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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM HORRY COUNTY**

Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-001091

Lower Court Case No. 2025-CP-26-09089

Claran Lundgren, Appellant,

v.

Ashton Glenn Homeowners' Association, Inc., Waccamaw Management, LLC, and Bob
Sauthoff, individually and as agent of the HOA, Respondents.

**APPELLANT'S RETURN IN OPPOSITION TO RESPONDENTS' MOTION TO
SUPPLEMENT THE RECORD ON APPEAL**

Claran Lundgren, Appellant Pro Se

1622 Montclair Drive

Surfside Beach, South Carolina 29575

(607) 427-5653

Claran.Lundgren@gmail.com

Appellant Claran Lundgren, proceeding pro se, respectfully opposes Respondents' October 2, 2026 Motion to Supplement the Record on Appeal with federal ECF Nos. 22, 27, and 31 as proposed. Respondents' motion now makes the central Rule 210(c) issue explicit: paragraph 9 states that "the three documents were not independently provided to the Court of Common Pleas by Respondents." Respondents nevertheless ask this Court to add the complete documents

because they are publicly available and allegedly subject to judicial notice. Public availability and judicial notice do not eliminate Rule 210(c)'s requirement that the Record on Appeal exclude matter not presented to the lower court.

Appellant does not dispute that the federal action existed, that its docket is public, or that courts may take appropriate judicial notice of indisputable matters concerning prior proceedings. The narrower issue is whether the complete federal filings Respondents now seek to add were themselves presented to the circuit court in a manner that makes them properly includable in this Record on Appeal.

I. Rules 209, 210, and 212 Preserve the Lower-Court Record Boundary.

Rule 209(b), SCACR, permits a designation only of material that may properly be included under Rule 210(c). Rule 210(c) states that the Record on Appeal "shall not, however, include matter which was not presented to the lower court or tribunal." Rule 212(b) supplies a procedure for supplementation by consent or motion; it does not expand the permissible content of the Record. Rule 212(a) likewise describes supplemental matter as matter "which was before the lower court." Accordingly, Respondents' June 2026 designation of ECF Nos. 22, 27, and 31 did not, by itself, make those documents properly includable.

The Court of Appeals applied Rule 210(c) directly in *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007), holding that Morris's statement, because it had not been presented below, "cannot be properly included in the Record on Appeal." The South Carolina Supreme Court later affirmed the Court of Appeals on that procedural issue. *State v. White*, 382 S.C. 265, 270 n.2, 676 S.E.2d 684, 686 n.2 (2009). White therefore confirms the Rule 210(c) record boundary Respondents must satisfy here.

II. Respondents' Own Motion Concedes They Did Not Independently Provide the Three Documents Below.

Paragraph 9 of Respondents' motion states: "While the three documents were not independently provided to the Court of Common Pleas by Respondents, the Court of Common Pleas and this Court are able to take judicial notice of those documents." That concession is significant because Rule 210(c) asks whether matter was presented below, not whether the material could later be located on a public docket.

Respondents' reliance on *Masters v. Rodgers Development Group* does not replace the Rule 210(c) showing. *Masters* stated, "We are, of course, confined to the record in reviewing a judgment for error," and further held that original appellate judicial notice of adjudicative facts should be limited to matters that are indisputable. 283 S.C. 251, 255-56, 321 S.E.2d 194, 196-97 (Ct. App. 1984). *Masters* does not hold that the public availability of a document makes that document part of the appellate record; to the contrary, the court declined to use judicial notice to supply material that was outside the record before it. The existence and filing date of a federal docket entry may be capable of indisputable verification. That is different from treating the complete contents, arguments, attachments, or disputed factual assertions in that filing as though they were part of the matter presented to the circuit court.

III. The Final Order's General Judicial-Notice Language Does Not Establish That These Specific Documents Were Presented Below.

