

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes III, Master in Equity

71154

Case No. 2013-002281

Deep Keel, LLC, Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc., Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the ... Appellants.

Motion to Strike from Designation of Matter

Charles S. Altman
Meredith L. Coker
SC Bar No. 71103
ALTMAN & COKER LLC
575 King Street, Suite A
Charleston, SC 29403
(843) 853-9907
Attorneys for Respondent

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SC Court of Appeals

Pursuant to Rules 209(b), 210(c), and 240, SCACR, Respondent hereby moves to strike certain of Appellants' Designation of Matter to be included in the Record on Appeal. A full explanation of this Motion is set forth herein and a memorandum in support would serve no useful purpose. In support of said Motion, Respondent would state as follows.

Appellants' Designation of Matter dated January 2, 2014, includes matter not before the Master in Equity in the Court below. Specifically, Plaintiff's First Set of Requests for Admission (Item 3) and Answers to Plaintiff's First Set of Requests for Admission (Item 4) were not proffered to the Master, were not made a part of the trial record, nor were at any time filed in the Court below.

Rule 209(b), SCACR, states

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

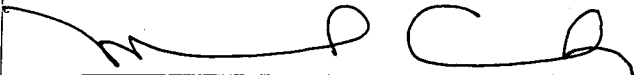
Id. Rule 210(c), SCACR states, in relevant part, "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Id. See also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 795-96 (1992); Norris v. Ferre, 315 S.C. 179, 182, 432 S.E.2d 491, 493 (Ct.App. 1993).

Discovery requests and responses are not, as a matter of procedure, before the trial court. See Rules 5(d), 26(g)(1), SCRCP. Appellants seek to improperly include discovery material which was not filed with the Court, was not admitted into evidence in

the trial below, and was not proffered to the Master either at the trial or in support of Appellant's Motion to Reconsider.

WHEREFORE, for the reasons stated hereinabove, Respondent respectfully requests that Items 3 (Plaintiff's First Set of Requests for Admission) and 4 (Answers to Plaintiff's First Set of Requests for Admission) be stricken from Appellants' Designation of Matter and excluded from the Record on Appeal when published.

Respectfully submitted this 31st day of January, 2014.



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PROOF OF SERVICE OF MOTION TO STRIKE
FROM DESIGNATION OF MATTER

I certify that I have served the Motion to Strike From Designation of Matter on Atlantic Private Equity Group, LLC, by delivering the same via United States Mail, postage prepaid, on January 31, 2014, to its attorney of record Keating L. Simmons, III, Simons & Dean, 147 Wappoo Creek Drive, Suite 604, Charleston, South Carolina 29412.



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SC Court of Appeals

Charleston, South Carolina
January 31, 2014

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Meghan Garmany, Assistant
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January 31, 2014

Jenny Abbott Kitchings
Honorable Clerk of Court
Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

Re: Deep Keel, LLC v. Atlantic Private Equity Group, LLC, Terry L. Rohlfing, Jerry T. Caldwell, and Bluffton Village Town Center Property Owners' Association, Inc.
Case Number: 2013-002281
Our File Number: 131-316909

Dear Ms. Kitchings:

Enclosed for filing please find an original plus seven (7) copies of the Motion to Strike from Designation of Matter and related Proof of Service along with our firm's check in the amount of \$25.00 for the filing fee. Please return the filed copies of the aforementioned documents to our office using the enclosed self-addressed, stamped envelope.

Please be advised by copy of this letter I am serving all counsel with the same. Feel free to contact the office should you have any questions.

Sincerely,



Meghan Garmany
Legal Assistant

/mrg
Enclosure(s)

cc: Keating L. Simmons, III

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SC Court of Appeals