

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

70935

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APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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Appellate Case No. 2013-000578

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Claude McAlhaney, ..... Appellant,

v.

Kenneth A. Carter, Sr. d/b/a Carter & Son Pest Control,  
Carter & Son Pest Control, Inc. and Erick Cogburn, Of whom,  
Erick Cogburn is ..... Respondent.

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NOTICE OF MOTION AND MOTION TO STRIKE CONTENT OF APPELLANT'S INITIAL  
DESIGNATION OF MATTER and MOTION TO STRIKE, PURSUANT TO RULE 210(c)

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YOU WILL PLEASE TAKE NOTICE, RESPONDENT ERICK COGBURN, by and through his undersigned attorneys, will move the Court for an Order striking portions of the Record on Appeal, as designated by Appellant, pursuant to Rule 210 (c), SCACR, as the designated matter was not submitted to the lower court, is not on file with the Clerk of Court for Bamberg County and is therefore extraneous and should not properly be included within the Record on Appeal.

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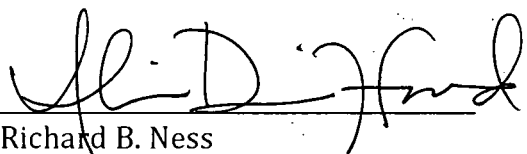
**SC Court of Appeals**

Particularly, Respondent requests the following matter be stricken from the Record on Appeal:

1. Kenneth A. Carter, Sr.'s Deposition Testimony, Dated January 25, 2012—Pages 4-5; 8-19; 23; 27-30; 33-34; 39-42; 45-48
2. Kenneth A. Carter, Sr.'s Deposition Exhibits 2, 3, 4, and 6
3. Erick Cogburn's Deposition Testimony dated February 29, 2012—Pages 3; 9-11; 15-17; 19-28; 31; 39-42; 53-54; 65-73; and 77-81
4. Erick Cogburn's Deposition Testimony Deposition Exhibit 4

This motion is based upon the Transcript of the Hearing on this matter, dated July 26, 2012, which contains no clear reference to this deposition testimony being submitted to the Court for consideration, as well as the file of the Clerk of Court for Bamberg County, which does not contain copies of the above-referenced deposition testimony. Upon information and belief, this particular matter was not submitted to the lower court, and Rule 210(c), SCRCR prohibits its inclusion within the Record on Appeal.

Respectfully Submitted,



Richard B. Ness  
Alison Dennis Hood  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for Respondent

Bamberg, S.C.  
January 9, 2014

Erick Cogburn

**CERTIFICATE OF SERVICE**

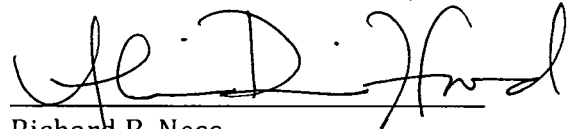
This is to certify that I, Alison Dennis Hood, Attorney for Respondent Erick Cogburn, along with Richard B. Ness of Ness & Jett, LLC, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **RESPONDENT'S NOTICE OF MOTION AND MOTION TO STRIKE CONTENT OF APPELLANT'S INITIAL DESIGNATION OF MATTER PURSUANT TO RULE 210(c), SCACR** in the matter captioned *Claude McAlhaney v. Kenneth A. Carter, Sr., d/b/a Carter & Son Pest Control, Carter & Son Pest Control, Inc., and Erick Cogburn*, Appellate Case Number: 2013-000578:

William F. Barnes, III  
Peters, Murdaugh, Parker, Eltzroth, and Detrick. P.A.  
101 Mulberry Street East  
P.O. Box 457  
Hampton, SC 29924  
Attorneys for Appellant

AND

Danielle F. Payne  
Grier, Cox, & Cranshaw, LLC  
P.O. Box 2823  
Columbia, SC 29202  
Attorneys for Respondent Kenny Carter, et al.

Bamberg, S.C.  
January 9, 2014



Richard B. Ness  
Alison Dennis Hood  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for Respondent  
Erick Cogburn

NESS & JETT, LLC  
ATTORNEYS AT LAW  
P.O. BOX 909  
BAMBERG, SOUTH CAROLINA 29003

RICHARD B. NESS\*  
NORMA A. T. JETT

\*CERTIFIED CIRCUIT COURT MEDIATOR

ALISON DENNIS HOOD  
ADAM C. NESS

2878 MAIN HIGHWAY  
Telephone 803/245-5178  
Telecopier 803/245-5384

JULIUS B. NESS  
1916-1991

January 9, 2014

The Honorable Jenny Abbott Kitchings  
S.C. Court of Appeals Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

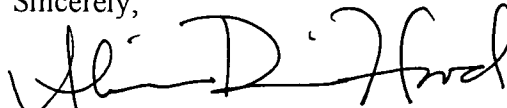
Re: *Claude McAlhaney v. Kenneth Carter, Sr., Kenneth A. Carter, Sr.,  
d/b/a Carter and Sons Pest Control, Carter & Sons Pest Control, Inc., and Erick  
Cogburn*  
*Appellate Case No: 2013-000578*

Dear Ms. Kitchings,

Please find enclosed the original and two copies of *Respondent's Motion to Strike Content of Appellant's Designation of Matter to be Included on Appeal* and a *Certificate of Service* in the above-referenced matter. Please file the originals and return clocked copies of each in the enclosed envelope.

By copy of this letter, a copy of this motion is being served on all counsel of record.

Sincerely,

  
Alison Dennis Hood

ADH  
Enclosure

Cc: Danielle F. Payne  
William F. Barnes

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JAN 13 2014  
SC Court of Appeals

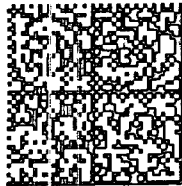
Ness & Jett, LLC  
Attorneys at Law  
P. O. Box 909  
Bamberg, SC 29003

The Honorable Jenny Abbott Kitchings  
SC Court of Appeals Clerk of Court  
P. O. Box 11629  
Columbia, SC 29211

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