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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-001248

Marka Danielle RodgersAppellant,

v.

CNT Foundations.....Respondent.

MOTION TO STRIKE

/s/ Daniel Summa
Daniel Summa
Summa Law Firm, LLC
3 Broad Street, #301
Charleston, SC 29401
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March 3, 2025

Appellant, Marka Rodgers, moves pursuant to Rules 208, 209, 210, and 240, SCACR, for an order that strikes improperly designated matter from the Respondent's designation of matter to be included in the record on appeal and strikes all references to that material from the Respondent's brief. The memorandum setting forth the grounds for this motion is as follows:

1. The purpose of an appeal is for the appellate court "to review the judgment of the circuit court for reversible error based on the issues and evidence presented to that court." Sanders v. Salley, 283 S.C. 458, 460, 322 S.E.2d 829, 830 (Ct. App. 1984). Neither the Court of Appeals nor the Supreme Court in its appellate jurisdiction "sit as a trial court to receive evidence on disputed issues of fact[.]" Id. "[A]ppellate review should be limited to the record in the trial court." Id. at 461.
2. Rule 210(c), SCACR, prohibits the inclusion in the record on appeal of "matter which was not presented to the lower court or tribunal." Accord State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007); Sanders, 283 S.C. at 460; see Cobb v. Benjamin, 325 S.C. 573, 581 n. 2, 482 S.E.2d 589, 593 n. 2 (Ct. App. 1997). Rule 209(b), SCACR, provides that a designation of matter for inclusion in the record on appeal "may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the record on appeal."

3. Rule 209(a), SCACR provides that a party shall serve a Designation of Matter to be Included in the Record on Appeal “[a]t the same time a party serves his initial brief(s) under Rule 208.”
4. Item 1 of Respondent’s Designation is “Summons and Complaint filed in the Magistrate’s Court on September 12, 2022.” **See Exhibit A.** This document was not presented to the trial court, and thus its inclusion is prohibited under 210(c), SCACR. The fact that the Appellant had previously filed and dismissed a magistrate suit was referenced by Respondent’s attorney at the hearing, but said document was never presented to the trial court.
5. Respondent appears to want to cite to this Summons and Complaint in its initial brief, on page 5. **See Exhibit B.**
6. The Respondent did not serve his designation until January 20th, 2025, even though his reply brief was due on January 6th by order of this Court. **See Exhibit A and Exhibit C.**
7. The Respondent has declined to amend its brief and designation by consent to remove the improperly designated matter and remove any reference to it from the Respondent’s brief.

WHEREFORE Appellant prays for an order that strikes the Respondent’s designation of matter to be included in the record on appeal and strikes the Respondent’s initial brief, or, in the alternative, that strikes the matter designated as “Summons and Complaint from Magistrate Court” from the Respondent’s designation

of matter to be included in the record on appeal and strikes all language referring to that Summons and Complaint from the Respondent's initial brief.

Further, Appellant would move to stay the time to file and serve the Record on Appeal until this motion is adjudicated.

Respectfully submitted,

/s/ Daniel Summa
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March 3, 2025

Exhibit A
Respondent's Designation

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge
Trial Court Case No. 2022-CP-10-05916

Appellate Case No. 2024-001248

Marka Danielle Rodgers.....Appellant,

v.

CNT Foundations.....Respondent.

**RESPONDENT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

Respondent proposes and would acknowledge all of Appellant’s designations and would add the additional:

1. Summons and Complaint filed in the Magistrate’s Court on September 12, 2022;
2. Plaintiff’s Memo in Opposition to Motion to Compel Arbitration on February 8, 2023;
3. Form 4 Order dated August 15, 2023;
4. Defendant’s Memo in Support to Compel Arbitration dated September 7, 2023.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

s/ Charles A. Krawczyk
SC Bar #: 16832
2118 Bayberry Ct.
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(803) 261-9809
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Charley@CAK-LAW.com
Attorney for Respondent

January 20, 2024

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Jan 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge
Trial Court Case No. 2022-CP-10-05916

Appellate Case No 2017-005916

Marka Danielle Rodgers, Appellant

v.

