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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Daniel D. Hall
Circuit Court Judge

APPELLATE CASE NO.: 2020-001068
CIVIL ACTION NO.: 2020-CP-46-01641

EVOLVE SOFTWORKS, LLC, Appellant,

vs.

ANTHONY BURKETT, Respondent.

RESPONDENT'S FINAL BRIEF

Dated: December 23, 2020

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STATEMENT OF FACTS

In looking at this case, it is important to understand that the Appellant's Complaint and the Guaranty attached to it refer to two different debts owed by 3 Guys to Harrell. The Complaint identifies an unspecified number of loans made between 2014 and July 2015 by R. Dean Harrell to 3 Guys Investments, LLC ("3 Guys') in the amount of $2,084,790.58 (hereinafter, "Loans"). [R. p. 6 Compl. ¶ 4] The Complaint does not identify the time for the repayment of the Loans.

In addition, the Guaranty attached to and referenced by the Complaint references a Promissory Note in the amount of $2,600,000.00 (the "Promissory Note") owed by 3 Guys to Harrell. [R. p. 10; Guaranty § I]

The Complaint states that "In Consideration for 3 Guys not enforcing the terms of the aforesaid loans, Burkett executed a Guaranty Agreement…" On the other hand, the Guaranty itself states that: "This Guaranty is given by the Guarantor to induce the Creditor not to call the Promissory Note from the Debtor to the Creditor in the Principal amount of $2,600,000.00." [R. p. 10; Guaranty § I]

There was no period specified in which the creditor promised to either not enforce the terms of the aforesaid Loans or not call the Promissory Note. There is no allegation that the forbearance of such action had occurred in the past or was to occur in the future.

The Complaint does not allege any default in the Promissory Note.

The Complaint contains only two allegations regarding a default of debts owed by 3 Guys to Harrell. Paragraph 5 states that "By October 2016, 3 Guys was in default pursuant to the loans' terms. [R. p. 7; Compl. at ¶ 5] Paragraph 9 states that "3 Guys

defaulted on its Debt." [R. p. 7; *Id.* ¶ 9] There is no allegation in the Complaint stating that the default in the Loans was ever cured after October 2016.

The use of "loans", "Promissory Note," and "Debt" in the Complaint is confusing. But, understanding that all of the obligations referenced in the Guaranty; the Promissory Note and all payments and liabilities of the Debtor to the Creditor (which would include the Loans) would be included under the word "Debt" in Paragraph 6 of the Complaint is useful to avoid the confusion.

ARGUMENT

Issue I: **The Appellant's Claim was Barred by the Statute of Limitations As the Action was Filed More than Three Years from the Default of Payment of the Debt and Therefore, The Trial Court's Dismissal Was Proper.**

The Respondent's position on the statute of limitation issue is simple. The Appellant filed this suit to collect certain loans which had been made by Harrell to 3 Guys in 2014 and 2015. By October 2016, those loans were in default. On October 25, 2016, Burkett executed the Guaranty which included the obligation to honor those loans in addition to the Promissory Note. Nothing in the terms of the Guaranty limited Harrell's ability to pursue litigation to collect the Loans. The Complaint alleged no other contractual provision which limited Harrell's ability or rights to pursue litigation to collect the Loans or the Promissory Note. Therefore, at any time after the Respondent signed the Guaranty, Harrell could have demanded payment of the Loans and or of the Promissory Note and sued the Respondent on the Guaranty. So, the Statute of Limitations on the Appellant's action on the Guaranty began to run no later than November 1, 2016.

The analysis of the issue in the case at hand requires the analysis of North Carolina substantive law concerning the parties' rights under the Guaranty and South Carolina procedural law, i.e., the application of the statute of limitations for an action on a guaranty.

The guaranty in this case is an absolute guaranty. Under North Carolina law, a guaranty of "the due and punctual payment when due of such sum or sums of is an absolute guaranty. The right to sue upon this absolute guaranty of payment arises immediately upon the failure of the principal debtors to pay the loans." *Cities Service Oil Company, Howell Oil Company, Inc.*, 34 N.C. App. 295, 300, 237 S.E. 2d 921 (1977).

