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May 05 2025

SC Court of Appeals

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. 2020-CP-42-00055

Appellate Case No. 2024-001239

Dr. Lad Santiago,

Appellant.

v.

Stephen N. Garcia, as Attorney for

Oscar Avila Hernandez, et.al.,

Respondents.

**APPELLANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE
APPELLANT'S 2ND AMENDED DESIGNATION OF MATTER**

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Pro Se for Appellant

Attorney for Respondents

NOW COMES Appellant, who files his Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Designation of Matter. Appellant has answered each of Respondents' Attorneys' allegations as noted below. Please note that the Respondents' Attorney has not complied with the normal protocol and rules for a Motion to Strike, which is herein noted and substantiated by the following citations.^{1,2,3,4}

1. It is the Respondents' Attorney's prerogative to object; however, it is solely the discretion of the Court of Appeals to allow an amendment to the Designation of Matter. Thus, the Appellant respectfully defers to the review and wisdom of this Honorable Court to make this decision. To this end, Appellant will be filing a Motion to Amend his Designation of Matter.

2. Respondents' Attorney has taken the Order out of context. The Appellant's filing was done as a Nunc Pro Tunc. The Court Order specifically stated, in part: "... this court denies Appellant's motion to amend his designation of matter *without prejudice on the basis Appellant has not*

¹ A motion to strike pleadings should be reserved for egregious violations, and this is true even if the District Court permits a party to replead. [Fed.Rules Civ.Proc.Rule 12\(f\)](#), 28 U.S.C.A. *See* [Farrell v. Pike](#), 342 F. Supp. 2d 433 (M.D.N.C. 2004)

² The federal civil procedure rule permitting a court to strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter imposes a sizable burden on the movant, and courts typically strike defenses only when they have no possible relation to the controversy. [Fed. R. Civ. P. 12\(f\)](#). *See* [United States v. Google, LLC](#), 692 F. Supp. 3d 583 (E.D. Va. 2023). Please note that the Appellant has not executed any of the above mentioned violations that would give cause for a Motion to Strike.

³ In review of Rule 240(c)(2) and 240(c)(3) regarding Motions, it is of interest to note that the Respondents' Attorney failed to include and comply with the aforementioned Rules: "...**(2)** A memorandum with citation of authorities in support of the motion," and "...**(3)** Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions." *See* Rule 240(c)(2)(3), Motions and Petitions Generally. Form and Content of Motions and Petitions. South Carolina Appellate Court Rules. <https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-240/>

⁴ Rule 12(f) DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS: Motion to Strike. South Carolina Rules of Civil Procedure (SCRCPP), [https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=\(f\)%20Motion%20to%20Strike,.of%20Rule%2012\(e\).](https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=(f)%20Motion%20to%20Strike,.of%20Rule%2012(e).)

indicated the matter he desires to designate.” (emphasis added). Based upon the Court’s mandate, the Appellant is allowed to resubmit a Motion to Amend his Designation of Matter, as it only denied the request on the designation of matter because Appellant had not indicated the matter to be designated. However, the Appellant added the matter in his Nunc Pro Tunc filing of April 15, 2025, which is contrary to Respondents’ Attorney’s erroneous understanding and erroneous statement of the Order and the application thereof. Furthermore, based upon the Court’s most recent letter of April 24, 2025, the Appellant will be submitting a Motion to Amend his Designation of Matter.

3. This is erroneous as it is not relevant nor applicable, as the Court has specifically stated that a Motion must be filed according to their letter of April 24, 2025, regarding the topic of amending the Designation of Matter. There is nothing in the Rules cited that requires the Appellant to communicate with the Respondents’ Attorney, verbally or in writing regarding this matter in particular. Appellant does not have any objection, nor is he adverse to confer with the Respondents’ Attorney regarding this specific matter; however, this is an inappropriate circumstance to execute this form of communicative exchange at this time, verbal or written.

4. This is a false and misleading statement by the Respondents’ Attorney. The Appellant’s cover letter of his April 15, 2025 Nunc Pro Tunc Court Filing did state the need to add the additional items. Please also note that the Respondents’ Attorney did not state his need for any of the items that he noted within his Designation of Matter. In further support and in verification, the Appellant’s letter to the Court of April 15, 2025, states specifically, as follows: “In keeping with the Court’s Order of April 8, 2025, the Appellant herein files his Nunc Pro Tunc Designation of Matter that *demonstrates* the matter being designated. Item #s 8, 9, 10, 12, 13, 14, 15, 18, 19, 25 were inadvertently omitted due to clerical error. *These items are in keeping with the Designation*

of Matter already submitted and do not prejudice the Respondents, but shed necessary light to include and reflect those issues that speak to the truth for justice to prevail in this Honorable Court's deliberations in this case.” (Emphasis added to the last sentence).

