THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

Opinion No.: 5964
Case No. 2021-CP-08-00513
Appellate Tracking Number 2021-00768
(Companion Case Tracking No.: 2019-001169)

Aracelis Santos, ……. ……Appellant,

vs.

Harris Investment Holdings, L.L.C.
the City of Hanahan, John Doe #1 and
John Doe #2, employees of the City of
Hanahan Police Department, ……..……...Defendants,

of which

Harris Investment Holdings, L.L.C. is the ……Respondent.

PETITION FOR REHEARING *EN BANC*

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As authorized by Rule 221(a) of the *South Carolina Appellate Court Rules*, the Appellant moves for an Order of the Court granting the Appellant a rehearing and re-briefing of the legal issues identified (for the first time on appeal) by the Court in Opinion No. 5964. The Appellant moves for a rehearing *en banc* because the decision reached in Opinion No. 5964, if unmodified, represents a reversal of established civil practice in South Carolina by (1) allowing the trial courts to decide cases without explanation, and (2) granting the appellate courts license to address 12(b)(6) motions for the first time on appeal. The Opinion under review for the first time authorizing trial courts to dismiss cases at the pleading stage without explanation is in conflict with precedent, and if the Court of Appeals is going to authorize such a revolutionary change, it should be an expansion endorsed by the entire Court if for no other reason than it goes against precedent. The petition for rehearing is based further on the Court's overlooking important matters of fact and law as follows:

The Court overlooks that the circuit court never divulged its ruling.

On page 6, of Opinion 5964, this Court holds:

> Further, contrary to Santo's assertions, the circuit court applied the appropriate standard of review when ruling on HIH's 12(b)(6) motion.

This record demonstrates that the record never identifies either the circuit court's analysis or the standard of review it employed. Here is the circuit court's Order on the motion **in its entirety:**

> This matter came before the Court as Defendant Harris Investment Holdings LLC's Motion to Dismiss heard on June 3, 2021. Defendant Harris Investment Holdings, LLC's Motion to Dismiss is granted. (R.O.A. page 4)

Therefore, whatever "appropriate standard of review" the circuit court applied remains unknown, which leaves both the Court of Appeals and the Appellant to grope in the dark. (The colloquy with the circuit court on the motion to dismiss suggests the circuit court dismissed the case because the

judge thought the matter had been decided previously. See R.O.A. page 178. However, neither the parties nor this Court know what standard or what reasoning the trial court employed because it never said. There is nothing in this record that suggests the circuit court applied any standard. The closest the record comes to supplying information on the proper standard of review is Appellant's May 27, 2021, memorandum prepared for the circuit court at pages 142-147 of the Record on Appeal. The Respondent's May 25, 2021 memorandum barely mentions the standard on review except to assert boilerplate statements that are not relevant here because the memorandum contains highly disputed assertions such as of fact such as "after receiving reports of **dangerous criminal activity** at El Alamo, on November 14, 2016, HIH filed an application in the magistrate's court to eject Santos from the Property." (R.O.A. page 69, emphasis added) Bolstering this highly disputed (Appellant says "false") statement, Counsel told the trial court at the motion hearing: "after receiving reports of dangerous criminal activity taking place at El Alamo, including violation of local alcohol ordinances, illegal drug use, and weapons possession . . ." R.O.A. page 169 None of this is true, and paragraphs 8-13 of the plaintiff's complaint lays out the conspiracy between the Respondent and Hanahan to drive off the Appellant. R.O.A. pages 55-56. The record demonstrates that the alleged "dangerous criminal activity" turns out to be nothing more than mostly trumped up municipal violations arising out of a zoning dispute with the City. See R.O.A. pages 158-162 for breakdown of 51 municipal citations, 25 dismissed, 1 deferred, 8 no contest pleas, and 16 then pending. Likewise the putative June 29, 2021, Order denying reconsideration likewise ignores a mention of the applicable standard. R.O.A. page 7-8. Of course, neither the parties, nor this Court know if the Court signed the June 29th Order because Respondent's counsel sent an unsolicited Order to the Court, to which Appellant vigorously objected, R.O.A. page 163, and on July 6, 2021, the lower court rescinded the Order. After the

circuit court signed the unsolicited Order, the Clerk of Court followed up with a docket entry as follows: "Decline to Sign: Order/Dismissal." R.O.A. page 1. The only possible interpretation of these facts is that the circuit court erroneously signed the unsolicited Order and rescinded it. Therefore, there is not a scintilla of evidence in this case as to what standard the circuit court applied or how it construed the facts or even what its final decision is. Instead, this Court engages in a contract interpretation, which was not an issue addressed below or ruled on by the circuit court.

