

**The South Carolina Court of Appeals On Appeal From the Richland County Court of
Common Pleas Appellate Case No:2022-CP-40-02713**

Elizabeth Ray and Melvin Ray

Appellants,

v.

**Sunsetter Properties, LLC
Home Inspection One, LLC
Nancy Warner, agent for Coldwell Banker Residential**

Respondents.

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Sep 12 2025

SC Court of Appeals

**MOTION FOR LEAVE TO FILE AMENDED MEMORANDUM IN OPPOSITION TO
RESPONDENTS' MOTION TO STRIKE THE RECORD ON APPEAL AND AMENDED
RECORD ON APPEAL**

Appellants Elizabeth and Melvin Ray, by and through undersigned counsel, respectfully move this Court for leave to file an Amended Memorandum in Opposition to Respondents' Motion to Strike the Record on Appeal and Amended Record on Appeal.

I. Basis for this Motion

1. Appellants previously filed a Memorandum in Opposition to Respondents' Motion to Strike.
2. Upon further review, Appellants determined that their prior memorandum (a) referenced a ten-day deadline under Rule 210(d), SCACR, and (b) cited Rule 210(f), SCACR, as a means to amend their designation of matter.
3. Because Rule 210(d) contains no such deadline and Rule 210(f) addresses only the physical inclusion of exhibits and does not provide a mechanism to amend a designation

of matter, Appellants respectfully seek leave to file an Amended Memorandum in Opposition that removes both the timeliness argument and the reference to Rule 210(f).

4. This amendment is sought solely to ensure that the arguments presented rest on the correct provisions of the South Carolina Appellate Court Rules and to provide the Court with a clear and accurate presentation of the issues raised by Respondents' motion.

II. Clarification Regarding the Deposition Notice

5. Appellants also seek to clarify their position regarding the deposition notice included in the Record on Appeal.
6. The deposition notice scheduling the deposition of Naeem Shabazz for April 26, 2024, which was served on Home Inspection One, LLC, was not formally presented to the trial court as an exhibit and was not listed in Appellants' Designation of Matter.
7. However, during the April 16, 2024 summary judgment hearing, Appellants advised the trial court on the record that the Shabazz deposition had been scheduled for April 26, and Respondents' counsel responded to that representation. (Tr. pp. 12, 33).
8. Because the fact of the deposition notice was before the trial court in argument and is reflected in the transcript, Appellants seek to clarify that they are requesting either that their Designation of Matter be deemed amended to include the notice or, alternatively, that the Court grant leave under Rule 212(b), SCACR, to supplement the Record on Appeal with the notice.

III. Clarification Regarding the Motion to Compel and Admissions Order

9. Appellants further seek to clarify their position regarding the Motion to Compel and the Order deeming Requests for Admission admitted, which Respondents seek to include in the Record on Appeal.
10. Appellants' revised memorandum clarifies that these materials were not presented to or considered by the trial court in ruling on summary judgment.
11. They were not submitted as exhibits, not discussed during the hearing, and are not referenced in the trial court's summary judgment order.
12. Under Rule 210(c), SCACR, the Record on Appeal is limited to matters presented to the lower court that are necessary to the determination of the appeal.
13. Because the Motion to Compel and admissions order played no role in the summary judgment decision, they are not properly includable in the Record on Appeal.
14. A copy of the proposed Amended Memorandum in Opposition is attached hereto as Exhibit A for the Court's review.

WHEREFORE, Appellants respectfully request that the Court enter an order:

1. Granting Appellants leave to file the attached Amended Memorandum in Opposition to Respondents' Motion to Strike the Record on Appeal and Amended Record on Appeal;
2. Deeming Appellants' Designation of Matter amended to include the corrected deposition notice for the deposition of Naeem Shabazz scheduled for April 26, 2024, or alternatively granting leave under Rule 212(b), SCACR, to supplement the Record on Appeal with the notice; and
3. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE SINGLETARY GROUP, LLC

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Attorney for Appellants

September 12, 2025
St. George, South Carolina

Exhibit A

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.

**APPELLANTS AMENDED
MEMORANDUM IN OPPOSITION TO
RESPONDENTS MOTION TO STRIKE**

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I. INTRODUCTION

Appellants Elizabeth and Melvin Ray respectfully submit this Amended Memorandum in Opposition to Respondents' Motion to Strike the Record on Appeal and Amended Record on Appeal.

