

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellant Case No. 2017-001790

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JUN 01 2018
SC Court of Appeals

Jimmie Aiken, Leila Brown, Veronda Cohen, Carla David, Anthony Sabb,
James Ginn, and Shirley Rice, as named Plaintiffs representing a class of
South Carolina Citizens.....Respondents,

v.

South Carolina Department of Revenue
.....Appellant.

Appellant's Return to Respondents' Motion to Supplement the Record

Dana R. Krajack (Bar No. 3608)
Counsel for Litigation P.O. Box 12265
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant
Dana.Krajack@dor.sc.gov
Jason.Luther@dor.sc.gov


INTRODUCTION

This is an appeal from an order of the Honorable Diane S. Goodstein, Circuit Judge of the First Judicial Circuit, dated July 5, 2017, which granted Respondents' Motion to Strike portions of the Appellant's Answer to Respondents' Second Amended Complaint. This Court should deny Respondents' present Motion to Supplement the Record with its *proposed* Third Amended Complaint—which the trial court has not yet ruled upon—because it fails to comply with the South Carolina Appellate Court Rules is an improper attempt to include extraneous matters in the record for this appeal that were not presented to or considered by the trial judge.

ARGUMENT

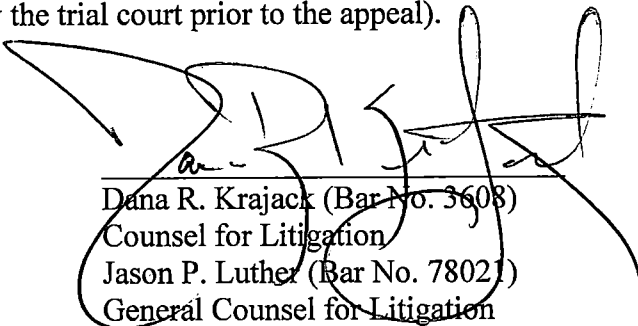
SCACR Rule 201 provides that an “[a]ppel may be taken, as provided by law, from any final judgment, appealable order or decision.” In addition, SCACR Rule 210 provides that the Record on Appeal may contain “all matter designated by any party under SCACR Rule 209,” but the Record on Appeal is not without limitation: “The Record shall **not**, however, include matter which was not presented to the lower court or tribunal.” Rule 210(C), SCACR.

Respondents' Motion to Supplement the Record, as evidenced by the attachments to its Motion, seeks to include in the record for this appeal Respondents' *proposed* Third Amended Complaint and its Motion for Leave to Amend (filed with the circuit court). By the very terms of Respondents' Motion for Leave to Amend, the Third Amended Complaint would add new parties and new claims that were not included in the Second Amended Complaint that was considered by the trial court and which form the basis of this appeal. In fact, Respondents only recently filed the Motion for Leave to File a Third Amended Complaint with the trial court (some nine months after Appellant first noticed the present appeal, and nearly a year after the trial court entered the order that is the subject of the present appeal), but the trial court has not held a hearing or ruled upon



that motion, much less addressed the merits of the actual Third Amended Complaint.¹ Thus, the matters with which Respondents seek to supplement the record on appeal are nothing more than a *proposed* pleading that was never presented to the lower court prior to this appeal and is not the subject of a final judgment, appealable order, or decision by the lower court.

Accordingly, Respondents' Motion to Supplement the Record with matters never considered or ruled upon by the trial court should be denied. See Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (denying motion to supplement the record with matters that were not presented to the trial judge); see also Farmers Auto. Ins. Ass'n v. Danner, 924 N.E.2d 1053, 1058 (Il. Ct. App. 2009) (denying motion to supplement the record on appeal with an amended complaint that was not considered by the trial court prior to the appeal).



Dana R. Krajack (Bar No. 3608)
Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant

May 31, 2018

¹ In fact, Respondents' Motion for Leave to File a Third Amended Complaint filed with the trial court is also improper and Appellant has filed with the circuit court its objections to the Motion. First, the trial court is deprived of the power to rule upon Respondents' motion because the issues sought to be litigated in the proposed Third Amended Complaint relate to matters affected by the current appeal. See Rule 205, SCACR; see also Arnal v. Fraser, 371 S.C. 512, 518–19, 641 S.E.2d 419, 422 (2007) (per curiam) (explaining that Rules 205 and 241(a) prohibit action on matters that are affected by the appeal). Second, the proposed Third Amended Complaint is improper because Rule 15, SCRCF, “does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant.” Valentine v. Davis, 319 S.C. 169, 172–73, 460 S.E.2d 218, 219–20 (Ct. App. 1995) (emphasis added).

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PROOF OF SERVICE

I certify that I have served the Appellant's Return to Respondent's Motion to Supplement Record, [and served Jimmie Aiken, Leila Brown, Veronda Cohen, Carla David, Anthony Sabb, James Ginn, and Shirley Rice] by depositing a copy of same in the United States Mail, postage prepaid, on May 31, 2018, addressed to their attorney(s) of record, Robert N. Hill, Esquire, P.O. Box 1323, Lexington, SC, 29071-1323; Mark B. Tinsley, Esquire, Gooding and Gooding, P.O. Box 1000, Allendale, SC 29810; Charles H. Williams, Esquire, Williams & Williams, P.O. Box 1084, Orangeburg, SC 29115; and Daniel W. Williams, Esquire, Bedingfield & Williams, P.O. Box 616, Barnwell, SC 29812.

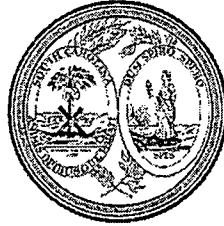
May 31, 2018



Tonie Miranda

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

Physical Address:
300A Outlet Pointe Blvd.
Columbia, SC 29210



Mailing Address:
PO Box 12265
Columbia, SC 29211-9979

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Jimmie Aiken, Leila Brown, Vernonda Cohen, Carla David, Anthony Sabb, James Ginn, and Shirley Rice, as named Plaintiffs representing a class of South Carolina Citizens, Respondents vs. South Carolina Department of Revenue, Appellant

Case Number: 2012-CP-38-00837

Appellant Case Number: 2017-001790

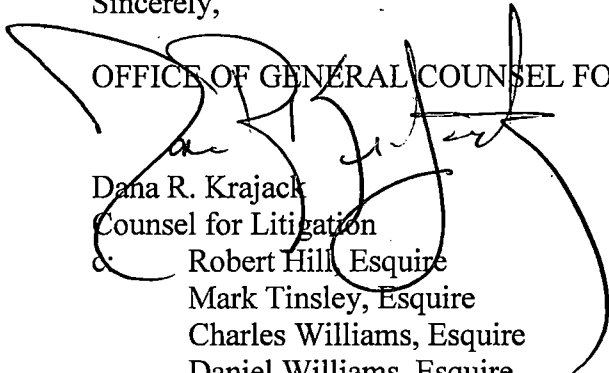
Dear Ms. Kitchings:

Enclosed for filing is the original and six copies of the Appellant's Return to Respondents' Motion to Supplement the Record in the above case. Also enclosed is a Proof of Service on the Respondents.

Should you have any questions, please do not hesitate to contact me at 803-898-5172 or Dana.Krajack@dor.sc.gov.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION


Dana R. Krajack
Counsel for Litigation
& Robert Hill, Esquire
Mark Tinsley, Esquire
Charles Williams, Esquire
Daniel Williams, Esquire

Enclosures
DRK/tm



South Carolina
Department of Revenue
Office of General Counsel

P.O. Box 12265, Columbia, SC 29211-9979

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THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
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COLUMBIA SC 29211

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