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Dec 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas,

Robert Bonds, Circuit Court Judge

Case No. 2022-CP-07-2484

Appellate Case No. 2025-00384

Roland Bernardon and Louise Bernardon,

Appellants

v.

Mark Damiano, Ellery K. Damiano, Sea Pines Real Estate at
the Beach Club, Robert Reichel, and John McMahon,

of whom Mark Damiano, Ellery K. Damiano, Sea Pines Real
Estate at the Beach Club, Robert Reichel are

Respondents

OPPOSITION TO MOTION TO STRIKE

Appellants Roland Bernardon and Louise Bernardon, through undersigned counsel, respectfully oppose Respondent's Motion to Strike from the Record on Appeal for the reasons set forth herein.

Undersigned counsel filed Appellants' Initial Designation of Matter for Record on Appeal which included reference to the deposition transcripts for Roland Bernardon, Louise Bernardon, Mark Damiano, Ellery Damiano, Adam Beck, Robert Reichel, Jill Murphy, Peter Geary and John McMahon. Respondent's Motion seeks to strike these transcripts from the record as set forth therein.

It is noted that the entire deposition of Louise Bernardon was introduced at summary judgment as Exhibit O by counsel for the Respondent, being counsel for the Defendants below. Further, counsel for the Appellants introduced the entire deposition of Roland Bernardon as an exhibit to Memorandum in Opposition to Sea Pines Motion for Summary Judgment. Thus, both the designated excerpts and entire depositions for Louise Bernardon and Roland Bernardon are requested to remain included in the Record—these entire deposition transcripts were introduced below.

Rule 210 (c) expressly provides that where excerpts of testimony are referenced as part of the record in proceedings below, the entire transcript should be and is a component of the Record on Appeal. Appellant's Memoranda in Opposition to the Respondent's Motions for Summary Judgment (Defendants in proceedings below) specifically referenced and attached as Exhibits excerpts from the depositions of Louise Bernardon, Roland Bernardon, Mark Damiano, Ellery Daniano, Adam Beck and Robert Reichel. Thus, by operation of law, the entire transcripts for the testimony of Louise Bernardon, Roland Bernardon, Mark Damiano, Ellery Damiano, Adam Beck and Robert Reichel become a component of the Record on Appeal, and Appellant herein requests that their reference and inclusion remain in the Designation of the Record on Appeal, in addition to the excerpts introduced at the proceedings below.

Appellants refer to the deposition testimony of John McManon and Jill Murphy in their memoranda in opposition at proceedings below and in their Initial Brief herein. Mr. McMahan was deposed by Respondents. Ms. Murphy was deposed by a third party, being counsel for Mr. McMahan, and also at a common date for depositions noticed by both parties. Its is likely that their transcripts were not introduced at the proceedings below either because they were not available to Appellant's counsel at the time of filing, or

because counsel understood that the transcripts were being introduced by Respondents. Counsel locates no record of the actual introduction into evidence of the transcripts for Ms. Murphy and Mr. McMahon, and thus concedes that Respondents are correct that the transcripts were not introduced in full in the proceedings below, but requests that the transcripts be permitted as a component of the within Record on Appeal.

Counsel herein, as counsel for the Appellants introduced the Affidavit of Peter Geary. Counsel does not locate the transcript of Mr. Geary's deposition testimony in the record below, nor any request for its inclusion. Thus, counsel concedes that the transcript of Mr. Geary's deposition testimony is not a component of the Record on Appeal unless both parties agree, which to this date they have not, based on Respondent's Motion.

WHEREFORE, for the reasons set forth herein Appellants request that the Honorable Court deny the Motion in Strike in Part, and Grant the Motion to Strike in Part, by permitting inclusion in the Record on Appeal for the full deposition transcripts and exhibits for witnesses Roland Bernardon, Louise Bernardon, Mark Damiano, Ellery Damiano, Adam Beck and Robert Reichel and excluding from the Record on Appeal the deposition transcript for Peter Geary. Further, Appellant's request that the Honorable Court permit inclusion of the deposition transcripts for Jill Murphy and John McMahon because their testimony is referenced in the motions below, and in the Initial Brief, and further because the deposition of Mr. McMahon was noticed and taken by the Respondents, and in Ms. Murphy's case, her follow up deposition was taken by both the Respondents and a third party.

December 17, 2025

Respectfully Submitted,

/s/ Michael W. Mogil

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