Paragraph 10 of Respondents' motion does not identify a circuit-court filing, hearing submission, or exhibit containing ECF Nos. 22, 27, or 31. Instead, it states that the circuit court "appears to have taken judicial notice" of documents in the federal action because the final order generally refers to "court records from [Appellant's] prior state and federal court lawsuits, which are

subject to judicial notice." (R. p. 9.) That general language does not identify these three complete filings. Respondents' own qualifier - "appears to have" - confirms that this assertion is an inference drawn from the final order's general language, not a record citation demonstrating that ECF Nos. 22, 27, or 31 themselves were presented to or considered by the circuit court.

The hearing record points the other direction. Defense counsel stated: "I'm not asking you to consider any documents, or discovery, or anything like that." (Hr'g Tr. p. 21, ll. 19-21, R. p. 453.) The final order's general reference to prior state and federal court records does not identify ECF Nos. 22, 27, or 31, and it does not establish document by document that the three complete federal filings now proposed were actually presented to the circuit court.

IV. The Existing Record Identifies the Federal Materials Respondents Actually Filed in the February 17 Packet.

Respondents' February 17, 2026 memorandum appears at R. pp. 324-335, and Respondents' Exhibits A-K appear at R. pp. 831-927. The existing Record reproduces that complete 97-page A-K packet. In the memorandum, Respondents stated that the federal-court facts described there came from publicly available court records, "file-stamped copies of which are attached herewith," and requested judicial notice of "these court records." The federal materials they actually attached were ECF No. 1 (Exhibit H), ECF Nos. 14/14-1 (Exhibit I), ECF No. 24 (Exhibit J), and ECF No. 30 (Exhibit K). ECF Nos. 22, 27, and 31 were not included as separate complete documents in that packet.

Appellant's reliance here on the February 17 memorandum and Exhibits A-K solely to identify what was actually filed below does not waive her previously preserved objections to the timeliness, procedural use, or substantive consideration of those materials. Their inclusion in the

Record reflects the procedural history; it is not a concession that the materials were properly considered for substantive Rule 12 purposes.

V. Appellant's Designation Did Not Waive the Rule 210(c) Limitation.

Appellant's May 22, 2026 Rule 209 Designation begins with an express limitation that governs every item that follows: "Appellant designates only matter filed, attached, presented, referenced, or considered in the circuit court proceedings below, and one complete copy of any duplicative item should be included unless duplication is necessary for context or pagination." It then states: "Nothing in this designation waives Appellant's objections to untimely, overbroad, irrelevant, duplicative, or extra-record materials, including any attempt to incorporate wholesale federal-court briefing or materials not presented to the circuit court below." Item 23 must be read subject to those opening limitations. Its reference to the federal Report and Recommendation, the order adopting it, the judgment, and specified federal materials therefore did not constitute unconditional consent to add a complete federal docket document that had not been presented below.

VI. The Pre-Motion Correspondence Confirms Appellant's Non-Consent Was Based on the Rule 210(c) Issue.

Respondents' motion states that Appellant "refused to consent." (Mot. ¶ 6.) The correspondence supplies the relevant context. On September 29, 2026, Respondents requested written consent to add the three documents in a proposed appendix. On September 30, Appellant declined consent and asked Respondents to identify, separately for ECF Nos. 22, 27, and 31, (1) the specific circuit-court record location demonstrating presentation and (2) the specific basis for any contention that the circuit court considered the document. Appellant also expressly stated that Respondents could proceed by motion under Rule 212(b) and reserved all objections.

Respondents did not identify document-specific lower-court locations in that correspondence; the present motion instead relies on public availability and judicial notice.

Because this correspondence occurred after the Record on Appeal was filed and concerns the present Rule 212 motion itself, Appellant submits it as Exhibit A pursuant to Rule 240(c)(3), SCACR, which applies to a return under Rule 240(e) and permits supporting documents when facts relied upon are not contained in the Record on Appeal. Exhibit A is offered only to document the Rule 212 consent process; it is not offered as supplementation of the lower-court Record on Appeal.

