

IN THE SUPREME COURT OF OHIO

ABBRA WALKER AHMAD,

Appellant,

v.

AK STEEL CORP.

Appellee.

: Consolidated Case Nos.

: 07-0288 and 07-0410

: On Appeal from the Butler

: County Court of Appeals,

: Twelfth Appellate District

: Court of Appeals

: Case No. CA 2006 04 0089

AK STEEL CORPORATION'S MEMORANDUM IN OPPOSITION TO
APPELLANT'S MOTION TO STRIKE PAGES 26 THROUGH 30 OF
APPELLEE'S SUPPLEMENT TO MERIT BRIEF

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In asking the Court to strike a portion of AK Steel's Supplement, Appellant asks this Court to ignore what occurred leading up to this issue. First, Appellant ignores the fact that she never, not once, sought through discovery any evidence that would establish that the Middletown Headquarters was subject to any regulation by the OBBC. Second, Appellant overlooks the fact that the record is devoid of any evidence establishing that the Middletown Headquarters is subject to any OBBC regulation. Third, Appellant forgets that, in the trial court and the Twelfth District, she relied solely on OBBC regulations that were not enacted until many years after the decedent's fall. And finally, Appellant turns a blind eye to the fact that the first time she ever argued that AK Steel violated 2002 Ohio Building Code § 1003.3.11 was in her Merit Brief to this Court.

Appellant violated one of the basic tenets of appellate review: "Reviewing courts do not consider questions not presented to the court whose judgment is sought to be reversed." *See Goldberg v. Indus. Comm.* (1936), 131 Ohio St. 399, 404; *State ex rel. Ohio Civ. Serv. Employees Assn. v. State Emp. Relations Bd.*, 2004-Ohio-6363, ¶10; 104 Ohio St.3d 122; *Ohio Farmers Ins. Co. v. Estate of Brace* (1997), 116 Ohio App.3d 395, 401, 688 N.E.2d 298. Appellant never raised an argument that AK Steel violated 2002 Ohio Building Code §1003.3.11 until she filed her Merit Brief in this Court.

This present situation is precisely why reviewing courts discourage new arguments on appeal and discourage the type of conduct exhibited by Appellant in this case. It is blatantly unfair to AK Steel to be faced with a new argument, for the first time, more than a year after the record was closed. The result of Appellant's ever-changing theories is to the great prejudice of AK Steel.

Taking judicial notice of certain facts is well within this Court's discretion. *See, e.g.* Evid R. 201; *see also* S. Ct. Prac. R. V, §6; *see also* *Armstrong v. Marathon Oil Co.* (1987), 32 Ohio St.3d 397, 419, 513 N.E.2d 776; *see also* *Brown v. Cleveland* (1981), 66 Ohio St.2d 93, 98, 420 N.E.2d 103. Appellant does not argue that the public domain information contained in the Supplement is incorrect. Namely, Appellant seems to concede that the Middletown Headquarters was, in fact, built in 1917, many decades before the OBBC regulation she claims AK Steel violated took effect. The fact that the evidence is uncontested should put the issue to rest.

Finally, there is no need to allow the Appellant to supplement the record as she suggests. Appellant argues that documents she attached to her motion "brings [the Middletown Headquarters] under the scope of the building code." Appellant's argument is unfounded and completely unsupported. The time for Appellant to present evidence in support of her case was in the trial court, more than a year ago. Appellant did not do that. Her Motion should be denied.

For the foregoing reasons, Appellee, AK Steel Corp., respectfully requests that Appellant's Motion be denied in its entirety.

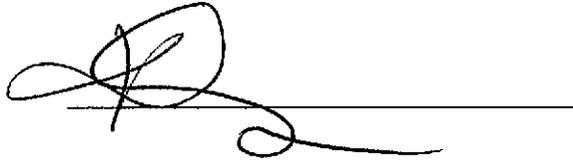

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent to the following by ordinary U.S. Mail Service this 27th day of October, 2007:

David S. Blessing, Esq.
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A handwritten signature in black ink, appearing to be "D. Blessing", is written over a horizontal line.

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