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September 2, 2022

VIA EMAIL ONLY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

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Sep 02 2022
SC Court of Appeals

RE: Lonnie Hamilton, III, and Zoe'Lia L. Culbreath, Appellants v. 301 Auto Parts, LLC, Respondent
Appellate Case No.: 2022-000805
Our File No.: 6329-79

Dear Ms. Kitchings:

I am the attorney of record for the Respondent in the above referenced appeal. Please find attached for filing Respondent's Memorandum of Law in Reply to Appellants' Opposition to Respondent's Motion to Strike. I also attach a Proof of Service indicating this Memorandum has been served on Counsel for Appellants.

Thank you for your attention to this matter.

Sincerely,

The Seibels Law Firm, PA



P. Gunnar Nistad

PGN/khm
Enclosures

cc: Thomas S. Tisdale, Esquire (w/enclosures via email and U.S. Mail) tst@chancellorsc.com
Salvatore G. Davi, Esquire (w/enclosures via email and U.S. Mail) sd@chancellorsc.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case No. 2022-000805

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2019-CP-10-06567

Lonnie Hamilton, III and Zoe'Lia L. Culbreath, Appellants,

v.

301 Auto Parts, LLC, Respondent.

RESPONDENT'S MEMORANDUM OF LAW IN REPLY TO APPELLANTS'
OPPOSITION TO RESPONDENT'S MOTION TO STRIKE

Respondent 301 Auto Parts, LLC, respectfully submits this Memorandum of Law in reply to Appellants' Opposition to Respondent's Motion to Strike. Respondent's Motion to Strike was based upon the basis that Appellants' Designation of Matters to be Included in the Record on Appeal that included matters that were not a part of the record in the lower court, including a report by Respondent's expert Bryan Durig, a deposition transcript of Brian Ard ("Ard"), and web pages from Respondent's website. "The Record shall not, however, include matter that was not presented to the lower court or tribunal." Rule 210(c), SCACR. Appellants fail to properly justify the inclusion of these matters to be included in the Record on Appeal, and therefore, the Motion to Strike should be granted.

At it relates to the report written by Bryan Durig, Appellants argue that the report designated in the proposed Designation of Matters to be Included in the Record on Appeal contains the same information as the affidavit actually submitted by the Respondent as an exhibit in support of its Motion for Summary Judgment. The report designated by Appellants, attached hereto as Exhibit A, was a preliminary report that did not provide all of Mr. Durig's opinions. The affidavit, attached hereto as Exhibit B, contains new information, including Mr. Durig's final opinions. The affidavit is the information in the matter that is a part of the lower court's record and considered by the lower court in its Order Granting Summary Judgment. (Exhibit C). Therefore, Mr. Durig's expert report, designated by the Appellants, should be struck from Appellants' Designation of Matters to be Included in the Record on Appeal.

As it relates to the deposition transcript of Brian Ard, Appellants rely on *Southern Glass & Plastics Co. v. Kemper*, 399 S.C. 483 S.C. 483, 732 S.E.2d 205 (S.C. App. 2012) to support inclusion of the Ard transcript into the record. Reliance on this case is misplaced. In *Southern Glass*, the lower court was presented with an actual transcript of the telephone conversation in question. In this case, Appellants merely cited sections of the deposition, but failed to attach the transcript as an exhibit.

Finally, Appellants argue that the citation to the hyperlinks of web pages is sufficient to make those webpages a part of the record because they cannot be reproduced in such a manner that allows for their inclusion into the record. Those web pages, however, can be reproduced in a form that allows for their inclusion into the record as shown by exhibits D and E attached hereto.

Based upon the foregoing, Respondent respectfully requests that the Court grant Respondent's Motion to Strike.

September 2, 2022
Charleston, South Carolina

s/P. Gunnar Nistad
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
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PROOF OF SERVICE OF RESPONDENT'S MEMORANDUM OF LAW IN REPLY TO
APPELLANTS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE

I certify that I have served Respondent's Memorandum of Law In reply to Appellants' Opposition to Respondent's Motion to Strike on the Appellants' attorneys of record, Thomas S. Tisdale and Salvatore G. Davi, whose email addresses are listed in the South Carolina Attorney Information System as tst@chancellorsc.com and sd@chancellorse.com, respectfully, via electronic mail and U.S. Mail to their office, located at 4 North Atlantic Wharf, Suite 100, Charleston, South Carolina, on September 2, 2022.

September 2, 2022

s/P. Gunnar Nistad
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