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Aug 10 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

CASE NO: 2019-CP-10-06058

Bay Light, LLC,.....Respondent
v.
Westgate Office Park Landowners' Maintenance Association, Inc.....Appellant

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

Appellant respectfully requests that Respondent's Motion to Dismiss be denied.

Appellant concedes that there have been a few delays in this appeal and that Appellant has made some errors. However, delays and errors happen frequently in human endeavors and the Respondent has not been prejudiced or damaged.

I. THE RESPONDENT HAS NOT BEEN PREJUDICED.

In Jordan v. Hartford Financial Group, Inc., 435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021), this Court reinstated a dismissed workers' compensation appeal after a mix-up regarding filing dates: "The touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps." Id., citing S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617, 626 (Ct. App. 1986) ("The law, however, is not merely an exercise of judicial power through the mechanical manipulation of rules; it is an organic body of principles rooted in reason, ethics, and human experience. The reason for a rule

must control the application of the rule[.]”). See also, State v. Brazell, 325 S.C. 65, 76, 480 S.E.2d 64, 70-71 (1997) and State v. Allen, 269 S.C. 233, 239, 237 S.E.2d 64, 67 (1977) (upholding convictions after finding the defendant failed to demonstrate prejudice from delayed criminal prosecutions).

Respondent alleges that it suffers from an “inability” to use its property. Respondent offers no citation or proof in support of this allegation. Indeed, the Complaint does not allege that Respondent is unable to use its property, but rather, that other people are able to use its property. (R. pp. 5-6).

Appellant does not know how Respondent calculated “some 100 days of delay due solely to Appellant’s filings” and thus does not agree with this allegation. Because the briefing and record-creating process is now complete, there is no “specter that similar delays will continue.” Even if there was, Appellant respectfully contends that appeals should not be dismissed on the basis of a “specter.”

Regarding the calculation of time, Appellant will note that Respondent never objected to any of Appellant’s requests for extensions of time. Respondent purchased the property at issue in this case on July 27, 2018 (R. pp. 509-511), approximately 1,473 days ago. It filed suit approximately 16 months later, on November 18, 2019, which was 994 days ago. The parties’ Final Briefs and the Record on Appeal were filed with this Court on July 11, 2022. Respondent filed its motion to dismiss 23 days later. Respondent’s own motion to dismiss has actually delayed this Court’s consideration of the merits of this appeal. Rule 240, SCACR

Respondent has not been prejudiced by anything Appellant has done or failed to do in this appeal, and thus dismissal is not warranted.

II. LITIGATION IN THE TIME OF COVID.

Ideally, no litigant would make a mistake or need to request an extension of time from any court. But the world is not ideal, and has been especially un-ideal since Covid reached the United States in March of 2020, less than 3 months after this lawsuit was filed.

“Without question, the effects of the COVID-19 pandemic have been unfathomable.” Adams v. McMaster, 432 S.C. 225, 851 S.E.2d 703 (2020). The pandemic has had the seemingly conflicting effects of increasing unemployment and decreasing the number of available employees. See, <https://www.cnn.com/2021/05/06/small-businesses-struggle-to-find-workers-as-pandemic-eases.html> (retrieved August 5, 2022). Nearly all Americans and South Carolinians have been surprised to see businesses open yesterday, closed today, then open again the next week.

South Carolina’s appellate courts have been flexible and understanding during this crisis. That approach is and has been appropriate and appreciated.

III. THIS APPEAL SHOULD BE DECIDED ON THE MERITS.

As alluded to by the Respondent, South Carolina law has a strong preference for resolving cases on the merits. See, Caldwell v. Wiquist, 402 S.C. 565, 741 S.E.2d 583 (Ct. App. 2013), citing, *inter alia*, Rochester v. Holiday Magic, Inc., 253 S.C. 147, 169 S.E.2d 387, 390 (1969) (noting that the statute applicable to vacating a default judgment “should be liberally construed to see that justice is promoted and to strive for disposition of cases on their merits”); Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc., 616 F.3d 413, 417 (4th Cir. 2010) (“We have repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits.”).

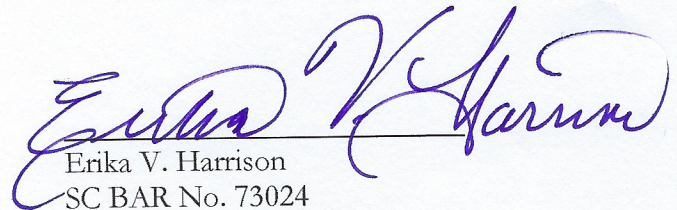
When this Court reaches the merits of this appeal, it will see that the trial court granted summary judgment prior to any discovery and while a motion to amend the answer and a motion to

intervene were pending. (R. p. 268-271, R. p.272-293). Ironically, at the status hearing, the Court indicated it would grant summary judgment but would also not “snuff out” the opportunity to amend the answer. (R. p. 505, lines 14-18). Dismissal of this appeal would double down on the trial court’s erroneous decision to rule before a full and fair airing of the substance of the dispute

IV. CONCLUSION.

For the reasons set forth above, Appellant respectfully requests that the Respondent’s motion to dismiss be denied.

August 10, 2022



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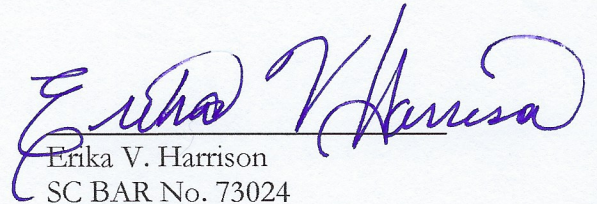
v.

Westgate Office Park Landowners' Maintenance Association Inc.....Appellant

PROOF OF SERVICE

I certify that I have served via electronic mail a Copy of the Appellant's Return to Respondent's Motion to Dismiss on Respondent Bay Light, LLC on August 10, 2022 addressed to his attorney of record, Stan Barnett, 305 North Civitas St. Mt. Pleasant, SC 29464 Stan.barnett@yahoo.com

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