

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Jocelyn Newman, Circuit Court Judge

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Case No. 2016-CP-40-03478  
Appellate Tracking No.: 2018-001062

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**RECEIVED**  
OCT 11 2019  
SC Court of Appeals

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.

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MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW APPEAL

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The Appellant’s motion to dismiss this appeal is based on the ground that the appeal is from the grant of an injunction that requires the Appellant to adhere to a City of Columbia ordinance, regulating, among other things, open admission, inventory, *etc.* Since filing this appeal, the Appellant reconfigured its operation, reapplied for a new business license on September 13, 2019, and is now in full compliance with the City’s Ordinance. Because the circuit court entered

its Order on March 8, 2018, requiring the Appellant to adhere to the requirements of the ordinance, and because the Appellant made the necessary changes to adhere to the ordinance as part of his September 13<sup>th</sup> application, the legal issue raised by this appeal is now moot. Because the Appellant is now in compliance, there is no longer a justiciable question over the circuit court's grant of injunction to resolve.<sup>1</sup>

An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997). Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable. See Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." [345 S.C. 568] *Mathis v. South Carolina State Highway Dep't.*, 260 S.C. 344, 346, 195 S.E.2d 713, 715(1973).

In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. See generally *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996); *Citizen Awareness Regarding Educ. V. Calhoun County Publ'g. Inc.*, 185 W.Va. 168, 406 S.E.2d 65 (1991) (holding an appellate court could consider newspaper's appeal from trial court's injunction compelling newspaper to publish political action advertisement even though case was moot because issue was capable of repetition yet evaded review). Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. See generally *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (the court recognized that questions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest). Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. See 5 AM. JUR.2D *Appellate Review* § 649 (1995).<sup>2</sup>

An order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable. S.C.Code Ann. § 14-3-330(4) (Supp. 2000); *Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 (1956) (appeal lay from the restraining order or temporary

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<sup>1</sup> There is still a pending challenge to the City's Board of Zoning Appeals' refusal to allow Appellant to appear before it (Tracking No. 2017-000561). This case is not moot, since the Order under review affirms the City's decision to bar a class of applicants from the quasi-judicial Board of Zoning Appeals.


<sup>2</sup> In this case, the Appellant could assert all three of these exceptions, but the Appellant's practical circumstances make continued litigation on this issue impossible. Since beginning this case, Appellant is dealing with a family medical emergency, his lawyer has been laid low by a defective heart, and the City has demonstrated a willingness to spend limitless sums to wear down Appellant. As of March 2017, the City spent over \$250,000.00 on its effort to eliminate Appellant. As a result, Appellant is practically and financially forced to capitulate on the issue of injunction and did so by reconfiguring his operation and applying for a new business license on the modified business.

injunction). However, "[t]he rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal, and will not consider immaterial or moot questions, applies when reviewing decrees and orders relating to injunctions." 42 AM.JUR.2D *Injunctions* § 335 (2000). Where only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits, or consider the granting of a new trial after it has become impossible to have a new trial in the case. See [345 S.C. 569] generally *State ex. Rel. Mathews v. Eastin*, 179 Kan. 555, 297 P.2d 170 (1956).

*Curtis v. State of South Carolina*, 345 S.C. 557, 549 S.E.2d 591 (2001)

Therefore, for the reasons stated above, the Appellant wishes to withdraw the appeal as authorized by the *Appellate Court Rules*.

October 8, 2019



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PROOF OF SERVICE

I certify that I have served the Appellant's Motion To Withdraw Appeal on the Respondent, City of Columbia, by depositing a copy of it in the United States Mail, postage prepaid, on October 8, 2019, addressed to its attorney of record, Peter M. Balthazor, Riley, Pope & Laney, L.L.C. at P. O. Box 11412, Columbia, S. C. 29205.

October 8, 2019



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October 8, 2019

Hon. Jenny A. Kitchings,  
Clerk of Court  
South Carolina Court of Appeals,  
P. O. Box 11629  
Columbia, S. C. 29211

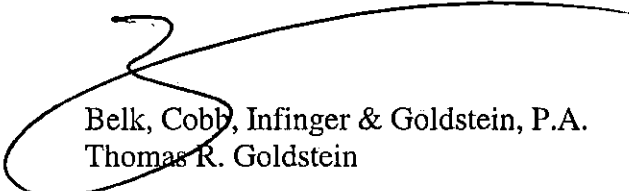
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Re: Cricket Store vs. City of Columbia, 2016-CP-40-03478  
Appellate Tracking Number: 2018-001062

Dear Ms. Kitchings,

I enclose the appellant's motion to withdraw appeal along with our firm's check in the amount of \$50.00 to cover the filing fee. Would you be so kind as to file this with the Court and return a clocked copy in the envelope provided? By copy of this letter, I am providing a copy to opposing counsel. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,

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

TRG/

encl.: Motion to withdraw appeal; check No. 18919, return envelope

cc:

Mr. Trevor P. Eddy (e-mail)  
Mr. Peter M. Balthazor (e-mail and regular mail)  
Riley, Pope & Laney, L.L.C.  
P. O. Box 11412  
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Mr. Scott Bergthold (e-mail)

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