

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE DORCHESTER COUNTY

Court of Common Pleas

The Honorable Perry M. Buckner, Circuit Court Judge

Case No. 2012-CP-18-1647

RECEIVED
MAR 12 2015
SC Court of Appeals

Diane S. Goodstein, Respondent,

v.

Seal-O-Flex, Inc. and Latitude Construction Services, LLC, Defendants,

Of Whom Seal-O-Flex, Inc. is the Appellant.

REPLY TO RESPONDENT’S MEMORANDUM IN OPPOSITION TO APPELLANT’S
MOTION TO AMEND DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Contrary to Respondent’s contentions, she cannot cite to material in her Final Brief that she did not previously cite to in her Initial Brief. Rule 211(b), SCACR, provides that:

The final brief(s) shall be *identical* to the brief(s) previously served under Rule 208, except for the following:

- (1) References to the Record: The *references* in the initial brief shall be *revised* to indicate where the material appears in the Record on Appeal. These revised references may be *in place of or in addition to the initial references*, and shall be in the form indicated by the following examples . . .

(2) Correction of Typographical Errors and Misspellings: The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made.

Rule 211(b), SCACR, emphasis added.

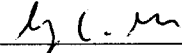
The Rule is clear that Respondent's Final Brief "shall be identical" to her Initial Brief. The only change that she may make, besides correcting obvious typographical errors, is substituting original citations for their corresponding pages in the Record on Appeal or adding Record on Appeal cites to their corresponding original citations. Respondent cannot add a cite in her Final Brief where none was found in her Initial Brief. If she were allowed to make such additions, the language of the Rule that "references" in the Initial Brief "shall be revised" would hold no meaning.

But, Respondent is seeking to do just that—add cites to her Final Brief that were not previously included in her Initial Brief. Not once in her Initial Brief did Respondent cite to the Transcript of Record of July 9, 2014 Hearing on Motion to Set Aside Default Judgment ("Transcript"). Therefore, any references in Respondent's Final Brief to the Transcript would be *additions* rather than *revisions* and the time for those *additions* has passed. Further, Respondent has not, and cannot, cite to any authority that would allow her to make such additions.

If Respondent believed any part of the Transcript was necessary to evaluate Appellant's Appeal, then Respondent should have included citations to the Transcript in her Initial Brief. This would have given Appellant an opportunity to respond to those arguments and citations in its Reply. Respondent, for whatever reason, chose not to do so. Having made that choice, Respondent cannot now cite to the Transcript after the briefing period is over.

Finally, as discussed in its Motion, Appellant's Motion is supported by Rule 210(c) and (g), SCACR, which requires "Appellant or his counsel shall certify that the Record on Appeal contains

all materials proposed to be included by any of the parties and not any other material.” Because neither Appellant nor Respondent included in their Initial Briefs those pages of the Transcript that Appellant seeks to remove from its Designation of Matter to Be Included in the Record on Appeal (“Designation”), Appellant, pursuant to Rule 210, moved to amend its Designation to remove those pages of the Transcript that had not previously been cited. Appellant filed this Motion to correct a technical error in its Designation, whereas Respondent is seeking to change the substance of her argument and Initial Brief.



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Attorney for Appellant

March 10, 2015

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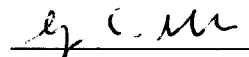
Of Whom Seal-O-Flex, Inc. is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 10, 2015 she served a copy of the foregoing Appellant's **Reply to Respondent's Memorandum in Opposition to Appellant's Motion to Amend Designation of Matter to be Included in the Record on Appeal** by depositing the same in the U.S. Mail, First Class postage prepaid, and addressed to the following:

Arnold S. Goodstein, Esquire
Goodstein Law Firm, LLC
P.O. Box 2350
Summerville, SC 29484-2350
ATTORNEY FOR RESPONDENT

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SC Court of Appeals



Suzanne C. Ulmer

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March 10, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Diane S. Goodstein v. Seal-O- Flex, Inc. and Latitude Construction Services, LLC*,
Appellate Case No.: 2014-001918
Our File No. 14-3

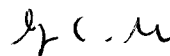
Dear Ms. Kitchings:

In regard to Appellate Case No.: 2014-001918, I am enclosing an original and seven (7) copies of a Reply to Respondent's Memorandum in Opposition to Appellant's Motion to Amend Designation of Matter to be included in the Record on Appeal.

Kindly return a date-filed stamped copy of the Reply to me in the self-addressed, stamped envelope that is enclosed.

Thank you for your consideration in this matter, and with kindest regards, I remain

Very truly yours,



Suzanne C. Ulmer

SCU/ads
Enclosure

cc: Arnold S. Goodstein, Esquire,

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