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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC, Appellants.
Reuben Mark Ward, and
Lynnette Pennington Ward

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SC Court of Appeals

**APPELLANTS' RETURN TO RESPONDENT'S MOTION TO
STRIKE SECTION "I.(F)" OF APPELLANTS' INITIAL BRIEF**

Pursuant to Rules 208, 209, 210 and 240, SCACR, the Appellants, Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, by and through their undersigned counsel, hereby file their Return to Respondent's Motion to Strike Section "I.(F)" of Appellants' Initial Brief.

FACTS/PROCEDURAL HISTORY

The Appellants commenced the instant appeal on November 14, 2016, appealing the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28,

2016. On December 2, 2016, the Respondent filed a Motion to Dismiss Appeal. On February 1, 2017, the Court of Appeals issued an order denying Respondent's Motion to Dismiss Appeal and directing Appellants to file their initial brief and designation of matter.

On March 3, 2017, the Appellants served and filed their Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal. On April 18, 2017, the Respondent served and filed its Initial Brief of Respondent and Respondent's Designation of Matter on Appeal. After receipt of Respondent's Initial Brief and Designation of Matter, Appellants filed a Motion to Strike and Exclude pursuant to SCACR 208(b)(4), SCACR 209(b), SCACR 210(c) and SCACR 240. ("Appellants' Motion"). Appellants' Motion requests that all documents listed in the Designation of Matter that were not presented to the lower court be stricken, and all references to these documents in Respondent's Initial Brief be excluded. The specific documents in question are identified as Items 2, 3 and 4 of Respondent's Designation of Matter, including the exhibit notebook and associated documents. *Appellants' Motion to Exclude and Strike; Appellants' Reply to Respondent's Opposition to Appellants' Motion to Strike.*

As part and parcel of Respondent's response to Appellants' Motion to Exclude and Strike, Respondent filed a Motion to Strike Section "I.(F)" of Appellants' Initial Brief. Respondent asserts that if Appellants' Motion to Strike and Exclude is granted, then the entire Section "I: (F)" of Appellants' Initial Brief must be stricken.

LAW/ANALYSIS

A. Section I.(F) of Appellants' Initial Brief Complies With SCACR 208 And, Therefore, Should Not Be Stricken From Appellants' Initial Brief.

Section I.(F) of the Initial Brief of Appellants is entitled "**The Appellants Are Entitled to Mandatory Mediation/Arbitration Of This Matter and Have Meritorious Defenses To The Plaintiff's Lawsuit.**" The Respondent makes the general assertion that "almost every defense asserted by Appellants [in Section I.(F)] is without citation to the record" in violation of SCACR 208(b)(4). The Respondent then specifically argues that the numbered Paragraphs F(1), F(2), F(3) and F(4) are without citation to the Record. The Respondent concludes its argument by asserting that if Appellants' Motion to Strike and

Exclude is granted, then the entire section I.(F) of Appellant's Initial Brief should be stricken. The Respondent's request for the wholesale striking of Section I.(F) relies on its two-pronged contention that certain paragraphs of Section I.(F) violate the citation requirements of SCACR 208(b)(4) and that the exhibit notebook contains the only documents in the record relevant to the defenses.

The Appellants have fully briefed and respectfully refer the Court to Appellants Motion to Strike and Exclude and supporting memoranda on the issue of whether Items 2, 3 and 4 of Respondent's Designation of Matter, including the exhibit notebook and associated documents, are contained in the Record on Appeal. *Appellants' Motion to Exclude and Strike; Appellants' Reply to Respondent's Opposition to Appellants' Motion to Strike*. Accordingly, Appellants submit that Items 2, 3 and 4 of Respondent's Designation of Matter, including the exhibit notebook and documents contained therein are not properly included in the Record on Appeal. *Id.*

Turning to Respondent's citation argument, the requirements of SCACR 208(b)(4) are dispositive on this issue. SCACR 208(b)(4) requires that the parties' briefs shall contain only references to the transcript, pleadings, orders, exhibits, or other materials ***which may be properly*** included in the Record on Appeal to support the salient facts alleged. (Emphasis added).

