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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000995

Elizabeth and Melvin

Ray,..... Appellants

vs.

Sunsetter Properties, LLC; Nancy Warner Agent for Coldwell Banker Residential Brokerage; and Home Inspection One, LLC, ...Respondents.

MEMORANDUM IN OPPOSITION TO THE RESPONDENTS' MOTION TO STRIKE

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I. Introduction

Appellants Elizabeth and Melvin Ray respectfully submit this memorandum in opposition to Respondents' Motion to Strike the Record on Appeal and Amended Record on Appeal. The Motion should be denied because it was filed outside the mandatory ten-day deadline under Rule 210(d), SCACR. Even if the Court were to consider the merits, the deposition notices included in the Amended Record were properly before the trial court and relevant to appellate review, and Respondents' effort to inject a Motion to Compel and an Order deeming Requests for Admission admitted is an improper attempt to rewrite the record with discovery matters that were not part of the trial court's summary judgment ruling.

II. Respondents' Motion Is Procedurally Barred as Untimely

Respondents' Motion is procedurally barred at the outset. Rule 210(d), SCACR, expressly provides that "[a]ny party may object by motion to the inclusion of any matter in the Record on Appeal within ten (10) days after service of the Record on Appeal." The Amended Record on Appeal was filed and served on August 8, 2025. Respondents did not file their Motion to Strike until August 27, 2025, nineteen days after service. Because the motion was filed outside the ten-day window, it is untimely and must be denied without further consideration.

III. Deposition Notices Were Properly Before the Trial Court and Relevant to Appeal

Even if the Court were to consider the motion, Respondents' challenge to the deposition notice lacks merit. Both deposition notices were part of the record below and directly relevant to the issues on appeal. One notice inadvertently listed the date of service rather than the scheduled date, and a corrected notice was served on Home Inspection One. At the April 16, 2024 summary

judgment hearing, Appellants specifically advised the trial court of the deposition notice, which is reflected in the transcript. The deposition had been noticed for the Friday following the hearing, and its existence supports Appellants' argument that summary judgment was premature. Under Rule 210(c), SCACR, the record must include matters that were before the lower court. To the extent one of the notices was not formally included in Appellants' designation of matter, Appellants respectfully move under Rule 210(f), SCACR, to amend the designation to ensure its inclusion. Respondents cannot selectively demand inclusion of the notice they designated while at the same time insisting that the corrected notice be stricken. Both notices were before the trial court, and both must be considered by this Court.

IV. Motion to Compel and Admissions Order Are Improperly Sought to Be Included

Respondents' insistence that the Motion to Compel and the Order deeming Requests for Admission admitted also be included is equally misplaced. Although Respondents Sunsetter Properties and Home Inspection One jointly submitted the Motion to Strike, this alignment does not change the analysis. The fact that both defendants now press the inclusion of the Motion to Compel and Order deeming matters admitted cannot overcome the fundamental defects in their request. First, the motion itself is untimely under Rule 210(d), SCACR, as it was filed nineteen days after service of the Record on Appeal rather than within the required ten days. Second, the Motion to Compel and admissions order remain irrelevant to the issues on appeal because the trial court did not consider them in ruling on summary judgment. The court's order, the transcript of the April 16, 2024 hearing, and the filings relied upon, namely the Motion for Summary Judgment, its exhibits, the Plaintiffs' Summons and Complaint, and the Plaintiffs' Interrogatory Responses, demonstrate conclusively that the discovery rulings now sought to be inserted played

no role in the trial court's decision. A joint filing cannot cure untimeliness or create relevance where none exists, and these materials should not be part of the appellate record.

V. Record Before the Trial Court Confirms the Limited Scope of Materials Considered

The record of what was before the trial court is clear. At the April 16, 2024 summary judgment hearing, the trial court considered HIO's Motion for Summary Judgment, its supporting memorandum and exhibits: inspection agreement, invoice, and inspection report, along with the Plaintiffs' Summons and Complaint and Plaintiffs' responses to interrogatories. These were the materials actually presented to the trial court to frame the issues and arguments. The trial court's order granting summary judgment makes no reference to the Motion to Compel or to the Order deeming Requests for Admission admitted. Nor were those discovery rulings submitted as exhibits or argued at the hearing.

VI. Respondents' Attempt Is an Improper Expansion of the Record

Respondents' effort to include the Motion to Compel and the admissions order now is nothing more than an attempt to expand the appellate record with collateral discovery rulings that were irrelevant to the decision under review. The appellate record must reflect only those matters that were actually before the lower court and necessary to the issues on appeal. Rule 210(c), SCACR, confines the record to materials necessary for determination of the appeal. Because the Motion to Compel and admissions order played no part in the trial court's summary judgment ruling, they are not properly included in the record on appeal.

Respondents' tactic should be recognized for what it is: an attempt to bolster their appellate position by rewriting the record. The appellate court reviews the trial court's ruling based only on the materials that were actually before that court. It is improper to pad the record with irrelevant discovery orders that the trial court did not consider.

VII. Conclusion

For these reasons, Appellants respectfully request that this Court deny Respondents' Motion to Strike as untimely under Rule 210(d), SCACR. Alternatively, should the Court reach the merits, Appellants request that the Court hold that the deposition notices were properly before the trial court and properly included in the record, or in the alternative permit Appellants to amend their designation under Rule 210(f), SCACR, to ensure their inclusion. Finally, Appellants request that the Court sustain their objection to the inclusion of the Motion to Compel and related Order, as those materials were not considered by the trial court at summary judgment and are irrelevant to the issues on appeal.

Respectfully submitted,

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Elizabeth Ray and Melvin Ray, Appellant,

v.

Sunsetter Properties, LLC, Nancy Warner, agent for Coldwell Banker Residential Brokerage, Home Inspection One, LLC Respondents.

PROOF OF SERVICE

I hereby certify that, on September 8, 2025, I caused a copy of the to be served on the following counsel of record, Memorandum in Opposition to the Respondents' Motion to Strike either via first class mail with postage prepaid, by hand delivery or by electronic mail at the address listed below:

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