

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Case No. 2011-CP-40-4068

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Denise Wright

Appellant,

v.

PRG Real Estate Management,  
Inc.; Franklin Pineridge  
Associates; Karen Campbell  
Individually, and in her  
Representative Capacity as an  
Agent of PRG Real Estate  
Management

Respondents.

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**SC Court of Appeals**

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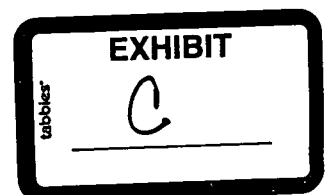
**RESPONDENTS'  
MOTION TO STRIKE**

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 210(c), SCACR, Respondents respectfully move this Court for an Order striking from the Record on Appeal certain matters designated by Appellants.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson, 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct.



App. 2007) Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court, including evidence, statutes or ordinances on which the parties are relying, and written memorials of any judicial action which triggered the appeal or which is necessary for the resolution of the appeal. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

In the Initial Reply Brief of Appellant, Appellants designated seven additional matters to be included in the Record on Appeal, as follows:

1. Karen Campbell Deposition;
2. Denise Wright Deposition;
3. Kevin Isenhoward Deposition;
4. Bill Booth Deposition;
5. Timir Patel Affidavit;
6. Nelissa Davis Affidavit; and
7. Shawn Howland Affidavit.

Respondents request the Court strike the “Timir Patel Affidavit” and “Nelissa Davis Affidavit” matters from Appellant’s Record on Appeal, as they were not presented to the circuit court and, therefore, are not appropriately included in the Record on Appeal. Appellant never presented these affidavits to the Circuit Court in Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment (“Plaintiff’s Opposition Memorandum”) or oral

argument of the summary judgment motion. Rule 210(c), SCACR. These Affidavits were also (appropriately) excluded from Appellant's Initial Brief.

Respondents also request the Court strike Appellant's wholesale inclusion of the full deposition transcripts of Karen Campbell, Denise Wright, and Bill Booth. Although Appellant presented portions of these matters to the Circuit Court, as cited in the Plaintiff's Opposition Memorandum and in Appellant's Initial Brief, Appellant's inclusion of entire deposition transcripts for these individuals violates the Appellate Court Rules.<sup>1</sup> The Designation may only include portions of the transcript or other materials which may be properly included in the Record. Rule 209, SCACR (“[T]he 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)] (emphasis added).

Furthermore, the Appellate Court Rules prohibit a party from including any matter in his Designation of Matter that is irrelevant to the appeal. Rule 209(b), SCACR; 15 S.C. Jur. Appeal and Error § 59 (“The Record on Appeal should contain only the information needed to permit the court to decide the issues on appeal; it should contain no irrelevant material”); 15 S.C. Jur. Appeal and Error § 63 (“Matters irrelevant to the question involved in the appeal are also disallowed.”). By attempting to designate entire deposition transcripts of these named individuals, Appellant seeks to include substantial matter that is not relevant to the appeal.

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<sup>1</sup> Respondent anticipates Appellant will cite to the transcript of the October 1, 2012 oral argument of the summary judgment motion (“Hearing Transcript”) as support for the designation. In the transcript, Appellant's counsel stated “For the purposes of a record, Your Honor, I would like to move the full depositions of Denise Wright, Karen Campbell, Mohammed Gabber, Michelle Roten, Sam Foster, and Kevin Isenhoward . . . “ (Oct. 1, 2012 Hearing Tr. at 45:18-21). Although Appellant's counsel made this motion during oral argument, Appellant's counsel obviously did not present the entirety of these transcripts to the Circuit Court. Appellant only argued and referenced to portions of the depositions in Plaintiff's Opposition Memorandum and in the Hearing Transcript. Respondent maintains that wholesale inclusion of the entire deposition transcripts violates the Appellate Court Rules, as discussed supra.

