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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

RECEIVED
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SC Court of Appeals

RABON & RABON, INC.,

Respondent,

vs.

KARON MITCHELL AND KYLE MITCHELL,

Appellants.

RESPONDENT'S RETURN TO
APPELLANTS' MOTION FOR LEAVE TO FILE A RULE 60, SCRPC MOTION

This Court should deny Appellants' Motion for Leave to File a Rule 60, SCRPC Motion because the Rule 60 motion that Appellants seek leave to file cannot be granted. Permitting Appellants to file such a frivolous Rule 60 motion will serve only to delay this appeal and waste the time and resources of the parties and the judicial system.

The Rule 60 motion cannot be granted for at least two reasons. First, Appellants do not allege any instances of fraud regarding the order that they seek to set aside. Instead, every allegation of fraud relates to a different order from a different court. Second, Appellants did not exercise any diligence at all to discover the purported "new" evidence in support of their Rule 60 motion, despite having clear notice and amply opportunity to do so.

I. Appellants do not allege any instances of fraud regarding the Order that they seek to set aside under Rule 60.

Appellants seek leave of this Court to file a Rule 60 motion with the Circuit Court because, they claim, “the Order on appeal was procured through extrinsic fraud upon the court.” (Motion for Leave, p. 1). Appellants claim that the alleged fraud consists of false representations by Respondent’s counsel, Lane Jefferies. The Order on Appeal was issued by the *Circuit* Court. However, Appellants do not cite any instance in which attorney Jefferies made any representation at all to the Circuit Court, let alone a false representation. Instead, each and every alleged misrepresentation pertains to the *Probate* Court. Accordingly, even if Appellants’ allegations were true, they would not support setting aside the *Circuit* Court’s order.

Quoted below are Appellants’ allegations of misrepresentation:

- “The Fraud on the court lies in the specific representations of Mr. Jeffries [*sic*] and Mr. Rabon to Appellants and the *Probate Court* that only \$542,000.00 was being paid for the two properties.” (Motion for Leave, p. 2) (emphasis added).
- “As described in the Complaint, evidence was fabricated and presented to the court in the sales contracts present to the *Probate Court*.” (Motion for Leave, p. 2) (emphasis added).
- “The material representations where that (1) the properties were ‘likely to sell for less than what was owed . . . ’” (Motion for Leave, p. 4) (referring to an August 20, 2015 motion before the *Probate Court*).
- “The material representations where that . . . (2) a deficiency would be placed against the company as a result . . . ” (Motion for Leave, p. 4) (referring to an August 20, 2015 motion before the *Probate Court*).
- “The material representations where that . . . (3) the buyers were only willing to pay \$542,000.00 for the property.” (Motion for Leave, p. 4) (referring to an August 20, 2015 motion before the *Probate Court*).
- “But for this fraud, Appellants and BB&T would never consented [*sic*] to the sale and the *probate Order* attached as Exhibit B to the Complaint.” (Motion for Leave, p. 5) (emphasis added).

Instead of citing representations to the *Circuit* Court – which issued the Order on Appeal that Appellants seek to set aside – Appellants cite exclusively to alleged representations to the *Probate* Court.

Appellants either do not understand the difference, or they intentionally conflate the two completely different orders. To be clear, the Order on Appeal is a February 2016 order of the Circuit Court signed by Judge Culbertson that enforces a settlement agreement. In contrast, the order to which all of Appellants' fraud allegations refer is an August 2015 Consent Order of the Probate Court signed by Judge Padgett that authorizes the sale of property.

Different Orders. Different Courts. Different Judges. Different Dates. Different subjects.

Therefore, even if Appellants' allegations were true – i.e. even if attorney Jefferies intentionally misled the *Probate* Court – such allegations cannot support relief from the order of the *Circuit* Court.

As a result, Appellants are currently seeking leave of this Court to do a useless thing – to file a Rule 60 motion that the Circuit Court has no choice but to deny. This Court should not allow Appellants to further delay this appeal by granting leave to file their frivolous Rule 60 motion.

II. Appellants are not entitled to relief under Rule 60 because Appellants did not exercise any diligence at all to discover the purported evidence in support of their motion, despite having clear notice and ample opportunity to do so.

Appellants are not entitled to any relief under Rule 60 because the purported “evidence” on which they rely is not new. On the contrary, it was there all along; Appellants just never bothered to examine it.

“South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.”

Bowman v. Bowman, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004). Moreover, “equity will not grant relief to one against whom an unfavorable judgment has been rendered, *even in consequence of fraud*, where the aggrieved party has not acted with diligence.” Rycroft v. Tanguay, 279 S.C. 76, 79, 302 S.E.2d 327, 329 (1983) (emphasis added). As described below, Appellants have not acted with diligence, and as a result they are not entitled to relief.

For almost three years Appellants have alleged that Jack Rabon was taking “money under the table” in the sale of the properties at issue. In fact, Appellants were so convinced that Jack Rabon was taking money under the table, that in February of 2015 they filed a lawsuit against him, Respondent Rabon & Rabon, Inc., West Town Savings Bank, Shai David, and Beth David. Among the allegations in the 2015 complaint is the following:

f. Upon information and belief, Jack Isaiah Rabon, Jr. is receiving money “under the table” from the David Defendants in order to complete the transactions referenced herein and that such receipt of money under the table is a violation of his fiduciary duty as well as tax laws and other laws.

(Complaint p. 5, C/A No. 2015-CP-26-01628)
(Attached as Exhibit A)

The “transactions referenced herein” to which Appellants refer are proposed sales of the very same properties that Appellants now allege to this Court were sold for money under the table. The allegation, like the “evidence,” is not new.

The allegedly tainted sales of which Appellants now complain took place while the 2015 lawsuit was pending, i.e. while the allegation that Jack Rabon “is receiving money ‘under the table’” was actively being litigated. And yet, despite the broad powers of Discovery that the

lawsuit conferred upon them¹, Appellants did not exercise any diligence at all – let alone due diligence – to discover the “new evidence” over which they now feign shock and surprise.

