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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

Appellate Case No. 2016-002487

MAY 11 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 231, SCACR, Respondents The Consolidated
Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas Holding Company, Inc.,

and SCANA (“Respondents”) respectfully move this Court for an Order dismissing the above-captioned appeal. In the alternative, Respondents move Pursuant to Rule 209(b) and Rule 210(c), SCACR, for an order striking from Appellants Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers (“Appellants”) certain materials designated by Appellants and requiring Appellant to file an amended initial brief omitting all references to the disputed items.

Further, Respondents move for an Order imposing sanctions upon Appellants, including, but not limited to attorneys’ fees and costs, relating to Respondents’ motion practice based on Appellants’ continued failure to comply with the Appellate Court Rules.

Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on these motions.

FACTUAL/PROCEDURAL BACKGROUND

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011. Appellants commenced suit against Respondents, asserting a cause of action for, *inter alia*, wrongful death sounding in negligence. Appellants have appealed from the Circuit Court’s entry of summary

judgment in favor of Respondents.

Appellants filed their Notice of Appeal on or about December 12, 2016. Appellants filed their Initial Brief and Designation of Matter on January 20, 2017.

On February 21, 2017, Respondents filed a Motion to Strike, requesting the Court strike certain matters contained in Appellants' Designation of Matter. Specifically, Respondents maintained that Appellants included certain matters not part of the circuit court record in their Designation of Matter. Respondents requested the Court strike the following: (1) Answers to all Interrogatories and Requests for Production; (2) Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants seek to include the entire deposition transcript; and (3) All emails between counsel of record. Respondents further requested the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders as irrelevant and unnecessary for the Court's review of the Circuit Court order granting summary judgment in favor of Respondents. Finally, Respondents requested the Court strike the designation of "[a]ny other document cited in Appellants' Initial Briefs." (Ex. A)

In addition to their request to strike certain matters from Appellants'

Designation of Matter, Respondents moved for an order requiring Appellants to revise their Initial Brief to omit all references to the improperly included matters. (Id.)

Pursuant to the Court's February 24, 2017, correspondence, all filing deadlines were held in abeyance pending the Court's decision on Respondents' Motion to Strike. (**Ex. B**).

On or about March 1, 2017, Appellants filed their Response to Respondents' Motion to Strike, arguing the Motion to Strike was premature and unfounded. (**Ex. C**). Appellants further argued that despite Respondents' contention, the matters designated by Appellants were indeed part of the Circuit Court record. On the same date, Appellants filed a Supplemental Designation of Matter. (**Ex. D**).

On March 6, 2017, Respondents filed their Reply to Appellants' Response to Respondents' Motion to Strike. (**Ex. E**).

By Order filed on April 6, 2017, the Court granted Respondents' Motion to Strike. (**Ex. F**). The Court directed Appellants, within twenty days of the date of the order, to serve and file an amended designation of matter including only those documents that were presented to the Circuit Court and to specifically reference each document Appellants desire to be

included in the record on appeal. The Court specifically ordered that the following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record.¹ (Id.)

On or about April 26, 2017, Appellants filed their Amended Designation of Matter. (**Ex. G**).

LAW/ANALYSIS

The Supreme Court of South Carolina has advised that “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). A party's failure to comply with these

¹ While Respondents requested the Court order Appellants to revise their initial Brief to omit all references to the improperly included matters, the Court did not address Respondents argument regarding the same and did not provide any direction to Appellants regarding their Initial Brief.

rules warrants dismissal of the appeal. Id.;² Rule 260, SCACR.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Appellants included the following matters in their Amended Designation of Matter: (1) Answers to Plaintiffs' Interrogatories to Defendants; (2) Answers to Plaintiffs' Second Interrogatories to Defendants; (3) several excerpts of the Deposition transcript of Mandy Bellamy; and (4)

² While the Henning Court ultimately permitted appellant to serve and file an initial brief that fully complied with the appellate court rules, the Court noted that it would be "justified in dismissing this appeal based on appellant's numerous violations of the Rules." 307 S.C. at 437, 415 S.E.2d at 794.

Consolidated Employee Recreations Clubs Bylaws Art. V.