Respondents also request the Court strike Appellant's wholesale inclusion of the full deposition transcript of Kevin Isenhoward and Appellant's citation to certain testimony of Mr. Isenhoward appearing on pages 16 and 17 the Initial Reply Brief of the Appellant ("Init. Reply Br."). The only deposition testimony of Mr. Isenhoward presented in Plaintiff's Opposition Memorandum and during oral argument related to lighting near Appellant's front door and an underpass on one of the trails near Wellspring. (Plaintiff's Opposition Memo. at 30; Hearing Tr. at 34:18 – 35:3). Appellant did not present testimony concerning whether Appellant told Mr. Isenhoward her attackers were concealed, or concerning "overgrown hedges" that may obstruct a person's view. (Init. Reply Br. of App. at 16-17). Because this testimony was not presented to the Circuit Court, it should not be included in the Record. Furthermore, wholesale inclusion of Mr. Isenhoward's deposition violates the Appellate Court Rules for the same reasons already provided with regard to the depositions of Karen Campbell, Denise Wright, and Bill Booth, discussed supra.

In short, the Circuit Court judge did not consider these matters in reaching his decision to grant summary judgment in favor of Respondents. Therefore, it is not apparent what purpose will be served by including these matters in the Record on Appeal. Accordingly, because these matters were not presented to the Circuit Court, they are not properly included in the Record on Appeal and Respondents request they be stricken.

***[SIGNATURE PAGE TO FOLLOW]***

Respectfully submitted,

COLLINS & LACY, P.C.

By:

  
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**RESPONDENTS' MOTION TO STRIKE**

Columbia, South Carolina  
March 21, 2014

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Case No.: 2011-CP-40-4068

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Denise Wright,

Appellant,

vs.

PRG Real Estate Management,  
Inc.; Franklin Pineridge Associates;  
Karen Campbell Individually, and in  
her Representative Capacity as an  
Agent of PRG Real Estate Management

Respondents.

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**PROOF OF SERVICE**

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I hereby certify that I served the Respondents' Motion to File Respondents' Motion to Strike Out of Time upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on March 21, 2014, addressed to the following:

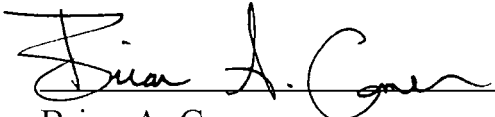
**Counsel Served:**

E. Wayne Ridgeway, Jr., Esquire  
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Columbia, SC 29211

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Jordan C. Calloway, Esquire  
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Gerald Malloy, Esquire  
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108 Cargill Way  
Hartsville, SC 29551

Respectfully submitted,  
COLLINS & LACY, P.C.

By:  \_\_\_\_\_

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March 21, 2014

**PROOF OF SERVICE –  
RESPONDENTS’ MOTION TO  
STRIKE**



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March 21, 2014

**VIA HAND-DELIVERY**

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
Clerk of Court  
Post Office Box 11629  
Columbia, SC 29211

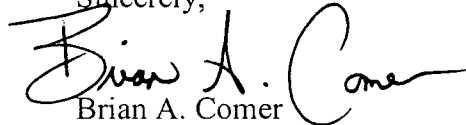
**Re: Denise Wright v. PRG Real Estate Management, Inc., Franklin Pineridge Associates, Karen Campbell Individually and in her Representative Capacity**  
**Civil Action No.: 2011-CP-40-04068**  
**Claim No.: 684-259253**  
**C&L File No.: 1-2055**

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Respondents' Motion to File Respondents' Motion to Strike Out of Time and Respondents' Motion to Strike in the above-referenced matter. I am also enclosing herewith two (2) checks, each in the amount of \$25.00, for the required filing fees. Please return the filed copies of each to me via my courier.

By copy of this letter, a copy of same, with enclosures, is being served upon all counsel.

With kindest regards, I am

Sincerely,  
  
Brian A. Comer

BAC:lcc

Enclosures

cc: S. Randall Hood, Esquire  
Jordan C. Calloway, Esquire  
Deborah G. Casey, Esquire  
E. Wayne Ridgeway, Esquire  
Gerald Mallow, Esquire