

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

RECEIVED

Jan 11 2021

The Honorable Bentley Price, Circuit Court Judge

SC Court of Appeals

Case No. 2019-CP-10-00178
Appellate Case No. 2020-000925

J. DANIEL MAHONEY..... Respondent,

v.

THE MUHLER COMPANY, INC. and HENRY M. HAY, III, in his individual capacity,
Defendants/Appellants..... Appellants.

APPELLANTS' MOTION TO STRIKE

EPTING & RANNIK, LLC
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ATTORNEY FOR APPELLANTS

Appellants The Muhler Company, Inc. and Henry M. Hay, III (“Muhler,” “Hay”) move this Court to strike (i) materials included in Respondent J. Daniel Mahoney’s (“Mahoney’s”) designation of matter that were not before the trial court and therefore should not be included in the Record on Appeal. As the parties have not been able to agree that these items should be excluded from the Record on Appeal, Respondent also moves for an extension of time to file the Record and final briefs pending resolution of this motion.¹

I. MATERIALS NOT BEFORE THE TRIAL COURT

Mahoney cites to the following materials that were not presented to the lower court:

- Muhler Stock Certificate dated October 17, 2008;
- Muhler Shareholder Meeting Transcript dated October 25, 2016;
- Letter from Mahoney to Hay dated November 15, 2016;
- Muhler Shareholder Meeting transcript dated September 18, 2018; and
- Order granting Writ of Certiorari in case number 2020-000370.

Because they were not presented to the lower court, these items are not properly included in the Record on Appeal. *See* Rule 210(c), S.C.R.A.P. (the appellate record “shall not . . . include matter which was not presented to the lower court or tribunal”). Accordingly, they should be stricken from Mahoney’s Designation of Matter, and references thereto in Mahoney’s brief should not be permitted.

Appellants request the deadline to file the Record on Appeal and final briefs be extended while this motion remains pending.

¹ Appellants have served the Record on Appeal as they believe it should be constituted, upon Respondent prior to filing this motion.

This 11th day of January, 2021
Charleston, S.C.

Respectfully submitted:

/s/ Jaan G. Rannik
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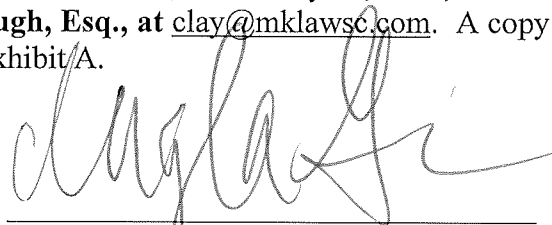
J. DANIEL MAHONEY.....Plaintiff / Respondent,

v.

THE MUHLER COMPANY, INC. and HENRY M. HAY, III..... Defendants/Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Strike via e-mail, on January 11, 2021, addressed to Respondent's attorney of record, **Clay McCullough, Esq.**, at clay@mklawsc.com. A copy of the e-mail is attached to this Proof of Service as Exhibit/A.



Angela Gross
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Angela Gross

From: Angela Gross
Sent: Monday, January 11, 2021 3:37 PM
To: 'Clayton B. McCullough, Esquire'
Cc: 'McKenna Joyce'; Jaan Rannik; 'Katie Nancy'
Subject: RE: Appellate Case No. 20-000925; J. Daniel Mahoney v. The Muhler Company, Inc. and Henry M. Hay, III/Case No.: 19-CP-10-00178
Attachments: 2021 01 11 - Motion to Strike (Mahoney v Muhler - 20-000925).pdf

Clay,

Attached for service please find Appellants' Motion to Strike in the above-referenced appeal.

Angela

Angela Gross
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