THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Supreme Court Case No. 2017-001404

Court of Appeals Case No. 2015-000058
Unpublished Opinion No. 2017-UP-067 (S.C. Ct. App. filed Feb. 1, 2017)

Lower Court Case No. 2013-CP-18-00735

William McFarland and Jennifer McFarland, Petitioners,

v.

Mansour Rashtchian and Amy Rashtchian, Respondents.

REPLY BRIEF OF PETITIONERS

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioners

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ARGUMENT: POINTS ON REPLY

To be clear, the McFarlands contend, most respectfully, that their legal position, as already expressed in their principal brief, is the rightful victor when squared off against the challenge the Rashtchians have put forth in response. Accordingly, it is in further support of a brief which, in their view, already speaks for itself well enough to withstand the Rashtchians' rebuttal that the McFarlands now make these points on reply:

1. Re: the Rashtchians' prologue

The McFarlands began their principal brief with a prologue, an excerpt from Mansour's trial testimony wherein he himself, on direct examination by his counsel, recounts the start of the April 26, 2011, incident underlying this lawsuit. (Br. of Pet'rs p. 1.) Of course, this was done to make (or rather to underscore) a point, specifically *this one*, which is both material and indisputable: *There had been no unpleasantness whatsoever between the McFarlands and the Rashtchians on April 26, 2011, before Mansour, acting not defensively, but very much offensively (in every sense of the word), initiated the underlying incident, storming out of his house to confront Bill in the middle of Flud Street—all because, according to Mansour, Bill had directed two cars across some portion of the grass adjacent to the Rashtchians' side of the street while the Johnsons were delivering mulch to the McFarlands' backyard, their truck/trailer temporarily obstructing*

part of the roadway. Even Mansour admits that the underlying incident was triggered by his "foolish" behavior and "should never [have] happened." (R. pp. 459:24-460:1; *see also* [Mansour:] R. p. 450:6-15, pp. 469:4-471:9; [Defense Counsel, Opening Statement:] R. p. 65:13-18; [Defense Counsel, Closing Argument:] R. pp. 508:24-509:2.)

The Rashtchians respond with a prologue of their own, a hodgepodge of context-free quotes (soundbites, if you will) lifted from various pages of trial transcript, each an insult or other *un*-pleasantry Bill is supposed to have directed at Mansour at one (irrelevant) time or another. (Br. of Resp'ts p. iv.) Doubtless, the Rashtchians' prologue is meant to make a point, too. As is readily apparent (indeed *transparent*), however, it is a point which is wholly *immaterial* to the Court's consideration of this matter on the merits. And boiled down it is no more than this: We do not like the McFarlands, and we hope you (the Court) will not like them either—a theme which, it should be noted, runs throughout the Rashtchians' brief, and rather heavy handedly at that. Of course, such a concerted effort to poison the well does not translate to analysis which is well reasoned, and it is of absolutely no moment here—and that is even if Bill were to have actually said what they say he did.

Now, then, the Rashtchians' prologue having provided no context for its various blurbs, the McFarlands will do so here.

First there is, "Why don't you go where you came from." According to Mansour, Bill said this during an encounter on New Years' Eve *2002*. (R. pp. 431:1-433:18.) Bill denies saying it,[1] but even assuming, *arguendo*, he did, *it was more than eight years before, and had nothing to do with,* the April 26, *2011*, incident underlying this lawsuit.

Second is, "Why don't you go get your green card?" According to Mansour, Bill said this *during* the April 26, 2011, incident underlying this lawsuit. (R. pp. 441:19-448:8.) Here, again, Bill denies saying it,[2] but even assuming, *arguendo*, he did, there can be no question that it was *not until after* Mansour, acting not defensively but rather storming angrily, had confronted Bill in the middle of Flud Street to initiate the day's discord.

Third is, "Why don't you go back where you came from?" This is attributed to Bill by Amy, echoing her husband's testimony (the first quote addressed above) about what Bill is supposed to have said during an encounter on New Years' Eve *2002*. (R. pp. 475:10-478:9.) Again, Bill denies saying it,[3] but even assuming, *arguendo*, he did, *it was more than eight years before* the *unrelated* incident of April 26, *2011*, which underlies this lawsuit.

