

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Case Nos. 2013-CP-02-02849, 2013-CP-02-02850

Appellate Case No. 2015-002417

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deana Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is the .....Appellant.

RESPONDENT'S RETURN TO APPELLANT DAVID C. SOJOURNER, JR.'S  
MOTION TO STRIKE IRRELEVANT AND PREJUDICIAL STATEMENTS FROM  
INITIAL BRIEF OF RESPONDENT TOMMIE RAE BROWN  
AND

RESPONDENT'S RETURN TO APPELLANT DAVID C. SOJOURNER, JR.'S  
MOTION TO EXCLUDE IRRELEVANT DOCUMENTS FROM  
RECORD ON APPEAL

**TO: THE HONORABLE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF  
THE SOUTH CAROLINA COURT OF APPEALS**

Respondent Tommie Rae Brown, by and through her undersigned counsel, hereby submits this Return to Appellant David C. Sojourner, Jr.'s Motion to Strike Irrelevant and

Prejudicial Statements from Initial Brief of Respondent Tommie Rae Brown and her Return to Appellant David C. Sojourner, Jr.'s Motion to Exclude Irrelevant Documents from Record on Appeal and respectfully opposes Appellant Sojourner's motion filed on or about November 9, 2016.

Appellant's Motion to Strike takes issue with several statements in Respondent's Initial Brief, alleging that they are "wholly unsupported, speculative, and which were not considered by the lower court because they do not appear in the Joint Stipulations of Fact and were not presented to the court" and are therefore irrelevant and prejudicial. *See* Motion at pp. 2-3. Appellant's Motion to Exclude takes issue with two documents Respondent included in her Designation, alleging that they were not presented to or considered by the lower court in deciding the orders on appeal and argues that they are therefore irrelevant, potentially prejudicial, and should be excluded from the Record. *See* Motion at p. 2. Respondent will address each of the statements and documents Appellant wishes to strike or exclude below.

## ARGUMENT

### **I. Appellant's Designation.**

Appellant contends that two documents Respondent listed in her Designation were not considered by the lower court in deciding the orders on appeal.

As to the first document, the "Joint Motion to Authorize Settlement of Brown Children Undue Influence Cases, filed December 7, 2015, with Settlement Agreement and Release, dated November 17, 2015," Respondent agrees to exclude this document from her Designation as it post-dates the appealed orders of Judge Early, which were signed on January 13, 2015 and October 26, 2015. Due to an oversight, this document

was included in her Designation. While Respondent believes this agreement settles the matter, she will file an amended Designation deleting that item if the Court so directs.

The second document Appellant contends is improper is the “Amended Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment, dated November 15, 2007, filed December 26, 2007” (hereafter “Amended Affidavit”), which is a clean copy of the “Affidavit of Tommie Rae Brown In Support of Her Motion for Summary Judgment that was filed November 26, 2007” (hereafter “Original Affidavit”). In her Memorandum of Law in Support of her Motion for Summary Judgment that was filed with the lower court on September 24, 2014, Respondent cited to her “Original Affidavit,” and also filed a copy of that affidavit with her memorandum. Due to an oversight, however, Respondent cited to her “Amended Affidavit” instead of her “Original Affidavit” that was filed with the lower court and considered in granting its order. The two documents are exactly the same, except that paragraph twelve (12) of Respondent’s “Amended Affidavit” was amended to reflect Respondent’s handwritten changes to her “Original Affidavit”. All of the information and exhibits are identical.

Respondent further notes that in the lower court’s Order regarding Respondent’s and Amici Curiae’s Motions to Alter, Amend or Reconsider Order regarding Petitioner’s Motion for Summary Judgment and the Limited Special Administrator’s Motion for Summary Judgment dated October 26, 2015 provides that “[i]n granting Petitioner’s Motion for Summary Judgment, this Court relied only upon the applicable law as well as stipulated facts and took judicial notice of the pleadings and other documents in this case.” *See* Order, Oct. 26, 2015, at p. 2. The lower court then cites to paragraph 21 of the Joint Stipulation of Facts filed September 5, 2014 in a footnote and includes the

following parenthetical explanation:

The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

*Id.* (quoting Joint Stipulation of Facts). Therefore, Respondent contends that her affidavit was clearly part of the record that was before the lower court for the two orders that are now on appeal and is properly included in the Designation. As such, Respondent asks for leave to amend her Designation and include the "Original Affidavit," which was filed with the lower court on September 24, 2014, as her Affidavit in Support was clearly considered.

