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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Conley..... Appellant,

v.

April Morganson.....Respondent.

**MOTION TO STRIKE
UNDESIGNATED MATTER**

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TABLE OF CONTENTS

Memorandum of Authorities.....4

Introduction.....5

Motion to Strike.....6

Conclusion.....6

MEMORANDUM OF AUTHORITIES

CASES

Croft v. Town of Summerville (S.C. Ct of App. Opinion No. 5687).....5

Fornér v. Butler, 460 SE 2d 425 (Ct. of App. 1995).....5

Sierra Club v. S.C Dept. Health and Environmental Control
(S.C. Ct. of App. Opinion No. 27891).....5

APPELLATE COURT RULES

South Carolina Appellate Court Rule 209(a)(b)(c).....5

South Carolina Appellate Court Rule 210(a)-(h).....5

INTRODUCTION

Appellant timely filed her Designation of Matter to be Included in Record on Appeal with this Court on October 10, 2019, consistent with South Carolina Appellate Court Rule 209(a)(b)(c).

Respondent failed to file a Designation of Matter to be included in Record on Appeal, with this Court.

Appellant timely filed the Record on Appeal in this matter on December 20, 2019, pursuant to South Carolina Appellate Court Rule 210(a)-(h).

Because Respondent failed to file a Designation of Matter, Respondent's Initial Brief contains citations to the Record for matter that is **not included in the Record on Appeal**. It is uncontroverted that an Appellate Court will not consider any fact which does not appear in the Record on Appeal. Forner v. Butler, 460 SE 2d 425 (Ct. of App. 1995); Sierra Club v. South Carolina Department of Health and Environmental Control (S.C. Ct. of App. Opinion No. 27891); Croft v. Town of Summerville (S.C. Ct of App. Opinion No. 5687). Appellant's Motion to Strike follows.

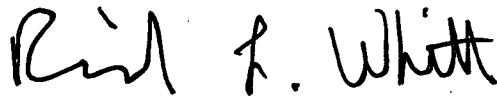
MOTION TO STRIKE

Ground

The ground for Appellant's Motion to Strike is set forth in the Introduction hereinabove, which is incorporated by reference. Based on the Respondent's improper citations to the Record on Appeal to matter, which is not included in the Record on Appeal, Appellant moves to strike the matter Respondent failed to include in the Record on Appeal. (see Exhibit "A" hereto, with references to Respondent's Initial Brief that should be struck).

CONCLUSION

Based on the foregoing, the citations to South Carolina case law provided and the citations to applicable South Carolina Appellate Court Rules, this Court should strike the Respondent's citations to matter which is not included in the Record on Appeal, consistent with Exhibit "A" hereto, and instruct Respondent that Respondent's Final Brief may not include the improper references to the Record, as described in more detail in Exhibit "A" attached hereto.



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December 30, 2019

EXHIBIT "A"

Transcript Pages/Exhibit not in Record on Appeal, but cited to by the Respondent in her Initial Brief.

- Respondent's improper reference to **Transcript page "16"**, appearing on page "4" of Respondent's Initial Brief. Namely,
"Prior to moving into the Respondent's home, the Appellant emailed the Respondent and asked to 'break the lease' (Transcript of Record, Page 16 Line 19)." **[Page 16 is not in Record]**

- Respondent's improper references to **Transcript page "22"**, appearing on pages "4" and "6" of Respondent's Initial Brief. Namely,
"In response, the Respondent informed the Appellant that she would be willing to break the lease (Transcript of Record, Page 22, Line 22)."; and
"The Respondent clearly communicated to the Appellant she wished to abide by the parties' written lease agreement (Transcript of Record, Page 22 Line 22)."
[Page 22 is not in Record]

- Respondent's improper reference to **Transcript page "28"**, appearing on page "5" of Respondent's Initial Brief. Namely,
"The Respondent was able to find a new tenant in July of 2016 (Transcript of Record, Page 28 Line 17)." **[Page 28 is not in Record]**

- Respondent's improper references to **Transcript page "30"**, appearing on pages "5" and "6" of Respondent's Initial Brief. Namely,
"The Appellant acknowledges her breach of the lease agreement (Transcript of Record, Page 30 Line 12).";
"By her own admission, the Appellant breached the lease between the parties at issue in this matter (Transcript of Record, Page 30 Line 19/Page 30 Line 21)."; and
"The Appellant acknowledges not only breaching the lease but also owing the Respondent three months' worth of unpaid rent (Transcript of Record, Page 30 Line 21)." **[Page 30 is not in Record]**

EXHIBIT “A”, (cont.)

Transcript Pages/Exhibit not in Record on Appeal, but cited to by the Respondent in her Initial Brief.

- Respondent’s improper reference to **Transcript page “33”**, appearing on page “5” of Respondent’s Initial Brief. Namely,
“The written lease agreement signed by the parties provides that the Respondent may apply the security deposit toward any unpaid rent so long as the Appellant is provided notice and an itemization (Transcript of Record, Page 33 Line 6).” **[Page 33 is not in Record]**

- Respondent’s improper reference to **Exhibit “A” from Trial Transcript**, on page “6” of Respondent’s Initial Brief. Namely,
“The parties’ lease agreement provides that in the event of a breach and in the event of a failure to pay rent during the breach, the Appellant’s security deposit may be applied toward any unpaid rent. (Exhibit A from trial transcript).” **[Exhibit “A” from Trial Transcript is not in Record]**

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Morgan Conley.....Appellant,

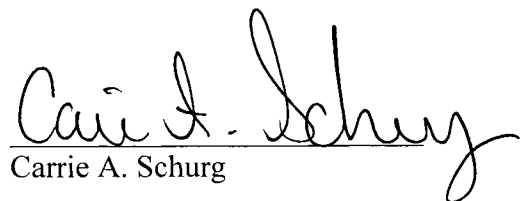
v.

April Morganson.....Respondent.

AFFIDAVIT OF SERVICE

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, hereby certify that I have caused the Motion to Strike Undesignated Matter, with Exhibit and this Affidavit of Service, to be served via, U.S. Mail as addressed below, on December 30, 2019.

S. Jahue Moore, Jr., Esquire
Moore, Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171


Carrie A. Schurg

December 30, 2019

Whitt Law Firm, LLC

ATTORNEYS AND COUNSELORS AT LAW

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December 30, 2019

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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Re: • Morgan Conley v. April Morganson
• Appellate Case No. 2019-001533

Ms. Kitchings:

Enclosed for filing in the above-referenced Appellate Case, please see the Motion to Strike Undesignated Matter with Exhibit, Affidavit of Service and a check in the amount of \$50.00, which represents the appropriate filing fee. Please have your staff clock in and return the extra enclosed copies in the self-addressed envelope enclosed. Please let me know if you require anything additional in this matter.

Respectfully Submitted,

WHITT LAW FIRM, LLC



Richard L. Whitt.

RLW/cas

cc: S. Jahue Moore, Jr., Esquire

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