"[T]he statute of limitations on an action on an absolute guaranty, which is conditioned only on the debtor's default, begins to run when the obligation matures and the debtor defaults." *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 759 S.E.2d 152 (S.C. App. 2014).

So, on October 25, 2016, the clock had begun to tick on the statute of limitations applicable to Harrell's claim against 3 Guys on the Loans, as well as his claim against the Respondent on the Guaranty. Once this clock starts ticking, statute of limitations continues to run until suit is filed or the time for doing so expires. "An action for breach of contract must be commenced within three years. S.C. Code Ann. § 15–3–530(1) (2005)." *Id.*

The Appellant filed this lawsuit on May 26, 2020, well past the three year period which expired on October 25, 2019.

Harrell's assignment of the Note to the Appellant did not extend the statute of limitations. The Appellant simply stepped into the shoes of its assignee, Harrell. The Assignment Agreement provided that it was governed by North Carolina law. Under North

Carolina law, an assignee steps into the shoes of his assignor. *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 194 S.E.2d 521 (1973). It is a "well-settled principle that the assignee of a nonnegotiable chose in action, though he buys it for value, in good faith, and before maturity, takes it subject to all defenses which the debtor may have had against the assignor based on facts existing at the time of the assignment or on facts arising thereafter but prior to the debtor's knowledge of the assignment..." *William Iselin & Co. v. Saunders*, 58 S.E.2d 614, 231 N.C. 642,647 (N.C. 1950). "'The assignee [of a contractual right] steps into the shoes of the assignor' for the purposes of a statute of limitations defense and takes the right subject to any defenses that then existed..." *Bayview Loan Servicing, LLC v. Locklear* (E.D. N.C. 2017), *citing, Rose v. Vulcan Materials Co.*, 282 N.C. 643, 194 S.E.2d 521 (1973) and *William Iselin & Co. v. Saunders*, 58 S.E.2d 614, 231 N.C. 642,647 (N.C. 1950).

The Appellant, as the Assignee, and his assignor cannot extend the statute of limitations by entering the assignment. The Loans were already in default by October 2016 and the statute of limitations began to run as of that date. The clock was continuing to tick on the statute of limitations for any suit on the Loans and thus on the Guaranty when Harrell assigned the Note to the Appellant. The statute of limitations continued to run from that date in October 2016 and it applied to bar the claim by October 2019.

The Appellant simply waited too long to file this lawsuit without any justification to avoid its claim being barred by the applicable three-year statute of limitations.

<u>No Second Default of the Loans</u>

The Appellant tries to avoid the application of the statute of limitations by some sleight of hand arguments in its Brief.

The first sleight of hand effort is that there was a second default which implies that the first default, the default of the Loans, was cured. In fact, the Appellant Brief states that 3Guys defaulted on its Debt a second time and references paragraph 9 of the Complaint to support this position. However, Paragraph 9 of the Complaint simply states that "3Guys defaulted on its Debt." [R. p. 7; Compl. ¶ 9] There is no allegation to put a date on this default other than Paragraph 5 of the Complaint which alleges that by October 2016, the Loans were in default. [R. p. 7; *Id.* at ¶ 5]The Complaint does not state that 3Guys cured the default which existed in 2016 or that it defaulted on the Loans for a second time. So, the Appellant on this appeal seeks to have the Court use its imagination to substitute for allegations of fact which do not exist in the Complaint. The use of the language that 3 Guys defaulted on its Debt is not tantamount to an allegation that the default in the Loans was cured. The reverse is true. If the Loans were in default in October 2016 and not subsequently cured, the Debt (which included the Loans) would be in default.

The standard applicable to a motion to dismiss is that it "… requires the Court to construe the complaint in a light most favorable to the nonmovant and determine <u>if the facts alleged</u> and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Grimsley v. South Carolina Law Enforcement Div.*, 396 S.C. 276, 721 S.E.2d 423 (S.C. 2012). (Emphasis added). The trial court must dispose of a motion for failure to state a cause of action based solely <u>upon the allegations set forth on the face of the complaint</u>. *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (S.C. 1987). (Emphasis Added). Therefore, there is no allegation in the Complaint to

support the Appellant's position on this appeal that the Loans were cured before the Guaranty and then went into default a second time after the date the Guaranty was executed.

