

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2016-001842
Case No. 2013-CP-10-3901

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MAY 01 2017

SC Court of Appeals

Charleston Electrical Services, Inc. and Selective Insurance
Company of South Carolina as Subrogee of
Charleston Electrical Services, Inc., Appellants,

v.

Wanda G. Rahall Respondent.

**RETURN TO RESPONDENT'S MOTION TO STRIKE
DESIGNATIONS NO. 4 AND NO. 7 FROM APPELLANTS'
DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL AND
EXCLUDED FROM THE RECORD ON APPEAL**

The Respondent Wanda G. Rahall has filed a motion to strike two items as designated by the Appellants for inclusion in the Record on Appeal. Specifically, the Respondent seeks to strike Plaintiffs' Trial Exhibit 1 which consists of

deposition excerpts on which the Appellants based its contribution action. The Respondent also seeks to strike the Plaintiff's Trial Brief which was submitted to the Court at the bench trial with a copy served on Respondent's counsel. The Appellants oppose this motion.

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, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

As indicated, Plaintiffs' Trial Exhibit 1 consists of deposition excerpts on which the Appellants based their contribution action. The Respondent argues that Plaintiffs' Trial Exhibit 1 is "irrelevant and duplicative." Clearly, the factual evidence on which the Appellants based their case is not irrelevant and certainly was not excluded by the trial judge as such. Furthermore, this Court cannot make a determination of relevance at this stage of the appeal. Plaintiffs' Trial Exhibit 1 is also not duplicative because it shows that factual evidence on which the Appellants relied in its case-in-chief. The Respondents did ultimately place the complete depositions at issue into evidence, but Plaintiffs' Trial Exhibit 1 may become necessary to show what the Appellants relied on in their case-in-chief.

As for the trial brief, the Respondent cites to two cases that pre-date the adoption of the South Carolina Appellate Court Rules, which became effective on September 1, 1990. In the pre-1990 cases, the Supreme Court had indicated that trial briefs are not part of the appellate record and that "no exception can be properly based upon them." *Hayes v. Adair*, 267 S.C. 291, 227 S.E.2d 665, 668 (1976). However, the Supreme Court Rules, which controlled appellate procedures prior to 1990, were repealed with the adoption of the South Carolina Appellate Court Rules. *See*, Rule 102(b), SCACR.

Pursuant to Rule 210(c), any matter that was "presented to the lower court" may be made part of the Record on Appeal. There is no question that the Plaintiff's trial brief was presented to Judge Mikell R. Scarborough in this case, and as a result, it may properly be part of the Record on Appeal.¹

Based on the foregoing, the Appellants request the Court to deny the Respondent's motion.

¹ Prior to the adoption of the Rules of Civil Procedure which became effective July 1, 1985, there was no requirement for counsel to serve the opposing counsel with pre-trial or trial briefs. Hence, that was a significant rationale as to why they could not be included as part of the appellate record. Currently, and as was the procedure in the present case, the trial briefs of the parties were presented to the trial judge and served on opposing counsel. They were not *ex parte* communications as they had been prior to 1985.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN

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Counsel for Appellants

Columbia, South Carolina

April 27, 2017

THE STATE OF SOUTH CAROLINA
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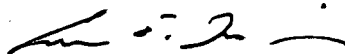
Wanda G. Rahall.....

Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellants, does hereby certify that service of the **Return to Respondent's Motion to Strike Designations No. 4 and No. 7 from Appellants' Designation of Matter to be Included in the Record on Appeal and Excluded from the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 27th day of April 2017:

Elizabeth F. Fulton, Esquire
Pritchard Law Group, LLC
Post Office Box 630
Charleston, South Carolina 29402



DAVIDSON & LINDEMANN, P.A.

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April 27, 2017

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

RE: Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina
as Subrogee of Charleston Electrical Services, Inc. v. Wanda G. Rayhall
Appellate Case Number: 2016-001842
Civil Action Number: 2013-CP-10-3901
Claim Number: 21010307
Our File Number: 307.9065

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Return to Respondent's Motion to Strike Designations No. 4 and No. 7 from Appellants' Designation of Matter to be Included in the Record on Appeal and Excluded from the Record on Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

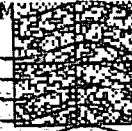
cc: Elizabeth F. Fulton, Esquire (w/ Enclosure)

COLUMBIA SC 292

SAT 29 APR 2017

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The Honorable Jenny Abbott Kitchings
Clerk of Court
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