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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

**RECEIVED**  
JAN 16 2018  
SC Court of Appeals

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers  
in their capacity as Co-Personal Representatives  
of the Estate of Evan Morris Myers, .....Appellants,

v.

The Consolidated Employee Recreation Clubs, a  
non-profit organization a/k/a Pine Island Club  
at Lake Murray, South Carolina Electric and Gas  
Holding Company, Inc.; SCANA .....Respondents.

**RESPONDENTS' REPLY TO APPELLANTS' RETURN TO THE  
MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,  
MOTION TO STRIKE AND AMEND RECORD ON APPEAL**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF  
SOUTH CAROLINA:

Respondents The Consolidated Employee Recreation Clubs, a non-  
profit organization a/k/a Pine Island Club at Lake Murray, South Carolina

Electric and Gas Holding Company, Inc., and SCANA (“Respondents”) filed a Motion to Dismiss Appeal or, in the alternative, Motion to Strike and Amend Record on Appeal following Appellants’ filing of the Record on Appeal, which contained numerous errors and omissions. Appellants Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers (“Appellants”) filed their Return in Opposition to Respondents’ Motion. Respondents submit this reply to Appellants’ return.

Appellants attempt to skirt the issues presented in Respondents’ Motion by contending that the mistakes in the Record on Appeal relate to the recent resignation of the attorney who had primary responsibility for this Appeal. Respondents acknowledge that on or about June 19, 2017, attorney Clayton Ruffin filed a motion to withdraw as Appellant’s counsel. Attorney Ruffin was employed at the Graham Law Firm. According to the July 28, 2017, correspondence to the Clerk of Court, and enclosing a correspondence to Appellants, Attorney Ruffin stated that he accepted employment with a new firm and will no longer be working with the Graham Law Firm, P.A. However, Attorney Ruffin continued: “Please be advised that while I am departing, the Graham Law Firm will continue to represent your interest in

this matter.” Attorney Ruffin was relieved as counsel pursuant to this Court’s Order on August 10, 2017.

While Appellants attempt to explain away the errors and omissions in the Record on Appeal by noting Attorney Ruffin’s departure from the Graham Law Firm, Respondents perceive that such explanation is disingenuous. Respondents note that Attorneys Edward L. Graham and Pedro E. Krompecher, III, have appeared in this appeal. Notably, Attorney Krompecher has represented Appellants throughout this litigation. Attorney Graham was included in the signature block of all matters submitted to this Court.

As to the specific issues regarding the Record on Appeal, Respondents maintain that the Appellate Court Rules are explicitly clear: “The Record on Appeal shall include **all matters designated to be included** by any party under Rule 209 ....” In short, Rule 209, SCACR, and the designation of matter provide for the content of the Record on Appeal. It is fundamental to include those matters only provided in the parties’ designation of matter.

Moreover, the designation of matter should only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials relevant to the appeal **and** previously before the lower court. Notably, in this

appeal, Respondents moved to strike several designations in Appellants' initial designation of matter as either irrelevant to the appeal or improper because the matter was not before the lower tribunal. In an unequivocal order filed April 16, 2017, this Court directed the parties that the following matters shall not be included in the designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record.

After Appellants amended their designation of matter, Respondents once again moved to dismiss or, in the alternative, moved to strike as the amended designation of matter included matters unrelated to the appeal or were not part of the lower court record. While the Court ultimately denied Respondents' motion, the Court's initial order directing that certain matters not be included in the designation of matter remained in place.

Despite the Court's initial order, Appellants included in the Record on Appeal answers to interrogatories and request for production and portions of the deposition transcript of Mandy Bellamy that were not part of the Circuit Court's record (or delineated in the parties' respective designations of

matter). The inclusion of the same is in direct contravention to this Court's April 16, 2017, order, as well as Rules 209 and 210, SCACR.

Furthermore, with regard to exhibits to the motions and memorandums, while Respondents acknowledge that the contents of the exhibits are located in other portions in the record on the appeal, detaching and removing the exhibits from the motions and memorandums filed with the trial court is wholly improper.

As to the emails to the trial court that were omitted from the Record on Appeal, Appellants contend that they included the designated e-mails of which Appellants were aware. Such contention is misleading. Notably, Attorney Krompecher, as counsel to Appellants throughout the motions practice before the trial court, was included in all communications to the court. Accordingly, contrary to Appellants argument that they are not in possession of certain emails with the trial court, Attorney Krompecher should be in possession of the emails referenced in Respondents' motion.

Finally, in response to Appellants contention that they are only in possession of a condensed format of the Bellamy transcript, Respondents note that the designated portions of the transcript were previously submitted to the trial court as exhibits to the motions and memorandum filed in the

same. These motions and memorandums, and corresponding exhibits—including the portions of the Bellamy transcript—were served upon Appellants. Moreover, while the exhibits were not scanned into the public index, such exhibits are on file with the Lexington County Clerk of Court’s office. In addition to consulting with Respondents to request single page copies of the transcript, Appellants could have pulled the same from the exhibits to the memorandums and/or contacted the lower court to obtain a single page copy of the designated portions of the Bellamy transcripts.

