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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM S. C. ADMINSTRATIVE LAW COURT

Debra B. Durden, Judge

Appellate Tracking No.: 2024-000962

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

Watertoys, LLC d/b/a Tidalwave Watersports ……Appellant,

v.

South Carolina Department of Revenue……Respondent.

RETURN TO MOTION TO STRIKE

As authorized by Rule 240(e) *S. C. Appellate Court Rules*, Appellant replies to the Respondent's motion to strike as follows:

Department of Revenue Audit Notice

Respondent asks this Court to remove the Department's original audit notice, pages 21-39, R.O.A., to be struck from the Record on Appeal. The Department of Revenue's audit notice is the originating pleading that began this case, and Appellant designated it as the first pleading in its Designation of Contents of Record or Appeal. So did the Respondent. (Respondent designates the same document as "Department's Determination dated August 18, 2023," which is found on page 206 of the R.O.A., essentially the same document with different dates.) Obviously, the

original notice of audit is part of the record of this case and formed the basis of the Administrative Law Court's decision under review because the Administrative Law Court adopted the same calculations as the basis for its decision.

Department of Revenue's Request for Admissions

Respondent asks that its own Requests for Admission at pages 43-48 be removed from the record. These Requests for Admission are clearly delineated in the Designation of Contents of Record on Appeal, and now that Appellant has printed and filed the Record, it is too late to complain about their inclusion now.

Judge Ralph King Anderson taught lawyers should refrain from arguing against an anticipated argument. However, based on the long history of the Department of Revenue's flyspecking in this case interposing numerous, hyper-technical, procedural objections, Appellant anticipates the Department of Revenue will allege Appellant's counsel consented to Respondent's demands. More than once, Respondent presented Appellant with demands regarding the R.O.A., and Appellant adhered to each one that was debatable or plausible, even agreeing to picayune demands such as amending the name of items in the table of contents. Respondent even objected to including the Notice of Appeal in the Record on Appeal. As professional courtesy, Appellant accommodated Respondent on each reasonable request but never agreed to allow the Respondent to dictate Appellant's Designation of Contents of Record on Appeal.

Appellant has no idea if the Administrative Law Judge relied on the Requests for Admission or not because the Administrative Law Court granted the "drastic remedy" of summary judgment without a hearing! ". . . since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual

issues. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)" *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002)

Respondent points to e-mails, for example page 218 of R.O.A., to allege Appellant consented to the case being decided on the merits without a hearing. Appellant assumed, based on 41 years of prior experience, that the Court would not require the parties to travel to Columbia if the Court were denying summary judgment, but it never occurred to Appellant that any court in any case at any time would entertain imposing a "drastic remedy" ending a case on any issue without affording a hearing to a litigant whose case the Court was ending. There is no appeal from a court's decision denying summary judgment, and in such cases, the necessity of a fully developed record is unnecessary. Because the Administrative Law Court ended the case without a hearing, the parties do not know if the Requests for Admission played a part in the decision or not. Either way, the Department of Revenue created the Requests for Admission and cannot identify any prejudice from its own document being included in the Record on Appeal, especially on an appeal from summary judgment in which the standard of review is *de novo*. The Appellant's answers to the Department of Revenue's Requests for Admission are entirely consistent with every pleading in the case.

For the foregoing reasons, the Department of Revenue's motion to strike should be denied.

May 14, 2025

/s/Thomas R. Goldstein
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PROOF OF SERVICE

I certify that I provided an electronic copy of Appellant's Return to Respondent's Motion to Strike on the Department of Revenue by mailing a copy properly addressed with sufficient postage affixed thereto to Marcus D. Antley, III, at 300A Outlet Pointe Boulevard, Columbia, S. C. 29210 and via electronic mail to marcus.antley@dor.sc.gov this 14th day of May, 2025.

May 14, 2025

/s/Thomas R. Goldstein
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