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Dec 19 2025

SC Court of Appeals

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

Case No. 2022-CP-40-02713
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.

**RESPONDENTS’ REPLY TO APPELLANTS’ AMENDED MEMORANDUM IN
OPPOSITION TO RESPONDENTS’ MOTION TO STRIKE THE RECORD
ON APPEAL AND AMENDED RECORD ON APPEAL**

Respondents Sunsetter Properties, LLC and Home Inspection One, LLC (“Respondents”),
by and through undersigned counsel, respectfully submit this Reply to Appellants’ Amended
Memorandum in Opposition to Respondents’ Joint Motion to Strike the Record on Appeal and
Amended Record on Appeal.

INTRODUCTION

This appeal is procedurally problematic not because of a good-faith disagreement over
Rule 210(c), SCACR, but because Appellants’ counsel repeatedly failed to comply with the South
Carolina Appellate Court Rules in preparing and filing the Record on Appeal (“ROA”) and the
Amended Record on Appeal (“Amended ROA”). These deficiencies were not isolated; they were
both technical and substantive. With respect to the original ROA, the defects included:

- The ROA being filed after the applicable deadline;

- Failing to paginate or properly organize the ROA; and
- Failing to file a Certificate of Service with the ROA.

The Court itself identified these deficiencies and issued deficiency notices requiring Appellants to address them.

In addition to the foregoing defects, the ROA was substantively deficient because it did not contain “all material proposed to be included by any of the parties,” as required by Rule 210(g), SCACR. Specifically, Appellants intentionally excluded from the ROA a motion and discovery order that were included in Respondent Home Inspection One, LLC’s (“HIO”) Designation of Matters (“DOM”) as:

- **Item 6:** HIO’s Motion to Compel Plaintiffs’ Discovery Responses and Motion to Deem Requests for Admission Admitted (with all exhibits), filed April 3, 2024 (“Discovery Motion”); and
- **Item 8:** Order granting HIO’s Motion to Compel and Motion to Deem Requests for Admission Admitted, entered July 24, 2023 (“Discovery Order”).

(collectively, the “Discovery Motion and Order”).

The ROA also omitted other matters designated by Respondents, including HIO’s Answer and Amended Answer; HIO’s Motion for Summary Judgment and supporting memorandum; Appellants’ Answers to HIO’s Discovery Requests; Respondent Sunsetter Properties, LLC’s (“Sunsetter”) Motion to Strike Plaintiff Elizabeth Ray’s Affidavit filed April 16, 2024; Alleged Notice of Deposition for Naeem Shabazz dated April 15, 2024; the Affidavit of Nicholas Langjahr filed August 9, 2023; and Transcript of Record dated April 16, 2024.

On August 5, 2025 – the same day Appellants filed the ROA– Respondents notified Appellants of these deficiencies as part of a good faith effort to ensure all matters designated by

the parties were included in the ROA and to resolve any disputes without involving the Court. See Exhibit A. Appellants did not immediately respond to Respondents.

On August 8, 2025, Appellants filed an Amended ROA. While the Amended ROA cured certain technical and substantive defects, it still: (a) omitted the Discovery Motion and Order, and (b) included a purported amended deposition notice that was not designated for inclusion by any party.

At or around the time the Amended ROA was submitted, Appellants, for the first time, objected to the inclusion of the Discovery Motion and Order as part of the record. HIO responded and offered to discuss possible resolutions without involving the Court. Similarly, Sunsetter notified Appellants that the Amended ROA included an undesignated deposition notice and requested correction.

Despite Respondents' good-faith efforts to resolve the issues without Court intervention, Appellants' counsel refused to correct the record, necessitating this Joint Motion to Strike.

I. THE DISCOVERY MOTION AND ORDER WERE PROPERLY DESIGNATED AND SHOULD BE PART OF THE RECORD ON APPEAL.

The Discovery Motion and Order were properly designated in HIO's DOM, and Rule 208(b)(1)(C) and (2), SCACR explain why.

Rule 208(b)(1)(C), SCACR requires a party's Statement of the Case to include "a concise history of the proceedings, insofar as necessary to an understanding of the appeal" and to describe "such orders, judgments, decisions and proceedings of the lower court...that may have affected the appeal, or may throw light upon the questions involved in the appeal." Rule 208(b)(1)(C), SCACR. Rule 208(b)(2), SCACR applies these same requirements when a respondent includes its own statement of the case.