## **II. Respondent's Statements are not Prejudicial or Irrelevant.**

Appellant requests that a number of statements from Respondent's Initial Brief be stricken, as Appellant contends that they are unsupported and speculative statements and/or are prejudicial and irrelevant to the Court's determination of the issues on appeal. Respondent, however, believes that most, if not all, of the statements Appellant wishes to have stricken are proper and are not prejudicial or irrelevant. Further, Respondent contends that she is permitted to draw reasonable inferences from stipulated facts, even though the inferences themselves are not in the stipulation. Respondent addresses each of the statements below.

1. "One of [Mr. Brown's trustees] was found to have lied under oath to the court. Another is under house arrest for stealing from Mr. Brown." Initial Brief of Respondent at p. 5, footnote 5.

As to the first statement, Respondent references paragraph 21 of the Joint

Stipulations of Fact stating that the “Court can take judicial notice, as it deems appropriate, of the files . . . in all cases concerning or related to Petitioner’s elective share and omitted spouse claim.” Respondent cites to the Order from *Wilson v. Dallas*, and specifically references a footnote from that case, which states: “The three left amid allegations that Cannon had misappropriated funds belonging to Brown. Bradley is now deceased. In 2011, Cannon entered a plea . . . to charges of taking money from Brown, for which he was sentenced to house arrest.” See *Wilson v. Dallas*, 403 S.C. 411, 420, 743 S.E.2d 746, 751 n.2 (2013). Therefore, Respondent does not believe this statement should be stricken as it is clearly supported in the record and the court may obviously take judicial notice of *Wilson v. Dallas*.

2. “Mr. Brown . . . willing[ly] ceded such total control over his assets while alive . . . .” *Id.* at p. 5.

Respondent contends that while this is not a statement of fact, it is an assumption based on the language from Mr. Brown’s will and trust, which were before the court as Mrs. Brown was seeking her spousal shares against it. Further, as permitted under paragraph 21 of the Joint Stipulations of Fact, this was part of the record and the court could take judicial notice of it.

3. “Discussion of the annulment began during the marriage between Mr. Brown and Mrs. Brown, when David Cannon, an associate of Mr. Brown who is currently under house arrest for stealing from Mr. Brown, expressed doubt over the validity of the Brown-Brown marriage. Specifically, Mr. Cannon expressed a belief that the marriage was bigamous because Mrs. Brown was previously married to Javed Ahmed.” *Id.* at p. 30.

Respondent refers the Court to paragraph 4 in her Affidavit (either her “Amended Affidavit” that was filed with the Probate Court on December 26, 2007 or her “Original Affidavit” that was filed with the Probate Court on November 26, 2007 and also with the

lower court along with her memorandum on September 24, 2014, which states: "In 2003, David Cannon told Mr. Brown that I was married to someone else, namely Javed Ahmed and had never been divorced. James and I both wanted our marriage to be legal and so James told me to have the marriage annulled. I had no funds to retain Mr. Rosen and James gave me the money to pay the legal fees for the annulment . . . . James and I continued to live as husband and wife. . . ." Respondent contends that this is properly before the court and/or the court may take judicial notice of her affidavit per paragraph 21 of the Joint Stipulations of Fact.

4. "The purpose of the annulment action was to address the doubts raised by Mr. Cannon. Mrs. Brown has always believed that her marriage to Ahmed was void and that her marriage to Mr. Brown was valid." *Id.* at pp. 30-31.

Respondent again refers to her affidavit, but also contends that this is a reasonable assumption or inference based on the stipulated facts.

5. "There was a difference of opinion on the subject of [Mrs. Brown's marriage to Mr. Ahmed] between Mr. Cannon and Mrs. Brown, and Mrs. Brown brought the annulment action, *at Mr. Brown's request*, to have that difference resolved authoritatively." *Id.* at p. 31 (emphasis added); *see also id.* at p. 31 ("The action was brought at his request."); *see also id.* at p. 55 ("Mr. Brown asked Mrs. Brown to procure an annulment.").

Respondent takes the position that these statements are not irrelevant or prejudicial, and further directs the Court to paragraph 13 of the Joint Stipulation of Facts which states, "James Brown gave Tommie Rae the funds to pay the legal fees for the Ahmed Annulment litigation." Respondent contends that these are reasonable assumptions and inferences based on the stipulated facts.

6. "*Mr. and Mrs. Brown* desired, as any reasonable person in that situation would, to resolve . . . doubts" regarding the validity of their marriage. *Id.* at p. 31 (emphasis added); *see also id.* at p. 32 ("he had just as much interest in determining the legal status of his marriage to Mrs. Brown as she did.")