It is beyond obvious that due diligence requires, at a bare minimum, that a litigant take at least *some* action to discover evidence in support of her allegations.² However, Appellants took no action at all. For example:

- Appellants did not serve any Interrogatories;
- Appellants did not serve any Requests for Production;
- Appellants did not serve any Requests for Admission;
- Appellants did not subpoena any documents;
- Appellants did not subpoena any witnesses to testify;
- Appellants did not conduct any oral depositions;
- Appellants did not conduct any depositions upon written questions;
- Appellants did not conduct any 30(b)(6) depositions;
- Appellants did not request to enter upon the properties to be sold;
- Appellants did not conduct any appraisals of the properties; and
- Appellants did not file any Discovery motions.

In short, Appellants did not do anything at all to gather evidence in support of their allegation that Jack Rabon was taking “money under the table.” And during this time, Appellants were not babes in the woods. Instead, they commanded the resources of three separate law firms, and were ably represented by at least three seasoned Horry County attorneys – Sid Connor, Scott Hutto, and Buddy Lindsay.

It is difficult to imagine what greater notice Appellants and their legal team might have needed to look for evidence of “money under the table” than their own allegation of “money under the table.” Nonetheless, they made no effort to look.

¹ Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (“Rule 26, SCRPC allows broad pre-trial discovery. . . the Rules often allow extensive intrusion into the affairs of both litigants and third parties.”).

² For example, due diligence is not exercised when (a) a party fails “to adequately question” a witness (State v. Kelly, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985)), (b) a party makes “no effort . . . to procure the testimony” of a witness (State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)), or (c) a party has the opportunity to examine a matter but doesn’t (Morris v. Jensen, 309 S.C. 153, 156, 420 S.E.2d 710, 711 (Ct. App. 1992)).

As a result of their complete lack of diligence, Appellants cannot suddenly appear now – almost three years later – and claim with any credibility that “new evidence has come to light.” Nor are Appellants entitled to upset the finality of the Circuit Court’s judgment based on evidence that they could have found three years ago simply by looking or asking. Bowman v. Bowman, 357 S.C. at 152.

In addition, despite Appellants’ complete failure to request any information, Respondent nonetheless voluntarily provided vast amounts of information to Appellants, and communicated with Appellants’ attorneys regularly -- enclosed herewith as Exhibit C is a CD containing 550 pages of documents and communications with Appellants concerning the properties at issue. As the attached communications show (Appellants’ profession of ignorance notwithstanding) they were fully informed as to persons and entities involved in the transactions at issue as well as the details thereof. Moreover, multiple bankers’ boxes of additional documents were available to Appellants had Appellants served even a single Request for Production.

Finally, the *coup de grâce* that precludes any relief for Appellants is this: Despite Appellants’ allegations that Jack Rabon was taking “money under the table,” in September 2015 – just three weeks after the allegedly fraudulent transactions were recorded – Appellants dismissed their lawsuit (Exhibit B).

In summary:

- Appellants filed a lawsuit in February 2015 alleging that Jack Rabon was taking money under the table in property transactions.
- Appellants knew who practically all the players in the transactions were, including the identity of their key witness, real estate agent and self-confessed fraudster Michal Cohen a/k/a Michelle Cohen.

- Appellants had hundreds of pages of documents containing numerous details of the transactions.
- And yet, despite clear notice and ample opportunity, at no time did Appellants ask even a single question to uncover evidence of the alleged fraud that they alleged then and continue to allege now.
- Instead, in September 2015, just three weeks after the allegedly fraudulent transactions were recorded, Appellants simply dismissed their lawsuit, having made no factual inquiry at all.

Under no conceivable stretch of the English language can Appellants' complete failure to act be considered "due diligence." As a result, Appellants are not entitled to any relief under Rule 60 now, over two years later.

CONCLUSION

Appellants do not allege any fraud upon the Circuit Court, yet they seek to set aside the Circuit Court's order on the basis of fraud. Accordingly, their Rule 60 motion is destined to fail on this basis alone. Moreover, even if Appellants could allege fraud upon the Circuit Court, their Rule 60 motion would still be destined to fail because the Circuit Court's order cannot be set aside, *even in consequence of fraud*, where the Appellants have not acted with diligence. Rycroft, 279 S.C. at 79 (1983).

WHEREFORE, having addressed the two most obvious and fatal defects in Appellants' argument, Respondent respectfully requests that this Court not grant Appellants' Motion for Leave to do a useless thing. Appellants' Rule 60 Motion cannot succeed, and this Court should not permit Appellants to waste the time and resources of the parties and the judicial system by granting Appellants leave to file it.

[SIGNATURE ON FOLLOWING PAGE]

RESPECTFULLY SUBMITTED,



Lane D. Jefferies (S.C. Bar No. 101764)
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Attorneys for Respondent

Myrtle Beach, South Carolina
October 6, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 15-CP-26-1628

Karon Mitchell, Kyle Mitchell and)
MB Boardwalk Entertainment, LLC,)

Plaintiffs,)

vs.)

Jack Isaiah Rabon, Jr., individually)
and as personal representative of the)
Estate of Peggy Jo Hardee Rabon,)
Shai David, Beth A. David,)
Rabon & Rabon, Inc., and)
West Town Bancorp, Inc., d/b/a)
West Town Savings Bank,)

Defendants.)

COMPLAINT
(Declaratory Judgment Action)
(Temporary and Permanent Injunction)
NON-JURY TRIAL

15-5 11:21

The Plaintiffs, complaining of the Defendants herein, would show and allege unto this Honorable Court as follows:

1. Plaintiffs are citizens and residents of the State of South Carolina, County of Horry.
2. Defendant Jack Isaiah Rabon, Jr. is a citizen and resident of the State of South Carolina, County of Horry and is currently serving as the Personal Representative of the Estate of Peggy Jo Hardee Rabon which is being probated in Horry County, South Carolina.
3. The Estate of Peggy Jo Hardee Rabon holds shares of stock previously held by Peggy Jo Hardee Rabon in a company known as Rabon & Rabon, Inc. which company owns property which is the subject of this Declaratory Judgment action.
4. The Defendants Shai David and Beth A. David are, upon information and belief, citizens and residents of the State of South Carolina, County of Horry and are otherwise subject to the jurisdiction of this court by virtue of various contracts to purchase properties owned by the Plaintiffs and Defendants.