Despite the Court's Order directing Appellants to not include Answers to Plaintiffs' Interrogatories in their Amended Designation of Matter, Appellants continue to include the same.³ Furthermore, Appellants have cited and made reference to Answers to Plaintiff's Interrogatories, Interrogatory Nos. 1-3, and Answers to Plaintiffs' Second Interrogatories, Interrogatory Nos. 2, 27, and 29. In addition to continuing to include Answers to Interrogatories in their Amended Designation of Matter to the Court despite this Court's Order, Appellants have included matters in their Initial Brief which were not part of the circuit court record. The inclusion of Answers to Interrogatories in the Designation of Matter and in Appellants' Initial Brief is in direct contravention to the appellate court rules and this Court's Order.

Further, despite the Court's Order directing Appellants to not include portions of the deposition transcript of Mandy Bellamy that were not part of

³ Respondents concede that Appellants submitted Respondents response to Interrogatory No. 21 as an exhibit in an email response to an inquiry made by the Circuit Court. However, this, along with Interrogatory Nos. 17-20—which were on the same page as Interrogatory No. 21—are the only Interrogatory responses that were submitted to the circuit court and are part of the circuit court record.

the Circuit Court's record, Appellants included all but a limited number of pages of the deposition transcript that were not part of the Circuit Court record.⁴

Finally, Appellants included for the first time Consolidated Employee Recreations Clubs Bylaws Art. V., which was not previously included in the Appellant's Designation of Matter—though was referenced and cited in Appellants' Initial Brief—and was not part of the Circuit Court record. Again, the inclusion of the same is in direct contravention to the appellate court rules.

Though this Court's April 6, 2017, Order appears to provide clear direction to Appellants of what matters to include in their Amended Designation of Matter, Appellants have seemingly defied this Court's Order. Appellants' continued violations of the appellate court rules—specifically Rule 209 and Rule 210—have gravely prejudiced Respondents. Respondents have unnecessarily had to incur expenses while engaging in motions practice based on Appellants counsel's perceived lack of familiarity with the Appellate Court Rules.

⁴ The following pages are not part of the circuit court record: 56; 57; 69; 71; 72; 81; 92; 149; and 150.

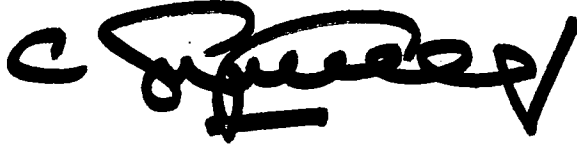
CONCLUSION

Based on Appellants' continued failure to comply with the Appellate Court Rules and this Court's Order, Respondents respectfully request the Court dismiss Appellants' appeal. In the alternative, Respondents respectfully request the Court strike those matters that are not part of the Circuit Court record, as well as any and all references to matters in Appellants' Initial Brief that are not part of the Circuit Court record. Further, pursuant to Rule 269, SCARC, Respondents respectfully request the imposition of sanctions, including, but not limited to, attorneys' fees and costs related to the continued motions practice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO
STRIKE**

Columbia, South Carolina
May 10, 2017

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

FEB 21 2017

Appellate Case No. 2016-002487

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

RESPONDENTS' MOTION TO STRIKE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA (“Respondents”) respectfully move this Court for an order striking from Appellants’ Designation of Matter certain materials designated by Appellants and requiring Appellants to file an amended initial brief omitting all references to the disputed items. Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on this motion to strike.

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011, in the freshwaters of Lake Murray in Lexington County, South Carolina. Appellants commenced suit against Respondents asserting a cause of action for, inter alia, wrongful death sounding in negligence.¹ Appellants have appealed from the Circuit Court’s entry of summary judgment in favor of Respondents.

At this time, counsels for Appellants and Respondents are not in agreement concerning the Appellants’ Designation of Matter and the undersigned now moves to strike all non-relevant documents from the same.

