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Jul 05 2023

SC Court of Appeals

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, Personal Representative
of the Estate of Jane Luanne Okun.....Respondent,

v.

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

APPELLANTS' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE

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In his Return, Respondent Steven Michael Okun (“Okun”) concedes that the September 27, 2022 deposition of David Teems (the “Teems Deposition”) was never submitted to the trial court. Under South the Carolina Appellate Court Rules, this concession, without more, requires the Court to strike the Teems Deposition from Okun’s Designation of Matter to Be Included in Record on Appeal. SCACR 209(b) (limiting record designations to materials properly included in the record on appeal per SCACR 210(c)), 210 (c) (limiting record on appeal to materials presented to the trial court).

Okun’s suggestion that Rules 209 and 210 are somehow inapplicable because Appellants Pobuckra Properties, LLC (“Pobuckra”) and Alliance Commercial Property Management, Inc. (“Alliance”) failed to submit the Teems Deposition to the trial court is absurd. Okun, not Pobuckra or Alliance, moved the trial court for the case-dispositive sanctions granted in the January 6, 2023 Order now on appeal before this Court. And Okun, not Pobuckra or Alliance, attempts to rely on the Teems Deposition to justify the trial court’s January 6, 2023 Order.

Indeed, Okun’s claim that counsel for Pobuckra and Alliance “tangentially” referenced the deposition at the January 6, 2023 hearing is false. On page 4, lines 1-9 of the January 6, 2023 trial transcript, counsel for Pobuckra and Alliance referenced facts contained in the affidavit of David Teems, which was submitted to the trial court

as an exhibit to Pobuckra and Alliance's Memorandum in Opposition to Plaintiff's Motion to Strike.

In sum, there is no dispute that the Teems Deposition was never submitted to the trial court for consideration and thus cannot form a part of the Record on Appeal. Pobuckra and Alliance therefore respectfully request that this Court strike the Teems Deposition from Okun's Designation of Matters to Be Included in the Record on Appeal.

July 5, 2023

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PROOF OF SERVICE

I certify that I have served Appellants’ Reply 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 July 5, 2023, addressed to Respondent’s counsel of record, Gene M. Connell, Jr., Esq., P.O. Drawer 14547, Surfside Beach, SC 29587-4547.

BARNWELL WHALEY PATTERSON & HELMS,
LLC

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