No Cure from Guaranty

Another sleight of hand argument is the Appellant's contention that the default was "cured" by the execution of the Guaranty. In fact, the Appellant in its Brief states: "While 3 Guys was initially in default on its obligations in October 2016, this default was cured when Burkett executed the Guaranty on October 25, 2016 in consideration for Harrell's forbearance of the debt owned by 3 Guys." The Appellant makes this "cure" argument because it is obvious that the facts alleged in the Complaint do not otherwise show that 3 Guys cured its default on the Loans.

However, the execution of the Guaranty did not "cure" the 2016 default. There was no language in the Guaranty which excused the default or otherwise supported a cure of the default. While the Guaranty stated it was given to induce the Creditor not to call the Promissory Note, the terms of the Guaranty did not limit Harrell's ability to pursue an action on the Loans. The terms of the Guaranty did not limit Harrell's right to immediately demand payment of the Note either. Similarly, the Guaranty did not limit Harrell's right to sue the Respondent to collect on the Guaranty for the defaulted loans. But more specifically, the Guaranty does not reference the Loans or the default in payment of the same. For example, the Guaranty did not contain any terms regarding curing the default on the Loans or extending the time for the repayment of the Loans or the Promissory Note.

The Appellant cites *CoastalStates supra* to support its position that the limitations period could not begin to run at the time the guaranty was executed. However, in *CoastalStates*, the loan obligation underlying the guaranty had maturity dates and the court held that the guaranty did not begin to run until the default occurred after the maturity date. This position supports the Respondent's position that because the Loans were in default at the time the Guaranty was signed, the limitations period began to run on that date. "South Carolina's statute of limitations requires 'very little to start the clock." *Maher v. Tietex Corp.*, 500 S.E.2d 204, 331 S.C. 371 (S.C. App. 1998).

Contrary to the Appellant's contentions, the Respondent does not contend that the limitations period began to run on the Guaranty when the Loans went into default. Rather, the Complaint alleges that the Loans were in default in October 2016 and the Guaranty was signed on October 25, 2016, and therefore the Respondent contends that the statute of limitations began to run no later than November 1, 2016.

> A guaranty is a contract. As noted above, [t]he cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language of the contract. Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *First S. Bank v. Rosenberg*, 790 S.E.2d 919, 418 S.C. 170 (S.C. App. 2016) (*Citations and internal quotations omitted*). Where contract terms in a guaranty regarding consideration are clear and unambiguous the Court is powerless to interpolate into the contract other conditions or stipulations. *Proffitt v. Sitton*, 244 S.C. 206, 136 S.E.2d 257 (1964)." *Carolina Eastern, Inc. v. Benson Agri Supply, Inc.*, 310 S.E.2d 393, 66 N.C. App. 180 (N.C. App. 1984). "The rights of the plaintiff against the guarantor arise out of the guaranty contract and must be based on the contract..."

Hudson v. Game World, Inc., 484 S.E.2d 435, 126 N.C. App. 139 (N.C. App. 1997)

The Guaranty in the case at hand provided, in part, "…the Guarantor guarantees prompt payment when due of all payments and liabilities of the Debtor to the Creditor…" [R. p. 10; Guaranty § I] The guaranty in this case is an absolute guaranty. Under North Carolina law, a guaranty of "the due and punctual payment when due of such sum or sums of is an absolute guaranty. The right to sue upon this absolute guaranty of payment arises immediately upon the failure of the principal debtors to pay the Loans." *Cities Service Oil Company, Howell Oil Company, Inc.*, 34 N.C. App. 295, 300, 237 S.E. 2d 921 (1977). This North Carolina rule is consistent with South Carolina law. *CoastalStates, supra.*

There is no language in the Guaranty tolling the statute of limitations. So, the Appellant can't claim that the execution of the Guaranty extended the statute of limitations or cured the default in the Loans.