¹ Appellants initially brought a wrongful death action sounding in negligence and intentional infliction of emotional distress claims against Respondents and other Defendants. Appellants subsequently dismissed the other defendants and amended their complaint eliminating their intentional infliction of emotional distress claims.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court, including evidence, statutes or ordinances on which the parties are relying, and written memorials of any judicial action which triggered the appeal or which is necessary for the resolution of the appeal. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents move to strike the following material and documents from Appellants' Designation of Matter that were not part of the Circuit Court record:

- a. Answers to all Interrogatories and Requests for Production;
- b. Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants' seek to include the entire deposition and excerpts;²
- c. All emails between counsel of record.

Respondents further request the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders.

This appeal stems from the Circuit Court's order granting Respondents' Summary Judgment. The only relevant pleadings, motions, and orders include: (1) Appellants' Complaint; (2) Appellants' Amended Complaint; (3) Respondents' Answer to Amended Complaint; (4) Respondents' Motion for Summary Judgment and supporting memorandum; (5) Appellants'

² See Rule 209, SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits which may not be properly included in the Record on Appeal [See Rule 210(c)]”) (emphasis added).

Mémorandum of Law in response to Respondents' Motion for Summary Judgment; (6) Appellants' Motion to Alter or Amend pursuant to Rule 59(e), SCRCF; (7) Respondents' Memorandum in Opposition to Appellants' Rule 59(e) motion; (8) Order granting Summary Judgment; (9) Order denying Rule 59(e) motion, SCRCF.

To the extent Appellants seek to include any pleadings, motions or orders not articulated above, such material and documents are irrelevant to the current appeal. See Rule 209(b) ("A party shall not include any matter on his Designation which is not relevant to the appeal."); 16 S.C. Jur Appeal and Error § 59 ("The Record on Appeal should contain only information needed to permit the Court to decide the issues on appeal; it should contain no irrelevant material."); 15. S.C. Jur. Appeal and Error § 63 ("Matters irrelevant to the question involved in the appeal are also disallowed.")

Respondents further move to strike from Appellants' Designation of Matter "Any other document cited in Appellants' Initial Briefs." The Appellate Court Rules clearly provide that documents listed in the Designation of Matter must be specifically named. See Rule 209(b), SCARC ("The Designation must clearly identify what the party desires to

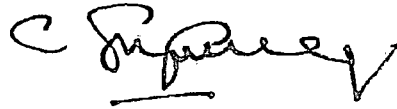
have included in the Record on Appeal[.]”). Appellants’ reference to “[a]ny other document cited,” does not comport with this rule.

In short, Appellants have included items in their Designation of Matter and Initial Brief that were not presented to the Circuit Court and do not form part of the record on Respondents’ summary judgment motion. Further, Appellants have purported to include items in the Designation of Matter that are irrelevant to the issues on Appeal. Accordingly, pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from Appellants’ Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same. Respondents additionally request the Court hold the briefing deadlines in abeyance during the pendency of this motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
STRIKE**

Columbia, South Carolina
February 21, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

FEB 21 2017

William P. Keesley, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers,Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANARespondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Strike upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on February 21, 2017, addressed to the following:

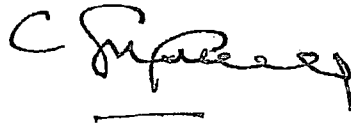
COUNSEL SERVED:
Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC

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Counsel for Appellants

Edward L. Graham, Esquire
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Graham Law Firm, P.A.
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Counsel for Appellants

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

EXHIBIT B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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February 24, 2017

Mr. Christian Stegmaier, Esquire
PO Box 12487
Columbia SC 29211

Re: Cassandra Myers v. The Consolidated Employee Recreation Clubs
Appellate Case No. 2016-002487

Dear Counsel:

The Court received your motion for extension and your motion to strike on February 21, 2017. All parties are advised the filing deadlines for this appeal will be held in abeyance pending the Court's decision on the motions.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Pedro Eduardo Krompecher, Esquire
Meghan Hazelwood Hall, Esquire
John Layton Ruffin, Esquire
Edward L. Graham, Esquire

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA, Respondents.

**APPELLANTS' RESPONSE TO
RESPONDENT'S MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Respondents filed a motion to strike and a motion for extension of time to file Respondents' initial brief that are dated as received by the court of appeals on February 21, 2017. Appellants have no objection to the request for an extension of time. However, Appellants object to the motion to strike because it is premature and unfounded.

