FORM 13
BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Case No. 2019-CP-02-02426

Historic Hospitality, LLC,
Shah Investments,
Shah Enterprises, LLC,
Southern Hotel Properties — Respondent,

v.

Stephan Shugart, — Appellant.

BRIEF OF APPELLANT

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s/ Stephan Shugart
546 Gates Court
Philadelphia, PA 19128
(215) 509-1088
Pro Se Appellant

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TABLE OF AUTHORITIES

CASES

Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998) ("[A]bsolute defense of assumption of risk is inconsistent with South Carolina's comparative negligence system. . ."; unless assumption of risk can be characterized as express or primary implied assumption, plaintiff is not barred from recovery if degree of fault arising from assumed risk is less than defendant's negligence .).

Spahn v. Town of Port Royal, 330 S.C. 168,173, 499 S.E.2d 205, 208 (1998) (Doctrine of "last clear chance has been subsumed by adoption of comparative negligence such that it remains a factor for the jury's consideration" in determining the respective fault of the parties but "does not totally relieve a plaintiff of his or her negligence ."). See F. Patrick Hubbard Robert L. Felix,Comparative Negligence in South Carolina : Implementing *Nelson v. Concrete Supply Co* ., 43 S.C. L. Rev. 273, 282-283 (1992).

McLean v. Atlantic Coast Line R. Co., 81 *S.C.* 100, 61 S.E. 900, 904 (1908) (held plaintiff contributorily negligent as a matter of law and observed "the doctrine of *comparative negligence* is not recognized");

Gladden v. Southern Ry. Co., 142 *S.C.* 492, 141 S.E. 90, 100 (1928) (held jury charge by trial judge improperly defined contributory *negligence* and noted "the doctrine of *comparative negligence* does not prevail in this state");

Bedford v. Armory Wholesale Grocery Co., 195 *S.C.* 150, 10 S.E.2d 330 (1940) (held not error for trial judge to refuse requested charge that doctrine of *comparative negligence* does not exist in *South Carolina)*;

Coleman v. Lurey, 199 *S.C.* 442, 20 S.E.2d 65, 66 (1942) (held improper for trial judge to charge jury: "where the plaintiff and defendant are equally at fault in producing an injury, where both are negligent, one is just as negligent as the other, the law leaves them where it finds them," and noted "we do not recognize or apply the doctrine of *comparative negligence* in this State unless it is required by statute");

Boyleston v. Southern Ry. Co., 211 *S.C.* 232, 44 S.E.2d 537 (1947) (held general rule that doctrine of *comparative negligence* is not recognized in *South Carolina* is subject to statutory exception in suits against railroads by their employees);

Sturcken v. Richland Oil Company, 248 *S.C.* 355, 150 S.E.2d 341 (1966) (held jury charge on doctrine of contributory *negligence* was improper where charge referred to "grades" of *negligence).*

Singleton v. Sherer, 659 S.E.2d 196, 206 (S.C. Ct. App. 2008). The South Carolina Supreme Court has held that comparative negligence is a jury question.

Hurd v. Williamsburg County, 611 S.E.2d 488, 492 (S.C. 2005)

Bloom v. Ravoira, 529 S.E.2d 710, 713 (S.C. 2000)

Littrell v. Landmark Builders of S.C., LLC No. 2:19-cv-0637-DCN (D.S.C. Mar. 2, 2021)

OTHER AUTHORITIES

163. Didiet v. J.C. Penny Co., 868 F.2d 276,281 {8 Cir. 1989}.
164. Id.

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THE RESPONDENTS RESPONSIBLE FOR THE INJURIES RECEIVED BY THE PETITIONER?

2. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGEMENT TO THE RESPONDENT DESPITE THE FACT THAT THE RESPONDENT ALTERED THE SCENE OF THE INCIDENT BEFORE THE PETITIONER COULD RETURN FROM SEEKING MEDICAL ATTENTION TO OBTAIN PICTURES AND OTHER PROOF OF THE INCIDENT LOCATION?

