

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Consolidated cases
Case No.: 2009-CP-26-3596
Case No.: 2010-CP-26-11320
Appellate No.: 2013-000714

RECEIVED
APR 29 2013
SC Court of Appeals

Ronald Jarmuth, *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc., Respondents.

RETURN TO MOTION TO LIMIT THE RECORD ON APPEAL

The Motion to Limit the Record on Appeal dated April 17, 2013 filed by Appellant, Ronald Jarmuth (“Appellant”) should be denied, because the motion is not ripe pursuant to the South Carolina Appellate Court Rules (“SCACR”), Rules 208, 209, and 210. Furthermore, the Appellant is attempting to exclude matters that are likely to be relevant and that were before the lower court, and therefore, his motion is without merit.

PROCEDURAL HISTORY

The Appellant served and filed his Notice of Appeal on April 3, 2013. Thereafter, on April 17, 2013, the Appellant filed his Motion to Limit the Record. The parties have not filed and served their initial briefs as required by Rule 208, SCACR, however,

Appellant has filed and served his Designation of Matter to be Included in the Record on Appeal.¹

DISCUSSION

I. Appellant's Motion to Limit the Record on Appeal is not Ripe.

Rule 209(b) states that “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(b), SCACR. Similarly, Rule 210(c) mandates that all matters designated by the parties shall be included in the Record, however, “[t]he Record shall not...include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR.

Although Rules 209 and 210, SCACR, dictate that certain matters cannot be contained in the Record, a motion to exclude matters from the Record should not be filed until the appellant has filed and served his initial brief with the issues on appeal, thereby providing respondent notice of the grounds for the appeal. See Jean H. Toal, *Appellate Practice in South Carolina*, 140-141 (2002). After the parties have served their initial briefs and Designations as set forth in Rules 208 and 209, SCACR, and if the parties are unable to reach an agreement as to the contents of the Record, a party may file a motion to strike matter from the record. Id.

According to Chief Justice Toal in *Appellate Practice in South Carolina*:

A primary purpose of the SCACR and its procedures for the preparation of briefs and the compiling of the record is to eliminate irrelevant matter. Under the old Supreme Court Rules, the record was put together before the writing of the briefs, that is, before attorneys researched the questions presented by their exceptions....Under SCACR, the process is reversed. The research and brief preparation

¹ Appellant's filing of the Designation of Matter before his initial brief is improper pursuant to Rules 208 and 209, SCACR.

occurs, or should occur, first. After that, the party designates the matters necessary to support the brief. This process should result in smaller records, containing only relevant matters.

Id.

In his Motion, Appellant moves to limit the Record on Appeal to: “1) The Complaints, Answers, and Replies as amended; 2) The Orders, Pleadings, and other documents with dates beginning with the Order of Reference dated June 13, 2012 and ending with the Order of Recusal dated October 17, 2012; 3) Deposition Transcripts taken for use at trial; 4) Trial Transcript; 5) Exhibits and other documents set before the Special Referee at Trial; and 6) Rule 16 documents.” **Appellant’s Motion to Limit the Record, pp. 8-9.** The Appellant also requests that duplicates of any document, as well as certificates of service or verifications when on a separate page, be excluded from the Record. Id.

Although Respondents do not object to eliminating duplicative documents and irrelevant matters from the Record, at this stage of the appeal, it is impossible to identify which materials are relevant. The Appellant has not filed or served his initial brief, and accordingly, the Respondents do not know which matters will be relied upon in responding to the Appellant’s arguments. Furthermore, matters listed by the Appellant may be irrelevant to the appeal if they are not relied upon by either party in their initial briefs, and accordingly, the Respondents lack the necessary information to respond to Appellant’s motion. For these reasons, the Appellant’s motion is premature and should be denied.


II. Even if Appellant's Motion to Limit the Record on Appeal is Ripe, it should be Denied.

As a general principle, "[t]he appellate court ... will not entertain motions to exclude matter designated for inclusion in the record on appeal." Jean H. Toal, *Appellate Practice in South Carolina*, 141 (2002). This Court should not entertain Appellant's motion, because it attempts to exclude documents that are presumably relevant to the appeal and were before the lower court, including the Respondents' brief in opposition to the Appellant's post-trial motions and the Order denying the Appellant's post-trial motions. Because the Appellant is attempting to limit the Record to exclude relevant matters that were before the lower court, although admittedly unfavorable to the Appellant's position, the Motion to Limit the Record should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the Appellant's Motion to Limit the Record on Appeal dated April 17, 2013.

Respectfully submitted,



McNAIR LAW FIRM, P.A.

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Attorneys for Respondents

The International Club, Inc., Rosemary

Toth, and K.A. Diehl & Associates, Inc.

Myrtle Beach, South Carolina

Date: April 26, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
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Ralph P. Stroman, Special Referee

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PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., *Pro Se* Appellant Ronald Jarmuth in the above-entitled action, certify that I have served the Respondent's Return to Motion to Limit the Record on Appeal, Exhibits and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 20th day of April, 2013.

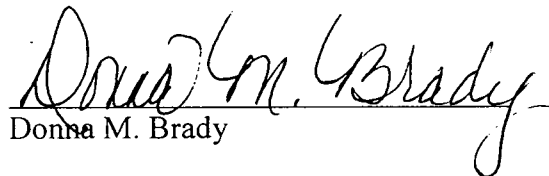
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APR 29 2013

SC Court of Appeals


Donna M. Brady

Myrtle Beach, South Carolina

MCNAIR

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April 26, 2013

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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC COURT OF APPEALS

RE: *Ronald Jarmuth v. International Club HOA, Inc. et al.*
Case Track #: 2013-000714
Civil Action Nos.: 2009-CP-26-3596 and 2010-CP-26-11320
Our File No.: 051490.00001

Dear Ms. Kitchings:

With regard to the above matter, enclosed for filing with the Court, please find the following:

- Original and seven copies of Respondent's Return to Motion to Limit the Record on Appeal, and
- Proof of Service.

By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the Return to Motion to Limit the Record on Appeal and Proof of Service.

Please return to me a clocked copy of the enclosed documents in the enclosed self-addressed envelope.

Sincerely,

McNair Law Firm, P.A.



Alicia Thompson

AT/dmb
Enclosures
cc: Ronald Jarmuth
Clients

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