With their initial brief, Appellants served and filed their designation of matter it intends to include in the record on appeal. Appellants' designations include only materials which may be properly included in the Record on Appeal pursuant to Rule 210(c), SCACR and which Appellants believe to be relevant to the appeal, as required by Rule 209(b), SCACR. At this

stage, it is not even certain what Respondents' brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply. As such, it is both premature and inappropriate for Respondents to unilaterally claim to be the arbiter of what is relevant to Appellants' appeal.

For instance, Respondents do not include the consent order allowing Plaintiffs to amend their complaint in its list of purportedly relevant pleadings, motions, and orders. While not the crux of the case, the order was referenced in Appellants statement of the appeal and is relevant to the procedural posture of this case. As such, Appellants designated the order. Respondents do not even cite to any specific pleading, motion, or order in Appellants' designation they believe is irrelevant. As such, Respondents argument should be disregarded and the motion denied.

Respondents claim certain materials are not part of the record. This is inaccurate. Respondents argue emails between counsel are not part of the record. This is untrue. At the hearing, Plaintiffs' counsel represented to the court that hours before the hearing Defendants filed a memorandum raising for the first time entirely new arguments. (Defs' Memo in Support). This exact same correspondence was referenced in Plaintiffs' motion to reconsider as exhibit 1.

Respondents claim the answers to interrogatories and request for production are not part of the record. This too is inaccurate. Plaintiffs' response to Defendants' motion for summary judgment clearly references Defendants answers to interrogatories numerous times. (Pls.' Response to Defendants' Mot. for Summ. J.). Plaintiffs' response also includes references to documents produced by Defendants during discovery.

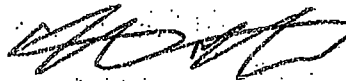
Finally, Respondents argue that to the extent Appellants seek to include Mandy Bellamy's entire deposition, this should be prohibited. Appellants are unaware of any rule which

states that a designated deposition cannot be included in its entirety if portions have been referenced. At this point, Appellants believe the Court would be best served by having her deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety. The record on appeal is created at the Appellants expense, so Respondents should not have any objection with respect to costs.

For the foregoing reasons, Respondents motion to strike should be denied. Appellants have no objection to Respondents request for an extension of time.

Respectfully submitted,

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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Attorneys for Appellants

March 1, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487.

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

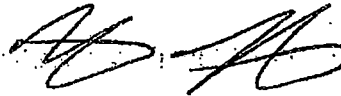
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Appellants' Response To Respondent's Motion To Strike* in
the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
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William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

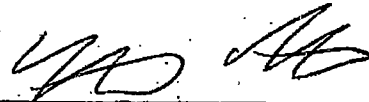
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment ;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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Attorneys for Appellants

Other Counsel of Record:
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Columbia, SC 29201
Attorneys for Respondents

March

1,

2017

2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
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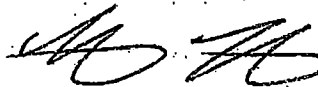
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
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Florence, SC 29501
t. (843) 662-3281
f. (800) 859-7028

Attorneys for Appellant

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

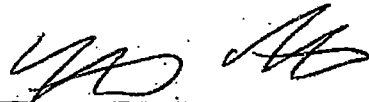
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment ;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
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Attorneys for Appellants

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201
Attorneys for Respondents

March

1,

2017

2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

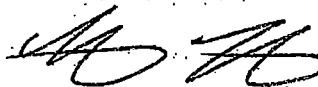
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
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Attorneys for Appellant

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 06 2017

APPEAL FROM LEXINGTON COUNTY SC Court of Appeals
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**RESPONDENTS' REPLY TO APPELLANT'S RESPONSE TO
MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF
SOUTH CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA (“Respondents”) moved for an order striking certain materials from Appellant’s Designation of Matter. On March 1, 2017, Appellants filed their Response to Respondents’ Motion to Strike. Along with their Response, Appellants filed a Supplemental Designation of Matter, adding two additional materials to be included in the record on appeal: (1) Plaintiffs’ response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation; and (2) Defendants/Respondents’ memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.¹ Respondents offer the following in reply.

