

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

---

Common Pleas Court Case No. 2019-CP-15-00218  
Appellate Case No. 2020-00607

---

**RECEIVED**

**Oct 02 2020**

**SC Court of Appeals**

Larry Rahn.....Respondent

vs.

Barbara Smith .....Appellant

---

**APPELLANT’S MOTION FOR LEAVE TO FILE MOTION PURSUANT TO RULE  
60(b)(5), SCRPC  
AND  
TO HOLD BRIEFING IN ABEYANCE**

---

COMES NOW the Appellant, Barbara Smith, pursuant to Rule 240, SCACR, and Rule 60, SCRPC, and who hereby requests: (1) leave of this Court to file a Motion Pursuant to Rule 60(b)(5), SCRPC, in the Circuit Court regarding the expiration of the order now pending on appeal; and (2) that briefing in this appeal be held in abeyance pending the Circuit Court’s ruling on such motion. In support of this motion the Appellant asserts as follows:

1. This appeal arises from an Order of the Circuit Court issued on December 3, 2019, (the “Order”) the same being attached hereto as Exhibit A and incorporated herein by reference.

2. The Order granted summary judgment in favor of the respondent’s claim for specific performance of a contract for the sale of real property owned by the appellant upon

payment of \$312,000.00 by respondent on or before July 11, 2020, and found no conditions precedent to the respondent's payment.

3. It was a necessary element of the respondent's claim for declaratory judgment, and a necessary finding of the trial court Order that the respondent stood ready willing and able to perform at the time specific performance is sought. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) (setting out the necessary elements of specific performance on a contract for the sale of real property); *see also* (Exhibit A – Order p. 4).

4. However, the respondent has not appealed the trial court's ruling as to the time in which the payment is required and this time has now passed without tender of payment and there have been no intervening orders staying or otherwise granting supersedeas that would extend this deadline.

5. The appellant contends the Order has expired rendering the issues moot or otherwise not justiciable.

6. Rule 60(b)(5), SCRCF provides that a party may seek relief from a judgment which "has been satisfied, released, or discharged" or when "it is no longer equitable that the judgment should have prospective application."

7. Additionally, Rule 60(b)(5), SCRCF provides that "[d]uring the pendency of an appeal, leave to make th[is] motion must be obtained from the appellate court."

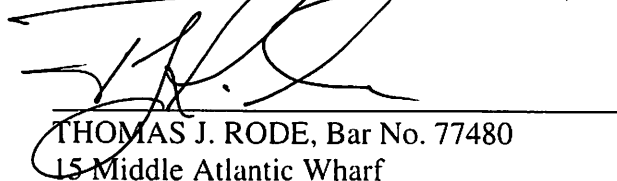
8. Because it effects the substance and merits of the issue(s) pending appeal to this Court, the appellant requests leave to file a motion pursuant to Rule 60(b)(5), SCRCF, the same being attached as Exhibit B and incorporate by reference, and being for the purpose of raising this matter to the Circuit Court, preserving those matters presently pending before this Court, and serving judicial economy by avoiding the need to bring a separate action to set aside the judgment.

See Rule 60, SCRCP (1990 Editor's Note stating that section (5) was provided for "avoiding the necessity of bringing a new action to set aside the judgment").

9. Further, and to give the Circuit Court and the parties the full and fair ability to address this issue, the appellant hereby request that briefing in this matter stayed or otherwise be held in abeyance pending resolution of the aforementioned motion by the Circuit Court, and the parties will notify this Court when Court upon such resolution. Appellant hereby requests an additional thirty (30) days to finish her Initial Brief for filing.

**THEREFORE IT IS PRAYED** that this Court: (1) issue an order granting unto the appellant leave to file the aforementioned motion pursuant to Rule 60, SCRCP, and (2) issue an order holding the briefing schedule for this appeal in abeyance pending the trial court's ruling on the aforementioned motion.

THURMOND KIRCHNER & TIMBES, P.A.



