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SC Court of Appeals

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. 2024-000788
Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendant

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 Library Associates, LLC is the Respondent.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO THE NOTICE OF NON-COMPLIANCE AND MOTION TO STRIKE, COMPEL, AND HOLD THE DEADLINE FOR SERVICE OF THE RECORD ON APPEAL IN ABEYANCE

At its core, Library argues that since Rule 220(c), SCACR, allows the appellate court to affirm the lower court ruling, order, decision or judgment “upon any ground(s) appearing in the Record on Appeal,” Library should be allowed to broadly and without specification designate the entire record of proceedings from the lower court into the Record on Appeal. Then, without specific reference to matter in the lower court record and without stating the grounds appearing in that record which justify affirming the lower court, Library essentially directs the appellate court itself to review the entire lower court record and conjure some justification to affirm. Such a position by Library is unjustified and improper.

In its appeal, and its Appellant’s Brief, Balfour asserted a number of specific errors by the Master. Furthermore, Balfour cited legal authorities and various specific elements of the lower court record in support of its identified errors. However, in its Respondent’s Brief, Library made few (and in many instances no) specific arguments in response to the appeal issues and made no effort to identify any grounds appearing in the lower court record upon which the Court should affirm the Master.

Having failed in its Respondent’s Brief to identify the “grounds” purportedly appearing in the lower court record upon which the Court may or should affirm the Master, and failing to cite, with any specificity, locations in a record comprised of 5,054 pages of trial transcript, 820 pages of deposition transcript, 18 videos of deposition testimony and 155 trial exhibits, it is apparent that Library expects this Court to do its job for it.

When Library states no grounds upon which the Court should affirm the Master despite the specific assignments of error and the arguments and record citations presented by Balfour, then Balfour has no reasonable or fair means to reply. When Library cites no specific evidence in the record in support of the Master’s findings and conclusions, Balfour has no reasonable or fair opportunity to reply and to challenge the veracity, applicability or weight of such evidence.

Library is effectively attempting to create a situation in which Balfour is arguing on appeal against the Court in an ambush and such a situation is impermissible under South Carolina's appellate court rules.

Neither the spirit nor the letter of the appellate court rules justifies the approach taken by Library. South Carolina courts have consistently admonished parties for including matter in the Record on Appeal that is not relevant to the issues raised in the appeal. *See State v. Harris*, 278 S.C. 46, 46–47, 292 S.E.2d 40, 40 (1982) (“We see in this appeal no hint of effort to cull irrelevant matter from the record. We denounce not only this casual violation of [the rule], but also the shocking waste such disobedience begets.”); *Merritt v. Grant*, 285 S.C. 150, 158–59, 328 S.E.2d 346, 351 (Ct. App. 1985). Despite clear statements from the Court that: (i) “a party shall not include any matter in his Designation which is not relevant to the appeal”, Rule 209(b), SCACR; and (ii) parties have an obligation to “cull irrelevant matter from the record”, *Harris*, 278 S.C. at 46–47, 292 S.E.2d at 40, Library's Designation of Matter includes thousands of pages that are not cited by either Library or Balfour in their briefs. Furthermore, Library has not identified or stated specific grounds to justify affirming the Master to be found in that record.

Just by way of one clear example, Library designated “the entirety of the post-trial Transcripts and Orders,” to be included in the Record on Appeal despite the fact that those transcripts include hearings on motions to reconsider orders granting summary judgment in favor of subcontractor defendants who are not parties to this appeal. Similarly, Library seeks to include the orders related to those hearings—none of which are cited in Library's brief or at issue in this appeal. Library's only explanation for such an expansive designation is that the Court may affirm the Master for any reason found in the Record on Appeal. It offers no argument as to the relevance of those transcripts or orders to the issues before the Court in this appeal.