5. The Defendant Rabon & Rabon, Inc. is a corporation organized and existing pursuant to the laws of the State of South Carolina and does business in Horry County, South Carolinas.

6. The Defendant West Town Bancorp, Inc. d/b/a West Town Savings Bank ("West Town") is, upon information and belief, a for-profit corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Illinois.

7. This court has jurisdiction over the parties and subject matter of this lawsuit which is brought under the Declaratory Judgment Act.

FACTUAL ALLEGATIONS

8. In March, 2014, Peggy Jo Hardee Rabon, Jack Rabon, Karon Mitchell and Kyle Mitchell, entered into an agreement to trade property interests and shares of stock, to the effect that MB Boardwalk Entertainment, LLC would own Building 4, being Lot 1, Block 15, Hotel Section, bearing Horry County TMS No. 181-11-04-005. See Agreement, attached to the Complaint and incorporated herein as Exhibit No. 4.

9. MB Boardwalk Entertainment, LLC has a claim to Building 4, pursuant to Exhibit 4.

10. Sometime in January, 2015, Defendants Shai David and Beth A. David presented offers to purchase several properties owned by Rabon & Rabon, Inc. These three offers to purchase were in the form of Contracts of Sale and are attached hereto and incorporated herein as Exhibits 1, 2, and 3 to this Complaint. One of the properties is Building 4, as referenced in the Agreement, Exhibit No. 4.

11. Plaintiffs Karon Mitchell and Kyle Mitchell own minority shares of Rabon & Rabon, Inc.

12. The Defendant West Town has a second mortgage on one or more of the properties listed in the Offers to Purchase, Exhibits 1, 2 and 3.

13. The Note to Defendant West Town is secured by mortgages on various properties, as well as personal guarantees signed by the Mitchells and Jack Isaiah Rabon, Jr.

14. Upon information and belief, Jack Rabon is attempting to be released from these personal guarantees in exchange for a partial payment on the West Town note, despite the fact that he would continue to hold an interest in MB Boardwalk Entertainment, LLC, the company which owns the Oceanfront property which is subject to West Town's First Mortgage. Upon information and belief, the Mitchells would not be released from their personal guarantees.

15. As administrator of the Estate of Peggy Joe Hardee Rabon, Jack Rabon owes a fiduciary duty to the beneficiaries of the Estate, including the Mitchells.

16. The sale of the properties as contemplated by the three offers, Exhibits 1, 2, and 3, would make it impossible for MB Boardwalk and the Mitchells to continue to make the mortgage payments on the Oceanfront property, which is subject to West Town's First Mortgage. Even though the proceeds from the sale of these properties may temporarily bring the Note current, the sale of the properties will cause the Mitchells to be unemployed and they will not have the funds to make the next scheduled payment, causing another default.

17. Upon default of the West Town First Mortgage, West Town will foreclose the Oceanfront Property, subjecting the Mitchells to a potential deficiency judgment which they have personally guaranteed.

18. The sale of the properties and eventual foreclosure will result in irreparable harm to the Mitchells and MB Boardwalk. The Mitchells and MB Boardwalk have no adequate remedy at law because the Defendant, Jack Rabon, does not have funds to pay a damages judgment to the Mitchells and MB Boardwalk. The foreclosure of the Oceanfront property will

cause MB Boardwalk to be insolvent and will take away the investment which has taken the Mitchells a lifetime to build.

19. The sale of the properties is not in the best interest of West Town, because such sale would virtually guarantee a future default on the Note to West Town, and, upon information and belief, the sales price is less than market value.

20. Currently, Jack Isaiah Rabon owns 13% of the shares of Rabon & Rabon, Inc., Karon Mitchell owns 13% of the shares and Kyle Mitchell owns 13% of the shares. The Estate of Peggy Jo Hardee Rabon owns 61% of the shares of Rabon & Rabon, Inc.

21. Through her Last Will and Testament, Peggy Jo Hardee Rabon bequeathed 41 shares of her stock to Jack Isaiah Rabon, Jr. and 20 shares of her stock to Karon Marie Rabon Mitchell, one of the Plaintiffs in this case. Jack Rabon has refused to distribute these shares out of the Estate.

22. When the Plaintiffs were informed of the offers to purchase by the David Defendants, the Plaintiffs, through their attorney, expressed their objection to the sale, citing South Carolina Code §33-12-102(e) which requires a 2/3's vote of the shareholders of the corporation to approve the sale of real estate. At a shareholders' meeting on February 12, 2015, Jack Isaiah Rabon, Jr. voted his shares and the shares being held by the Estate to approve the sale of the three contracts attached to the Complaint to sell the property to the Davids. If the shares were distributed out of the Estate, Jack Rabon would own and control only 54% of Rabon & Rabon, Inc., short of the 2/3's majority required to transfer real property out of the corporation.

