

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Jane H. Merrill, Circuit Court Judge

Appellate Case No. 2025-002252
Trial Court Case No. 2023-CP-04-01493

RECEIVED

Aug 17 2026

SC Court of Appeals

T. Cox Builders, LLC,Appellant,

v.

Piedmont Vacant Properties, LLC and Watson Engineering, Inc., Respondents.

**APPELLANT’S MOTION TO EXCLUDE FROM THE RECORD ON APPEAL
AN AFFIDAVIT NEITHER SERVED NOR FILED, AND TO STRIKE
THE PORTIONS OF RESPONDENTS’ INITIAL BRIEF THAT RELY ON IT**

Appellant T. Cox Builders, LLC (“Cox”), pursuant to Rules 209, 210, and 240 of the South Carolina Appellate Court Rules, moves this Court for an order (1) excluding from the Record on Appeal the document Respondents have designated as the “Affidavit of Tom Scott”; (2) striking the portions of Respondents’ Initial Brief that rely upon that affidavit; and (3) in the alternative, relieving Cox of any obligation under Rule 210(g), SCACR to include that affidavit in the Record on Appeal it is required to prepare. The grounds for this motion are as follows.

1. On August 7, 2026, Respondents served and filed their Initial Brief and their Designation of Matter to be Included in the Record on Appeal. The Designation lists, as additional matter designated by Respondents, an “Affidavit of Tom Scott” bearing the date 08/6/2026.
2. The affidavit has not been served on Cox. Respondents’ own Proof of Service certifies that counsel served “Respondents Piedmont Vacant Properties, LLC’s and Watson

Engineering, Inc.’s Initial Brief and Designation of Matter via electronic mail only.” It certifies service of two documents. It does not mention the affidavit.

3. Nor does the affidavit appear among the documents Respondents transmitted to the Clerk of this Court. Respondents’ August 7, 2026 transmittal enclosed three documents: the Initial Brief of Respondents, Respondents’ Designation of Matter, and Respondents’ Proof of Service. A later transmittal the same evening enclosed a corrected Proof of Service. Neither enclosed the affidavit.
4. The affidavit bears a date of August 6, 2026. That is eleven months after the judgment appealed from was filed, nine months after Cox served and filed its Notice of Appeal, and one day before Respondents served their brief. It was never presented to the Honorable Jane H. Merrill or to the Court of Common Pleas for Anderson County.
5. Rule 209(b), SCACR permits a party to designate only material “which may be properly included in the Record on Appeal [See Rule 210(c)].” Rule 210(c), SCACR provides that the Record “shall not . . . include matter which was not presented to the lower court or tribunal.”
6. 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.” Cox, as appellant, must prepare, serve, file, and certify the Record. Cox cannot certify a Record containing a document it has never received.
7. Respondents rely on the affidavit at four points in their brief, and they rely on it for the one fact this Court singled out when it denied their Motion to Dismiss: “the mindset of the

parties in paying or accepting the judgment monies.” Cox cannot answer evidence it has never seen, and this Court cannot weigh evidence it has never received.

8. This motion is directed to the Scott affidavit alone. Cox does not object to Respondents’ designation of the October 2025 correspondence between counsel, or of the Satisfaction of Judgment filed in the Court of Common Pleas on October 27, 2025. To the extent that correspondence postdates the judgment, Cox consents to its inclusion, and this motion may be treated as the written consent of counsel contemplated by Rule 212(b), SCACR as to that material.
9. A memorandum with citation of authorities, the affidavit of undersigned counsel contemplated by Rule 240(c)(3), SCACR, and a certificate of service accompany this motion. The filing fee required by Rule 240(d), SCACR accompanies the filing.

Cox respectfully requests that the Court grant this motion and enter an order excluding the Affidavit of Tom Scott from the Record on Appeal and striking the portions of Respondents’ Initial Brief that depend upon it.

Respectfully submitted,

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August 17, 2026
Greenville, South Carolina