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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

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APR 11 2019  
SC Court of Appeals

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

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

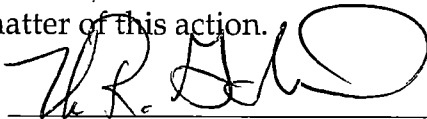
vs.

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

MOTION TO WITHDRAW APPEAL WITHOUT PREJUDICE AS MOOT AND  
REMAND TO COURT OF COMMON PLEAS FOR DETERMINATION OF COSTS

Pursuant to Rule 260(b)(c), *South Carolina Appellate Court Rules*, the appellant, Benjamin Reyna, d/b/a, El Alamo Restaurant, requests an Order of the Court allowing withdrawal of the above appeal, without prejudice, as moot and for an Order of Remand to the Court of Common Pleas for the determination of whether the Court should impose costs and penalties for defendant's misconduct in destroying appellant's business, or in the alternative, for this Court to award costs and penalties against the Respondent for destroying the subject matter of this action.

April 8, 2019



BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Thomas R. Goldstein, S. C. Bar #2186  
P.O. Box 71121  
Charleston, S. C. 29415-1121  
(843) 554-4291, (843) 554-5566 fax  
[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
Attorneys for Appellants

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

vs.

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

MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW APPEAL AS MOOT  
WITHOUT PREJUDICE AND REMAND TO COURT OF COMMON PLEAS FOR  
DETERMINATION OF COSTS

On March 14, 2017, the appellant appealed the circuit court's affirmance of the City of Hanahan's revocation of appellant's business license. While this case was pending, the City employed its police department to create additional pressures on the appellant by writing numerous municipal citations and arresting employees and patrons on alleged municipal violations. Appellant brought suit over this activity, and the parties resolved that litigation at mediation. (Case No. 2017-CP-08-00177) At the same time, the appellant's landlord began an ejectment proceeding, which is currently on appeal to the circuit court (Case No. 2018-CP-08—00266) The appellant also filed a separate tort case against the landlord (Case No.: 2018-CP-08-1008), and when the

landlord and the City began coordinating with one another to eject the appellant from the building by changing the locks, breaking down the door, terminating the utilities, and posting armed police officers to keep appellant out, the appellant filed a motion to amend his complaint on March 19, 2019, to add the City as parties defendant and requested the Court to set the matter for an emergency hearing to issue a temporary restraining Order to enjoin the City and the landlord from destroying the appellant's business. When the City and the landlord began working in concert to destroy the appellant's business and physically oust him from his business by breaking down his door and posting armed police officers to prevent appellant from entering. As a result, the appellant filed a motion for emergency relief the following day and hired a private process server who personally served the City, the landlord, the landlord's contractor and a principal individual defendant on March 20, 2019 with appellant's request for emergency protection. The circuit court set the hearing for Tuesday, March 26, 2019, at 1:00 p.m. However, before the parties could appear before the Court on March 26<sup>th</sup>, the defendants, the appellant alleges acting in concert, bulldozed the appellant's business including the commercial restaurant equipment inside.

Since the subject matter of this appeal is the City's decision to terminate appellant's business license to operate a restaurant/discotheque at 5901 Loftis Road, and since on Saturday and Sunday, March 23<sup>rd</sup> and 24<sup>th</sup>, while both this case and an application for a Temporary Restraining Order were pending, after the appellant filed, served and scheduled a hearing for a temporary restraining Order, the defendants leveled the appellant's business. By acting in such open disregard for the procedure of the Court, the defendants deprived this Court (and the circuit court) of any opportunity

to grant the appellant relief. (Since the appellant's business no longer exists, appellant has not filed a reply brief or the record on appeal and asks that such deadlines be held in abeyance on the ground that such filings are probably now unnecessary.) Even though by taking matters into their own hands, the defendants have deprived this Court of any possibility of granting the appellant relief, the defendants' resort to extra judicial self-help should be punished as an affront to both the appellant and to the Court. Thus, the appellant prays for an Order of the Court:

- 1) Allowing withdrawal of this appeal without prejudice as moot,
- 2) Remanding the issue of costs to the circuit court at Case No. 2019-CP-08-1008 in order that the circuit court can determine if additional penalties above costs are justified due to the defendants' conduct and to determine in what degree defendants coordinated their decision to destroy the appellant's business and restaurant equipment, or, in the alternative, for this Court to retain jurisdiction over the limited issue of costs and penalties and set a briefing schedule on the limited issue of whether costs and penalties should be imposed against the respondent for its participation in the destruction of the subject matter of this case, and
- 3) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

April 8, 2019



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BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Thomas R. Goldstein, S. C. Bar #2186  
P.O. Box 71121  
Charleston, S. C. 29415-1121  
(843) 554-4291, (843) 554-5566 fax  
[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
Attorneys for Appellants

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CERTIFICATE OF COUNSEL

I certify that prior to filing this motion, I consulted with opposing counsel who agrees that the issue of the business license is now moot. I did not inquire as to whether the City would consent to costs being assessed against it.

April 8, 2019



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Thomas R. Goldstein, S. C. Bar #2186

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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.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Withdraw Appeal as Moot and for remand to the circuit court for a determination of costs on the Respondent, The Town of Hanahan, by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2019, addressed to its attorney of record, Stafford John McQuillin, III, P. O. Box 340, Charleston, S. C. 29402.

April 8, 2019



Thomas R. Goldstein, #2186  
Belk, Cobb, Infinger & Goldstein, P.A.  
P. O. Box 71121  
N. Charleston, S. C. 29415-1121  
(843) 554-4291; (843) 554-5566 fax  
[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
Attorneys for the Appellant

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)  
Dale T. Cobb, Jr.

Peggy M. Infinger  
pinfinger@cobblaw.net

Thomas R. Goldstein  
tgoldstein@cobblaw.net

ATTORNEYS AT LAW  
2344 COSGROVE AVENUE  
CHARLESTON, SC 29405

Mailing Address:  
P.O. Box 71121  
Charleston, SC  
zip 29415-1121  
Ph: (843) 554-4291  
Fax: (843) 554-5566

April 8, 2019

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


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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 260(b)(c) of the *South Carolina Appellate Court Rules*, I am enclosing an original and six copies of a motion to withdraw the appeal as moot and remand the issue of costs to the Court of Common Pleas. 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: Motion to Dismiss Appeal, proof of service, check no. 18704

cc: (with enclosure)

Mac McQuillin, Esq.

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