VII. ECF No. 22 - The Six-Page Federal Reply.

Appellant's own pleading exhibits contain the federal Report and Recommendation, ECF No. 24, as Complaint Exhibit 19 at R. pp. 554-572. That copy identifies ECF No. 22 as Defendants' November 12, 2024 federal Reply and later refers to a point made in that Reply. (R. pp. 554, 569.) Defense counsel also told the circuit court that the federal motion had been fully briefed. (R. p. 454.) Those references establish that ECF No. 22 existed and was part of the federal procedural history. They do not identify where the complete six-page federal Reply itself was filed with, attached to, handed up to, or otherwise presented to the circuit court.

Appellant therefore requests that supplementation with complete ECF No. 22 be denied unless Respondents establish a lower-court basis satisfying Rule 210(c).

VIII. ECF No. 27 - The 52-Page Filing and the Duplicate Transcript.

Defense counsel stated below that Appellant had filed a response to the federal Report and Recommendation, and ECF No. 30 cites ECF No. 27. Appellant does not dispute those references. But the complete 52-page ECF No. 27 was not included as a separate document in

Respondents' February 17 Exhibits A-K. A reference to a federal filing does not establish that all 52 pages were presented below.

There is also a separate duplication concern. Respondents' Initial Brief identifies the non-transcript portion of ECF No. 27 as "Objections at pp. 1-9," while the existing Record already contains the May 16, 2024 Legal Eagle magistrate-court transcript at R. pp. 496-538. If the Court permits supplementation of ECF No. 27, Appellant respectfully requests that any resulting Appendix avoid unnecessary duplication of material already contained in the Record and be limited to material the Court determines is properly includable.

IX. ECF No. 31 - The Separate One-Page Federal Judgment.

The federal disposition was before the circuit court through ECF No. 30, which states that the district judge adopted the Report and Recommendation and dismissed the federal action. The separately docketed one-page Judgment, ECF No. 31, was not included as a separate document in Respondents' February 17 packet. Although Appellant's May 22 Designation used the term "judgment," that language was expressly limited by the Designation's lower-court-presentation requirement and its reservation of objections to overbroad federal material. Respondents should still establish the Rule 210(c) basis for adding ECF No. 31 itself.

X. Any Supplementation Should Not Resolve the Separate Rule 12 / Rule 56 Merits Issue.

Appellant's appellate briefing separately preserves whether prior-record materials were used only for a permissible purpose at the pleading stage or were used to resolve disputed matters in a manner requiring Rule 56 safeguards. Appellant does not ask the Court to decide that merits issue in resolving this Rule 212 motion. If supplementation is allowed, inclusion should not be treated as a concession that any newly added document was properly considered below for its

truth, completeness, or preclusive effect, or as converting the document into a Rule 10(c) pleading exhibit.

REQUEST FOR RELIEF

For these reasons, Appellant respectfully requests that the Court deny Respondents' Motion to Supplement the Record on Appeal with ECF Nos. 22, 27, and 31 as proposed because Respondents have not established, document by document, that the complete materials were presented to the circuit court as required by Rule 210(c). In the alternative, if the Court permits supplementation in any part, Appellant requests that supplementation be limited to material the Court determines is properly includable; that unnecessary duplication of material already contained in the Record be avoided; and that supplementation not be treated as resolving or waiving Appellant's separately preserved Rule 12 / Rule 56 objections.

Respectfully submitted,

s/ Claran Lundgren

Claran Lundgren

Appellant Pro Se

1622 Montclair Drive

Surfside Beach, South Carolina 29575

(607) 427-5653

Claran.Lundgren@gmail.com

Horry County, South Carolina

Date: October 5, 2026

CERTIFICATE OF SERVICE

I certify that on October 5, 2026, I served a true and correct copy of the foregoing Appellant's Return in Opposition to Respondents' Motion to Supplement the Record on Appeal, together with Exhibit A, upon each counsel of record listed below by electronic mail to the email address shown and by depositing a copy addressed to each in the United States Mail, first-class postage prepaid:

Counsel served:

Jonathan G. Lane, Esquire

McAngus, Goudelock & Courie, LLC

P.O. Box 12519

Columbia, South Carolina 29211

jonathan.lane@mgclaw.com

F. Elizabeth Millender, Esquire

McAngus, Goudelock & Courie, LLC

P.O. Box 12519

Columbia, South Carolina 29211

elizabeth.millender@mgclaw.com

Mark Andrew Nappier, Esquire

3575 Highway 17 Business

Murrells Inlet, South Carolina 29576

MNappier@inletlaw.com

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SC Court of Appeals

Jeffrey Kuykendal, Esquire

McAngus, Goudelock & Courie, LLC

P.O. Box 30307

Charlotte, North Carolina 28230-0307

jeffrey.kuykendal@mgclaw.com

s/ Claran Lundgren

Claran Lundgren

EXHIBIT A

September 29-30, 2026 Rule 212 Correspondence

10/2/26, 7:13 PM

Gmail - 20610.24047.001 – Claran Lundgren v. Ashton Glenn HOA c/o Waccamaw Management and Bob Sa (Claim No.: 0-44717)



Claran Lundgren <claran.lundgren@gmail.com>

20610.24047.001 – Claran Lundgren v. Ashton Glenn HOA c/o Waccamaw Management and Bob Sa (Claim No.: 0-44717)

Jeffrey Kuykendal <jeffrey.kuykendal@mgclaw.com>
To: "claran.lundgren@gmail.com" <claran.lundgren@gmail.com>
Cc: Jonathan Lane <jonathan.lane@mgclaw.com>

Tue, Sep 29, 2026 at 3:03 PM

Ms. Lundgren,

I am assisting with the appeal in the above matter. I saw that you recently provided the record on appeal in three volumes. I believe three of the documents that we identified in our designation of matter were not included in the record on appeal you provided.

Accordingly, pursuant to Rule 212, I am writing for your written consent to add those three documents to the record in an appendix to the record on appeal. I have included the cover page and index for the appendix on the record on appeal and the proposed documents with pages continuing the numbering from where the record on appeal ended.

Let me know if you agree to the inclusion of the appendix or if a motion to the Court of Appeals noting the need for the appendix is necessary.

Thanks.



Jeffrey Kuykendal
Attorney
jeffrey.kuykendal@mgclaw.com



6302 Fairview Road Ste 700, Charlotte, NC 28210-2267
Mail: PO Box 30307, Charlotte, NC 28230-0307
Main: 704-643-6303 | **Direct:** 704-405-4575 | **Fax:** 704-643-2376
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2 attachments



Appendix to Record on Appeal.doc
33K



Documents for Appendix to Record on Appeal.pdf.pdf
2766K

<https://mail.google.com/mail/u/0/?ik=7c31c12717&view=pt&search=all&permmsgid=msg-f:1877694221944295721&simpl=msg-f:1877694221944295721> 1/1



Claran Lundgren <claran.lundgren@gmail.com>

20610.24047.001 – Claran Lundgren v. Ashton Glenn HOA c/o Waccamaw Management and Bob Sa (Claim No.: 0-44717)

Claran Lundgren <claran.lundgren@gmail.com>
To: Jeffrey Kuykendal <jeffrey.kuykendal@mgclaw.com>
Cc: Jonathan Lane <jonathan.lane@mgclaw.com>

Wed, Sep 30, 2026 at 1:54 PM

Mr. Kuykendal:

Thank you for your September 29, 2026 correspondence and proposed Appendix. I do not consent to the proposed Appendix.

Please identify, separately for each of ECF Nos. 22, 27, and 31, (1) the specific location in the circuit-court record demonstrating that the document was presented to the circuit court and (2), if Respondents contend that the document was considered by the circuit court, the specific basis for that contention.

If Respondents contend supplementation is warranted notwithstanding Appellant's non-consent, they may proceed pursuant to Rule 212(b), SCACR.

I reserve all objections.

Respectfully,
Claran Lundgren
Appellant Pro Se
Appellate Case No. 2026-001091

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