FOR A FIRST CLAIM
(Declaratory Judgment)

23. The allegations of Paragraph Nos. 1 through 22 are incorporated as if fully set forth herein.

24. This action is brought pursuant to the South Carolina Declaratory Judgment Act.

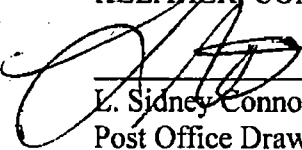
25. The Plaintiff would show that the attempted sale of property owned by Rabon & Rabon, Inc. is unlawful and ineffective and should be enjoined by the Court for one or more of the following reasons:

- a. The owners of Rabon & Rabon, Inc. had previously entered into an agreement in or about March, 2014 as to the appropriate disposition of shares of stock in Rabon & Rabon and the property owned by Rabon & Rabon, Inc. and the attempted sale of property owned by Rabon & Rabon, Inc. is in direct contravention of this agreement. Please see agreement attached hereto as Exhibit 4.
- b. Plaintiffs have contested the ability of Jack Isaiah Rabon, Jr. to serve as Administrator of the Estate of Peggy Jo Hardee Rabon and that issue is still pending in Probate Court;
- c. The Plaintiffs object to the sale of the property owned by Rabon & Rabon, Inc. and made these objections known to Jack Isaiah Rabon through his attorney.
- d. Jack Isaiah Rabon, Jr. has an inherent conflict of interest in voting the shares held by the Estate of Peggy Jo Hardee Rabon because Jack Isaiah Rabon owned shares personally and the sale would be to his personal benefit but detrimental to the interests of the Mitchell Plaintiffs and MB Boardwalk.
- e. Jack Isaiah Rabon, Jr., acting as the Administrator of the Estate of Peggy Jo Hardee Rabon, owes a fiduciary duty to Karon Mitchell regarding her interest in the shares to be distributed out of the Estate in Rabon & Rabon, Inc. and the sale of the property out of Rabon & Rabon, Inc. against the interests of Karon Mitchell is a breach of that fiduciary duty.
- f. Upon information and belief, Jack Isaiah Rabon, Jr. is receiving money "under the table" from the David Defendants in order to complete the transactions referenced herein and that such receipt of money under the table is a violation of his fiduciary duty as well as tax laws and other laws.
- g. Jack Isaiah Rabon, Jr. does not have the authority to vote the shares of the Estate prior to the distribution of those shares when such a vote is in direct contravention of the interest of the beneficiaries of the shares. Such a vote is a breach of his fiduciary duty to the beneficiaries.

- h. Building No. 4 cannot be sold without the consent of MB Boardwalk, because MB Boardwalk has a claim to Building No. 4, pursuant to Exhibit No. 4, attached hereto.

26. The Plaintiffs herein request both a temporary and permanent injunction from the Court enjoining the Defendants from carrying out the sale of these properties owned by Rabon & Rabon, Inc. The Plaintiffs further request the Court either to disallow any vote on the distribution of property of Rabon & Rabon, Inc., until after the distribution of shares out of the Estate or to require the shares held by the Estate to be voted by the ultimate beneficiary of those shares.

KELAHER, CONNELL & CONNOR, P.C.



L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Plaintiff

February 27, 2015

CONTRACT OF SALE

This Contract of Sale ("Contract") made and entered into on this ___ day of January, 2015, by and between Rabon & Rabon, Inc., (hereinafter collectively "Seller"), and Shai David and Beth A. David (hereinafter collectively "Purchaser").

WITNESSETH:

In consideration of the premises and of the mutual promises and covenants contained in this Contract, Seller and Purchaser agree as follows:

1. Property: Seller agrees to sell and Purchaser agrees to purchase the real estate described as 308 7th Ave. N., Myrtle Beach, SC 29577 (Lot 7, Block 18 of the Hotel Section) bearing TMS 181-07-02-002 & Pin#44401040040 consisting of real property and improvements thereon together with all appurtenances, rights, easements, rights-of-way, permits, approvals, contracts, plans, tenements and hereditaments incident to it, and all title and interest, if any, of Seller in and to all strips and gores and any land lying in the bed of any street, road, or avenue open or proposed in front or adjoining the property (referred to below collectively as the "Property").

Block # 1

2. Purchase Price: The purchase price of the Property shall be Two-Hundred Forty-Two Thousand and 00/100 (\$242,000.00) Dollars and shall be payable as follows:

- a. Ten Thousand and 00/100 (\$10,000.00) Dollars to be held by Escrow Agent (defined below)
- b. The balance of Two Hundred Thirty-Two Thousand and 00/100 (\$232,000.00) Dollars to be paid in certified funds at closing.

It is understood that all earnest money deposited pursuant to this paragraph shall be applied as partial payment toward the total purchase price for the Property or forfeited as provided in this Contract. It is understood that the earnest money deposited will not earn interest.

3. Conveyance. Seller shall convey marketable title to the Property to Purchaser in fee simple by general warranty deed, free and clear of all encumbrances. All real property taxes and other applicable pro-ratable items shall be prorated as of the closing date. Seller agrees to pay for preparation of the deed and for all statutory recording fees.

4. Date of Closing. This transaction shall be closed, the balance of the purchase price shall be paid and all documents signed by the parties on or before April 15, 2015.

5. Possession. Seller shall give possession to the Purchaser upon recordation of the deed. The premises shall be free of all occupants, tenants and personal possessions prior to the date of closing. Further, the Seller shall remove all trash and/or rubbish from both the interior and exterior of the property prior to the date of closing.

J.F.R. Jr. 1-16-15
MNR 1-16-15

EXHIBIT 1

6. Brokerage Fees. The parties represent they have not dealt with a real estate broker and that no other real estate commission is to be paid by either party. Each party agrees to indemnify and hold harmless the other party for any claim of commission by others arising by, through or on account of the acts of each party.

7. Escrow Agent. Escrow agent referred to above shall be The McNair Law Firm 2411 Oak Street, Myrtle Beach, SC 29577. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the earnest money deposit into the Office of the Clerk of Court for Horry County, P.O. Box 677, Conway, South Carolina 29577 pending resolution of the disposition of the funds and upon depositing the funds, escrow agent shall bear no further responsibility.

8. Condition of the Property. The Purchaser has fully examined and inspected the Property and agrees to purchase same "as is." The Purchaser acknowledges the Seller gives no warranty of any kind, express or implied, as to the Property or to the condition of or existence of improvements, services, appliances or systems found thereon. Notwithstanding the foregoing, until the time of closing, the Seller shall maintain the Property in the same condition it was in at the time the Purchaser inspected same.

