

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Jennifer B. McCoy, Circuit Court Judge

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Appellate Case No. 2022-001208  
Case No. 2018-CP-10-3286

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Karolina Richardson and Krista Richardson, ..... Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park  
Apartments, Dewberry Capital Corporation, and GREP  
Southeast, LLC,..... Appellants.

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**APPELLANTS’ REPLY TO RESPONDENTS’ RETURN  
TO MOTION TO STRIKE MATERIALS  
DESIGNATED BY RESPONDENTS FOR  
INCLUSION IN RECORD ON APPEAL**

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The Appellants have filed this motion seeking an order directing that the documents designated by the Respondents that were never filed in the lower court record be excluded from the Record on Appeal. The Respondents have now filed a return whereby they contend that the exhibits supporting their Motion for

Sanctions were “presented” to Judge Jennifer McCoy because they were emailed to her. The Respondents make no mention of the Affidavit of Clayton B. McCullough (dated July 21, 2022) which is also unfiled but has been designated for inclusion in the Record on Appeal.

In their return, the Respondents correctly refer to Rule 210(c), SCACR, which provides that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” 210(c), SCACR. The issue before the Court involves the meaning of the term “presented” which to date has never been construed in a published opinion. As the Appellants have argued, the term “presented” as used in Rule 210(c), SCACR, should be construed *in pari materia* with Rule 5(d), SCRCP, which makes the filing of pleadings and “other papers” mandatory. The Respondents disregard the entire discussion and simply state that the disputed exhibits were “presented” to Judge McCoy. The Respondents do not deny that the disputed materials have never been filed in the public record, nor do the Respondents offer any excuse or reason for that. They offer no explanation for why they never complied with the mandatory requirements of Rule 5(d), SCRCP.

Clearly, the Supreme Court in promulgating the Appellate Court Rules, with approval from the General Assembly, used the term “presented.” It is likely that the term “filed” was not used because not all materials that may be properly designated for a record on appeal are “filed,” but those exceptions should be limited to transcripts prepared by certified court reporters and exhibits admitted

into evidence in open court (trials or hearings) and which are accounted for by the clerk of court and/or the court reporter and are maintained in the court's file.

In contrast, the disputed documents at issue in this case are not trial exhibits but rather exhibits that support motions that were pre-filed with the court and not raised orally in open court. When a motion is filed and to the extent it is supported by exhibits, those exhibits are required under Rule 5(d) *to be filed with the court* – not just emailed to the judge or conveyed in some other informal manner. Thus, for documents that are submitted outside of open court, they must be filed. The term “presented” does not excuse that nor excuse the mandates of Rule 5(d), requiring filing. Again, the term “presented” was likely chosen to convey that there are documents that are properly part of the record that are admitted as an exhibit in open court, and those documents need not necessarily be filed in the public record to be properly included in the Record on Appeal. However, the documents in dispute in this case, which were emailed to the judge and were not filed or otherwise admitted in open court to the custody of the court reporter, do not meet the meaning of “presented” in Rule 210(c), and thus should be excluded from the Record on Appeal.

Respectfully submitted,

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October 17, 2023

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Appellate Case No. 2022-001208  
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Southeast, LLC,..... Appellants.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of the Lindemann Law Firm, P.A., counsel for the Appellants, does hereby certify that service of **Appellants’ Reply to Respondents’ Return to Motion to Strike Materials Designated by Respondents for Inclusion in Record on Appeal** was made upon all counsel of record by email only this the 17th day of October 2023 as follows:

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McCullough Khan, LLC  
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*s/ Andrew F. Lindemann*

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October 17, 2023

**RECEIVED**  
**Oct 17 2023**  
**SC Court of Appeals**

**Via Email Only**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: Karolina Richardson and Krista Richardson v. Mt. Pleasant Square Associates, II, LLC  
d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC  
Appellate Case Number: 2022-001208  
Civil Action Number: 2018-CP-10-3286  
Claim Number: 21894612  
Our File Number: 307.20636

Dear Ms. Kitchings:

Pursuant to Section (b)(2) the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended May 6, 2022), please find enclosed for filing the **Appellants' Reply to Respondents' Return to Motion to Strike Materials Designated by Respondents for Inclusion in Record on Appeal** with regard to the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb  
Enclosure

cc: Clayton B. McCullough, Esquire (w/ Enclosure, Via Email Only)  
Jeffrey A. Ross, Esquire (w/ Enclosure, Via Email Only)  
Emily C. Sheets, Esquire (w/ Enclosure, Via Email Only)