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Feb 04 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeals Case No. 2025-000288

Hon. Ralph King
Anderson III

Chief Administrative
Law Judge
ALC Case No. 24-ALJ-07-0367-CC

Walter Buchanan, Appellant

v.

South Carolina Department of Environmental Services, and Silfab Solar, Respondents

**APPELLANT BUCHANAN REPLY TO
JOINT MOTIONS TO STRIKE BY SILFAB SOLAR AND
SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES**

Appellant would reply to the joint motion of Silfab Solar and South Carolina Department of Environmental Services looking to strike Replies of Walter Buchanan filed January 27, 2026 and would show the following as it pertains to the Appellant's January 27, 2026 reply brief filings.

FACTUAL BACKGROUND

Appellant does not wish to belabor the factual disputes in this case, set forth in all parties' briefs but provides brief factual reply in response to the strike motion. The parties vehemently differ on the July 30, 2024, letter by the department SCDES to Silfab, which Respondents cite merely "*documented the Department's receipt and review of air dispersion modeling pursuant to a March 1, 2024, permit issued by SCDES's predecessor to Silfab* (R. p. 17). The case is not merely a challenge to a department letter, but constitutional challenge to the extension of the air permit under materially different parameters involving structural design changes involving exhaust towers. It is a challenge where Appellant alleges SCDES exceeded its statutory authority where the department could not issue construction permits in the first place, only the county could do so. As to due process, Walter Buchanan received no timely notice of the letter, sent only to Silfab digitally by Epermitting.

Counsel now addresses the procedural matters raised by Respondents' joint motion to strike under SCACR 211(b) and SCACR 240:

ARGUMENT

1. Timeliness under Rule 211, SCACR.

On Wednesday January 21, 2026, Appellant counsel received a call from the office of the chief clerk Hon. Jenny Kitchings who requested Reply briefs be filed as soon as possible, which Appellant counsel filed Monday January 27, 2026. Appellant counsel used the weekend for reply due to impending trial in common pleas, attached. (see fn.#1 p. 2). The CPNJ matter was moved in order by the trial court to January 28th, and counsel attempted to continue the CPNJ trial. (Roster attached). In short, the replies were filed prior to trial week beginning on the date of

January 26, albeit inclement weather postponed the start of court this date.

Appellant respectfully asserts the Reply Briefs are timely and in good faith predicated on reliance and discussion with the chief clerk of court, even if characterized as untimely under the Respondent contentions regarding the December 12, 2025 court letter (Resp. motion. p. 4 at ¶3). While counsel acknowledges the Court of Appeals takes priority over trial court, counsel could not postpone the trial during the week of January 28, 2026 as re-scheduled day to day by the trial judge to the 28th of January,¹ where counsel advised Mrs. Kitchings he would act on the court's request as soon as possible, but could not do so precisely on Wednesday January 21. Counsel for Respondents may not have known of this communication.

(A). Appellant respectfully avers the Court of Appeals should consider more moderate remedies vs. the sanction of striking the final briefs filed January 26, 2026.

This is a matter of court discretion. Appellant acknowledges the briefs are inadvertently not identical to the initial briefs filed July 31, 2025, and that no other adjusted appellant reply brief was filed (Res motions. 3 at 1-3). Where they not identical, a remedy that this court may consider is the less drastic options discussed below vs. sanctions. One of these options is to ignore non-conforming aspects of the final replies; or the court may decide the case on the Initial Reply brief filed July 31, which neither respondents file no claim of grievance upon of record, until now. Appellant would ask the court to ignore non-conforming parts of the final briefs filed January 27 vs. granting Respondents' Motion to Strike; or, alternatively, strictly limit review to the Initial Reply Briefs as-is vs. imposing the harsh sanction sought by movants.

¹ This was case no. 2023-CP-06-00271 Hull Barrett PC vs Coldwell Banker Best Life Realty, defendant, et al. with Hon. Martha Rivers presiding.

Recent Court of Appeals unpublished decisions have addressed Rule 211(b) issues. A recent decision is *Mack v. Washington*, No. 2021-UP-037 (S.C. Ct. App. Feb. 10, 2021) is an example. While *Mack* makes clear the Rule 211(b) is applied exactly as written. The court has repeatedly noted that [t]he final brief(s) shall be identical to the [initial]briefs...except for ..[r]eferences to the Record . . . [a]nd... [c]orrection(s) of [t]ypographical errors and misspellings...” The court in *Mack* also stated it “would address issues on appeal as set forth in [appellant’s] initial brief because her final brief differs substantially from her initial brief in violation of Rule 211(b), SCACR.” *Id.* In other cases, where new issues were raised in violation of the SCACR, the *Shabazz* court said it would “address only the issues set forth in [appellant’s] initial brief because [she] raised new issues in violation of the South Carolina Appellate Court Rules,” and likewise refused to consider new issues first raised in a Reply Brief. *Shabazz v. Rodriguez*, No. 2019-UP-416 (S.C. Ct. App. January 28, 2026). In the year 2016 *Gallipeau* decision, the court explained it addressed “only the issues and arguments set forth in [appellant’s] initial brief because [his] final brief was not identical to his initial brief and was in violation of the South Carolina Appellate Court Rules. *Dennis Gallipeau v. D. Ryan McCabe* No. 2023-001005 (Ct. App. January 28, 2026).

