

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Paul M. Burch, Circuit Court Judge

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**RECEIVED**  
SEP 19 2019  
SC Court of Appeals

Case No. 2016-CP-40-07109 - Appellate No.: 2018-002054

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Richard A. Finan.....Appellant,

v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia .....Respondent.

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**RETURN TO APPELLANT'S PETITION FOR REHEARING**

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Mark S. Barrow  
Ryan C. Holt  
William H. Yarborough, Jr.  
Sweeny Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, South Carolina 29211  
(803)256-2233  
Attorneys for Respondent

Respondent hereby files this brief Return to Appellant's Petition for Rehearing and would further show that, as argued in its original Memorandum In Re Appealability, no final judgment has been entered in this matter and, as a result, the present appeal is improper.

## ARGUMENT

### **I. APPELLANT'S APPEAL IS FROM A DENIAL OF A MOTION TO AMEND AND IS INTERLOCUTORY**

Despite Appellant's argument that *Tillman* and *Tatnall* are somehow not controlling law, the Court of Appeals has plainly and repeatedly ruled that "[i]n the unlikely event the motion to amend is denied, then Appellant retains the right, after the lawsuit ends, to appeal the denial . . . ." *Tillman v. Tillman*; 420 S.C. 246, 250, 801 S.E.2d 757, 760 (Ct. App. 2017) (internal citations omitted); *see also Tatnall v. Gardner*, 350 S.C. 135, 563 S.E.2d 377 (Ct. App. 2002) (holding an order denying a motion to amend is not immediately appealable). Ultimately, the present appeal arises as a result of the circuit court denying Appellant's Motion to Amend. Any right of appealability is preserved until the proper time for appeal, once a final judgment is reached.

### **II. NO DECISION BY THE COURT DEPRIVES APPELLANT OF ANY SUBSTANTIAL RIGHT**

Appellant argues that the denial of this appeal would somehow deprive him of the ability to choose his own Defendant. Appellant deprived himself of the ability to choose his Defendants by failing to name new, additional parties within the three-year statute of limitations found in S.C. Code Ann. § 15-3-530. As stated in Respondent's initial memorandum, the incident in question occurred on June 5, 2015 and the statute of limitations passed prior to the September 9, 2018 hearing from which Appellant appeals. As a result, Appellant never had the right, and indeed never filed and served, an Amended Complaint with the proposed new parties. Appellant argues that the denial of the appeal somehow deprives him of the relation back doctrine despite the fact that he is attempting to add *new* and *additional* parties. This argument does not hold

water as “[t]he language of Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant to an already existing defendant. In [the Court of Appeals’] view, the addition of a party is not the same as a substitution or change of party.” *Jackson v. Doe*, 342 S.C. 552, 558 537 S.E. 567, 570 (Ct. App. 2000) (ruling that the amended complaint in that case involved the addition of a defendant, that which precluded the amended complaint from relating back to comply with the statute of limitations requirement). As a result, any argument from Appellant that the Court is depriving it of a substantial right is a mere deflection from Appellant’s own missteps. Respondent would incorporate the argument in its original Memorandum regarding the mootness of Appellant’s argument in this regard.

### CONCLUSION

The appeal before this Honorable Court is not proper as it is interlocutory pursuant to the clear language of *Tillman* and *Tatnall*. For these reasons, Respondent respectfully requests the Court dismiss the appeal.

September 19, 2019

Respectfully submitted,



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Mark S. Barrow  
Ryan C. Holt  
William H. Yarborough, Jr.  
Post Office Box 12129  
Columbia, South Carolina 29211  
(803)256-2233  
Attorneys for Respondent

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Case No. 2016-CP-40-07109 - Appellate No.: 2018-002054

Richard A. Finan .....Appellant,

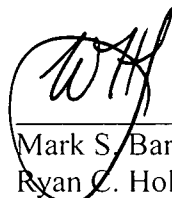
v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia .....Respondent.

**PROOF OF SERVICE**

I certify that I have served the Return to Appellant's Petition for Rehearing on Appellant, Richard A. Finan, by depositing a copy of the same in the United States Mail, Postage Prepaid, on September 19, 2019, addressed to his attorneys of record; Jenkins M. Mann, Esquire and Shaun C. Blake, Esquire, P.O. Box 11803, Columbia, South Carolina 29211.

September 19, 2019



Mark S. Barrow  
Ryan C. Holt  
William H. Yarborough, Jr.  
Sweeny Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, South Carolina 29211  
(803)256-2233  
Attorneys for Respondent



SWEENY WINGATE & BARROW P.A.

September 19, 2019

Reply to: Main Office

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William H. Yarborough, Jr.  
(803) 256-2233 x7102  
why@swwb.com

SEP 19 2019

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, Brent  
Weston, and Aaron Miller  
Civil Action No.: 2016CP4007109/appellate #2018-002054  
Claim No.:  
Our File: 1395-10793

Dear Ms. Kitchings:

Enclosed for filing is the original and six (6) copies of Respondent's Return to Appellant's Petition for Rehearing in the above-referenced matter. Please stamp and return a copy of the Memorandum and one copy of the Proof of Service to our courier. By copy of this correspondence with enclosures, opposing counsel is served with same.

Thank you for your assistance and should you have any questions or concerns, please do not hesitate to contact me directly.

Yours truly,

**SWEENY, WINGATE & BARROW, P.A.**

William H. Yarborough, Jr.

WHY/smt  
Enclosure

cc: Jenkins M. Mann, Esquire, Rogers Lewis Jackson Mann & Quinn, LLC  
Shaun C. Blake, Esquire, Rogers Lewis Jackson Mann & Quinn, LLC