

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

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MAY 07 2018
SC Court of Appeals

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 MOTION
TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE**

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

Respondents moved to dismiss this Appeal due to Respondents
continued noncompliance with the South Carolina Appellate Court Rules as
well as this Court's prior orders in this matter. Appellants filed a Return to

Respondents' motion. Respondents submit the following as their Reply to Appellants' Return.

In their Return to Respondents' Motion to Dismiss or, in the alternative, Motion to Strike, Appellants contend that the Court's Order provided only two (2) directives to Appellants: (1) amend their designation of matter to exclude certain material not formally presented to the trial court; and (2) to prepare the Record on Appeal accordingly. (Appellants' Return, pages 1-2). Appellants further contend that Rule 211(b), of the South Carolina Appellate Court Rules, requires that their Final Brief be identical, with only limited revisions permitted such as typographical errors, to their Initial Brief. Therefore, Appellants contend that a substantial revision to delete references and citations to materials not contained in the Record on Appeal would be a violation of Rule 211(b), SCACR. Appellants' arguments are flawed.

As articulated in their Motion, Respondents initially moved to strike certain portions of Appellants' Initial Brief and Designation of Matters. Both the Initial Brief and Designation of Matters contained references, citations, or other materials that were not part of the Circuit Court record. While Appellants ostensibly contend that the Court's order was silent as to the references contained in their Initial Brief to material not before the Circuit Court and,

therefore, did not provide a directive to Appellants to amend their Initial Brief, Respondents' February 21, 2017, Motion was clear in the presentation of Respondents' position on this matter. Specifically, Respondents requested the Court strike certain matters not before the Circuit Court contained within Appellants Designation of Matter as well as order Appellants "to revise their Initial Brief to omit all references to the same." The Court, by order dated April 16, 2017, **granted** Respondents' motion.

To the extent the Order did not specifically provide directive to revise the Initial Brief to omit references and citations to matters not before the Circuit Court, Rule 208, SCACR provides guidance to Appellants. Specifically, Rule 208(b)(4), SCACR states: "The brief shall **contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.**" (Emphasis added). Indeed, it does not appear that Appellants contest Respondents' position that the references and citations cited in Respondents' Motion to Dismiss were not part of the Circuit Court record. Notably, the documents to which Appellants attempt to cite were stricken from the Designation of Matter and subsequent Record on Appeal. Therefore, because only matters that could be properly included in the Record

on Appeal should be referenced and cited to in the Initial Brief, and subsequent Final Brief, Appellants improperly included matters in their Initial Brief.

While Respondents acknowledge that Rule 211(b), SCACR requires that the Final Brief be identical to the Initial Brief, Appellants' Initial Brief should not have contained improper references and/or citations that were not part of the Designation of Matter or subsequent Record on Appeal. Accordingly, pursuant to Respondents initial Motion to Strike and this Court's Order granting the same, Appellants could have avoided the alleged predicament they contend is presented by Rule 211(b), SCACR by including only proper references and citations in their Initial Brief.

Respondents maintain that the Court's Order, as well as Rule 208(b)(4), SCACR, provided guidance to Appellants on matters that are to be considered before the Court. Accordingly, because Appellants have continued to fail to comply with this Court's Orders as well as the Appellate Court Rules, Respondents Motion to Dismiss must be granted.

CONCLUSION

Based on the aforementioned, as well as the argument articulated in Respondents' Motion to Dismiss or, in the Alternative, Motion to Strike, Appellants appeal should be dismissed. Alternatively, Appellant's references

and citations to materials or matters not contained in the Record on Appeal should be stricken from Appellants' Final Brief.

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
May 7, 2018

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

PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellants' Return to Motion to Dismiss or, in the Alternative, Motion to Strike upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on May 7, 2018, addressed to the following:

COUNSEL SERVED:


Pedro E. Krompecher, III, Esquire
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Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS



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May 7, 2018

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 Respondents' Reply to Appellants' Return to Respondents' Amended Motion to Dismiss Appeal or, in the alternative, Motion to Strike Appellants' Final Brief 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

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1330 Lady Street, Sixth Floor, (29201) Post Office Box 12487 | Columbia, SC 29211

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The Honorable Jenny A. Kitchings
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