CNT Foundations, LLC, Respondent

PROOF OF SERVICE

I certify that I have served Respondent's Designation of Matter to be Included in the Record on Appeal on Marka Danielle Rodgers, by electronic mail to their attorney of record, Daniel Summa, Esquire, daniel@summalawfirm.com on January 20, 2025.

s/ Charles A. Krawczyk

Charles A. Krawczyk
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Attorneys for Respondent

Exhibit B

**Page 5 of Respondent's Initial Brief
Highlights added**

element of surprise in the inclusion of the challenged clause, and the conspicuousness of the clause.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (citation omitted). The Court similarly applied these factors to the facts in *Smith*, which involved a dispute over the arbitration clause of an agreement between a homebuyer and seller. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 46, 790 S.E.2d 1, 2 (2016).

Applying the *Simpson* factors to the facts, Appellant and CNT had equal bargaining power throughout their contracted relationship. Specifically, the Contract clearly contains a provision, executed and acknowledged by Appellant, that states: “I have had the option to negotiate and change this contract.” (R.____). Appellant not only had the opportunity to negotiate the Contract but had the most meaningful input of either party. In fact, CNT regularly alters the terms of its contracts based on potential customer suggestions. Unlike the multi-state corporate seller in *Smith*, CNT is a Charleston-based small business who has a vested interest in customer satisfaction and maintaining a good business reputation. Even more so, the foundation repair business is a crowded and highly competitive business, and CNT is routinely required to change terms of their contracts to be competitive in getting jobs. It is for this reason that they included a specific provision in the contract which informed their clients that they had the opportunity to negotiate the terms of the contract.

Appellant in her Complaint indicates that she already had quote from competitors when she contacted CNT (R. ____). This is typical of a foundation repair customer. Because the competition is so fierce customers are usually in possession of multiple bids and estimates which are provided by repair companies free of charge. As appellant had other options available to her and a clear acknowledgement of her right to negotiate and change the contract Appellant’s claim that this was an adhesion contract fails.

Exhibit C

**Order indicating when
Respondent's brief was due**

The South Carolina Court of Appeals

Marka Danielle Rodgers, Appellant,

v.

CNT Foundations, Respondent.

Appellate Case No. 2024-001248

The Honorable Jennifer B. McCoy
Charleston County
Trial Court Case No. 2022CP1005916

ORDER

The time for serving and filing the initial brief of respondent and designation of matter is hereby extended until January 6, 2025.

FOR THE COURT
BY *Catherine Hannisai, deputy*
CLERK

Columbia, South Carolina

cc:
Philip Daniel Summa, Esquire
Charles A. Krawczyk, Esquire
Dylan Ross Glick, Esquire

FILED
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Marka Danielle RodgersAppellant,

v.

CNT Foundations.....Respondent.

PROOF OF SERVICE

I certify that I have served Appellant’s Motion to Stike on Respondent CNT Foundations by emailing a copy to Respondent’s attorney of record at ckrawczyk@finkellaw.com and charley@cak-law.com on March 3rd, 2025.

/s/ Daniel Summa

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Attorney for Appellant

March 3, 2025
Charleston, South Carolina



Daniel Summa <daniel@summalawfirm.com>

Rodgers - Motion to strike

Daniel Summa <daniel@summalawfirm.com>

Mon, Mar 3, 2025 at 5:54 PM

To: Charles Krawczyk <ckrawczyk@finkellaw.com>, charley@cak-law.com, Evan Riley <evan@summalawfirm.com>, Tina Kelly <tkelly@finkellaw.com>

Charles- please find enclosed for service Motion to Strike.

Best,

Daniel

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Rodgers_motion to strike with exhibits.pdf

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