STATEMENT OF THE CASE

The matter before you stems from an accident I myself incurred on September 29, 2016. I initially sought out counsel here where I live in Philadelphia, Pennsylvania and was helped by a local law firm. Since the firm did not have legal licenses in South Carolina, I was put in touch with several law firms in South Carolina. Many of the law firms looked at the case and declined the case. I then sought counsel through the South Carolina Bar association and again the lawyers I had found did not want to take the case on a contingency basis. Since the filing of the case in the Court of Common Pleas in Aiken South Carolina I have been Pro Se. I have personally made trips to Columbia, South Carolina to the Respondent's law firm to give depositions and appeared in court for the hearing of the matter before Honorable Judge Nettles. That ended in a judgment in my favor in this matter. From that time, I kept trying to find a law firm to take my case but most of the firms I contacted did not want the case because the matter had already been heard or they wanted a great deal of money to even look at the case.

STANDARD OF REVIEW

I apologize if the format of the matter is not exactly in accordance with what the court is used to in this matter, but it is the best I can do in these circumstances. I am hopeful that if my appeal is granted that a particular law firm in South Carolina will take over the case, but as time and financial resources are limited to my monthly Social Security allowance, I humbly present my case for relief from the court.

FACTS

The Respondent's attorney, James Knox, made several errors in his testimony during the trial as shown in the Transcript of Record 2019-CP-02-02426 dated August 31, 2020 hela {Via Remote Platform}, Aiken County Courthouse state of South Carolina, TT page 6, line 19 to 25. Mr. James Knox stated that the hotel "owes a duty to warn hotel guests of open and obvious dangers in and around the hotel property as well as hidden dangers and obstacles that exist that could cause harm or injury". At the time of my injury there was no posting on the property in or around the main hotel or the annex in which I stayed together with my service animal. There were no postings at the front desk in the main hotel and I was not given any information whether

written or verbal that would have prepared me to avoid such dangers that existed by anyone of the hotel staff or management. The Respondent asserts that there are no genuine issues of

material fact, and that the Petitioner is not entitled to a judgment from the court as a matter of law.

ARGUMENTS

1. Specifically, Petitioner asserts that the Respondent has not produced any evidence that the Respondent was not responsible for maintenance of the area where the Petitioner was injured and fell or that Petitioner was on notice of either actual or constructive, of an defective or dangerous condition on or around the breezeways, exits, or landings going to and from the parking lot to the rooms located in the Hotel Aiken Annex where the Petitioner came in contact with the protruding, low hanging ornamental shrubbery that bordered both sides of each of several of the exits leading into and out of the breezeways leading into the rooms of the Hotel Aiken Annex of hotel rooms.

2. Respondent's attorney asserts that the Hotel Aiken had no responsibility for alerting the guests of the Hotel. The assertion is clearly prejudiced and without factual basis. Accordingly, under Rule 56 of the Federal Rules of Civil Procedure entitle "The Analysis and Decision of Summary Judgment Motions by William W. Schwarzer, Alan Hirsch and David J. Barrans dated Federal Judicial Center 1991, pg. 125 Personal Injury and Products Liability: "Whether a store customer assumed the risk when she stepped ion a slippery floor was the "type of injury that is textbook example 'issue of fact" inappropriate for determining summary judgment." 163. The trail court erred in finding as a matter of law that the customer had assumed the risk.164. This issue falls squarely within the experience of most jurors and has traditionally been entrusted to them. The jury's determination involves primarily common sense and knowledge of human affairs."

