

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr.  
Circuit Court Judge

Appellate Case No. 2017-000024  
Circuit Court Case No. 2016-CP-10-1629

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MAY 30 2017

SC Court of Appeals

Senior Ride Connection f/k/a ITNCharleston Trident..... Appellant,  
v.  
ITNAmerica, ..... Respondent.

RESPONDENT’S MOTION TO STRIKE IMPROPER DESIGNATIONS AND ARGUMENTS  
NOT CONTAINED IN RECORD

The Appellate Court Rules are clear that this Court cannot consider anything on appeal that was not presented to the trial court. *See, e.g.*, Rule 210(h), SCACR (providing that “the appellate court will not consider any fact which does not appear in the Record on Appeal”); *id.* 210(c) (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”).

The first four items listed in Senior Ride Connection’s Designation of Matter were not presented to Judge Cooper in this case. Instead, they are all filings from a different case that Senior Ride Connection filed against ITNAmerica, which Senior Ride Connection voluntarily dismissed before it commenced this case. None of these items were presented in this case, and they cannot be included in the Record or considered in this appeal.

Likewise, the full paragraph on Page 15 of Senior Ride Connection’s opening brief—beginning “ITNAmerica’s argument....”—relies solely on these materials that were never part of this case.

Accordingly, this paragraph should be stricken and disregarded as well. *See, e.g., Jenkins v. Jenkins*, 401 S.C. 191, 204, 736 S.E.2d 292, 299–300 (Ct. App. 2012) (noting that a party’s appellate argument based on a court order that was not included in the Record on Appeal violated Rule 210(h), SCACR); *Spreeuw v. Barker*, 385 S.C. 45, 68, 682 S.E.2d 843, 854 (Ct. App. 2009) (“[A]fter reviewing the record, we have been unable to find where Father listed this amount as income on his tax return. Accordingly, we conclude this evidence does not appear in the record and cannot be considered on appeal.”).

For these reasons, the Court should strike Items 1 through 4 from Senior Ride Connection’s Designation, as well as the full paragraph on Page 15 of Senior Ride Connection’s opening brief.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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Attorneys for ITNAmerica

Columbia, South Carolina  
May 26, 2017

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PROOF OF SERVICE

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I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Respondent's Motion to Strike Improper Designations and Arguments Not Contained in Record

Parties Served:


Jennifer H. Thiem  
K&L Gates LLP  
134 Meeting Street, Suite 500  
Charleston, SC 29401

*Attorneys for Appellant*

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SC Court of Appeals



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May 26, 2017



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May 26, 2017

The South Carolina Court of Appeals  
The Honorable Jenny Abbott Kitchings  
1220 Senate Street  
Columbia, SC 29201

Re: Senior Ride Connection, f/k/a ITNCharleston Trident v. ITNAmerica  
Civil Action No. 2016-CP-10-1629  
Appellate Case No. 2017-000024

Dear Ms. Kitchings:

Please find enclosed the following materials for filing in the above-referenced case:

- Respondent's Initial Brief and 1 copy;
- Respondent's Designation of Matter and 1 copy; and
- Respondent's Motion to Strike and 7 copies, along with our check in the amount of \$25.

Please file the originals and return clocked copies in the enclosed envelope. If we can provide the Court with anything further, please let us know.

Very truly yours,

M. Todd Carroll

MTC/tm  
cc: Jennifer Thiem

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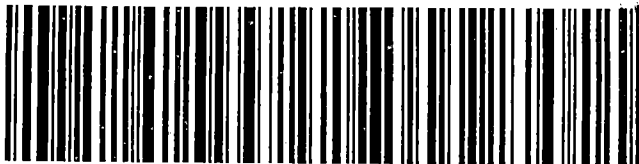
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