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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
The Honorable Jennifer B. McCoy
Circuit Court Judge

Circuit Court Case No. 2016-CP-10-03783

Court of Appeals Case No. 2021-001050
Opinion No. 6099 (S.C. Ct. App. filed Feb. 12, 2025)

Appellate Case No. 2025-001224

The Retreat at Charleston National County Club Home Owners Association, Inc., and
The Retreat at Charleston National Country Club Horizontal Property Regime.....Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders FirstSource, Inc; Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting, LLC; Hurley Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC Construction, Inc.; L&G Construction Group, LLC; Liollo Architecture; JC Contractors, LLC; Soto & Vasquez Construction, LLC; Costa De Oliverira Construction, LLC; Solesmar Jesus De Oliverira; Wilson Lucas Sales d/b/a Miracle Siding; Miracle Siding, LLC; Royal Homes of SC, Inc.; Collen Batissa; Christopher Batissa; Norma Ferreira Bruno; Mendez Construction, LLC; Juan Garza Ramos, individually; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin, individually; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin, individually; Carlos Marroquin Construction; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario SalgadoDefendants

Builders FirstSource-Southeast Group, LLC.....Third-Party Plaintiff, Appellant,

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and Renovation; Edward Bruce Witham; and East Coast Carpentry.....Third-Party Defendants,

Of which, Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting, LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman Quality Exteriors, Inc.; and L&G Construction Group, LLC are theRespondents

**RESPONDENTS ECC CONTRACTING, LLC’S, EAST COAST CARPENTRY,
PALMETTO TRIM AND RENOVATION’S REPLY IN OPPOSITION TO
APPELLANT BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC’S MOTION
TO SUPPLEMENT THE APPENDIX**

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Rules

Rule 210, SCACR4

INTRODUCTION

Respondents, ECC Contracting, LLC, East Coast Carpentry, Palmetto Trim and Renovation, (collectively the “Respondents”), oppose the Motion of Appellant Builders FirstSource-Southeast Group, LLC (“Appellant”) to Supplement the Record on Appeal/Appendix. The motion filed by Builders FirstSource-Southeast Group, LLC should be denied because Rule 210(c) expressly prohibits the inclusion of the material Appellant seeks to add to the Record on Appeal/Appendix.

ARGUMENT

Rule 210(c) of the South Carolina Appellate Court Rules governs the content of the Record on Appeal. Rule 210(c) provides, in part, that:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal...

Rule 210(c), SCACR. (emphasis added)

The Supreme Court explained the importance of the Record of Appeal in S.C. State Highway Dep't v. Meredith 241 S.C. 306, 128 S.E.2d 179, (1962)(citation omitted) stating, “[t]he transcript of record is the source of our information as to what occurred in the trial of the case below; its very object is to inform the Court authoritatively of the legal questions contested below and of the facts pertaining thereto. S.C. State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 181 (1962). The Court went on to state that “A question in respect to a point based on alleged facts not shown in the transcript of record cannot be considered. “ Id. (citation omitted).

Furthermore, even if Appellant had presented the testimony that it seeks to add to the Record on Appeal/Appendix, to the Trial Court, denial of this motion would still be appropriate. South Carolina Appellate Courts have consistently held that it is the Appellant's burden to prepare

and present an adequate record on appeal—not the Respondent's obligation to assist in remedying its deficiencies. In Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services, 372 S.C. 279 (2007), the South Carolina Supreme Court affirmed the denial of a motion to supplement the record where the Appellant (the Department) failed to include critical documents, including the trial court's final order, in the record on appeal. The Court ruled:

Ordinarily, no point will be considered which does not appear in the record on appeal. Rule 210(h), SCACR. Because court rules require the appealing party to prepare the record on appeal, *see* Rule 210(a), SCACR, South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review.

Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs., 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007).

The Supreme Court went on to rule that the Court of Appeals properly denied the Appeal based upon the Department's [Appellant's] failure to present an adequate record on appeal. Id. (“Because the Department failed to include the trial court's final order in the record on appeal, the court of appeals properly decided the case without reaching the merits.”)

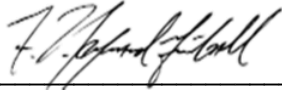
The Deposition excerpts Appellant moved to be added to the Record on Appeal have never been presented to the Trial Court or previously included in the Record on Appeal. Thus, they are not proper for addition to the Record on Appeal.

In the event that this Court grants the Appellant's Motion, Counsel for the Respondents would request sixty (60) Days to counter designate any further documents or evidence to include in the Record on Appeal/Appendix in response to Appellant's late addition to the Appendix.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Motion of Appellant Builders FirstSource-Southeast Group, LLC to Supplement the Record on Appeal/Appendix.

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