3. Statements were made by the Respondent's Attorney alluding to the Petitioner's ability of seeing the foliage near or at the accident site was reason enough in and by itself to find the Petitioner guilty of comparative negligence greater than fifty per cent. TT page 8 line 1 to line 9., This assertion by the Respondent's Attorney was pulled from the deposition that I attended in Columbia, South Carolina at the behest of the Respondent's Attorney at great cost and effort by the Petitioner. This fact was pulled by the Respondent's Attorney stating a fact that was not in evidence creating an error of the court to rely on statements that were not in evidence. In addition to the error of facts not in evidence concerning the assertion of comparative negligence there is compelling evidence submitted by the Petitioner to the court in pictures and a video showing that multiple hazards existed all along the parking lots adjacent to the Hotel Aiken annex . The Petitioners statements during the Zoom hearing Transcript of Record 2019-CP-02-02046-TT page 4 line to line 25., wherein the Petitioner tried to plead to the court the facts stated in both deposition and both hearings at the Court of Aiken, South Carolina that multiple obstructions protruding into the exits were almost completely concealed and hidden by masonry pillars that border all along the breezeway exits leading into the Hotel Aiken parking lot. Except for the thick branches covered by foliage the unsuspecting person would have little or no time to avoid the hazard.

The Hotel Aiken Annex parking level breezeway exits and entrances which total more than six separate exits and entrances all had planted shrubbery lining the driveway in front of masonry pillars facing out into the parking lot. Large protruding limbs covered by the green foliage

covered the limbs. The view from the parking lot facing the Hotel Aiken Annex one can see the breezeway exits and entrances leading into and out of the Annex of rooms. The protruding limbs and branches causes a person to bow down or walk around to stay clear of the obstructions but on exiting out of the Hotel Annex of rooms either from the first or second floor the larger part of the obstructions is hidden and concealed from view. The fact that multiple obstructions existed picking an unobstructed path was near to impossible. An invitee or Hotel patron would understandably randomly choose any of the six or more breezeways to exit to access the Hotel Aiken adjoining parking lot. The Respondent's Attorney alludes to the presence of a single branch with foliage when in fact there were multiple obstructions in all of the breezeways leading out into the parking lot. The masonry pillars supporting the breezeway conceal the obstructions from view until the invitee or hotel patron makes a sharp turn into the breezeway opening into the parking lot. It is important to note that at the time of the accident the bright sun was out, and the breezeway area was completely shaded by the second-floor walkway so it is understandable that a invitee or hotel patron walking out from a shaded area into the bright sun covering the parking lot it would take several seconds for a person's eyes to adjust to the light. It is understandable that a heavy limb or branch covered with green foliage would not be immediately seen and in the Petitioners case, came in contact and was knocked to the ground suffering neck pain and was temporally knocked unconscious.

The Respondent's Attorney alludes to the Petitioner striking his head and falling to the ground to be fifty or more percent at fault for the accident. If this scenario that is put forth to include a hotel patron carrying out of the hotel room heavy luggage or in the event of pushing a wheelchair or walking with a small child or in the Petitioner's case walking out into the parking lot with his service dog on leash, then the rule of comparative negligence would apply to all of the above. In all of the above examples it would also be normal for a person of average height would be looking down and not ahead while walking unaware of a heavy limb or branch protruding out into the breezeway opening. If the Respondent's Attorney assertion is accepted, then in all the cases the Comparative Negligence rule would apply. This would be too arbitrary and discriminatory faulting persons with handicaps such as the Petitioner for being responsible for an accident that was not able to be reasonably avoided. I only ask the Court for a small amount of consideration and understanding that the Petitioner acted with reasonable care but was unable to protect himself due to the number of obstacles and the positioning of the hazards.

It is notable that no designated signs or handicap placards existed anywhere along the full extent of the parking lot and there were no postings of the existence of any hazards. With so many possible obstructions protruding into the breezeway exits and the fact the obstructions were hidden from sight, it is not plausible to assert comparative negligence on behalf of the Petitioner. Common Sense tells us that hidden and concealed dangers are apt to be the full reason a person could come in harm's way.