By signing his name to the Record on Appeal, Attorney Graham, on behalf of himself and other Appellants’ counsel of record, has in essence certified to this Court that such filing, to the best of his knowledge, information and belief, is compliant with this Court’s Orders and Appellate Court Rules. See Rule 210(g), SCACR (“Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.”). However, as outlined, *supra*, it is abundantly clear that the Record on Appeal does contain “other material” not proposed to be included and excludes certain material that was proposed to be included, as indicated in the parties’ respective designations of matter.

While Appellants contend Respondents have not been prejudiced by the inclusion/exclusion of certain documents in the Record on Appeal, Respondents note that this is the third motion filed as it relates to the designation of certain matters before this court, either in the parties' designations of matter or the record on appeal. It is the continual need to engage in motions practice, and the clear violations of the appellate court rules, that have prejudiced Respondents. Indeed, this appeal has been pending since on or about December 12, 2016. After pending for over a year, this appeal is still in the final briefing stage. Such delay is attributable, in part, to Appellants continued defiance of this Court's order and the Appellate Court Rules.

Due to Appellants numerous violations of the Rules, dismissal of this appeal is warranted. See Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992) (noting that court could be justified in dismissing the appeal based on appellant's numerous violations of the Rules). In addition to, or alternatively to, dismissal, sanctions, including—but not limited to—attorneys' fees and costs related to the continued motions practice are justified pursuant to Rule 269, SCACR.

To the extent the Court denies Respondents' motion to dismiss, Appellants request the Court direct Appellants to file an Amended Record on Appeal, revising the Record as outlined in Respondents' Motion to Dismiss or, in the alternative, Motion to Strike.

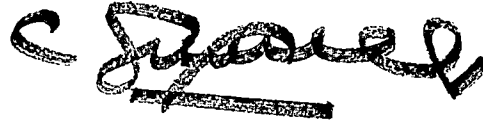
### **CONCLUSION**

For the foregoing reasons, as well as Respondents' argument in its Motion to Dismiss, or in the Alternative, Motion to Strike, Respondents respectfully request the Court dismiss this appeal with prejudice. Alternatively, Respondents request that the stated matters contained by error by Appellants be stricken from the Record on Appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' REPLY TO  
APPELLANTS' RETURN TO  
THE MOTION TO DISMISS  
APPEAL OR, IN THE  
ALTERNATIVE, MOTION TO  
STRIKE AND AMEND RECORD  
ON APPEAL**

Columbia, South Carolina  
January 16, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
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William P. Keesley, Circuit Court Judge

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at Lake Murray, South Carolina Electric and Gas  
Holding Company, Inc.; SCANA ..... Respondents.

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**PROOF OF SERVICE**

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I hereby certify that I served Respondents' Reply to Appellants' Return to the Motion to Dismiss Appeal or, In the Alternative, Motion to Strike and Amend Record on Appeal upon all parties, by placing a copy in the United

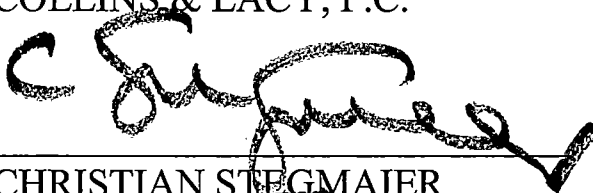
States mail, postage prepaid, to all counsel of record on January 16, 2018,  
addressed to the following:

**COUNSEL SERVED:**

Pedro E. Krompecher, III, Esquire  
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*Counsel for Appellants*

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Post Office Box 550  
Florence, SC 29501  
*Counsel for Appellants*

Respectfully submitted,  
COLLINS & LACY, P.C.



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**PROOF OF SERVICE-  
RESPONDENTS' REPLY TO  
APPELLANTS' RETURN TO THE  
MOTION TO DISMISS OR, IN THE**

**ALTERNATIVE MOTION TO  
STRIKE AND AMEND RECORD ON  
APPEAL**



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January 16, 2018

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JAN 16 2018  
SC Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**Re: *Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, vs. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA***

**Civil Action No. 2014-CP-32-02210**  
**Appellate File No. 2016-002487**  
**Claim No. 683-411339**  
**C&L File No. 000001-02078**

Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of the Respondents' Reply to Appellants' Return to Respondents' Motion to Dismiss Appeal or, in the alternative, Motion to Strike and Amend the Record on Appeal in the above referenced matter. Please file the original and return a clocked copy of same via our courier.

By copy of this letter and enclosure, we are serving same on counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/mmm

Enclosures

cc: Edward L. Graham, Esquire  
Pedro E. Krompecher, III, Esquire