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Jun 28 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2021-CP-22-00927

Steven Michael Okun, as Personal Representative
of the Estate of Jane Luanne Okun Respondent,

v.

Pobuckra Properties, LLC and Alliance Commercial
Property Management, Inc.....Appellants.

APPELLANTS' MOTION TO STRIKE

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for Appellants, pursuant to Rules 209 and 210, SCACR, hereby move this Court for an Order striking the September 27, 2022 deposition of David Teems from Respondent's Designation of Matter to Be Included in the Record on Appeal.

June 26, 2023
Charleston, South Carolina

M. Dawes Cooke, Jr.
D. Summers Clarke, II
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Steven Michael Okun, Personal Representative
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v.

Pobuckra Properties, LLC and Alliance
Commercial Property Management, Inc... .. Appellants.

**APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO STRIKE**

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This Court should strike the September 27, 2022 Deposition of David Teems (“Teems Deposition”) from Respondent-Appellee Steven Okun’s Designation of Materials to Include in the Record on Appeal (“Okun’s Record Designations”) because the Teems Deposition was never presented to the trial court.

BACKGROUND

By this appeal, Pobuckra Properties, LLC (“Pobuckra”) and Alliance Commercial Property Management, Inc. (“Alliance”) seek vacatur of the trial court’s January 6, 2023 Order, granting Okun’s Motion to Strike Defendants’ Answers and Affirmative Defenses (“Motion to Strike”). The Motion to Strike totaled two pages, cited no legal authority, and did not attach any evidence. (Affidavit of Summers Clarke (“Clarke Aff.”), Ex. 1.) Okun never subsequently filed any memorandum of law or proffered any evidence in support of the Motion to Strike. (Clarke Aff., ¶ 4.) On May 15, 2023, Okun filed his Record Designations. (5/15/23 Okun’s Record Designations.) Okun’s Record Designations include the Teems Deposition. (Id.)

ARGUMENT

Rule 209 governs record designations. It provides in relevant part that: “The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].” SCACR 209(b) (emphasis added). Rule 210(c), in turn, further provides: “The Record shall not ... include

matter which was not presented to the lower court or tribunal.” SCACR 210(c)
(emphasis added). The Teems Deposition was not submitted to the trial court, and
therefore, cannot be included in Okun’s Record Designations.

CONCLUSION

For the reasons set forth above, Pobuckra and Alliance respectfully request that
this Court strike the Teems Deposition from Okun’s Record Designations.

Respectfully submitted,

s/ Colleen P. Sorensen

Agelo L. Reppas (*pro hac vice*)
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William H. Seals, Jr., Circuit Court Judge

Case No. 2021-CP-22-00927

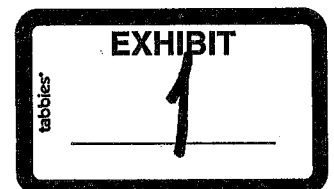
Steven Michael Okun, as Personal Representative
of the Estate of Jane Luanne Okun.....Respondent,
v.

Pobuckra Properties, LLC and Alliance Commercial
Property Management, Inc. Appellants.

AFFIDAVIT IN SUPPORT OF APPELLANTS' MOTION TO STRIKE

PERSONALLY appeared before me D. Summers Clarke, II, who having first been duly sworn, deposes and on oath says:

1. My name is D. Summers Clarke, II.
2. I am an attorney at the law firm of Barnwell Whaley Patterson and Helms, LLC.
3. Plaintiff/Respondent Steven Michael Okun's Motion to Strike Defendants' Answers and Affirmative Defenses, filed with the Georgetown County Court of Common Pleas on October 12, 2022, totaled two pages, cited no legal authority, and did not attach any evidence. (Notice of Motion and Motion to Strike Defendants' Answers and Affirmative Defenses, Ex. 1)
4. Plaintiff/Respondent Steven Michael Okun never subsequently filed any memorandum of law or proffered any evidence in support of the Motion to Strike.



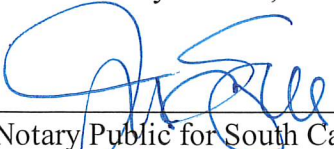
Further Affiant sayeth naught.



D. Summers Clarke, II

SWORN TO AND SUBSCRIBED before me

This 28th day of June, 2023



Notary Public for South Carolina
My Commission expires: July 23, 2023

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-000063

Steven Michael Okun, as Personal Representative
of the Estate of Jane Luanne Okun Respondent,

v.

Pobuckra Properties, LLC and Alliance Commercial
Property Management, Inc.....Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Memorandum of Law in Support of their Motion to Strike on Respondent Steven Michael Okun, as Personal Representative of the Estate of Jane Luanne Okun by depositing a copy of it in the United States Mail, postage prepaid, on June 28, 2023, addressed to Respondent's counsel of record, Gene M. Connell, Jr., Esq., P.O. Drawer 14547, Surfside Beach, SC 29587-4547.

Janet Segell, Legal Assistant to
M. Dawes Cooke, Jr. (S.C. Bar No. 1376)

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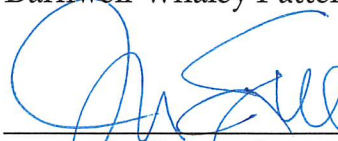
v.

Pobuckra Properties, LLC and Alliance Commercial
Property Management, Inc.....Appellants.

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Barnwell Whaley Patterson & Helms, LLC



Janet Segell, Legal Assistant to
M. Dawes Cooke, Jr. (S.C. Bar No. 1376)

EST. 1938

BARNWELL WHALEY

ATTORNEYS AT LAW

M. DAWES COOKE, JR.
MEMBER ATTORNEY
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SC Court of Appeals

2026.211
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

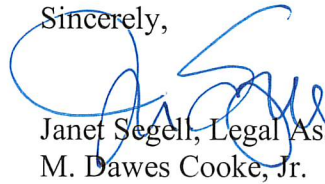
Re: *Steven Michael Okun, as Personal Representative of the Estate of Jane Luanne Okun vs. Pobuckra Properties, LLC and Alliance Commercial Property Management, Inc.*
Appellate Case No. 2023-000063

Dear Ms. Kitchings:

Please find enclosed Appellants' Motion to Strike, along with their supporting memorandum and affidavit. Also enclosed is our firm's check in the amount of \$50 to cover the filing fee for the Motion. We are serving copies of same on counsel for Respondent, as indicated on the enclosed Proofs of Service.

As always, thank you for your assistance and consideration.

Sincerely,



Janet Segell, Legal Assistant to
M. Dawes Cooke, Jr.

/jas
enclosures

c: Gene M. Connell, Jr., Esq.

{01266965.DOCX.1}

BARNWELL WHALEY PATTERSON & HELMS LLC

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