Respondent contends that these are reasonable inferences and reasonable conclusions based on the stipulated facts. The status of Mrs. Brown's purported marriage to Ahmed would affect Mr. Brown's marriage to Mrs. Brown.

7. Mr. Brown's payment of legal fees "made the action possible, which suggests he had a strong interest in the subject matter of the action." *Id.* at p. 32; *see also id.* at p. 52 ("Mr. Brown evidently agreed that his interests in the annulment action were represented by Mrs. Brown, as he retained no attorney of his own, filed no claim of his own, and paid Mrs. Brown's attorney.").

Respondent takes the position that these statements are not irrelevant or prejudicial, and further directs the Court to paragraph 13 of the Joint Stipulation of Facts which states, "James Brown gave Tommie Rae the funds to pay the legal fees for the Ahmed Annulment litigation." Respondent contends that these are reasonable assumptions and inferences based on the stipulated facts. In addition, this is an argument to the Court.

8. Mr. Brown gave "full support" to Mrs. Brown to pursue the Ahmed annulment action. *Id.* at p. 33; *see also id.* at p. 51 (insinuating Mr. Brown "support[ed], encourage[d], and insist[ed] upon [Mrs. Brown's annulment action against Mr. Ahmed]"); *id.* at p. 52 (implying Mr. Brown "fostered" Mrs. Brown's annulment action").

Respondent takes the position that these statements are not irrelevant or prejudicial, and further directs the Court to paragraph 13 of the Joint Stipulation of Facts which states, "James Brown gave Tommie Rae the funds to pay the legal fees for the Ahmed Annulment litigation." Respondent contends that these are reasonable assumptions and inferences based on the stipulated facts, as well as an argument to this Court.

9. "With funds provided *for that purpose by Mr. Brown*, Mrs. Brown hired Robert Rosen, who, in December 2003, brought an action on her behalf to

obtain an annulment from Ahmed.” *Id.* at p. 1 (emphasis added).

Respondent directs the Court to paragraph 13 of the Joint Stipulation of Facts which states, “James Brown gave Tommie Rae the funds to pay the legal fees for the Ahmed Annulment litigation.” Respondent further contends that this statement is not irrelevant, as it clearly shows Mr. Brown’s support.

10. “In January 2004, soon after Mr. Brown was arrested in a domestic violence dispute . . . .” *Id.* at p.1; *see also id.* at p. 4 (“After a quarrel with Mrs. Brown . . . .”); *id.* at p. 31 (“Mr. Brown was later arrested on a domestic violence charge involving Mrs. Brown on January 28, 2004.”).

Respondent directs the Court to Exhibit 17 of the Joint Stipulations of Fact, which is Mrs. Brown’s Answer and Counterclaim that was filed on June 14, 2004. In paragraph 14 of that exhibit, Mrs. Brown states: “The parties hereto separated on or about January 28, 2004, due to the Plaintiff’s assault on and physical abuse of Defendant. On that date, the Plaintiff physically assaulted Defendant during an altercation in which he picked up a chair and slammed it on Defendant’s head, causing her to crash to the floor. Defendant was frightened of the Plaintiff and dialed ‘911.’ Law enforcement came to the scene to ensure the safety of Defendant and the parties’ minor child. As a result of this incident, the Plaintiff was immediately arrested for Criminal Domestic Violence.”

11. “Mr. Brown clearly accepted the benefits of [Tommie Rae Brown’s] Charleston County Family Court order . . . .” *Id.* at pp. 2, 52; *see also id.* at p. 31 (“Mr. Brown clearly accepted the benefits . . . when he utilized the Order to advance his own position in the Aiken County action.”); *see also id.* at pp. 51, 52 (“Mr. Brown also accepted substantial benefits of the judgment during his lifetime.”); *id.* at p. 51 (“The effect of the annulment was to resolve uncertainty as to the validity of a marriage to which both spouses were parties, and Mr. Brown therefore benefitted as much from the judgment as Mrs. Brown did.”).

Respondent contends that she is permitted to make reasonable inferences from the stipulated facts, and believes that these are reasonable inferences to make based on the

Joint Stipulated Facts and the incorporation of the family court documents from Mr. and Mrs. Brown's case in 2004 (Exhibits 15-19). Mr. Brown alleged in his Amended Complaint for Annulment in the Aiken case as follows:

The Charleston County Family Court made Findings of Fact and Conclusions of Law that the Defendant was in fact married to Mr. Ahmed on February 17, 1997. The Charleston Family Court granted the Defendant an annulment on April 15, 2004. . . . Defendant, in that action, has not filed any appeal from the Family Court Order and as such, the Findings of Fact of the Charleston Family Courts are binding on this Court. Pursuant to the Order from the Charleston Family Court, Defendant is collaterally and judicially estopped from denying the allegations in this action.