The purpose of the *Rules of Civil Procedure* is to provide litigants with an orderly disposition of cases so litigants can be informed why they did not prevail and make an informed decision on whether to accept a loss or seek judicial review. See Rule 1. Because that did not occur, neither this Court nor the Appellant knows what standard of review the circuit court applied because it never disclosed it and on what ground it dismissed the case. In short, the Court of Appeals, reverses normal court procedure and turns its back on precedent, to step in and analyze the case on new grounds **for the first time on appeal**. This is not the function of the Appellate Courts. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998), *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995) "**An issue is not preserved where the [circuit court] does not explicitly rule on an argument** and the appellant does not make a Rule 59(e) [, SCRCP] motion to alter or amend the judgment." (emphasis added)

Here, the record demonstrates that no one knows why the circuit court dismissed the case, and while a reviewing court may agree or disagree with a lower court, it has to have a ruling before it can answer the question. An appellate court cannot substitute its reasoning for the vacuum

created by a lower court in not rendering a decision. Here the Court of Appeals substitutes its reasoning for the silence of the circuit court *nunc pro tunc* creating the inchoate reasoning of the circuit court out of a vacuum, but this procedure not only upends hundreds of years of civil practice, but also overlooks the obvious due process dilemma when a party learns for the first time on appeal why her case is dismissed. Such a lack of process forecloses her from any opportunity to make a record that might convince a reviewing court otherwise. "Appellate courts in this state, like well-behaved children, do not speak until spoken to and do not answer questions they are not asked." *Transportation Insurance Company v. South Carolina Second Injury Fund*, 298 S.C. 255, 39 S.E.2d 732 (1989) quoting *C. Ray Miles Constr. Co. v. Weaver*, 296 S.C. 466, 469 n. 10, 373 S.E.2d 905, 909 n. 10 (Ct. App. 1988)

The circuit court's failure to supply a ruling prevents judicial review and illustrates why this Court should grant rehearing *en banc* because if the Court of Appeals is going to sweep away over a century of precedent, civil practice and procedure (and appellate procedure) by relieving trial courts of an obligation to explain their decisions, this represents a sea change in established procedure, fundamentally altering notions of procedural due process, and the entire Court should speak to this new standard. The function of an appellate court is to review a decision, not function as a trial court, which is the forum where litigants resolve disputes in an orderly and established procedure established by the *Rules of Civil Procedure*. Litigants cannot learn for the first time on appeal why their cases are dismissed because such a procedure jettisons all the truth seeking functions in an adversarial system of the trial courts.

The Court resolves disputed questions of fact and law for the first time on appeal.

As set forth above, neither this Court nor the Appellant knows why the circuit court dismissed her case. For the first time—on appeal—this Court analyzes the parties Lease, an

exercise the circuit court omitted, and in so doing parses the parties' lease terms in isolation and construes facts *against* the Appellant without affording her an opportunity to make her case. The Opinion under review analyzes three sections of the parties' lease, putting emphasis (again for the first time on appeal) in places favoring the Landlord while ignoring other provisions favoring the Tenant. Appellate courts refuse to address issues raised for the first time on appeal because the lower court had no opportunity to evaluate and rule on the issue. Yet here, Opinion No. 5964 reverses that well-developed principle of appellate practice and functions like a trial court to range far and wide construing disputed factual allegations *against* the Appellant even though the lower court gave no indication the lease provisions interpreted by this Court were the basis for its decision. This process and decision violates the precedent of the Supreme Court on this issue. See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2018):