Respondent's attorney cited the case of Bloom vs. Ravoria the act was "overwhelming", as found by the court: South Carolina ascribes to a modified version of comparative negligence known as

the "less than or equal to" approach, where the plaintiff in a negligence action can recover damages if his negligence does not exceed 50%. Singleton v. Sherer, 659 S.E.2d 196, 206 (S.C. Ct. App. 2008). The South Carolina Supreme Court has held that comparative negligence is a jury question. Hurd v. Williamsburg County, 611 S.E.2d 488, 492 (S.C. 2005) ("The

determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn.") That being said, where evidence of the petitioner's negligence is "overwhelming," courts have granted summary judgment to a defendant based on comparative negligence. For example, in Bloom v. Ravoira, 529 S.E.2d 710, 713 (S.C. 2000), the South Carolina Supreme Court held that where a pedestrian "entered the street quickly [in the middle of the block from between two parked cars] and without any warning to drivers" and was struck by a motorist who was driving no more than 25 miles per hour and was not driving recklessly as the pedestrian attempted to cross a street, the district court was correct in granting the motorist summary judgment on the basis of comparative negligence. In relevant part, the Bloom court stated:

The Petitioner's accident had no similarities with the case referenced by the Respondent's Attorney James Knox. The fact that the Petitioner was walking in a manner that cannot be reasonably construed to be "overwhelming" negligence. The Petitioner's manner was being exercised in a usual and distinctive manner of a guest of the Hotel Aiken.

Littrell v. Landmark Builders of S.C., LLC No. 2:19-cv-0637-DCN (D.S.C. Mar. 2, 2021)In order to establish a cause of action in negligence , a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). "However, under South Carolina's comparative negligence doctrine, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." Id. at 422, 529 S.E.2d at 712-13. Generally, a "comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Id. at 422, 529 S.E.2d at 713. In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is the plaintiff's negligence exceeded fifty percent. See Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created.").

McLean v. Atlantic Coast Line R. Co., 81 S.C. 100, 61 S.E. 900, 904 (1908) (held plaintiff contributorily negligent as a matter of law and observed "the doctrine of comparative negligence is not recognized"); Gladden v. Southern Ry. Co., 142 S.C. 492, 141 S.E. 90, 100 (1928) (held jury charge by trial judge improperly defined contributory negligence and noted "the doctrine of comparative negligence does not prevail in this state"); Bedford v. Armory Wholesale Grocery Co., 195 S.C. 150, 10 S.E.2d 330 (1940) (held not error for trial judge to refuse requested charge that doctrine of comparative negligence does not exist in South Carolina); Coleman v. Lurey, 199 S.C. 442, 20 S.E.2d 65, 66 (1942) (held improper for trial judge to charge jury: "where the plaintiff and defendant are equally at fault in producing an injury, where both are negligent, one is just as negligent as the other, the law leaves them where it finds them," and noted "we do not recognize or apply the doctrine of comparative negligence in this State unless it is required by

statute"); Boyleston v. Southern Ry. Co., 211 S.C. 232, 44 S.E.2d 537 (1947) (held general rule that doctrine of comparative negligence is not recognized in South Carolina is subject to statutory exception in suits against railroads by their employees); Sturcken v. Richland Oil Company, 248 S.C. 355, 150 S.E.2d 341 (1966) (held jury charge on doctrine of contributory negligence was improper where charge referred to "grades" of negligence). Davenport v. Cotton

Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998) ("[A]bsolute defense of assumption of risk is inconsistent with South Carolina's comparative negligence system. . ."; unless assumption of risk can be characterized as express or primary implied assumption, plaintiff is not barred from recovery if degree of fault arising from assumed risk is less than defendant's negligence .). Spahn v. Town of Port Royal, 330 S.C. 168,173, 499 S.E.2d 205, 208 (1998) (Doctrine of "last clear chance has been subsumed by adoption of comparative negligence such that it remains a factor for the jury's consideration" in determining the respective fault of the parties but "does not totally relieve a plaintiff of his or her negligence ."). See F. Patrick Hubbard Robert L. Felix,Comparative Negligence in South Carolina : Implementing Nelson v. Concrete Supply Co ., 43 S.C. L. Rev. 273, 282-283 (1992).

CONCLUSION

With that stated, it is only fair and equitable for me, the Petitioner in this matter to have this case set before a jury to determine whether the Hotel Aiken is liable in not warning its invitees of present dangers while entering and exiting the breezeways into and out of the hotel rooms located in the Hotel Aiken hotel annex of rooms.
163. Didiet v. J.C. Penny Co., 868 F.2d 276,281 {8 Cir. 1989}.
164. Id.

