

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2015-001720

Kevin Watkins.....Appellant,

v.

J.S. Hall, Inc.....Respondent.

INITIAL BRIEF OF APPELLANT

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SATEMENT OF ISSUES ON APPEAL

1. DID THE APPELLANT PLEAD VICARIOUS LIABILITY FOR THE TORTS OF THE RESPONDENT'S EMPLOYEE?
2. DID THE APPELLANT ADEQUATELY PLEAD NEGLIGENT HIRING AND SUPERVISION?
3. DID THE CIRCUIT COURT ERR IN APPLYING RULE 23 *SCRPC* INSTEAD OF RULE 8 TO THE PLEADINGS IN THIS ACTION?

STATEMENT OF THE CASE

This is an appeal of the Circuit Court's ruling, which granted J.S. Hall, Inc.'s motion to dismiss. The plaintiff filed a summons and complaint on March 28, 2014, which did not name J.S. Hall, Inc. ("the respondent") as a defendant. Kevin Watkins ("the appellant") brought the action after the respondent's employee, Jason Hall, Jr., shot him on January 28, 2014. As the appellant conducted discovery, and as other issues arose, the complaint was amended three times to add specific language and additional parties, including the respondent. The pleading related to this appeal is the Third Amended Complaint.

When the summons and complaint were filed, the appellant was unaware that Jason Hall, Jr. was an employee of J.S. Hall, Inc., and that he was acting in the scope and course of his employment with J.S. Hall, Inc. when he shot the appellant. During his deposition, the shooter/employee invoked his Fifth Amendment right, refusing to answer several questions, but he did testify that he is "always on call," and that his J.S. Hall, Inc. duties include acting as property manager for the property where pertinent shooting took place. (Hall Depo. p. 26, lines 8-21, p. 23, line 23). The shooter/employee went on to testify that he receives J.S. Hall, Inc. paychecks for his duties and that he lives in a house at a reduced rent in exchange for acting as property manager. (Hall Depo. p. 36, lines 4-8, p. 15, lines 2-13, p. 35, lines 2-13, p. 24, lines 3-6). The shooter/employee's father, Jason Hall, Sr., owns J.S. Hall, Inc. (Hall Depo. p. 15, lines 9-21). The house where the shooter/employee lives is owned by his mother, who seems to be involved in and "make[s] decisions" for J.S. Hall, Inc., as alleged in the pleadings. (Hall Depo. p. 24, lines 16-25, Third Amended Complaint pp. 2-5).

When the appellant discovered these facts, naturally, he amended the complaint to add J.S. Hall, Inc. as a defendant since the company is vicariously liable for its employees' acts in the scope and course of employment. The respondent filed a motion to dismiss on the pleadings, relying, in part, on Rule 23(b)(1) *SCRCP*. (J.S. Hall Inc.'s Memo in Support of Motion to Dismiss p. 5, Transcript p. 16, lines 5-19). At the hearing, the appellant argued that Rule 8 *SCRCP*, and not rule 23, governs the pleading requirements applicable to the claims brought by the appellant. (Transcript p. 16, lines 5-19). The appellant also argued that, pursuant to Rule 8, the respondent should not be dismissed as a defendant. (Transcript p. 16, lines 12-19).

The Court questioned the appellant's counsel about the allegations that the shooter/employee had acted in his capacity as an employee when he shot the appellant.

(Transcript p. 17, lines 10-22). Counsel for the appellant argued that the respondent's owner hired the shooter/employee, provided him with a gun, put him in a house to work as caretaker, and the shooter/employee shot people as a result. (Transcript p. 18, lines 15-19). Counsel for the appellant further argued that as long as allegations are properly set forth under Rule 8, a motion to dismiss must be denied, and that if the respondent wished to file a summary judgment motion at a later date, a different analysis would be required at that time. (Transcript p. 19, lines 4-13).

