

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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JUL 05 2018

SC Court of Appeals

Civil Action No. 2016-CP-40-03478  
Appellate Case No. 2018-001062

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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.

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**RESPONDENT AND COUNTERCLAIMANT’S RESPONSE TO MOTION FOR LEAVE  
TO FILE TRANSCRIPT OUT OF TIME AND MOTION TO CONSOLIDATE**

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**I. Motion for Leave to File Transcript Out of Time**

Respondent and Counterclaimant (collectively, the “City”) do not object to Taboo’s request for leave to file the transcript out of time in this appeal.

**II. Motion to Consolidate**

The City opposes Taboo’s motion to consolidate this appellate case with Appellate Case No. 2017-00561 (the “first appeal”), which has been fully briefed and is ready for consideration.

Rule 214, SCACR provides:

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

Taboo's motion meets none of Rule 214's requirements for consolidation.

First, the present appeal is not from the "same order, judgment, decision or decree" involved in the first appeal. The first appeal was filed almost a year and half ago, on March 6, 2017. The first appeal involves the trial court's orders affirming (and denying reconsideration of) certain rulings made more than a year before that, in April 2016, by the City of Columbia Board of Zoning Appeals. In contrast, this second appeal involves the trial court's injunction order (and an order denying reconsideration of same) entered after an evidentiary hearing held in 2018.

Second, the two appeals do not involve "the same question." The first appeal involves the trial court's February 6, 2017 order affirming the Board's April 2016 decisions. The February 6, 2017 order explains (at p. 1, n.1) that "[t]he Board's July 2016 answer included a counterclaim by the City of Columbia Zoning Administrator seeking injunctive relief against Taboo, but that counterclaim is not the subject of this order." So the first appeal does not involve injunctive relief. In contrast, the second appeal is all about an injunction entered in February 2018.

Third, there are good reasons to refuse consolidation, independent of the requirements of Rule 214. The first appeal has been fully briefed, and consolidation would only delay disposition of that appeal. Moreover, it was a chore to get briefing completed because Taboo refused to properly prepare the record according to the Rules, resulting in multiple motions regarding completion and correction of the record. Thus, there are no reasons to grant consolidation, and significant downsides to doing so.

For these reasons, the City respectfully requests that the Court deny Taboo's motion to consolidate.

Respectfully submitted,



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

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

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PROOF OF SERVICE OF RESPONDENT AND COUNTERCLAIMANT’S RESPONSE TO  
MOTION FOR LEAVE TO FILE TRANSCRIPT OUT OF TIME AND MOTION TO  
CONSOLIDATE

I certify that on July 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:

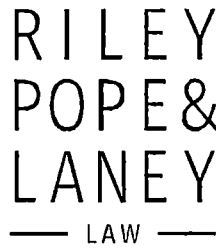
Thomas R. Goldstein  
Belk, Cobb, Infinger & Goldstein, P.A.  
Post Office Box 711121  
North Charleston, South Carolina 29415-1121  
Attorneys for Cricket Store 17, LLC d/b/a Taboo

Dated: July 5, 2018

*Kimberly R. Bickford*  
Kimberly R. Bickford  
Paralegal

**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

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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 29201

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  
Calendar No.: 2016-CP-40-03478  
Appellate Case No.: 2018-001062  
Our File No.: 5253.00114

Dear Ms. Kitchings:

Please find enclosed the original and six copies of the City's Response to Motion for Leave to File Transcript Out of Time and Motion to Consolidate, 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