Here, the Discovery Order¹ conclusively established certain matters under Rule 36, SCRCP, and fixed the parties' litigation positions prior to summary judgment. See Scott v. Greenville Housing Auth., 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) (explaining that under Rule 36(b), SCRCP, any matter admitted under Rule 36(a) is "conclusively established unless the court on motion permits withdrawal or amendment of the admission."). In particular, the Discovery Order fixed the parties' procedural positions with respect to the agreement governing HIO's inspection obligations, thereby eliminating any dispute as to which contract applied.

The relevance of the Discovery Order to the issues on appeal is underscored by the fact that the parties and the lower court treated the existence of a governing inspection agreement as central to the analysis of HIO's duties and obligations – this is reflected in both HIO's Memorandum in Support of its Motion for Summary Judgment and the April 16, 2024 hearing transcript (Transcript, pp. 7, 18, 20).

While Respondents do not contend that Discovery Motion or Discovery Order were expressly discussed during the hearing on HIO's Motion for Summary Judgment, the Discovery Order established conclusive facts under Rule 36, SCRCP, that were operative at the time summary judgment was evaluated and that fixed the contractual framework within which the issues on appeal must be assessed. Accordingly, the Discovery Order is an order from the lower court that "may have affected" or "may throw light upon the questions involved in the appeal" within the meaning of Rule 208(b)(1)(C) and (2), SCACR.

¹ The Motion to Compel and Motion to Deem Requests for Admission Admitted, together with the Requests for Admission attached as exhibits thereto, were designated and included because the Discovery Order granting said motions does not identify the specific requests that were deemed admitted. Inclusion of the Discovery Motion and its exhibits is necessary to identify the scope and substance of the matters conclusively established by the Discovery Order under Rule 36, SCRCP, and to permit the appellate court to understand the procedural posture created by the Discovery Order.

Accordingly, and consistent with Rule 208, SCACR's disclosure requirements and the designation procedures set forth in Rule 209, SCACR, HIO properly described, cited, and designated the Discovery Motion and Order for inclusion in the Record on Appeal.

II. RULES 209 AND 210 REQUIRED INCLUSION OF THE DESIGNATED DISCOVERY MATERIALS AND DID NOT PERMIT THEIR UNILATERAL EXCLUSION BY APPELLANTS.

Rules 209 and 210, SCACR, operate together to govern the designation and inclusion of materials in the Record on Appeal. Under Rule 209, SCACR, each party is entitled to serve a DOM that identifies with specificity those pleadings, orders, transcripts, exhibits, or other materials the party proposes to include. The Rule expressly limits designation to matters "relevant to the appeal," and counsel's signature constitutes a certification that no irrelevant matter has been designated. Rule 209, SCACR. Rule 210(c), SCACR, then mandates that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209" but prohibits inclusion of matters not presented to the lower court.

Here, HIO complied with Rule 209 by timely designating the Discovery Motion and Order in the DOM it served on all parties when it served its Initial Brief. As discussed above, those materials were relevant to the appeal because they fixed the parties' procedural posture with respect to the agreement governing HIO's inspection obligations; thus, the conclusive facts established by the Discovery Motion and Order deeming Requests for Admission admitted were presented to the lower court.

Moreover, neither Rule 209 nor Rule 210, SCACR permits a party to unilaterally exclude matters from the Record on Appeal. Allowing Appellants to do so here would here would undermine the orderly and fair operation of the appellate rules and deprive Respondents of a complete record necessary for meaningful appellate review under Rule 208, Rule 209, Rule 210,

and Rule 220, SCACR. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”).

Additionally, Rule 210(g), SCACR further provides that “[t]he act of filing the Record on Appeal constitutes a certificate that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” Appellants filed and certified both the ROA and Amended ROA while omitting materials designated by Respondents and including materials not designated by any party.

