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SC Court of Appeals

EXHIBIT 1

From: [Andrew Lindemann](#)
To: "[Brandon Gaskins](#)"
Cc: [David Pagliarini](#); [Claude Tackett](#)
Subject: RE: SCDG v. TOMP appeal
Date: Wednesday, May 19, 2021 10:48:28 AM

Brandon:

Thanks for the quick reply. As I understand the law, Rule 220(c) allows for an additional sustaining ground based on what is in the record – not what could have been included in the Circuit Court record but was not filed. There is no basis that I am aware of to supplement the trial court record on appeal to raise an issue that could have been asserted below but was not. I think I will need to move to strike that material as well as strike references from your respondent's brief.

Andrew

From: Brandon Gaskins <gaskinsb@mvalaw.com>
Sent: Wednesday, May 19, 2021 9:51 AM
To: Andrew Lindemann <Andrew@ldlawsc.com>
Cc: David Pagliarini <DPagliarini@tompsc.com>; Claude Tackett <claudetackett@law.com>
Subject: RE: SCDG v. TOMP appeal

Andrew,

You are correct that these documents were not presented to the trial court. These records are included in the record out of necessity because the Town is claiming that it was deprived of records that it actually possessed. For whatever reason, the Town chose not to use them at trial, and SCDG had no reason to use them because they were irrelevant to our damages theory and calculation. Although I am aware of Rule 210(c) and its requirements, our inclusion of these materials is explained in fn. 9 of our brief. Specifically, we believe that *I'On v. Town of Mount Pleasant* allows for these materials to be included in the record on appeal by SCDG as the respondent. I understand if you take a different position and need to file a motion to strike.

Brandon

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Wednesday, May 19, 2021 8:56 AM
To: Brandon Gaskins <gaskinsb@mvalaw.com>
Cc: David Pagliarini <DPagliarini@tompsc.com>; Claude Tackett <claudetackett@law.com>
Subject: SCDG v. TOMP appeal

EXTERNAL EMAIL - USE CAUTION

Brandon:

I hope you are doing well. There is a potential issue with the Record on Appeal and SCDG's Designation of Matter that I need to address with you. I did not realize this issue existed until I got knee deep in the reply brief the other day.

In SCDG's Designation of Matter, you included the following:

18. Plaintiff's Supplemental Production to Defendant's First Requests for Production – 101

Coleman Partners' Financial Statements and Parking Garage Financials, Bates labeled

SCDG00004005 through SCDG00004367

19. Email from Counsel for Plaintiff to Counsel for Defendants dated April 9, 2019 producing Plaintiff's Supplemental Production to Defendant's First Requests for Production – 101 Coleman Partners' Financial Statements and Parking

From my review of the Circuit Court file contained in the Public Index, I do not see that these voluminous discovery responses and the referenced email were ever submitted to the Circuit Court. I know you are well aware that Rule 210(c), SCACR, provides that "the Record shall not, however, include matter which was not presented to the lower court or tribunal."

Please clarify for me how or why items 18 and 19 are properly designated for inclusion in the Record on Appeal. Perhaps I have just missed something in the lower court record.

I would like to resolve this issue without a motion to strike, so please let me know your position at your earliest convenience.

Thanks.

Andrew

Andrew F. Lindemann

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Moore & Van Allen

EXHIBIT 2

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CIVIL ACTION NO.: 2017-CP-10-5493
Shem Creek Development Group, LLC,)	
)	
Plaintiff,)	
)	
v.)	PLAINTIFF'S RESPONSES TO
)	DEFENDANT'S SECOND SET OF
)	REQUESTS FOR PRODUCTION
The Town of Mount Pleasant, South)	
Carolina,)	
)	
Defendant.)	
)	

TO: JAMES J. HINCHEY, JR., ESQUIRE, AND JULIA P. COPELAND, ESQUIRE, HINCHEY, MURRAY & PAGLIARINI, LLC, ATTORNEYS FOR DEFENDANTS:

Plaintiff Shem Creek Development Group, LLC ("Plaintiff") responds to Defendant's Second Set of Requests for Production as follows. Plaintiff incorporates, as if fully set forth herein, all general objections from its previous responses.

GENERAL OBJECTION

Plaintiff objects to Defendant's Second Set of Requests for Production because the deadline for discovery expired prior to the issuance of these requests and Defendant had ample opportunity during discovery in this action to obtain the information sought.

RESPONSES TO SECOND REQUESTS FOR PRODUCTION

1. Any and all Pro Forma financial statements, both internally and externally generated, drafted or submitted from project inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a

liquidated damages provision in the parking license agreement and information relating to the financial projections for the project would not affect the damages to which Plaintiff is entitled in this case. Subject to and without waiving this objection, see documents previously produced in discovery, including those labeled SCDG0004368-4388.

2. Any and all forecasts and/or projections, both internally and externally generated, including but not limited to revenues, profit, operating expenses, net operating income, etc.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and information relating to the financial projections for the project would not affect the damages to which Plaintiff is entitled in this case. Subject to and without waiving this objection, see documents previously produced in discovery, including those labeled SCDG0004368-4388.

3. Business tax returns from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The tax returns sought are not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and Plaintiff's tax returns will not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because this request seeks confidential information.

