

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2012-212842

Litchfield Plantation Association, Inc., Joseph E. Johnston, Thomas Eckard, Carol E. Kirby,
Robert F. McMahan, Jr., and Thomas Martin Phillips Appellants,

v.

Litchfield Plantation Company, Inc. Respondent,

AND,

E. Scott Trotter Intervenor.

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SC Court of Appeals

**Appellants' Motion to Strike Portions of
Respondents' Designation of Matter**

LEATH, BOUCH & SEEKINGS, LLP

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MOTION TO STRIKE RESPONDENTS' DESIGNATION

The Appellants, Litchfield Plantation Association, Inc., Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr., and Thomas Martin Phillips (Collectively "Appellants"), respectfully request the court to Strike Respondent's Designation of the Complaint filed in Civil Action Number 2013-CP-22-0598.

The Respondent's Designation of the Complaint filed in Civil Action Number 2013-CP-22-0598 must be stricken from the record. The Appellate Court Rules prohibit the inclusion of a post-dated case from the Record on Appeal. *See* Rule 209(b), SCACR ("A party shall not include any matter in his Designation which is not relevant to the appeal."); Rule 210, SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

The Complaint filed in Civil Action Number 2013-CP-22-0598 was filed less than two months ago, on June 14, 2013. The Appellants' Notices of Appeal were filed August 23, 2012, and October 31, 2012. There is no question that Civil Action Number 2013-CP-22-0598 was never presented to the circuit court. There is no question that Civil Action Number 2013-CP-22-0598 is irrelevant to the instant appeal. The Appellants respectfully request the court to Strike the Respondent's Designation of the Complaint filed in Civil Action Number 2013-CP-22-0598. *See Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 174-95 (1992) (reminding parties that the Record on Appeal shall not contain any matter not presented to the trial court).

LEATH, BOUCH & SEEKINGS, LLP

By: 

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July 18, 2013

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APPEAL FROM THE GEORGETOWN COUNTY
Court of Common Pleas

SC Court of Appeals

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2012-212842

Litchfield Plantation Association, Inc., Joseph E. Johnson, Thomas Eckard, Carol E. Kirby,
Robert F. McMahan, Jr., and Thomas Martin Phillips Appellants/Respondents,

v.

Litchfield Plantation Company, Inc. Respondent/Appellant,

and,

E. Scott Trotter Intervenor.

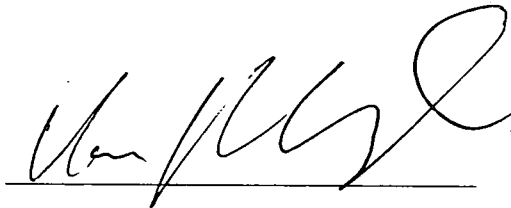
PROOF OF SERVICE

I certify that I served the Appellants' Motion to Strike Portions of Respondents' Designation of Matter on July 18, 2013, by depositing a copy of it in the United State Mail, postage prepaid, addressed as follows:

Mark D. Neill, Esquire
The Neil Law Firm
P.O. Box 2810
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Attorney for Respondent
Litchfield Plantation Company, Inc.

Robert S. Shelton
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P.O. Box 357
Myrtle Beach, S.C. 29578
Attorney for Respondent/Intervenor
E. Scott Trotter

July 18, 2013

A handwritten signature in black ink, appearing to read 'Timothy W. Bouch', written over a horizontal line.

Timothy W. Bouch
Michael S. Seekings
Yancey A. McLeod III
Leath Bouch & Seekings, LLP
92 Broad Street, Post Office Box 59



LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

July 18, 2013

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JUL 23 2013

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Litchfield Plantation Ass'n, Inc., et al v. Litchfield Plantation Company, Inc.
Appellate Case No.: 2012-212842

Dear Ms. Kitchings:

Enclosed please find the Appellants' Motion to Strike Portions of Respondent's Designation of Matter in the above revered appeal. By copy of this letter, I am forwarding a copy of this filing to all counsel of record. Please do hesitate to contact me with questions or concerns.

Thank you and with best regards, I am

Very truly yours,

LEATH, BOUCH & SEEKINGS, LLP

A handwritten signature in black ink, appearing to read "Yancey A. McLeod III", is written over the typed name. The signature is fluid and cursive, with a large, sweeping flourish at the end.

Yancey A. McLeod III

Enclosures

cc: Mark D. Neill, Esq.
Robert S. Shelton, Esq.