After hearing the motion, the Court took the matter under advisement. (Transcript p. 21, lines 24-25, p. 22, line 1). Shortly after the hearing and before a ruling was issued, the appellant sent an email to the Court and the respondent's counsel, providing case law supporting the appellant's position. (Hawkins Email to Circuit Court). On June 19, 2015, the Court entered an Order dismissing the respondent from the lawsuit. (Watkins Motion to Reconsider p. 3). The appellant filed a motion to reconsider on June 25, 2015. (Watkins Motion to Reconsider p. 1). On July 16, 2015, the Court denied the motion to reconsider without a hearing. (Form 4 Denial of Motion to Reconsider). On August 10, 2015, the appellant mailed his notice of appeal for filing.

FACTS

On January 28, 2014, the appellant walked with his friends along West Marion Road in the Berea area of Greenville, South Carolina. The appellant's route took him in front of the house containing Jason Hall, Jr, an employee of the respondent. As the appellant passed the house, Jason Hall, Jr. exited the home with his father's firearm, stood on the porch of the house, and began firing at the appellant and his companions.

Using the gun owned by his father (owner of J.S. Hall, Inc.), and standing on the porch of the home owned by his mother, the respondent shot the appellant five times and shot his companion, Robert Bankston, once, leaving the victims severely injured. The appellant and Mr. Bankston were taken to Greenville Memorial Hospital, where they were treated for their injuries. (Third Amended Complaint, p. 2).

The shooter/employee is employed by the respondent to manage the property owned by his mother and other properties owned by defendants in the underlying lawsuit. (Hall Depo. p. 24, lines 3-6, p. 25, lines 10-25, p. 26, lines 1-16, Third Amended Complaint pp. 1-4). Both Jason Hall, Sr. and Martha Hall appear to be involved in the decision-making and hiring for J.S. Hall, Inc. (Hall Depo. p. 24, lines 16-25, Third Amended Complaint pp. 2-5). The respondent receives J.S. Hall, Inc. paychecks for his work as a caretaker of the property owned by his mother (where the shooting took place) and other properties. (Hall Depo. p. 34, lines 21-25, p. 35, lines 1-25, p. 36, lines 1-14). The shooter/employee continues to work as an employee of J.S. Hall, Inc. (Hall Depo. p. 19, lines 19-24).

Arguments

1. BECAUSE THE PLEADINGS STATE JASON HALL, JR. ACTED IN HIS CAPACITY AS A J.S. HALL, INC. EMPLOYMEE WHEN HE SHOT THE APPELLANT, THE CIRCUIT COURT SHOULD HAVE DENIED J.S. HALL, INC.'S MOTION TO DISMISS ON THE PLEADINGS.

The respondent bases its Rule 12(b)(6) *SCRPC* motion to dismiss on the assertion that the appellant has not stated that the shooter/employee acted in his capacity as a J.S. Hall, Inc. employee when he shot the appellant. (Transcript, p. 7, lines 3-18). However, the appellant's pleadings state "Hall, Jr. is an employee of Hall, Inc. and works as the full time care-taker of the defendants' properties as a condition of being able to reside in a home owned by one or more of the defendants. In addition, Hall, Jr. receives monetary compensation for his duties as caretaker..." (Third Amended Complaint, p. 2). The pleadings further state "Hall, Jr. acted within his capacity as caretaker [for] the property owned by one or more of the defendants and Hall, Sr., Hall, Inc. and Martha Hall acted vicariously through Hall, Jr." (Third Amended Complaint, p. 2). The pleadings describe the shooting and the shooter/employee's employment with J.S. Hall, Inc. in the "FACTUAL BACKGROUND" section of the pleadings, and those facts are incorporated by reference into each cause of action. This satisfies the "short and plain statement of the facts" requirement of Rule 8, *SCRPC*. "[I]f the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory," a motion to dismiss should be denied. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

At the hearing on this matter, the respondent's counsel took the position that the shooter/employee quit working for the company in 2007, which is outside of the pleadings. (Transcript p. 20, lines 2-7). Although Courts do not look to information outside of the pleadings when considering a motion to dismiss, the appellant addressed the respondent's statement during the hearing, informing the Court that the shooter/employee testified he is still employed with the respondent, that he is caretaker for the property where the shooting took place, that he is always on duty, and that J.S. Hall, Inc. writes his paychecks for his duties as caretaker. (Hall Depo p. 16, lines 19-24, p. 23, lines 23-24, p. 26, lines 1-16, p. 36, line 8).

