

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

NOV 06 2015

SC Court of Appeals

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-002085  
Case No. 2014-CP-10-4445

JACOB GREENSPAN,

Appellant,

v.

BROTHERS PROPERTY CORPORATION,  
BROTHERS PROPERTY MANAGEMENT  
CORPORATION, VICTOR FULLER, Individually and  
in his official capacity, ANA REINA, Individually and  
in her official capacity, and OLIVER ROOSKENS,  
Individually and in his official capacity,

Defendants,

Of whom BROTHERS PROPERTY CORPORATION  
and BROTHERS PROPERTY MANAGEMENT  
CORPORATION are

Respondents.

APPELLANT'S REPLY TO APPELLEES' OPPOSITION TO APPELLANT'S MOTION FOR  
LEAVE OF COURT OF APPEALS TO FILE MOTION SEEKING RELIEF UNDER RULE  
60(b), SCRPC

Appellant Jacob Greenspan, proceeding pro se, hereby replies to Appellees' Response in Opposition to Appellant's Motion for Leave of Court of Appeals to File Motion Seeking Relief under Rule 60(b), SCRPC ("Appellees' Response").

Rule 60(b)(1), SCRPC, allows a party to seek relief from a final judgment or order on the grounds of "mistake, inadvertence, surprise, or excusable neglect." Relief under this section lies

within the sound discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion. See *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989). "Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support." *Id.* at 119, 382 S.E.2d at 903.

Appellees' claim that Appellant's motion pursuant to Rule 60(b)(1), SCRCF, is fatally flawed based upon the fact that Appellant does not attempt to explain why any of the causes of action set forth in his First Amended Complaint are meritorious. However, the motion that is before the Court at this moment is Appellant's request for leave of the Court to file a motion seeking relief under Rule 60(b)(1), SCRCF. It is in the prospective motion that Appellant will present evidence to the Circuit Court proving that the order was issued against him by mistake, inadvertence, surprise or excusable neglect, and that relief is appropriate under Rule 60(b)(1), SCRCF.

Rule 60(b)(1), SCRCF, requires a moving party to establish: (1) the judgment was taken through mistake, inadvertence, surprise, or excusable neglect; and (2) the existence of a meritorious defense. See *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E. (2d) 321 (Ct. App. 1988). Appellant has clearly established his contention that the Circuit Court's order was taken against him by mistake, inadvertence, surprise, or excusable neglect. What's more, Appellant's meritorious defense exists on the record with the Circuit Court in the form of the facts already pled within Appellant's First Amended Complaint.

As set forth above, Appellees' contention that Appellant cannot satisfy the grounds for relief provided by Rule 60(b)(1), SCRCF, is without merit. And Appellees' erroneous proclamation that Appellant's motion for leave should be denied because he never responded to

Appellee's motion to dismiss his First Amended Complaint pursuant to Rule 12(b)(6), SCRPC, is without virtue.

"The test to be utilized by both the trial and appellate court in considering a motion to dismiss pursuant to Rule 12(b)(6), SCRPC is straightforward:

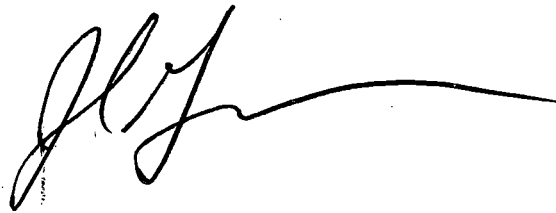
[I]n deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint and a 12(b)(6) motion should not be granted if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

"All wellpleaded factual allegations are deemed admitted for purposes of considering a motion for judgment on the pleadings." "[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our courts."

(quoting *Food Lion v. United Food & Commercial*, 567 S.E.2d 251, 351 S.C. 65 (Ct. App. 2002)(internal citations omitted)).

WHEREFORE, Appellant respectfully requests that the Court grant his Motion for Leave of Court of Appeals to File Motion Seeking Relief under Rule 60(b), SCRPC.

