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Jul 08 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Thomas J. Rode, Circuit Court Judge

Appellate Court Case No. 2026-000910
Circuit Court Case No. 2024-CP-10-02642

Christopher Sawyer and Terese Sawyer,..... 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 filed in this matter on June 24, 2026 for the purposes of addressing certain arguments in Appellants' return to that motion filed July 3, 2026. Respondents incorporate by reference the arguments made in their June 24, 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, pp. 5-6). In Appellants’ view, allegations in their complaint that vaguely reference enforcement actions means that those complaints were presented to the lower court in opposition to the Respondents’ motion 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.”¹ (App. Return, p. 7). 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

¹ Item 21 in Appellants’ Designation references Complaints for Vacation Inspirations, dated January 28, 2026, from the South Carolina Department of Consumer Affairs. (App. Designation, p. 2).

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.

July 8, 2026

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APPEAL FROM THE CIRCUIT COURT
NINTH JUDICIAL CIRCUIT

The Honorable Thomas J. Rode

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Christopher Sawyer and Terese Sawyer, Appellants,

v.

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

PROOF OF SERVICE

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 July 8, 2026. A copy of the service e-mail is attached
hereto as Exhibit A.

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EXHIBIT “A”

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Subject: 2026-000910; Christopher Sawyer, et al. v. Vacation Inspirations, et al.
Date: Wednesday, July 8, 2026 12:51:00 PM
Attachments: [20260708 Reply to Return to Motion to Strike.pdf](#)

Dear Counsel,

Attached for service in regard to the above-referenced matter, please find Respondents' Reply to Return to Motion to Strike. If you have any questions, please do not hesitate to contact us.

Thank you,

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