> 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. See *Foman v. Davis*, 371 U.S. 178, 179, 182, 83 S.Ct. 227, 228, 230, 9 L.Ed2d 222, 224, 226 (1962) where a complaint is dismissed "for failure to state a claim upon which relief might be granted," leave to amend the complaint "should, as the rules require, be 'freely given'" (quoting Rule 15(a), Fed. R. Civ. P.)); *Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988) (holding "Dockside should have been given leave to amend its complaint" before it was finally dismissed pursuant to Rule 12(b), SCRCP (citing *Foman*, 371 U.S. at 182, 83 S.Ct. at 230, 9 L.Ed.2d at 226)). Rule 15(a) "strongly favors amendments and the court is encouraged to feely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting *Parker v. Spartanburg Sanitary Sewer Dist*. 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).
>
> The circuit court erred by failing even to consider allowing Skydive to amend its complaint. See *Patton*, 420 S.C. at 490, 804 S.E2d at 262 (holding the trial court's failure to exercise its discretion under Rule 15(a) is itself an abuse of discretion).

When the parties were before the lower court on June 3, 2021 (R.O.A. page 167), Appellant told the Court if it identified any deficiencies in the pleadings, the Appellant stood ready to amend

to correct them. See R.O.A. page 176: "If there are any deficiencies in my complaint, the Court can point them out and identify them, and I'll be happy to file an amended complaint to conform to any deficiencies in the pleading." The lower court never answered.

The *Skydive* case goes on to explain that in reviewing a 12(b)(6) motion, the court is required to confine itself to the allegations of the complaint, but here, not only did the circuit court not give Appellant a ruling, but also this Court, in reviewing the lack of decision, ranged far and wide engaging in an evidentiary analysis and interpretation of the contract without affording the Appellant to participate in the process. The record demonstrates the circuit court never gave Appellant an opportunity to address or correct or even respond to the Landlord's interpretation of the Lease and deprived the Appellant of the opportunity to make her record. The record, even though undeveloped because of the trial court's preemptive termination of the case, demonstrates that this Court's reading of the Lease is one-sided, construing isolated provisions of the lease against the Appellant and this not only inverts the 12(b)(6) standard but also completely rewrites precedent on evaluating such motions.

For example, in the first paragraph of Opinion 5964, the Court quotes the Lease with this emphasis:

> Tenant *shall surrender* to Landlord, *at the end of the term of this lease* or upon cancellation of this lease . . . (Opinion at page 2)

The Court ignores the critical disjunction "or upon cancellation of this lease," which is where Appellant would put the emphasis had she been afforded an opportunity, but since she had no idea the lower court was relying on this provision. As a result, the court denied her an opportunity to respond because the lower court never explained why it was dismissing the case, and the Appellant is learning of this interpretation **for the first time on appeal**. The disjunction "or" is an important provision since at the time the Landlord destroyed the Tenant's property, the Tenant occupied the

premises under an appeal Order staying ejectment, including a posting an appeal bond, which remains posted to this day. The Landlord made no effort to dissolve to dissolve the appeal bond or to ask the Magistrate for a put out Order, or to ask the Sheriff to effect an ejectment, and thus it is a highly disputed question of fact whether the Tenant did or did not occupy the premises pursuant to either a court Order or a holdover provision, or both.

As stated above, the Lease contains a holdover provision that increases the rent to 150% of the base rent, which the Tenant was paying, and it is an highly disputed question of fact and law as to whether the Tenant could remain in place under either the appeal bond staying the ejectment or as an holdover tenant as provided by the lease or both.

Finally, at the time the Landlord destroyed the building, the Tenant had filed and served a motion for temporarily restraining Order on March 19, 2019, to prevent the destruction of the building. See R.O.A. page 181, which the Landlord also ignored. The Affidavit in support of the motion says in applicable part:

> The City of Hanahan has now posted a police officer at our door, and instead of prosecuting the landlord for destroying the door, is standing guard to prevent us from entering the building. There is currently on file an Order of the Court authorizing us to be in possession so long as we pay the rent by the 5th of each month, which we have done. R.O.A. page 183

In short, the applicability or efficacy of the selected lease provisions as interpreted in isolation by the Court of Appeals **for the first time on appeal** is a highly disputed fact, and the rules of procedure, especially the rules limiting review to the complaint and inferences drawn from it, do not authorize an appellate court to make the initial judicial determination of disputed contractual provisions for the first time on appeal especially when the Court construes the provisions in the light most favorable to the Landlord.