Exhibit 16, at Stip Exhibits 000070, ¶¶ 8-11.

12. "[I]f Mr. Brown had truly intended not to be married to Mrs. Brown, surely he would have pursued his annulment action to its conclusion." *Id.* at p. 32.

Respondent contends that this is not a statement of fact, but rather an argument and an assumption following from Mr. Brown's failure to seek a divorce after the Consent Order of Dismissal was filed on August 16, 2004 (Stipulation Exhibit 19).

13. "what Mr. Brown wanted: his marriage to Mrs. Brown." *Id.* at p. 5.

Respondent contends that this is not a statement of fact, but rather an argument and assumption following from Mr. Brown's failure to seek a divorce after the Consent Order of Dismissal was filed on August 16, 2004 (Stipulation Exhibit 19).

14. "In July 2004, Mr. and Mrs. Brown reconciled . . . ." *Id.* at p. 2.

Respondent directs the Court to the lower court's January 13, 2015 Order which stated, per the Joint Stipulations of Fact, that, "Mr. and Mrs. Brown reconciled in July 2004 and signed a Consent Order on August 16, 2004 dismissing Mr. Brown's action." *See* Order, p. 8. Further, the Joint Stipulations of Fact and Exhibits clearly support the

conclusion that couples that dismiss their divorce action and continue to reside together have clearly reconciled.

15. "Mr. and Mrs. Brown then continued to reside together as husband and wife until Mr. Brown's death." *Id.* at p. 32.

Respondent contends that this is a conclusion based on the stipulations, order, and the court is permitted to take judicial notice (as noted in paragraph 21 of the Joint Stipulations of Fact). The parties reconciled and no further divorce action was brought.

16. "Mr. Brown died knowing he was married to Mrs. Brown." *Id.* at p. 4.

Respondent contends that this is an argument and assumption based on the fact that Mr. Brown dismissed his divorce action and Mr. and Mrs. Brown resided together following that dismissal.

Based on the foregoing, Respondent respectfully requests the Court deny Appellant Sojourner's Motion to Strike.

Respectfully submitted,

ROSEN LAW FIRM, LLC



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Robert N. Rosen (Bar No. 4918)  
Erin C. Casey (Bar No. 101935)  
18 Broad Street, Suite 201  
Charleston, South Carolina 29401  
843-377-1700 (office)

S. Alan Medlin  
1713 Phelps Street  
Columbia, SC 29205

T. Heyward Carter, Jr.  
Andrew W. Chandler  
M. Jean Lee  
Evans, Carter, Kunes & Bennett  
115 Church Street  
P.O. Box 369  
Charleston, SC 29402

David L. Michel  
Michel Law Firm, LLC  
192 East Bay Street, Suite 202  
Charleston, SC 29401

Arnold S. Goodstein  
Goodstein Law Firm, LLC  
P.O. Box 2350  
Summerville, SC 29484-2350

Charleston, SC  
January 19, 2017

ATTORNEYS FOR RESPONDENT  
TOMMIE RAE BROWN

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

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Case Nos. 2013-CP-02-02849, 2013-CP-02-02850

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Appellate Case No. 2015-002417

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JAN 23 2017

SC Court of Appeals

Tommie Rae Brown ..... Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown, Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown, and Daryl Brown are the.....Appellants.

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PROOF OF SERVICE

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The undersigned hereby certifies she has served the foregoing Respondent Tommie Rae Brown's Returns to Appellant David C. Sojourner, Jr.'s Motion to Exclude Irrelevant Documents from Record on Appeal and Motion to Strike Irrelevant and Prejudicial Statements from Initial Brief of Respondent, by depositing a copy of the same in the United States Mail, postage prepaid on January 20<sup>th</sup>, 2017 and addressed as follows:

Robert C. Byrd, Esq.  
Parker Poe Adams & Bernstein LLP  
200 Meeting Street, Suite 301  
Charleston, SC 29401  
*Attorneys for Appellants Deanna Brown-Thomas,  
Yamma Brown, and Venisha Brown*

Matthew Day Bodman, Esq.  
Matt Bodman, PA  
1500 Calhoun Street  
Columbia, SC 29201  
*Attorney for Daryl Brown,  
Michael Deon Brown and Lisa Sims*

Louis Levenson, Esq.  
Levenson & Associates  
125 Broad Street, SW  
Atlanta, GA 30303  
*Attorney for Larry Brown*