THOMAS J. RODE, Bar No. 77480

15 Middle Atlantic Wharf

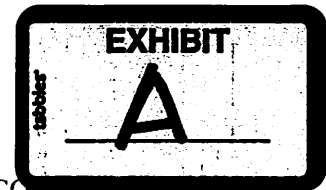
Charleston, South Carolina 29401

Phone: 843-937-8000

Fax: 843-937-4200

Email: thomas@tktlawyers.com

Attorneys for Appellant



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF COLLETON ) CIVIL ACTION NO.: 2019-CP-15-00218  
  
LARRY RAHN, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
BARBARA SMITH, )  
 )  
 ) Defendant. )

**ORDER**

This matter came before the Court on a Motion for Summary Judgment filed by the Plaintiff seeking specific performance with the terms of a mediation agreement signed on November 20, 2015. A hearing was held at the Colleton County Courthouse on October 9, 2019, attorney Ronnie Crosby was present for the Plaintiff, and attorney Gregory Parker was present for the Defendant. The Court Reporter for the hearing was Rebecca Hill.

The mediation agreement concerns the division of real property bequeathed by Marvin F. Rahn to his wife, Myrtie S. Rahn, with a remainder interest to their four children, including Plaintiff and Defendant. Following Myrtie S. Rahn's passing, the four children, including Plaintiff and Defendant, attempted numerous times to come to an agreement regarding the division of the property, to no avail. Finally, on November 20, 2015, the parties signed two settlement agreements with the purpose of finalizing the division of the subject property.

The mediation was conducted by attorney Reeves McLeod who drafted the Agreements. The first agreement, "Settlement Agreement 1," memorialized the transfer of all interests in a real property known as the Glover Place tract to Loretta Harriet in exchange for the relinquishment of her interest in another tract of land known as the Home Place tract to the remaining heirs of Marvin Rahn.

In this action, Plaintiff seeks to compel Defendant to comply with the second agreement, "Settlement Agreement 2." The pertinent language of Settlement Agreement 2 is set forth below:

In light of mediation, Loretta R. Harriett has relinquished her interest in the "Home Place Tract" property. Due to such, the current ownership of the "Home Place Tract" is 1/3 interest to Larry L. Rahn, 1/3 interest to Barbara R. Smith, 1/6 interest to Kenneth F. Rahn and 1/6 interest to Nancy R. Crosby.

1. Barbara R. Smith will deed her interest in this property to Larry L. Rahn, Kenneth F. Rahn, and Nancy R. Crosby for the sum of three hundred and twelve thousand and 00/100 (\$312,000.00) dollars. Larry L. Rahn, Kenneth F. Rahn, and Nancy R. Crosby have 24 months to deliver funds to Barbara R. Smith, in exchange for her interest in the land.

The agreement was signed by all parties on November 20, 2015.

Subsequent to the parties entering the settlement agreements, the relevant parties deeded their interest in the Glover Tract to Loretta Harriet in July of 2017. In particular, Defendant deeded her interest to Ms. Harriet on July 26, 2017. Loretta Harriet did not deed her interest in the Home Place Tract to the other parties until July 11, 2018, over two and a half years after the signing of the original settlement agreements. Thus, performance under Settlement Agreement 1 was not completed until this date. The deeds were not recorded until October 1, 2018.

To date, Defendant has refused to comply with the terms of Settlement Agreement 2. Defendant contends that she is not obligated to comply with Settlement Agreement 2, as over 24 months have passed since the two settlement agreements were entered, and she did not receive payment before the expiration of the deadline. Plaintiff contends that when reading the two settlement agreements in concert, it is clear that the 24-month deadline for payment was not intended to commence until Ms. Harriett's interest in the Home Place Tract was completely relinquished to the other parties.

In determining this matter, the Court is required to interpret the language of the settlement agreements in order to give legal effect to the parties' intentions. *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 571, 574 (2009) (citing *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). In South Carolina, settlement agreements are viewed as contracts. *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 749 (Ct. App.

2019) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). “An action to construe a contract is an action at law.” *Kinghorn*, 426 S.C. at 151 (quoting *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012)).<sup>1</sup>

“Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract.” *Bolt v. Ligon*, 144 S.C. 218, 142 S.E. 504 (1928). A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 161 S.E.2d 179 (1968). “Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties.” *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). On the other hand, a contract is unambiguous when its meaning is clear and susceptible to only one reasonable interpretation. See *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct. App. 1992). “If a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms. *Id.* The purport of the written agreement is to be gleaned from the contents of the whole instrument. *Id.*”

Here, the language of the two settlement agreements, as reflected by the settlement documents, is clear and unambiguous. Settlement Agreement 2 obviously contemplated the completion of Settlement Agreement 1 before its terms were to become effective: “In light of mediation, Loretta R. Harriett **has relinquished** her interest in the ‘Home Place Tract’ property.” It plainly requires Defendant to deed a 1/3 interest in the Home Place Tract to Plaintiff and the other heirs of Marvin Rahn, in light of Ms. Harriett’s relinquishing of her interest in the tract. Plaintiff and the other heirs were to have 24 months to deliver funds to Defendant in exchange for her 1/3 interest in the land. Since Ms. Harriett did not relinquish her interest in the tract until

---

<sup>1</sup> A separate lawsuit was filed against Harriett seeking to compel her compliance with Agreement 1. See *Rahn v. Harriett*. This suit was settled with Harriett agreeing to comply.

