

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2022-000853

Dwayne Thompson, Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the..... Petitioners.

**LG CHEM, LTD. AND LG CHEM AMERICA, INC.'S OBJECTIONS TO
RESPONDENT'S MOTION TO SUPPLEMENT THE APPENDIX**

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LG Chem, Ltd. and LG Chem America, Inc.*

Petitioners LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) submit this opposition and objections to Respondent Dwayne Thompson’s Motion to Supplement the Appendix, filed August 21, 2023.

INTRODUCTION

Respondent asks the Court to include in the Appendix motions that have nothing to do with LG Chem or LGCAI or the personal jurisdiction issues before the Court, and that were never ruled upon by the lower court. In addition, Respondent asks to include in the Appendix briefs that are already part of the Supreme Court record in this appeal and another document that is already in the Appendix. These materials should not be included.

OBJECTIONS AND ARGUMENTS

I. LG Chem and LGCAI object to supplementing the Appendix with documents that were not ruled upon by the trial court and are irrelevant to the issues in this appeal.

“ A party shall not include any matter in his Designation which is not relevant to the appeal.” S.C. App. Ct. R. 209. Further, the statement of facts in the brief should include only “facts relevant to the issues presented for review.” S.C. App. Ct. R. 208(b)(E). Finally, the “Record shall not . . . include matter which was not presented to the lower court or tribunal.” S.C. App. Ct. R. 210.

Petitioners object to including the following documents in the Appendix because they were not presented to the lower court for ruling and are irrelevant to the issues in this appeal:

- Plaintiff-Respondent’s December 16, 2019 Motion to Compel Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”) to answer Plaintiff’s Interrogatories and Requests for Production (proposed supplemental Appendix at pages 106-134).
- Defendant Rolling Fog’s January 23, 2020 Motion to be Relieved as Counsel (proposed supplemental appendix at 132-134).

- Petitioner-Defendant LG Chem’s August 21, 2020 Motion for a Protective Order, seeking protection from Plaintiff’s discovery requests that exceeded the scope of jurisdictional discovery (proposed supplemental appendix at 135-176).¹

The issue in this appeal is whether South Carolina courts have personal jurisdiction over LG Chem and LGCAI. Respondent acknowledges this (*See* Mot. to Suppl. the App’x at 1.) Motions involving discovery disputes that were never ruled upon and another defendant’s attorneys’ motion to be relieved as counsel have nothing to do with personal jurisdiction or the Orders that are being appealed. Respondent has not argued otherwise. To the contrary, the stated basis that Respondent gives for including these documents are merely “[t]o give a complete statement of the case.” (*Id.*) However, the statement of the case should not include material and facts irrelevant to the issues on appeal.

The discovery motions that Respondent seeks to enter into the record were never ruled upon by the lower court and were never raised to the Court of Appeals. Therefore, the motions that are still pending in the lower court have no relevance to the motions at issue in this appeal.

For these reasons, the motions on discovery and another defendant’s request to be relieved as counsel—along with the multiple exhibits to those documents—are both unnecessary to the appeal and improper under the Rules and should not be allowed.

Of the 213 pages in Respondent’s proposed Supplemental Appendix, Petitioners do not object to including page 105 (a postcard inadvertently left out of the original Appendix) and pages 177-213 (because part of the final column of this chart was inadvertently cut off in the original Appendix).

¹ During the hearing before Judge McKinnon, Respondent informed the trial court that he was withdrawing his request for jurisdictional discovery and asked the trial court to deny LG Chem’s Motion for Protective Order as moot.

II. LG Chem and LGCAI object to including documents in the Appendix that are already part of the Supreme Court record.

Respondent seeks to include in the Appendix the following documents that are already part of the Supreme Court record:

- Respondent’s Motion to Dismiss Appeal (filed in this appeal in this Court on May 22, 2023 (proposed supplemental Appendix at 1-89).
- Petitioners LG Chem, Ltd. and LG Chem America, Inc.’s Return to Respondent’s Motion to Dismiss Appeal (proposed supplemental Appendix at 90-102).

These documents were not presented to the trial court and therefore should not be included. *See* S.C. App. Ct. R. 210 (“The Record shall not . . . include matter which was not presented to the lower court or tribunal. ”). In addition, these materials are already a part of the Court’s record in this appeal, and adding them to the Appendix would be merely cumulative.

III. LG Chem and LGCAI object to adding a document that is already in the Appendix.

Respondent’s proposed Supplemental Appendix includes two additional documents that are not mentioned in his Motion to Supplement the Appendix. The first—a letter to LG Chem dated March 25, 2019 (included in Respondent’s proposed Supplemental Appendix at 103)—is already in the Appendix at page 00137. Including that document again is unnecessarily cumulative and could cause confusion.

IV. LG Chem and LGCAI do not object to Respondent’s request to the remaining two documents in his proposed Supplemental Appendix.

Petitioners do not object to the document included in Respondent’s proposed Supplemental Appendix at pages 105 and 177-213.

CONCLUSION

For the foregoing reasons, the following specific documents should not be included in a Supplemental Appendix: (1) **Plaintiff's Motion to Compel** and all exhibits (dated 12/16/19) [attached to Exhibit A to Respondent's Motion to Supplement the Appendix at 106-134]; (2) **Motion for Order to Be Relieved as Counsel for Defendant Rolling Fog Vapor Company, LLC** and exhibit (dated 1/23/20) [attached to Exhibit A to Respondent's Motion to Supplement the Appendix at 132-134]; (3) **LG Chem's Motion for Protective Order Regarding Plaintiff's Jurisdictional Interrogatories, Requests for Production, and Requests for Admission** and all exhibits (dated 8/21/20) [attached to Respondent's Motion to Supplement the Appendix at 135-176]; (4) **Respondent's Motion to Dismiss Appeal** and all exhibits (filed on May 22, 2023) [attached to Respondent's Motion to Supplement the Appendix at 1-89]; (5) **Petitioners LG Chem, Ltd. and LG Chem America, Inc.'s Return to Respondent's Motion to Dismiss Appeal** (filed on June 9, 2023) [attached to Respondent's Motion to Supplement the Appendix at 90-102]; and (6) the **letter from the South Carolina Secretary of State to LG Chem, Ltd.**, dated March 25, 2019 [attached to Respondent's Motion to Supplement the Appendix at 103].

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