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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 Joseph M. Strickland

Appellate Case No. 2025-000448
Case No. 2021-CP-40-05596

Kim Enterprises, LLC, ...Respondent,

v.

Youmi Cho, K&C Beauty, LLC, and Sang Cho, ... Appellants,

AND

Youmi Cho and K&C Beauty, LLC, ... Appellants,

v.

Kim Enterprises, LLC and Tok Kim, ... Respondents.

MOTION TO STRIKE APPELLANTS' DESIGNATION OF DEMONSTRATIVES INCLUDED IN THEIR RECORD ON APPEAL

Respondents Kim Enterprises, LLC and Tok Kim (collectively, "Kim Enterprises") move the Court pursuant to Rules 209(b), 210(c), and 240, SCACR, for an order striking a portion of Appellants' Designation of Matter To Be Included In The Record On Appeal ("DOM").

Appellants' DOM seeks to designate demonstratives in the DOM that were not introduced into evidence at trial. Specifically, Appellants' DOM seeks to designate "Defense Demonstratives 4, 8(a)". These demonstratives consist of summaries of Appellants' financial expert's calculations. There is no dispute that Appellants failed to move to enter these demonstratives into the record at

trial.

If Appellants desired to introduce these demonstratives into evidence at trial, Appellants could have moved to do. Appellants are unable to backdoor demonstrative exhibits into the record *for the first time* at the Court of Appeals.

It is well established that "[d]emonstrative evidence includes items such as a photograph, chart, diagram, or video animation ***that explains or summarizes other evidence and testimony***." *Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000) (emphasis added). "Such evidence has secondary relevance to the issues at hand; it is not directly relevant, but must reply on other material testimony for relevance." *Id.* "Demonstrative evidence is distinguishable from exhibits that comprise 'real' or substantive evidence, such as the actual murder weapon or written document containing allegedly defamatory statements." *Id.* "Demonstrative evidence often is admitted only for use in the courtroom to explain and illustrate a witness's testimony, but it also may be admissible as an exhibit for the jury to examine and consider during deliberations." *Id.*

Appellants may cite to the trial record where questions were asked about the demonstratives. But, Appellants are unable to seek to add demonstratives into the record for the first time at the Court of Appeals. Kim Enterprises would be prejudiced by allowing Appellants to designate demonstratives as part of the record on appeal that were not entered into evidence at the trial.

(attorney signature on following page)

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Motion To Strike Appellants' Designation of Demonstratives Included In Their Record On Appeal by e-mailing a copy on September 12, 2025, addressed to its attorneys of record, David L. Paavola and Ashley C. Thibault, Kenison, Dudley & Crawford, LLC to their email *paavola@conlaw.com, thibault@conlaw.com*.

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