

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 18 2019

SC Court of Appeals

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

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

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.

RESPONDENT’S RETURN TO APPELLANT’S MOTION TO WITHDRAW APPEAL

Respondent does not oppose the *relief* Appellant Taboo seeks by its motion to withdraw, namely, the dismissal of this appeal. Rule 260(c), SCACR, states: “An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.” By virtue of Taboo’s motion, the Court should simply dismiss this appeal.

The City files this return, however, to oppose Taboo’s *rationale* for withdrawing the appeal. The body of Taboo’s motion contends that the appeal is moot. It is not moot.

For years after losing its case against the City in federal court, Taboo has unlawfully continued to operate a sexually oriented business. In March 2018, the trial court found Taboo to

be an illegal sexually oriented business, and it permanently enjoined Taboo from running one at its location. That order is the subject of this appeal. In subsequent proceedings below, the trial court heard evidence that Taboo was violating the injunction by continuing to operate as a sexual device shop, and in July 2019 the trial court found Taboo and its operators in contempt of court. In light of *that* contempt order (which Taboo fails to mention), Taboo claims that it is “forced to capitulate on the issue of injunction....” (Aplts. Mem. at 2 n.2.)

Taboo now alleges that its store is complying with the City’s regulations (and, by extension, the injunction) and that its appeal from the injunction is moot. The City disputes Taboo’s factual allegation, and its legal conclusion. To the contrary, if Taboo (after being held in contempt) were indeed operating according to the injunction and in compliance with the City’s code (it is not), that fact would merely demonstrate that the injunction serves its purpose, not that it is moot.

In any event, neither this appeal nor Taboo’s motion provides an occasion to address how Taboo currently operates. And there is no need for this Court to remark on Taboo’s raising of the mootness doctrine. It is enough that Taboo is asking to withdraw its appeal. Under Rule 260(c), the Court should simply grant the motion and dismiss this appeal.

Respectfully submitted,



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Board of Zoning Appeals and City of
Columbia Zoning Administrator*

October 18, 2019
Columbia, South Carolina

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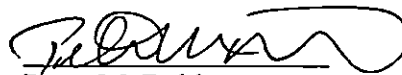
PROOF OF SERVICE

I certify that on October 18, 2019, 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 addresses:

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October 18, 2019

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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
Civil Action 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 *Respondent's Return to Appellant's Motion to Withdraw Appeal*, with *Proof of Service* in the above-referenced matter. Please file the enclosed documents and return a clocked copy with my runner.

Thank you for your kind assistance in this matter.

Sincerely,



Kimberly R. Bickford
Paralegal

/krb

Enclosures

Cc: Thomas R. Goldstein, Esquire
Trevor P. Eddy, Esquire