July 11, 2018, it was impossible for any of the parties to successfully perform under the terms of Settlement Agreement 2 until that date.

Prior to July 11, 2018, Defendant did not possess a "current ownership" consisting of the 1/3 interest in the land that would have entitled her to the consideration offered by Plaintiff. Thus, the parties were prohibited from complying with the terms of the agreement until July 11. Under the plain and ordinary meaning of the language of Settlement Agreement 2, the 24-month deadline could not have begun to run until Defendant possessed a 1/3 interest in the tract she could exchange. The Plaintiff has alleged that he and the other heirs stand ready, willing and able to comply with the terms of Settlement Agreement 2. That they attempted to do so was confirmed by the affidavit of Barbara Smith wherein she confirmed that the Plaintiff and other heirs reached out to her in the fall of 2018 in an attempt to fulfill the Settlement Agreement 2.

The language of the settlement agreements cannot be fairly and reasonably understood under Defendant's interpretation. This would have the effect of bestowing upon Ms. Harriett the ability to effectively nullify Settlement Agreement 2, to which she was not a party. Under Defendant's interpretation of the agreements, by unilaterally refusing to relinquish her interest in the Home Place Tract until after the 24-month deadline passed, Ms. Harriett would have the power to frustrate the entire purpose and intent of the second agreement via an unlawful act. Even in a light most favorable to Defendant, interpreting the language of Settlement Agreement 2 in such a manner would be unreasonable, as the sole purpose of the second agreement was to effectuate a legal transfer of property between Plaintiff and Defendant, and not Ms. Harriett.

Based on the foregoing, it is ORDERED that the Plaintiff's Motion for Summary Judgment is granted. The Defendant is hereby ORDERED to transfer her interest in the Home Place upon payment of \$312,000.00 per the terms of the Settlement Agreement 2. The Parties are further ORDERED to fully comply with the terms of the Settlement Agreement 2 on or before

July 11, 2020 which is two years after the transfer from Harriett of her interest in the Home Place.

IT IS SO ORDERED.

\_\_\_\_\_  
Perry M. Buckner, III  
Chief Administrative Judge

\_\_\_\_\_, 2019

\_\_\_\_\_, South Carolina



Colleton Common Pleas

**Case Caption:** Larry Rahn VS Barbara Smith

**Case Number:** 2019CP1500218

**Type:** Order/Other

It is so Ordered

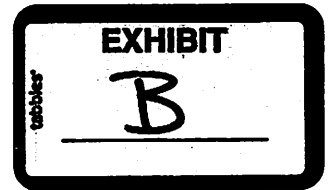
s/ Perry M Buckner III 2122

Electronically signed on 2019-12-03 15:28:04 page 6 of 6

END OF  
EXHIBIT  
A

Appellant’s Motion for Leave and To Hold in Abeyance

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2019-CP-15-00218
COUNTY OF COLLETON	)	Appellate Case No.: 2020-00607
	)	
Larry Rahn,	)	
	)	
Plaintiff,	)	<b>Motion for Relief from Judgment</b>
	)	<b>Rule 60(b), SCRPC</b>
vs.	)	
	)	
Barbara Smith,	)	
	)	
Defendant.	)	



**COMES NOW** the Defendant (“Smith”) with leave granted by an order of the South Carolina Court of Appeals, and pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure and upon the affidavits, memoranda and other materials that have been, or may hereafter be, submitted to this Honorable Court:

1. By Order dated December 3, 2019, (the “Order”) this Court granted summary judgment in favor of Plaintiff’s claim for specific performance and directing the sale of certain real property owned by Smith “upon the payment of \$312,000.00” by Plaintiff on or before July 11, 2020.

2. Smith appealed the Order, and that appeal remains pending before the South Carolina Court of Appeals bearing Case No.: 2020-00607.

3. However, during the pendency of the appeal the Order was rendered moot by the expiration of the deadline imposed therein. Asserting this matter is no longer justiciable, Smith requested leave from the Court of Appeals to bring this motion, which was granted by the order of the Court of Appeals attached hereto as **Exhibit 1**.

