

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

NOV 21 2013

George C. James, Jr., Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2013-001452

Stokes-Craven Holding Corp.,
d/b/a Stokes-Craven Ford, Appellant,

v.

Scott L. Robinson and Johnson
McKenzie & Robinson, LLC, Respondents.

**RESPONDENTS' JOINT REPLY TO APPELLANT'S RESPONSE IN
OPPOSITION TO RESPONDENTS' MOTION TO STRIKE CERTAIN ISSUES
ON APPEAL**

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Scott L. Robinson and Johnson McKenzie & Robinson, LLC (“Respondents”), by and through their counsel, hereby submit this Joint Reply to Appellant’s Response in Opposition to Respondents’ Motion to Strike Certain Issues on Appeal.

A. Appellant’s Motion for Summary Judgment is Not Properly Before the Court Because the Lower Court Never Ruled on the Motion (Issue Four in Appellant’s Initial Brief).

Appellant concedes in its Opposition that the lower court “declined to consider Stokes-Craven’s motions [sic] for summary judgment” (Appellant’s Opposition p. 1), yet Appellant fails to address the law that holds “[a] party cannot appeal a trial court’s failure to rule on a motion or objection.” 15 S.C. Jur. *Appeal & Error* § 14 (citing *Aetna Life Ins. Co. v. Lourie*, 201 S.C. 478, 23 S.E.2d 741, 743 (1942) (“There has been no ruling on this question, and it is not properly before this court.”)).

An appellate court cannot couple an appealable issue with a non-appealable issue where the non-appealable issue was never ruled upon by the lower court. In those cases in which the appellate court has considered a non-appealable issue in conjunction with an appealable issue, the lower court actually ruled upon the non-appealable issue. See *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005); *Hite v. Thomas & Howard Co. of Florence, Inc.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991) overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995).

In essence, Appellant is asking the Court to consider its summary judgment motion *sua sponte*, which is not permitted under the appellate court rules. Thus, Issue Four of Appellant’s Initial Brief must be stricken as a matter of law because there is no ruling, no judgment, and no order from the lower court from which to appeal.

B. Appellant Fails to Apply the Test for Determining the Appealability of the Discovery Issues (Issues Five and Six in Appellant's Initial Brief).

Appellant's Opposition to Respondents' Motion to Strike the discovery issues Five and Six ignores the requirements set forth in S.C. Code Ann. § 14-3-330(1). To be considered on appeal, otherwise non-appealable issues must necessarily affect the judgment that is on appeal. By Appellant's own admission, the discovery orders have no impact or bearing on the statute of limitations issue which is the only issue properly before the Court on appeal.

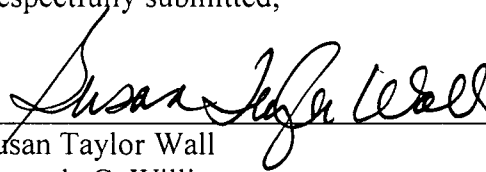
Appellant deflects from analyzing the elements required for appealability by arguing that the discovery issues presented in its Initial Brief are novel and unsettled areas of the law that the Supreme Court should consider. Appellant's argument, however, is not the test for determining the appealability of an interlocutory order.

Because Issues Five and Six in Appellant's Initial Brief do not impact the statute of limitations issue, as Appellant admits, these discovery issues must be stricken from the appeal as a matter of law.

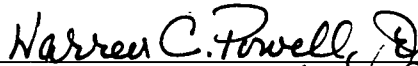
CONCLUSION

For the reasons set forth herein, Respondents request this Court strike Appellant's Issues on Appeal numbered Four, Five, and Six and strike all discussion and case citation related to those Issues from Appellant's Initial Brief and the Designation of Matter on Appeal, specifically numbers 3, 7, and 9 through 17, inclusive.

Respectfully submitted,



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November 18, 2013

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In The Supreme Court

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Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-001452

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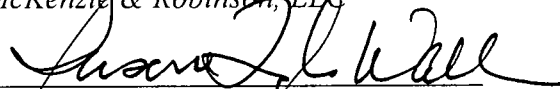
The undersigned hereby certifies that on November 18, 2013, the foregoing **RESPONDENTS' JOINT REPLY TO APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO STRIKE CERTAIN ISSUES ON APPEAL** was served on all counsel of record via U.S. Mail, addressed as follows:

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