

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

v.

KARON MITCHELL AND
KYLE MITCHELL,

Appellants.

RECEIVED

SEP 25 2017

SC Court of Appeals

RESPONSE TO CORRESPONDENCE OF LANE JEFFRIES

Appellants submit this response to the correspondence of Lane Jeffries dated September 22, 2017.

While Appellants appreciate the “observations and concerns” of Mr. Jeffries, there is no rule or procedure that allows such subjective editorial comments to stand in opposition to the actual motion filed by Appellants on September 12, 2017. Moreover, despite the apparent request that the letter serve as a “motion to dismiss”, there is no rule or procedure that allows a motion to dismiss another motion. The proper procedure is to file a return to the motion with 10 days. To the extent that this Court treats the correspondence as a Return, several arguments contained within the correspondence need to be addressed.

SERVICE

More than once, Mr. Jeffries refers to the motion as “yet-to-be-served.” However, this Court can observe that, according to the Certificate of Service filed by Appellants, the motion was mailed to the Law Office of Natasha M. Hanna, P.C., 4712 Jenn Drive, Ste. A, Myrtle Beach, SC 29577. This Court can also observe that this is the same law office and same address at the top of the letterhead submitted by Mr. Jeffries on September 22, 2017. If this address is

incorrect, then Mr. Jeffries has violated Rule 7.5(d) of the South Carolina Rules of Professional Conduct by falsely representing an association with a law firm. Moreover, Counsel for Appellants spoke directly with Natasha Hanna on the day she received the motion at her address in Myrtle Beach, South Carolina. Ms. Hanna stated she would turn the motion over to Mr. Jeffries. This certainly satisfies both Rule 5(b)(1), SCRCP and Rule 262, SCACR as it left a copy of the motion with a responsible party at Mr. Jeffries' office. More importantly, Mr. Jeffries provided no proof or argument to overcome the rebuttable presumption that delivery was made. *Wiggins v. Todd*, 296 S.C. 432, 373 S.E.2d 704 (Ct. App. 1998) (citing Rule 5(b)(1) and holding service of a hearing notice was complete when deposited in the United States mail with a proper address and sufficient postage); *see also State v. Langston*, 275 S.C. 439, 272 S.E.2d 436 (1980) (noting there is a rebuttable presumption of delivery which arises from evidence that a notice was properly mailed). The designation of Appellants' motion as "yet-to-be-served" is without merit.

APPELLATE RULE 241 IS INAPPLICABLE

Despite Mr. Jeffries erroneous analysis, the motion before the Court is based on Rule 60, SCRCP, not Rule 241, SCACR. Appellants are not seeking relief from the stay of the lower court's order, they are seeking to file a motion in the lower court to set aside the order of the lower court. Rule 60, SCRCP dictates that a party seeking to file a Rule 60 motion must obtain leave from the appellate court prior to filing the motion in the lower court. This Court has granted such motions in at least two separate cases this year, based on motions that are nearly identical to the one submitted by Appellants (See *Appellate Case Number 2016-0006986* and *Appellate Case Number 2016-0000462*). If Mr. Jeffries was correct, Appellants would have to ask the lower court for permission to ask this Court for permission to file a motion with the lower court. Not only is such a procedure inefficient and duplicitous, it makes no sense.

ADDITIONAL EVIDENCE OF FRAUD ON THE COURT

As the case filed in Horry County proceeds, **Exhibit 1** to Appellants' Motion for Leave, additional evidence substantiating the fraud is coming to light. Appellants attach **Exhibit 9**, the *Affidavit of Dan Joyner*, and **Exhibit 10**, the *Affidavit of E. Robert Frenz, Jr.* These additional affidavits prove that: (1) the formation of Daisy Ridge, LLC was a fraudulent act in and of itself by using a fake address for the location of its office; (2) Lane Jeffries knew of its formation as he referred Jack Rabon to Mr. Frenz for the formation of Daisy Ridge, LLC; and (3) Daisy Ridge, LLC was owned, at least in part, by Jack Rabon.

CONCLUSION

Respondent is allowed 10 days to respond to a motion. Those 10 days have elapsed and the correspondence of Mr. Jeffries is the only submission provided within the requisite time. Though it commits to nothing, there are vague inferences that it is a motion to dismiss a motion (which is improper and not allowed under the rules) or possibly a motion for an extension of time. Appellants ask this Court to rule on the motion as it stands and grant leave to file the Rule

60 motion with the court below.

If this Court decides in its discretion to treat Mr. Jeffries' "observations and concerns" as a motion for an extension of time to respond to the motion, Appellants consent to a 10 day extension. The allegations in the motion are serious and deserve the full attention of counsel for a response. However, if this is the case, Appellants reserve the right to reply to an actual response to the motion once it is filed.

September 25, 2017

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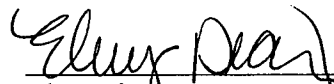
KARON MITCHELL AND KYLE
MITCHELL,

Appellants.

CERTIFICATE OF SERVICE

This is to certify that I, Elvy Diaz, Legal Secretary, served a copy of the RESPONSE TO CORRESPONDENCE OF LANE JEFFRIES upon the following parties by depositing said copy in the US Mail with adequate postage affixed, at the following address:

Natasha M. Hanna, Esq.
The Law Office of Natasha M. Hanna, P.C.
4712 Jenn Drive, Ste. A
Myrtle Beach, SC 29577


Elvy Diaz

September 25, 2017
Columbia, South Carolina