The appellant drafted the Third Amended Complaint to include information gleaned from the shooter/employee's testimony. If considered to be true, the appellant's statement that shooter/employee shot the appellant while acting as the respondent's employee defeats the respondent's motion to dismiss. "Generally, in considering a 12(b)(6) motion, the court must

base its ruling solely upon allegations set forth on the face of the complaint.” *Baird v. Charleston County*, 713 S.E.2d 604 (2011); *Doe v. Greenville County Sch. Dist.*, 651 S.E.2d 305, 307 (2007). “The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory.” *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). The pleadings unambiguously state the shooter/employee acted in the scope and course of his employment when he shot the appellant, and at least an inference can be drawn that the shooter was attempting to protect the property within his capacity as property manager, since the shooter/employee lives in the house where the shooting occurred.

The respondent’s motion to dismiss should be denied because the pleadings entitle the plaintiff to relief on not just one, but several theories. “The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct.App.1995). “The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” *Id.* at 68, 463 S.E.2d at 99.

At the hearing, the respondent’ counsel stated “at no point does it say that was within the course and scope of his employment with the corporate defendants.” (Transcript p. 20, lines 17-20). The appellant pointed out that “paragraph 20 says Hall, Jr. acted within his capacity as caretaker [for the] property owned by one or more of the defendants [and] Hall. Sr., Hall Incorporated, and Martha Hall acted vicariously through the...” shooter/employee. (Transcript p. 21, lines 5-8). The respondent’s counsel stated “Absolutely nothing in the third amended complaint alleges he was doing anything in the course and scope of his alleged employment with J.S. Hall Inc...” when the respondent’s employee shot the plaintiff. (Transcript p. 7 line 15-18). However, the pleadings contain several paragraphs clearly stating allegations that the employee/shooter acted within the scope and course of his employment when he shot the appellant:

12. Hall, Jr. is an employee of Hall, Inc. and works as the full time care-taker of the defendants’ properties as a condition of being able to reside in a home owned by one or more of the defendants. In addition, Hall, Jr. receives monetary compensation for his duties as caretaker for Hall, Sr.’s properties.

13. Hall, Jr.'s paychecks for his caretaker duties are issued by Hall, Inc. and, upon information and belief, are signed by Hall, Sr.
20. Hall, Jr. acted within his capacity as caretaker the property owned by one or more of the defendants and Hall, Sr., Hall, Inc. and Martha Hall acted vicariously through Hall, Jr.
21. Hall, Sr., Hall, Inc. and Martha Hall endorsed and ratified Hall, Jr.'s actions.
22. Hall, Sr., Hall, Inc. and Martha Hall were negligent and/or reckless by hiring Hall, Jr., who injured the plaintiff by acting recklessly or through mental derangement.
23. Hall, Sr., Hall, Inc. and Martha Hall knew or should have known of Hall, Jr.'s dangerous propensities.
24. During all times described herein, Hall, Sr. and possibly Martha Hall acted as directors of J.S. Hall, Inc., and these defendants acted vicariously through Hall, Jr.
26. ... Hall, Sr., Hall, Inc. and Martha Hall owed a duty to avoid hiring dangerous employees and other duties as will be shown through discovery and at trial.
37. Hall, Sr., and/or Martha Hall as owners of the property in question and/or exert dominion and control of it and one or both of them are shareholders of Hall, Inc. the defendants breached their duty by hiring and/or failing to properly supervise Hall, Jr.

