

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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.

MEMORANDUM IN RESPONSE TO
APPELLANTS' MOTION FOR RECONSIDERATION

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

This Court entered an Order on April 10, 2014, granting Respondent's Motion to Strike certain matters from Appellant's designation of matters to be included on the record on appeal. On or about May 9, 2014, Appellants filed a Motion for Reconsideration or Clarification of said Order. For the reasons set forth below, Respondent opposes in part Appellants' Motion.

To the extent that the Appellants seek reconsideration of the Court's Order to allow the stricken matters to remain part of the record, Respondent opposes the Motion. The Order of this Court is well supported by the record below and complies with Rule 209(b), SCACR.

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.

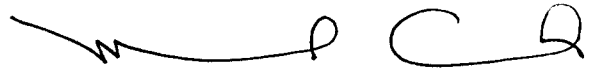
Id. Rule 210(c), SCACR states, in relevant part, "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Id. See also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 795-96 (1992); Norris v. Ferre, 315 S.C. 179, 182, 432 S.E.2d 491, 493 (Ct.App. 1993).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

The Court's Order was issued subsequent to the filing of the final briefs and

Record on Appeal. The Record on Appeal, as well as certain portions of Appellants' Final Brief, therefore contain the matters that this Court has ordered be stricken. While Respondent contends that the Order to Strike was proper and should stand as the law of the case, Respondent would join with Appellants to seek the Court's guidance as to the most cost-effective and appropriate method by which to strike the matter from the Record and any reference made to the stricken matter in Appellants' Brief.

WHEREFORE, for the reasons stated hereinabove, Respondent opposes Appellants' Motion for Reconsideration of this Court's Order of April 10, 2014, and respectfully requests that this Court clarify its Order to the extent deemed necessary with regard to striking the matters from the final Record and Brief.

Respectfully submitted this 27th day of May, 2014.



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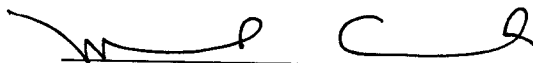
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Property Owners' Association, Inc., Defendants,

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Terry L. Rohlfing, and Jerry T. Caldwell are the Appellants.

PROOF OF SERVICE OF MEMORANDUM IN RESPONSE TO
APPELLANTS' MOTION FOR RECONSIDERATION

I certify that I have served the Memorandum in Response to Appellants' Motion for Reconsideration by delivering the same via United States Mail, postage prepaid, on May 27, 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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Charleston, South Carolina
May 27, 2014

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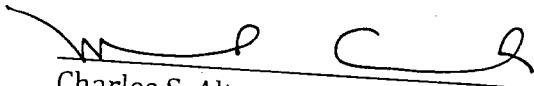
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May 27, 2014



ATTORNEYS & COUNSELORS at LAW

Meredith L. Coker
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May 27, 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, et al.*
Case Number: 2013-002281
Our File Number: 131-316909

Dear Ms. Kitchings:

Enclosed for filing please find an original plus six (6) copies of Respondent's Memorandum in response to Appellants' Motion for Reconsideration. Please be advised by copy of this letter I am serving all counsel with the same. Please contact me if you require additional information.

Sincerely,

Meredith L. Coker

Enclosure(s)

cc: Keating L. Simmons, III

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MAY 28 2014

SC Court of Appeals

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APR 11 2017

SC Court of Appeals

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