9. Notices. Any notice, communication, request, approval or consent which may be given or is required to be given under the terms of this Contract shall be in writing and shall be transmitted via express commercial courier or by first-class mail to Seller or Purchaser, as the case may be, at the addresses set forth below:

To Seller: Rabon & Rabon, Inc.

To Purchaser: Shai David and Beth A. David
P.O. Box 67,
Green Castle, PA 17225

With a copy to: Lane Jefferies, Esquire
McNair Law Firm
2411 Oak Street,
Myrtle Beach, SC 29577
Email address: LJefferies@Mcnair.net
Attorneys for the Seller

Bradley King
1000 29th Avenue North
Myrtle Beach, SC 29577
BKing@bellamylaw.com
Attorney for Purchaser

J.F.P. J. 1-16-15
MKR 1-16-15

10. Application of Earnest Money and Remedies. On the closing, the earnest money shall be paid by escrow agent to Seller and applied to and credited against the Purchase Price of the Property. In the event the purchase and sale under this Contract is not closed by reason of Seller's inability, failure or refusal to perform its respective obligations under it, or because of any warranty or representation made by Seller proves untrue and is not waived by Purchaser, then escrow agent shall immediately return the earnest money to Purchaser, and Purchaser may then avail itself of any and all remedies at law or in equity under the laws of the State of South Carolina, including a suit for specific performance of this Contract. In the event the sale under this Contract is not closed by reason of Purchaser's inability, failure or refusal to perform Purchaser's obligations under this Contract, then, escrow agent shall immediately pay the earnest money to Seller as liquidated damages, and no party shall have any further rights, claims or liabilities under this Contract.

11. Miscellaneous. This Contract shall be binding on and shall inure to the benefit of Seller and Purchaser, their respective heirs, assigns and legal representatives. In the event any provision of this Contract is held to be invalid or unenforceable, said holding shall not affect the validity or enforceability of any other provision of it. This Contract contains the entire agreement of the parties with respect to the subject matter of it, and no representations, inducements, promises or agreements, oral or otherwise, not expressly set forth in this Contract shall be of any force or effect. If either party is required to institute suit against the other party to enforce its rights under this Contract and if the party obtains a valid judgment against the other party, the non-prevailing party agrees to pay all reasonable costs, expenses, and reasonable attorney fees of the prevailing party attributable to the enforcement of the Contract. This Contract may not be modified except by written modification executed by all parties to it. This Contract may be assigned by Purchaser to an entity or entities in which Purchaser is an owner. In the event of any such assignment and the assumption by the assignee of Purchaser's obligations under this Contract, Seller shall look solely to the assignee for the performance of all obligations imposed on Purchaser under this Contract. All titles or captions of the paragraphs set forth in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Contract, or the intent or any provision of it. This Contract, and the warranties and representations set forth in it, shall not be merged into the documents executed at closing, but shall survive the closing and the provisions of this Contract shall remain in full force and effect.

12. Contingency to Sale. The sale of the Property (described in Paragraph 1) is contingent upon the Seller holding a Special Shareholders Meeting at which a vote shall be taken for the sale of the Property with the vote affirming the sale. S.D. 1-16

J.I.P. 1-16-15
MINE 1-16-15

EXHIBIT 1

Seller and Purchaser have caused this Contract to be duly executed on this ___ day of January, 2015.

WITNESSES:

AS TO SELLER

Rabon & Rabon, Inc.

Jacquelyn Dodd
Admin Sales

By: Mark I. Rabon, Jr.
Its: _____

By: M. Rabon
Its: _____

AS TO PURCHASER:

Shai David
Shai David
Beth David
Beth A. David

EXHIBIT 2

CONTRACT OF SALE

This Contract of Sale ("Contract") made and entered into on this ___ day of January, 2015, by and between Rabon & Rabon, Inc., (hereinafter collectively "Seller"), and Shai David and Beth A. David (hereinafter collectively "Purchaser").

WITNESSETH:

In consideration of the premises and of the mutual promises and covenants contained in this Contract, Seller and Purchaser agree as follows:

1. **Property:** Seller agrees to sell and Purchaser agrees to purchase the real estate described as "Brick house located at 309 7th Ave. N., Myrtle Beach, SC 29577, Buildings 2 and 3, the Sea Palms "Middle Parking Lot", bearing TMS#'s 181-11-10-03-003 - Pin#44401040042; 181-11-03-002 - Pin#44-40-10-40-051; 181-11-03-004 - Pin#44401040043; and 181-11-03-005 - Pin#44401040044, consisting of real property, improvements and all furniture, fixtures and equipment thereon, together with all appurtenances, rights, easements, rights-of-way, permits, approvals, contracts, plans, tenements and hereditaments incident to it, and all title and interest, if any, of Seller in and to all strips and gores and any land lying in the bed of any street, road, or avenue open or proposed in front or adjoining the property (referred to below collectively as the "Property").

2. **Purchase Price:** The purchase price of the Property shall be One Million and 00/100 (\$1,000,000.00) Dollars and shall be payable as follows:

- a. Five-Thousand (\$5,000.00) Dollars to be held by Escrow Agent (defined below)
- b. The balance of Nine Hundred Ninety-Five Thousand and 00/100 (\$995,000.00) Dollars to be paid in certified funds at closing.

It is understood that all earnest money deposited pursuant to this paragraph shall be applied as partial payment toward the total purchase price for the Property or forfeited as provided in this Contract. It is understood that the earnest money deposited will not earn interest.

3. **Conveyance.** Seller shall convey marketable title to the Property to Purchaser in fee simple by general warranty deed, free and clear of all encumbrances. All real property taxes and other applicable pro-ratable items shall be prorated as of the closing date. Seller agrees to pay for preparation of the deed and for all statutory recording fees.

4. **Date of Closing.** This transaction shall be closed, the balance of the purchase price shall be paid and all documents signed by the parties on or before July 15, 2015, at the sole discretion of the Purchaser as to the date and time it will close.

