

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Kristi L. Harrington, Circuit Court Judge
Case number: 2015-CP-10-06615
(Appellate Case Number: 2017-001532)

BOUCHELLE INCORPORATED,.....APPELLANT,

vs.

CHARLESTON WRECKING INC. and MICHAEL C. GOLEMIS.....RESPONDENTS.

RESPONDENTS' REPLY

NOW COMES Respondent Michael Golemis, by and through his undersigned counsel, and Respondent Charleston Wrecking, Inc., by and through their undersigned counsel, who Reply to Appellant's Return opposing Respondents' Motion to Exclude Deposition Excerpts from the Record on Appeal and to Strike references to the deposition testimony from Appellants Initial Brief.

APPELLANT'S RETURN

Appellant's Return confirms that no deposition excerpts of Bouchelle and Golemis were ever designated for use at trial pursuant to Rule 32(a)5, SCRCP; and establishes that no deposition testimony was ever presented to the Trial Court as mandated by Rule 210(c) SCACR. Appellant relies solely on unsupported arguments of counsel in an attempt to show that the deposition testimony was ever before the lower court. (Appellant's Return p. 7, Exhibit 1, Affidavit of Counsel, p. 4).

Appellant attempts to rely on argumentative statements of counsel which are not supported by evidentiary filings in the record of the motion, for example, the statement in its

Opposition to Defendant Charleston Wrecking, Inc.'s Motion for Summary for Judgment that "At Defendant Golemis' deposition on February 28, 2017, he acknowledged that he was on the roof at the time the damage occurred." This pleading allegation does not meet the requirement of evidentiary specificity necessary to oppose a motion. In *Dawkins v. Fields*, 354 S.C. 58, 580 S.E. 2nd 433 (S.C. 2003) the Supreme Court considered the requirements for opposing affidavits under Rule 56(e) S.C.R.C.P., which would be equally applicable to deposition excerpts. The Court stated that affidavits:

" [1.] Shall be made on personal knowledge, [2.] shall set forth such facts as would be admissible in to evidence, and [3.] shall show affirmatively that the affiant is competent to testify to the matters stated therein." Rule 56(e), S.C.R.C.P., "few pleadings will satisfy these requirements even when verified." (Citation Omitted) *Id.* at 354 S.C. 68.

Further, the statement is taken from the Opposition to Charleston Wrecking Inc.'s Motion for Summary Judgment which motion was denied and not relevant to this appeal.

Appellant argues that Respondent's counsel referred to depositions in his statement in the record that "the Appellant was a commercial and industrial general contractor." The limited citation from the record relied upon by Appellant is taken out of larger context. The complete context (Respondent's Motion record p. 38, lines 8-25) indicates that counsel's statements were supported by documents attached to Charleston Wrecking Inc.'s Motion for Summary Judgment.

A review of the entire trial transcript discloses that at no time did Appellant move to include any deposition testimony into the hearing record. (Respondent's Motion Record, pp. 43-54). The transcript further reveals that Respondents invited the trial court's attention to lack of any deposition testimony or affidavits, "We don't have any deposition testimony excerpts noted, we don't have any affidavits." (Respondent's Motion Record, p. 44, lines 19-21).

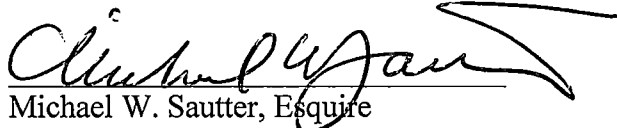
Appellant's reliance on *Austin v. Blue Ridge Transfer Company*, 308 S.C. 292, 417 S.E. 2nd 631 (Ct. App. 1992) is misplaced.

In that case, the issue was whether the trial judge erred in considering unfiled deposition excerpts in deciding a motion for summary judgment. Both parties had referred to depositions and portions of the depositions were quoted by both parties. The trial court ordered the deposition filed. Id. at 417 S.E. 2nd 632-633. In this case, the transcript of the hearing does not reveal that either party read any portion of any deposition into the record, nor did any party refer to deposition testimony in its argument.

WHEREFORE Respondents Golemis and Charleston Wrecking, Inc., move that the deposition transcripts of Appellant David Bouchelle and Michael Golemis be excluded and stricken from Appellant's Designation of Matters to be Included in Record on Appeal, and from arguments in Appellant's Initial Brief.

Respectfully Submitted,

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire
mikewsautter147@aol.com

SC Bar No.: 4944

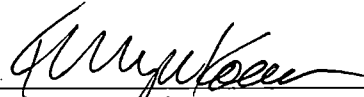
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ATTORNEY FOR DEFENDANT GOLEMIS



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ATTORNEY FOR RESPONDENT

CHARLESTON WRECKING, INC.

Dated: December 19, 2017
Charleston, SC

OTHER COUNSEL OF RECORD:

Karen M. DeJong, Esquire
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272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
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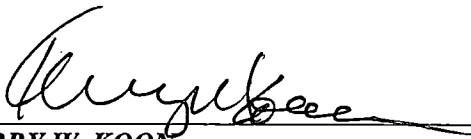
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PROOF OF SERVICE

I certify that I have served Respondent's Reply to Appellant's Return to Motion to Exclude and Strike portions of Appellant's Designation of Matter together with exhibits and supporting affidavits, on Karen M. DeJong, Esq., by depositing a copy of the same in the United States Mail, postage prepaid, on November 30, 2017, addressed to 272 West Coleman Blvd., Ste. 200, Mt. Pleasant, SC 29464.

December 19, 2017



KERRY W. KOON

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December 19, 2017

Jenny Kitchings, Clerk of Court
Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *Bouchelle Incorporated v. Charleston Wrecking, Inc. and Michael C. Golemis*
Appellate Case #: 2017-001532

Dear Ms. Kitchings,

Please find enclosed Respondent's Reply to Appellant's Return to Motion to Exclude and Strike portions of Appellant's Designation of Matter together with a Proof of Service of the same in the above referenced matter.

With kindest personal regards, I am

Very truly yours,

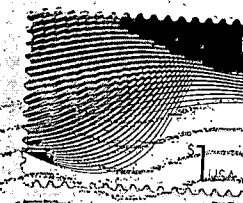
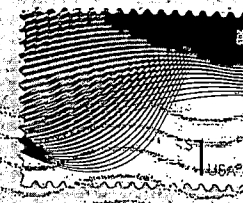
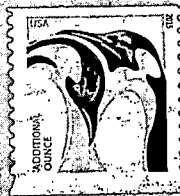
Kerry W. Koon



Michael W. Sautter

KWK:mm
Enclosures

cc: Karen M. DeJong, Esq.



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