Fourth is, "[S]and N-word." According to Mansour, his testimony rather

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[1] (R. p. 174:7-17.)

[2] (R. p. 184:12-14.)

[3] (R. p. 174:7-17.)

vague on this point, though "hard [for him] to say," "if [he] had to guess," Bill directed this slur at him "[p]robably around ten times" in the two-year period before April 26, 2011—none of them, however, it should be noted, did he claim to have actually been on April 26, 2011, nor on any date of any particular proximity thereto. (R. pp. 438:18-441:18.) Bill denies ever saying it,[4] but even assuming, *arguendo*, he did, while certainly repugnant and morally reprehensible, it is legally inconsequential here, having nothing at all to with the April 26, 2011, incident underlying this lawsuit, which, again, without question, was not initiated by Bill but rather by Mansour, acting not defensively but rather storming angrily, confronting Bill in the street on account of his (Mansour's) upset with Bill for allegedly directing a couple cars across the grass on his side of the road.

Fifth is, "[G]oddamn Iranian." This refers to an incident in *2013* when the Rashtchians caused police officers to arrive at the McFarlands' home; it was *completely unrelated to the incident underlying this case*, which, of course, had *already* occurred some *two years prior* on April 26, *2011*—indeed, when the McFarlands' trial counsel objected to opposing counsel's questioning about it, the trial court sustained the objection. (R. pp. 177:8-178:6.)

The last is, "I know what kind of a shoddy contractor you are." This is something else that, according to Mansour, Bill said *in the course of* the April 26,

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[4] (R. pp. 176:16-177:7.)

2011, incident underlying this lawsuit. (R. pp. 446:18-449:7.) Here, again, Bill denies saying it,[5] but even assuming, *arguendo*, he did, there can be no question that it was *not until after* Mansour, not acting defensively, but angry and offensively, had confronted Bill to initiate the day's discord.

2. Mansour's defamation of Bill is not "alleged"—it is established.

The Rashtchians describe this case as having arisen "from *alleged* defamatory statements made on April 26, 2011." (Br. of Resp'ts p. 1 (emphasis added).) To be clear, however, there is no room for any equivocation about whether Mansour defamed Bill; it is conclusively established that he did, having been expressly admitted by both Mansour himself and his counsel and, of course, found by the trial court as a matter of law. ([Mansour:] R. pp. 445:15-446:23, p. 450:6-15, pp. 459:24-460:1, pp. 469:4-471:9; [Defense Counsel, Opening Statement:] R. p. 65:13-18; [Defense Counsel, Closing Argument:] R. pp. 508:24-509:2; [Trial Court:] R. pp. 512:15-513:13.) Indeed, elsewhere in their brief, the Rashtchians expressly "concede that, 'you stole your father-in-law's business' is defamatory *per se* and is actionable *per se*.'" (Br. of Resp'ts p. 16.)

3. Re: the Rashtchians' references to extraneous matters

The Rashtchians assert, "Petitioners Bill and Jennifer McFarland have been and are currently involved in similar disputes with several other neighbors within

[5] (R. p. 185:2-4.)

the Live Oak Community." (Br. of Resp'ts p. 1.) They then cite the Record on Appeal at pages 551-561 and list a number of other lawsuits. (*Id.*) To begin, of all the cases listed, only *Live Oak Village Homeowners Association, et al. v. Thomas Morris, et al.*, 2012-CP-18-2583, is referenced in the record at pages 551-561. And this is also a good place to note just how broad is the brush (and/or light the touch and/or loose the grip thereon) with which the Rashtchians would paint their portrait of this case—save for the parenthetical "another defamation suit by the McFarlands," one is left in the dark as to just how it is that the other lawsuits are "similar" to this one or that the second suit involving these parties, 2016-CP-18-00574, is "nearly identical." (Br. of Resp'ts p. 1.) All that being said, perhaps the strongest rejoinder the McFarlands have to the Rashtchians' references to these other matters is still simply (but, to be absolutely sure, respectfully) "So what?" So what if they are involved in other disputes? Based on that mere fact, what is there that could possibly be properly said about the merits of any case (whether this one or those others)? Nothing, of course. *This* appeal is about the trial court's error in *this* dispute, nothing more.[6]