5. **Possession.** Seller shall give possession to the Purchaser upon recordation of the deed. The premises shall be free of all occupants, tenants and personal possessions prior to the date of

EXHIBIT 2

closing. Further, the Seller shall remove all trash and/or rubbish from both the interior and exterior of the property prior to the date of closing.

6. Brokerage Fees. The parties represent they have not dealt with a real estate broker and that no other real estate commission is to be paid by either party. Each party agrees to indemnify and hold harmless the other party for any claim of commission by others arising by, through or on account of the acts of each party.

7. Escrow Agent. Escrow agent referred to move shall be The Bellamy Firm, 1000 29th Avenue North, Myrtle Beach, South Carolina 29577. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the earnest money deposit into the Office of the Clerk of Court for Horry County, P.O. Box 677, Conway, South Carolina 29577 pending resolution of the disposition of the funds and upon depositing the funds, escrow agent shall bear no further responsibility.

8. Condition of the Property. The Purchaser has fully examined and inspected the Property and agrees to purchase same "as is." The Purchaser acknowledges the Seller gives no warranty of any kind, express or implied, as to the Property or to the condition of or existence of improvements, services, appliances or systems found thereon. Notwithstanding the foregoing, until the time of closing, the Seller shall maintain the Property in the same condition it was in at the time the Purchaser inspected same.

9. Notices. Any notice, communication, request, approval or consent which may be given or is required to be given under the terms of this Contract shall be in writing and shall be transmitted via express commercial courier or by first-class mail to Seller or Purchaser, as the case may be, at the addresses set forth below:

To Seller: Rabon & Rabon, Inc.

To Purchaser:

Shai David and Beth A. David
P.O. Box 67,
Green Castle, PA 17225

With a copy to:

Lane Jefferies, Esquire
McNair Law Firm
2411 Oak Street,
Myrtle Beach, SC 29577
Email address: LJefferies@McNair.net
Attorneys for the Seller

Bradley King
1000 29th Avenue North
Myrtle Beach, SC 29577
BKing@bellamylaw.com

Attorney for Purchaser

10. Application of Earnest Money and Remedies. On the closing, the earnest money shall be paid by escrow agent to Seller and applied to and credited against the Purchase Price of the Property. In the event the purchase and sale under this Contract is not closed by reason of Seller's inability, failure or refusal to perform its respective obligations under it, or because of any warranty or representation made by Seller proves untrue and is not waived by Purchaser, then escrow agent shall immediately return the earnest money to Purchaser, and Purchaser may then avail itself of any and all remedies at law or in equity under the laws of the State of South Carolina, including a suit for specific performance of this Contract. In the event the sale under this Contract is not closed by reason of Purchaser's inability, failure or refusal to perform Purchaser's obligations under this Contract, then, escrow agent shall immediately pay the earnest money to Seller as liquidated damages, and no party shall have any further rights, claims or liabilities under this Contract.

11. Miscellaneous. This Contract shall be binding on and shall inure to the benefit of Seller and Purchaser, their respective heirs, assigns and legal representatives. In the event any provision of this Contract is held to be invalid or unenforceable, said holding shall not affect the validity or enforceability of any other provision of it. This Contract contains the entire agreement of the parties with respect to the subject matter of it, and no representations, inducements, promises or agreements, oral or otherwise, not expressly set forth in this Contract shall be of any force or effect. If either party is required to institute suit against the other party to enforce its rights under this Contract and if the party obtains a valid judgment against the other party, the non-prevailing party agrees to pay all reasonable costs, expenses, and reasonable attorney fees of the prevailing party attributable to the enforcement of the Contract. This Contract may not be modified except by written modification executed by all parties to it. This Contract may be assigned by Purchaser to an entity or entities in which Purchaser is an owner. In the event of any such assignment and the assumption by the assignee of Purchaser's obligations under this Contract, Seller shall look solely to the assignee for the performance of all obligations imposed on Purchaser under this Contract. All titles or captions of the paragraphs set forth in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Contract, or the intent or any provision of it. This Contract, and the warranties and representations set forth in it, shall not be merged into the documents executed at closing, but shall survive the closing and the provisions of this Contract shall remain in full force and effect.

12. Financing Contingency: This Contract of Sale is contingent upon PURCHASER obtaining financing in an amount and upon such terms and conditions as are satisfactory to PURCHASER from bona fide lending institutions making loans in Horry County. PURCHASER will endeavor in good faith to obtain a loan from a bona fide lending institution and shall supply the prospective mortgagee with such information as the latter shall require. In the event the PURCHASER is unable to obtain said financing after prompt, proper, diligent and truthful application within sixty (60) days from the date of this Contract, PURCHASER may declare this Contract of Sale null and void and receive a refund of the earnest money deposit.

13. Assignment of Contract: Purchaser may freely assign the contract to whom he chooses.

EXHIBIT 2

14. Shareholder Approval: The sale of the property (described in Paragraph 1) IS CONTINGENT UPON THE Seller holding a special Shareholders Meeting at which a vote shall be taken for approval of the Sale of the Property with the vote affirming the sale. The Shareholder Meeting shall be held on or before _____.

Seller and Purchaser have caused this Contract to be duly executed on this ____ day of January, 2015.

WITNESSES:

AS TO SELLER

Rabon & Rabon, Inc.

By: _____

Its: _____

By: _____

Its: _____

AS TO PURCHASER:

Shai David

Shai David

Beth A. David

Beth A. David

EXHIBIT 3

CONTRACT OF SALE

This Contract of Sale ("Contract") made and entered into on this ___ day of January, 2015, by and between Rabon & Rabon, Inc., (hereinafter collectively "Seller"), and Shai David and Beth A. David (hereinafter collectively "Purchaser").

WITNESSETH:

In consideration of the premises and of the mutual promises and covenants contained in this Contract, Seller and Purchaser agree as follows:

1. Property: Seller agrees to sell and Purchaser agrees to purchase the real estate described as Sea Palms Building #4(Lot 1, Block 15, Hotel Section, Myrtle Beach, SC), TMS#181-11-04-005, Pin#44401040054, consisting of real property, improvements and all furniture, fixtures and equipment thereon, together with all appurtenances, rights, easements, rights-of-way, permits, approvals, contracts, plans, tenements and hereditaments incident to it, and all title and interest, if any, of Seller in and to all strips and gores and any land lying in the bed of any street, road, or avenue open or proposed in front or adjoining the property (referred to below collectively as the "Property").

