

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKLEY COUNTY  
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

**RECEIVED**  
MAY 01 2017  
**SC Court of Appeals**

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Case No.: 2016-CP-08-01261  
Appellate Case No.: 2017-000796  
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Benjamin Reyna, d/b/a, El Alamo Restaurant,.....Appellant,

vs.

The Town of Hanahan, ..... Respondent.

\_\_\_\_\_  
APPELLANT'S REPLY  
\_\_\_\_\_

Pursuant to Rule 240(f), *South Carolina Appellate Court Rules*, the appellant, Benjamin Reyna, d/b/a, El Alamo Restaurant, files the following Reply to Respondent's Return:

The Respondent asserts that *Wells Fargo*<sup>1</sup> controls even though the case is currently under review by the Supreme Court. Because the case is under review,

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<sup>1</sup> 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015)

appellant suggested the Court hold briefing in abeyance until the Supreme Court issues its Opinion on *Wells Fargo*.

Respondent asserts that Rule 203(b)(1) controls the manner in which the Berkeley County Clerk of Court must furnish notices to lawyers. Rule 203 does not direct the Clerk of Court. Rather, it sets the time period for filing an appeal. It is consistent with the rules of procedure governing Clerks of Court. Both Rule 77 and Rule 203 require **written** notice, and as pointed out and quoted in appellant's original motion, the Supreme Court drafted the electronic filing rules to make clear that counties not participating in the e-filing pilot program must still furnish notice by first class mail. (The Supreme Court's rule is quoted on page 4 of appellant's motion.)

This Court's Order of Dismissal in *Wells Fargo* is inconsistent with the Supreme Court's rules governing the pilot program. In fact, the Order in *Wells Fargo* does not address the Supreme Court's rules on the e-filing pilot program. Respondent makes appellant's argument for him on page 3, where he points out that Spartanburg County was not an e-filing county at time of the *Wells Fargo* decision. Appellant made the same point in his motion, and respondent's legal position is paradoxical to the extent it suggests that counties not participating in the e-filing pilot program (such as Berkeley County now or Spartanburg County in 2015) are subject to the rules governing e-filing. This is especially true because, as quoted on page 4 of appellant's motion, the Supreme Court emphasizes that the counties not participating in the pilot program must adhere to the rules of civil procedure. Rule 77 is clear (and consistent with Appellate Court Rule 203), and under Rule 77, an e-notice is not "written" notice of entry of judgment.

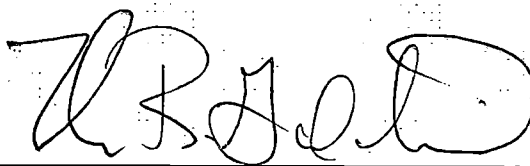
Moreover, the respondent is mistaken that service under Rule 5 is “complete upon mailing.” In order to be “complete upon mailing,” the papers must be mailed first class mail to the correct address. The term “complete upon mailing” is not a term in a vacuum: “Service upon the attorney . . . shall be made by delivering a copy to him or by mailing it to him at his last known address, or , if no address is known, by leaving it with the clerk of court.” The purpose of the rules is to insure that parties receive timely and actual notice. They are not recipes for traps to “create mischief.”

Finally, respondent takes exception to being identified for sharp practice. However, the respondent here engaged in sharp practice, not only ignoring the appellant’s e-mail request for information about the status of the Order, but also neglecting to mention that the parties had several telephone conversations during which respondent’s counsel remained silent about the status of the Order. In fact, appellant’s counsel first learned of the January 27<sup>th</sup> e-filing of the Order when a lawyer from the Nelson Mullens firm confronted appellant with the alleged passed deadline during a pre-trial hearing in Magistrate’s Court on a related matter. Obviously, he knew about the January 27<sup>th</sup> electronic filing, which strongly suggests that respondent’s counsel was willfully withholding notice from appellant’s counsel in an effort to set a procedural trap. Whether respondent’s counsel intentionally set a trap or not, the point is that the rules should be enforced consistently, and Rule 77 is not ambiguous, uses the mandatory verb “shall,” and is the established practice. Because 16 counties are participating in an e-filing experiment does not mean Rule 77 ceases to exist.

