THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Jeremy C. Hodges, Esquire, Special Referee

Case No. 2022-CP-28-00877
Appellate Case No.: 2024-000679

Joseph & Lauren Jaco……Respondents,

vs.

J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green……..….Appellants.

RESPONDENTS' RETURN TO APPELLANTS' MOTION TO COMPEL DOCUMENT PRODUCTION

RELEVANT PROCEDURAL BACKGROUND

I. **Appellants' First Motion for Appellate Discovery**.

On June 6, 2025, Appellants filed their "Motion for Extension of Time and Leave to File Reply Brief Out of Time and For Related Relief." Among the "related relief" requested in this Motion was "an order from the Court directing Respondents to provide any correspondence involving the Special Referee that was not previously shared with Appellants' counsel so that these documents can be included on the record on appeal." *See also* Appellants' April 1, 2025, Designation of Matter (providing for the inclusion on the Record on Appeal of "[a]ny and all emails pertaining to this matter that list Special Referee Jeremy T. Hodges as a sender or recipient.").

On this point, in their return to Appellants' June 6, 2025, Motion, Respondents stated as follows:

> While Appellants did not raise [a concern regarding correspondence between Respondents and the Special Referee] before the Special Referee, Appellants request should be denied as **moot because Respondents' counsel have been able to ascertain only one piece of correspondence with the Special Referee pertaining to this matter in which Appellants' counsel was not included**: two emails dating to January 3, 2023, among the Special Referee and counsel for Respondents that pre-dates Appellants' counsel's appearance, provides a copy of the Summons & Complaint, and generally solicits Mr. Hodges' willingness and ability to serve as a Special Referee here. . . .
>
> While Appellants['] request is not procedurally proper, the Court need not even reach the issue because Respondents' provision of this correspondence moots the necessity of any order of this Court on this ground.

Id. at 6 (emphasis added). Appended to Respondents' Return were the two emails referenced above. And Respondents' Return was signed by counsel for Respondents. *See* Rule 11(a), SCRCP ("Every . . . motion or other paper of a party represented by an attorney shall be signed . . . by at least one attorney of record . . . The written or electronic signature of an attorney . . . constitutes a certificate by him that he has read the . . . motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.").

On August 5, 2025, this Court entered an order permitting Appellants' filing of a reply brief and noting,

> Further, to the extent Appellants request an order directing Respondents to provide any correspondence involving the special referee that was not previously shared so that the documents can be included in the record on appeal, that request is denied without prejudice on the basis that the request lacks sufficient specificity.

Six days later, on August 11, 2025, Appellants filed their Reply Brief, making, under Rule 210 (b), SCACR, the record on appeal due no thirty days later, or September 10, 2025.

II. **Appellants' Second Motion for Appellate Discovery**.

Just after 1:00 a.m. on September 12, 2025, Appellants filed their untimely request for extension of time seeking until October 13, 2025, to file and serve the record on appeal. On

September 16, 2025, the request for extension of time was granted by the Court.

Yet, very late in the evening of October 13, 2025, rather than timely file the Record on Appeal (as this Court's September 16, 2025, Order directed), Appellants filed their "Motion to Compel Document Production."[1]

DISCUSSION

On the following grounds, Appellants' Motion to Compel Document Production should be denied and a prompt deadline set for filing the record on appeal.

A. APPELLANTS' MOTION SHOULD BE DENIED BECAUSE IT FAILS TO COMPLY WITH RULE 240, SCACR.

Rule 240(c)(2), SCACR, provides that all "motions or petitions filed in an appellate court . . . shall include" "[a] memorandum with citation of authorities in support of the motion." Moreover, where "the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions." *Id*. at Rule 240(c)(3).

Here, Appellants have neither presented "citation of authorities in support of the[ir] motion" or "file[d] affidavits and other documents in support of their position[ ]" as Rule 240 directs.

As such, on these grounds alone, Appellants' Motion should be dismissed.

[1] Thereafter, on October 17, 2025, this Court issued correspondence noting that Appellants had not paid "[t]he required filing fee" and had not provided the Court with a proof of service. The Court's letter directed Appellants to correct the deficiencies "within ten (10) days." But in keeping with their past practice, Appellants waited until the tenth day, October 27, 2025, to pay the filing fee, and then filed their doubly untimely proof of service 11 days later, on Friday, November 7, 2025.

B. APPELLANTS' MOTION SHOULD BE DENIED BECAUSE NO AUTHORITY CONTEMPLATES APPELLATE DISCOVERY.

Appellants do not suggest, and Respondents are not aware of, any authority permitting discovery to be conducted before this Appellate Court.