Furthermore, the appropriateness of the Discovery Motion and Order for inclusion in the record is supported by Rule 210(h), SCACR, which provides that “except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR’s reference to Rule 208(b)(1)(C) and (2), SCACR, reinforces the importance of proper record inclusion and incentivizes parties to include relevant lower court orders where their exclusion could prevent the Court from considering factual or procedural postures that affected the lower court’s ruling.

III. APPELLANTS WAIVED ANY OBJECTION TO THE DISCOVERY MATERIALS AND IMPROPERLY ALTERED THE RECORD ON APPEAL.

In addition to lacking merit, Appellants’ objections are untimely and waived, as Appellants did not object when Respondents designated the Discovery Motion and Order in its DOM and served the DOM on all parties when HIO served its Initial Brief in accordance with Rule 209,

SCACR. Instead, Appellants filed and certified the ROA and raised no objections until the time they filed and certified the Amended ROA.²

In Epstein v. Coastal Timber Co., Inc., the Supreme Court of South Carolina rejected a similar late challenge to materials included record because there was “no indication that [the objecting party] interposed a timely objection by filing a motion to strike at the time the material was designated for inclusion in the record” and no prejudice to the objecting party had been shown. 393 S.C. 276, 289 n.4, 711 S.E.2d 912, 919 n.4 (2011).

Here, Appellants did not object when the Discovery Motion and Order were designated by HIO pursuant to Rule 209, SCACR. Additionally, Appellants have not argued that they would be prejudiced in any manner by the inclusion of the Discovery Motion and Order in the record. As such, Appellants’ failure to timely object constitutes a waiver under Epstein. Notably, Appellants’ waiver is made worse by their unilateral alteration of the record (i.e., excluding designated materials while inserting designated materials) and their certification of compliance with Rule 210(g) despite their knowingly deviating from the requirements of Rule 209 and Rule 210, SCACR.

IV. APPELLANTS IMPROPERLY AND UNILATERALLY ADDED THE PURPORTED AMENDED DEPOSITION NOTICE TO THE RECORD ON APPEAL AND AMENDED RECORD ON APPEAL.

Pursuant to Rule 210, SCACR, “[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209.” Additionally, Rule 210(g), SCACR, provides that “the act of filing the Record on Appeal constitutes a certificate that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.”

² Appellants’ email submitting the Amended ROA and Appellants’ email raising objections to the inclusion of the Discovery Motion and Order were both received by counsel for HIO at 3:30 p.m. on August 8, 2025. See Exhibit B.

Here, Appellants have unilaterally included a purported amended notice of deposition that was not designated by any party or presented to or ruled on by the lower court – Appellants acknowledge this in their Amended Memorandum in Opposition to Respondents’ Motion to Strike. As such, Appellants have falsely certified that the ROA and Amended ROA comply with the requirements of Rule 210, SCACR.

Nevertheless, Appellants take the position that the purported amended deposition notice should be included in the record because said notice was presented to the lower court. However, a review of the pages of the hearing transcript cited in Appellants’ Amended Memorandum in Opposition to Respondents’ Motion to Strike reveals this is simply not true as there were only (a) brief statements by Appellants that they had noticed a deposition, and (b) statements by counsel for Sunsetter indicating he never received the deposition notice mentioned by Appellants.

Accordingly, Appellants appear to argue that the purported amended deposition notice may be included simply because its alleged “existence” was mentioned during the hearing. Such a position cannot be reconciled with Rule 210(c), and Appellants should not be permitted to include unilaterally include this document in the ROA or Amended ROA.

V. CONCLUSION

For the foregoing reasons, the ROA or Amended ROA remain technically and substantively defective. The Discovery Motion and Order were properly designated, relevant to the issues on appeal, and required to be included under Rules 208, 209, and 210, SCACR. Additionally, Appellants waived any objection to those materials and further violated the SCACR by unilaterally altering the record and certifying the ROA and Amended ROA included all materials designated by any party. Likewise, the purported amended deposition notice was not

designated by any party or presented to or ruled upon by the lower court, nor is it relevant to the issues on appeal.

Accordingly, Respondents respectfully request that the Court:

- a. Strike the Record on Appeal and Amended Record on Appeal;
- b. Order Appellants to correct the deficiencies in the Record on Appeal and Amended Record on Appeal by filing an accurate and correct Record on Appeal that includes all matters designated by the parties and excludes the purported amended deposition notice; and
- c. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

[Signatures on following page.]

