

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Presiding Judge

Case No. 2013-CP-23-1833

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 is the Respondent.

REPLY OF RESPONDENT IN SUPPORT OF RESPONDENT'S
MOTION TO STRIKE MATTER FROM APPELLANT'S DESIGNATION AND
BRIEF

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SC Court of Appeals

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The Appellant is attempting to have this Court review documentation and records that the lower court has never even seen.

The Appellant has attempted to include the following in the Record on Appeal in this matter:

23. Entire contents of Spartanburg County Court File of D&C Builders, Inc. v. TMKG, Inc., 2011-CP-42-04141

It is well established that the fundamental gate-keeping function of the Appellate courts of this State is to ensure that the issues on appeal, together with any substantive support thereof, be properly presented to and ruled upon by the lower court. Ulmer Id.; In the Interest of Michael H. at 732; Busillo Id.; Wilder Corp., Id.; Armstrong at 378; Conran Id.; Beall Id.; Betsill Id.; Elam Id.; White Id.; Carolina Chloride Id.

If the actual “Entire contents” of another case were allowed to be presented to the Appellate Court for the first time without any shred of any content of the same case being previously presented to, and ruled upon by, the lower court, the cornerstone of this Court’s jurisdiction would be eviscerated (especially when the lower court, as is the case here, never even ruled on the underlying assertion purportedly related to the contents of that case). Id.

The Appellant attempts to justify the inclusion of this documentation into the record on appeal here by claiming the Respondent never took exception or made objection in the lower court to “Appellant’s introduction and use of the information” to the lower court, and the lower court “refused to consider the facts presented by the TKMG Court file.” See Appellant’s Return to Respondent’s Motion to Strike. and Memorandum for same. However, as evidenced by the transcripts and the Appellant’s

own subsequent summaries and descriptions of same to the lower court, those claims are misleading and a misrepresentation of the facts.

It remains abundantly clear from the transcript and the lengthy, detailed summaries of same provided to the lower court by Appellant itself that the Appellant never “introduce[ed]” or “use[d]” the “Entire contents of Spartanburg County Court File of D&C Builders, Inc. v. TMKG, Inc., 2011-CP-42-04141” in the lower court. Likewise, it is just as clear from same that the lower court never “refused to consider the facts presented by the TKMG Court file”; rather, the lower court was never presented with them.

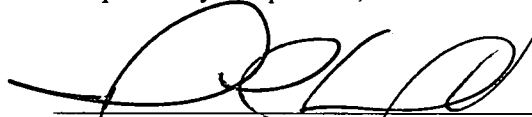
Furthermore, if the Appellant thought the lower court had actually “refused to consider” the documents offered by Appellant, then it would be “encumbent upon him to raise the issue by proper exceptions.” Beall v. Doe, 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984). As is clear from the transcript and the Appellant’s detailed, lengthy summaries of same, the Appellant never made such exception, and the Appellant was never otherwise precluded from making the documents part of the record.

The statement by the lower court regarding the public, non-confidential nature of the few pleadings referenced by Appellant had nothing to do with the lower court’s alleged “refus[al] to consider the facts presented by the TKMG Court file”, as the Appellant now alleges. Furthermore, if that is what the Appellant truly believed at the time, it should have, at a minimum, taken exception. Beall v. Doe, 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984) But, Appellant failed to do anything in response. Yet, the Appellant now attempts to present the “Entire contents” of this separate matter to this

Court.

It remains clear that despite the opportunity to “introduce and use the information” in its arguments to the lower court, the Appellant never did. The Respondent did not offer into the record any of the contents of the other case, the lower never ruled (“refused” or otherwise) on any such non-existent offer into the record, and the lower court never made a dispositive ruling on the Respondent’s motion. So, as there is absolutely no basis in support of Appellant’s apparent contention that the lower court issued a dispositive ruling on the seminal issue of disqualification, the record is also void of any “introduction and use” by Appellant or objection made by Appellant before the lower court, or refusal by the lower court, regarding the “Entire contents” of the other case. There being no such ruling, no such objection, and there likewise being no indication in the record that the lower court was presented with or reviewed any of the “Entire contents” of the other case, the Respondent’s Motion to Strike should be granted.

Respectfully Requested,



October 16, 2014

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

OCT 17 2014

Edward W. Miller, Presiding Judge

SC Court of Appeals

Appellate Case No. 2013-001645
(Trial Court Case No. 2013-CP-23-1833)

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 is the Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Reply of Respondent in Support of Respondent's Motion to Strike Matter from Appellant's Designation and Brief and Reply Memorandum in Support of Respondent's Motion to Strike Matter from Appellant's Designation and Brief in the above-referenced case has been served on all parties of record by electronic mail and by mailing a copy of same in the United States mail, first-class postage prepaid this 16th day of October, 2014, addressed as follows:

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October 16, 2014

Via Federal Express

Hon. Jenny Abbott Kitchings
Clerk of Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *D&C Builders, Inc. v. Richard M. Buckley, et al.*
Of Whom Richard M. Buckley is the Respondent
Appeal from Greenville County
C.A. No.: 2013-CP-23-1833
Appellate Case No.: 2013-001645

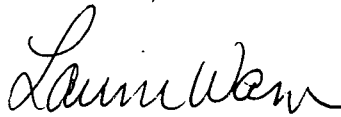
To Whom It May Concern:

Please find enclosed the original and six (6) copies of Reply of Respondent in Support of Respondent's Motion to Strike Matter from Appellant's Designation and Brief and Reply Memorandum of Respondent in Support of Respondent's Motion to Strike Matter from Appellant's Designation and Brief, along with Proof of Service in the above referenced matter. By copy of this letter, we are serving one copy of each upon all counsel of record.

Thank you for your assistance in this matter and please do not hesitate to contact our office if you have any questions.

Very truly yours,

KENISON, DUDLEY & CRAWFORD, LLC



Laurie Warren
Legal Assistant

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/lkw

Enclosures

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