I. Respondents’ Motion to Strike is Not Premature

Initially, Appellants argue that Respondent’s Motion to Strike is premature. Appellants specifically aver that “it is not even certain what Respondents’ brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply.”

Rule 210(c), SCACR, provides that matters not presented to the trial court are not properly included in the Record on Appeal. Accordingly, these

¹ Respondents do not contest the inclusion of these matters in Appellants’ Designation of Matter.

matters should not be identified in the Designation of Matter. See Rule 210(c), SCACR; see also Rule 209(b), SCACR (“[T]he 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)].”). Furthermore, the Designation of Matter should **not** contain matters or materials that are irrelevant to the appeal. Rule 209(b), SCACR. Indeed, Counsel must certify that the Designation does not contain any matters that are irrelevant to the appeal. Rule 209(b), SCACR.

The determination of whether Appellants have properly designated matters that were presented before the Circuit Court **and** are relevant to the appeal is ripe for review. First, the Court is readily able to determine what matters were properly before the Circuit Court. Furthermore, the issue of whether certain matters are relevant to the appeal is ripe for this Court consideration, particularly in light of the lower court’s record and what was considered and reviewed by the Circuit Court.

Moreover, Appellants’ argument that it is uncertain what Respondents’ brief will argue or the materials Respondents may reference is without any merit. Several matters identified by Appellants were not part of the Circuit

Court record and would not be referenced-pursuant to the Appellate Court Rules-by Respondents in their brief.

Because the Court can properly determine matters not presented to the Circuit Court or matters irrelevant to the appeal at this time, Respondents' Motion to Strike is ripe.

II. Matters Not Part of the Circuit Court Record

Appellants aver that several matters identified by Respondents in their Motion to Strike as not being a part of the Circuit Court record were in fact part of the record. Appellants specifically identify the following matters as part of the Circuit Court record, and which are now properly identified in their Designation of Matter: (1) Answers to interrogatories and requests for production; (2) Emails between counsel; and (3) Deposition Transcript of Mandy Bellamy.

The Designation of Matter and subsequent Record on Appeal cannot contain matters not presented to the Circuit Court. See Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to the trial judge). Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Respondents concede that the briefing before the Circuit Court contained references to answers to interrogatories and requests for production. However, Respondents aver that copies of the answers to interrogatories and requests for production were not included in any exhibit to any memorandum submitted to the Circuit Court and are thus not part of the record. The Circuit Court did not consider the actual answers to interrogatories and requests for production, save those simply referenced in the text of Appellants' memorandum. Consequently, Appellants cannot now ask this Court to consider the same. Accordingly, the identification of answers to interrogatories and requests for production in Appellants' Designation of Matter is improper and must be struck.

Likewise, emails between counsel were not part of the Circuit Court record. Again, Respondents concede that an email correspondence from Respondents' counsel transmitting Respondents' memorandum in support of motion for summary judgment was attached as Exhibit 1 to Appellants' Motion to Reconsider and, therefore, is arguably part of the Circuit Court record.² However, Appellants seek to generally designate "E-mail

² Respondents aver, however, that because the email was not included as an exhibit in Appellants' memorandum in opposition of motion for summary

correspondence between Plaintiff's counsel and Defendant's counsel." To the extent Appellants seek to include any other email correspondence, Respondents aver such email correspondence was not before the Circuit Court and are therefore improperly designated in Appellants' Designation of Matter. Accordingly, Respondents request the Court strike such designation.

Finally, the entire deposition transcript of Mandy Bellamy was not before the Circuit Court and therefore cannot be included in the Record on Appeal. Appellants acknowledge that only portions of Bellamy's deposition were attached as an exhibit to the briefing before the Circuit Court. Regardless of this concession, Appellants attempt to circumvent Rule 209, SCACR, by including the entire transcript as part of their Designation of Matter. Indeed, Appellants ignore Rule 209(b), SCACR, and Rule 210(c), SCACR, and argue that the "Court would be best served by having [Bellamy's] deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety." (See Appellants' Response to Respondents' Motion to Strike, at p. 3). However, before determining

judgment, the email is inadmissible when attached as an exhibit to Appellants' Motion to Reconsider.

whether a matter is relevant, a matter must have been “presented to the lower court or tribunal.” See Rule 210(c), SCACR. Bellamy’s entire deposition transcript was not presented to the Circuit Court.

