

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2020-000667
Case No. 2012-CP-07-3218

The Callawassie Island Members Club, Inc., Respondent,

v.

Gregory L. Martin and Rebecca L. Martin, Defendants,

and

The Callawassie Island Members Club, Inc., Respondent,

v.

Michael J. Frey and Grace I. Frey, Defendants,

Of Whom, Gregory L. Martin and Michael J. Frey are Petitioners.

**RETURN IN OPPOSITION TO PETITIONERS'
MOTION TO EXCEED PAGE LIMIT**

The Petitioners have filed a motion pursuant to Rule 208(b)(5), SCACR, to allow them to exceed the twenty-five page limitation for their Reply Brief. The Petitioners have filed a proposed 39-page Reply Brief with their motion. The Respondent Callawassie Island Members Club, Inc. ("CIMC") opposes that motion for the reasons stated below.

Rule 208(b)(5), SCACR, establishes a twenty-five page limitation for all reply briefs except in death penalty cases. The rule does provide that "[o]n motion, the appellate court may grant a party permission to exceed those limitations." *See*, Rule 208(b)(5), SCACR. Neither the rule nor any authority from the appellate courts have set forth the applicable standard that must be satisfied in order to exceed the page limitation.

In their motion, the Appellants request to exceed the twenty-five page limitation by fourteen pages "[i]n order to adequately respond to the arguments contained in the Brief of Respondents." However, that explanation is conclusory and fails to specify any valid basis for allowing a 39-page reply brief in this case.

Importantly, the Petitioners have already filed a fifty-page Opening Brief. The Respondent CIMC was able to respond to that fifty-page brief with 31-page Respondent's Brief. Yet, the Petitioners believe that they need 39 pages to reply to a 31-page brief. The Petitioners contend that the appeal involves "two cases" although the arguments and positions stated by the two Petitioners are the same, with the exception of a statute of limitations defense asserted by the Petitioner Frey alone, which is the only succinct argument in the Reply Brief, given that it is a single paragraph. *See*, Proposed Reply Brief, p. 37. The Petitioners also insist that the appeal involves "seven complex issues," although in reality these issues are not complex and are largely controlled by the precedent established from this Court's earlier decision in *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018).

As this Court has counseled litigants, "[a]t the appellate stage, particularly, succinct, relevant legal arguments are most likely to be persuasive." *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517, 517 (2002). The Petitioners certainly disregard that advice from the Court as even a casual reading of the proposed 39-page Reply Brief reflects that the Petitioners' positions are not

stated succinctly, concisely, or without unnecessary, excessive, and inflammatory diatribes that do not serve the ends of justice. The page limitations established by Rule 208(b)(5) are designed to discourage such unnecessary verbiage and to foster a constructive discourse. The Court will only be encouraging such unnecessary and unconstructive verbosity by allowing the Petitioners to exceed the twenty-five page limitation by fourteen pages (amounting to an almost 60% enlargement on the rule). This is particularly true where the Petitioners have already presented a fifty-page opening brief and only were replying to a 31-page brief from the Respondent. In short, the Petitioners have not shown good cause for their request to exceed the twenty-five page limitation.

Like preservation rules and other appellate rules and procedures, the page limitations established by Rule 208(b)(5) serve a definitive and meaningful role in the appellate process. Those rules encourage and maintain judicial economy and should not be ignored or flaunted. Exceptions should be rare and absolutely necessary. The proposed Reply Brief filed by the Petitioners demonstrates that this is not the type of extraordinary case where the rules should be excused or not strictly enforced.

For the foregoing reasons, the Respondent CIMC respectfully requests that the Court deny the Petitioners' motion to exceed the twenty-five page limitation for their Reply Brief.

Respectfully submitted,

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