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

Case No.: 2016-CP-08-01261
Appellate Case No.: 2017-000796

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

vs.

The Town of Hanahan, ... Respondent.

APPELLANT'S REPLY TO RESPONDENT'S RETURN

Pursuant to Rule 240(f), *South Carolina Appellate Court Rules*, the Appellant replies to Respondent's Return as follows:

As set forth in the Appellant's original January 10, 2019, motion, the Appellant filed two versions of his Initial Brief with this Court, "Brief No. 1" and "Brief No. 2." "Brief No. 1" is the Appellant's original brief, with the 42-word edit that Respondent contended should result in dismissal of the entire appeal even though Appellant set out the Statement of Issues on Appeal in both the Table of Contents and before each separately numbered Argument. Instead of consenting to an amendment to add the Statement separately, Respondent, consistent with the sharp practice exhibited before in this appeal (Respondent attempted to have Appellant's case dismissed on a technicality,

relying on a case on which the Supreme Court had granted *certiorari*), withheld consent to correct the minor defect and instead sought dismissal.

This hyper-technical position left Appellant with no choice but to involve the Court by seeking permission to amend his brief, which the Court granted by Order dated November 21, 2018. This Court's Order did not limit Appellant's amendments to the originally proposed 42-word proposed amendment—the same 42-word amendment the Respondent refused to allow by consent. Appellant recognized that the Respondent "opened the door" to amendments, a just result for a party seeking to disadvantage an opponent over a minor omission. However, Appellant acknowledged that reasonable minds could disagree over whether the Court's November 21, 2018, Order does or does not limit Appellant's amendments to 42 words, and for that reason, the Appellant submitted both briefs and asked the Court for permission to file Brief No. 2, the rewritten version of his Initial Brief. Respondent mischaracterizes Brief No. 2 as "an entirely new initial brief." (Respondent's Return at page 2.) However, Respondent refutes this assertion by providing highlighting the edits of Brief No. 2 in its Return, although conceding in footnote 1 that they are not completely accurate. From these highlighted edits, the Court can see that the changes are not material and are the same arguments better organized, the result of the Appellant having additional time—time granted him because Respondent withheld consent to allow the insertion of a Statement of Issues on Appeal in Appellant's initial brief. The biggest change is Appellant's treatment of the evidence below in a separately numbered argument instead of blending it in the discussion of substantive due process. Improving organizational

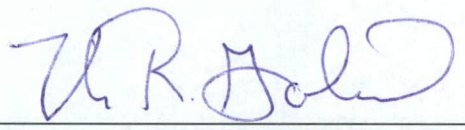
clarity assists not only the Court in deciding the case, but also assists the Respondent in formulating a response. The Respondent identifies no prejudice.

In short, this editing dispute is a tempest in a teapot, and an embarrassing wrangling over technicalities that in an earlier time would be resolved without burdening the Court. The edits in "Brief No. 2" are nothing more than better organization of the same arguments presented in "Brief No. 1." Respondent can identify no prejudice from Appellant changing, for example, "at every page" to "almost any page." Appellant never objected to Respondent having as much time as it desires to edit its Respondent's brief if it believes changes are necessary to address Appellant's arguments, and if the Court allows "Brief No. 2," then, of course, Respondent is entitled to likewise edit its response. Finally, Respondent is solely responsible for this current battle-of-the-edits because it sought to exploit an immaterial defect in Appellant's Initial Brief that should have been resolved by consent.

In conclusion, the Appellant asks that the Court accept Brief No. 2 as Appellant's Initial Brief, grant the Respondent as much time as it requests to address anything it believes necessary, and to hold in abeyance the filing of Appellant's Reply Brief pending resolution of Appellant's request for leave to file Brief No. 2. as his initial brief.

Respectfully submitted,

January 28, 2019



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PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return on the Respondent, The Town of Hanahan, by depositing a copy of it in the United States Mail, postage prepaid, on January 28th, 2019, addressed to its attorney of record, Stafford John McQuillin, III, P. O. Box 340, Charleston, S. C. 29402.

January 28, 2019

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January 28, 2019

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 Case No.: 2017-000796

Dear Ms. Kitchings,

As allowed by Rule 240(f) *South Carolina Appellate Court Rules*, I am enclosing an original and six copies of our Reply to Respondent's Return. Would you be so kind as to file this with the Court? 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: Reply, proof of service
cc: (with enclosure)
Mac McQuillin, Esq.

First Class Mail

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Hon. Jenny A. Kitchings,
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