(B). Addressing Respondents’ arguments under Rule 240 SCACR:

Even addressing Respondents’ argument of this court striking and omitting from record on appeal (Resp. mot. p. 2 at fn#2), the reference of the irregularities of the department (DHEC) transcription were integral to and explicitly relied upon in both Appellant Initial brief and Appellant Reply brief. If reference is error under Rule 240 SCACR it does not preclude meaningful review by this court given its reference in two prior Appellant briefs. While the transcript was stricken from inclusion in the record on appeal, at no time did Respondents

challenge authenticity of the incomplete transcript. Rather, it was challenged by motion to strike as it never made it to the eyes of administrative law court, below, and was not of record before the ALC. Provided, this court may take judicial notice of the public record if they are central to Appellant claims of failure of due process specifically to Appellant, and Respondent final briefs acknowledge only the corporation received notice of the July 30, 2024 letter digitally by Epermitting. Appellant received no notice. The transcript by DHEC of March 30, 2023 is a public record referenced and relied upon by inference, this court can take judicial notice of without resort reviewing the contents of the transcript, or ignore the reference in final reply briefs. See, Rule 201, 803(8), SCRE . *Sheppard v. Tex. Dep't of Transp.*, 158 F.R.D. 592, 595-96 (E.D. Tex. 1994) (“Documents ...[i]f they are referred to ...[a]nd are central to [plaintiff’s] claim” the court may take judicial notice of, or alternatively strike from review in the January 26 Appellant Replies. There is no Rule 240 or Rule 211 issue which precludes meaningful review by the court, and there is no prejudice to respondents. Lastly, the Court of Appeals could provide Respondents additional briefing opportunity.

CONCLUSION

Appellants respectfully seeks the court deny Respondents’ Motion to Strike and permit the Reply briefs to stand, precluding or striking any offending paragraphs only. Alternatively, should the court strike under relief being sought by Respondents, Appellant counsel would ask the Initial Reply Briefs stand as is with Appellant’s final brief, as there is no bad faith intentional or deliberate disregard for the SCACR despite Respondent assertions to the contrary. Appellant counsel in good faith obeyed what was requested by the chief clerk of the court by telephone call January 16 as soon as he could. Appellant therefore requests the court omit from review offending provisions of the final reply briefs, or alternatively permit review under Initial Reply Briefs filed

July 31, 2025 and Appellant Final Brief. Appellant thanks the court for its consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Appellant in this matter and that I did on February 4, 2026 deliver to the counsel for Respondents identified below by electronic filing and email addressed to the following AIS address and email for Respondents' counsel by efilng and email:

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Respectfully submitted,

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Barnwell County Second Judicial Circuit - Roster Details
Barnwell's CP Non Jury Roster for Monday January 26, 2026 @ 9:30 am

Court Agency	Common Pleas	Judge	Rivers	Roster Id	233
Roster Type	Non Jury Roster	Roster Begin Date	01/26/2026	Roster End Date	01/26/2026

Number of cases = 10

#	Case	Plaintiff Attorney	Defendant Attorney	Filed Date	Sub Type	Status	Notes
1	2023CP0600271 Hull Barrett PC VS Coldwell Banker Best Life Realty , defendant, et al	Paul Knapp Simons Jr. (803) 648-4213	J. Cameron Halford (803) 524-8659 Clarke W. McCants III (803) 649-6200 x3 Clarke Wardlaw McCants IV (803) 649-6200	09/18/2023	Interpleader	Pending	01/23/2026...Pending Rivers signature for Continuance.
2	2025CP0600163 Capital One Na VS Janet R Walker	Sharonda James (843) 588-1349 Carli Jo Wilcox (803) 906-3385 x1072		04/29/2025	Debt Collection 110	Dismissed	NON JURY #1
4	2025CP0600240 Wells Fargo Bank NA VS Steven J Lynch	Cullan M. Demianczyk (252) 917-0915 Daniel M Esposito (336) 354-1797		06/27/2025	Debt Collection 110	Dismissed	12/23/2025...Case Dismissed per Rule 41A.
5	2025CP0600274 Capital One NA VS James M Gredler	Jerry T. Myers (919) 250-2133	Daniel Christian Abarno (770) 238-2633	07/28/2025	Debt Collection 110	Pending	NON JURY #3
7	2025CP0600280 Wells Fargo Bank NA VS Deshannon James	Jessica Lynn Carcione (803) 454-3540 Ryan Mills Eldridge (931) 675-2472		07/30/2025	Debt Collection 110	Dismissed	NON JURY #4
8	2025CP0600301 Capital One VS Thomesina F Jellhaug	Jerry T. Myers (919) 250-2133		08/14/2025	Debt Collection 110	Judgment	01/22/2026...Pending Rivers signature for Default Judgment.
9	2025CP0600303 Jefferson Capital Systems LLC VS Travis Et Al Neal , defendant, et al	Sharonda James (843) 588-1349 Michael Brittain Travis (843) 573-4350		08/22/2025	Debt Collection 110	Pending	NON JURY #6
11	2025CP0600321 Rodney Sanders VS Kelly Highsmith	Rodney Sanders	Kelly Highsmith	09/03/2025	Possession 450	Dismissed	NON JURY #8
13	2025CP0600335 Shirley Barfield VS O'Bertha Johnson Estate , defendant, et al	Glenn Walters Sr. (803) 531-8844		09/09/2025	Partition 440	Special Referee	NON JURY #10
16	2025CP0600482 Ericka King , plaintiff, et al VS Dolgencorp Llc	Jacob C McKenzie Sr. (843) 732-8128		12/03/2025	Minor Settlement 730	Pending	NON JURY #13

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