

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-001825
Trial Court Case No. 2015-CP-08-01213

Christopher Duvall and Natalie Duvall, Plaintiffs,

v.

The Ryland Group, Inc., Defendant.

And

The Ryland Group, Inc., Third-Party Plaintiff,

v.

Land Site Services, Inc., Carolina Consulting Engineers,
Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and
Stark Truss Company, Inc. a/k/a Stark Truss Company of
Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina
Truss Systems, Inc., Third-Party Defendants,

Of which The Ryland Group, Inc. is the Appellant,

And

Of which Christopher Duvall and Natalie Duvall, Land Site
Services, Inc., Carolina Consulting Engineers, Inc., A.C.
Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark
Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc.
d/b/a Carolina Truss Systems, Inc. are the Respondents.

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SC Court of Appeals

**APPELLANT'S REPLY
TO RESPONDENTS CHRISTOPHER DUVALL AND NATALIE DUVALL'S
RESPONSE TO APPELLANT'S MOTION TO STRIKE PORTIONS OF
RESPONDENTS CHRISTOPHER DUVALL AND NATALIE DUVALL'S
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON
APPEAL**

Appellant The Ryland Group, Inc. ("Appellant"), pursuant to Rule 240(F), SCACR, respectfully submits this Reply to Respondents' Response to Appellant's Motion to Strike ("Response to Appellant's Motion to Strike").

As an initial matter, in their Response to Appellant's Motion to Strike, Respondents Christopher and Natalie Duvall ("Duvalls") represent that Appellant moves to strike, among other things, the Duvalls' inclusion in the record of "multiple discovery requests from the Third-Parties" (Duvalls' Resp. to Appellant's Mot. to Strike 2). The Duvalls define "Third-Parties" to include "Ryland's subcontractors Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc." (Duvalls' Resp. to Appellant's Mot. to Strike 2 fn. 1). However, contrary to the Duvalls' representations, Appellant's Motion to Strike only addresses discovery requests from Land Site Services, Inc., discovery requests from Stark Truss Company, Inc. ("Stark"), and subpoenas issued by Stark, and does not concern any discovery requests from Carolina Consulting Engineers, Inc., Higdon Concrete, LLC¹, or A.C. Construction, Inc. (Appellant's Mot. to Strike 2-3 & Ex. A).

¹ To date, no answer has been filed on behalf of Higdon Concrete, LLC and no counsel has appeared on its behalf.

The Duvalls argue their pleadings filed with the lower court and statements made at the hearing on Appellant's Motion to Compel Arbitration contain certain references to the documents at issue in Appellant's Motion to Strike—*i.e.*, those documents identified as items 14 through 25 in the Duvalls' Designation of Matter To Be Included in the Record on Appeal ("Duvalls' Designation of Matter"). (Duvalls' Response to Appellant's Motion to Strike pp. 2-3). However, the Duvalls' argument does not change the fact that such documents themselves were not enclosed with such pleadings nor handed to the trial court judge at the hearing, and, thus, the documents at issue constitute matters that were not properly presented to the lower court. *See* Rules 209(b) and 210(c), SCACR. The Duvalls' arguments therefore do not alter the fact that the documents are not appropriate for inclusion in the record on appeal for the reasons set forth in Appellant's Motion to Strike and Exhibits A through E thereto, and for those reasons Appellant respectfully requests that the Court grant its Motion to Strike.

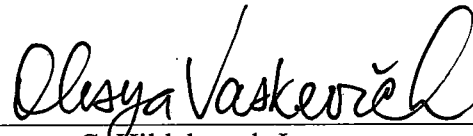
In addition, in their Response to Appellant's Motion to Strike, the Duvalls' improperly attempt to address arguments made by Appellant in Appellant's Reply Brief. (Duvalls' Resp. to Appellant's Mot. to Strike 3-5 & fn. 2). Pursuant to Rule 208(a), SCACR, a respondent does not have the right to file a sur-reply brief unless the Court orders otherwise and only an appellant has the right to file a reply. As a result, the Duvalls' attempt to address the merits of this appeal in their Response to Appellant's Motion to Strike is not appropriate, is in violation of the South Carolina Appellate Court Rules, and should be disregarded by the Court.

In light of the foregoing, Appellant respectfully requests that the Court grant its Motion to Strike Portions of Duvalls' Designation of Matter and strike those materials

listed in Duvalls' Designation of Matter that were not presented to the lower court. Appellant further requests that the Court either (a) strike those portions of the Duvalls' Initial Brief that include arguments that rely on or cite to such materials or (b) order the Duvalls to refile their Initial Brief with those portions removed.

Respectfully submitted,

February 20, 2017



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Of which The Ryland Group, Inc. is the Appellant,

And

Of which Christopher Duvall and Natalie Duvall, Land Site
Services, Inc., Carolina Consulting Engineers, Inc., A.C.
Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark
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d/b/a Carolina Truss Systems, Inc. are the Respondents.

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PROOF OF SERVICE

I certify that I have served Appellant's Reply to Respondents Christopher Duvall and Natalie Duvall's Response to Appellant's Motion to Strike Portions of Respondents Christopher Duvall and Natalie Duvall's Designation of Matter To Be Included in the Record on Appeal on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on February 20, 2017, addressed to the following:

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February 20, 2017

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

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SC Court of Appeals

Re: Christopher and Natalie Duvall, et al v. The Ryland Group, Inc., et al.
Case No.: 2015-CP-08-01213

Dear Ms. Kitchings:

Enclosed for filing please find an original and six copies of Appellant's Reply to Respondents Christopher Duvall and Natalie Duvall's Response to Appellant's Motion to Strike Portions of Respondents Christopher Duvall and Natalie Duvall's Designation of Matter To Be Included in the Record on Appeal and Proof of Service.

Please file the original and return a file-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter. Please contact me if you have any questions.

With best regards,

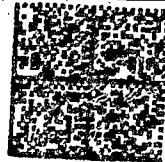
Yours very truly,

Thomas C. Hildebrand, Jr. / by OVV

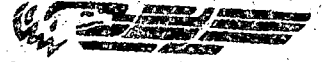
Thomas C. Hildebrand, Jr.

TCHJr/kjg
Enclosures

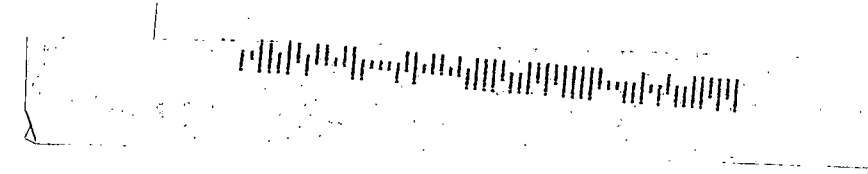
cc: James Taylor Anderson, III, Esq. (via email and U.S. Mail)
John E. Rogers, II, Esq. (via email and U.S. Mail)
C. Reed Teague, Esq. (via email and U.S. Mail)
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