In conclusion, it appears the Supreme Court is poised to offer clarification on *Wells Fargo*. The Supreme Court might affirm the Order, modify the Order, remand the Order, or reverse the Order. Until that time no one knows whether *Wells Fargo* is or is not authoritative. The respondent's legal position is inconsistent. On the one hand respondent complains about delay in reaching the case on the merits, while on the other hand, simultaneously doing everything possible to prevent addressing the case on the merits. Just as the City of Hanahan concludes its Return by formulating a list of grievances and harms, so too can this appellant compile a list of grievances and harms against the Town of Hanahan, whom the appellant accuses of using its governmental power to target and punish Hispanics based on nothing more than prejudice. The history books are full of accounts of governments discriminating against minority populations while the casebooks are full of accounts of courts preventing government overreach and protecting the most vulnerable in our society from the tyranny of the majority. Therefore, it serves both appellant and respondent for the case to be decided on its merits and not thrown out based on respondent's tortured misreading of the clear rules of procedure.

Respectfully submitted,

April 28, 2017



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Benjamin Reyna, d/b/a, El Alamo Restaurant,.....Appellant,


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The Town of Hanahan, ..... Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return to Motion to Hold Appeal in Abeyance, on the Respondent, The City of Hanahan, by depositing a copy of it in the United States Mail, postage prepaid, on April 28, 2017, addressed to its attorney of record, Stafford John McQuillin, III, P. O. Box 340, Charleston, S. C. 29402.

April 28, 2017



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**SC Court of Appeals**

Hon. Jenny A. Kitchings,  
Clerk of Court  
S. C. Court of Appeals  
P. O. Box 11629  
Columbia, S. C. 29211

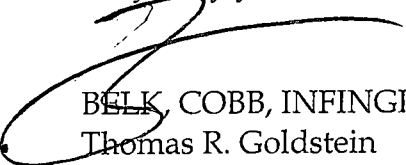
Re: Benjamin Reyna vs. Town of Hanahan; Case No.: 2016-CP-08-1261  
Appellate Tracking Number: 2017-000796

Dear Ms. Kitchings,

I enclose an original and seven copies of my reply to respondent's return. Would you be so kind as to file the motion and return an extra copy to me in the self, addressed, return envelope? By copy of this letter, I am providing a copy to opposing counsel.

Moreover, can I get clarification on your letter of April 14, 2017? In that letter, your office states the Initial Brief was due on or before April 13<sup>th</sup>. However, since the appellant filed a motion to dismiss on April 7<sup>th</sup>, I am assuming that briefing is suspended in accordance with Rule 240(b). If I am correct in my conclusion, there is no need to respond. However, if I am in error, I ask that you let me know so that I can file the proper motion. I thank you for your attention to this request. With kind regards, I am

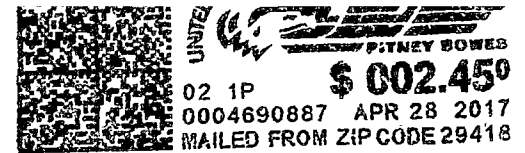
Very truly yours,



BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Thomas R. Goldstein

TRG/  
enclosure: Reply, return envelope #17774

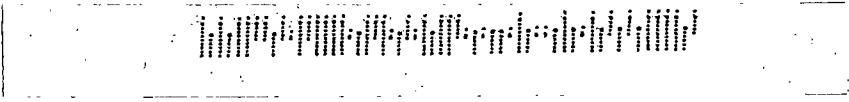
cc: (with enclosure)  
Mac McQuillin, Esq.



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# First Class Mail

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