

**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

**APPEAL FROM KERSHAW COUNTY
Court of Common Pleas**

RECEIVED

JUN 04 2014

Joyce McDonald, Clerk of Court

SC Court of Appeals

Case No. 2013-CP-28-0601

Business Loan Center, LLC.....Respondent.

v.

Subham Hospitality, Inc. d/b/a Knights Inn a/k/a Deluxe Inn,
Sudhir T. Mehta and Bhariben Mehta.....Appellants.

REPLY TO APPELLANTS' RETURN TO MOTION TO DISMISS

Pursuant to SCACR 240(f), Respondent Business Loan Center (“BLC”) submits the following Reply to Appellant’s Return¹ to Respondent’s Motion to Dismiss and Memorandum on Appealability (“Return”).²

Appellants’ Return simply does not address in any manner the seminal issue raised in and basis for BLC’s Motion to Dismiss and Memorandum of Appealability – whether this Court has appellate jurisdiction over this matter pursuant to S.C. Code Ann. § 14-3-330. The Return is completely devoid of argument or authority showing that this Court has jurisdiction to hear this matter and decide the substantive issues raised on appeal. Therefore, BLC reaffirms its positions and arguments contained in the Motion to Dismiss and again respectfully requests that the present appeal be dismissed for the

¹ Appellants’ filing is labeled as “Reply to Motion to Dismiss.” It is referred to in this filing as “Return to Motion to Dismiss” or “Return” as such a filing should be made under SCACR 240(e).

² BLC is unsure as to the date of service of Appellants’ Reply to Motion to Dismiss as the paperwork received by counsel did not include a Certificate of Service. BLC is not alleging any nefarious acts on the Appellants part and simply noting this for administrative purposes. BLC is filing this Reply promptly.

reasons stated in its previous filing.

Appellant's Return does make several accusations and statements to which BLC must respond.³ Specifically, Appellants' deem BLC's Motion to Dismiss "frivolous" and claim it contained "settlement discussions" that should be excluded from the record. (Return at 1-2). First, BLC takes issue with the assertion that filing a Motion allowable under SCACR 240 based upon the applicable and controlling law is in any way "frivolous" or "should never have occurred." (Return at 1-2). The Court must have appellate jurisdiction in order to hear a matter and decide the substantive issues on appeal. BLC filed its Motion to Dismiss because it believes the Court lacks appellate jurisdiction under the circumstances making it inappropriate for it to consider and rule upon the substantive issues raised. Such an important and necessary issue need be raised and resolved prior to delving into any of the issues raised in an appeal. Secondly, BLC's reference in its Motion to Dismiss to the March 25, 2014 letter mischaracterizes it as containing "settlement discussion(s)." (Return at 2). SCRE 408 provides that:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, it not admissible to provide liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

SCRE 408. The March 25th letter proposed that the parties agree to submit the matter to a jury trial by voluntarily vacating the Order of Reference if Appellants dismissed this

³ BLC disputes and disagrees with the statements and positions taken by Appellants in their Return however does not feel it is necessary to specifically respond to each.

appeal. This correspondence did not contain “settlement discussions” prohibited from inclusion in the record as Appellants argue. That letter and the offer therein was merely BLC’s attempt to provide a practical and efficient resolution to the issue forming the basis of Appellants’ appeal. It did not seek nor offer to settle any substantive claims in the underlying action and was not submitted to establish liability or any other prohibited purpose and was properly included in BLC’s Motion.

Therefore, BLC reaffirms its position in the Motion to Dismiss and respectfully requests this matter be dismissed due to the Court’s lack of appellate jurisdiction under S.C. Code Ann. § 14-3-330.

Respectfully submitted this 4 day of June, 2014.

ROE CASSIDY COATES & PRICE, P.A.



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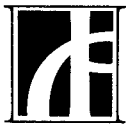
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing RESPONDENT'S REPLY TO APPELLANTS' RETURN TO MOTION TO DISMISS was served upon the counsel of record listed below and to the Court of Appeals by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope addressed to:

Shawn M. French
1476 Ben Sawyer Boulevard, Ste. 3
Mt. Pleasant, SC 29464
Attorney for Appellants

This the 2nd day of June, 2014


Amber B. Glidewell
Attorney for Respondents



Roe Cassidy
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Amber B. Glidewell
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June 2, 2014

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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JUN 04 2014

SC Court of Appeals

Re: Business Loan Center, LLC v. Subham Hospitality, Inc. et al.
Appellate Case Number: 2014-000292
RCCP 1490.0008

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Respondents' Reply to Appellants' Return to Motion to Dismiss in connection with the above-referenced matter, together with the original and one (1) copy of a Certificate of Mailing evidencing service of same.

I would ask that you please file the originals in your usual manner and return a clocked copy to me in the stamped, self-addressed envelope provided herein.

With kind regards, I am

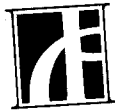
Very truly yours,

ROE CASSIDY COATES & PRICE

Katy M. Brown
Paralegal to Amber B. Glidewell

Enclosures: (as stated above)

cc: Shawn M. French
Attorney for Appellant



**Roe Cassidy
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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201