This Amended Memorandum supersedes the prior version solely to ensure accuracy and clarity for the Court. In particular, Appellants have removed arguments regarding any purported ten-day objection period under Rule 210(d), SCACR, and any reference to Rule 210(f), SCACR, as a mechanism to amend a designation of matter.

This Amended Memorandum refines Appellants' arguments to focus on the governing principles of Rule 210(c), SCACR, which limit the appellate record to matters actually presented to and considered by the trial court.

II. ITEMS 6 AND 8 (MOTION TO COMPEL AND ADMISSIONS ORDER) ARE NOT PROPERLY PART OF THE RECORD ON APPEAL

Respondents seek to include in the Record on Appeal their Motion to Compel and the Order deeming Requests for Admission admitted. These materials were not presented to or considered by the trial court in ruling on summary judgment. They were not submitted as exhibits and are not referenced in the trial court's summary judgment order.

The transcript of the April 16, 2024 hearing confirms that these discovery rulings were not discussed or relied upon by the trial court. Under Rule 210(c), SCACR, the Record on Appeal must include only matters that were presented to the lower court and are necessary to the determination of the appeal.

Because the Motion to Compel and admissions order played no role in the trial court's summary judgment decision, they are not properly includable in the Record on Appeal. See *Beverly S. v. Kayla R.*, 394 S.C. 12, 713 S.E.2d 604 (Ct. App. 2011) (appellate court cannot consider matters not contained in the record); *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6 (2003) (appellate review is confined to the record before the trial court).

III. THE APRIL 26, 2024 DEPOSITION NOTICE WAS BEFORE THE TRIAL COURT IN ARGUMENT AND SHOULD BE INCLUDED

Respondents also seek to strike the corrected deposition notice for the deposition of Naeem Shabazz scheduled for April 26, 2024, which was served on Home Inspection One, LLC.

Appellants acknowledge that this notice was not formally presented to the trial court as an exhibit and was not listed in Appellants' Designation of Matter. However, during the April 16, 2024 summary judgment hearing, Appellants specifically advised the trial court on the record that the Shabazz deposition had been scheduled for April 26, and Respondents' counsel directly responded to that representation. (Tr. pp. 12, 33).

Under Rule 210(c), SCACR, the Record on Appeal may include only such material as was "presented to the lower court" and "necessary for the determination of the appeal." South Carolina appellate courts have recognized that materials need not be formally admitted as exhibits to be considered part of the record if their substance was brought to the trial court's attention during the proceedings. See *Beverly S. v. Kayla R.*, 394 S.C. 12, 713 S.E.2d 604 (Ct. App. 2011); *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6 (2003).

Because the fact of the Shabazz deposition was brought to the trial court's attention and is reflected in the transcript, the corrected notice is properly includable in the Record on Appeal as documentation corroborating a matter that was before the trial court in argument.

To the extent necessary, Appellants respectfully request that the Court either (a) deem their Designation of Matter amended to include the deposition notice or (b) grant leave under Rule 212(b), SCACR, to supplement the Record on Appeal with the notice.

IV. CONCLUSION

Respondents' Motion to Strike seeks to include collateral discovery materials that were not presented to or considered by the trial court and to exclude a deposition notice whose existence was brought to the trial court's attention and is reflected in the transcript. Under Rule 210(c), SCACR, the Record on Appeal must be confined to matters actually presented to and considered by the trial court.

For the foregoing reasons, Appellants respectfully request that the Court:

1. Deny Respondents' Motion to Strike;
2. Confirm that the Motion to Compel and admissions order are not properly part of the Record on Appeal; and
3. Confirm that the April 26, 2024 deposition notice is properly includable or, alternatively, deem the Designation of Matter amended or grant leave under Rule 212(b), SCACR to supplement the Record on Appeal with the notice.

Respectfully submitted,

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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 12, 2025, I caused a copy of the to be served on the following counsel of record, **APPELLANTS MOTION FOR LEAVE TO FILE AMENDED MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION TO STRIKE THE RECORD ON APPEAL AND AMENDED RECORD ON APPEAL** either via first class mail with postage prepaid, by hand delivery or by electronic mail at the address listed below:

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