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May 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Debra B. Durden, Administrative Law Judge

Administrative Law Court Docket No.: 23-ALJ-17-0362-CC

Watertoys, L.L.C., d/b/a Tidalwave Watersports,.....Appellant,

v.

South Carolina Department of Revenue,.....Respondent.

MOTION TO STRIKE AND MEMORANDUM IN SUPPORT

Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue (the Department) requests that the Court strike pages 21–39 and 43–48 of the Record on Appeal, which contain matters not presented to the Administrative Law Court (ALC).¹

Under Rule 210(c), SCACR, “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” The Department did not include these records in its designation of matters to be included in the Record on Appeal. Moreover, the undersigned objected to the inclusion of these matters and raised this concern to Appellant’s counsel on April 11, 2025, April 25, 2025, April 28, 2025, and April 30, 2025 in an effort to avoid the necessity of filing this

¹ “Matter may be stricken where it is improperly included in the record on appeal.” 4 C.J.S. Appeal and Error § 660.

Motion. Despite the Department's repeated requests, Appellant has failed to identify where these matters were presented to the ALC but has insisted on including them in the Record on Appeal nevertheless.

Consequently, the Department moves that these pages be stricken from the Record and respectfully requests this Court not consider those matters because they were not presented to the ALC. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 193 n.10, 826 S.E.2d 585, 594 n.10 (2019) (noting an amended complaint that was not submitted to trial court should not have been included in the record on appeal); *Croft as Tr. of James A. Croft Tr. v. Town of Summerville*, 428 S.C. 576, 597 n.5, 837 S.E.2d 219, 230 n.5 (Ct. App. 2019), *vacated on other grounds*, 433 S.C. 473, 860 S.E.2d 352, 2021 WL 2448236 (2021) (noting this Court's order striking items from the designation of matter under Rule 210(c), SCACR because they were not presented to the lower court).

Respectfully submitted,



Marcus D. Antley, III, Esquire (Bar No. 102176)

W. Allen Myrick, Esquire (Bar No. 14718)

Jason P. Luther, Esquire (Bar No. 78021)

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*Attorneys for Respondent South Carolina
Department of Revenue*

May 7, 2025

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Deborah B. Durden, Administrative Law Judge

Appellate Case No. 2024-000962
Administrative Law Court Case No. 23-ALJ-17-0362-CC

Watertoys, L.L.C., d/b/a Tidalwave Watersports,Appellant,

v.

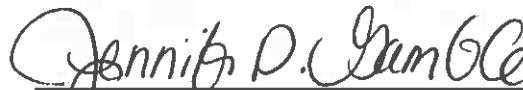
South Carolina Department of Revenue,Respondent.

PROOF OF SERVICE

I, the undersigned Paralegal with the South Carolina Department of Revenue, attorneys for the Respondent, hereby certify that I have served all counsel listed below with Motion to Strike and Memorandum in Support via electronic mail:

Thomas R. Goldstein
PO Box 71121
N. Charleston, SC 29415-1121
tgoldstein@cobblaw.net

Counsel for Appellant



Jennifer D. Gamble
Senior Paralegal

May 7, 2025

From: [Jennifer Gamble](#)
To: tgoldstein@cobblaw.net
Cc: [Marcus "Trey" Antley, III](#); [Jason Luther](#); [Allen Myrick](#); [Jennifer Gamble](#)
Subject: Watertoys, LLC d/b/a Tidalwave Watersports v. SC Dept. of Revenue (2024-000962)
Date: Wednesday, May 7, 2025 2:48:00 PM
Attachments: [2025.05.07 Motion to Strike.pdf](#)

Good Afternoon:

Please find attached Motion to Strike and Memorandum in Support in the above referenced matter which I am hereby serving upon you.

Thank you,

Jennifer

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

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SC Court of Appeals

300A Outlet Pointe Blvd.
Columbia, SC 29210



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May 7, 2025

VIA ELECTRONIC MAIL to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
Clerk of Court
1220 Senate Street
Columbia, SC 29201

**Re: Watertoys, L.L.C., d/b/a Tidalwave Watersports v. South Carolina
Department of Revenue
Appellate Case No. 2024-000962**

Dear Ms. Kitchings:

Attached please find Motion to Strike and Memorandum in Support in the above referenced matter. Additionally, I have enclosed a Proof of Service.

By copy of this letter to counsel of record, the Department is serving Appellant.

Sincerely,

A handwritten signature in blue ink that reads "Marcus D. Antley III".

Marcus D. Antley, III

Enclosures
MDA/jdg

c: Thomas R. Goldstein, Esquire