

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable Jane H. Merrill Circuit Court Judge

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Appellate Case No.: 2025-002252  
Case No.: 2023-CP-04-01493

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**RECEIVED**

**Aug 27 2026**

**SC Court of Appeals**

T. Cox Builders, LLC .....Appellant,

v.

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

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**RESPONDENTS' REPLY IN OPPOSITION  
TO APPELLANT'S MOTION TO EXCLUDE**

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**INTRODUCTION**

Respondents Piedmont Vacant Properties, LLC and Watson Engineering, Inc. (“Respondents”), pursuant to Rule 240(e), SCACR, respectfully submit this reply in opposition to Appellant T. Cox Builders, LLC’s *Motion to Exclude the Affidavit of Tom Scott from the Record on Appeal . . . and to Strike the Portions of Respondents’ Initial Brief That Rely On It*.<sup>1</sup> Appellant’s motion should be denied because it rests on a premise that is no longer accurate, applies Rule

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<sup>1</sup> Paragraph 9 of Appellant’s Motion to Exclude asserts that the motion is supported by “[a] memorandum with citation of authorities [and] the affidavit of undersigned counsel contemplated by Rule 240(c)(3), SCACR[.]” No such memorandum or affidavit, however, was ever filed or otherwise served, either with the motion or thereafter.

210(c) inconsistently, and seeks the extraordinary remedy of striking briefing directed to an issue this Court has expressly authorized the parties to address.

## **ARGUMENT**

### **I. The Affidavit Has Been Properly Filed and Served.**

Appellant’s motion asserts that the Affidavit of Tom Scott was “neither served nor filed.” However, that assertion is no longer correct. Respondents filed the Affidavit with this Court on August 18, 2026, and served it on Appellant. Accordingly, the practical concern animating Appellant’s motion (*i.e.*, that Appellant could be required to respond to or certify a record containing a document it had never received) has been eliminated. Appellant has the Affidavit, the Affidavit is part of this Court’s record, and there is no prejudice that would justify excluding it from consideration or striking Respondents’ briefing.

### **II. Appellant’s Rule 210 Argument Is Inconsistent with Its Own Position on Post-Judgment Materials.**

Appellant invokes Rule 210(c), SCACR, which provides that the Record on Appeal “shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. But Appellant does not apply that rule consistently. In paragraph 8 of its motion, Appellant expressly consents to the inclusion of other post-judgment materials, including the October 2025 correspondence between counsel and the Satisfaction of Judgment filed in the Court of Common Pleas on October 27, 2025. Appellant further states that its motion may be treated as the written consent contemplated by Rule 212(b), SCACR, as to those materials.<sup>2</sup> Appellant therefore acknowledges that post-judgment materials may be included when they are relevant to

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<sup>2</sup> Rule 212(b), SCACR, does not appear to apply in the appeal’s present procedural posture. Regardless, Appellant’s own characterization of its consent as satisfying Rule 212(b) confirms that Appellant does not treat Rule 210(c) as an absolute bar to the inclusion of post-judgment materials it deems relevant.

an appellate issue and when the procedural requirements for inclusion are satisfied. Having taken that position, Appellant cannot fairly wield Rule 210(c) as an absolute bar against Respondents' Affidavit while accepting the inclusion of other post-judgment materials bearing on the same issue.

**III. The Affidavit Is Properly Before the Court Under Rule 240(c)(3) and Directly Addresses the Issue This Court Identified.**

Even if the Court determines that the Affidavit need not be included in the formal Record on Appeal, Appellant has not shown that the separate and more drastic remedy of exclusion is warranted. The Affidavit has been filed and served in connection with a motion practice issue under Rule 240(c)(3), SCACR, and it supports Respondents' position on the mootness issue raised in their March 23, 2026 Motion to Dismiss. This Court's April 13, 2026 Order denied dismissal at that stage but expressly permitted the parties to present argument in their briefs concerning the mindset of the parties in paying or accepting the judgment monies. (*See Order Denying Motion to Dismiss Appeal filed April 13, 2026.*) The Affidavit speaks precisely to that issue.

Appellant should not be permitted to narrow the record on that issue while simultaneously relying on other post-judgment materials that support its preferred framing. The Court identified the parties' intent and understanding surrounding payment and acceptance of the judgment as material to the appeal. Respondents are entitled to present competent, relevant materials bearing on that issue, and Appellant remains free to respond to the Affidavit on the merits. Striking Respondents' brief would be a disproportionate remedy, particularly where Appellant has now received the Affidavit and can address it without prejudice.<sup>3</sup>

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<sup>3</sup> Respondents would be agreeable to a reasonable extension of Appellant's briefing window to allow Appellant to respond to the contents of the Affidavit, notwithstanding that the material portions of the Affidavit were cited in Respondents' Initial Brief.

## **CONCLUSION**

For these reasons, Respondents respectfully request that the Court deny Appellant's Motion to Exclude the Affidavit of Tom Scott from the Record on Appeal and deny Appellant's request to strike the portions of Respondents' Initial Brief that rely upon it. In the alternative, should the Court determine that the Affidavit need not be included in the formal Record on Appeal, Respondents respectfully request that the Court nevertheless consider the Affidavit as properly filed motion-related material or permit Respondents to rely on it in addressing the mootness issue identified by this Court.

Respectfully submitted,

*s/ Lauren N. Vriesinga*

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*Attorneys for Respondents*

August 27, 2026

Charleston, South Carolina

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**PROOF OF SERVICE**

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This is to certify that I have this day served counsel in the foregoing matter with a copy of  
***Respondents Piedmont Vacant Properties, LLC's and Watson Engineering, Inc.'s Reply in  
Opposition to Appellant's Motion to Exclude*** via electronic mail only, addressed as follows:

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August 27, 2026  
Charleston, South Carolina