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Feb 06 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS

Appeal No.: 2022-000328

Mark Shaffer, as Personal Representative of the  
Estate of Susan Shaffer, .....Appellant,

v.

DEH Disaster Recovery, LLC, Ceres Environmental  
Services, Inc.; Beaufort County, A Political  
Subdivision of the State of South Carolina;  
Ryan Colter Stoltz; Matt T. Dotson; Tim Tod Dotson;  
Brandi Dotson; Spencer A. Olson Trucking, LLC;  
Buyers Products, Co.; and TruckPro, LLC, ..... Defendants,

Of which Ceres Environmental Services, Inc. and  
Beaufort County, A Political Subdivision of the  
State of South Carolina are the ..... Appellants-Respondents,

And Spencer A. Olson Trucking, LLC, DEH Disaster  
Recovery, LLC, and Ryan Colter Stoltz are the ..... Respondents.

**MOTION TO STRIKE AND/OR AMEND  
FINAL BRIEF OF APPELLANTS-RESPONDENTS AND  
FINAL REPLY BRIEF OF APPELLANTS-RESPONDENTS**

Pursuant to Rules 211 and 240, SCACR, Respondents DEH Disaster Recovery, LLC, and  
Ryan Colter Stoltz move this Court to strike the Final Brief and the Final Reply Brief of  
Appellants-Respondents Ceres Environmental Services, Inc. and Beaufort County, A Political  
Subdivision of the State of South Carolina, both filed on February 2, 2023. Rule 211(b) provides  
that the “final brief(s) shall be **identical** to the brief(s) previously served under Rule 208,” except  
that references to the record below “shall be revised to indicate where the material appears in the

Record on Appeal,” and allowing for correction of “obvious typographical errors and misspellings which were contained in the initial brief. **No other changes may be made.**” Rule 211(b), SCACR (emphasis added).

The Final Brief of Appellants-Respondents violates Rule 211(b) in at least two respects:

1. In the last paragraph on page 4 before the Standard of Review, four lines down from the beginning of the paragraph, Appellants-Respondents have changed the phrase, “Plaintiff has appealed that ruling R. p. \_\_\_\_” to read “Plaintiff filed its Notice of Appeal.”
2. In the first paragraph on p. 14 after the heading for Subsection C, Appellants-Respondents have added language, italicized below, to the next to last sentence in that paragraph, which was not in their Initial Brief: “The lower Court compounded its error by ignoring the plain language of the Ceres-Olson Subcontract’s severability clause *in subcontract section 15.4*”.

While Respondents would not have moved to strike the Final Brief of Appellants-Respondents for those violations of Rule 211(b) alone, the numerous and substantive “corrections” contained in their Final Reply Brief prompted this Motion. Those include:

3. On page 4 of the Final Reply Brief, Appellants-Respondents moved the sentence, “As the Court of Appeals held in *Federal Pacific Elec. v. Carolina Production Enterprises*, 298 S.C. 23, 378 S.E.2d 56 (Ct. App. 1989), ‘[a] contract of indemnity will be construed in accordance with the rules for the construction of contracts generally.’” from the end of the first full paragraph, which starts with, “The Lower Court erred ...” to the end of the second full paragraph, which starts with, “As Ceres further discussed ...”
4. On page 4 of the Final Reply Brief, Appellants-Respondents changed the beginning of the second sentence of the second full paragraph, from “The *D.R. Horton* Court specifically held” to “That case specifically held ...”
5. On page 4 of the Final Reply Brief, Appellants-Respondents added an entire sentence following the second sentence of the second full paragraph. Following the phrase, “set forth the intent of the parties,” Appellants-Respondents added, “The Lower Court compounded its error by ignoring the plain language of the Ceres-Olson Subcontract’s severability clause (R. p. 3586).” That sentence does not appear anywhere in their Initial Reply Brief.
6. The entire paragraph starting at the bottom of page 4 and carrying over to the top of page 5, starting with the phrase, “While the indemnification clause within the Ceres-Olson Subcontract,” and ending with “those Orders must be reversed because they misconstrue the analysis of the *D.R. Horton* case as described below,” does not appear in their Initial Reply at all.

7. The paragraph that starts at the bottom of page 5, currently starts, “As noted above,” which has been changed from Appellants-Respondents’ Initial Brief which read, “As the second component of its overall argument noted above ...”
8. Finally, in that same paragraph that starts at the bottom of page 5, in the second sentence, Appellants-Respondents changed the word “actually” in the Initial Reply Brief to “inadvertently” in their Final Reply Brief.

While some of the above-listed changes are more substantive than others, Appellants-Respondents should be ordered to conform their Final Brief and Final Reply Brief to comply fully with Rule 211(b), SCACR.

### CONCLUSION

For the reasons stated herein, Respondents DEH Disaster Recovery, LLC, and Ryan Colter Stoltz move this Court to strike the Final Brief of Appellants-Respondents and the Final Reply Brief of Appellants-Respondents, both dated February 2, 2023, and to order Appellants-Respondents to file final briefs that comply with Rule 211, SCACR.

McANGUS GOUDELOCK & COURIE, LLC

*s/Helen F. Hiser*

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*Attorneys for Respondents DEH Disaster Recovery, LLC,  
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And Spencer A. Olson Trucking, LLC, DEH Disaster  
Recovery, LLC, and Ryan Colter Stoltz are the ..... Respondents.

**PROOF OF SERVICE**

I certify that I have served Respondents DEH Disaster Recovery, LLC, and Ryan Colter Stoltz's **Motion to Strike and/or Amend Final Brief of Appellants-Respondents and Final Reply Brief of Appellants-Respondents** on Appellants-Respondents Ceres Environmental Services, Inc. and Beaufort County, A Political Sub-Division of the State of SC, and other counsel of record on this day by emailing a copy of it as follows:

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McANGUS GOUDELOCK & COURIE, LLC

February 6, 2023

*s/Helen F. Hiser*

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**SC Court of Appeals**

**Via S.C. Courts E-Filing & U.S. Mail**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: Mark Shaffer, as Personal Representative of the Estate of Susan Shaffer, Deceased v. Ryan Colter Stoltz, DEH Disaster Recovery, LLC, Ceres Environmental Services, Inc., Beaufort County A Political Subdivision of the State of South Carolina, Matt T. Dotson, Tim Tod Dotson, Brandi Dotson, Dotson & Son Trucking, LLC, Spencer A. Olson Trucking, LLC, Buyers Products Company, TruckPro, LLC, ST Sales, LLC and Tetra Tech, Inc.  
Civil Action No.: 2017-CP-07-01739 (Beaufort)  
Date of Incident: May 3, 2017  
Carrier Claim No.: 180204-GF  
MGC File No.: 20302.17106  
Appeal No.: 2022-000328

Dear Ms. Kitchings:

Enclosed please find the original of Respondents DEH Disaster Recovery, LLC and Ryan Colter Stoltz's Motion to Strike and/or Amend Final Brief of Appellants-Respondents and Final Reply Brief of Appellants-Respondents, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email only.

We will send our firm's check in the amount of \$50 for filing the motion via U.S. Mail with a copy of this letter. Please do not hesitate to contact the undersigned if the Court requires additional copies and/or if you have any questions.

Yours truly,

McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Counsel of Record (via email only)