November 4, 2015



Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, SC 29412  
(843) 647-9277  
Appellant, Pro Se

Other Counsel of Record:

Wendy L. Furhang (Fed. I.D. No. 9851)

Email: [furhangw@jacksonlewis.com](mailto:furhangw@jacksonlewis.com)

John W. Sulau (Fed. I.D. No. 11613)

[John.Sulau@jacksonlewis.com](mailto:John.Sulau@jacksonlewis.com)

JACKSON LEWIS P.C.

15 South Main Street, Suite 700

Greenville, SC 29601

Phone: 864-232-7000

Fax: 864-235-1381

ATTORNEYS FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

THE STATE OF SOUTH CAROLINA  
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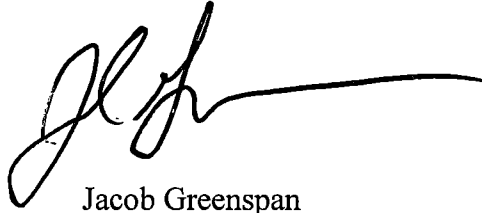
Of whom BROTHERS PROPERTY CORPORATION  
and BROTHERS PROPERTY MANAGEMENT  
CORPORATION are

Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Reply to Appellees' Opposition to Appellant's Motion for Leave of Court of Appeals to File Motion Seeking Relief under Rule 60(b), SCRCPC on BROTHERS PROPERTY CORPORATION and BROTHERS PROPERTY MANAGEMENT CORPORATION by way of the United States Postal Service, Certified Mail, on November 4, 2015, addressed to the attorney of record, Wendy L. Furhang, JACKSON LEWIS P.C., 15 South Main St., Suite 700, Greenville, SC 29601.

November 4, 2015



Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, SC 29412  
(843) 647-9277  
Appellant, Pro Se

Other Counsel of Record:

Wendy L. Furhang (Fed. I.D. No. 9851)

Email: [furhangw@jacksonlewis.com](mailto:furhangw@jacksonlewis.com)

John W. Sulau (Fed. I.D. No. 11613)

John.Sulau@jacksonlewis.com

JACKSON LEWIS P.C.

15 South Main Street, Suite 700

Greenville, SC 29601

Phone: 864-232-7000

Fax: 864-235-1381

ATTORNEYS FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

November 4, 2015

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

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NOV 06 2015

SC Court of Appeals

RE: Jacob Greenspan, Plaintiff/Appellant, v. Brothers Property Corporation; Brothers Property Management Corporation, Victor Fuller, Individually, and in his official capacity; Ana Reina, Individually, and in her official capacity; and Oliver Rooskens, Individually, and in his official capacity, Defendants, Of whom Brothers Property Corporation, and Brothers Property Management Corporation are Respondents.  
Appellate Case No. 2015-002085

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Reply to Appellees' Opposition to Appellant's Motion for Leave of Court of Appeals to File Motion Seeking Relief under Rule 60(b), SCRCP in the above case.

- (1) Proof of service of the motion to order the transcript outside of the filing deadlines on Appellees' on October 29, 2015.

Sincerely,



Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, South Carolina 29412  
(843) 647-9277  
Appellant, Pro Se

cc: Wendy L. Furhang  
JACKSON LEWIS P.C.  
15 South Main Street, Suite 700  
Greenville, SC 29601  
Phone: 864-232-7000  
Attorney for Appellees'

## TABLE OF AUTHORITIES

### CASES

*Mitchell Supply Co. v. Gaffney*,  
297 S.C. 160, 375 S.E. (2d) 321 (Ct. App. 1988).

*Thompson v. Hammond*,  
299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989).

*Food Lion v. United Food & Commercial*,  
567 S.E.2d 251, 351 S.C. 65 (Ct. App. 2002).

### OTHER AUTHORITIES

South Carolina Rules of Civil Procedure, Rule 12(b)(6)

South Carolina Rules of Civil Procedure, Rule 60(b)(1)