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Mar 11 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2024-000753

Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC d/b/a Koch Corporation and Watson Electrical Construction Co., LLC are the Respondents.

**APPELLANT'S NOTICE OF NON-COMPLIANCE AND
MOTION TO COMPEL**

Pursuant to Rule 240, SCACR, Appellant Balfour Beatty Construction, LLC (“Balfour”) submits this Notice of Non-Compliance with Rule 208 and Rule 209 of the South Carolina Appellate Court Rules, and moves the Court to enter an Order compelling Respondent Strong Tower Construction, LLC d/b/a Koch Corporation (“Strong Tower”), to file a conforming Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal.

Rule 208(b)(4), SCACR, requires the following:

The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. **In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced;** e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1).

(emphasis added).

On March 7, 2025—after receiving four thirty-day extensions of time—Strong Tower filed its Initial Respondent’s Brief and Designation of Matter to be included in the Record on Appeal. However, Strong Tower’s Initial Respondent’s Brief does not contain any specific citations to trial, hearing, or deposition transcripts or any of the other evidence Strong Tower references therein. Instead, Strong Tower uniformly uses the citation placeholder “(R. __).”¹ For example, in its Statement of the Case, Strong Tower states:

Two of the Owner’s representatives, Kim Brown and James Clement, were deposed and both testified that there were no

¹ Balfour does not dispute that the use of a placeholder citation may be appropriate as an intelligible abbreviation when the context of a sentence makes it clear as to the source of the information. For example, the use of such a placeholder may be appropriate when a sentence references the filing of particular pleading in the course of the procedural history and the document referenced is obvious based on the context of the sentence.

outstanding issues with Strong Tower's work, that Strong did not cause any delays and that Strong should be paid under its contract with BBC. (R. __). Clements testified that Strong Tower was "a pleasure to do business with." (R. __).

(Strong Tower Initial Brief p. 4).

Strong Tower's failure to comply with Rule 208(b)(4), SCACR, places an undue burden on Balfour as it works to confirm or refute the accuracy of Strong Tower's representations to the Court and inhibits Balfour's ability to review the alleged record evidence Strong Tower relies upon for its arguments. Thus, Balfour's ability to prepare arguments in reply is seriously impaired. Accordingly, Balfour requests the Court issue an order requiring Strong Tower to file an Amended Initial Brief that complies with the Rule 208(b)(4), SCACR, and includes proper citations to the record evidence—including the page(s) and line number(s) for any citation to a transcript.

Balfour also moves the Court to order Strong Tower to file an Amended Designation of Matter to be included in the Record on Appeal that complies with 209(a) and Rule 209(b), SCACR. Rule 209(a) requires that a Designation of Matter to be included in the Record on Appeal "set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal." Additionally, Rule 209(b) requires a party's designation of matter "clearly identify what the party desires to have included in the Record on Appeal."

Strong Tower's Designation of Matter does not comply with Rule 209(a) or Rule 209(b), SCACR, and impairs Balfour's ability to prepare the Record on Appeal in compliance with Rule 210, SCACR (requiring a party include all matter designated by any party under Rule 209 in the Record on Appeal). For example, Strong Tower's Designation of Matter includes the following purported "designations" which fail to identify the specific transcript pages Strong Tower seeks to have included in the Record on Appeal:

11. Transcript of first deposition of Kim Brown, specifically excerpts of any questions by Strong Tower and answers of the deponent;
12. Transcript of first deposition of Jim Clements, specifically excerpts of any questions by Strong Tower and answers of the deponent;
- ...
18. Transcript of second deposition of Jim Clements, specifically excerpts of any questions by Strong Tower and answers of the deponent;
19. Transcript of second deposition of Kim Brown, specifically excerpts of any questions by Strong Tower and answers of the deponent;
20. Transcript of deposition of Mark Boe, specifically excerpts of any questions by Strong Tower and answers of the deponent; [and]
21. Transcript of deposition of Sam Hadley, specifically excerpts of any questions by Strong Tower and answers of the deponent.

Without knowledge of the specific transcript pages Strong Tower intends for Balfour to include in the Record on Appeal, Balfour cannot prepare a Record on Appeal in Compliance with Rule 210(c), SCACR. Furthermore, Strong Tower's failure to comply with the South Carolina Appellate Court Rules prevents Balfour from complying with Rule 210(g), SCACR, and from certifying that "the Record on Appeal contains all material proposed to be included by any of the parties and not any other material" because Balfour cannot reasonably discern the specific transcript pages Strong Tower intends to be included in the Record on Appeal.

WHEREFORE, Balfour respectfully requests the Court issue an Order requiring Strong Tower file an Amended Initial Brief that is compliant with Rule 208(b)(4), SCACR, as well as an Amended Designation of Matter to be included in the Record on Appeal that complies with Rule 209 and includes a proper designation of the transcript pages Strong Tower would like to be included in the Record on Appeal.

Because, Strong Tower's current noncompliance impairs Balfour's ability to Reply to the existing arguments and to compile the Record on Appeal, Balfour also requests that its deadlines to file and serve its Reply Brief and the Record on Appeal be held in abeyance pending Strong Tower's service of compliant documents.

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Columbia, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that on March 11, 2025, a copy of **Appellant's Notice of Non-Compliance and Motion to Compel** was served on all counsel of record via email containing the above referenced documents to counsels' individual AIS email addresses:

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