Moreover, Appellants maintain they “are unaware of any rule which states that a designated deposition cannot be included in its entirety if portions have been referenced.” However, Rule 209, SCACR, directly limits the inclusion of transcripts to only “portions” of the transcript which may be properly included in the Record on Appeal. See Rule 209(b), SCACR (emphasis added).

Therefore, the inclusion of Bellamy’s entire deposition transcript in Appellants’ Designation of Matter is improper. Accordingly, Respondents respectfully request the Court strike the same.

III. Matters Not Relevant to Appeal

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents recognize that the Circuit Court record consists of all orders, pleadings, motions, memorandums, and other writings. However, to

be properly included in the Record on Appeal, such matters must be relevant to the appeal. See Rule 209(b), SCACR; Rule 210(c), SCACR. Furthermore, Rule 209(a) provides that the Designation of Matter “shall set forth with specificity, those parties of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.” Rule 209(a), SCACR.

Respondents moved to strike the following designations as not relevant to the appeal: (1) “All Orders ...” and (2) “All Motions” While Respondents acknowledge the any order or motion filed in this case is part of the Circuit Court record, not all orders and motions are relevant to this appeal. See Rule 209(b), SCACR; Rule 210(c), SCACR. Indeed, Appellants’ concede the consent order allowing Plaintiffs to amend their complaint is “not the crux of the case,” yet seeks to designate the same to give reference to the procedural posture of this case.

Moreover, many of the orders and/or motions filed with the Circuit Court would not assist the Court or provide any guidance relevant to the determination of whether the Circuit Court properly granted Respondents’ Motion for Summary Judgment. Furthermore, Respondents aver the designation of “All Motions” and “All Orders” are not matters identified with

specificity as required by the Appellate Court Rules. See Rule 209(a), SCACR. Accordingly, these designations must be stricken.³

CONCLUSION

Based on the aforementioned, as well as those articulated in Respondents' Motion to Strike, Respondents aver Appellants have improperly designated curtailed matters in their Designation of Matter. Therefore, Respondents respectfully request this Court strike these matters from the Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same.

[SIGNATURE PAGE TO FOLLOW]

³ Respondents previously outlined the pleadings, motions and orders they maintain are relevant to the appeal. See Respondents' Motion to Strike.

Respectfully submitted,

COLLINS & LACY, P.C.



CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
KELSEY J. BRUDVIG
kbrudvig@collinsandlacy.com
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(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAR 06 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellants' Return
to Respondents' Motion to Strike upon all parties, by placing a copy in the
United States mail, postage prepaid, to all counsel of record on March 6,
2017, addressed to the following:

COUNSEL SERVED:

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Raleigh, NC 27628
Counsel for Appellants

Edward L. Graham, Esquire
J. Layton Ruffin, Esquire
Graham Law Firm, P.A.
Post Office Box 550
Florence, SC 29501
Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.



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cstegmaier@collinsandlacy.com
KELSEY J. BRUDVIG
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(803) 256-2660 (voice)
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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

EXHIBIT F

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

Respondents' motion to strike Appellants' designation of matter is granted. Within twenty days of this order, Appellants shall serve and file an amended designation of matter that includes only those documents that were presented to the circuit court. The following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record. Further, the amended designation of matter must specifically reference each document Appellant desires to be included in the record on appeal at this time. Nothing, however, prevents Appellants from moving to supplement their designation of matter after Respondents file their initial brief.

Respondents shall serve and file their initial brief and designation of matter within thirty days of service of Appellants' amended designation of matter.


