

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2022-CP-42-03123
Appellate Case No. 2023-001752

MECO, Inc. of Augusta.....
Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading & Investments, LLC.....
Respondents.

REPLY TO APPELLANT’S RESPONSE

Respondents move pursuant to Rules 209 and 210, SCACR, to limit the evidence on which this Court will render its decision. Appellant agrees “that Rule 210(c), SCACR, prohibits inclusion in the record on appeal of ‘matter which was not presented to the lower court or tribunal.’” (*See App.’s Resp to Mot.*, p. 2). “The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review.” (*See Id.*) (quoting *Windham v. Honeycutt*, 290 S.C. 60, 63, 348 S.E.2d 185, 187 (Ct. App. 1986)). Appellant again confirms however that “an appellate court is ‘bound by the record established *at trial*.’” (*See Id.* at p. 5) (citing *Argabright v. Argabright*, 398 S.C. 176, 179 n.3, 727 S.E.2d 748, 750 (2012) (emphasis supplied)).

Appellant relies on *Alston v. Blue Ridge Transfer Co.*, in which the parties had not filed any deposition testimony before the *trial court* but made arguments which included that testimony. *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 294-94, 417 S.E.2d 631, 633 (Ct. App. 1992) (emphasis added). The distinction here is that the parties both provided detailed excerpts to the trial court and the trial court did not consider any testimony outside those provided.

Appellant makes the contention the Improperly Designated Material¹ was available to all parties and would be admissible at trial for jury consideration. However, this matter is now on appeal at the request of Appellant and not at trial. Appellant had the opportunity to present the Improperly Designated Material to the trial court and failed to do so. Appellant also had the opportunity to move under 59(e), SCRPC, for a motion to reconsider and chose not to. The fact that Appellant feels that the evidence within the record on appeal would be incomplete is a product of its own doing. If the Appellant's proposed interpretation of the rule is followed, then Rule 210(c) is negated as Respondents can designate new matter and the record before this Court will look nothing like what the trial court considered.

Therefore, Respondents ask the Court to enter an Order striking the Improperly Designated Material from Appellant's Initial Designation and Initial Brief and requiring Appellant to refile its Initial designation and Initial Brief without these materials.²

Signature page follows

¹ See Resps.' Mot., ¶ 1 (defining the "Improperly Designated Material")

² Respondents consent to Appellant's request for 20 days to revise its Designation of Matter and Initial Brief if so ordered.

Respectfully submitted,

/s/ Zachary A. Turner

Adam C. Bach (#74885)

Zachary A. Turner (#105187)

TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@tonnsenbach.com

zturner@tonnsenbach.com

Attorneys for Respondents

March 1, 2024
Greenville, South Carolina

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SC Court of Appeals

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J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2023-001

MECO, Inc. of Augusta.
Plaintiff,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading &
Investments, LLC.....
Defendants,

OF WHOM

MECO, Inc. of Augusta is
Appellant, and

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading &
Investments, LLC.....
Respondents.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Reply to Appellant's Response was served upon counsel of record in the above-entitled action by electronic mail on March 1, 2024, as follows:

Kyle B. Weddell
Scott W. Kelly
Fulcher Hagler LLP
PO Box 1477
Augusta, GA 30903-1477
kwaddell@fulcherlaw.com
skelly@fulcherlaw.com

/s/ Zachary A. Turner
Adam C. Bach (#74885)
Zachary A. Turner (#105187)
TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@tonnsenbach.com
zturner@tonnsenbach.com
Attorneys for Respondents

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