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May 19 2025

SC Court of Appeals

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

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.

REPLY TO RETURN TO MOTION TO STRIKE

Pursuant to Rule 240(f), SCACR, Respondent South Carolina Department of Revenue (the Department) files this Reply and requests that the Court grant the Department’s Motion to Strike.

In its Return, Appellant still fails to identify where the matters at issue were presented to the Administrative Law Court (ALC). *See* Rule 210(c), SCACR (“[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.”). The documents at issue are not pleadings. Importantly, those documents were never filed or presented to the ALC in any other manner.

In its Return, Appellant states that the Department designated pages 21-39 to be included in the Record on Appeal. This is demonstrably incorrect. The Court need only look at the Department’s Designation of Matter; nowhere in that filing does the Department designate the

documents on pages 21-39 of the Record on Appeal. *See* Department’s Designation of Matter filed on February 10, 2025. Appellant wrongly equates these new matters to the Department Determination dated August 18, 2023, which was included in the Department’s Designation of Matter. They are not the same thing. Appellant listed these documents as separate and distinct items in the Index to the Record on Appeal—even placing the documents in separate sections of the Index. The Department invites the Court to compare the documents on pages 21–39 to the Department Determination dated August 18, 2023 on pages 206–211 of the Record on Appeal and see that these are not the same document (just with different dates)—they are entirely different documents.

Regarding its Answers to the Department’s Requests to Admit, Appellant argues “now that Appellant has printed and filed the Record, it is too late to complain about their inclusion now.” This position ignores the relevant timeline. Neither Appellant nor the Department included Appellant’s Answers to the Department’s Requests to Admit (pages 44–48 of the Record on Appeal) in its Designation of Matter. *See* Department’s Designation of Matter filed on February 10, 2025 and Appellant’s Designation of Matter filed on December 11, 2024. Appellant identified those documents for the first time in the Record on Appeal, and the Department subsequently objected to their inclusion. In other words, Appellant failed to designate this matter to be included in the Record on Appeal and then included it in the Record on Appeal over the Department’s objection. Besides having never been presented to the ALC, Appellant cannot add these extraneous matters when they were not designated. *See* Rule 201(c), SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209”).

For the reasons discussed in the Department’s Motion to Strike and this Reply, the Court should strike pages 21–39 and 43–48 of the Record on Appeal.

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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THE STATE OF SOUTH CAROLINA
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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 Reply to Return to Motion to Strike via electronic mail:

Thomas R. Goldstein
PO Box 71121
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Counsel for Appellant



Jennifer D. Gamble
Senior Paralegal

May 19, 2025

From: [Jennifer Gamble](#)
To: tgoldstein@cobblaw.net
Cc: [Marcus "Trey" Antley, III](#); [Allen Myrick](#); [Jason Luther](#)
Subject: Watertoys, L.L.C. d/b/a Tidalwave Watersports v. SC Department of Revenue
Date: Monday, May 19, 2025 9:44:00 AM
Attachments: [Reply to Return to Motion to Strike 5-19-25.pdf](#)

Good Morning:

Attached and served upon you please find Reply to Return to Motion to Strike in the above referenced matter.

Thank you,

Jennifer

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

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SC Court of Appeals

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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 Reply to Return to Motion to Strike 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,

Marcus D. Antley, III

Enclosures
MDA/jdg

c: Thomas R. Goldstein, Esquire