[6] In this same vein, regarding the Rashtchians' assertion that they "have [now] moved to a new residence and hope to distance themselves from this toxic neighborhood[]" (Br. of Resp'ts pp. 1-2), it is without record support; the supposed toxicity of the neighborhood is, of course, merely self-serving editorializing; and, in any event, it has nothing to do with anything insofar as the questions actually presented to this Court are concerned.

4. The underlying incident was not "a culmination of events."

The Rashtchians' wrongly describe "[t]he incident on April 26, 2011 [a]s a *culmination* of events that began nine years before . . . ." (Br. of Resp'ts p. 2 (emphasis added).) It was not. The April 26, 2011, incident underlying this lawsuit was its own event, which, again, Mansour initiated, as he admitted. (*See* R. pp. 445:15-446:23.) Similarly off base is the Rashtchians' assertion, "The record is clear that the incident on April 26, 2011 was precipitated by years of racially charged insults towards Mr. Rashtchian, as well as Mr. McFarland's inconsiderate actions immediately prior to their interaction where Mr. McFarland directed two cars around his landscaper's truck and onto the Rashtchian property." (Br. of Resp'ts p. 21.) Aside from the fact that, as the McFarlands have explained elsewhere in their briefing, Bill flatly denies ever having made the supposed racially charged insults or acted inconsiderately, and also aside from the fact that, even as Mansour tells it, the grass allegedly driven over was not on the Rashtchians' "property" but rather in the "right-of-way" area *immediately adjacent* to the street, this notion of what precipitated the underlying incident is revisionist history, irreconcilable with Mansour's own testimony about the day's events, his "foolish" behavior, and how the incident "should never [have] happened." (R. pp. 459:24-460:1; *see also* [Mansour:] R. p. 450:6-15, pp. 469:4-471:9; [Defense Counsel, Opening Statement:] R. p. 65:13-18; [Defense Counsel, Closing

Argument:] R. pp. 508:24-509:2.) Moreover, in the Rashtchians' own brief, where they quote from the subject charge, they observe that a *verbal attack* by the plaintiff against the defendant is a prerequisite to any privilege for the defendant to reply in defense. (Br. of Resp'ts p. 21.) Of course, even if it were true, as they say,[7] that Bill had directed the two vehicles around the truck/trailer, this was obviously no "verbal attack"—nor, for that matter, an "attack" of any description—and Bill's supposed "inconsiderate actions" are obviously irrelevant.

CONCLUSION

For the foregoing reasons, along with, of course, those set forth in their principal brief, the McFarlands ask this Court to reverse the Court of Appeals (as well as the trial court) and remand this matter for a new trial—or, alternatively, to reverse the Court of Appeals and remand this matter to it to properly address every point distinctly stated in the case necessary to the decision of the appeal, as required by Rule 220(b), SCACR.

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[7] The Rashtchians imply that the McFarlands admit Bill directed "two vehicles" onto the grass. (Br. of Resp'ts p. 21.) The McFarlands do not, and they have consistently spoken only in terms of what *Mansour claims* Bill did. (*See* Br. of Pet'rs pp. 13, 20-21; *see also* R. pp. 183:25-184:8 (Bill's express denial of this allegation at trial).)

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioners

Charleston, South Carolina

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PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioners

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Petitioners, hereby certify that the foregoing **REPLY BRIEF OF PETITIONERS** was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on April 13, 2018, properly posted for delivery to the following addressees:

David C. Cleveland, Esquire
Michael L. Leech, Esquire
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

Attorneys for Respondents

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____
Russell G. Hines (SC Bar No. 72100)
Attorneys for Petitioners

Charleston, South Carolina

Dated: 4/13/18