

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-000582

RECEIVED
FEB 20 2015
SC Court of Appeals

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, and Associated
Developers, Inc.....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 Respondents.

**APPELLANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL.**

The Appellant, Tipperary Sales d/b/a La-Z-Boy Furniture Gallery, hereby files this
Response to Respondents' Motion to Strike. The Respondents filed the Motion to Strike
certain documents from the Appellant's designation of Matter, arguing that because the 1980
Seabrook Study and the 2007 David & Floyd study were not attached as exhibits they were
somehow not "presented" to the lower court they should be excluded from the record on

appeal pursuant to SCACR, Rule 210(c). Rule 210(c) provides "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 21(c), SCACR 210. The 1980 Seabrook Study and the Davis & Floyd study were both presented to the lower court. As Respondents' admit, this matter was referenced and alleged in Plaintiff's Amended Complaint. This is an appeal from the circuit court's granting of Respondents' various motions to dismiss and motions for summary judgment. In ruling on these motions, the court was required to take the allegations in the Amended Complaint as true, including the allegations that relate to the Seabrook and Davis & Floyd studies. *See Fabian v Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014), *reh'g denied* (Dec. 10, 2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.").

Contrary to the Respondents' contentions, the Davis & Floyd and Seabrook studies were indeed presented to the lower court by virtue of their inclusion in the Amended Complaint. For the purposes of ruling on the appealed motions, those allegations were deemed true. Nothing in Rule 210 (c) provides that the actual documents themselves be provided to the court. Rule 210(c) merely requires the "matter" must have been presented. In the instant case, the matter was presented to the lower court via the Amended Complaint. *See id*, *see also* Rule 8(f), SCRCPP ("All pleadings shall be so construed as to do substantial justice to all parties."); *Solley v Navy Fed. Credit Union, Inc*, 397 S.C. 192, 205, 723 S.E.2d 597, 604 (Ct.App.2012) (noting the South Carolina Rules of Civil Procedure do not necessarily require the technical or restrictive requirements of Code Pleading); *Watts v. Metro Sec Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("The purpose

of a pleading is fair notice to the opponent and the court."); *Overcash v. S C Elec & Gas Co*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) ("[P]leadings in a case should be construed liberally...."); *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) ("A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment."); *Falk v Sadler*, 341 S.C. 281, 286–87, 533 S.E.2d 350, 353 (Ct.App.2000) ("When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." (quoting *Russell*, 305 S.C. at 89, 406 S.E.2d at 339)); *id* at 287, 533 S.E.2d at 353 (noting our courts consider a judgment on the pleadings to be a drastic procedure); *id*. at 290, 533 S.E.2d at 354 (finding the trial court erred by granting judgment on the pleadings when the complaint contained several allegations which, if true, would entitle the plaintiff to a judgment if resolved in the favor of the plaintiff). Because the matter to which Respondents have moved to strike was presented to the circuit court by way of reference in the Amended Complaint, the Respondent's Motion should be denied.

Respectfully submitted,

LEATH BOUCH & SEEKINGS, LLP

By: 

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of which South Carolina Department of Transportation, South Carolina Department of
Health and Environmental Control, City of North Charleston, and Charleston Water System
areRespondents.

PROOF OF SERVICE

I certify that I served Appellant's Response to Respondent's Motion to Strike on
Respondents by depositing a copy of it in the United State Mail, postage prepaid, addressed
as follows:

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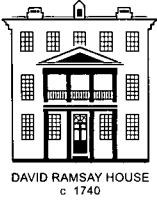
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February 17, 2015



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COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

February 17, 2015

RECORDED

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SC Court of Appeals

VIA US MAIL & FACSIMILE

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department
of Transportation, et al.
Case No.: 2012-CP-10-6922

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Appellant's Response to Respondents' Motion to Strike Designation of Matter in the above referred appeal. I would appreciate your returning a file-stamped copy to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am forwarding a copy of this filing to all counsel of record.

Thank you and with best regards, I am

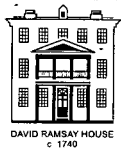
Very truly yours,

LEATH, BOUCH & SEEKINGS, LLP

Yancey A. McLeod III

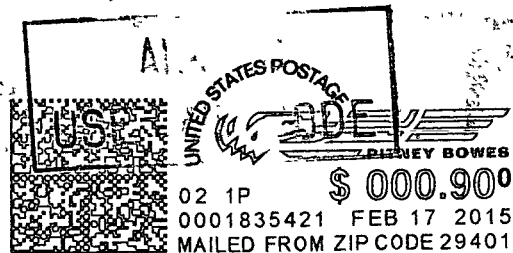
Enclosures (as stated)

cc: Amanda Maybank
G. Wade Cooper
Andrew S. Halio
Phillip S. Ferderigos
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