

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

RECEIVED

AUG 1 2013

SC Court of Appeals

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.

Appellants' Reply to Respondent's Return

LEATH, BOUCH & SEEKINGS, LLP

Tim W. Bouch, Esq.
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(843) 937-8811
Attorneys for the Appellants

APPELLANTS' REPLY TO RESPONDENT'S RETURN

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 offer the following Reply pursuant to Rule 240(f) of the South Carolina Appellate Court Rules.

The Respondent's Return to Appellants' Motion to Strike does not cite to any authority. Rule 240 of the South Carolina Appellate Court Rules requires citation to authority. *See* Rule 240(e), SCACR ("The provisions of Rule 240(c) shall apply to a return."); *see also* Rule 240(c)(2), SCACR ("Each motion or petition shall include . . . A memorandum with citation to authority in support of the motion."). In fact, there is no supporting authority for including Civil Action Number 2013-CP-22-0598 in the Record on Appeal. That Complaint was filed on June 14, 2013, nearly eight (8) months after the final notice of Appeal was filed in the instant appeal.

Rule 210 of the South Carolina Appellate Court Rules strictly prohibits the inclusion of any matter that was not presented to the lower court. *See* Rule 210, SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); *See also 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). There is no question the Complaint in Civil Action Number 2013-CP-22-0598 was not presented to the circuit court.

Respondent asserts that the Complaint in Civil Action Number 2013-CP-22-0598 should be included in the Record on Appeal because it is "relevant." That is not the standard. To be included in the record on appeal, the matter must not only be relevant to the

appeal, it must also have been presented to the trial court. *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 inclusion of a complaint that post-dates the notices of appeal is a direct violation of Rule 210, SCACR.

In any event, the Complaint in Civil Action Number 2013-CP-22-0598 is in no way relevant to the instant appeal. The instant appeal concerns Respondent Litchfield Plantation Company, Inc.'s majority voting status and absolute control over the Appellant Homeowner's Association. Whether the circuit court erred in finding it did not have the authority to grant the requested equitable relief and in finding the Respondent could regain its majority voting power by repaying a small percentage of the total monies owed to the Homeowner's Association has nothing to do with a complaint filed eight (8) months after the circuit court issued the appealed orders.

Wherefore, Appellants respectfully request that the Motion to Strike be granted. The Complaint in Civil Action Number 2013-CP-22-0598 is irrelevant and was never presented to the circuit court. Pursuant to the Rules, it should be excluded from the record.

LEATH, BOUCH & SEEKINGS, LLP

By: 

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Charleston, South Carolina

June 30, 2013

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

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Litchfield Plantation Association, Inc., Joseph E. Johnson, Thomas Eckard, Carol E. Kirby,
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v.

Litchfield Plantation Company, Inc. Respondent/Appellant,

and,

E. Scott Trotter Intervenor.

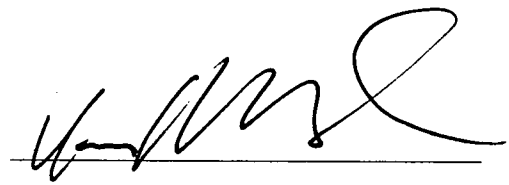
PROOF OF SERVICE

I certify that I served the Appellants' Reply to Respondent's Return on July 30,
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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Litchfield Plantation Company, Inc.

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Myrtle Beach, S.C. 29578
Attorney for Respondent/Intervenor
E. Scott Trotter

July 30, 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 30, 2013

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

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AUG 1 2013

SC Court of Appeals

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 original and 6 copies of Appellants' Reply to Respondent's Return. 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".

Yancey A. McLeod III

Enclosures

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