

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 REPLY TO STRONG TOWER'S RETURN TO
THE NOTICE OF NON-COMPLIANCE AND MOTION TO COMPEL**

Pursuant to Rule 240(f), SCACR, Appellant Balfour Beatty Construction, LLC (“Balfour”) submits this Reply to Respondent Strong Tower Construction, LLC d/b/a Koch Corporation’s (“Strong Tower”) Return to the Notice of Non-Compliance with Rule 208 and Rule 209 of the South Carolina Appellate Court Rules.

Balfour moved the Court to enter an Order compelling Strong Tower to file an Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal on the grounds that Strong Tower’s Initial Respondent’s Brief does not comply with the requirement set forth in Rule 208(b)(4), SCACR—requiring initial briefs include citations to the page and line number of the transcript prepared by the Court Reporter—and Strong Tower’s Designation of Matter does not comply with Rule 209(b), SCACR, which requires a party “clearly identify what the party desires to have included in the Record on Appeal.”¹

On March 20, 2025—without requesting leave of the Court—Strong Tower preemptively filed an Amended Initial Brief and an Amended Designation of Matter to be included in the Record on Appeal. However, Strong Tower’s amended submissions remain out of compliance with the South Carolina Appellate Court Rules.

While Strong Tower’s Amended Initial Respondent’s Brief replaced multiple record citation placeholders with intelligible abbreviations to the referenced material, Strong Tower’s Amended Initial Brief remains out of compliance with Rule 208(b)(4) due to its failure to identify the page and line number of several of the hearing transcripts referenced in its Initial Brief. Specifically, Strong Tower fails to identify any pages or line numbers from the transcripts of the January 6, 2021 hearing or the March 19, 2021 status conference. Instead, Strong Tower’s Amended Respondent’s Brief merely cites to “(Tr. January 6, 2021)” and “(Tr., March 19, 2021)”

¹ And which designation allows Appellant to satisfy Rule 210(g) SCACR, which requires certification “that the Record on Appeal contains all material proposed to be included by any of the other parties and not any other material.” (emphasis added).

to support its arguments regarding the statements made during those hearings. Rule 208(b)(4), SCRCRCP, plainly requires Strong Tower identify the line and page number of the referenced transcripts. However, Strong Tower admits in its Return that it has not included such citation because Strong Tower does not have copies of those transcripts and, instead, relies upon the recollection of counsel as to the statements made during those proceedings.

Importantly, nothing from the January hearing or the March 19 status conference are on appeal. Nonetheless, Strong Tower incorrectly argues that Balfour is obligated to provide it with copies of those transcripts pursuant to the South Carolina Appellate Court Rules. As evidenced by Strong Tower's submission to the Court, Strong Tower requested copies of those transcripts and Balfour declined to provide Strong Tower with the requested copies for two (2) reasons.

First, Balfour declined to provide Strong Tower with a copy of the March 19, 2021 hearing transcript because nothing from that hearing is at issue in the Balfour's appeal, and the agreement with the Court Reporter from whom Balfour ordered the transcript states:

Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

The South Carolina Appellate Court Rules do not require an appellant to provide courtesy copies of all hearing transcripts—including transcripts that are not cited by the appellant in the Initial Appellant's Brief—prior to service of the Record on Appeal. Since there is no court order or rule mandating Balfour provide copies of the transcript prior to service of the Record on Appeal Balfour refused to violate the agreement with the Court Reporter and provide a copy to Strong Tower. Strong Tower's duty to file a compliant Respondent's Brief is not Balfour's duty.

Second, Balfour did not previously obtain a copy of the January 6, 2021 hearing transcript and declined to purchase one now simply to provide it to Strong Tower to introduce material into

this Record not involved in the pending appeal. The January 6, 2021 hearing addressed Strong Tower's first Motion for Summary Judgment. The Master denied that motion and provided Strong Tower leave to file a renewed motion for summary judgment. Balfour has not ordered a copy of that transcript because Balfour did not cite to or reference any statements made during the January 6, 2021 hearing and it did not appeal any ruling issued during that hearing.²

Now, Strong Tower seeks to have Balfour order and pay for a hearing transcript solely for the purpose of providing it to Strong Tower so that Strong Tower may use it to introduce material in its Initial Respondent's Brief not otherwise at issue in Balfour's appeal. The South Carolina Appellate Court Rules do not place the obligation on the appellant to purchase all transcripts of all underlying proceedings—that are not even at issue in the appeal—and provide free courtesy copies to a respondent. To the extent Strong Tower would like the transcript from the January 6, 2021 hearing, or portions thereof, included in the Record on Appeal, Balfour respectfully requests the Court issue an order directing Strong Tower to order a copy of that transcript and provide a copy to Balfour so that it may fulfill its obligation under Rule 210, SCACR, and compile the Record on Appeal. Furthermore, without Strong Tower providing a copy of the January 6, 2021 transcript which it sees to inject into this appeal, Balfour cannot comply with the Rule 210(g), SCACR, obligation to certify that the Record on Appeal contains all material proposed to be included by the Respondents or that the Record on Appeal contains no matter that is irrelevant to the appeal.

Based on the foregoing, Balfour respectfully requests the Court enter an Order rejecting the Amended filings made by Strong Tower without leave and compelling Strong Tower to file an

² This appeal relates to the Master's grant of Strong Tower's renewed motion for summary judgment which was heard on August 16, 2021 and the Master's denial of Balfour's motion to reconsider the order granting Strong Tower partial summary judgment which was heard on March 13, 2024. Balfour obtained a copies of those hearing transcripts and provided courtesy copies to Strong Tower. The August 16, 2021 and March 13, 2024 hearing transcripts do not contain a provision limiting the distribution of those transcripts to other parties.

Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal that complies with the requirements set forth in Rule 208(b)(4) and Rule 209(b) of the South Carolina Appellate Court Rules. Furthermore, to the extent Strong Tower intends to continue to designate all or portions of the January 6, 2021 hearing transcript, Balfour requests the Court order Strong Tower to order a copy of that transcript and provide it to Balfour for evaluation of whether it contains material that is relevant to this appeal and proper for inclusion in the Record on Appeal.

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March 27, 2025
Columbia, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that on March 27, 2025, a copy of **Appellant's Reply to Strong Tower's Return to the 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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