

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
15<sup>th</sup> JUDICIAL CIRCUIT

Karon Mitchell, Kyle Mitchell, and Rabon )  
& Rabon, Inc., )  
Plaintiffs, )

C.A. No. 2017-CP-26-05757

vs. )

AMENDED ORDER GRANTING  
DECLARATORY RELIEF

Jack Rabon, Nicole Rabon, Lane )  
Jeffries, McNair Law Firm, P.A., Atid )  
Properties, LLC, Daisy Ridge, LLC, )  
Friends of LBS, LLC, Sarah Ginsburg, )  
Jacob Biderman, Gabriel Yosef, and )  
Michelle Cohen, )

Defendants. )

Atid Properties, LLC and Jacob )  
Biderman, )

Cross-Claimants, )

vs. )

Michelle Cohen, )

Cross-Defendant. )

**RECEIVED**

**Jun 07 2023**

**SC Court of Appeals**

Counsel for Defendants Jack and Nicole Rabon timely filed a Motion to Alter or Amend the March 7, 2023, Order Granting Declaratory Relief. Having considered the Defendants' motion and without a hearing, this Court Amends its prior order to add the following:

The Covenant Not to Execute required Jack and Nicole Rabon to provide affidavits and to provide documentation to support their statements. The Covenant further provided that if any portion of the affidavits was found to be false or untrue, or if the documents were found to be fraudulently created, then the Covenant would be null and void. I find Nicole Rabon's

misrepresentations in her affidavit as to her knowledge and participation in the fraudulent acts committed by Jack Rabon, Lane Jefferies, herself, and others in this case are material and caused harm to the Mitchells in their attempt to settle the case with Lane Jefferies and McNair. Lane Jefferies would have known Nicole Rabon lied in her affidavit about her involvement in acting on behalf of Rabon & Rabon, and could have used that dishonesty to influence Jack or Nicole Rabon, or both, to change their testimony had the case not settled with Jefferies and McNair. Further, while a settlement of three million dollars may appear significant, fraud of this magnitude might have garnered a larger settlement against Jefferies and McNair had this misrepresentation not occurred as testified to by attorney Tucker Player. I further find that the case law raised by Defendants, *Ackerman v. McMillan*, 314 S.C. 268, 442 S.E.2d 618 (Ct. App. 1994) and *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1993), have no application to the case before me.

In *Ackerman*, a buyer of certain real property filed suit against the sellers, alleging a breach of contract after the sellers decided to withdraw their offer of sale. 314 S.C. at 269, 442 S.E.2d at 618. While the special referee found that the buyer was not entitled to damages because she failed to apply for financing pursuant to the contract of sale, *id.* at 270-71, 442 S.E.2d at 619, the Court of Appeals found this failure was not the reason the sellers withdrew their offer of sale, *id.* at 271, 442 S.E.2d at 619. Accordingly, the buyer's breach was insufficient for the sellers to rescind their contract. *Id.* In addition, the court found rescission was not proper because the purpose of the contract was not frustrated since the buyer nonetheless secured financing prior to closing. *Id.* at 271, 442 S.E.2d at 620. *Ackerman* is clearly distinguishable under these facts from the present case.

In *Kiriakides*, a landlord commenced an ejectment action against its lessee to collect a miniscule amount of past rent owed due to a rent increase under a commercial lease. 312 S.C. at 273-74, 440 S.E.2d at 365. The landlord argued that the past rent owed permitted it to eject the lessee and to forfeit the lease “no matter how trivial, inadvertent, non-prejudicial, or technical the breach.” *Id.* at 275, 440 S.E.2d at 366. The South Carolina Supreme Court rejected this argument and held that a forfeiture of a commercial lease was not enforceable where the breach was immaterial. *Id.* at 276, 440 S.E.2d at 366. *Kiriakides* is also distinguishable from this case because *Kiriakides* is an ejectment action based on a miniscule portion of unpaid rent from a commercial lease.

As far as the equitable argument made by the Defendants alleging the Rabons performed under the Covenant Not to Execute and provided "voluminous information" subjecting Jack Rabon to criminal liability (for which he has never been charged nor prosecuted) and assisted in securing a settlement with Jefferies and McNair, it must be remembered that: (1) Jack and Nicole Rabon caused the fraud to occur in the first place and (2) that it is Jack Rabon who accused his sister Karon Mitchell of stealing from the family business, starting this flurry of litigation wherein the Rabons at every juncture of this litigation have had unclean hands.

Finally, as to Defendants’ characterization of this motion for Declaratory Judgment as the "legal equivalent to Lucy pulling the football away from Charlie Brown," what the Defendants fail to recognize that they are not of similar character to Charlie Brown, but rather Lucy, and are the authors of their financial downfall due to their own greed.

It is for these aforementioned reasons that this Court amends by adding to its March 7, 2023, Order Granting Declaratory Relief.

IT IS SO ORDERED!

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Carmen Mullen  
15<sup>th</sup> Judicial Circuit  
May 5, 2023



## Horry Common Pleas

**Case Caption:** Karon Mitchell , plaintiff, et al VS Jack Rabon , defendant, et al

**Case Number:** 2017CP2605757

**Type:** Order/Amend

So Ordered

s/Carmen T Mullen 2142