

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

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C.A. No. 2016-CP-08-01261  
Appellate Case No. 2017-000796

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OCT 09 2018

SC Court of Appeals

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

v.

The Town of Hanahan.....Respondent.

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**RETURN TO APPELLANT'S MOTION  
FOR LEAVE TO FILE AMENDED INITIAL BRIEF**

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The City of Hanahan (the "City") submits this brief return in opposition to Appellant's motion for leave to file amended initial brief. As set forth in the City's Initial Respondent's Brief, the City struggled to respond to the Initial Appellant's Brief because Appellant failed to present a statement of issues on appeal and failed to present properly preserved arguments. Only now, after having the benefit of reviewing the City's brief, does the Appellant take any steps to clarify what he presented to this Court.

In its brief, the City did not ask for dismissal but rather argued that the trial court should be affirmed because the Appellant has failed to present any preserved issues for this Court's review. (*See* City's brief at Sections I and II). For this reason, much of

Appellant's argument in his motion is inapplicable, including its reference to the stay provided by Rule 240(b), SCACR.

As far as the proposed statement of issues on appeal, they are not a verbatim recitation of the issue headings.<sup>1</sup> The City suspects this is because the Appellant has realized that those headings do not satisfy Rule 208, SCACR and its mandate that "[b]road general statements may be disregarded by the appellate court." This omission and the proposed fix goes well beyond "mere scrivener's error" or "typographical error."

Appellant appears to rely on a Rule 15, SCRCP standard, which provides a liberal right to amend. The Appellate Court Rules do not include the same standard, which is likely because the rules relating to the record and the standards for error preservation limit the evidence and the arguments that will be considered by South Carolina Appellate Courts. Similarly, a party cannot use its reply brief to correct deficiencies in its appellant's brief. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("Additionally, even though [Appellant] more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.>").

The City filed its brief in good faith based on the initial brief filed by the Appellant. The City's brief was more difficult to draft based on this omission of the statement of issues on appeal because the City had to guess what was being argued. In addition, should the motion be granted, the City would need to amend its brief. Thus, the City would suffer prejudice if Appellant is allowed to amend its initial brief now.

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<sup>1</sup> The City further notes that the issue headings for Appellant's Argument 2 are presented together on page 9 of the brief and do not appear to be associated with any particular argument thereafter.

Appellant is free to make these argument in its reply, but it should not be permitted to amend its initial Appellant's brief in an attempt to correct problems pointed out by the City. For these reasons, the motion should be denied.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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*Attorneys for Respondent*

Dated: October 2, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Dale Van Slambrook, Special Circuit Court Judge

Case No. 2016-CP-08-01261

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SC Court of Appeals

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

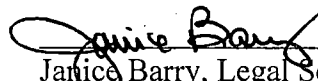
v.

The Town of Hanahan ..... Respondent

**PROOF OF SERVICE**

I certify that I have served the Respondent's, *The Town of Hanahan's Return to Appellant's Motion for Leave to File Amended Initial Brief* on all attorneys of record by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2018, addressed to

Thomas R. Goldstein  
Belk, Cobb, Infinger & Goldstein P.A.  
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Janice Barry, Legal Secretary  
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October 2, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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Re: Benjamin Reyna, d/b/a El Alamo Restaurant v. The Town of Hanahan  
Appellate Case No. 2017-000796

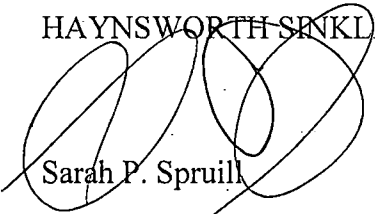
Dear Ms. Kitchings:

Enclosed herewith for filing is an original and seven (7) copies of Respondent's Return to Appellant's Motion for Leave to File Amended Initial Brief regarding the above-referenced case together with a Proof of Service. Please file the originals and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely yours,

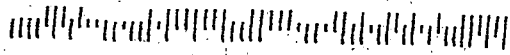
HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/jmb  
Enclosures

cc: Thomas R. Goldstein  
Mac McQuillin (via email only)



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