When questioned about whether the shooter/employee was working when he shot the appellant, counsel for the appellant responded "Yes. Yes, Your Honor. He's testified that he is always on-call; he's never off-duty. I asked him about it. That's why I wrote the complaint the way I did. He was acting in the scope and course of his employment. He's always on duty." (Transcript p.17, line 23-25, p.18, lines 1-3). The appellant's statements to the Court are consistent with the pleadings. (Third Amended Complaint p. 2). The appellant's counsel further argued "...you have got a duty to hire people that are not crazy. If anybody knows his level of craziness it's his parents. They have known him his whole life. They put him in a house with a gun and he used the gun to shoot people." (Transcript p.18, lines 15-19). This statement is also consistent with the pleadings. (Third Amended Complaint pp. 2-4, also see J.S. Hall, Inc.'s Responses to Requests for Admission p. 1).

The appellant's counsel also argued "[i]f we assume...[the shooter/employee acted through his employment]...as it's alleged, then we've met the burden to survive a motion to

dismiss. I mean we just simply have because we allege he was acting in the scope and course of his employment when he shot these people.” (Transcript p. 19, lines 4-9).

Rule 8 *SCRPC* requires little of the pleader; only “a short and plain” statement of facts that allows a plaintiff to recover under the law. The “FACTUAL BACKGROUND” section of the pleadings sets forth fairly detailed facts about the shooting. There are also fairly detailed facts about the shooter/employee’s job and duties, accompanied by allegations that he acted through his employment when he shot the appellant. These facts and allegations are assumed to be true, and the appellant could recover under the law, based on these facts and allegations. The appellant’s motion to dismiss, therefore, should have been dismissed as a matter of law.

2. BECAUSE THE PLAINTIFF HAS ADEQUATELY PLED NEGLIGENT HIRING AND SUPERVISION, J.S. HALL, INC. SHOULD NOT HAVE BEEN DISMISSED.

The appellant need not *prove* J.S. Hall, Inc. negligently hired or supervised its employee in order to survive a motion to dismiss on the pleadings. The appellant must merely set forth a “short and plain statement,” in compliance with Rule 8 *SCRPC*. The appellant has set forth such a statement in the pleadings, and for that reason, the Circuit Court should have denied the respondent’s motion to dismiss.

Not only has the appellant alleged the respondent was negligent in hiring and supervising the shooter/employee, but also has specifically stated that that the shooter/employee is caretaker of the property at issue, that he is employed for that job by J.S. Hall, Inc. and that he acted in his capacity as caretaker of the properties at issue. (Third Amended Complaint pp. 2-4). Although the property where the respondent’s employee shot the appellant is titled in the name of Martha Hall (the shooter/employee’s mother), it is clear from the pleadings that part of the shooter/employee’s job is caring for that property and that Martha Hall is involved in the respondent’s hiring, including the hiring of shooter/employee. (Third Amended Complaint p. 2, see also Hall Depo. p. 24, lines 16-21). Since the appellant stated that J.S. Hall, Inc. and the people running the company and making all hiring decisions “knew or should have known of [the shooter/employee’s] dangerous propensities,” the Rule 8 threshold has been satisfied, and the respondent’s motion to dismiss should have been denied. (Third Amended Complaint p. 2). The respondent’s counsel stated to the Court that the appellant “failed to allege facts to show that the corporate defendant had any knowledge of the...danger posed by Jason Hall.” (Transcript p. 9, lines 1-4). However, the pleadings state that the shooter/employee’s parents make business

decisions for J.S. Hall, Inc. and do the hiring. (Third Amended Complaint pp. 2-4). The pleadings also state that the shooter/employee's parents (who hire for and manage J.S. Hall, Inc.) had actual or constructive knowledge of the shooter/employee's dangers. (Third Amended Complaint p. 2). Although these statements satisfy Rule 8 *SCRCP*, the respondent contends the pleadings must be more detailed and "particularized." (J.S. Hall, Inc.'s Memo in Support of Motion to Dismiss p. 5). As discussed more fully below, the respondent seems to rely on Rule 23, but again, Rule 8 is applicable here, and the pleadings meet the mandates of Rule 8.