5. Contrary to Respondents' Attorney's allegations that these Designation of Matter items are not cited in either the Initial Brief and/or the Reply Brief, this is an erroneous statement. Upon examination by the Appellant of the Appellant's Initial Brief and his Reply Brief, these documents reveal references to the items that the Appellant desires to include in his Designation of Matter for both his Initial Brief and/or his Reply Brief. Also, as previously stated, "Item #s 8, 9, 10, 12, 13, 14, 15, 18, 19, 25 were inadvertently omitted because of clerical error due to extraordinary circumstances involving severe illness of the Appellant. *These items are in keeping with the Designation of Matter already submitted and do not prejudice the Respondents, but shed necessary light to include and reflect those issues that speak to the truth for justice to prevail in this Honorable Court's deliberations in this case.”* (Emphasis added to the last sentence).

6. It is not applicable and it is illogical for the Respondents' Attorney to state that having these additional Designation of Matter Case Court Filings would cause prejudice to the Respondents, as these documents are already part of the case record in the Circuit Court and were requested to be included in the Appellant's Nunc Pro Tunc Amended Designation of Matter filing. These documents are pertinent and essential to this Appeal. As previously stated above, "*These items are in keeping with the Designation of Matter already submitted and do not prejudice the Respondents, but shed necessary light to include and reflect those issues that speak to the truth for justice to prevail in this Honorable Court's deliberations in this case.”* Furthermore, Respondents' Attorney fails to note any specificity regarding how any of these additional documents to be added to the Designation of Matter would prejudice the Respondents. It is of

interest to note that a number of the Documents that the Respondents' Attorney is claiming would cause great prejudice to his clients, are actually documents that he has listed within his own Designation of Matter. Some of the other documents that are related to and relevant to documents in his Designation of Matter, and that are being requested by the Appellant to be included, are Court Transcripts that have already been submitted by the Appellant to this Honorable Court. Appellant fails to understand how this would cause great prejudice to the Respondents if these and related documents in question are within the Respondents' Attorney's own Designation of Matter. And as previously stated above, any remaining documents are already within the Circuit Court record. Therefore, the documents being requested to be included in the Appellant's Amended Designation of Matter should be granted by this Honorable Court.

7. Respondents' Attorney's allegation is misleading in and of itself, when he stated that "... the time for filing Designations of Matter has long passed." The Appellant has had multiple illnesses that have impaired his ability to complete the Designation of Matter in full due to an inadvertent clerical omission caused by severe multiple illnesses. Furthermore, this has been acknowledged by the Court as the Appellant has motioned for and been granted, extensions of time more than once due to extraordinary circumstances because of the Appellant's illnesses. Furthermore, this Honorable Court required time to deliberate on the Motion filed by the Appellant on March 3, 2025, that requested an extension of time due to severe illness and to amend his Designation of Matter. The answer from the Appellate Court was rendered on April 8, 2025, which the Appellant had no control over, nor over his persistent and debilitating illnesses. The Court granted the requested extension of time until April 15, 2025; however, the Appellant was compelled to request another extension of time as his illness had worsened. The Respondents' Attorney's statement that "...time for filing had long passed" is not applicable in this case.

The Appellate Court is empowered to make the decision for allowing an Amended Designation of Matter. As such, the Court has stated in their letter of April 24, 2025 to both the Appellant and the Respondent, “[i]f you wish for the Court to take some action, you must file a motion.” Therefore, the Appellant will also be preparing and filing a Motion to this effect.

8. The Respondents’ Attorney’s statement is erroneous. It would not in any way divest the Respondents of opportunity and fairness to respond to any documents or potential arguments. His statement is inaccurate and not in the interest of justice. The Respondents’ Attorney did not object to any of the Appellant’s initial Designation of Matter, so why would he now object to this amended Designation of Matter, especially when all of the items noted to be designated are already part of the Circuit Court record and already referenced in the Appellant’s Initial Brief and/or Reply Brief. Additionally, as previously stated, one would be hard pressed to believe that any of these additional documents would be prejudicial, given that a number of them are already contained within the Respondents’ Attorney’s own Designation of Matter, as was previously noted in answer to item number 6 above.

