

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Judge
Appellate Case Number 2016-001899
Case Number 2016-CP-07-1778

A & B ASSOCIATES, L. P.,

Respondent,

vs.

FCRE REL, LLC, and TIDELAND REALTY, INC.,

Appellants.

NOTICE OF MOTION AND MOTION TO STRIKE AND MEMORANDUM
IN SUPPORT

Curtis L. Coltrane
COLTRANE & WILKINS, LLC
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AUG 17 2017

SC Court of Appeals

MOTION TO STRIKE AND MEMORANDUM IN SUPPORT

In this case, FCRE REL, LLC, has filed appeals from two separate Orders of the Hon. Marvin H. Dukes, III. The Orders under appeal are an Order Granting Temporary Injunction dated August 26, 2016, and an Order Granting Motion for Contempt, dated September 23, 2016. By Order of this Court dated October 26, 2016, the two appeals were consolidated.

A & B Associates, L. P., moves to Strike the “Designation of Matter to Be Included in The Record on Appeal” filed by FCRE REL, LLC, on July 31, 2017. In the July 31, 2017, “Designation of Matter to Be Included in The Record on Appeal” FCRE REL, LLC, proposes to include items in the Record on Appeal that were not offered or entered into the record in the hearings before the Hon. Marvin H. Dukes, III.

Rule 210(c), SCACR, includes the following text: “The Record shall not, however, include matter which was not presented to the lower court or tribunal.”

The items set out in the July 31, 2017, “Designation of Matter to Be Included in The Record on Appeal” are copies of loan documents that were neither offered or entered into evidence at the hearings before the Hon. Marvin H. Dukes, III.

In its Initial Brief, FCRE REL, LLC, admits that the loan documents were not offered or entered into evidence before Judge Dukes. On page 20, lines 3 and 4 of the Initial Brief of FCRE REL, LLC, the following text appears: “In this case, however, none of the loan documents were actually submitted to the Trial Court for its consideration.”¹

¹ This admission by FCRE REL, LLC, likely accounts for the fact that FCRE REL, LLC, did not propose to include any of the loan documents in the Record on Appeal in its “Designation of Matters to Be Included in the Record On Appeal” filed on December

Because FCRE REL, LLC, failed to offer the loan documents at the hearings before Judge Dukes, it is now prohibited from including them in the Record on Appeal. Rule 210(c), SCACR.

CONCLUSION

In its July 31, 2017, "Designation of Matter to Be Included in The Record on Appeal," FCRE REL, LLC, seeks to include matter in the Record on Appeal that FCRE REL, LLC, failed to offer at the hearings before Judge Dukes and which was not considered by Judge Dukes. Rule 210(c), SCACR, expressly prohibits this.

Based on the foregoing, A & B Associates, L. P., moves to strike the "Designation of Matter to Be Included in The Record on Appeal" filed by FCRE REL, LLC, on July 31, 2017.

COLTRANE & WILKINS, LLC

By:



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Hilton Head Island, South Carolina

This 3rd day of August, 2017.

21, 2016, or in its "Supplemental Designation of Matters to Be Included in the Record On Appeal," also filed on December 21, 2016.

COLTRANE & WILKINS, LLC
ATTORNEYS AT LAW

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Curtis L. Coltrane*
John W. Wilkins
*Also Member Virginia Bar

August 14, 2017

Hon. Jenny A. Kitchings
S. C. COURT OF APPEALS
Post Office Box 11629
Columbia, SC 29211

ATTN: Shelby

RE: A & B Associates, L. P. V.FCRE REL, LLC
Case 2016-1899

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Dear Shelby:

Per our conversation, you will find enclosed a signed original of the second Motion to Strike that was filed on August 3, 2017. The Motion is still dated August 3, 2017. I also enclose a copy of time stamped one that was returned to me from the Court. I also enclose the \$50.00 check for the filing fee for the two motions that was returned to me under the Court's correspondence of August 10, 2017. Please let me know if anything further is needed at this moment. I am,

Sincerely,

COLTRANE & WILKINS, LLC


Curtis L. Coltrane

CLC/bms

cc: Benjamin T. Coppage, Esq.

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08/14/2017

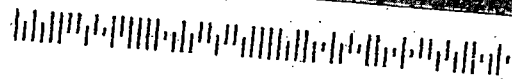
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COLTRANE & WILKINS, LLC

Attorneys at Law

P.O. Box 6808

Hilton Head Island, SC 29938

TO:

Hon. Jenny A. Kitchings

S.C. COURT OF APPEALS

Post Office Box 11629

Columbia, SC 29211

ATTN: SHEELY

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