Not only facts, but also *inferences* must be weighed in the nonmoving party's favor when considering a motion to dismiss. *Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct.App.1995). When facts and inferences "would entitle the plaintiff to any relief on any theory" a motion to dismiss "cannot be sustained." *Id.* Inferences stemming from the familial relationship between the shooter and the respondent's managers should be weighed in the appellant's favor, and there is certainly an inference that the shooter/employee's parents are in the best position to know of his dangerous propensities and the dangers arising from furnishing him with a firearm.

The pleadings state the managers of J.S. Hall, Inc. "...had a duty to avoid hiring unstable, mentally deranged or dangerous persons to reside on and care for..." the property where the respondent's employee shot the appellant, and that they "...had a duty to properly supervise..." the employee. (Third Amended Complaint p. 4). The pleadings also state the parents of the shooter/employee "... are shareholders of Hall, Inc..." and that the shareholders of J.S. Hall, Inc. "...breached their duty by hiring and/or failing to properly supervise Hall, Jr." (Third Amended Complaint p. 4).

The respondent has admitted that it never performed a background check before hiring the shooter/employee and that the employee/shooter was never reprimanded for his actions. (J.S. Hall, Inc.'s Responses to Requests for Admission, p. 2). These facts are consistent with the pleadings and the appellant's claim for negligent hiring and supervision.

As stated above, the appellant's counsel argued to the Court that the pleadings are drafted and amended as they are, in part, because of the shooter/employee's deposition testimony. In the shooter/employee's deposition, counsel for the appellant learned that the shooter/employee "still gets a check from J.S. Hall Incorporated. [The owner of J.S. Hall, Inc.]... signs it...[J.S. Hall, Inc. and its managers]...entrust the property to [the shooter/employee] and he is the caretaker." (Transcript p. 15, lines 2-5). The appellant's counsel also informed the Court that the

shooter/employee's father likely owned the firearm used to shoot the appellant. (Transcript p. 15, line 20.) Since the hearing, the appellant has verified through discovery that the owner of J.S. Hall, Inc., and the same man responsible for hiring and supervising the shooter/employee, does, in fact, own the firearm used by the shooter/employee to shoot the appellant. (J.S. Hall, Inc.'s Resp. to Plaintiff's Requests to Admit p. 1) The pleadings provide for such a discovery: "Hall, Inc...owed a duty to avoid hiring dangerous employees *and other duties as will be shown through discovery* and at trial." (Third Amended Complaint, p. 3). More importantly, the pleadings are fairly detailed as to the appellant's acts, listing several ways the respondent was negligent, such as "hiring dangerous employees..." (Third Amended Complaint p. 3).

The pleadings contain protective language for the very purpose of surviving a motion to dismiss. The appellant has, in fact, learned through discovery that the owner of J.S. Hall, Inc. furnished the shooter/employee with the very firearm used to shoot the appellant, and stored the firearm at a property managed and inhabited by the employee/shooter. At a minimum, those facts allow a negligent hiring and supervision claim to survive a motion to dismiss.

During the hearing, the appellant drew the Court's attention to the fact that the respondent made real property and a firearm available to the shooter/employee, resulting in the serious injuries described in the pleadings. (Transcript p. 15, line 23). Again, not only were the real property and firearm at issue furnished by the respondent, but according to the shooter/employee's own testimony, he *had* to have been on duty when he shot the appellant, a fact which is unambiguous on the face of the pleadings. (Third Amended Complaint p. 2). "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." *Brown v. Leverette*, 353 S.E.2d 697 (1987); *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985); and *Glass v. Glass*, 276 S.C. 625, 281 S.E.2d 221 (1981).

The employee of J.S. Hall, Inc. was on duty when he shot the appellant, working at a position given to him by managers of J.S. Hall, Inc. He shot the appellant with a firearm owned by the respondent's owner and stored at a property the respondent hired him to manage. Inferences can be drawn related to the shooter/employee's familial relationship with managers of the respondent (the shooter/employee's parents) and the managers' actual or constructive knowledge of the danger surrounding him. For all of these reasons, the respondent should not be dismissed based on the appellant's negligent hiring and supervision claim.

