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Jan 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC Respondents

**APPELLANT’S RETURN AND CONSENT TO RESPONDENTS’ MOTION TO AMEND
THEIR DESIGNATION OF MATTER**

K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
BARNWELL WHALEY PATTERSON &
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Charleston, SC 29402
Phone: (843) 577-7700
*Attorneys for Appellant Virgie C. Simmons
Family, LLC*

**APPELLANT’S RETURN AND CONSENT TO RESPONDENTS’ MOTION TO AMEND
THEIR DESIGNATION OF MATTER**

AND NOW COMES Appellant Virgie C. Simmons Family, LLC (“Appellant”), by and through its undersigned counsel, and files the following Return and Consent to Respondent’s Motion to Alter or Amend Their Designation of Matter.

DISCUSSION

On December 9, 2024, Respondents Limetrade, LLC and Limehouse Produce, LLC (collectively “Respondents”) filed their Initial Brief of Respondents and Designation of Matter to Be Included in the Record on Appeal (“Respondents’ Designation”).

Rule 210(c) of the South Carolina Rules of Appellate Procedure provides that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” On January 7, 2025, counsel for Appellant advised that Respondents’ Designation designated a substantial amount of material for inclusion in the record that was not presented to the trial court either by filing or by admission into evidence at trial. (*See Ex. A hereto*). Appellant’s counsel asked that Respondents “withdraw the designation of any materials that do not comply with Rule 210(c)” and offered to consent to a motion to amend Respondent’s Designation. Subsequently, on January 14, 2025, Respondents filed the instant Motion to Amend Their Designation of Matter.

Appellant consents to the granting of this Motion to allow Respondents to withdraw the designation of the following materials that were not presented to the trial court—and to withdraw any other items that are improper under Rule 210(c):

DISCOVERY

1. Defendants' First Set of Interrogatories and Requests for Production to Plaintiff, December 18, 2019
2. Plaintiff's responses to Defendants 1st Roggs/RFP 1.31.20
3. Plaintiff's Pl Roggs/RFP to Defendants 2.10.20
4. Defendants’ 2nd RFP to Plaintiff 2.12.20
5. Defendants’ responses to Plaintiff's 1st Roggs/RFP 3.4.20

6. Defendants' Supplemental responses to Plaintiff's 1st RFP 3.5.20
7. Defendants' Amended responses to Plaintiff's pt RFP 3.10.20
8. Plaintiff's responses to Defendants 2nd RFP 3.13.20
9. Defendants' Amended Supplemental responses to Plaintiff's 1st RFP 12.8.21
10. Defendants' 2nd Supplemental responses to Plaintiff's pt RFP 12.8.21
11. Defendants' Third Supplemental Responses to Plaintiffs 1st RFP 2.1.22
12. Plaintiff's supplemental responses to Defendants; RFP 2.8.22
13. Defendants' 4th Supplemental responses to Plaintiffs 1st RFP 1.27.23
14. Plaintiff's Second Supplemental Answers to Defendant's First Set of Interrogatories 8.11.23
15. Plaintiff's supplemental responses to Defendants 1st Roggs/RFP 11.21.23

TRANSCRIPTS

1. Deposition of Andrea Limehouse, December 6, 2021
2. Deposition of Kevin Scott Milligan, January 17, 2022
3. 30(b)(6) Deposition of Plaintiff, April 5, 2022
4. Deposition of David Willis, July 18, 2023
5. Deposition of Michael Allen, July 7, 2023
6. Deposition of Jordan Behringer, October 5, 2023

It appears that none of the above-referenced documents was filed or otherwise presented to the trial court as part of the trial. None of those documents are actually referenced or cited in the Initial Brief of Respondent.

Once this issue is resolved, Appellant can complete the process of compiling, serving, and filing the Record on Appeal.

CONCLUSION

For the foregoing reasons, Appellant consents to the granting of Respondents' Motion to Amend Their Designation of Matter to require Respondents to withdraw any materials that do not comply with South Carolina Rule of Appellate Procedure 210(c).

