

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-001282

Case No. 17-ALJ-07-0085-CC

RECEIVED

Jun 30 2020

SC Court of Appeals

Richard J. Hook and Phillip Patterson.....Respondents,

vs.

South Carolina Department of Health and Environmental Control.....Appellant.

**MOTION TO STRIKE MATERIALS FROM
RESPONDENT'S DESIGNATION OF MATTER**

TO: ALL PARTIES AND THE SOUTH CAROLINA COURT OF APPEALS

PLEASE TAKE NOTICE that the Appellant South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") hereby moves the Court to strike Exhibit A attached to item # 11 of Respondent Richard J. Hook's Designation of Matter (along with any argument referencing Exhibit A attached to item # 11).

Item # 11 of Hook's Designation of Matter is a *Return to Respondent DHEC's Motion to Reconsider*, filed June 7, 2019 ("*Return*" or "*Return to Motion to Reconsider*"). This *Return* includes a File Memo from OCRM's Project Manager, Bill Eiser ("*Memo*" or "*Eiser Memo*").

Rule 209(b), SCACR excludes matters “which [are] not relevant to the appeal.” The Eiser Memo is irrelevant to the issues before this Court. On October 31, 2014 Mr. Eiser prepared a File Memo addressing where the dock walkway would originate from the Patterson’s lot. This Memo references and incorporates a survey drawing provided by Robert Frank Land Surveying to show how the beginning of the dock walkway will avoid a large oak tree. Respondent Hook did not include the referenced Robert Frank survey in his *Return to Motion to Reconsider*. Without the referenced Robert Frank survey, the Eiser Memo is irrelevant because it does not “tend[] to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Hook’s *Request for Contested Case* and his *Motion to Enforce Consent Order* are not concerned with where the dock walkway *originates*. Furthermore, without the survey drawing, the incomplete Eiser Memo is confusing because there is no way to know what Mr. Eiser’s general reference to “40’ from the side property line” means. Putting aside the ambiguity and confusion created by the Eiser Memo without the referenced survey drawing, this issue is not relevant to the issues raised at the Motion Hearing and on appellate review.

Hook does not reference the incomplete Eiser Memo in his *Respondent’s Initial Brief* to this Court despite the requirement of Rule 208(b)(4), SCACR that Initial Briefs “shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal...”

In Rieb v. Stevenson, the South Carolina Federal District Court affirmed that “[t]he Appellate Court Rules require that only *relevant portions* of the Transcript are to be included in the Record on Appeal. See South Carolina Appellate Court Rules, Rule 209(b).” Rieb v. Stevenson, No. 1, 2010 U.S. Dist. LEXIS 104070, at *47 (D.S.C. Aug. 4, 2010). (Emphasis

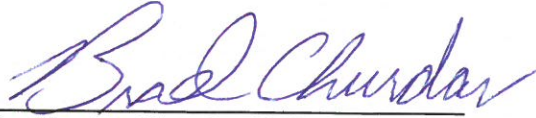
added). Accordingly, any document that can be included in the Record on Appeal can also be edited for relevance. If this Court determines that a redacted version of the *Return to Motion for Reconsideration* is properly before the Court and is included in the Record on Appeal, the incomplete Eiser Memo and any reference to the Memo in Hook's *Return* should be redacted. Any document included in the ALC record should be excluded from the Record on Appeal if it is not relevant to the appeal.

Respondent Hook's effort to include the Eiser Memo in the Record on Appeal reinforces the problems arising from this matter because there has never been an evidentiary hearing. As the Department referenced in its *Initial Brief* and *Initial Reply Brief*, both the ALC and Respondent Hook's counsel recognized that the hearing was only a Motion Hearing and not an evidentiary hearing. The issues arising from the incomplete Eiser Memo would have properly been considered, if at all, in such an evidentiary hearing. Respondent should not be allowed to now utilize the incomplete Eiser Memo in an attempt to demonstrate an alleged defect with DHEC's permitting process that has not been raised on appeal and has not been referenced in either the Appellant's or Respondents' Briefs.

WHEREFORE, the Department moves this Court for an Order striking from the Designation of Matter the Eiser Memo and Hook's argument relying on the Eiser Memo in his *Return to Motion to Reconsider*. The Department further requests that all deadlines be held in abeyance until this matter is resolved.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

A handwritten signature in blue ink that reads "Brad Churdar". The signature is written in a cursive style with a horizontal line underneath it.

Bradley D. Churdar (SC Bar #12829)
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Environmental Control
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June 30, 2020
Charleston, South Carolina

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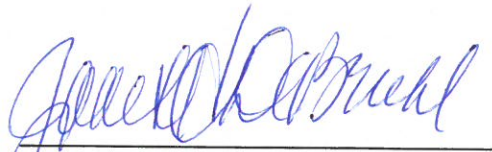
South Carolina Department of Health and Environmental Control.....Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date she has served the Appellant, South Carolina Department of Health and Environmental Control's *Motion to Strike Materials from Respondent Richard J. Hook's Designation of Matter* in this matter upon the following, by email and by placing copies of same in the United States Mail, first class postage prepaid, addressed to:

Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
Nexsen Pruet
Post Office Box 486
Charleston, SC 29402
mshahid@nexsenpruet.com

Phillip Brent Patterson
627 Parrot Point Drive
Charleston, SC 29412
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Janet DeBruhl

June 30, 2020



June 30, 2020

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Jun 30 2020

SC Court of Appeals

Via email to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Richard J. Hook v. SCDHEC and Phillip Patterson*
In Re: Ford Development Corp. v. SCDHEC, Docket No. 05-ALJ-07-0031-CC
Case Tracking No. 2019-001282

Dear Ms. Kitchings:

Please find enclosed the Department's *Motion to Strike Materials from Respondent Richard J. Hook's Designation of Matter* in the above referenced case.

Please address all correspondence in this matter to my attention at churdabd@dhec.sc.gov.

Thank you for your attention in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Brad Churdar". The signature is fluid and cursive, written in a professional style.

Bradley D. Churdar
Associate General Counsel

BDC/jhd

Enclosure

cc: Mary D. Shahid, Esquire (Via email and U.S. Mail)
Angelica M. Colwell, Esquire (Via email and U.S. Mail)
Phillip Brent Patterson (Via email and U.S. Mail)