3. RULE 8 SCRPC, AND NOT RULE 23, DETERMINES THE ADEQUACY OF PLEADINGS FOR PURPOSES OF THE RESPONDENT'S MOTION TO DISMISS.

Rule 8 *SCRPC* requires a “short and plain statement of the facts.” Liberal rules as to amendment throughout enable the parties to conform the pleadings to the facts and relief demanded, as they develop. (Rule 8 Notes, South Carolina Rules of Court, 2013). The respondent filed its motion to dismiss, relying, in part, on its position that the appellant did not plead “particularized facts” supporting the respondent’s vicarious liability for its employee’s tortious conduct. (J.S. Hall, Inc.’s Memo in Support of Motion to Dismiss p. 5). A case relied on and quoted by the respondent in support of its motion to dismiss is *Carolina First Corp. v. Whittle*, 539 S.E.2d 402. In addition to the language quoted by the respondent, *Carolina First* also contains the following language: “Rule 23 is a departure from the more liberal pleading requirements of Rule 8, SCRPC, in that it requires particularized allegations.” *Id.* The word “departure” is indicative of the fact that Rule 23 requires more detailed pleading than what is required by Rule 8, which governs the pleadings related to the appellants underlying lawsuit.

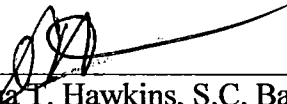
Rule 23(b)(1) is applicable only to shareholder derivative actions, and the respondent’s reliance on *Carolina First* and Rule 23 is misplaced. Rule 8 governs the pleadings in this case, and Rule 8 *does not* require particularized facts. It is not necessary that the appellant prove his case on the face of his pleadings, but only that he set forth a “short and plain statement of the facts.” Rule 8 *SCRPC*.

The appellant has set forth a statement of the facts which is short and plain, and which comports with the mandates of Rule 8 *SCRPC*. For that reason, Rule 8 *SCRPC*, and not Rule 23 should be applied to the pleadings in this case, and the respondent’s motion to dismiss should have been denied.

CONCLUSION

The appellant has stated in his pleadings that the respondent's employee acted in his capacity as an employee when he shot the appellant. The appellant has stated in his pleadings that the respondent knew of its employee's dangerous nature, and that the respondent was negligent in hiring and supervising its employee. Finally, the appellant's pleadings are governed by Rule 8 *SCRCP* and not Rule 23. For the foregoing reasons, the appellant respectfully requests that the Appellate Court reverse the Circuit Court's ruling.

Respectfully submitted,



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December 22, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 29 2015

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

Appellant Case No. 2015-001720

Kevin Watkins.....Appellant,

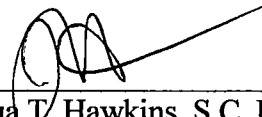
v.

J.S. Hall, Inc.....Respondent.

PROOF OF SERVICE

I certify that I have mailed for filing the Appellant's Initial Brief, via Certified Mail, to the South Carolina Court of Appeals on the date indicated below. I further certify that I have sent a copy of all mailings to the respondent's attorney by depositing a copy of it in the United States Mail, postage prepaid, addressed to Courtney Atkinson, 9 Toy Street, Greenville, South Carolina 29601.

December 22, 2015



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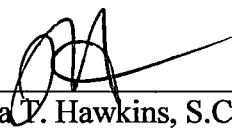
December 22, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Kevin Watkins, Appellant, v. J.S. Hall, Inc., Respondent,
Appellate Case No. 2015-001720

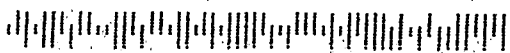
Dear Ms. Kitchings:

Enclosed please find the appellant's initial brief, designation of matter and proof of service, which we have also mailed to the attorney for the respondent. Should the Court need anything further from me, please let me know.


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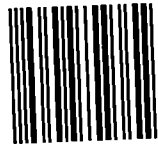


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