4. Backup copy of QuickBooks file or other relevant project accounting system from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and Plaintiff's accounting files would not affect the damages to which Plaintiff is entitled in this case. Subject to and without waiving such objection, Plaintiff does not have a QuickBooks file or accounting system for its own operations.

5. Support for interest rate on note as outlined in footnote 1, Bates SCDG0004389.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has amended its damages calculation presented in SCDG0004389 and no longer is using the interest rate referenced in that calculation as the present value discount factor. Subject to and without waiving such objection, see attached documents labeled SCDG0004390-4405.

6. Any and all documentation for loans, lines of credit, or other notes obtained to finance the project from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has amended its damages calculation presented in SCDG0004389 and no longer is using cost of debt related to the project as its discount factor. Subject to and without waiving such objection, see documents previously produced, including SCDG00000056-59, and attached documents labeled SCDG0004390-4405.

7. Any all documentation for equity or other investments in project from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The documentation relating

to equity investments in the project is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and information relating to investments in the project would not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects to this request because it is overly broad and unduly burdensome. The scope of documents requested is too vast, and the cost and burden of searching for all documents, many of which have little, if any, probative value, will far exceed the benefit of producing them. Plaintiff further objects because this request seeks confidential information. Subject to and without waiving such objection, see documents previously produced, including SCDG00000054-59, 101-103, 117-121, 429, 450-459, 483-484, and 639-725, and attached documents labeled SCDG0004406-4415.

8. Any and all documentation and correspondence related to the Plaintiffs solicitation of debt or equity financing, inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The documentation relating to debt equity or financing for the project is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and information relating to investment for the project's financing would not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects to this request because it is overly broad and unduly burdensome. The scope of documents requested is too vast, and the cost and burden of searching for all documents, many of which have little, if any, probative value, will far exceed the benefit of producing them. Plaintiff further objects because this request seeks confidential information. Subject to and without waiving such objection, see

documents previously produced, including SCDG00000054-62, 101-103, 117-123, 429, 450-459, 483-486, 623-625, 629-631 and 639-725, and attached documents labeled SCDG0004390-4415.

9. Internal and/or management prepared financial statements from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and financial statements would not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to specify about whom Defendant is seeking information. Subject to and without waiving this objection, Plaintiff does not possess financial statements for its own operations.

10. Internal and/or management prepared reports of revenues and expenses including sufficient segment detail (i.e. detailed by commercial rental, "Parking Spaces," "Public Spaces," and "Reserved Spaces") from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and revenue and expenses for the project would not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to specify about whom Defendant is seeking information. Subject to and without waiving this objection, Plaintiff does not possess reports of revenues and expenses for its own operations.

11. Report detailing "Net Operating Profit" generated by "Parking Spaces" from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and the financial information relating to the project will not affect the damages to which Plaintiff is entitled in this case. Subject to and without waiving this objection, to the extent that "Parking Spaces" and "Net Operating Profit" are intended to have the same meaning as those terms in the parking license agreement, Plaintiff does not possess any documents responsive to this request because Plaintiff does not account for "Net Operating Profit" as that term is defined in the parking license agreement as a result of the Town's breach thereof.

12. Any and all supporting schedules relevant to or documenting internal calculations or deliberations relevant to the allocation of operating expenses among revenue segments (i.e. commercial rental, "Parking Spaces," "Public Spaces," and "Reserved Spaces") from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The financial information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and the financial information relating to the project will not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to specify about whom Defendant is seeking information. Subject to and without waiving this objection, Plaintiff does not possess any documents responsive to this request.

13. Any and all information and/or schedules, both internally and externally generated, regarding planned and actual parking rates from inception to present.

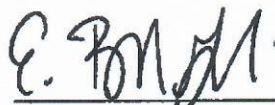
RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and the parking rates for the project will not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to specify about whom Defendant is seeking information. Subject to and without waiving this objection, see documents previously produced, including SCDG0004368-4388.

14. Any internal or external evaluation of market rates for rental of "Parking Spaces," "Public Spaces," and "Reserved Spaces".

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and the market rates for parking spaces will not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to define "Parking Spaces," "Public Spaces," and "Reserved Spaces." Subject to and without waiving this objection, to the extent that "Parking Spaces," "Public Spaces," and "Reserved Spaces" are intended to have the same meaning as those terms in the parking license agreement, Plaintiff does not possess any documents responsive to this request because the parking garage is not divided into "Public Spaces" and "Reserved Spaces" as contemplated by the parking license agreement.

15. Records or reports detailing "Parking Spaces" usage and resulting revenue from inception to present.

RESPONSE: Plaintiff objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. The information sought is not relevant to any issue in dispute in this case as the parties agreed to a liquidated damages provision in the parking license agreement and the parking usage and revenue will not affect the damages to which Plaintiff is entitled in this case. Plaintiff further objects because the request is vague and fails to define "Parking Spaces." Subject to and without waiving this objection, to the extent that "Parking Spaces" is intended to have the same meaning as that term in the parking license agreement, Plaintiff does not possess any documents responsive to this request because the parking garage is not divided into "Public Spaces" and "Reserved Spaces" as contemplated by the parking license agreement.



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Dated: September 20, 2019

Charleston, South Carolina