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318
1812 Lincoln Street, Suite #200 (29201)
P. O. Box 1390
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***Attorney for Respondent Sunsetter
Properties, LLC***

AND

HALL BOOTH SMITH, PC

s/M. Shanter Chaparro

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***Attorneys for Respondent Home Inspection
One, LLC***

December 19, 2025

Michael Brannan

From: Shanter Chaparro
Sent: Tuesday, August 5, 2025 4:54 PM
To: 'Reagan Singletary'
Cc: 'Jim Koutrakos'; 'Kathy Romero'; Michael Brannan
Subject: RE: Elizabeth Ray v Sunsetter Properties et. al [HBS-DMS.FID1932541]
Attachments: Ray v. Sunsetter - DOM.pdf

Reagan,

The Record on Appeal (“ROA”) you filed is missing and/or does not list several items included in my designation of matters, including:

1. HIO’s Answer filed November 11, 2022 – **not listed as being part of ROA or included in the record provided.**
2. HIO’s Amended Answer filed November 18, 2022 – **included in the record provided but not listed as being part of the ROA.**
3. HIO’s Motion for Summary Judgement filed July 26, 2023 – **not listed as being part of ROA or included in the record provided.**
4. HIO Memo In Support of HIO’s Motion for Summary Judgement (with all exhibits) filed July 26, 2023 - **not listed as being part of ROA or included in the record provided.**
5. HIO’s Motion to Compel Plaintiffs Discovery Responses and Motion to Deem Admitted Requests to Admit (with all exhibits) filed April 3, 2024 - **not listed as being part of ROA or included in the record provided.**
6. Order granting HIO’s Motion Compel and granting HIO’s Motion to Deem Admitted Requests to Admit entered by the Honorable Clifton B. Newman on July 24, 2023 - **not listed as being part of ROA or included in the record provided.**
7. Transcript of Record dated April 16, 2024 – **listed as part of ROA but transcript is not included in the record provided.**
8. Plaintiff’s Answers to HIO’s Discovery Requests - **not listed as being part of ROA or included in the record provided.**

A copy of my client’s designation of matters is attached for your records.

Please note, I also echo Jim’s comments on pagination and following the requirements of Rule 210(c), SCACR.

Please correct the issues identified above before close of business (5:00 p.m.) on Friday, August 8, 2025, or I will have no choice but to file a motion.

If you have any questions or need any additional information, please feel free to give me a call.

Best,
Shanter

From: Jim Koutrakos
Sent: Tuesday, August 5, 2025 4:43 PM
To: Reagan Singletary
Cc: Kathy Romero ; Shanter Chaparro
Subject: RE: Elizabeth Ray v Sunsetter Properties et. al

Hi Reagan,

I have attached my client's designation of matter.

The following is missing from the Record on Appeal that you filed.

- Sunsetter's Motion to Strike Plaintiff Elizabeth Ray's Affidavit filed April 16, 2024;
- Sunsetter's Motion to Strike Plaintiff Elizabeth Ray's Affidavit filed April 16, 2024;
- Alleged Notice of Deposition for Naeem Shabazz dated April 15, 2024 (the second attachment to this email is what I received from you and should replace what you have included in the Record on Appeal);
- Affidavit of Nicholas Langjahr filed August 9, 2023; and
- Transcript of Record dated April 16, 2024

Regarding the Affidavit of Greg Langjahr, together with Exhibits A-G filed August 9, 2023, pages 17-45 of the document you sent contain incomplete exhibits—only tabbed Exhibit E and a partial Exhibit F, both lacking exhibit tabs and pictures. Exhibits A-D and G are missing. Then, on pages 69-140, the complete affidavit with all tabbed exhibits appears.

Finally, pursuant to the applicable rule, the Record on Appeal must be paginated so we can cite to it. See Rule 210(c), SCACR ("Each page of the Record on Appeal shall be numbered consecutively beginning with the index.")

