

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE CIRCUIT COURT  
NINTH JUDICIAL CIRCUIT

The Honorable Deadra L. Jefferson

Appellate Court Case No. 2026-000058  
Circuit Court Case Nos. 2024-CP-10-04606 and 2024-CP-10-02646

Frank Perrelli, Jr., ..... Appellant,

v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner  
and Jeffrey Pumilia, ..... Respondents.

AND

Peter Skoler and Patricia Skoler, ..... Appellants,

v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner and Jeffrey  
Pumilia, ..... Respondents.

**RESPONDENTS' REPLY TO RETURN TO MOTION TO STRIKE**

Respondents Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner and Jeffrey Pumilia ("Respondents"), through undersigned counsel, submit this reply to return to the motion to strike in this matter on June 11, 2026 for the purposes of addressing certain arguments in Appellants' return filed June 22, 2026. Respondents incorporate by reference the

arguments made in their June 11, 2026 motion and supporting memorandum in this reply. For the reasons stated herein, the motion to strike should be granted.

**I. Mere reference to material does not mean such material was presented to the lower court for purposes of Rules 209 and 210, SCACR.**

Appellants rely heavily on the assumption that just because something was noted by reference in a pleading means it was presented to the lower court when the lower court made its ruling. This assertion goes against longstanding law in our state regarding what can be considered on appeal.

In cases analyzing material in the record and issue preservation, South Carolina courts repeatedly interpret the presentation requirement as demanding both that an issue be raised to the lower court and that it be ruled upon by that court. For example, the Supreme Court of South Carolina has held that “[w]here it did not appear from record that any of issues raised by appeal were *presented to and passed upon* by lower court, Supreme Court would not consider such issues and appeal would be dismissed. Reno v. Manufacturers & Jobbers Fin. Corp., 222 S.C. 401, 73 S.E.2d 277 (1952) (emphasis added). In Elam v. S.C. Department of Transportation the Court stated “issues and arguments are preserved for appellate review only when they are *raised to and ruled on* by the lower court.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004) (emphasis added).

Appellants, with no support, assert that the word “presented” in Rule 210(c), SCACR does not mean materials have to be admitted to evidence, received as an exhibit, or relied upon in an order. (App. Return, p. 5). In Appellants’ view allegations in their complaints that vaguely reference enforcement actions means that those complaints were presented to the lower court in opposition to the Respondents’ motions to compel arbitration. However, the contested documents were not even attached to the complaint. Appellants cannot rely on mere references to documents

describing events in which they were not involved or prepared by third parties to assert that these materials were presented to the lower court.

Appellants also argue that public record of consumer complaints and other proceedings against Respondents should be permitted in the record, even though such materials were not presented to or ruled on by the lower court. However, the law on this is also clear. “Records in another proceeding cannot be considered by appellate court unless they were introduced and made part of record in same manner as other evidence.” Beall v. Doe, 281 S.C. 363, 372, 315 S.E.2d 186, 191 (Ct. App. 1984).

Further, Appellants position that a motion to reconsider is a vehicle to present material to the lower court is also incorrect. A party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995); see also Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C., 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004). In short, these materials were never submitted to the lower court and are not appropriate to be included on the record on appeal under Rules 209 and 210, SCACR.

## **II. Appellants remaining arguments incorrectly rely on the principle of judicial notice to assert the challenged materials should be permitted in the record.**

Appellants next turn to their argument that the materials not previously presented should be permitted in the record because they pertain to appellate jurisdiction and so the court should take judicial notice of them. In this section, they also acknowledge that “some of the relevant materials could not have been presented to the circuit court because they postdate the orders.”<sup>1</sup>

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<sup>1</sup> Item 23 in Appellants’ Designation references Complaints for Vacation Inspirations, dated January 28, 2026, from the South Carolina Department of Consumer Affairs. (App. Designation, p. 2).

App. Return, p. 8). While this statement in itself makes clear the lower court was not presented, this material, the reliance on judicial notice is also misplaced.

