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Jan 04 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-000851

ARO-D Enterprises, LLC Respondent,

v.

Tiger Enterprises & Trading, Inc., Bonnie Walker and
Dwight Walker Appellants,

Tiger Enterprises & Trading, Inc., Third-Party Plaintiff / Appellant,

v.

Rudy A. Dixon, Frank T. Gangi, and
T3 Aviation, LLC Third-Party Defendants / Respondents.

**MOTION TO STRIKE CERTAIN MATTERS THAT APPELLANTS
DESIGNATED FOR INCLUSION IN THE RECORD ON APPEAL**

PLEASE TAKE NOTICE THAT, pursuant to Rule 240, SCACR, the undersigned counsel for Respondents are respectfully requesting an Order from the Court which strikes certain matters that Appellants have designated for inclusion in the Record on Appeal. The specific matters at issue, and the reasons for their removal from the Record on Appeal, are set out below.

First, Rule 209(b), SCACR, states that “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” Item 2(a) of Appellants’ Designation identifies a Form 4 Order issued by the lower court on June 11, 2020 pertaining to the denial of a motion filed by Respondent ARO-D Enterprises, LLC, for a preliminary injunction and the appointment of a receiver. No party to these proceedings has taken an appeal from this order, and no aspect of this order is presently under appellate review. Accordingly, this item of designated matter is not relevant and should be stricken from the Record on Appeal.

Second, Rule 210(c), SCACR, states that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” Items 5(b)-(g) of Appellants’ Designation identifies six (6) documents which are not part of the record below. These 6 documents purport to be exhibits to an affidavit of Appellant Dwight Walker that was filed in connection with the underlying proceedings on June 10, 2020. As evidenced by the electronic docket maintained by the South Carolina Judicial System, Appellant Walker’s affidavit was filed on June 10, 2020; however, as evidenced by the electronic docket, no attachments in support of that affidavit were filed with the Court. Consequently, the 6 exhibits to Appellant Walker’s affidavit are not a part of the record of proceedings from the lower court, are not proper matters for designation in these proceedings, and should be stricken from the Record on Appeal.

WHEREFORE, the undersigned counsel for Respondents respectfully request the relief sought herein, and for such other and further relief as the Court deems just and proper. The filing fee for this Motion is being sent separately via U.S. Mail.

Respectfully,

s/ J.J. Andrighetti

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Greenville, South Carolina
January 4, 2022