

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

68203

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No.: 2009-CP-38-2087

Kathy BeasonRespondent

v.

Chatone LowdenAppellant

MOTION TO DISALLOW APPELLANT'S BRIEF AND
EXTEND RESPONDENT'S TIME TO ANSWER

Daniel W. Luginbill
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Attorneys for the Respondent

April 25, 2013

Bamberg, SC

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APR 29 2013

SC Court of Appeals

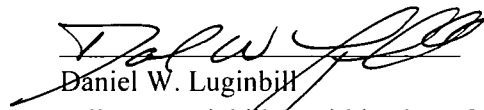
Respondent, by and through her undersigned counsel of record, hereby moves this Court to disallow Appellant's current brief filed April 23, 2012, on the grounds that it cites to matters not in the record. Specifically, Appellant makes multiple references to the discovery depositions of the Appellant and the Respondent. The briefs and the Record on Appeal must only contain matters admitted into evidence in the trial below. Accordingly, Appellants brief, in its current form, is improper, and should not be accepted.

Presumably, Respondent relied on the discovery depositions because the trial transcript has never been provided to either party. Ms. Harry Dot Walker was the reporter for the trial. She produced a copy of the transcript from Appellant's Motion to Reconsider, but has not produced the trial transcript, despite numerous attempts, in writing, from counsel for both parties seeking the transcript. Upon information and belief, per my conversation with Ms. Walker, she has retired and has turned the tapes of the trial over to Court Administration, who is in the process of assigning Ms. Walker's outstanding transcript requests to other court reporters to transcribe. As of the date of this Motion, I have not been contacted by any reporter indicating when the transcript may be available.

Respondent respectfully requests that Appellant's brief filed April 23, 2012 be disallowed, and that Respondent's time to file a brief be extended until 30 days after the re-filing of Appellant's brief, after the transcript has been produced and made available. In the alternative, and out of an abundance of caution, Respondent is filing contemporaneously with this Motion, Respondent's Initial Brief. Respondent respectfully requests leave to file and Amended Brief or Supplemental Brief, as the Court directs, once the transcript is finally made available.

Counsel for the Respondent has conferred with counsel for the Appellant prior to the filing of this Motion, and Appellant consents. Respondent contends Appellant is not prejudiced by this Motion, as the judgment has been paid into the Clerk of Court, thus there is no post-judgment interest accruing. Respondent asserts it is in the interests of justice that the matter be determined on its merits after a full briefing of the issues by the Respondent.

Respectfully Submitted,


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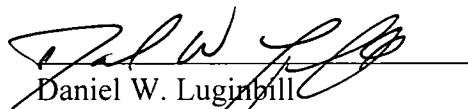
Kathy BeasonRespondent

v.

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PROOF OF SERVICE

I certify that I have served this Motion to File Respondent's Brief Out of Time by depositing a copy of it in the United States Mail, postage prepaid, on this date, to J. Austin Hood, P.O. Box 7966, Columbia, SC 29201.



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