Please correct these errors by close of business Friday, or else I will have no choice but to file a motion.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
JimKoutrakos@CallisonTighe.com

From: Reagan Singletary <reagan@thesingletarygroup.com>
Sent: Tuesday, August 5, 2025 12:03 AM
To: Shanter Chaparro <schaparro@hallboothsmith.com>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Fw: Elizabeth Ray v Sunsetter Properties et. al

Please see the attached record on appeal

From: Reagan Singletary
Sent: Monday, August 4, 2025 11:59 PM

To: Court Of Appeals Filings <ctappfilings@sccourts.org>

Subject: Elizabeth Ray v Sunsetter Properties

Please see the attached record on appeal.

Reagan Singletary, Esq.

The Singletary Group, LLC

Telephone: 803.552.6957

Fax: 803. 753.9623

Email: reagan@thesingletarygroup.com

Michael Brannan

From: Reagan Singletary <reagan@thesingletarygroup.com>
Sent: Friday, August 8, 2025 3:30 PM
To: Court Of Appeals Filings
Cc: Jim Koutrakos; Shanter Chaparro
Subject: Ravy v. Sunsetter Properties, LLC et. al
Attachments: Ray Amended Record on Appeal.pdf

Attached please find the Amended Record on Appeal. Thank you.

Reagan Singletary, Esq.
The Singletary Group, LLC
Telephone: 803.552.6957
Fax: 803. 753.9623
Email: reagan@thesingletarygroup.com

Michael Brannan

From: Reagan Singletary <reagan@thesingletarygroup.com>
Sent: Friday, August 8, 2025 3:30 PM
To: Shanter Chaparro
Subject: Record on Appeal-Ray v. Sunsetter Properties, LLC et. al

Dear Mr. Chaparro:

I am writing pursuant to Rule 210(d), SCACR, to formally object to the inclusion of the following items designated by Home Inspection One, LLC in the Record on Appeal:

- **Item 6:** HIO's Motion to Compel Plaintiffs' Discovery Responses and Motion to Deem Admitted Requests to Admit (with all exhibits), filed April 3, 2024
- **Item 8:** Order granting HIO's Motion to Compel and Motion to Deem Admitted, entered July 24, 2023

These materials are not relevant to the issues raised on appeal. As outlined in the Appellants' Initial Brief, the appeal challenges the court's premature grant of summary judgment, the exclusion of an affidavit, the denial of leave to amend, the dismissal based on service, and the application of the economic loss rule. The trial court's order granting summary judgment to HIO does not reference the motion to compel or the order deeming matters admitted, nor were these issues discussed or relied upon at the April 16, 2024 hearing.

Because Rule 210(c) limits the Record on Appeal to materials necessary for the appellate court to decide the issues raised, we respectfully request that these items be withdrawn from the designation. If they are not withdrawn, we will file a formal objection with the Court of Appeals pursuant to Rule 210(d).

Please let me know by Monday, August 11, 2025 if you intend to withdraw these designations.

Additionally, all other deficiencies previously noted have been corrected, and an Amended Record on Appeal has been filed.

Best,
Reagan

Reagan Singletary, Esq.
The Singletary Group, LLC
Telephone: 803.552.6957
Fax: 803. 753.9623
Email: reagan@thesingletarygroup.com

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Elizabeth and Melvin Ray,..... Appellants

vs.

Sunsetter Properties, LLC; Nancy Warner Agent for Coldwell Banker
Residential Brokerage; and Home Inspection One, LLC, Respondents.

PROOF OF SERVICE

The undersigned counsel hereby Certifies that he has served the **Respondents’ Reply to Appellants’ Amended Memorandum in Opposition to Respondents’ Motion to Strike the Record On Appeal and Amended Record On Appeal** on counsel for record, pursuant to the South Carolina Supreme Court’s Order dated March 20, 2020, as amended, by sending a copy of the same to the AIS email address for the following attorneys of record:

Reagan Singletary, Esquire
The Singletary Group, LLC
327 Great North Road
Columbia, SC 29223
Reagan@thesingletarygroup.com
Attorney for Appellants

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

[Signatures on following page.]

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

By: /s/ M. Shanter Chaparro

Derek M. Newberry, SC Bar No. 77791

M. Shanter Chaparro, SC Bar No. 102419

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schapparro@hallboothsmith.com

**Attorneys for Respondent Home Inspection One,
LLC**

The 19th day of December, 2025
Charleston, South Carolina