"[U]nder South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." Bloom v. Ravoira, 529 S.E.2d 710, 713 (S.C. 2000). "Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Id. (quoting Creech v. S.C. Wildlife & Marine Res. Dep't, 491 S.E.2d 571, 575 (S.C. 1997)). Where, however, "the evidence admits only one reasonable inference, it becomes a matter of law for the determination of the court." Creech, 491 S.E.2d at 575. Because the determination of fault is an issue uniquely suitable and explicitly reserved for resolution by a jury, "summary judgment is generally not appropriate in a comparative negligence case." Bloom, 529 S.E.2d at 713.

This motion is based on the South Carolina Rules of Civil Procedure, the common and statutory law of South Carolina, affidavits, depositions, and any other evidence which may be admissible by the Court. Petitioner reserves the right to submit a Memorandum in support of its motion prior to hearing.

The motion before you your Honor is based on the South Carolina Rules of civil procedure, the common and statutory law of South Carolina, affidavits, depositions, or any other evidence which may be admissible by the Court.

Respectfully Submitted

s/ Stephan Shugart
Stephan Shugart
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(215) 509-1088
Pro Se Petitioner

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EXHIBITS

Exhibit 1
CMS Medicare Health Care list of medical providers related to the care and treatment of medical care related to the accident billed directly to the client. Moneys due if any amount is paid by the Respondent's Nationwide Insurance provider.

Exhibit 2
Pictures of Hotel Aiken Annex of rooms showing severely pruned back shrubbery branches and limbs ordered by the Hotel Aiken manager shortly after the accident date of September 29, 2016 that were taken by Petitioner on return from the Aiken County Hospital Emergency Room September 30, 2016 Note the fresh cuttings of branches and limbs that were removed after reporting that Petitioner incurred injury while staying at the Hotel Aiken Annex of rooms.

Exhibit 3
Pictures of Hotel Aiken Annex of rooms showing current conditions of shrubbery as of March 03. 2020 taken where Petitioner's accident occurred. Note the weathered branches and limbs depicted in Exhibit2 after cuttings were aged and weathered.

Exhibit 4
Chart notes from treating physician dated 12/05/2016 showing Petitioner sought medical treatment for injuries received while staying at Hotel Aiken on September 29, 2016. Additional medical treatment is available after 12/05/2016 from different medical providers in records upon request.

Exhibit 5
Request by Petitioner to Respondent's Attorney James Knox of Turner and Paget requesting dates for mediation. The 300 day rule expired and Respondent's Attorney did not answer Petitioner by said date of August 10, 2020

Exhibit 6
Petitioner's answer to Respondent's Attorney in regards to Respondent's motion to dismiss dated July 18,2020 heard via Zoom virtual hearing August 30,2020.

Exhibit 7
Payment to South Carolina Court of Appeals

Exhibit 8
Notice of Appeal from Common Pleas regarding Conviction in Magistrates or Municipal Court

Exhibit 9
Proof of Service of Notice of Appeal served to all involved parties.

Exhibit 10
Transcript of Record 2019-CP-02-02426 Held August 31, 2020Cl held before Honorable Courtney Clyburn-Pope, Judge. held via Zoom with no Exhibits attached by the court.

Exhibit 11
Picture of my South Native Carolina Service dog Layla, may she rest in peace, was with me at all times while staying in Hotel Aiken.

Exhibit 12
Deposition of Petitioner conducted at the offices of James Knox of Turner and Paget, attorney for the Respondent.

Exhibit 13
Answer by Petitioner to Respondent's Attorney submission of Notice of Motion and Motion for Summary Judgment in the matter Stephan Shugart v. Shah Investments LLC., Please note all Examples listed have already been put into Discovery prior to Appeal to the South Carolina Court of Appeals.

PROOF OF SERVICE OF A MOTION TO EXTEND DEADLINE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No. 2020-001453

Stephan Shugart,

Petitioner,

v.

