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VIA U.S. MAIL AND FAX TO 803.734.1839

September 22, 2017

Jenny Abbott Kitchings  
Clerk of Court  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED

SEP 25 2017

SC Court of Appeals

RE: Rabon & Rabon, Inc. v. Karon Mitchell  
Appellate Case No. 2016-000522

Dear Ms. Kitchings:

I am writing to offer my observations and concerns regarding Appellants' yet-to-be-served motion for a lift of stay.<sup>1</sup> This Court should not consider Appellants' Motion – must less grant it – as the Motion is procedurally defective on its face. The first and most obvious defect is that Appellants filed their Motion with the wrong court.

The first step in obtaining a lift of stay is to ask the lower court for relief, not the appellate court. See Rule 241(d) "Procedure for Obtaining Lift of Stay or Supersedeas." Seeking relief first from the lower court is not optional. Instead, "an application for an order lifting the automatic stay . . . **must first be made to the lower court** or administrative tribunal which entered the order or decision on appeal." Rule 241(d)(1). Rule 241's use of the word "must" means that the requirement is mandatory. Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Only after the lower court has ruled may a party petition this Court. See Rule 241(d)(2) ("**After** the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order.") (emphasis added).

Appellants have indisputably not met the mandatory requirement that they ask the lower court for relief before coming to this Court. Moreover, Appellants do not cite any authority to support such disregard for the rules. On this basis alone, Appellants' Motion should be dismissed.

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<sup>1</sup> Although Appellants caption their motion "Motion for Leave to File a Rule 60, SCRCP Motion," the relief they seek is a lift of stay. See Quality Trailer Products v. CSL Equip. Co., 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002) (A motion is treated based on substance and effect rather than how it is captioned by the movant.).

Even if this Court were to consider Appellants' Motion despite its fatal procedural defect described above, this Court should still dismiss Appellants' Motion because it is procedurally defective in the following respects as well:<sup>2</sup>

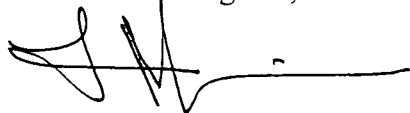
1. **Appellants' Motion is not verified by the client**, as required by Rule 241(d)(3) ("A person seeking an order lifting an automatic stay or granting a writ of supersedeas *must* file a written petition *verified by the client.*") (emphasis added).
2. **Appellants did not serve their Motion on Respondent's counsel**, as required by Rule 241(d)(5). Service upon a party represented by an attorney must be made upon the attorney "by delivering a copy *to him* or by mailing it *to him.*" Rule 262(b) (emphasis added). Inexplicably, Appellants did not serve Respondent's attorney – despite having served and corresponded with him dozens of times previously as to other aspects of this appeal – but instead mailed a copy of the Motion to another lawyer in the same firm who is not attorney of record and who has never been involved in this matter.
3. **Appellants did not "contemporaneously file a certified copy of the order, judgment, decree or decision of the lower court . . . and a copy of the notice of appeal with its proof of service"** as required by Rule 241(d)(3).

Because Appellants' Motion does not comply with multiple mandatory requirements of the Appellate Court Rules, this Court should dismiss the Motion without further consideration.

In the interest of judicial economy, this letter addresses only the fatal procedural defects that preclude consideration of the Motion. However, should this Court determine that Appellants' Motion may be considered despite these defects, then Respondent will file and serve a Return as to both the procedural and substantive issues as and when directed by this Court – in which case, Respondent would request that this Court set a reasonable deadline for Respondent to file its Return, such deadline not to be sooner than ten days from the date of service on Respondent's Counsel, Lane D. Jefferies, of the yet-to-be-served Motion.

I appreciate your time and attention. Out of an abundance of caution I have enclosed two checks, each in the amount of \$25.00 in the event this letter is deemed to be a motion to dismiss and/or a motion for an extension of time to respond to Appellants' Motion.

With warmest regards,



Lane D. Jefferies  
Attorney for Respondent Rabon & Rabon, Inc.

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<sup>2</sup> "As the Supreme Court advised the bar in *Henning v. Kaye*, the Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." *Forner v. Butler*, 319 S.C. 275, 276, 460 S.E.2d 425, 426, 1995 S.C. App. LEXIS 109, \*2 (quoting *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992)) (internal citations and quotations omitted).