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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No.: 2020-001387
Case No. 2017-CP-10-5493

Shem Creek Development Group, LLC, Respondent,

v.

The Town of Mount Pleasant, South Carolina, Appellant.

**RESPONDENT'S REPLY TO APPELLANT'S RETURN IN OPPOSITION TO
RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

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Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, Respondent Shem Creek Development Group, LLC (“SCDG”) submits this Reply to Appellant’s Return in Opposition to Respondent’s Motion to Supplement the Record on Appeal. As explained below, SCDG’s request to supplement the record seeks to ensure that the record is accurate and to correct mischaracterizations of what happened below.

ARGUMENT

I. The record should be supplemented to ensure that it accurately reflects the Town’s possession of 101 Coleman Partners’ financial records.

SCDG attempts to supplement the record to ensure that it reflects what really happened in the lower court, which is that the Town received 101 Coleman Partners’ financial records during discovery and did nothing with them.¹ The Town cannot dispute receipt of 101 Coleman Partners’ financial records in response to its first discovery requests; nor can it dispute that it failed to present or proffer them at trial. In fact, the Town does not even attempt to do so or explain why. Instead, it asks the Court to look in the other direction by questioning why SCDG did not present them to the lower court.

¹ The Town implies that SCDG attempted to sneak the documents into the record by claiming that “the Town’s counsel caught the issue and challenged that designation.” (See Town’s Return Mot. Supp. Record, p. 3.) However, SCDG attempted no such thing. Instead, SCDG expressly disclosed in its initial brief that the records were not presented to the trial court and were being presented in accordance with *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). (See SCDG Initial Br. pp. 44-45, fn. 9.) Thus, there was nothing for the Town to “catch” as SCDG transparently disclosed what it was doing.

The answer is simple. The Town never claimed that SCDG's response to the Town's original request for documents relating to the parking garage's revenue and finances were inadequate. As a result, the Town did not file a motion to compel responses to its first discovery requests, and SCDG had no reason to present its production of 101 Coleman Partners' financial records to the lower court.

Rather, nearly two years after the case began, the Town issued additional discovery requests to SCDG and a subpoena to 101 Coleman Partners seeking documents that went beyond records of revenues and expenses. These requests sought tax returns, loan documentation, equity investment documentation, documentation of SCDG's solicitation of debt or equity financing, and other documents that do not exist. Because these documents were not relevant to the issues before the lower court, SCDG objected to the requests on the basis that the requests were not reasonably calculated to lead to the discovery of admissible evidence.² In so doing, SCDG was within its rights under Rule 26, SCRCRCP, and SCDG's prior document production was not pertinent to its objections.

The lower court ultimately agreed with SCDG's position that the documents requested in the Town's second set of requests for production were not relevant, and the Town now attempts to make the trial court's ruling on this issue a centerpiece of

² In its return to the motion to supplement the record, the Town wrongly claims that "SCDG refused to produce any documents" in response to the Town's second set of requests for production. (*See* Town's Return Mot. Supp. Record, p. 4.) Again, the Town mischaracterizes the record. Although SCDG did lodge objections to each of the requests on relevancy grounds, it nevertheless produced some documents as evidenced by the responses attached as Exhibit 2 to the Town's return.

its appeal. Although the Town is free to choose its appellate issues, it should not be able to attack the trial court's ruling while simultaneously concealing what actually happened below. And the documents submitted for supplementation do nothing more than prove that the Town received 101 Coleman Partners' financial records, contrary to the Town's representations to the Court.

In opposing the motion to supplement the record, the Town largely disregards Rule 212, SCACR, and the cases cited by SCDG in the motion. Instead, the Town opines on "how an appeal is supposed to work" with little citation to precedent. Rule 212, however, rejects a rigid limitation of the record on appeal in all cases and provides the Court with discretion to expand the record in the interest of justice. As explained in SCDG's motion to supplement the record, supplementation to ensure the record is accurate and to correct mischaracterizations is consistent with the purpose of Rule 212, SCACR. Because SCDG's motion to supplement seeks to do nothing more than this, the Court should grant the motion to supplement the record.

II. Even if the record is not supplemented, there is no need for amended briefing because the Court can easily disregard the few references to the Town's possession of 101 Coleman Partners' financial records without affecting its consideration of SCDG's main arguments.

In addition to opposing supplementation of the record, the Town requests that the Court require SCDG to file an amended brief excluding reference to the supplemental documents. Yet there is no compelling reason to require SCDG to file an amended brief because it is unnecessary and will only delay the Court's consideration of the case.

As explained in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000), appellate courts maintain the discretion to determine whether to address any additional sustaining grounds raised by a respondent. And, if so inclined, the Court is free to ignore such grounds. *Id.*

In this case, SCDG discusses the Town's possession of 101 Coleman Partners' financial records in only three paragraphs of its fifty-page brief. (See SCDG Initial Br. pp. 45, 48-49.) This brief discussion is independent from SCDG's main arguments in defense of the trial court's rulings. If it wishes, the Court can easily disregard SCDG's argument regarding the Town's possession of financial records without any risk that its consideration of the other issues on appeal will be tainted. Therefore, if the Court denies SCDG's motion to supplement the record, it should nevertheless reject the Town's request for the parties to submit amended briefs.

CONCLUSION

Based on the foregoing, SCDG respectfully requests that the Court grant Respondent's Motion to Supplement the Record on Appeal.

Respectfully submitted,

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