

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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73327

APPEAL FROM Horry COUNTY  
Court of Common Pleas

William H. Seals, Presiding Court Judge

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Trial Court Case No. 2013-CP-26-5009

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City of Myrtle Beach.....*Respondents,*

v.

KNS Foundation, LLC, d/b/a Elite.....*Appellant.*

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RESPONDENT CITY OF MYRTLE BEACH'S MOTION  
TO SUPPLEMENT RECORD ON APPEAL

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Michael W. Battle, SC Bar # 00584  
James R. Battle, SC Bar # 73604  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528  
T: 843-248-4321  
mbattle@battlelawsc.com

Attorneys for Respondent City of Myrtle Beach

August 21, 2014

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**SC Court of Appeals**

## **MOTION TO SUPPLEMENT RECORD ON APPEAL**

The Respondent City of Myrtle Beach, pursuant to Rule 212(b), SCACR, hereby moves the court for an order allowing the Respondent to supplement the Record on Appeal in order to include materials proposed to be included by the Respondent in the Record on Appeal in its Respondent's Designation Of Matter To Be Included In The Record On Appeal but omitted by the Appellant. In support of the motion, the Respondent shows the following to the court:

1. Leave to supplement the Record on Appeal will not prejudice the Appellant because the omitted materials were proposed by Respondent to be included in the record in Respondent's Designation Of Matter To Be Included In The Record On Appeal. The omitted materials are:

1. ¶ 2. City Exhibits Book (6 Tabs) - Elite Business License Revocation Hearing License # 26941, #26943, & #26942 hearing.
2. ¶ 3. Pages 6 -19 of the Transcript of hearing held before the City of Myrtle Beach Council Members on Tuesday, June 25, 2013 prepared by Sharon B. Brock of Prestige Court Reporting, Inc., 125 pages;
3. ¶ 4. City's Exhibit s #'s 1,2,3 & 4 as identified in Transcript of hearing held before City Council

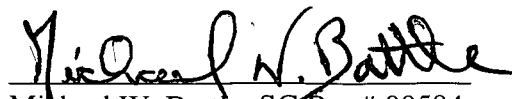
The omission by Appellant of the materials designated in Respondent's Designation Of Matter To Be Included In The Record On Appeal was deliberate. Appellant claims that Circuit Judge William H. Seals, Jr., did not examine the omitted exhibits when he affirmed the decision of City Council on appeal to the Circuit Court. Although Appellant has admitted the exhibits were part of the evidence considered by City Council, Appellant claims that the Clerk of Court for Horry County was unable to locate copies the exhibits for Appellant's attorneys when they requested the record. Appellant claims the omitted materials were not considered by Judge Seals and they should be omitted from the

the Record on Appeal. Respondent contends that the failure of the Clerk of Court to locate the exhibits is immaterial to the merits of Appellant's appeal. The exhibits were part of the materials considered by City Council and the appeal is from City Council's decision to revoke Appellant's business license.

The supplemental transcript pages show the procedure followed and agreed to by the parties and City Council including Respondent City of Myrtle Beach's introduction of exhibits described in ¶'s 2 & 4 above. Those exhibits were introduced into the record of the hearing before City Council for the City of Myrtle Beach without objection from the Appellant. [Tr. pg. 16]. Appellant's attorneys were given copies of the exhibits on the first day of the hearing before City Council.

2. Supplementation of the Record on Appeal is necessary to allow the Respondent a fair appeal. Supplementation is also necessary because the exhibits provide additional evidentiary support of City Council's decision to revoke Appellant's business license.

WHEREFORE, the Respondent City of Myrtle Beach respectfully requests that the court permit it to supplement the Record on Appeal in order to include the omitted materials that were proposed to be included from Respondent's Designation Of Matter To Be Included In The Record On Appeal.



Michael W. Battle, SC Bar # 00584

James R. Battle, SC Bar #73604

Battle Law Firm LLC

PO Box 530

Conway, SC 29528

(843) 248-4321

Attorneys for City of Respondent City of Myrtle Beach

August 21, 2014

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM HORRY COUNTY  
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PROOF OF SERVICE

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Teresa M. Phillips certifies that she is a Paralegal with Battle Law Firm, LLC, attorneys for Respondent City of Myrtle Beach and that she has mailed Respondent City of Myrtle Beach's Motion to Supplemental Record on Appeal to the addressees shown this 21<sup>st</sup> day of August, 2014, with proper postage attached thereto.

Howell V. Bellamy, III  
Bellamy Law Firm  
PO Box 357  
Myrtle Beach, SC 29578  
*Attorney for Plaintiff*

John M. Leiter  
1203 48<sup>th</sup> Ave. North, Suite 109  
Myrtle Beach, SC 29577  
*Attorney for Plaintiff*

Armand G. Derfner  
PO Box 600  
Charleston, SC 29402  
*Attorney for Plaintiff*

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Teresa M. Phillips

Teresa M. Phillips, Paralegal  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528  
(843)248-4321

**BATTLE LAW FIRM, LLC**  
ATTORNEYS AND COUNSELORS AT LAW  
1200 MAIN STREET  
POST OFFICE BOX 530  
CONWAY, SOUTH CAROLINA 29528  
TELEPHONE (843) 248-4321  
FACSIMILE (843) 248-4512  
www.battlelawfirm.com

MICHAEL W. BATTLE  
E-Mail Address: [mbattle@battlelawsc.com](mailto:mbattle@battlelawsc.com)  
JAMES R. BATTLE, II  
E-Mail Address: [jbattle@battlelawsc.com](mailto:jbattle@battlelawsc.com)

M. KIRK BATTLE  
E-Mail Address: [kbattle@battlelawsc.com](mailto:kbattle@battlelawsc.com)

August 21, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 116929  
Columbia, SC 29211

RE: K & S Foundation, LLC d/b/a Elite v. City of Myrtle Beach  
Case No. 2013-CP-26-5009 (Appellate Case No.: 2013-002793)

Dear Ms. Kitchings:

Enclosed is Appellant City of Myrtle Beach's Motion to Supplement the Record on Appeal to include materials listed in Respondent's Designation of Matter but omitted from the Transcript of Record by Appellant. I am enclosing the required filing fee in the amount of \$25.00 to cover the cost for this motion.

By copy of this letter I am notifying the attorneys for the Appellant of my request. If you need any additional information please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,

  
Michael W. Battle

Enclosure: Stated

C: Howell Bellamy, III, John M. Leiter and Armand Derfner  
Tom Ellenburg

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**SC Court of Appeals**

**BATTLE LAW FIRM, LLC**  
1200 MAIN STREET  
POST OFFICE BOX 530  
CONWAY, SOUTH CAROLINA 29528-0530



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Columbia, SC 29211

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