

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

REP. LARRY METZ, *et alii*,

Appellants,

CASE NO. 1D18-0687

v.

L.T. Case Nos. 2017-CA-2284,
2017-CA-2368

MAT MEDIA, LLC, *et alius*,

Appellees.

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**APPELLANTS' UNOPPOSED MOTION TO
SUPPLEMENT THE RECORD ON APPEAL WITH ENTIRE OMITTED
RECORD FROM CASE NO. 2017-CA-2368**

The Appellants, by undersigned counsel and pursuant to Florida Rule of Appellate Procedure 9.200, respectfully move this Court for leave to supplement the record on appeal with the record from Case No. 2017-CA-2368, which appears to have been omitted in its entirety by the trial court clerk. This motion draws no objection from the Appellees. In support of this motion, Appellant states as follows:

1. This appeal involves two cases consolidated in the trial court, and the caption above indicates the two case numbers below. The cases were not immediately consolidated, and there are pleadings and other filings in Case No. 2017-CA-2368 required by Rule 9.200 to be included in the record on appeal.

2. Undersigned counsel filed a notice of appeal in each of the two consolidated cases to ensure that the full record in each case would be transmitted as the record on appeal. Undersigned counsel did not file directions with the trial clerk to exclude any documents from the record.

3. On April 30, 2018, the trial court clerk served undersigned counsel with a copy of the index and record on appeal transmitted to this Court. After reviewing those documents, undersigned counsel discovered that the clerk did not include anything from the docket in Case No. 2017-CA-2368 in the record on appeal. Pursuant to Florida Rule of Appellate Procedure 9.200(a)(1), the pleadings and other filings in Case No. 2017-CA-2368 should have been included as part of the record on appeal, and there was no request that the clerk exclude those documents.

4. On appeal, there are arguable issues related to and stemming from the pleadings and other filings that the trial clerk omitted. Appellants need these documents included in the record on appeal to ensure a complete record is before this Court for review. Inclusion of these documents in the record also will allow undersigned counsel to complete preparation of a suitable brief to be filed in this case.

5. As authority for this motion, Appellant relies on Florida Rule of Appellate Procedure 9.200(f)(2), which provides in part that “[n]o proceeding shall

be determined, because of an incomplete record, until an opportunity to supplement the record has been given.” This Court in turn should allow the Appellants an opportunity to supplement the record. *Cf. Morgan v. Pake*, 611 So. 2d 1315, 1316 (Fla. 1st DCA 1993) (noting that it is appellant’s responsibility to ensure preparation of a “record adequate to permit resolution of the issues raised on appeal is prepared and transmitted to the appellate court”); *Brice v. State*, 419 So. 2d 749, 750 (Fla. 2d DCA 1982) (“It is well settled that it is the appellant’s duty to provide an adequate record to the appellate court.”).

Certification of No Objection Pursuant to Fla. R. App. P. 9.300(a)

6. Undersigned counsel certifies that he communicated by e-mail with counsel for the Appellees about the relief sought in this motion. In a reply e-mail, counsel advised that he has no objection.

WHEREFORE, the Appellants pray that the Court grant them leave to supplement the record on appeal with the omitted documents from Case No. 2017-CA-2368 that Florida Rule of Appellate Procedure 9.200(a) otherwise requires be included as part of the record.

[Signature block on next page.]

Respectfully submitted,

/s/ Adam S. Tanenbaum

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2018, a true copy of the foregoing motion was furnished via e-mail to the following counsel at the address listed, constituting compliance with the service requirements of Florida Rule of Judicial Administration 2.516(b) and Florida Rule of Appellate Procedure 9.420(c):

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