Instead of complying with Rule 209(c) and identifying only relevant information, Library seeks to place its burden on the Court to cull the Record and determine what matter might be actually relevant to the issues on appeal in this case. For example, in support of its erroneous position on the issue of having voluntarily withdrawn its counterclaim for declaratory judgment, Library apparently wants the Court to review the entire transcript of the twenty-three (23) day trial to find evidence which refutes Balfour's argument on this issue. However, Library does not cite a single page or line of the transcript in either its brief, or in its Return, to support its argument. Instead, Library is requesting the Court do Library's job. Effectively Library seeks to require the Court to scour the Record on Appeal, and identify facts that Library itself fails to cite in its submissions to the Court.

Furthermore, Library contends that the Record on Appeal "will necessarily be voluminous" due to the length of the trial and the amount in controversy. Nevertheless, Library's brief only cites to 334 pages of the trial transcript, excerpts of the video deposition of Mike Baumbach, and 18 trial exhibits. Library offers no specific explanation as to the relevance of the 4,720 pages of the trial transcript that it never references in its brief. Similarly, Library provides no explanation as to why the 137 trial exhibits, or the 820 pages of deposition transcripts it designated for inclusion in the Record (but never cites to in its brief) are relevant to this appeal.

When other courts have been confronted with comparable actions by a litigant (offering no specific record cites, no specific legal arguments and no apparent legal research in support of its positions) those courts have refused to assume the responsibility effectively to serve as the litigant's counsel in constructing the arguments and searching the record.

In *Swint v. Dish Network*, No. 23-4098, 2023 WL 8074820, at *1 (10th Cir. Nov. 21, 2023), *cert. denied*, 144 S. Ct. 1069, 218 L. Ed. 2d 247 (2024), the United States Court of Appeals for the Tenth Circuit said:

We ‘can affirm a lower court’s ruling on any grounds adequately supported by the record, even grounds not relied upon by the district court.’ Because [the plaintiff] appears pro se, we construe his filings liberally, but we do not serve as his advocate.

We may make allowances for failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements, but we cannot take on the responsibility of constructing arguments and searching the record.

(emphasis added, citations omitted).

Similarly, in *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 727 (4th Cir. 2021), the Fourth Circuit Court of Appeals concluded, “[i]t is not the obligation of this court to research and construct legal arguments open to parties, especially when they are represented by counsel,’ and ‘perfunctory and undeveloped arguments ... are waived.’” (citation omitted).

The United States Court of Appeals for the Seventh Circuit responded most bluntly to an effort by the litigant to have the court identify the grounds for its position and to search out in the record support for such grounds. The court said: “[j]udges are not like pigs, hunting for truffles buried in [the record].” *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). But, that is essentially what Library requires the Court to do in this case.

Similar to the courts that admonished parties for including irrelevant matter in the record, or those refusing to scour a record to find grounds supporting a litigant’s position when the litigant itself makes no such effort, Balfour respectfully requests the Court issue an Order striking Respondent’s Designation of Matter in its entirety or, alternatively, limiting Respondent’s Designation of Matter to the, 334 pages of the trial transcript, the March 17, and June 17, 2020 Orders of the trial court, the excerpts of the video deposition of Mike Baumbach, and 18 trial exhibits specifically referenced in Respondent’s Initial Brief. This Court in *Forner v. Butler*, 319 S.C. 275, 277 n.1, 460 S.E.2d 425, 427 n.1 (Ct. App. 1995), quoting the directions of the Supreme Court, has already stated:

As the Supreme Court advised the bar in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the Appellate Court Rules ‘are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.’

That direction is particularly applicable here and Balfour respectfully requests that its Motion be granted in accordance therewith.

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PROOF OF SERVICE

The undersigned hereby certifies that on July 3, 2025, a copy of **Appellant's Reply to Respondent's Return to the Notice of Non-Compliance and Motion to Strike, Compel, and Hold the Deadline for Service of the Record on Appeal in Abeyance** was served on all counsel

of record via email containing the above referenced documents to counsels' individual AIS email addresses:

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