4. Pursuant to Rule 60(b), SCRPC, and without waiver of any claim, right or argument on appeal, Smith asserts this Court should grant relief from the Order which has expired.

BACKGROUND

This matter arose from Plaintiff's claim for specific performance of a settlement agreement that provided Plaintiff the option to purchase Smith's interest in real property by delivery of \$312,000.00. The controversy centered on Smith's claim that the option expired, while the Plaintiff asserted he had until July 11, 2020, to deliver payment and compel the transfer of the real property. Based on Plaintiff's representation that he was "ready willing and able" to perform, this Court accepted Plaintiff's argument and ordered that Smith transfer the property "upon payment of \$312,000.00" which was required "on or before July 11, 2020." (Order p. 4); *see also* (Exhibit 4 – Transcript of Hearing, Oct. 9, 2019, p. 17). However, the court-ordered time for performance—i.e., "on or before July 11, 2020"—has now passed without Plaintiff delivering payment. *See* (Exhibit 2 - Affidavit of Smith); (Exhibit 3 - Affidavit of Parker, Esq.). For this reason, Smith requests relief from the Order pursuant to Rule 60(b)(5), SCRPC.<sup>1</sup>

ARGUMENT

Rule 60(b)(5) provides for relief from a "judgment, order, or proceeding" when it "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or if it is no longer equitable that the judgment should have prospective application." Rule 60(b)(5), SCRPC. The Supreme Court has recognized that Rule 60(b)(5) provides an avenue for relief from judgments that have become moot. *See e.g., Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 596, 748 S.E.2d 781, 787 (2013) (affirming the granting of relief from portions of a judgment affecting the rights of parties under a contract—in a declaratory judgment action—that had become moot). A judgment can become moot during the pendency of

---

<sup>1</sup> Although Smith has challenged the Order on appeal, for the purposes of this Motion it is assumed, without waiver, that the Court was correct in granting summary judgment on Plaintiff's claim for specific performance.

EXHIBIT B

Appellant's Motion for Leave and To Hold in Abeyance

an appeal where certain “intervening events,” such as the passage of time, “render a case nonjusticiable” or otherwise make it impossible to grant relief because “there remains no actual controversy.” *Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003); *see Reid v. Reid*, 280 S.C. 367, 372, 312 S.E.2d 724, 726 (Ct. App. 1984) (recognizing the general premise that the “passage of time” during the pendency of an appeal may render a ruling of the trial court moot).

The law requires that in order for a party to be entitled to specific performance, it must be that he “has performed . . . [or] remains able and willing to perform his or her part of the contract.” *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). In the context of an option to purchase land, specific performance requires delivery of payment. *Id.* At the time of the hearing Plaintiff had not performed, and although Plaintiff represented he was ready, willing, and able to do so; Plaintiff also suggested his obligation to deliver payment was contingent upon an agreement to harvest timber from the property. (Exhibit 4, pp. 29-31). However, this Court found no such condition precedent to Plaintiff's payment obligation. (Order p. 4). Instead, the Court ordered payment must be made on or before July 11, 2020, and that “upon payment” Defendant was to transfer her interest. (Order p. 4). Plaintiff did not appeal this ruling, and therefore, it is the law of the case that there was no condition precedent to the delivery of \$312,000.00 on or before July 11, 2020. *See e.g., ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (unappealed findings are the law of the case and may not be changed).

Therefore, with nothing to justify a delay of payment, Plaintiff's ability to compel specific performance, and thus the effectiveness of the Order depends, on the Court's finding that Plaintiff stands “ready, willing and able to comply with the terms” and make payment. (Order at p. 4); *see Ingram*, 340 S.C. at 106, 531 S.E.2d at 291 (granting specific performance of an option to purchase

land requires the plaintiff has or stands ready to deliver payment). Plaintiff's failure to make payment on or before July 11, 2020, is a failure of a necessary element of the Order and cannot be excused nor extended.