2. Purchase Price: The purchase price of the Property shall be Three Hundred Thousand and 00/100 (\$300,000.00) Dollars and shall be payable as follows:

- a. Five-Thousand (\$5,000.00) Dollars to be held by Escrow Agent (defined below)
- b. The balance of Two Hundred Ninety-Five Thousand and 00/100 (\$295,000.00) Dollars to be paid in certified funds at closing.

It is understood that all earnest money deposited pursuant to this paragraph shall be applied as partial payment toward the total purchase price for the Property or forfeited as provided in this Contract. It is understood that the earnest money deposited will not earn interest.

3. Conveyance. Seller shall convey marketable title to the Property to Purchaser in fee simple by general warranty deed, free and clear of all encumbrances. All real property taxes and other applicable pro-ratable items shall be prorated as of the closing date. Seller agrees to pay for preparation of the deed and for all statutory recording fees.

4. Date of Closing. This transaction shall be closed, the balance of the purchase price shall be paid and all documents signed by the parties on or before July 15, 2015, at the sole discretion of the Purchaser as to the date and time it will close.

5. Possession. Seller shall give possession to the Purchaser upon recordation of the deed. The premises shall be free of all occupants, tenants and personal possessions prior to the date of closing. Further, the Seller shall remove all trash and/or rubbish from both the interior and exterior of the property prior to the date of closing.

EXHIBIT 3

6. Brokerage Fees. The parties represent they have not dealt with a real estate broker and that no other real estate commission is to be paid by either party. Each party agrees to indemnify and hold harmless the other party for any claim of commission by others arising by, through or on account of the acts of each party.

7. Escrow Agent. Escrow agent referred to here shall be The Bellamy Firm, 1000 29th Avenue North, Myrtle Beach, South Carolina 29577. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the earnest money deposit into the Office of the Clerk of Court for Horry County, P.O. Box 677, Conway, South Carolina 29577 pending resolution of the disposition of the funds and upon depositing the funds, escrow agent shall bear no further responsibility.

8. Condition of the Property. The Purchaser has fully examined and inspected the Property and agrees to purchase same "as is." The Purchaser acknowledges the Seller gives no warranty of any kind, express or implied, as to the Property or to the condition of or existence of improvements, services, appliances or systems found thereon. Notwithstanding the foregoing, until the time of closing, the Seller shall maintain the Property in the same condition it was in at the time the Purchaser inspected same.

9. Notices. Any notice, communication, request, approval or consent which may be given or is required to be given under the terms of this Contract shall be in writing and shall be transmitted via express commercial courier or by first-class mail to Seller or Purchaser, as the case may be, at the addresses set forth below:

To Seller: Rabon & Rabon, Inc.

To Purchaser:

Shai David and Beth A. David
P.O. Box 67,
Green Castle, PA 17225

With a copy to:

Lane Jefferies, Esquire
McNair Law Firm
2411 Oak Street,
Myrtle Beach, SC 29577
Email address: LJefferies@Mcnair.net
Attorneys for the Seller

Bradley King
1000 29th Avenue North
Myrtle Beach, SC 29577
BKing@bellamylaw.com
Attorney for Purchaser

EXHIBIT 3

10. Application of Earnest Money and Remedies. On the closing, the earnest money shall be paid by escrow agent to Seller and applied to and credited against the Purchase Price of the Property. In the event the purchase and sale under this Contract is not closed by reason of Seller's inability, failure or refusal to perform its respective obligations under it, or because of any warranty or representation made by Seller proves untrue and is not waived by Purchaser, then escrow agent shall immediately return the earnest money to Purchaser, and Purchaser may then avail itself of any and all remedies at law or in equity under the laws of the State of South Carolina, including a suit for specific performance of this Contract. In the event the sale under this Contract is not closed by reason of Purchaser's inability, failure or refusal to perform Purchaser's obligations under this Contract, then, escrow agent shall immediately pay the earnest money to Seller as liquidated damages, and no party shall have any further rights, claims or liabilities under this Contract.

11. Miscellaneous. This Contract shall be binding on and shall inure to the benefit of Seller and Purchaser; their respective heirs, assigns and legal representatives. In the event any provision of this Contract is held to be invalid or unenforceable, said holding shall not affect the validity or enforceability of any other provision of it. This Contract contains the entire agreement of the parties with respect to the subject matter of it, and no representations, inducements, promises or agreements, oral or otherwise, not expressly set forth in this Contract shall be of any force or effect. If either party is required to institute suit against the other party to enforce its rights under this Contract and if the party obtains a valid judgment against the other party, the non-prevailing party agrees to pay all reasonable costs, expenses, and reasonable attorney fees of the prevailing party attributable to the enforcement of the Contract. This Contract may not be modified except by written modification executed by all parties to it. This Contract may be assigned by Purchaser to an entity or entities in which Purchaser is an owner. In the event of any such assignment and the assumption by the assignee of Purchaser's obligations under this Contract, Seller shall look solely to the assignee for the performance of all obligations imposed on Purchaser under this Contract. All titles or captions of the paragraphs set forth in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Contract, or the intent or any provision of it. This Contract, and the warranties and representations set forth in it, shall not be merged into the documents executed at closing, but shall survive the closing and the provisions of this Contract shall remain in full force and effect.

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13. Assignment of Contract: Purchaser may freely assign the contract to whom he chooses.

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Seller and Purchaser have caused this Contract to be duly executed on this ____ day of January, 2015.

WITNESSES:

AS TO SELLER

Rabon & Rabon, Inc.

