

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

RECEIVED
FEB 26 2018
SC Court of Appeals

Case No. 2016-CP-40-03478
Appellate Tracking No.: 2017-000561

Cricket Store 17, L.L.C. d/b/a Taboo Appellant,

vs.

City of Columbia Board of Zoning Appeals..... Respondent,

And

City of Columbia Zoning Administrator, Counterclaimant,

vs.

Cricket Store 17, L.L.C. d/b/a Taboo, Counterdefendant.

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD ON APPEAL
AND HOLD FILING DEADLINE IN ABEYANCE PENDING RULING
RULE 212 SOUTH CAROLINA APPELLATE COURT RULES**

Cricket Store 17, L.L.C. moves for an Order of the Court granting appellant permission to supplement the Record on Appeal to include pages already designated and contained in the previously filed Record on Appeal as pages 35-42, 384-386, and 387-389 of the record on appeal (application

for special exception and Supreme Court report and statement of counsel). This motion is based on the following grounds:

On February 7, 2018, the Court entered an Order¹ directing the appellant to remove the following six groups of pages (and pages 115-116) from the Record on Appeal:

- (a) **35-42: Application for Special Exception**
- (b) 287-318: City letter and photos.
- (c) **384-386: excerpt from Hardship Application transcript**
- (d) **387-389: Supreme Court's report on admission**
- (e) 405-415: Respondent's Responses to Requests to Admit
- (f) 483-616: Zoning Comments (2009) by F. Patrick Hubbard

The boldfaced items (a), (c) and (d) are the subject of this motion. The others are removed pursuant to this Court's February 7, 2018, Order, including pages 115-116.

As to as the material designated as (a), pages 35-42, the application for Special Exception, the appellant clearly identified that document in its Designation of Contents of Record on Appeal. The appellants' s original designation of contents of record on appeal stated: "Application to Zoning Administrator for Special Exception." Thus, appellant specifically designated this document, and it was part of the record transmitted to the circuit court as required by § 6-29- 830, S. C. Code, ann. It is germane to the issues raised and should be included in the record on appeal.

¹ Because there is no procedure for requesting a rehearing in this circumstance pursuant to Rule 240, appellant seeks to supplement the record as allowed by Rule 212. Rule 240(i): "The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal."

Items (c) and (d) are two parts of the same issue; to wit, the official Supreme Court record on *pro hac vice* admissions and counsel's statement about them to the Hearing Officer. Designation "d" is the Supreme Court's official record on its action on applications for licensure filed by Mr. Bergthold. Since appellant raised the issue of his admission in this case *pro hac vice*, Mr. Bergthold's status with the Supreme Court is clearly germane. Since the South Carolina Supreme Court possesses exclusive jurisdiction over the admission of lawyers to the practice of law in this State under Article V, § 5, S. C. Constitution, this Court is obligated to take notice of the Supreme Court's decisions as part of its inherent authority to regulate the practice of law. As the Supreme Court said in 2003: "Under the South Carolina Constitution, this Court has the duty to regulate the practice of law in South Carolina. See S.C. Const. art. V, § 4; *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992); see also S. C. Code Ann. § 40-5-10 (1986) (the Supreme Court has inherent power with respect to regulating the practice of law)." *Linder v. Insurance Claim Consultants* 348 S.C. 477, 560 S.E.2d 612 (2002). Because the appellant challenges the trial court's admission of Mr. Bergthold, this Court can; in fact, it must, take judicial knowledge of the statements he made to the Supreme Court to gain temporary admission and whether those statements are at variance with statements made in other tribunals. For example, if the City of Columbia discovered the appellant's lawyer was not licensed, it would have a duty to bring that fact to the Court's attention, and the Court has a duty to evaluate the allegation to protect the integrity of the judicial process. This is why the Court of Appeals and the Supreme Court do not allow litigants or non-lawyers (except in *pro se* matters) to sit at counsel table in the courtroom. In short, in evaluating appellant's challenge to Mr. Bergthold's admission, this Court is required to examine his status with the Supreme Court as part of its inherent authority to govern the practice of law.

For the foregoing reasons, the appellant respectfully requests that the Court allow the appellant to supplement the record on appeal by including the application for special exception, which was clearly part of the record below and designated as such, and the documents relating to Mr. Bergthold's admission because they relate to the Court's inherent authority to govern whom it allows to practice before it. All the other designations as set forth in the Court's February 7th Order have been removed, but appellant requests that the time for filing the record on appeal be held in temporary abeyance to allow the Court to decide if it will allow items (a), (c) and/or (d) to remain.

Respectfully submitted,

February 22, 2018

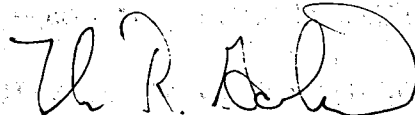


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Attorneys for Appellant

CERTIFICATE OF COUNSEL

I certify simultaneously with filing this motion, I will attempt to consult with opposing counsel in an effort to resolve this issue and give a further report. I certify that the failure to do so is not the result of neglect but the result of a lingering illness that has kept the undersigned out of the office.

February 22, 2018



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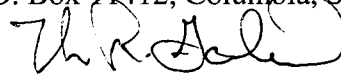
vs.

Cricket Store 17, L.L.C. d/b/a Taboo, Counterdefendant.

PROOF OF SERVICE

I certify that I have served the Motion to Supplement the Record and hold the filing deadline in abeyance on the Respondent, City of Columbia, by depositing a copy of it in the United States Mail, postage prepaid, on February 22, 2018, addressed to its attorney of record, Peter M. Balthazor, Riley, Pope & Laney, L.L.C. at P. O. Box 11412, Columbia, S. C. 29205.

February 22, 2018



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February 22, 2018

Hon. Jenny Abbott Kitchings,
South Carolina Court of Appeals,
ATTN.: Jessica, case manager
1220 Senate Street
Columbia, S. C. 29201

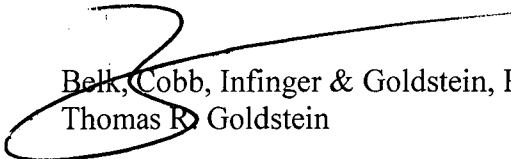
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SC Court of Appeals

Re: Cricket Store vs. City of Columbia, 2016-CP-40-03478
Appellate Tracking Number: 2017-000561

Dear Ms. Kitchings,

I enclose an original and seven copies of a Motion for Leave to Supplement the Record on Appeal and hold the filing deadline in abeyance. I also enclose a certificate of service and our firm's check in the amount of \$25.00 to cover the filing fee for the Motion. Would you be so kind as to file the original and return one copy of each marked filed in the envelope provided? By copy of this letter I am providing a copy to opposing counsel. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/

enclosure: Motion to Supplement Record on Appeal certificate of service, check No.: 18216

cc: Mr. Peter M. Balthazor, Esq. (with enclosure)

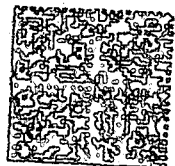
Mr. Peter M. Balthazor

Riley, Pope & Laney, L.L.C.

P. O. Box 11412

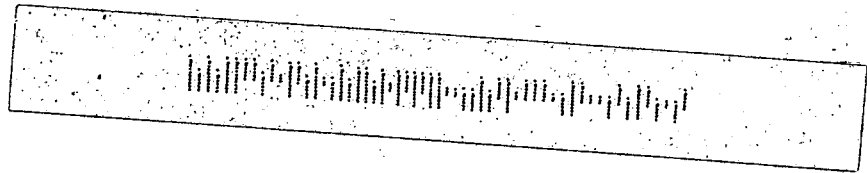
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