THE STATE OF SOUTH CAROLINA
South Carolina Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III

Appellate Case No.: 2020-001094

BURTON FIRE DISTRICT.....Respondent,

vs.

CITY OF BEAUFORT.....Appellant.

And

BURTON FIRE DISTRICT.....Respondent,

vs.

TOWN OF PORT ROYAL.....Appellant.

REPLY TO RETURN FOR PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DID THE SOUTH CAROLINA COURT OF APPEALS INCORRECTLY FIND THAT IT COULD NOT RECALL THE REMITTITUR ISSUED IN THIS MATTER WHEN THE PETITION FOR REHEARING WAS POST-MARKED ON THE DUE DATE AND THE RESPONDENT CONSENTED TO THE RECALL?

ARGUMENT

In an ironic turn of events the Respondent argues strict adherence to the appellate court rules in its return to the Petition for Writ of Certiorari. First, it should be noted that the Respondent originally consented to the recall of remittitur, and the position taken in its response is a change in its original position in the matter. The Respondents originally consented to the recall.

Additionally, part of what makes the Court of Appeals strict adherence to Rule 221(a) so painfully unjust in this particular case is the leniency to even basic compliance to the Appellate Court Rules given to the Respondent by the Court of Appeals in this matter. In fact, the Respondent was allowed to utterly fail to comply with Rule 211, SCACR, having never submitted a final brief to the Court of Appeals. Moreover, the Respondent was warned by the Court by letter dated December 2, 2017, of the failure and with instructions on how to correct the failure. The Respondent simply still did not comply. The Appellate Court then after waiting two months sent a letter advising the matter would be moved along to the panel for with only appellate' s brief and the record on appeal being considered. However, when the Court of Appeals issued the opinion it did in fact adopt the argument made for the first time and contained only in the respondent's initial brief that was never submitted in final form pursuant to Rule 211 to the Court. The petition for rehearing which is the subject of this petition raised this as an issue.

The Petitioners recognize that an error was made by their counsel. The fact of the matter is the petition for rehearing in this case was erroneously

calendared by petitioners' counsel's staff to go out in the mail on the day it should have been filed at the Court of Appeals. The other appellate court rules consider filing to be made when the document is placed in the mail. Confusion with these other rules caused the error.. The distinction in this rule, does, and did, create a trap for the unwary lawyer warned of by this Court in Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). Because it is clear that the petition for rehearing was post-marked on the due date, placing it in the mail rather than filing at the court was a procedural error and this rule should not be applied in this instance so at to preclude the municipalities right to rehearing. While it is true, the court does lose jurisdiction over the matter if it is not filed at the Court pursuant to Rule 221(a), SCACR, it does in fact have the power to recall that jurisdiction should it so desire to do so and at the time the motion to recall was made the motion was consented to by opposing counsel. Justice has not been evenly dealt or served in this matter amongst the parties, and we would ask this court for mercy from an honest mistake and the same opportunity for correction of an apparently fatal error given to the Respondents in this matter.

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