By: _____

Its: _____

By: _____

Its: _____

AS TO PURCHASER:

Shai David

Shai David

Beth David

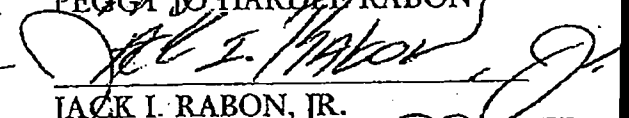
Beth A. David

EXHIBIT 4

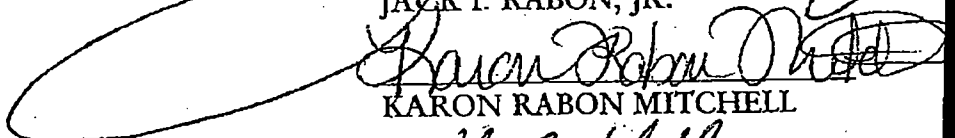
Witness, our hands and seals at Myrtle Beach, SC, this _____ day of March,
2014.



PEGGY JO HARDEE RABON



JACK I. RABON, JR.



KARON RABON MITCHELL



KYLE MITCHELL

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Karon Mitchell, Kyle Mitchell and MB Boardwalk Entertainment, LLC,

Plaintiffs

vs.

Jack Isaiah Rabon, Jr., individually and as personal representative of the Estate of Peggy Jo Hardee Rabon, Shai David, Beth A. David, Rabon & Rabon, Inc., and West Town Bancorp, Inc., d/b/a West Town Savings Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEEN JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-01628

STIPULATION OF DISMISSAL
WITHOUT PREJUDICE AND
CANCELLATION OF LIS PENDING

HORRY COUNTY
OCT - 1 PM 2:25
CLERK OF COURT

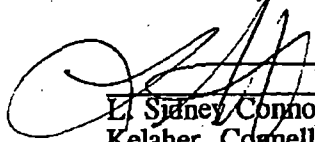
Plaintiffs, Karon Mitchell, Kyle Mitchell, and MB Boardwalk Entertainment, LLC, (collectively "Plaintiffs"), hereby dismiss, without prejudice, all causes of action asserted or that could have been asserted against Defendants, Jack Isaiah Rabon, Jr., individually and as personal representative of the Estate of Peggy Jo Hardee Rabon, and Rabon & Rabon, Inc., (collectively "Rabon Defendants"), in the above captioned matter pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure.

The Rabon Defendants hereby dismiss, without prejudice, all causes of action asserted against Plaintiffs in the above captioned matter pursuant to Rule 41(c) of the South Carolina Rules of Civil Procedure.

Pursuant to South Carolina Code Annotated § 15-11-40 (1976, as amended) and other applicable law, Plaintiffs, by and through their undersigned counsel, do hereby cancel and discharge in its entirety the *Lis Pendens* filed in this case with the Clerk of Court for Horry County on March 3, 2015.

I SO STIPULATE AND CONSENT:

KELAHER, CONNELL & CONNOR, PC



Stanley Connor, IV, SC Bar# 1363
Kelaher, Connell, & Connor, PC
Post Office Drawer 14547
Surfside Beach, SC 29587
Email: sconnor@classactlaw.net

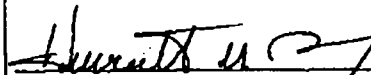
Counsel for Plaintiffs

Surfside Beach, South Carolina

10/28, 2015

I SO STIPULATE AND CONSENT:

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, SC Bar# 2173
Lane D. Jefferies, SC Bar# 101764
McNair Law Firm, P.A.
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Email: hgolding@mcnair.net
ljefferies@mcnair.net

Counsel for the Defendants

Myrtle Beach, South Carolina

10/28, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

RECEIVED

OCT 09 2017

SC Court of Appeals

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

vs.

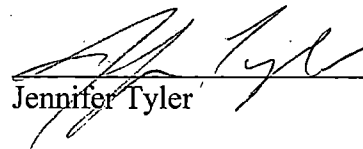
KARON MITCHELL AND KYLE MITCHELL,

Appellants.

CERTIFICATE OF SERVICE

This is to certify that I, Jennifer Tyler, an employee of the Law Office of Natasha M. Hanna, P.C., served a copy of RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR LEAVE TO FILE A RULE 60, SCRPC MOTION upon the following parties by depositing said copy in the U.S. Mail with adequate postage affixed, at the following address:

Tucker S. Player
Player Law Firm
1415 Broad River Rd.
Columbia, SC 29210


Jennifer Tyler

October 6, 2017
Myrtle Beach, SC

THE LAW OFFICE OF
Natasha M. Hanna, P.C.

4712 Jenn Drive, Suite A | Myrtle Beach, SC 29577 | OFFICE: (843) 839-8002 | FAX: (843) 839-8011

October 6, 2017

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

RECEIVED
OCT 09 2017
SC Court of Appeals

RE: Rabon & Rabon, Inc. v. Karon Mitchell
Case No.: 2014-CP-26-07862
Appellate Case No.: 2016-000522

Dear Ms. Kitchings:

Enclosed for filing please find the following:

- Respondent's Return to Appellants' Motion for Leave to File a Rule 60, SCRCP Motion, with Exhibits A, B, and C; and
- Certificate of Service.

Thank you in advance for your assistance, and please let me know if there is anything further that you need at this time.

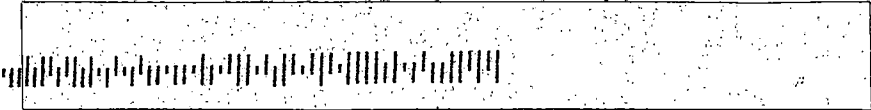
Best regards,



Lane D. Jefferies

enclosures: as stated

cc: Tucker S. Player



1 **USPS FIRST CLASS MAIL®**
US POSTAGE & FEES PAID

FROM:

Law Office of Natasha M. Hanna, PC
4712 Jenn Drive, Suite A
Myrtle Beach SC 29577-5763

SHIP TO:

B012

Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629

stamps.com

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10/06/2017



RECEIVED

OCT 09 2017

SC Court of Appeals