The South Carolina Supreme Court has recognized that an appellate court cannot "expand the time for [an option holder] to tender the money." *Id.*, at n. 1. Instead, a plaintiff "must be able to perform at the exact time he requested specific performance, not some 'reasonable time' in the future." *Id.* (emphasis added). Thus, initiation of an appeal had no impact on the effectiveness of the judgment, and the obligations of the parties remained just as if there had been no appeal.<sup>2</sup> See S.C. Code Ann. § 18-9-170 ("If the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgement shall not be stayed" by the filing of a notice of appeal); S.C. Code Ann. § 18-9-130(A) ("A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment."); *see also* Rule 241(b)(4), SCACR (judgment directing the sale of real property not stayed on appeal); Rule 241(b)(1), SCACR (judgments directing the payment of money are not stayed on appeal). Here the validity of the Order ceased on July 11, 2020, despite the pending appeal.

It is a well-recognized policy of this state that continued litigation will not extent the validity of a judgment or court order. *See Gordon v. Lancaster*, 425 S.C. 386, 389, 823 S.E.2d 173, 174 (2018) (finding that there was bright light rule that a judgment would become ineffective upon its statutory expiration even if there were ongoing and active litigation regarding its enforcement); *see also Ingram*, 340 S.C. at 106, 531 S.E.2d at 291 (finding the time for a party to pay under on

---

<sup>2</sup> For context, it could hardly be argued that if Plaintiff had waited until July 12, 2020, to commence his action having never tendered the funds, he could not prevail on a claim for specific performance. The point is that the filing of an appeal does not operate to suspend Plaintiff's obligation under this Court's interpretation of the settlement agreement. When the clock struck midnight on July 11, 2020, Plaintiff's performance was due, as a result Smith's was not.

EXHIBIT B

Appellant's Motion for Leave and To Hold in Abeyance

an option to purchase real property could not be extended despite ongoing and continued litigation). Likewise, simply because an appeal has been perfected, does not mean a party is relieved from its duty to take action to preserve the justiciability of a case. The Supreme Court's ruling in *Utley v. S. W. Wilson & Sons*, 205 S.C. 469, 471 (1944) is instructive here. There, the issue on appeal was whether an option to purchase real property was valid; however, the option holder did not appeal a portion of the final order that directed the property to be sold to someone else. *Id.* As a result, the unappealed portion of Order, coupled with the passage of time, operated to render the issue moot because the option holder failed to fully protect his claim. *Id.*

Even if the Court of Appeals were to affirm this Court's finding that Plaintiff had until July 11, 2020, to deliver payment, because that date has come and gone the issue is now purely academic. In other words, it is impossible for Plaintiff to perform, therefore it is impossible to compel specific performance. Moreover, it is of no consequence why Plaintiff did not pay before July 11, 2020, because the analysis would not change. First, Plaintiff's non-payment cannot be blamed on a failure of a condition precedent because Plaintiff did not appeal the Order which finds no condition precedent. Second, Plaintiff's failure to pay must not be for lack of ability because that would mean specific performance was improper to begin with. *See Ingram*, 340 S.C. at 106, 531 S.E.2d at 291 (*supra*). Third, Plaintiff's failure to pay cannot be because the matter was appealed because the judgment was not stayed by the appeal. *See* S.C. Code Ann. § 18-9-170; S.C. Code Ann. § 18-9-130(A). Thus, it can only be that the failure to pay was voluntary, and it is axiomatic that voluntary non-performance justifies the granting this motion. *See* Rule 60(b)(5) (providing for relief where judgment has been released or discharged).

Regardless, and even if there were a basis for this non-payment, the law provides a party that might be prejudiced by the passage of time during an appeal with various forms of redress to

EXHIBIT B

Appellant's Motion for Leave and To Hold in Abeyance

preserve their rights and the justiciability of a case to prevent it from becoming moot. For example, a party can petition for a supersedeas order “to prevent a contested issue from becoming moot.” Rule 241(c)(1), SCACR; *see also Berry v. Ianuario*, 281 S.C. 21, 314 S.E.2d 308 (1983) (ordering writ of supersedeas because it was necessary in order to prevent the appeal from becoming moot). Alternatively, where a judgment directs the payment of money or the sale of real property, neither of which are stayed on appeal, a party may seek a stay. *See* Rule 241(b)(1) &(b)(4). Another option would permit a party, such as Plaintiff, to timely tender performance and attempt to execute its judgment, thereby forcing Smith to seek a stay. *See* S.C. Code Ann. §18-9-160 or §18-9-170. Yet another option would permit Plaintiff to timely tender performance and then pursue a contempt order against Smith. *See* S.C. Code § 15-35-180. However, Plaintiff exercised none of these remedies and once the case became moot on July 12, 2020, those avenues were closed.