The next provision of the Lease quoted by Opinion No. 5964 displays a more troublesome emphasis. On page 2, this Court quotes the Lease as follows:

> *It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises* when Tenant vacates shall be deemed to have been *abandoned by tenant . . .* (Opinion on page 2)

This inappropriate emphasis—**again raised for the first time on appeal** so that the Appellant has no opportunity to challenge it or develop the record—reduces the Appellate Court to Landlord's amanuensis or accessory, but the Court can never be an enabler to a lawbreaker:

> "The Courts in the due administration of law will not enforce a contract in violation of law, or permit plaintiff to recover upon a transaction against public policy and the policy of the law, even where the invalidity or illegality of the contract or transaction is not specifically pleaded" *Brown v. Newell*, 64 S.C. 27, 35, 418 S.E. 835 (S.C. 1902)

Even Respondent conceded the Appellant was entitled to a trial on the destruction of her property, see R.O.A. page 174: "I will grant you that's [destruction of plaintiff's property] a factual issue, and if we want to have a trial on whether there was personal property in the building when it was demolished, who it belonged to, and whether—even if any of it belonged to her, she should had removed it, having received two notices to get her belongings out of the building, we can do that." The Court ignores this concession and it ignores—again, **for the first time on appeal**—the obvious, undisputed fact that the Tenant **never vacated**. Thus, if the Court is going to put emphasis, based on the record and the mandatory standard of review at the motion to dismiss stage, the emphasis should be:

> It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises *when Tenant vacates* shall be deemed to have been abandoned by tenant . . .

Equally troubling is the fact that the Opinion under review itself refutes itself. After placing emphasis on the provision of the Lease that governs "when Tenant vacates," the Court notes on page 4, the Tenant never vacated: "After Santos failed to vacate the premises, . . ." (Opinion at

page 4) Obviously, it cannot be both, and the record shows that not only did Santos not vacate, she was doing everything in her power to avoid the destruction of her property. The dispute over where the emphasis goes emphasizes how inappropriate it is for any debate about the Lease to be adjudicated for the first time on appeal. Clearly, the trial court did not apply the proper standard of review because it did not apply **any** standard of review, at least none that it shared.

The third quoted provision demonstrates the same misapplied standard discussed above. Here again, the Court of Appeals is taking up an isolated Lease provision **for the first time on appeal** and construes it in the light most favorable to the Landlord, the precise opposite of the standard of review. The Tenant's conclusions about the lease are just as plausible as the Landlord's, but she is foreclosed from making a record. On page 2 of Opinion 5964, the Court quotes the lease placing emphasis as follows:

> If Tenant fails to pay Monthly Base Rental including Additional Rent . . . this Agreement shall be in default . . . . In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and *re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage*. (Opinion at page 2)

The Court overlooks that this Lease provision is a material implication: if p then q. The Court improperly interprets isolated contract provisions, placing emphasis against the Appellant in a process that excludes the Appellant **for the first time on appeal**. This method violates the rules of logic (and grammar) by ignoring the "If" at the beginning of the clause. The record demonstrates that the Tenant was paying the Monthly Base Rental including Additional Rent. The Record also demonstrates that the Tenant possessed the property under an appeal bond Order and had pending at the time of the destruction a motion to enjoin the destruction of the plaintiff's property. The point is that the Appellate Court is substituting its analysis for the missing analysis of the circuit court and in so doing, construing isolated contractual provisions in a vacuum in the

light most favorable to the Landlord. These questions are questions of disputed fact and law, and the appellate court is not free to answer questions not asked while resolving every doubt in favor of the Landlord for the first time on appeal. Not only does this violate the standard of review, but more importantly, when it occurs for the first time on appeal, the Appellant has no part in the process. Because the circuit court never informed Appellant why she was tossed out of court, it prevented her any opportunity to meet the Landlord's allegations and create a meaningful record on appeal.

The Court also overlooks the law of the case that the Tenant could not appeal her ejectment

On page 4 of the Opinion under review, the Court states "On June 6, 2019, the circuit court affirmed the magistrates' order of ejectment. Santos appealed to this court; however she only appealed the magistrate's award of attorney's fees to HIH." This is a demonstrably incorrect.