Scott Keniley, Esq.  
Keniley Kumar LLC  
Two Ravinia Drive, Suite 500  
Atlanta, GA 30346  
*Attorney for Terry Brown and Forlando Brown*

William Joseph Barr, Esq.  
Barr Law LLC  
108 N. Academy Street  
Kingstree, SC 29556-3422  
*Attorney for Tonya Brown a/k/a Sara  
LaTonya Brown-Fegan, Jeanette Mitchell  
and Ciara Pettitt and Cherquarius Williams  
for LaRhonda Pettitt*

A. Peter Shahid, Jr., Esq.  
Shahid Law Office  
89 Broad Street  
Charleston, SC 29401  
*Attorney for Guardian ad Litem,  
Stephen M. Slotchiver*

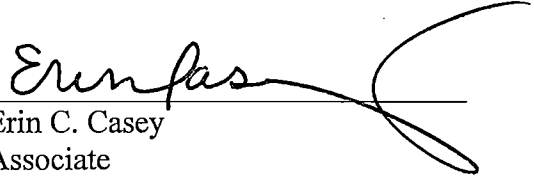
John F. Beach, Esq.  
Lyndey Ritz Zwing, Esq.  
Adams and Reese LLP  
1501 Main Street, Fifth Floor  
Columbia, SC 29201  
*Attorneys for the Appellant Limited  
Special Administrator and Limited  
Special Trustee David C. Sojourner, Esq.*

John A Donsbach, Esq.  
Donsbach & King, LLC  
504 Blackburn Drive  
Augusta, GA 30907  
*Attorney for Terry Brown and Forlando  
Brown*

Itriss Jenkins, Esq.  
Itriss J. Jenkins, LLC  
215 E. Bay Street, Suite 203  
Charleston, SC 49401  
*Attorney for Tonya Brown a/k/a Sara  
LaTonya Brown-Fegan, Jeanette Mitchell  
and Ciara Pettitt and Cherquarius  
Williams for LaRhonda Pettitt*

Vera Gilford, Esq.  
Post Office Box 12553  
Miami, Florida 33101  
*Attorney for Tonya Brown a/k/a Sara  
LaTonya Brown-Fegan, Jeanette Mitchell  
and Ciara Pettitt and Cherquarius  
Williams for LaRhonda Pettitt*

David B. Bell, Esq.  
David Bell Law Firm  
619 Greene Street  
Augusta, GA 30903  
*Attorney for Daryl Brown,  
Michael Deon Brown and Lisa  
Sims*

  
Erin C. Casey  
Associate  
Rosen Law Firm, LLC

# ROSEN LAW FIRM, LLC

ATTORNEYS AND COUNSELORS AT LAW

THE PEOPLES BUILDING

P.O. BOX 1840 (29402)

18 BROAD STREET, SUITE 201

CHARLESTON, SOUTH CAROLINA 29401

www.rosen-lawfirm.com

ERIN C. CASEY  
ATTORNEY-AT-LAW  
ecasey@rosen-lawfirm.com

PHONE (843) 377-1700

FAX (843) 377-1709

January 19, 2017

***By U.S. Mail and Email***

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

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JAN 23 2017

SC Court of Appeals

Re: Estate of James Brown a/k/a James Joseph Brown  
*Tommie Rae Brown, Respondent v. David C. Sojourner, Jr., et al.*  
Appellate Case No. 2015-002417

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondent Tommie Rae Brown's **Returns to Appellant David C. Sojourner, Jr.'s Motion to Exclude Irrelevant Documents from Record on Appeal and Motion to Strike Irrelevant and Prejudicial Statements from Initial Brief of Respondent** and the accompanying **Proof of Service**. Please file the original and six copies and return the extra clocked-in copy of the Return and Proof of Service in the enclosed pre-addressed, pre-stamped envelope.

By copy of this letter, I am serving a copy of these documents on all attorneys of record.

Thank you for your assistance, and please feel free to contact our office if you have any questions.

Sincerely,



Erin C. Casey

Enclosures

cc: All Counsel of Record (w/ enclosures)

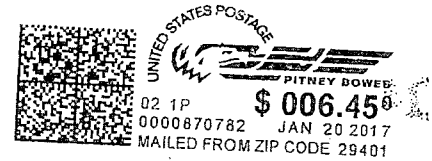


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ROSEN LAW FIRM, LLC  
ATTORNEYS AND COUNSELORS AT LAW  
THE PEOPLES BUILDING  
P.O. BOX 1840 (29402)  
18 BROAD STREET, SUITE 201  
CHARLESTON, SOUTH CAROLINA 29401

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