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

K. Michael Barfield (S.C. Bar No. 69400)

John W. Fletcher (S.C. Bar No. 69550)

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*Attorneys for Appellant Virgie C. Simmons
Family, LLC*

January 24, 2025

John W. Fletcher

From: Hamlin O'Kelley <hamlin.okelley@buistbyars.com>
Sent: Tuesday, January 7, 2025 10:31 AM
To: John W. Fletcher; Amanda Dowd
Cc: Michael Barfield; Anthony Baglivo; Emel Ibryam
Subject: [EXT] RE: Vergie C. Simmons Family, LLC v. Limetrade, LLC and Limehouse Produce, LLC - Appellate Case No. 2024-0000834

John

Let me check. It shouldn't be a problem, but I need to check

G. Hamlin O'Kelley, III

Attorney at Law
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
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From: John W. Fletcher <jfletcher@barnwell-whaley.com>
Sent: Tuesday, January 7, 2025 10:28 AM
To: Hamlin O'Kelley <hamlin.okelley@buistbyars.com>; Amanda Dowd <amanda.dowd@buistbyars.com>
Cc: Michael Barfield <mbarfield@barnwell-whaley.com>; Anthony Baglivo <abaglivo@barnwell-whaley.com>; Emel Ibryam <eibryam@barnwell-whaley.com>
Subject: Vergie C. Simmons Family, LLC v. Limetrade, LLC and Limehouse Produce, LLC - Appellate Case No. 2024-0000834
Importance: High

Ex. A

Hamlin,

Happy new year, and I hope you had a great holiday.

I am working on getting the Record on Appeal prepared for service. It is currently due on January 21, 2025. In doing so, I have noticed that you designated a substantial amount of material for inclusion in the record that was not presented to the trial court either by filing or by admission into evidence at trial. Rule 210(c) of the South Carolina Rules of Appellate Procedure provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." I am writing to ask that you withdraw the designation of any materials that do not comply with Rule 210(c). We would be happy to consent to the filing of an Amended Designation of Matter withdrawing those items.

Specifically, your clients' Designation of Matter to be Included in the Record on Appeal identifies the following documents that I do not believe were ever actually presented to the trial court:

DISCOVERY

1. Defendants' First Set of Interrogatories and Requests for Production to Plaintiff, December 18, 2019
2. Plaintiff's responses to Defendants 1st Roggs/RFP 1.31.20
3. Plaintiff's P1 Roggs/RFP to Defendants 2.10.20
4. Defendants' 2nd RFP to Plaintiff 2.12.20
5. Defendants' responses to Plaintiff's 1st Roggs/RFP 3.4.20
6. Defendants' Supplemental responses to Plaintiff's 1st RFP 3.5.20
7. Defendants' Amended responses to Plaintiff's 1st RFP 3.10.20
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13. Defendants' 4th Supplemental responses to Plaintiff's 1st RFP 1.27.23
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5. Deposition of Michael Allen, July 7, 2023
6. Deposition of Jordan Behringer, October 5, 2023

It appears that none of these documents were filed or otherwise presented to the Court as part of the trial. It does not appear that you actually reference or cite any of these documents in the body of your Brief of Respondent.

Please let me know if you are willing to withdraw your designation of the above-identified documents for inclusion in the record on appeal. If you do not do so, we will have to file a motion to strike your designations of those items. If I am mistaken and any of the above-referenced documents were actually presented to the trial court for its consideration, please let me know. Please let me know your position on these matters by Friday, so we can avoid the unnecessary expense and delay of a motion to strike.

I also wanted to confirm that the "EXHIBITS" section of your Designation of Matter refers to Trial Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 15. Please confirm that this is the case.

John

JOHN W. FLETCHER



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Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

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**PROOF OF SERVICE OF APPELLANT’S RETURN AND CONSENT TO
RESPONDENTS’ MOTION TO AMEND THEIR DESIGNATION OF MATTER**

I certify that I have served the Appellant’s Return and Consent to Respondents’ Motion to Amend the Designation of Matter on the above-referenced Respondents by email in accordance with the South Carolina 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) on January 24, 2025, addressed to their attorneys of record:

G. Hamlin O’Kelley, III
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652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
hamlin.okelley@buistbyars.com

Attorneys for Respondents Limetrade, LLC and Limehouse Produce, LLC

BARNWELL WHALEY-PATTERSON &
HELMS, LLC

By: 
K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
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