It may seem odd, but Harrell accepted the Guaranty in a form which triggered the running of the statute of limitations almost from the date it was signed, if not from that date. Harrell, his assignee, and the Appellant are bound by the language of the Guaranty upon which the lawsuit was filed. On the flip side, the Respondent signed the Guaranty which immediately exposed him to a possible lawsuit to collect the Loans which were in default.

The act of forbearing collection actions does not extend the limitations period for a claim on a guaranty any more than the act of forbearing to sue for a personal injury claim while negotiating the claim. Forbearing too long under either claim will result in the claim being time barred, absent a tolling agreement to the contrary.

The Appellant attempts to equate the Respondent's execution of Guaranty with the situation where a debtor is in default but acknowledges or reaffirms the debt, citing cases such as *Wofle v. Brannon*, 211 S.C. 282, 286, 44 S.E.2d 833, 835 (1947). However, that effort conflates 3 Guys obligations under the Loans with the Respondent's obligation under the Guaranty. A guaranty "…is separate and independent of the obligation of the principal debtor, and the creditor's cause of action against the guarantor ripens immediately upon the failure of the principal debtor to pay the debt at maturity..." *Investment Properties of Asheville, Inc. v. Norburn*, 188 S.E.2d 342, 281 N.C. 191 (N.C. 1972) The Respondent was never obligated directly under the Loans. The Respondent's obligation was created for the first time upon the execution of the Guaranty. The Appellant's cause of action ripened upon two conditions being met: 1) the execution of the guaranty and 2) the default of the loans.

Therefore, the Trial Court's Dismissal of the Appellant's Complaint would not have been in error because the claim on the guaranty was barred by the statute of limitations.

Issue II: **<u>The Trial Court Ruling was Correct Because No Consideration Existed to Support the Guaranty Agreement.</u>**

An alternative ground which supports the Trial Court's dismissal of the Appellant's action is that of lack of consideration.

Again, one must look at North Carolina law when analyzing the issue of consideration for the Guaranty as it incorporates North Carolina law as the applicable law.

Consideration is essential to a valid guaranty contract. *Carolina Eastern, Inc. v. Benson Agri Supply, Inc.*, 310 S.E.2d 393, 66 N.C. App. 180 (N.C. App. 1984) In the case

at hand, Harrell loaned the money to 3 Guys between 2014 and July 2015. The Guaranty executed by Defendant-Respondent was dated October 25, 2016. Thus, the Guaranty was for a pre-existing debt.

Under North Carolina law, when the guaranty, as in this case, involves a preexisting debt, it must be supported by some new consideration other than the original debt. *Klingstubbins Southeast, Inc. v. 301 Hillsborough St. Partners, LLC*, 721 S.E.2d 749 (N.C. App. 2012) *affirmed*, 736 S.E.2d 485 (N.C. 2012). *Sollis v. Holman* (N.C. App. 2012); *Accord, Sollis v. Holman* (N.C. App. 2012); *Carolina Eastern, supra*.

> Although forbearance may constitute valid legal consideration, it must be based on a promise to forbear made at the time of the parties' contract. Plaintiff hereunder presented no evidence of an agreement that would have prevented plaintiff from bringing suit earlier. It is incumbent upon plaintiff to prove the consideration supporting a guaranty contract for a pre-existing debt; the law does not presume such consideration.. Plaintiff, not having proved any agreement to forbear, failed to prove the consideration essential to the underlying contract. A directed verdict, therefore, in defendants' favor was entirely proper.

Carolina Eastern, Inc. v. Benson Agri Supply, Inc., 310 S.E.2d 393, 66 N.C. App. 180, 183 (N.C. App. 1984)