FOR THE COURT

Columbia, South Carolina

cc:

Pedro Eduardo Krompecher, Esquire

Christian Stegmaier, Esquire

Meghan Hazelwood Hall, Esquire

John Layton Ruffin, Esquire

Edward L. Graham, Esquire

FILED

April 6, 2017

EXHIBIT G

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants propose the following to be included in the Record on Appeal:

- 1) The following pleadings:

Amended Complaint
Answers to Plaintiffs' Interrogatories to Defendants
Answers to Plaintiffs' Second Interrogatories to Defendants;

- 2) The following portions of the Deposition transcript and exhibits of Mandy Bellamy:

Bellamy Depo. 44:9-16
Bellamy Depo. 48:17-19
Bellamy Depo. 53:10-15
Bellamy Depo. 56:11 to 57:8
Bellamy Depo. 69:24-25, 71:22 to 72:2
Bellamy Depo. 74:7-10
Bellamy Depo 81:1-9
Bellamy Depo. 92:13-19, 93:7-13
Bellamy Depo. 96:25 to 97:24
Bellamy Depo 149:15-150:1;

- 3) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 4) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 5) The following Orders:

Order (August 24, 2016)
Order denying motion to alter or amend (November 15, 2016)
Order Granting Summary Judgment
Reply to Defendants' Response (October 10, 2016)
Response to Defendant's Motion for Summary Judgment
(December 8, 2015);

- 6) The following Motions, and responses to motions:

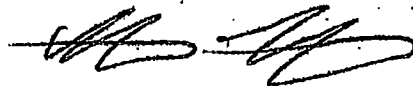
Defendant's Motion for Summary Judgment (November 3, 2014)
Memo in Opposition to Motion to Alter or Amend (September 27,
2016)
Motion to Alter or Amend and Supp. Affs. of Drs. Pia and
Johnson;

- 7) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley;
- 8) Appellants Notice of Appeal and Amended Notice of Appeal;
- 9) The following documents cited in Appellants' Initial Briefs:

Consolidated Employee Recreation Clubs Bylaws Art. V.
Pine Island Chapter Bylaws Art. V
Statement of Evan McPherson
Statement of J.W. Seay

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
Pedro E. Krompecher, III (SC Bar: 100485)
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f. (800) 859-7028
Attorneys for Appellants

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
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Sixth Floor
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Attorneys for Respondents

April 26, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,


Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Amended Designation of Matter to be Included in the Record* in the above-referenced matter was served by U.S. Mail, postage prepaid, on April 26, 2017 addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
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1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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f. (800) 859-7028
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

Appellate Case No. 2016-002487

MAY 11 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Dismiss Appeal
or, in the Alternative, Motion to Strike upon all parties, by placing a copy in
the United States mail, postage prepaid, to all counsel of record on May 10,
2017, addressed to the following:

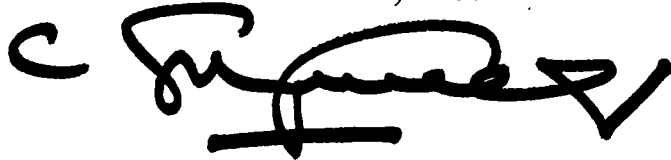
COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
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Post Office Box 6639
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Counsel for Appellants

Edward L. Graham, Esquire
J. Layton Ruffin, Esquire
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Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS



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May 10, 2017

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, vs. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA*

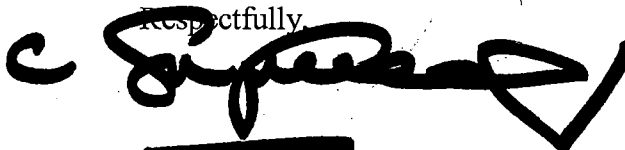
Civil Action No. 2014-CP-32-02210
Appellate File No. 2016-002487
Claim No. 683-411339
C&L File No. 000001-02078

Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of the Respondents' Motion to Dismiss Appeal or, in the alternative, Motion to Strike in the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00, representing the filing fee of same. Please file the original and return a clocked copy of same via our courier.

By copy of this letter and enclosure, we are serving the same on counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/mmm
Enclosures

cc: John Layton Ruffin, Esquire
Edward L. Graham, Esquire
Pedro E. Krompecher, III, Esquire

RECEIVED

MAY 11 2017

SC Court of Appeals



1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
1-2078