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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143
Appellate Case No.: 2016-002308

RECEIVED

JUN 16 2017

SC Court of Appeals

Palmetto Construction Group, LLC Respondent,

v.

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

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

Appellants moved to strike certain documents from Respondents Palmetto Construction Group's ("PCG's") Designation of Matter on Appeal, including Appellants' own document productions dated July 6, 11, and 13, 2016 and PCG's exhibit notebook provided to the Master in Equity at the hearing on October 4, 2016 in support of its proffer of damages. Though the notebook was not filed, it was presented to the lower court as part of the Master's requested proffer of PCG's damages. The Master confirmed the exhibit notebook was part of PCG's proffer of damages and that PCG's damage calculation was based on the exhibit notebook provided at the hearing. (See Email of Master dated May 18, 2017).

As part of its opposition to Appellants' motion to strike, PCG argued that in violation of Rule 208(b), almost every defense asserted by Appellants in their initial brief is without citation to the record. Therefore, PCG argued that if the documents provided to the Master by PCG in support of its proffer of damages are stricken, so too must Appellants' entire section on their alleged meritorious defenses as the exhibit notebook contains the only documents in the record relevant to the defenses.¹ PCG's argument with regard to the cross motions to strike is more fully contained in its opposition to Appellants' motion to strike as the motions are entwined.

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

BY: Andrew K. Epting, Jr.
Andrew K. Epting, Jr.
Michelle N. Endemann
46a State Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

On this 14th day of June, 2017
Charleston, South Carolina

ATTORNEYS FOR RESPONDENT

¹ Appellants, as part of their initial brief, asserted the Master erred in failing to lift the default because Appellants have "meritorious defenses" to PCG's complaint and go on to list each alleged defense. (Appellants' Brief, pp.19-20).

Michelle Endemann

From: Mikell Scarborough <master@charlestoncounty.org>
Sent: Thursday, May 18, 2017 3:47 PM
To: Bright Ariail
Cc: Andrew K. Epting; Michelle Endemann; Barnwell Fishburne; Laura Dukes Beck
Subject: RE: Appellate Case 2016-002308/Civil Action 2016-CP-10-1143

Importance: High

Counsel,

I have been provided your emails and have gone back to review the record as well as searched my memory about this. This issue came up in an unusual context (as I recall) because the matter was set for a default damages hearing that was returned from appeal of an interlocutory order.

Ms. Ariel has filed an appeal of the denial of her motion to reconsider which is where I understand this matter now rests with the Court of Appeals.

At the scheduled damages hearing, we did not go forth with a full hearing on damages; however, due to the unusual posture of the case, I allowed the Plaintiffs to Proffer their damages into the record. My review is that the figure is \$1.6 Million. The support for that figure was found in the documents presented in the notebook presented by counsel for the Plaintiffs. I am well aware that the amount of damages as well as the supporting documentation for the damages was objected to at the time.

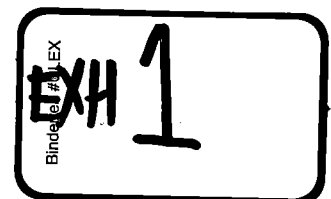
My review of Rule 103, SCRE sets for the effect of Rulings on Evidence. Section b gives the court latitude to set forth the terms of the offer of proof – the reason for the proffer. I allowed the Plaintiff to state the amount of the damages and this was based upon the documentation contained within the notebook. Accordingly, I am of the opinion that the notebook was part of the proffer. It does not constitute admitted evidence because the court never got to the merits of the hearing. It is an offer of proof as to what the Plaintiff seeks to prove whenever the hearing on Damages is finally heard. Ms. Ariel did not agree to the evidence contained within the documents and, as I told her then, she did not have to. Tr. 29. L11-13.

I am aware of this dispute. I asked for the proffer to establish a record for the appellate court as they will decide the issues currently on appeal.

Thanks & I'm hopeful this helps to resolve the record on appeal.

Mikell R. Scarborough
Charleston County Master-in-Equity
100 Broad St, Ste. 266
Charleston, SC 29401
843 958-5070

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Tuesday, May 16, 2017 6:04 PM
To: Mikell Scarborough <master@charlestoncounty.org>
Cc: Andrew K. Epting <ake@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Barnwell Fishburne <JFishburne@charlestoncounty.org>; Laura Dukes Beck <LBeck@charlestoncounty.org>
Subject: Appellate Case 2016-002308/Civil Action 2016-CP-10-1143



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

CASE NO. 2016-CP-10-1143

Palmetto Construction Group, (Respondent)

v.

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

PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Appellants' Opposition to Respondent's Motion to Strike Section "I.(F)" of Appellants' Initial Brief on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on June 15, 2017, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By  _____

Andrew K. Epting, Jr.

Michelle N. Endemann

46A State Street, Charleston, SC 29401

Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

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JUN 16 2017

SC Court of Appeals

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

June 15, 2017

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

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JUN 16 2017
SC Court of Appeals

RE: *Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward,
and Lynnette Pennington Ward*
Case No.: 2016-CP-10-1143
Appellate Case No.: 2016-002308

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of the Respondent's Reply to Appellants' Opposition to Respondent's Motion to Strike Section "I. (F)" of Appellants' Initial Brief together with a Proof of Service in the above-referenced appeal.

I would greatly appreciate your filing the originals and returning the file-stamped copies to me in the self-addressed, stamped envelope provided.

With kind regards,

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr.

AKE/agg

Enclosures – as stated

cc: A. Bright Ariail, Esquire