

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Civil Action No. 2016-CP-40-03478
Appellate Case No. 2017-000561

RECEIVED
MAR 05 2018
SC Court of Appeals

Cricket Store 17, LLC d/b/a Taboo,.....Appellant,

v.

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

And

City of Columbia Zoning Administrator,.....Counterclaimant,

v.

Cricket Store 17, LLC d/b/a Taboo,.....Counterdefendant.

**CITY'S RETURN TO TABOO'S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD ON APPEAL**

The Court should deny Taboo's motion for leave to supplement the record on appeal for two reasons: (1) Taboo's current motion is a prohibited request for reconsideration of the Court's February 7, 2018 order concerning the contents of the record on appeal, and (2) in that order, the Court already determined that the documents Taboo wants to include in the record should be removed. By pressing this matter, Taboo has disregarded the Court's decision and has disobeyed its order to serve the amended record on appeal within 20 days (i.e., by February 27, 2018). In these circumstances, dismissal of the appeal is appropriate.

1. The Court should deny the motion to supplement the record because—as Taboo recognizes in footnote 1 of its motion—the motion is really a disallowed motion for rehearing. Under Rule 240(i), SCACR, the Court does not entertain motions for rehearing, except where the prior decision had “the effect of dismissing or finally deciding a party’s appeal.” That is not the case here. The February 7 order resolved disputes concerning the record on appeal, not dismissal or resolution of the appeal.

Dissatisfied with the outcome, Taboo again asks “the Court to decide if it will allow items (a), (c), and/or (d) to remain” in the record on appeal. Because the motion seeks rehearing of a prior non-dispositive order, it is in direct violation of Rule 240(i), and the Court should deny it.

2. The Court should also deny Taboo’s motion because it already considered and resolved this matter. The Court’s February 7 order denied Taboo’s motion for leave to file “as filed” the first record that Taboo compiled, granted the City’s motion to strike portions of it, and directed Taboo to serve an amended record that “shall not include the materials listed as items a. through f. on pages 4 and 5 of Respondent’s motion to dismiss.” As the Court found, items a. through f. do not belong in the record on appeal because they were not presented to the trial court.

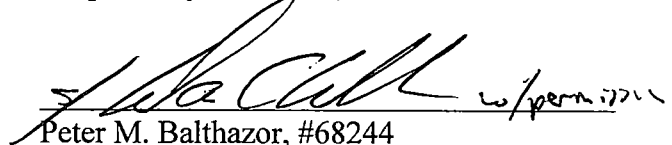
Taboo’s current motion nevertheless asks to re-inject parts, “a,” “c,” and “d” into the record. While Taboo contends that these parts relate to its arguments, Taboo does not (and cannot) show that the documents were part of the record in the lower court.

Under Rule 210(c), SCACR, the record “shall not” include “matter which was not presented to the lower court or tribunal.” Thus, the Court properly struck Taboo’s original record on appeal and directed Taboo to prepare and serve an amended record without the improper parts. Instead of complying, Taboo again asks the Court to let it include some of the improper parts. Taboo’s motion is not supported by the Rules or by reason, but only by recalcitrance.

3. Under Rule 269, SCACR, the Court has authority to sanction a party that files a motion that “is frivolous or taken solely for the purposes of delay, or is not in compliance with” the rules. Rule 269 applies here. The Court already told Taboo that the stricken documents cannot be included in the record for this appeal, so it is frivolous for Taboo to move the Court to reconsider that decision. Pressing the matter again—rather than following the Court’s order—violates Rule 240(i)’s prohibition on motions for rehearing or reconsideration *and* the Court’s express directive. Taboo’s conduct serves only to delay, even further, the completion of final briefs and resolution of the appeal. Taboo’s motion is precisely the sort that is sanctionable under Rule 269.

Taboo’s motion also deserves sanctions because it shows that Taboo disobeyed the Court’s February 7 order, which instructed Taboo to file an amended record “within twenty days,” i.e., by February 27. Taboo has refused to do so, as though filing a prohibited motion excuses its disobedience of a clear order. As a result, all progress on this appeal is again delayed. Under these circumstances and the language of Rule 269, dismissal of Taboo’s appeal is appropriate.

Respectfully submitted,



Peter M. Balthazor, #68244
RILEY, POPE & LANEY, LLC
Post Office Box 11412
Columbia, South Carolina 29211-1412
(803) 799-9993 – Office
peteb@rplfirm.com

Scott D. Bergthold, admitted *pro hac vice*
LAW OFFICE OF SCOTT D. BERGTHOLD, PLLC
2290 Ogletree Avenue, Suite 106
Chattanooga, Tennessee 37421-8828
(423) 899-3025 – Office
sbergthold@sdblfirm.com

Attorneys for City of Columbia
Board of Zoning Appeals and City of
Columbia Zoning Administrator

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PROOF OF SERVICE OF CITY'S RETURN TO TABOO'S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD ON APPEAL

I certify that on March 5, 2018, I have served all counsel in this action with a copy of the foregoing by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

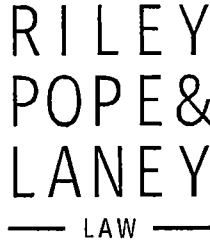
Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 711121
North Charleston, South Carolina 29415-1121
Attorneys for Cricket Store 17, LLC d/b/a Taboo

Dated: March 5, 2018


Peter M. Balthazor
Counsel for Respondent

South Carolina

Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, SC 29205
Phone: 803.799.9993
Fax: 803.239.1414



North Carolina

Riley Pope & Laney, PLLC
4822 Albemarle Road
Suite 248
Charlotte, NC 28205
Phone: 980.201.3888
Fax: 704.625.9430

March 5, 2018

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SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201s

Re: Cricket Store 17, LLC d/b/a Taboo v. City of Columbia Board of Zoning Appeals AND
City of Columbia Zoning Administrator v. Cricket Store 17, LLC d/b/a Taboo
Civil Action No.: 2016-CP-40-03478
Appellate Case No.: 2017-000561
Our File No.: 5253.00114

Dear Ms. Kitchings:

Please find enclosed the original and six copies of the City's Return to Taboo's Motion for Leave to Supplement the Record on Appeal, with Proof of Service in the above-referenced matter. Please file the enclosed documents and return a filed copy with my runner.

Thank you for your kind assistance.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly R. Bickford".

Kimberly R. Bickford
Paralegal

/krb

Enclosures

Cc: Thomas R. Goldstein, Esquire

Riley Pope
& Laney, LLC | ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 11412
COLUMBIA, SOUTH CAROLINA 29211

TO:

HAND-DELIVERY

The Honorable Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

1220 Senate St

Columbia, SC 29201

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