

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY  
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

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Common Pleas Case No.: 2014-CP-23-01871  
Appellate Case No.: 2016-1787

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**RECEIVED**

JUL 05 2017

SC Court of Appeals

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and Patricia  
Sprenger ..... Respondents/Appellants

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**APPELLANT/RESPONDENT'S REPLY TO RETURN TO MOTION TO SETTLE  
RECORD ON APPEAL**

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*Attorneys for Appellant/Respondent China  
Construction America of South Carolina,  
Inc.*

## REPLY

On June 16, 2017, Appellant/Respondent China Construction America of South Carolina, Inc. (“CCA”), by and through its undersigned counsel, moved pursuant to Rule 240, SCACR for an Order Settling the Record on Appeal (the “Record”) and excluding the last page of Defendants’ Exhibit 14 from the Record, which was admitted into evidence at the March 2, 2016 hearing before the Master-in-Equity and previously designated by Respondents/Appellants in Appellants’ Initial Brief of Respondents/Appellants. On June 27, 2017, Respondents/Appellants served its Return to Appellant/Respondent’s Motion. Pursuant to Rule 263(a) and Rule 240(f), SCACR, Appellant/Respondent timely submits the following Reply.

Respondents/Appellants’ Return to CCA’s Motion includes several representations that CCA contends are inaccurate. First, Respondents/Appellants contend that the document in question was introduced and considered by the trial court at the March 2, 2016 hearing. It is CCA’s position that this is not the case. CCA contends that document was inadvertently included in the notebook provided to the court reporter, as counsel for Respondents/Appellants agreed prior to the hearing and off the record to exclude it. That document was removed from the copy of the exhibits provided to counsel for CCA.

While it is true that the witness as questioned at the March 2, 2016 hearing regarding to the “salary” he received from the company, the witness was not questioned regarding the document evidencing the same. Per the affidavit of Robert C. Osborne provided to this Court, Mr. Osborne and trial counsel for Respondents/Appellants agreed that any testimony relating to Mr. Sprenger’s “salary” that conflicted with any prior sworn testimony of the witness would not be objected to by CCA, as the credibility of the witness’

testimony was a matter to be considered by the trial judge. Therefore, CCA did not object testimony and had no reason to object to the document because the document itself was not introduced. A careful review of the hearing transcript reflects the same. Respondents/Appellants arguments in its Return regarding admissibility are of no consequence because the document was not admitted.

Counsel for CCA submitted a sworn affidavit to the Court evidencing the agreement between counsel at the March 2016 hearing. Trial counsel for Respondents/Appellants has no specific recollection of the conversation to refute the same. Appellate counsel for Respondents/Appellants was not present at the trial and does not have any specific or personal knowledge of the events at that hearing. Therefore, the only unrefuted evidence before this court is that the document in question was admitted inadvertently and in error.

This matter was resolved after several hearings, during the course of which numerous exhibits were introduced and admitted into evidence by both parties. While counsel for CCA deeply regrets that he did not identify the error regarding Exhibit 14 at the hearing, it would be unjust and inequitable for Respondents/Appellants to benefit from the oversight, particularly considering counsel's agreement to exclude the document prior to the hearing and CCA's reliance on the same.

In the absence of any evidence contradicting the sworn Affidavit of Robert Osborne, who, as an officer of the court, has an ethical obligation of truthfulness and candor toward this tribunal, CCA contends this Court has sufficient information to exclude the last page of Exhibit 14 from the Record. In the alternative, CCA requests this Court remand CCA's Motion to the trial court to resolve this matter.

July 5, 2017



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*China Construction America of*

*South Carolina, Inc.*

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**PROOF OF SERVICE**

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I, Katie Gjennestad, of Bruner, Powell, Wall & Mullins, LLC, attorneys for the Appellants, do hereby certify that on this 5<sup>th</sup> day of July 2017, I served the **APPELLANT/RESPONDENTS REPLY TO RETURN MOTION TO SETTLE RECORD ON APPEAL** upon the Respondent's attorney of record by depositing a copy of the same in U.S. Mail, first class, postage prepaid and addressed as follows:

J. Falkner Wilkes  
Attorney at Law  
114 Whitsett Street  
Greenville, SC 29601

July 5, 2017

  
Katie Gjennestad

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July 5, 2017

\*\* Also Admitted in District of Columbia

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**  
JUL 05 2017  
SC Court of Appeals

**Re: China Construction America of S.C., Inc. v. MS Production Solution, LLC**  
**Appellate Case No.: 2016-1787**  
**C/A No.: 2014-CP-23-1871**  
**Our File No.: 9-948.131**

Dear Ms. Kitchings:

I have enclosed the original and seven (7) copies of the **APPELLANT/RESPONDENTS REPLY TO RETURN MOTION TO SETTLE RECORD ON APPEAL** and a proof of service on counsel for the Respondents/Appellants. Please stamp one copy and return it with our runner who will be waiting.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my kindest regards, I am

Sincerely yours,



Katie Gjennestad  
Legal Assistant to Caitlin C. Heyward, Esq.

CCH/kg

Enclosures

cc: J. Falkner Wilkes  
Mike Watson, China Construction