The record demonstrates the Tenant did appeal the ejectment, and while that case was on appeal, the Landlord destroyed the building on March 21 or 22, 2019. Therefore, when the ejectment appeal came before the Circuit Court three months later on June 19, 2019, the Circuit Court determined that the ejectment action was moot because the Landlord destroyed the premises and entered an Order so holding. See R.O.A. page 49. This un-appealed Order—as it pertained to ejectment says in its entirety: "The magistrate's court judge's award of attorney fees is affirmed. All other issues in this appeal are now moot as the subject property has been demolished." Neither the Landlord nor the Tenant appealed this decision regarding the ejectment, and it is the law of the case. "An unappealed ruling is the law of the case and requires affirmance." *Transp. Ins. Co. & Flagstar Corp. v. S. C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010) To say that the Tenant never appealed the ejectment action is an incorrect statement of fact and law. The

Landlord's destruction of the premises prevented the appeal from being heard, and in overlooking these indisputable facts and law rewards the Landlord for improper conduct.

The Court applies an incorrect statement of law because a Lease cannot bestow on a Landlord the right to break the law.

An additional erroneous application of South Carolina law (and another compelling reason why this case should be reviewed *en banc*) is the Court's conclusion that the Lease—or any contract—provides a party with leave to disobey South Carolina law. Statutory provisions and case law make clear that a Landlord cannot exercise self-help in retaking possession of a building unless it can be accomplished "without breach of the peace." *Barbee v. Winnsboro Granite Corp.*, 190 S.C. 245, 2 S.E.2d 737, 738 (1939), a case even cited by the Landlord (see Respondent's brief, page 7). This case holds:

> "As I understand it, the rule in this state is, where the tenancy had terminated, the landlord may enter upon and retake possession of the premises, and he commits no trespass upon the real estate in so doing, even if force is used in making such entry, and therefore, in such a case, he is not liable to a civil action for trespass. **If, however, the landlord, in making such entry, commits a trespass upon the person of the outgoing tenant, or upon his personal property, he may be liable to a civil action for such trespass.** But the simple removal of the tenant's personal property from the premises which had been rented, does not constitute a trespass, **unless it is effected by the use of unnecessary force, whereby such property is destroyed or injured**."
>
> . . .
>
> The evidence is uncontroverted that the [Landlord] took possession peaceably, and having gained entrance, **simply removed the [Tenant's] household effects from the premises, without injury to any of them, and carefully stored them.** (emphasis added)

It is not clear if this Court has contemplated the permission to break the law implied in the Opinion under review. Either way, the General Assembly makes contracts that indemnify a tortfeasor from negligence unlawful. See § 32-2-10, S. C. Code, ann.: "Hold harmless clauses in certain construction contracts" outlawed. Parties are not permitted to enter into contracts in which the performance of the contract contemplates an unlawful act. See *Am.Jur2d*, Contracts, § 310:

"The doctrine of *in pari delicto* precludes relief on an illegal contract." Of course, here, the parties are not *in pari delicto* because it is only the Landlord who uses isolated portions of the contract to justify an illegal act. Here the Tenant is innocent of wrongdoing, and it is only the Landlord who urges the Court to read fragmented portions of the contract to justify an illegal act. Thus, when only one party is seeking to exploit isolated provisions of a contract to justify an illegal act, the analysis is more properly one of measuring against public policy:

> Generally citing public interest or public policy, courts will not permit a party to excuse its liability through exculpatory clauses for intentional harms or for reckless wanton, or gross negligence. Nor may contractual exculpatory clauses relieve one from liability for violation of the law, and liability for knowing or bad faith breaches of contract can never be limited. *Am. Jur. 2d*, Contracts, § 286

Thus, the Opinion under review not only rewrites years of civil procedure, but also provides cover to any Landlord who chooses to take matters into its own hands, reducing the Court to an accessory to an unlawful act. (Historically, the lawbooks are full of cases of courts going wrong, but history also teaches that when presented with an opportunity for correction, the judiciary always, ultimately, self-corrects because the engine of common law is reason.) Obviously, the Landlord knew it was out of bounds because it asked city police offices to stand guard instead of turning the matter over to the Sheriff as required by statute. (And, as set forth above, the Landlord conceded Appellant is entitled to a trial on the destruction of her property.) If every municipal police force in the state is now authorized to effect ejectments, the State will have to brace for bad results. The General Assembly put Sheriffs in charge of ejectments for a reason, and this Court's Opinion, unless reconsidered and modified, provides case law justification for each and every Landlord who dispenses with the rules laid out by the General Assembly for ejectment and takes matters into its own hands.