Having failed to tender the funds within the time required the issue is no longer justiciable because, as the saying goes, Plaintiff has no skin in the game. Whether or not Plaintiff's payment was required on or before July 11, 2020—or some earlier date as Defendant claims—has now become a purely academic question. Moreover, it would simply be inequitable to allow the Order to afford Plaintiff additional time to pay when the relief requested and obtained—i.e., specific performance—required he stand ready willing and able to perform as was represented to the Court. *See* Rule 65(b)(5), SCRCF (permitting relief from judgement where it would “no longer be equitable that [it] have prospective application”). Therefore, this Court should grant Defendant's motion and find the Order is now expired and of no effect.

Appellant's Motion for Leave and To Hold in Abeyance

Respectfully submitted,

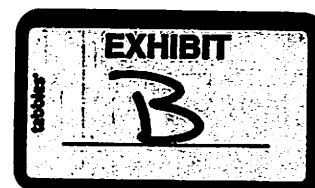
THURMOND KIRCHNER & TIMBES, P.A.

By: s/ TJ Rode

THOMAS J. RODE  
SC Bar No. 77480  
15 Middle Atlantic Wharf  
Charleston, South Carolina 29401  
Phone: 843-937-8000  
Fax: 843-937-4200  
Email: [thomas@tktlawyers.com](mailto:thomas@tktlawyers.com)  
*Attorneys for Plaintiff*

Charleston, South Carolina

End of



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )  
 )  
Larry Rahn, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Barbara Smith, )  
 )  
 )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
Civil Action No.: 2019-CP-15-00218  
Appellate Case No.: 2020-00607

Affidavit of Barbara Smith  
**RECEIVED**  
**Oct 02 2020**  
**SC Court of Appeals**

UPON being duly sworn, and under penalty of perjury, I, Barbara Smith, herein state as follows:

1. I am over the age of eighteen and competent to understand the oath I have taken and make this affidavit knowing it will be submitted to a court in the above-captioned matter, and unless stated to be upon information and belief, I have personal knowledge of those things stated herein.
2. I am the Defendant in the above-captioned matter.
3. Pursuant to the Court's Order of December 3, 2019, I was to convey my property upon the payment of \$312,000.00; however I have not received that payment.

END AFFIDAVIT

By Barbara R. Smith  
Barbara R. Smith, Esq. *BRB*


Sworn to and subscribed before me,  
This 1 day of October, 2020.

Ashley W McMahon  
Notary Public  
For the State of NC

My commission expires: May 19, 2025





By:   
Gregory E. Parker, Jr., Esq.

Sworn to and subscribed before me.

This 2 day of October, 2020.

Sara Nial Chapman  
Notary Public  
For the state of South Carolina

My commission expires: 10-22-25

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

RECEIVED

Oct 02 2020

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

SC Court of Appeals

Perry M. Buckner, III, Circuit Court Judge

---

Common Pleas Court Case No. 2019-CP-15-00218  
Appellate Case No. 2020-00607

---

Larry Rahn.....Respondent

vs.

Barbara Smith .....Appellant

PROOF OF SERVICE

---

I, hereby certify that the enclosed was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on this day and properly posted for delivery to the following addresses:

Ronnie L. Crosby  
101 Mulberry Street East  
P.O. Box 457  
Hampton, SC 29924

and

Gregory E. Parker  
609 Sims Avenue  
Columbia, SC 29205

THURMOND KIRCHNER & TIMBES, P.A.



Adam Smith  
Paralegal to Thomas J. Rode  
Charleston, South Carolina  
Dated: September 3, 2020

THURMOND KIRCHNER  
& TIMBES, P.A.

www.TKTLawyers.com

October 2, 2020

**VIA US MAIL, FAX, AND EMAIL**

Jenny Abbott Kitchings, Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
(F) 803-734-1839  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

**Re: *Larry Rahn v. Barbara Smith***  
***Appellate Case No. 2020-000607***

**RECEIVED**

**Oct 02 2020**

**SC Court of Appeals**

Dear Honorable Kitchings:

Enclosed please find Appellant's Motion for Leave to File Motion Pursuant to Rule 60(b)(5) and Motion for Relief from Judgment Rule 60(b) for filing in the above-referenced matter. In addition, I have enclosed a check (#21453) for \$50.00 for the filing fee.

Very truly yours,

THURMOND KIRCHNER & TIMBES, P.A.



Adam Smith  
Paralegal to Thomas J. Rode

/ags  
Enc. As Stated

CC: Ronnie Crosby and Gregory Parker