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Aug 03 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No: 2021-000100
Common Pleas Case No: 2019-CP-10-06058

Bay Light, LLC.....Respondent
v.
Westgate Office Park Landowner’s Maintenance Association, Inc.....Appellant

RESPONDENT’S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

Pursuant to SCACR 240, Respondent hereby moves for the dismissal of the above captioned appeal. The basis for this motion, as explained in detail below, is Appellant’s repeated failure to follow the rules for filing and the series of orders for extension of time, and in many cases, the letters of deficiency issued by the Clerk of Court. Dismissal of an appeal for such failure is permitted by Rule 260.

This appeal was commenced on February 1, 2021. The first letter of deficiency was sent by the Clerk on February 2, 2021 for lack of the required filing fee. Missing filing fees have been a recurring deficiency. Altogether, ten deficiency letters have been sent relating to Appellant’s filings,

There were delays in securing the transcript which were due to the court reporter and not to either party. When the transcripts were finally received, briefing of the appeal commenced. The filing errors and late filings by Appellant, both before and after the

transcripts were received, however, have resulted in some 100 days of delay due solely to Appellant's filings.

The most recent discrepancies raise the specter that similar delays will continue. Appellant filed both the record on appeal and the final brief, but not until June 14. (Appellant did not file a reply brief). The Clerk sent a deficiency letter on June 23 noting that a bound copy of the final brief and a certificate of counsel related to the final brief were late and giving Appellant until July 5 to file them. Appellant missed this deadline and filed both the bound brief and the certificate of counsel on July 11.

At this time, it is Respondent's understanding, that the late filing of both the bound brief and certification of counsel would normally result in yet another deficiency letter providing time to cure the deficiency. That letter would also create the chance for another missed deadline, another deficiency notice and a required motion.

Respondent is mindful of the Court's preference for resolving appeals substantively and not by reason of procedural discrepancies. However, the number of delays stemming from missed deadlines and other departures from the rules has put the Respondent in the position of suffering delay, in this case leading to the inability to use his property. For this reason, Respondent respectfully requests that the above appeal be dismissed.

August 3, 2022

s/ Stan Barnett

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305 North Civitas Street
Mt. Pleasant, SC 29464
843-708-4887
ATTORNEY FOR RESPONDENT

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PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss on Appellant, Westgate Office Park Landowner's Maintenance Association, Inc. by electronic mail and by depositing a copy of it in the United States Mail addressed to:

Erika V. Harrison, Esq.
92 Line Street
Charleston, SC 29403

August 3, 2022

s/ Stan Barnett
SC Bar No. 533
305 North Civitas Street
Mt. Pleasant, SC 29464
843-708-4887
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The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

RE: Bay Light, LLC v. Westgate Office Park Landowners Maintenance Asso., Inc.
Appellate Case No.: 2021-000100

Dear Ms Kitchings:

Enclosed please find the Respondent's, Bay Light, LLC, Motion to Dismiss in the above captioned appeal. Also enclosed is the Proof of Service.

With kindest regards and appreciation, I remain

Sincerely,



Stan Barnett

Cc: Ms. Terri Southard /via email
Erika V. Harrison, Esq. /via email