

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Edward W. Miller, Presiding Judge

JUL 07 2014

SC Court of Appeals

Case Number: 2013-CP-23-1833
Appellate Case No. 2013-001645

12723

D&C Builders, Inc.....Appellant,

v.

Richard M. Buckley and Wells Fargo National Association, Defendants,
And Richard M. Buckley, Third-Party Plaintiff,

v.

Scott Dodenhoff, Third-Party Defendant

of whom:

Richard M. Buckley Respondent,

**MOTION TO STRIKE MATTER FROM RESPONDENT’S DESIGNATION AND
BRIEF, OR IN THE ALTERNATIVE, ORDER OFFICE OF DISCIPLINARY
COUNSEL TO RELEASE ENTIRE FILE ON APPELLANT’S ETHICS
COMMISSION COMPLAINT FILED JULY 26, 2013**

Appellant, D&C Builders, Inc., by and through its undersigned attorney and pursuant to Rule 240, SCACR, hereby respectfully moves the Court for an Order striking certain matter from Respondent’s Designation of Matter and any references, provisions or

arguments supported by such matters in Respondent's Initial Brief. This motion is based in part on Rule 210(c) of the South Carolina Rules of Appellate Procedure as being matters not presented to the lower court at all, and in part on Rule 209(b) as matters not properly included in the Record because they were not preserved for appeal.

The following items contained in Respondent's Designation of Matter and argued in Respondent's Brief were never presented to the lower court prior to the filing of the Notice of Appeal on July 26, 2013 and are not contained, incorporated or referenced in any way in the pleadings, transcripts, affidavits, orders, exhibits or other filings made to the lower court in this matter:

5. June 19, 2013 email
18. August 1, 2013 Email (emphasis added)
20. Appellant's Ethics Commission Complaint filed July 26, 2013
21. SC Supreme Court's Office of Disciplinary Counsel Ruling dated November 22, 2013
22. SC Supreme Court's Office of Disciplinary Counsel Ruling dated December 27, 2013
30. Appellants' Returns to Appellate Motions Filed by Respondent
31. April 8, 2014; June 9 and 10, 2014 email chain
32. Respondent's Motion for Partial Relief dated April 10, 2014
34. Appellant's email dated August 1, 2013
35. Initial Brief of Appellant dated November 8, 2013
40. All Appellate Filings of Appellant

Respondent's Initial Brief extensively utilizes the substance of the above improperly designated matter as the basis and support for its facts and arguments presented to the Court. Therefore, to the extent such matters are stricken from Respondent's Designation by the Court, Appellant hereby moves that any corresponding references, provisions or arguments supported by the stricken designated matters also be stricken from Respondent's Initial Brief.

Should the Court deny the motion to strike as it particularly relates to items 20, 21 and 22 of Respondent's Designation of Matter, Appellant would move pursuant to Rule 12(a) of Rule 413 of the Appellate Court Rules (Rules for Lawyer Disciplinary Enforcement) that the Court issue an Order to the Office of Disciplinary Counsel to release the entire contents of its investigation file into Appellant's Ethics Commission Complaint filed July 26, 2013 to Appellant to be included in the Record on Appeal in its entirety.

Although not presented to the lower court, Respondent argues to this Court in its brief that the determination of the Office of Disciplinary Counsel to dismiss Appellant's complaint without action supports Respondent's claims that the two cases are not "substantially related" and should be taken as authority by this Court. Undersigned counsel for Appellant did not represent Appellant in such complaint which was filed by Appellant pro se, has had no communications with the Office of Disciplinary Counsel about the matter and is not privy to what facts, circumstances, arguments or information was presented to the Office of Disciplinary Counsel regarding such matter.


If the Court should allow Respondent's argument as to the interpretation of such decision as binding to stand, the Court must Order that all information considered by the

Office of Disciplinary Counsel in such decision be made available to Appellant for review and allow Appellant the opportunity to respond to Respondent's argument in its Reply Brief.

As a result, counsel respectfully requests an Order striking the herein referenced items from Respondent's Designation of Matter and striking all corresponding references, provisions and arguments supported by such stricken matter contained in Respondent's Initial Brief. In the alternative, if Respondent's Designation of Matter regarding Appellant's Ethics Complaint and the decision of the Office of Disciplinary Counsel are allowed to be included in the Record, counsel respectfully requests an Order requiring the Office of Disciplinary Counsel to release its entire file to Appellant for inclusion in the Record on Appeal.

Respectfully submitted,

July 1, 2014



Brian A. Martin
S.C. Bar # 9791
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212 Trade Street
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(864) 879-7779
ATTORNEY FOR APPELLANT

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v.

Scott Dodenhoff, Third-Party Defendant

of whom:

Richard M. Buckley Respondent,

PROOF OF SERVICE

I hereby certify that that I have served a true copy of Appellant's Motion to Strike Matter from Respondent's Designation and Brief, or in the Alternative, Order Office of Disciplinary Counsel to Release Entire File on Appellant's Ethics Commission Complaint Filed July 26, 2013 and Memorandum in Support of Appellant's Motion to Strike on Respondent and all parties of record by depositing a copy in the United States Mail, first class postage prepaid, on July 2, 2014, addressed to their attorneys of record as follows:

M. Stokely Holder, Esq.
Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601

H. Stewart James, Esq.
Babb & Brown, P.C.
505 W. Butler Rd.
Greenville, South Carolina 29607

Thomas A. Shook, Esq.
Finkel Law Firm, LLC
Post Office Box 71727
North Charleston, South Carolina 29415

July 2, 2014

A handwritten signature in black ink, reading "Brian A. Martin", written over a horizontal line.

Brian A. Martin
Brian A. Martin, LLC
S.C. Bar # 9791
212 Trade Street
Greer, South Carolina 29651
(864) 879-7779

ATTORNEY FOR APPELLANT



BRIAN A. MARTIN, LLC
ATTORNEY AT LAW

JULY 2, 2014

VIA U.S. MAIL AND FAX: 803-734-1839

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *D&C Builders, Inc. v. Richard M. Buckley, et al.*
Greenville County Case #: 2013-CP-23-1833
Appellate Case No. 2023-001645

Dear Ms. Kitchings:

Please find enclosed for filing in the above referenced matter an original and seven (7) copies each of Appellant's **Motion to Strike Matter from Respondent's Designation and Brief**, Memorandum in Support of Appellant's Motion to Strike, Proof of Service along with a check for the filing fee in the amount of \$25.00. Please file the original and return one clocked copy of each to our office in the enclosed self-addressed stamped envelope.

Additionally, please find enclosed for filing in the above referenced matter an original and seven (7) copies each of Appellant's **Motion for Extension of Time to file Reply Brief**, Proof of Service, and a check for the filing fee in the amount of \$25.00. Please file the original and return one clocked copy of each to our office in the enclosed self-addressed stamped envelope.

By copy of this letter, we are serving the same on all other parties via their counsel of record.

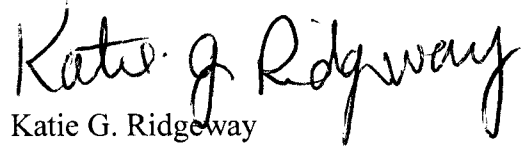
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SC Court of Appeals

Thank you in advance for your assistance. Should you have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink that reads "Katie G. Ridgeway". The signature is written in a cursive, flowing style.

Katie G. Ridgeway
Paralegal

Enclosures (Originals by U.S. Mail)

cc: M. Stokely Holder, Esquire
H. Stewart James, Esquire
Thomas A. Shook, Esquire

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SC Court of Appeals

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