appellant by demanding to include matter in the Record which cannot be included because it does not exist, or include broad general matter when they have neither pointed to, or are unable to point to, specific parts of that matter which would support any argument or salient fact alleged.

Just because this Court denied the Appellant's request for Respondents to *clarify* its Designations, therefore basically creating a guessing game of the record, its ruling clearly does not allow Respondents to be limitless in their Designation(s) or waive Rule 208 and 209's requirement that a party *limit* their designation. Respondents' complete compliance of Rule 208 and Rule 209 is mandatory and has not been ruled otherwise by this Court.

SCARC Rule 208: The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used.

SCACR Rule 209: 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)

It should be noted that these particular rules are in place to prevent the parties and this Court from guessing the "what", "where", "why" and "how" of the arguments and having to search for the specific or detailed support of those salient facts presented by the parties. In other words, these rules are to prevent this Court from having to "'grope in the dark' concerning the specific allegations of error"⁸ and, in this case, doing all the Respondents' work for them. These rules also are to prevent any misunderstandings, prejudice or harassment, and to allow the appellate process to flow smoothly and without violating due process.

⁸ Quoting *Connolly v. People's Life Ins. Co. of S.C.*, 299 S.C. 348, 352, 384 S.E.2d 738, 740 (1989)).

For one example, in Respondents designation of matter, they ask for “The Morphew and Ferro sales *contract*.” Appellant has separate and more than one (1) sales contract with the Ferros. Their Designation(s) do not *clearly identify* this matter pursuant Rule 209(b), and because this Court has waived the rule in-part to the Respondents, it leaves Appellant to guess which contract they propose to include in the Record. Additionally, their brief(s) do not contain references to [either] contract pursuant Rule 208(b)(4) and their Designation(s) do not *set forth with specificity*” any part of [either] contract pursuant Rule 209(a), or propose to include portions of [either] contract pursuant Rule 209(b). Building the Record is not a guessing game and Appellant has no duty to include any matter that does not exist or in which the Appellant has to speculate. To do so severely prejudices Appellant and/or would set Appellant up for failure.

Just as important, and because the Reply Brief is very page limited, Appellant can only properly defend based on the salient facts alleged and those *specific* parts of the evidence they point to in their matter which supports those alleged facts. If they fail to specifically support their arguments or reference their designations of matter in their brief(s), or they designate matter that does not exist, or fail to set forth with specificity or designate those specific parts of the matter as required by the rules, Appellant is unable to fully defend or is limited to mere speculation in its Reply Brief.

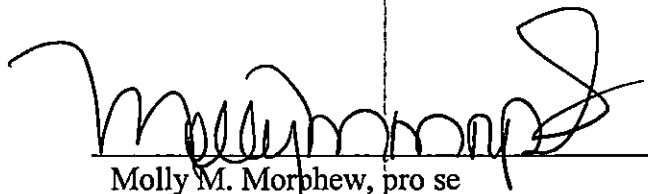
It’s obviously mandatory that ALL parties comply with the rules and submit initial briefs according to Rule 208, and clearly identify and limit their designation pursuant Rule 208 and 209. Neither Respondents’ brief(s) nor their Designation(s) comply. In this case, the Respondents submitted briefs without containing, or substantially lacking, references (e.g., page numbers, line numbers, paragraphs) to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support

the salient facts alleged. Respondents submitted their Designation(s) expecting them to be limitless and include matter that does not exist or to include hundreds of pages of matter in which the Respondents did not, and are apparently unable to, specifically point to any part within that matter to support their salient facts alleged. The Respondents submitted a false certification of compliance to this Court. The Respondents refuse to comply even after Appellant raised these issues to the Respondents and this Court, which this court did not waive. Consequently, Respondents initial brief(s) and Designation(s) are not in compliance therefore invalid and untimely and should be struck from the record. Additionally, if this Court violates its own rules and allows limitless designation for one party and not the other, it then presents severe prejudice, discrimination and a violation of due process towards the other.

Respondents also claim Appellant has appointed herself as arbiter of the record on appeal. Appellant disagrees. Due to their lack of specificity in reference to their matter in their briefs to support the salient facts alleged, or in their matter itself, and their attempt to include irrelevant matter or matter that was not presented before the lower court or to which does not exist, Respondents have left Appellant guessing their intended matter or an inability to complete the record, plus the undue burden having to raise these issues to this Court. Appellant has included all matter that exists and presented in this case to the lower court, was not speculation, and matter or portions of that matter which was specifically pointed to or properly referenced in the Record. Meaning, matter properly designated and not irrelevant to the appeal pursuant SCACR Rule 208, 209 and 210.

Due the reasons above, that Appellant compiled and served a timely Record, and due Respondents' failed and improper motion to dismiss and substantial violation of SCACR Rule

209(a), (b) and (c) and SCACR Rule 208(b)(4),⁹ plus their intentional refusal to address the specific issues in their brief(s) and Designations raised by Appellant in its motion to compel and in its motion to strike, both incorporated by reference, Appellant asks this court to strike or dismiss with prejudice Respondents' joint motion to dismiss and dismiss all Respondents' initial briefs and Designations as non-compliant therefore invalid and untimely. As an alternate, strike or dismiss with prejudice Respondents' joint motion to dismiss, an order for all Respondents' in this case to comply with Rule 208, specifically, to correct their initial brief(s) in accordance with Rule 208(b)(4) and the current Record served; and for an order for all Respondents' full compliance of Rule 209 as argued herein and in its Motion to Strike.



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May 15, 2021

⁹ **References to Record.** *The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1)*

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew, Appellant

v.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First
Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, Woody Law Firm, Respondents

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant for said case, hereby certify that I have, on this date indicated below, served counsel below with an APPELLANT'S RESPONSE TO RESPONDENT'S JOINT RETURN TO APPELLANT'S MOTION TO STRIKE by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:


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Allison Williams
First Federal Bank (aka South State
Bank)



Molly M. Morphew, pro se

May 18, 2021

May 15, 2021

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

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SC Court of Appeals

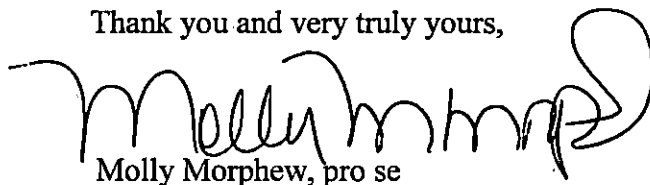
Re: Appellate Case No. 2018-002185
Molly M. Morphew v. Stephen Dudek, Doreen Cross, et al.

Dear Ms. Kitchings:

Please find enclosed APPELLANT'S RESPONSE TO RESPONDENT'S JOINT RETURN TO APPELLANT'S MOTION TO STRIKE and Certificate of Service to be recorded and filed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Thank you and very truly yours,



Molly Morphew, pro se

Cc: Amy L. Neuschafer, Esq.
Amy B. Hill, Esq.
Steven L. Smith, Esq.
David A. Collins, pro se

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