

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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Case No.: 2013-CP-40-4051

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Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Petitioner,

v.

City of Columbia Board of Zoning Appeals,.....Respondent.

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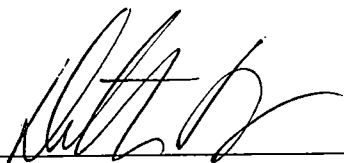
APPELLANT'S RETURN TO MOTION

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The Appellant pursuant to Rule 240 (e), SCARC, hereby makes this return to the November 18, 2016, Respondent's Motion for Costs filed by the Respondent. The underlying appeal stems from the trial court's affirming the Respondent's decision to deny the special exception to the Appellant in the above-mentioned action. The basis of the return is the following: 1) This appellate court has the discretion to deny this request for attorney fees or reduce the fees based upon the respective financial conditions of the parties involved in this action and based upon the reasonableness of the attorney fees.

Pursuant to Rule 240 (e) and 240(c) 2, the Appellant submits the accompanying memorandum in support of its return.

November 28, 2016



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Dietrich A. Lake  
The Lake Law Firm  
1034 Briargate Circle, Ste. 201  
Columbia, SC 29210  
(803) 750-8311  
Attorney for Appellant

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APPELLANT'S MEMORANDUM IN DENIAL OF MOTION FOR COSTS

COUNTER-STATEMENT TO MOTION PRESENTED

1) The Respondent's motion requesting attorney fees from this appeal should be denied.

STATEMENT OF THE CASE

The Appellant filed a letter of agency and an application for a special exception for a liquor store located at 5050 Fairfield Road, Columbia, South Carolina on May 15, 2013. The application summary lists the case number as 13-041-SE and states that the building is located in a C-3 (General Commercial) zoning district.

A hearing was held before the Respondent on June 11, 2013, to consider the Appellant's request for a special exception to operate a liquor store. The Respondent heard oral arguments from the parties against and in favor of granting the request for a

special exception to operate a liquor store. At the conclusion of the hearing, the Appellant's request for a special exception was denied.

A hearing involving the Appellant and Respondent was held in a Richland County court on March 7, 2014, before the Honorable Eugene C. Griffith, Jr. The Appellant presented a brief and the Respondent provided the court with Memorandum of Law in Opposition to Petition for Appeal for the court's review. In addition, counsel for the Appellant presented oral arguments to the court regarding the facts and law in favor of reversing the Respondent's decision and granting the special exception; counsel for the Respondent presented oral arguments in opposition to affirming the Respondent's decision and denying the Appellant's special request. On June 4, 2014, the Circuit Court issued an Order affirming the Respondent's decision to deny the special exception to the Appellant.

The Appellant timely filed his Motion for Reconsideration on June 11, 2014. The Appellant's Motion for Reconsideration was denied by Order of July 30, 2014. The Appellant filed his Notice of Appeal on August 25, 2014. On March 30, 2016, the Court of Appeals filed an unpublished *per curiam* opinion affirming the decision in the circuit court. The Appellant timely filed a Petition for Rehearing, which the Court of Appeals denied in an order filed on May 20, 2016. By order of November 9, 2016, the Supreme Court denied the Appellant's Writ of Certiorari.

#### ARGUMENT

I

THE APPELLATE COURT HAS DISCRETION TO DENY THE  
REQUEST FOR ATTORNEY FEES.

The Appellant contends that the Respondent's request for attorney fees be denied due to financial hardship and ability to pay. The Appellant testified at the zoning board hearing that he opened the liquor store based upon obtaining his liquor license from the Department of Revenue and that he never was advised that he had to obtain a special exception before he opened the liquor store. The Appellant further testified that he expended a large sum of money to improve and enhance the store before opening the liquor store and in anticipation of obtaining the special exception to keep open the liquor store. The Appellant was required to further expend a great of monies for attorney fees and costs in the appeal of this denial of granting the special exception.

At the time of the initial appeal, counsel for the Respondent was an employee of the City of Columbia; therefore, there were no attorney fees associated with his representation of the Respondent. The city attorney and his representatives are required to appear on behalf of the City of Columbia or City Council in all matters unless the city attorney has designated or employed a party to perform duties on behalf of the city attorney. *Sec. 2-115 of the City of Columbia Code of Ordinances*. The Appellant contends that there are no fees for counsel for Respondent as a designee of the city attorney nor would there likely have been any attorney fees for the Respondent had counsel for the Respondent not taken the case with him into private practice.

In addition, the City of Columbia is in a greater financial condition than the Appellant and is in a better position to absorb any of the fees associated with counsel for the Respondent taking this case into private practice with him when he left working for the City of Columbia. Furthermore, the Appellant would contend that the attorney fees are not reasonable in light of the limited other costs of the appeal for the

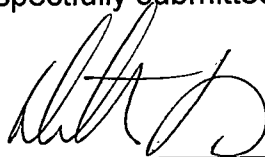
Respondent in the amount of \$109.84.

The Appellant requests that this appellate court consider the Appellant's ability to pay the attorney's fee as well as the financial conditions of both the Appellant and the Respondent.

CONCLUSION

The Respondent's request for attorney fees would create an undue hardship for the Appellant who is financially vulnerable due to the expenditures in opening the business and appealing the decision of the trial court. The Respondent's request for attorney fees are not reasonable in light of the total costs of Respondent's other expenses related to this appeal. In addition, the attorney fees are not reasonable because there are no fees for counsel for Respondent as a designee of the city attorney and because this expense only may have incurred as a result of counsel for the Respondent taking this appellate case into private practice with him when he left the employment of the City of Columbia. Therefore, the Respondent's request for attorney fees should be denied.

Respectfully submitted,



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803/750-8311 office  
803/750-8312 fax  
ATTORNEY FOR APPELLANT

November 28, 2016

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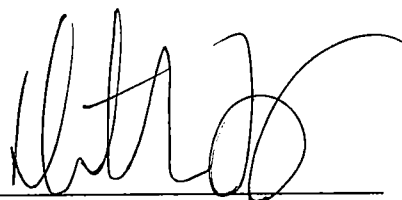
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PROOF OF SERVICE

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The undersigned counsel for the Appellant hereby certifies that the Appellant's Return and Memorandum in Support of Denying the Respondent's Motion for costs was served and delivered upon counsel for the Respondent by U.S. mail to: Peter M. Balthazor, Riley Pope & Laney, LLC, P.O. Box 11412, Columbia, SC 29211.

November 28, 2016



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Attorney for Appellant

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Columbia, SC 29210***

***Office 803/ 750-8311  
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***Dietrich A. Lake***

November 28, 2016

**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

**RECEIVED**

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SC Court of Appeals

Re: Andreas Ganotakis, v. City of Columbia Board  
Appellate Case No.: 2014-001824

Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of the following materials: 1) Appellants Return; 2) Appellants Memorandum in Support of Denying the Respondent's Motion for Costs; and 3) Proof of service. Please file the originals and return the extra stamped copies.

By copy of this letter, I am serving opposing counsels with these documents.

With kind regards,



Dietrich A. Lake

cc: Peter M. Balthazor (w/enclosures)