Contrary to Respondent's argument, a review of Section I.(F) of Appellants' Initial Brief shows that SCACR 208(b)(4) has been satisfied. Firstly, Appellants' claim of entitlement to mandatory mediation/arbitration contained in Section I.(F) is referenced to the *Initial Brief of Appellants, Arguments Section II*. Section II of the Initial Brief of Appellants contains references to multiple supporting documents, including the Subcontract attached to Respondent's Complaint¹, the Respondent's Motion to Stay and Compel mandatory mediation/arbitration, the Appellants' Motion to Stay and Compel mandatory mediation/arbitration, and portions of the Transcript of Proceedings Held July

¹ The Subcontract attached to Respondent's Complaint ("Subcontract") does not include Attachment 1. While the Subcontract itself is a part of the official records, the document entitled Attachment 1 is not. Respondent, in its Initial Brief, has referred to Attachment 1 as a) Subcontract, Attachment 1, b) Subcontract, Attachment, c) Subcontract Breakdown, and d) PCG Subcontract Breakdown.

14, 2016 before the Honorable Mikell R. Scarborough. All of these documents are contained in the official lower court record and listed/included on both Appellants' and Respondent's Designation of Matter To Be Included In The Record On Appeal.

Likewise, the defenses set forth in Paragraphs (1) – (5) of Section I. (F) are collectively referenced to the *Motion to Lift Entry of Default* and the *Memorandum In Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c)* which were both filed by the Appellants in the lower court. Both of these documents are contained in the official lower court record and listed/included on both Appellants' and Respondent's Designation of Matter To Be Included In The Record On Appeal.

Finally, Paragraphs (2), (3), (4) and (5) of Section I. (F) contain supplemental references to additional documents filed by both the Appellants and the Respondent in the lower court. These documents include the Teaming Agreement attached to Respondent's Complaint, the Subcontract attached to Respondent's Complaint and the Payment Bond attached to Respondent's Complaint. Once again, these documents are all in the official court records and listed/included on both the Appellants' and Respondent's Designation of Matter To Be Included In The Record On Appeal.

Based on the above facts, the Appellants respectfully submit that Section I.(F) of the Initial Brief of Appellants contains references to materials which may be properly included in the Record on Appeal. As such, Section I.(F) is in compliance with SCACR 208(b)(4).

CONCLUSION

Based on the foregoing, Section I. (F) of the Initial Brief of Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward should not be stricken.

For these reasons, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that the Respondent's Motion to Strike Section "I.(F)" of Appellants' Initial Brief be denied.

[SIGNATURE ON FOLLOWING PAGE]

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A handwritten signature in black ink, appearing to read "A. Bright Ariail", written over a horizontal line.

A. Bright Ariail

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ATTORNEY FOR APPELLANTS

June 9, 2017

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

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[Appellate Case No. 2016-002308]

SC Court of Appeals

Palmetto Construction Group, LLC

Respondent

v.

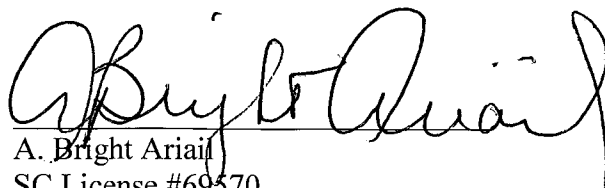
Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward

Appellants

PROOF OF SERVICE

I certify that I have served Appellants' Return to Respondent's Motion to Strike Section "I.(F)" of Appellants' Initial Brief on Palmetto Construction Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2017, addressed to Palmetto Construction Group, LLC's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, LLC, 46A State Street, Charleston, South Carolina, 29401.

June 9, 2017

A handwritten signature in black ink, appearing to read "A. Bright Ariail". The signature is written in a cursive style with a large, sweeping initial "A".

A. Bright Ariail

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Law Office of A. Bright Ariail, LLC

125E Wappoo Creek Drive, Suite 202

Charleston, SC 29412

843/814-8805

Attorney for Appellants

Law Office of A. Bright Ariail, LLC

June 9, 2017

VIA PRIORITY MAIL

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

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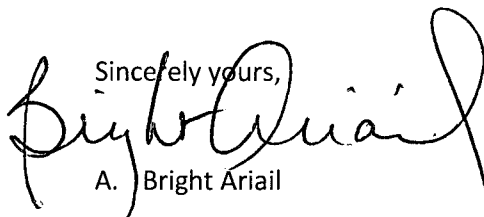
RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
Appellate Case No. 2016-002308

Dear Ms. Kitchings;

Enclosed, please find for filing the original and seven copies of Appellants' Return to Respondent's Motion to Strike Section "I.(F)" of Appellants' Initial Brief and Proof of Service of same in the appeal reference above which are hereby provided to you for filing. I'd request that you return a stamped copy to me in the enclosed SASE.

By copy of this letter, I am serving opposing counsel with a copy of same.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures as stated

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

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