

No. 20-305

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

TOWN OF APEX,)	
)	
Plaintiff-Appellee,)	
v.)	<u>From Wake County</u>
)	19-CVS-6295
BEVERLY L. RUBIN,)	
)	
Defendant-Appellant.)	

**PLAINTIFF-APPELLEE’S CONSENT MOTION FOR LEAVE TO
EXTEND WORD COUNT LIMIT FOR APPELLEE’S BRIEF**

NOW COMES Plaintiff-Appellee Town of Apex (“Town”), by and through counsel, pursuant to Rule 37 of the Rules of Appellate Procedure, and hereby requests this Court to extend the word count limit contained in Rule 28(j)(2) to 9,750 for the Town’s appellee brief. In support of said motion, the Town shows to the Court the following:

1. On 29 January 2020 the Defendant-Appellant Beverly L. Rubin (“Rubin”) filed a Notice of Appeal of the 21 January 2020 Order Denying

Defendant's Motion to Dismiss and the 21 January 2020 Preliminary Injunction.

2. The Record on Appeal in this matter was filed on 14 May 2020 and the printed Record on Appeal was mailed to the parties 18 May 2020.

3. Prior to filing Rubin's Appellant Brief herein, Rubin requested with the Town's consent an extension of the word count for her opening brief to 12,500 words in length.

4. On 5 June 2020 Rubin was granted leave to extend the word count of her opening brief to 9,750 words in length.

5. There is another pending appeal (20-304) involving the same parties as those herein.

6. Prior to filing Rubin's Appellant Brief in 20-304, Rubin requested with the Town's consent an extension of the word count for her opening brief in 20-304 to 12,500 words in length

7. On 5 June 2020 Rubin was also granted leave to extend the word count of her opening brief to 9,750 words in length in the 20-304 appeal.

8. On 30 June 2020 Rubin filed her brief herein.

9. The Town's brief is due to be filed in the Court of Appeals on 31 August 2020. The time for filing the Town's brief with the Court of Appeals has not expired.

10. In order to address Rubin's arguments in her filed brief, the Town requests that the Court enter an order enlarging the length limitations applicable its brief up to 9,750 words. Rubin has linked these two appeals in both briefs, including duplicate facts that must be addressed in both briefs, and included overlapping legal arguments in both briefs. An extension of the word count is necessary to allow the Town to adequately address the issues raised and state its position on the issues to the Court.

11. Enlarging the word limit will not unreasonably delay this action or prejudice any party.

12. On 3 June 2020, Counsel for Appellant requested by electronic mail the undersigned's consent to an increase in the word limit for its opening brief to 12,500 words; and in that correspondence stated that he would provide similar consent to a 12,500-word extension for Appellee's

brief herein. However, the Town is only requesting an extension to 9,750 words for this appellee brief.

Accordingly, for good cause shown, the Town moves the Court pursuant Rule 37 of the Rules of Appellate Procedure to increase the word limit for its appellee brief to 9,750 words.

Respectfully submitted, this the 28th day of July 2020.

/s/ David P. Ferrell
David P. Ferrell
NC State Bar No. 23097
dferrell@nexsenpruet.com
Norman W. Shearin
NC State Bar No. 3956
nshearin@nexsenpruet.com
Nexsen Pruet PLLC
4141 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Telephone: (919) 755-1800
Facsimile: (919) 890-4540
*Attorneys for Plaintiff-Appellee Town
of Apex*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing **PLAINTIFF-APPELLEE'S CONSENT MOTION FOR LEAVE TO EXTEND WORD COUNT LIMIT FOR APPELLEE'S BRIEF** upon the parties by depositing the same in the United States mail, first class postage prepaid, addressed as follows:

Matthew Nis Leerberg
Troy D. Shelton
Fox Rothschild LLP
PO Box 27525
Raleigh, NC 27611
*Attorneys for Defendant-
Appellant*

Kenneth C. Haywood
B. Joan Davis
Howard, Stallings, From, Atkins,
Angell & Davis, P.A.
5410 Trinity Road, Suite 210
Raleigh, NC 27607
Attorneys for Defendant-Appellant

This the 28th day of August, 2020.

/s David P. Ferrell
David P. Ferrell