Historic Hospitality, LLC, Respondent.

PROOF OF SERVICE

I certify that I have served the Brief of the Appellant on Historic Hospitality, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2021, addressed to his attorney of record, James F. Knox, Post Office Box 1473, Columbia, South Carolina 29202.

June 30, 2021

s/ Stephan Shugart
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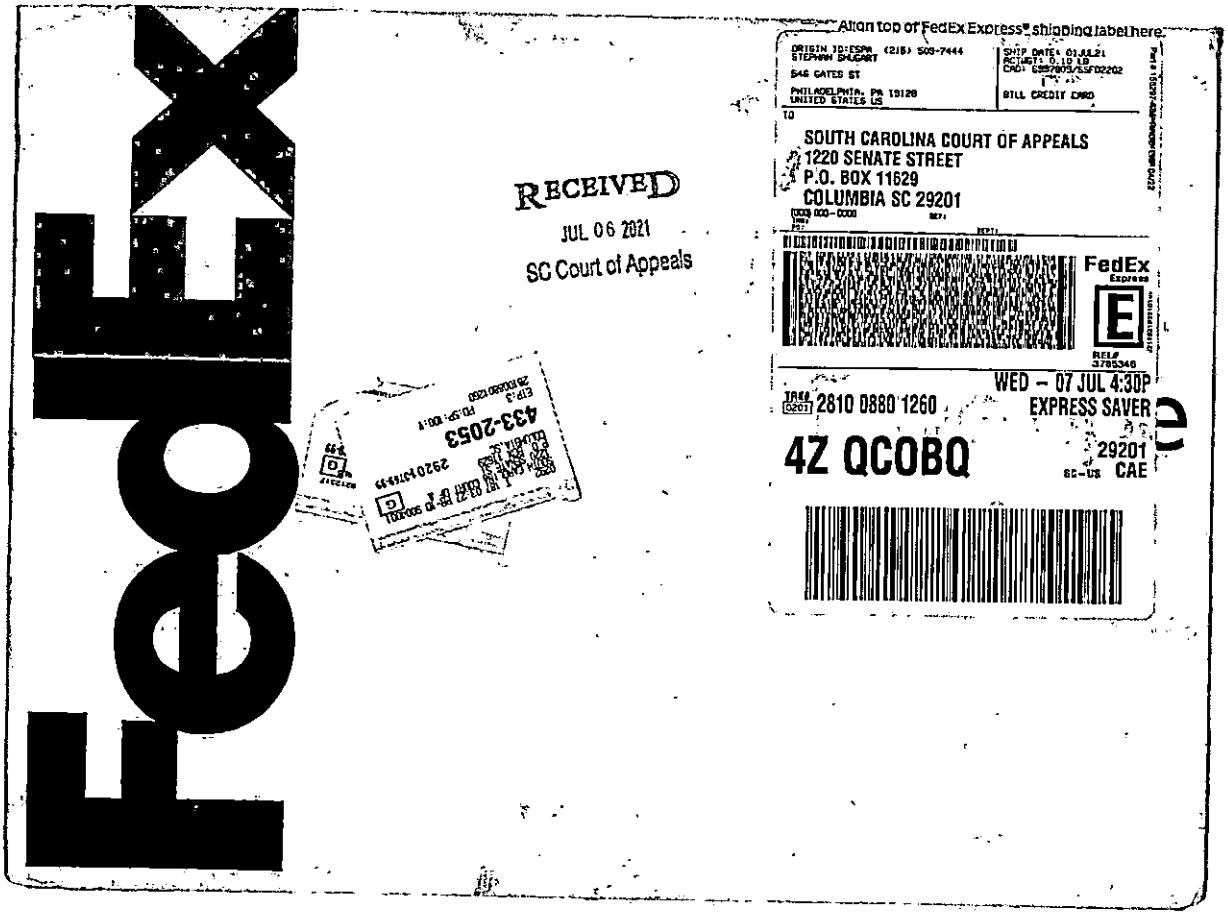
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