Conversely, the Rules of Civil Procedure explicitly contemplate discovery while an appeal is pending. Rule 27(a)(4)(b), SCRCP, provides that "[i]f an appeal has been taken from a judgment of a court . . . the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court." Additionally, if upon motion of the party seeking such depositions, "the court finds that the perpetuation of the testimony is proper . . . it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35." *Id.*

But Appellants have made no such motion before the lower court—the proper and only venue where they may pursue discovery at this time.

In sum, Appellants do not suggest grounds meriting an exception to the Rules, and as such, this Court should not entertain as much. On these grounds too, Appellants' Motion should be denied.

C. APPELLANTS' MOTION SHOULD BE DENIED BECAUSE APPELLANTS FAILED TO RAISE THE ISSUE BEFORE THE TRIAL COURT.

Because Appellants failed to pursue discovery and failed to obtain a ruling on discovery before the Special Referee, their Motion should be denied.

It is well-established that,

> The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also Repko v. Cnty. of Georgetown*, 424 S.C. 494, 503, 818 S.E.2d 743, 748 (2018) (same); *Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 132, 470 S.E.2d 373, 376 (1996) ("The appellant has the burden of providing this court with a sufficient record upon which to make a decision."); *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983) (affirming the trial court's judgment when the appellant failed to provide "any of the trial testimony" in the record on appeal to support his argument on appeal).

As such, on these grounds as well, Appellants' Motion should be denied.

D. APPELLANTS' MOTION SHOULD BE DENIED BECAUSE APPELLANTS FAILED TO PRESENT PERTINENT ARGUMENT ON APPEAL.

Even if Appellants had preserved this issue at the trial level, it "must still be properly raised and argued to the appellate court." *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008). Here, both Appellants' Initial and Reply Brief are bereft of argument or even passing reference that implies a utility for the material they now seek, and, on these grounds, Appellants' Motion should be denied.

In Appellants' Initial Brief, the only reference to an email is on page 22, in which Appellants argue that the Special Referee improperly relied "on an email from [Appellant] Joe Green in which he suggested that the [Respondents] may have had less than pure intentions in seeking to disrupt his construction contract."

Likewise, in Appellants' Reply Brief, at page 9, Appellants appear to reiterate their argument about the email mentioned in their Initial Brief, while on page 5, discuss emails "Appellants promptly sent" and that the "Special Referee expressed acknowledged receipt of" along with "several emails back and forth" among the parties and Special Referee just before

Appellants' Notice of Appeal was filed. No further mention of how or why earlier exchanged correspondence could be relevant to this Appeal is made.

As such, even if Appellants had properly preserved this issue for appeal, because they abandoned any such argument in their briefing to this Court, their Motion should be denied.

E. APPELLANTS' MOTION SHOULD BE DENIED BECAUSE APPELLANTS HAVE FAILED TO SET FORTH WHY SUCH MATERIALS ARE "RELEVANT" AND MERIT INCLUSION IN THE RECORD ON APPEAL.

Even if appellate discovery were permissible, to be properly included in a record on appeal, material must be relevant. *See* Rule 209(b)-(c), SCACR; *see also* Toal, et al., APPELLATE PRACTICE IN SOUTH CAROLINA, 1999 at 153 ("A primary purpose of the SCACR and its procedures for the . . . compiling of the record is to eliminate irrelevant material.").

Appellants suggest no grounds for why the materials they seek are relevant here beyond a bare assertion that such "materials are essential to ensure a complete, accurate, and transparent appellate record, and to allow for meaningful review by this Court." But this is little more than repetition of the naked contention in Appellants' June 6, 2025, motion (asserting that so that certain documents "can be included in the record on appeal" discovery was warranted) that this Court already found wanting for lack of "sufficient specificity."

Besides the lack of specific briefing, without explanation Appellants waited months until after briefs were filed here to bring their Motion.[2] Appellants' actions confirm that the materials they seek are not "essential." As such, on these grounds, Appellants' Motion should be denied.

[2] Appellants fail to explain why this issue was not raised earlier to this Court. This is even though, by the time of filing of their Reply Brief on August 11, 2025, Appellants had, for two months, already possessed the "one piece of correspondence with the Special Referee pertaining to this matter in which Appellants' counsel was not included: two emails dating to January 3, 2023, among the Special Referee and counsel for Respondents that pre-dates Appellants' counsel's appearance, provides a copy of the Summons & Complaint, and generally solicits Mr. Hodges'

F. APPELLANTS' REQUEST FOR ADDITIONAL TIME SHOULD BE DENIED.

In their Motion Appellants seek not just appellate discovery, but additional time to file the Record on Appeal ("Appellants respectfully request that this Court . . . [h]old all applicable deadlines in abeyance pending resolution of this Motion.").