The test for judicial notice is whether sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67 n.1, 82, 321 S.E.2d 258, 266 (1984). The Court of Appeals in Masters v. Rodgers Dev. Grp., 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) articulated the stringent standard for judicial notice in this context:

For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof. Moss v. Aetna Life Insurance Co., 267 S.C. 370, 228 S.E.2d 108 (1976); State v. Broad River Power Co., 177 S.C. 240, 181 S.E. 41 (1935). Unless the fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable of verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice. Moss v. Aetna Life Insurance Co., *supra*; In the Matter of Harry C., 280 S.C. 308, 313 S.E.2d 287 (1984) (citing State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974)).

See Masters, 283 S.C. 251, 255, 321 S.E.2d 194, 196. In that case, the court declined to take judicial notice of a deed on appeal, even though it was public record and recorded in Charleston County, finding that “[n]otice of facts for the first time on appeal may deny the adverse party the opportunity to contest the matters noticed; it may also violate the general principle that appellate review should be limited to the record.” Id. at 256-257, 321 S.E.2d at 197 (further finding that “[w]hile the existence of recitals in the deed may be verified by resort to the public records, mere recitals in a deed do not establish, as against strangers, facts recited there.”). In sum, the court found it inappropriate to allow a party to “introduce evidence through the back door of judicial notice.” Id. at 257, 321 S.E.2d at 197.

Here, the challenged materials included consumer complaints, news articles, and other proceedings. These were not presented to the lower court, and they are not so notoriously known that their existence to the general public could be presumed without proof. Appellants seek to do

just what the court declined to do in Masters, which is to get materials in the record on appeal just because they may be publicly available. If Appellants are permitted to include these materials, they would theoretically be able to include anything in the record simply because it is publicly available. This is not the purpose of judicial notice and is contradictory to the purpose of Rules 209 and 210, SCACR.

### **III. Inclusion of these materials on appeal would prejudice Respondents.**

Finally, if Appellants are permitted to include these materials in their designation, Respondents would be unfairly prejudiced. As stated in the Masters case, “[n]otice of facts for the first time on appeal may deny the adverse party the opportunity to contest the matters noticed; it may also violate the general principle that appellate review should be limited to the record.” Masters, at 256-257, 321 S.E.2d at 197. Further, appellate rules are designed to give the trial court a fair opportunity to rule on the issues and thus provide us with a platform for meaningful appellate review. Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (internal citation omitted). “These rules must also be applied consistently and not selectively.” Id. Inclusion of materials not presented to the lower court would result in unfairness to Respondents. Appellants should be required to abide by the clear language of Rules 209 and 210, SCACR.

### **CONCLUSION**

For the reasons stated above and in Respondents’ motion, the court should strike the materials not presented to the lower court from the Appellants’ designation and initial brief.

June 29, 2026

Respectfully submitted,

s/John A. Massalon

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM THE CIRCUIT COURT  
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Appellate Court Case No. 2026-000058  
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Peter Skoler and Patricia Skoler, ..... Appellants,

v.

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Pumilia, ..... Respondents.

AND

Appellate Court Case No. 2026-000043  
Circuit Court Case No. 2024-CP-10-04606

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Frank Perrelli, Jr., .....Appellant,

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Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner  
and Jeffrey Pumilia, ..... Respondents.

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**PROOF OF SERVICE**

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I certify that Respondents' Reply to Return to Motion to Strike was served upon Appellants  
via e-mail to counsel of record listed below on June 29, 2026. A copy of the service e-mail is  
attached hereto as Exhibit A.

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**EXHIBIT “A”**

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**Cc:** [John A. Massalon](#); [Carissa Land](#); [Charline Barrasso](#); ["dnlevine@dnllaw.com"](#); [jeff@uricchio.com](#)  
**Subject:** 2026-000043 (Perrelli v. Vacation Inspirations, et al.); 2026-000058 (Skoler, et al. v. Vacation Inspirations, et al.)  
**Date:** Monday, June 29, 2026 3:17:00 PM  
**Attachments:** [20260629 Reply to Return to Motion to Strike.pdf](#)  
[20260629 Court of Appeals - filing fee.pdf](#)

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Dear Counsel,

Attached for service in the above-referenced matters, please find the following:

1. Respondents' Reply to Return to Motion to Strike; and
2. Letter to the Clerk of Court enclosing motion filing fee.

If you have any questions, please do not hesitate to contact us.

Thank you,

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