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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 204-000582

Tipperary Sales, d/b/a La-Z-Boy Furniture Gallery, Appellant,

v.

South Carolina Department of Transportation; South Carolina Department
of Health and Environmental Control; City of North Charleston;
Charleston Water System; Associated Developers, Inc., Parkhill, LLC, Defendants,

Of Which South Carolina Department of Transportation; South Carolina
Department of Health and Environmental Control; City of North
Charleston; and Charleston Water System are the Respondents.

**MOTION TO STRIKE DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondents move, pursuant to Rules 209(b) and 210(c), SCACR, to strike certain matters that the Appellant has proposed to be included in the Record on Appeal on the ground that they were not presented in the lower court.

Rule 209(b), SCACR provides that "... 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)]." Rule 210(c), SCACR provides that: "The Record shall not, however, include matter which was not presented to the lower court or tribunal."

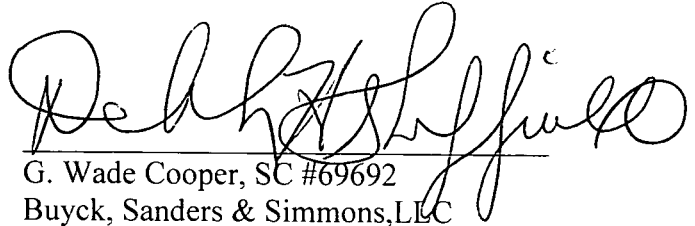
In the Appellant's Designation of Matter to be Included in the Record on Appeal, the Appellant listed two documents denominated as "Exhibits," namely: 1980 Seabrook Study, and 2007 Davis & Floyd Study," which it proposes be included in the Record on Appeal. However, these two documents were never presented in the lower court. While the two documents were mentioned in the Complaint and Amended Complaint, they were not attached. Nor were the actual documents presented to the lower court as exhibits by the Appellant in any other respect. Accordingly, Rule 210(c) prohibits them from being included in the Record on Appeal and, thus, under Rule 209(b), the Appellant may not designate them.

The undersigned counsel for the Respondent Charleston Water System consulted with the Counsel for Appellant regarding this matter and, while he could not confirm that the documents had ever been presented to the trial court as exhibits, he declined to consent to amending Appellant's designation to withdraw them. Therefore, the Respondents hereby move the Court for an order striking those matters.

Request to Hold Final Briefing in Abeyance

Pursuant to the Court's order of January 2, 2015, the Respondents' initial brief and designations are due to be filed and served no later than February 17, 2015. Since the inclusion of these exhibits may affect the Respondents' argument in their brief, they request that the Court hold the due date in abeyance pending disposition of this motion.

Respectfully submitted,



G. Wade Cooper, SC #69692
Buyck, Sanders & Simmons, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
(843) 377-1400

Andrew S. Halio, SC # 2459
Halio & Halio
P.O. Box 747
Charleston, SC 29402-0747
(843) 577-5200
Attorney for Respondent SCDHEC

Amanda Maybank
Maybank Law Finn, LLC
P.O. Box 12579
Charleston, SC 29422
(843) 408-4272
Attorney for Respondent SCDOT

Deborah H. Sheffield, SC #2757
117 Brook Valley Rd.
Columbia, SC 29223
(803) 419-7837
**Attorneys for Respondent
Charleston Water System**

Phillip S. Ferderigos
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700
**Attorney for Respondent
City of North Charleston**

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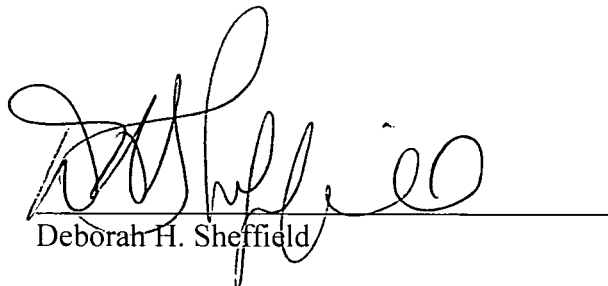
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SC Court of Appeals

Certificate of Service

I, Deborah H. Sheffield, Counsel for the Respondent Charleston Water System, do hereby certify that on February 6, 2015, I served a copy of the foregoing Motion on Counsel for Appellant, via U.S. Mail, first class, postage prepaid to the following address:

LEATH, BOUCH & SEEKINGS,
Yancey A. McLeod III, Esq.
P. O. Box 59
Charleston, SC 29402
Attorney for Appellant/Plaintiff


Deborah H. Sheffield

Law Office of Deborah Harrison Sheffield, P.A.

117 Brook Valley Road
Columbia, South Carolina 29223

(803) 419-7837
Fax: (803) 419-3519
DHSheffieldAtty@AOL.com

February 6, 2015

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

RE: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. SCDOT, et al.
Appellate Tracking No. 2014 -000582

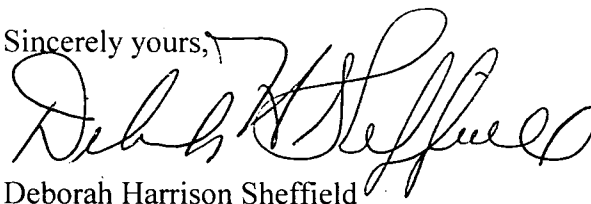
Dear Madam Clerk:

Enclosed for filing please find a Motion to Strike Designations (original and 6 copies) on behalf of all the Respondents, along with the \$25 filing fee and my certificate of service of the motion on Counsel for Appellant by mail with copy of this letter.

By previous order of the Court, the deadline for the Respondents' initial brief and designations are due February 17, 2015. In this motion, we are asking that the Court hold the briefing schedule in abeyance pending the disposition of this motion.

Thanking you for your cooperation and consideration in this request, I am

Sincerely yours,



Deborah Harrison Sheffield

cc: Yancey Alford McLeod, III, Counsel for Plaintiff
G. Wade Cooper, Counsel for Charleston Water System
Amanda Maybank, Counsel for SCDOT
Andrew S. Halio, Counsel for SCDHEC
Phillip S. Ferderigos, Counsel for City of N. Charleston

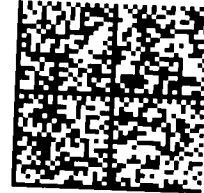
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SC Court of Appeals

Sheffield, Attorney at Law
117 Brook Valley Rd.
Columbia, SC 29223

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