In the case at hand, the guaranty fails for the same reason as that stated in *Carolina Eastern*. There was no consideration to support the guaranty. The guaranty recites that "[T]his Guaranty is given by the Guarantor not to call the Promissory Note from the Debtor to the Creditor in the principal amount of $,6000,000.00". However, the guaranty does not establish that the Debtor agreed to forbear from calling the Promissory Note <u>for any specific period of time</u>. So, Harrell could have called the Note the day after the guaranty was signed. North Carolina courts have held that consideration which may be withdrawn

on a whim is illusory consideration which is insufficient to support a contract. *See, e.g., Mclamb v. T.P. Inc.*, 619 S.E.2d 577, 173 N.C. App. 586 (N.C. 2005), *citing Kadis v. Britt*, 224 N.C. 154, 163, 29 S.E.2d 543, 548 (1944) ("A consideration cannot be constituted out of something that is given and taken in the same breath — of an employment which need not last longer than the ink is dry upon the signature of the employee [to a covenant not to compete]. . . .')..." *Mclamb v. T.P. Inc.*, 619 S.E.2d 577, 173 N.C. App. 586 (N.C. 2005). Therefore, the guaranty agreement was not supported by consideration where the agreement failed to include a specific time limit for the debtor's forbearance.

Similarly, the allegations of the Complaint, while stating the Defendant-Respondent's executed the Guaranty Agreement in consideration for 3 Guys not enforcing the terms of aforementioned Loans, does not describe any specific time period in which the Appellant agreed to not enforce or collect the Loans owed by 3 Guys by Harrell. Therefore, the Complaint's lack of allegations showing the existence of an agreement that would have prevented the Appellant from enforcing the terms of the Loans fails to establish the consideration necessary to support the guaranty. *See, Carolina Eastern, supra.*

The Complaint fails to establish any allegations establishing consideration to support the guaranty. Absent consideration, there is no enforceable contract of guaranty. Thus the Trial Court's dismissal of the Complaint was proper.

When looking at the consideration issue it is important to distinguish the forbearance of collection actions deemed sufficient to support a guaranty versus the alleged forbearance in the case at hand. The usual forbearance is a contractual agreement to forbear collection actions on a debt for a specified period.

The Appellant's brief cited *Union Bank of Bavaria v. Belk,* 510 F. Supp. 1117, 119 (W.D. N.C. 1981). This case was a classic example, of forbearance which constitutes consideration. The creditor loaned money to the corporation. The company defaulted. Shortly thereafter, the company gave the creditor a promissory note for $2,086,305.56, covering principal and accrued interest on the loan. The note specified certain conditions under which the creditor could demand payment. The defendant, owners of the debtor, guaranteed the loan.

Another example of forbearance cited by the Appellant as consideration is *Rice v. Harris*, 52 Ga. App. 42, 182 S.E. 404 (Ga. App. 1935) where the creditor owing Harris a past-due debt, made a written contract with Rice on January 22, 1931, which was signed by all the parties, and in which Harris extended the time of payment until October 15, 1931,..."

Similarly, a "mutually agreed final payment plan was sufficient forbearance to serve as consideration" where the plan contained specific monthly payments in *Kellogg v. Food Service Supplies, Inc.*, 246 Ga. App. 695, 541 S.E.2d 683 (Ga. App. 2000)

In *Branch Banking v. Carolina Crank Core*, 362 S.C. 647, 608 S.E.2d 896 (S.C. Ct. App. 2005) the Court found forbearance as consideration were "in exchange for receiving Tipi's guaranty, the Bank agreed to extend the line of credit for an additional eight months past the original maturity date, thus forbearing on its pre-existing right to enforce other remedies, including collection under the original note."

In the case at hand, there are no allegations of any agreement wherein the Appellant agreed to forebear collection actions for any period of time. There is simply no such

condition limiting Harrell's ability to call the Note or to sue to recover the Loans. Any alleged forbearance would be voluntary, not contractual.

For guarantees entered into after the underlying loan, another way to establish consideration is by actual forbearance by the lender in reliance on a request by the guarantor.

The Appellant's brief cites *Standard Supply Co. v. Finch*, 154 N.C. 456, 70 S.E. 75 (1911) evidence of a request for forbearance by the guarantor and action forbearance in response. However, there is no allegation in the case at hand of a request for forbearance by the Respondent in the case at hand.