Furthermore, the Respondents’ Attorney’s motion to strike is improper and misplaced because the Appellant’s actions to amend the Designation of Matter Nunc Pro Tunc does not fit the definition set forth by Rule 12(f) where in part it requires that it reflect and comply with the criteria of being “...redundant, immaterial, impertinent or scandalous matter.” The Appellant’s actions and filings have done none of these.⁵

⁵ Rule 12(f) DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS: Motion to Strike. South Carolina Rules of Civil Procedure (SCRCP), [https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=\(f\)%20Motion%20to%20Strike.,of%20Rule%2012\(e\).](https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=(f)%20Motion%20to%20Strike.,of%20Rule%2012(e).)

9. Respondents' Attorney's statement has already been addressed in item number 8. Moreover, adding additional items to the Designation of Matter will not cause the Respondents to refile an Initial Brief. Furthermore, a great number of these additional Designation of Matter items also apply to the Reply Brief of the Appellant and are referenced within its contents. As previously stated, it would not be prejudicial for the Appellant to add additional items to his Designation of Matter. Respondents' Attorney never posed any objection to Appellant's initial Designation of Matter. Also, as previously stated, (1) all of the items to be added are already part of the Circuit Court Record, (2) several of these items are already a part of the Respondents' Attorney's Designation of Matter, (3) these items are already referenced in the Initial Brief and/or the Reply Brief of the Appellant, (4) the Appellant was impeded from entering these items in his Designation of Matter previously due to illness. To further support this, Appellant has consistently noted that due to his prolonged and extraordinary health conditions that have caused the inadvertent clerical omissions, he was unable to properly complete his Designation of Matter. As noted in his filing of March 5, 2025, ". . . due to illnesses that were previously noted in his Motion of February 25, 2025, and in his Nunc Pro Tunc of March 3, 2025, the Appellant inadvertently omitted the Amended Designation of Matter [items] to his Initial Brief, and the Designation of Matter to his Reply Brief," necessitating this correction. Please note that the Appellant already attempted to submit a Nunc Pro Tunc Amended Designation of Matter, but the Respondents' Attorney objected *without cause*. (5) Furthermore, in addition to the above, the following is hereby noted: ". . . since the Respondents' Attorney introduced new issues in his Initial Brief of Respondents that were beyond those issues in the Appellant's Initial Brief, which issues are in dispute, the Appellant needs to add these disputed matters/items within the Appellant's Designation of Matter to the Reply Brief." *See: Page 3 of Appellant's Response to*

Respondents' Attorney's Objection Letter dated February 28, 2025, to Appellant's Motion For Extension Of Time To File The Record On Appeal And For Amendment Of Designation Of Matter.

It would be inordinately prejudicial to deny the Appellant the right to amend his Designation of Matter, as it would derail justice in denying this Honorable Court to properly deliberate all of the issues in this case.

10. Although the Respondents' Attorney has this position, it is not applicable in this case as an inadvertent clerical omission occurred to which in response, Nunc Pro Tunc^{6,7} documents were filed by the Appellant. This error of omission occurred because of extraordinary circumstances involving illness to the Appellant, which the Court was notified of accordingly. However, the Respondents' Attorney has failed to acknowledge that the Appellant has had extreme illness that has directly impacted the Appellant's ability to address the Designation of Matter completely; thus, the error of clerical omission. This previous statement, in and of itself, is a showing of good cause, and as the Appellate Court has stated, a Motion is to be filed to address the amendment of a Designation of Matter, which the Appellant is in the process of formulating. Respondents'

⁶ "The applicant or petitioner must demonstrate that the delay in filing was caused by exceptional circumstances beyond their control, such as illness or a family emergency, and the length of the delay is reasonable given the circumstances."

See <https://www.boundless.com/immigration-resources/nunc-pro-tunc-requests-explained/#:~:text=USCIS%20may%20approve%20a%20nunc,is%20reasonable%20given%20the%20circumstances>.

⁷ "The purpose of nunc pro tunc actions is understood as correcting the judicial record to remedy clerical issues, clear errors, or prevent injustice, and in doing so more clearly reflects the original intention of the court. As a result, nunc pro tunc amendments and judgments are treated as if they were made on the dates of the original amendment or judgment."

See https://www.law.cornell.edu/wex/nunc_pro_tunc#:~:text=Nunc%20pro%20tunc%20is%20a,the%20original%20amendment%20or%20judgment.

