

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

**RECEIVED**

FEB 24 2015

**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.

**REPLY TO APPELLANT'S RETURN TO  
RESPONDENTS' MOTION TO STRIKE DESIGNATIONS**

The Respondents have moved, 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. The Appellant acknowledges that the actual documents were not provided to the lower court, but argues that the documents -- 1980 Seabrook Study, and 2007 Davis & Floyd Study -- were presented to the lower court and included in the amended complaint by reference in the allegations. Respondents respectfully submit that the Appellant misapprehends the implications of Rules 209(b) and 210(c) and the basis of the motion to strike.

The Appellant does not contend that the actual documents were ever presented in the lower court. Instead, the Appellant argues that Rule 210(c) does not require that the actual documents be provided to the court, and that the “matter” of the studies was presented via the allegations of the amended complaint.

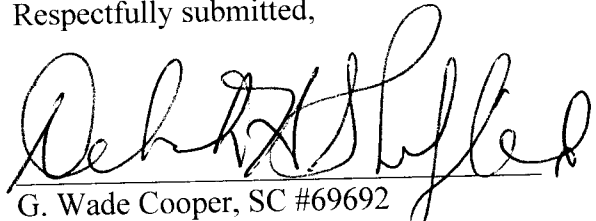
In support of its argument that the studies were presented, the Appellant cites to authority for the proposition that the lower court was required to take the allegations of the amended complaint as true, including the allegations about the Studies. *Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132, 136 (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-pleaded allegations as true.” The Respondents do not challenge this well-settled statement of law.<sup>1</sup> However, the Respondents’ motion does not seek to strike the allegations of the amended complaint or limit the Appellant’s reliance on its allegations to the extent allowed under Rule 12(b)(6). Rather, the Respondents seek to strike the actual documents from inclusion in the Record on Appeal because they were never presented to the lower court.

While the two documents were mentioned in allegations in the 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. Thus, the Respondents maintain that Rules 209(b) and 210(c) prohibits the documents from being designated for inclusion in the Record on Appeal.

---

<sup>1</sup> *But see* *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789, 792 (1990) (“Rule 56(e), SCRPC requires that when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings.”)

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  
Halia & 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**

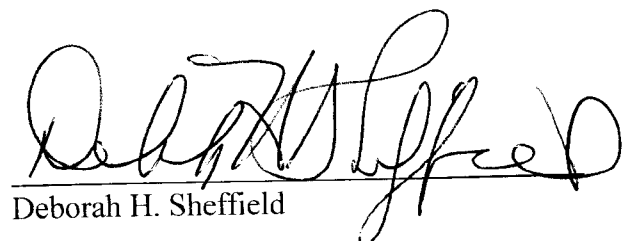
---

### Certificate of Service

---

I, Deborah H. Sheffield, Counsel for the Respondent Charleston Water System , do hereby certify that on February 20, 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 20, 2015

**RECEIVED**

FEB 24 2015

**SC Court of Appeals**

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

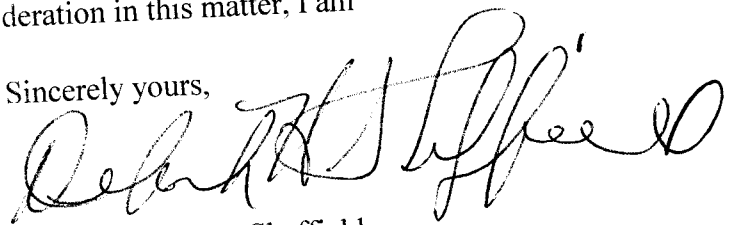
RE: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. SCDOT, et al.  
Appellate Tracking No. 2014 -000582

Dear Madam Clerk:

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

Thanking you for your cooperation and consideration in this matter, 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

field, Attorney at Law  
Brook Valley Rd.  
Columbia, SC 29223



**RECEIVED**  
FEB 24 2015  
SC Court of Appeals

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