By conducting a merits analysis for the first time on appeal, the Court denies the Appellant fundamental procedural due process because she has no opportunity to rebut conclusions disclosed for the first time on appeal.

Procedural due process requires that a party be afforded an opportunity to be heard in a meaningful manner at a meaningful time. As set forth above, the circuit court never disclosed why it was dismissing Appellant's complaint, and the Appellant is learning the reason for the first time on appeal which deprives her of an opportunity to rebut improper inferences and make a record. The short colloquy with the lower court gives no indication of the trial court's thinking other than a suggestion the trial judge thought the matter was barred by *res judicata*. The lower court's written Order—or lack of written Order—gives no indication, and this Court goes in a completely different direction interpreting a contract without affording the Appellant an opportunity to be heard. This process violates fundamental procedural due process.

Conclusion

For reasons set forth above, the Appellant requests that this Court reconsider Opinion No. 5964 and give the parties an opportunity to re-brief the specific findings in the Opinion under review and re-argue the case to the entire members of the Court of Appeals because the Opinion fundamentally changes civil procedure. Clearly, the Opinion under review construes the facts and the law in the light most favorable to the Landlord while freezing the Appellant out of the process since it occurs for the first time on appeal and not as an analysis of a lower court's decision. The record demonstrates that the Circuit Court never gave any indication of why it reached the decision it did, and when the Appellate Court makes findings **for the first time on appeal**, the Appellant is cut out of the process and left incapable making a meaningful record. The Opinion assumes that any amendment to Appellant's complaint would be futile, but such a conclusion is mere speculation and not supported by either the record or the facts. The Respondent conceded

Appellant was entitled to a trial on the facts, and even the Court's Opinion tacitly recognizes Appellant possesses a viable claim, at least at the 12(b)(6) stage, because it adopts contradictory findings to sustain itself. This alone demonstrates the error in dismissing the Appellant's claim at the demurrer stage. As stated in Appellant's Brief, this appeal from a 12(b)(6) dismissal should not be before this Court until the lower court provides a ruling that can be reviewed. The circuit court failed to fulfill its responsibilities to adjudicate a serious case as required by the *Rules of Civil Procedure*. Rule 1 of the *South Carolina Rules of Civil Procedure* says the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." The circuit court failed to do this. It is improper for an appellate court to take up a motion to dismiss in the first instance. See *Spence v. Spence*, 368 S. C. 106, 628 S.E.2d 869 (2006) for the South Carolina procedure governing motions to dismiss.

Finally, if this Court is going to rewrite motion practice in the State, it should do so by an Order issued by the entire Court.

Respectfully, the case should be remanded to the circuit court with instructions to explain why the case is dismissed and further instructions to allow the Appellant an opportunity to address identified deficiencies as required by the controlling precedent of the South Carolina Supreme Court.

Respectfully submitted.

February 6, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

Case No. 2021-CP-08-00513
Appellate Tracking No.: 2021-00768
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Aracelis Santos, ……Appellant,

vs.

Harris Investment Holdings, L.L.C.,
the City of Hanahan, John Doe #1,
and John Doe #2 ……..……..Defendants,

of whom

Harris Investment Holdings, L.L.C. is ……..Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on the Respondent, Harris Investment Holdings, L.L.C., by depositing a copy of it in the United States Mail, postage prepaid, on February 6, 2023, addressed to the attorneys of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401-2239. (I also sent a copy to counsel for the City of Hanahan and John Doe #1 and John Doe #2, Stafford J. McQuillin at P. O. Box 340, Charleston, S. C. 29402.)

February 6, 2023

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Hon. Jenny A. Kitchings,
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Re: Aracelis Santos v. Harris Investment Holdings, L.L.C., *et. al.*
Opinion No.: 5964
Case Nos.: 2021-CP-08-00513
Appellate Tracking No.: 2021-00768
(companion case No.: 2019-00169)

Dear Ms. Kitchings,

I filed Petitioner's Petition for Rehearing and Rehearing *en banc* (and proof of service) electronically, and I am transmitting the filing fee under cover of this letter. By copy of this letter, I am providing a paper copy of each to opposing counsel. Please let me know if you require anything further.

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/

enclosure: filing fee, Check No. 20226

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