Attorney has misinterpreted and misapplied rule 212(b)⁸ which solely references Supplementing the Record on Appeal. The Appellant is NOT supplementing the Record on Appeal since the Record on Appeal has NOT yet been created or filed, and the Record on Appeal is predicated upon the Designation of Matter, which is being submitted shortly, per the Court's directive, as a Motion to Amend the Designation of Matter that had previously been filed as a Nunc Pro Tunc by the Appellant.

Conclusion

11. It is clear from what has been addressed by the Appellant in this document that the Appellant has cause and has shown cause to amend his Designation of Matter. It will not prejudice the Respondents as this has also been earlier addressed and explained within this document by the Appellant; and it will allow the Appellant the opportunity to have this Honorable Court consider these Amended Designation of Matter relevant issues/items in its deliberation, and thus allow for a just and fair review.

The Appellant is not required to obtain consent from the Respondent as Rule 212(b) is not applicable in this instance, as the Record on Appeal has not yet been filed. Upon the Court's directive, the Appellant is to file a Motion to the Court for the Amended Designation of Matter, which the Appellant is in the process of formulating.

Contrary to the Respondents' Attorney's contention that this is a "last-ditch attempt," it is rather the exercise of the Appellant's right to seek justice in his quest to complete his Designation of Matter.

⁸ Rule 212(b) SUPPLEMENTAL RECORD: By a Party. South Carolina Appellate Court Rules, <https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-212/>

Furthermore, this has nothing to do with the supplementation of the Record on Appeal, as Respondents' Attorney has stated, but rather, this is strictly about the Designation of Matter being amended under Nunc Pro Tunc. To clarify and as has been previously noted, the Record on Appeal can only be fulfilled/filed once the Amended Designation of Matter issue is resolved by this Honorable Court.

In the interest of fairness and justice, and in order for the entire case record to be complete and properly documented, the Appellant's request for the Amendment of his Designation of Matter should be granted.

Additionally, Appellant's answers contained herein also apply to Respondents' Attorney's filing of April 21st, 2025, that is entitled Return To Appellant's Letter/Motion To Amend Designation of Matter.

WHEREFORE, Appellant prays for an Order from this Honorable Court that will deny the Respondents' Attorney's Motion to Strike and will grant the Appellant his Amended Designation of Matter, and for any further relief that the Court deems just and proper.

Appellant also prays for an abeyance of the time requirement to file the Record on Appeal that is currently set for May 15, 2025. In light of the Motion to Strike filed by the Respondents' Attorney on April 24, 2025, this request is now necessary, on two counts: (1) Addressing this filing has taken away time from the Appellant to prepare his answer to the Respondents' Attorney's Motion to Strike, and (2) The Record on Appeal and its preparation are dependent upon the Appellant's Amended Designation of Matter, which has not yet been filed as a Motion and ruled upon by this Honorable Court. To this end, the Appellant will be filing a Motion to Amend his Designation of Matter.

Respectfully submitted,

/s/ Dr. Lad Santiago

Dr, Lad Santiago

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Pro Se for Appellant

Dated May 5, 2025

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2024-001239

Dr. Lad Santiago,

Appellant.

v.

Stephen N. Garcia, as Attorney for
Oscar Avila Hernandez, et.al.,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of May 2025, he served counsel for the Respondents with a copy of Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Designation of Matter in this matter by mailing a copy of the same by the United States Mail with postage prepaid to the following address:

Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601

/s/ Dr. Lad Santiago

Dr. Lad Santiago
5041 N. Blackstock Rd.
Spartanburg, SC 29303

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May 05 2025

SC Court of Appeals

Dr. Lad Santiago
5041 North Blackstock Road
Spartaburg, South Carolina 29303

May 5, 2025

The Honorable Jenny Abbott Kitchings Clerk,
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Dr. Lad Santiago, Appellant v. Oscar Avila Hernandez, et.al., Respondents
Appellate Case No. 2024-001239

VIA: E-mail to the Appellate Court

Dear Ms. Kitchings:

Attached for filing is Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Designation of Matter that Respondents' Attorney filed on April 24th, 2025. Also, please note that the Appellant will be filing a Motion to Amend his Designation of Matter forthwith.

Moreover, enclosed is the Certificate of Service of filing this same document on the Respondents' attorney, Stephen N. Garcia.

Please note that the last paragraph of the attached Appellant's Response is requesting an abeyance for the filing of the Record on Appeal. Therefore, the Appellant is respectfully requesting that this abeyance be granted given the circumstances noted. Thank you.

Please confirm receipt of this filing.

Sincerely,

/s/ Dr. Lad Santiago

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