The Appellant asserts that the Guaranty is a continuing guaranty and thus provides the consideration. This assertion is based on the words: ..the Guarantor guarantees prompt payment when due of all payments and liabilities of the Debtor to the Creditor including without limitation all amounts due and payable pursuant to the Note <u>and all uncollected amounts of any award of judgment in favor of Creditor against the Debtor and/or Burkett and /or Michael Long, whether now existing or hereafter incurred…"</u>

> Whereby the terms of the guaranty it is evident that the object is to give a standing credit to the principal to be used from time to time either indefinitely or for a certain period it is generally deemed a continuing guaranty. ..'Whether a contract of guaranty is a continuing undertaking is a question of intention which must be gathered from the instrument itself, or from the course of dealings between the parties or from both. If it appears that a future course of dealing for an indefinite time, or a succession of credits to be given, was contemplated by the parties, the contract will be construed to be a continuing guaranty'…

Hickory Novelty Co v. Andrews, 123 S.E. 314, 317 (N.C. 1924).

The language in the Guaranty regarding “now existing or hereafter incurred” was attached to awards of judgments, not future loans. There is nothing in the Guaranty or in the complaint to suggest that the lender was going to extend future loans to the borrower. Moreover, the Complaint alleges that the Guaranty was given in consideration of the Loans extending between 2014- 2015, not expected future advances. Similarly, the Guaranty itself said it was given in consideration for the lender to not call the Note. So, the reference in the Guaranty regarding future judgments is not sufficient to constitute a continuing guaranty. Therefore, the Appellant can’t rely on the words “now existing or hereafter incurred” to generate the missing consideration to support enforcement of the Guaranty.

So, the Appellant’s Complaint simply fails to allege consideration to support the guaranty. Therefore, the Trial Court’s dismissal of the Complaint was proper.

Issue III: <u>The Trial Courts Denial of Appellant’s Motion to Amend Did Not Constitute Prejudicial Error.</u>

The Appellant cites *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 826 S.E.2d 585 (S.C. 2019) for the proposition that "When a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal..."

However, the Respondent moved to dismiss the Appellant’s complaint on the specific grounds that the Complaint was barred by the Statute of Limitations and the Guaranty was not supported by consideration.

The Appellant has the burden of showing that the Trial Court's ruling, including the failure to allow it to amend, was in error and was prejudicial. *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (S.C. App. 1987). In this case, the Appellant has alleged facts which establish an insurmountable bar to its claim. It has alleged the date the Loans were in default which was outside the applicable statute of limitations. The Appellant specifically alleged the lack of consideration. In fact, the lack of consideration is shown on the face of the Guaranty which does not specify any time for the forbearance to calling the Note. So, this case is far different from a case where the plaintiff simply failed to plead the essential elements of his claim. The Appellant can't create new facts to cure the fact that the statute of limitations bars its claim. Moreover, it can't allege facts to cure the lack of consideration given the language of the Guaranty. Therefore, the Appellant can't show prejudice resulting from the Trial Court's Failure to allow it to amend because there is no proposed amended complaint which can cure these two insurmountable bars to its claim on the Guaranty. So, this Court can't determine if any prejudicial error occurred.

Moreover, the Appellant did not file a proposed amended complaint or otherwise document in the Motion to Amend how it would have amended its complaint. So, there is nothing in the Record which the Appellant can offer as to how it would have amended to avoid the insurmountable bars of the Statute of Limitations and lack of consideration, and thus, the Appellant can not show that the ruling, if error, was actually prejudicial.

CONCLUSION

The Appellant filed the Complaint, in this case, more than three years after the loan obligations owed to 3 Guys were in default. The Complaint was not filed within the three-year statute of limitations applicable to claims on a guaranty. The Appellant's lawsuit is barred by the statute of limitations and the Trial Court's granting of the Defendant-Respondent's Motion to Dismiss was proper.

Additionally, the Complaint fails to allege the existence of any consideration which is necessary to support the guaranty. Absent consideration, the guaranty is not enforceable. The lack of consideration is another basis that supported the Court's dismissal of the Appellant's claims.

Therefore, the Defendant-Respondent respectfully prays that the Court deny the Appellant's Appeal and affirm the Trial Court's granting of the Motion to Dismiss.

Dated: December 23, 2020

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing was served on this date by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed to the party/attorney or attorneys for said parties.

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Dated: December 23, 2020

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