

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Deadra Jefferson, Circuit Court Judge

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C. A. NO. 12-CP-26-4852

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Jacklyn J. Donevant . . . . . Respondent

v.

Town of Surfside Beach. . . . . Appellant

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APPELLANT'S REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR  
REHEARING AND SUGGESTION FOR REHEARING EN BANC

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Attorney for the Respondent

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SEP 30 2015

SC Court of Appeals

**The Respondent's Response to the Petition is Untimely and Should Not Be Considered**

Appellant's Petition was timely filed and served on September 9, 2015. S.C. R. App. P. 240(d) required Appellant to file a response within ten days. Appellant did not file a response until September 24, 2015.<sup>1</sup> No motion to extend the time has been filed. *See, e.g., Calhoun v Calhoun*, 529 S.E.2d 14 (S.C. 2000) (motion denied where untimely filed). For these reasons, the court should not consider the Respondent's Reply. In the event it is considered, Appellant replies as follows.

**The Town's Petition Does Not Merely Attempt to Reargue the Case and a Suggestion for Rehearing En Banc Should Include Prior Arguments a Party Deems to be of Exceptional Importance**

Donevant begins by arguing that the Petition is merely an attempt to reargue the case. Donevant fails to account for the fact that the petition includes a suggestion for rehearing *en banc*. Rehearing *en banc* is appropriate "when the proceeding involves a question of exceptional importance." Jean H. Toal, *Appellate Practice in South Carolina* (2d ed. 2002) (citing *Davenport v. Cotton Hope Plantation*, 482 S.E.2d 569 (S.C. Ct. App. 1997)). Because the suggestion for rehearing rests on the argument that questions of exceptional importance are involved, it is entirely correct to explain the importance of these questions even if those questions were argued to the panel that issued the decision. The questions of exceptional importance include:

1. The holding expands the tort of public policy discharge beyond its long-established parameters and erodes the doctrine of at-will employment.

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<sup>1</sup> This Reply is timely filed and served. Replies must be filed within five days of service of the response, not including intervening weekend days per S.C. R. App. P. 263. The Reply was therefore due on or before October 1, 2015.

2. The holding immunizes a long list of bureaucrats from any oversight by management regarding their statutory duties.
3. The holding would create economic chaos in the construction industry because it states building officials must issue stop work orders for building code violations.
4. The panel abandons the first rule of statutory construction that requires application of the plain meaning of a statute.
5. The panel credited an expert's testimony on the meaning of regulations instead of making that legal determination themselves.

Furthermore, the petition does not merely restate arguments but includes arguments on matters that the panel misapprehended or committed error. Some of these issues include:

1. The panel misapprehended the legal significance of testimony by an expert regarding the meaning of regulations.
2. The panel did not consider the economic chaos that would be created by ruling that building inspectors must issue stop work orders for all building code violations
3. The panel misconstrued the holding in *Antley v. Shepherd* that public employees who insist on performing a discretionary duty may be terminated without violating public policy.

**Appellant did not Waive a Challenge to the Panel's Reliance on the Testimony of an Expert Regarding the Meaning of the Law**

The panel improperly credited the testimony of expert Gary Wiggins that a building official was required to issue a stop work order for building code violations. Donevant contends that the Town cannot challenge this reliance because the admissibility of Wiggins testimony was not an appeal issue. Donevant misapprehends the Town's challenge. The admission of Wiggins's

testimony was not challenged on appeal because it is not relevant. The Town is appealing the denial of its motions for directed verdict and judgment notwithstanding the verdict. Judge Jefferson (the trial judge) did not credit the testimony of Wiggins regarding the meaning of the stop work ordinance in ruling on these motions. (R. pp. 355-384). In fact, Judge Jefferson's interpretation of the stop work order ordinance was that Donevant was not required to issue a stop work order. (R. p. 366). Therefore, the Town had no reason to make Wiggin's testimony regarding the meaning of the ordinance an appeal issue. The Court of Appeals panel raised Wiggin's testimony *sua sponte* and improperly relied upon it. The Town is therefore entitled to challenge an improper legal conclusion by the panel that the panel raised *sua sponte*. *See, e.g., Smith v. Phillips*, 458 S.E.2d 427 (S.C. 1995) (court of appeals should not raise issues *sua sponte*).

**Remaining Issues Regarding Expansion of the Public Policy Exception to At-Will Employment**

The remaining issues as to why the panel was incorrect in expanding the tort of public policy exception to at-will employment are adequately covered in the Petition. Therefore, they will not be re-examined in this Reply.



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September 30, 2015

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Deadra Jefferson, Circuit Court Judge

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C. A. NO. 12-CP-26-4852

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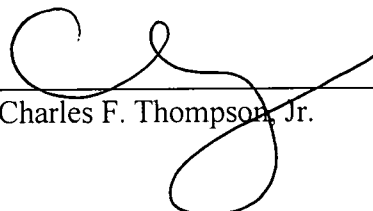
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**PROOF OF SERVICE**

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I hereby certify that I have served one copy of the Appellant's Reply to respondent's Response to the Petition for Rehearing and Suggestion of Rehearing En Banc by depositing a copy of it in the United States Mail, postage prepaid, and addressed to her attorney of record: Henrietta Golding, Esquire McNair Law Firm 2411 N. Oak Street, Suite 206 Myrtle Beach S.C. 29577

September 30, 2015

  
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Charles F. Thompson, Jr.