Acknowledging that they have already filed two motions to dismiss based on Appellants' untimely behavior, and cognizant of Rule 240(b), SCACR's automatic "stay" when "[a] motion to dismiss an appeal" is filed, Respondents do not again move for dismissal here today at the risk of only further extending an already too-lengthy appellate proceeding. Instead, this Court should simply deny Appellants' latest request for yet another extension of time.

Ample grounds support such a decision. This Court knows its own docket, so Respondents need not detail all the eleventh hour and untimely requests for extensions of time Appellants have already sought and received. But by any measure, Appellants' Motion is just the latest instance of Appellants' dilatory behavior in the judicial proceedings before this Court and the lower court. This, to be sure, has already caused great prejudice to Respondents.[3]

Furthermore, Appellants assert that their latest motion "is not made for the purpose of delay." But Appellants do not explain why it took them nearly a month to file essentially a two-page motion on the same date that this Court instructed the record on appeal was due. A party engaged in good faith diligence, not dilatory contact, could have easily filed the Record on Appeal on October 13, 2025 (as this Court plainly directed nearly a month prior); and, at any time before

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willingness and ability to serve as a Special Referee here" referenced in Respondent's June 11, 2025, filing.

[3] Respondents filed their Summons and Complaint just over three years ago on October 12, 2022. On January 8, 2024, nearly 15 months later, the Special Referee's Final Order was issued. Conversely, this appeal has been pending for over 18 months, and Appellants have yet to file their Record on Appeal.

or after the filing of the Record on Appeal, moved to "supplement the Record on Appeal" as Rule 212(b), SCACR contemplates. But Appellants did not.

Even still, it is Appellants' "burden" to "furnish[ ] a sufficient record from which this court can make an intelligent review." *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984). "Appellant[s] ha[ve] failed to carry this burden." *Id.* If, "[t]here simply is nothing before [this court]" for it to "conclude that the trial court should be reversed" thus making dismissal warranted, that is a consequence of Appellants' inaction and nothing else. *Id.*

In the alternative, if this Court does permit Appellants' appeal to proceed, it should promptly order Appellants to file their Record on Appeal.

Appellants have already had (at least) more than two months to make progress on the preparation of the Record on Appeal. On August 5, 2025, this Court directed the filing of Appellants' reply brief no later than August 10, 2025,[4] which under Rule 210(a), SCACR, made the Record on Appeal due no later than September 9, 2025.[5] On September 16, 2025, this Court extended the deadline for the Record on Appeal until October 13, 2025.[6] Accordingly, this Court should set a prompt and date certain for Appellants to file the Record on Appeal.

CONCLUSION

For these reasons, this Court should deny Appellants' motion for appellate discovery and deny Appellants' Motion for additional time to submit the Record on the Appeal; and, in the alternative, set a prompt and date certain for Appellants to file the Record on Appeal; and grant all other relief that is just and proper.

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[4] Appellants filed their untimely Reply Brief on August 11, 2025, at 11:39 p.m.

[5] Appellants untimely moved for an extension of time on September 12, 2025, at 1:01 a.m.

[6] Appellants filed their instant Motion on October 13, 2025, at 10:13 p.m.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

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Columbia, South Carolina

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PROOF OF SERVICE

I hereby certify that, on this date, the **RESPONDENTS' RETURN TO APPELLANTS' MOTION TO COMPEL DOCUMENT PRODUCTION** was served on Appellants' counsel via first-class mail delivery, and by email, pursuant to Supreme Court Order dated April 24, 2024, as follows:

Adrianne L. Turner, Esquire
Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
aturner@turnerlawsc.com
Attorney for Appellants
J.N. Green & Associates, LLC,
Big Blue Express, LLC, and Joe N. Green

I further certify that all parties required by Rule to be served have been served.

s/ Ian T. Duggan
Ian T. Duggan, SC Bar No. 80074

November 10, 2025
Columbia, South Carolina

CALLISON TIGHE

Ian T. Duggan - Lawyer
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November 10, 2025

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Nov 10 2025
SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Joseph & Lauren Jaco vs. J.N. Green & Associates, LLC; Big Blue Express, LLC; and Joe N. Green
Appellate Tracking No. 2024-000679
Our File No. 8728.001

Dear Ms. Kitchings:

Enclosed herewith please find the Respondents' Return to Appellants' Motion to Compel Document Production, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned via return email.

The enclosed documents have been served upon Appellants' counsel today via email and first-class mail as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan

ITD:kam
Enclosures
cc: Adrianne L. Turner, Esquire (via email and first-class mail)
Joseph and Lauren Jaco (via email)