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RECEIVED

Aug 12 2022

SC Court of Appeals

August 12, 2022

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

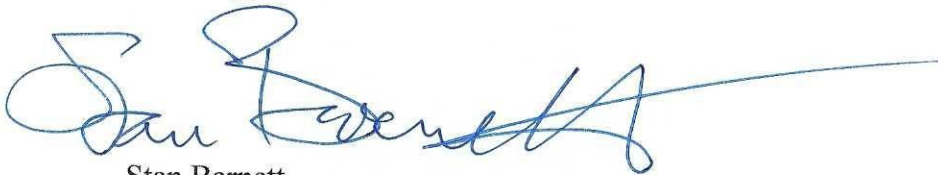
RE: Bay Light, LLC v. Westgate Office Park Landowners Maintenance Asso., Inc.
Appellate Case No.: 2021-000100

Dear Ms Kitchings:

Enclosed please find a copy of the Respondent's, Bay Light, LLC, Reply to Appellant's Return to Motion to Dismiss in the above captioned appeal and the Proof of Service filed electronically today.

With kindest regards and appreciation, I remain

Sincerely,

A handwritten signature in blue ink, appearing to read "Stan Barnett", with a long horizontal flourish extending to the right.

Stan Barnett

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

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

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Aug 12 2022

SC Court of Appeals

Bay Light, LLC.....Respondent

v.

Westgate Office Park Landowner's Maintenance Association, Inc.....Appellant

RESPONDENT'S REPLY TO APPELLANT'S RETURN TO MOTION TO
DISMISS AND MEMORANDUM IN SUPPORT

Pursuant to SCACR 240, Respondent hereby move for dismissal of the above captioned appeal. The basis for this motion was 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. Appellant filed a Return to the motion. Respondent files this Reply to answer some key points made by Appellant.

- I. Respondent has, indeed, been prejudiced by the delays occasioned by Appellant.

Appellant argues that Respondent has not been prejudiced and has not lost use of its land. The entire theme of this case is use of the property at issue. Appellant is using a substantial part of it for parking for employees and customers of various offices in its property regime. This clearly prevents Respondent from using the property. Short of

forcefully and physically taking control of that part of the property and ejecting Appellant's employees and customers from the parking area, use of the area is clearly lost to Respondent.

II. Appellant has caused One Hundred and Thirty-One days of delay in this appeal.

Appellant launches its Return with reference to a case involving "a mix up regarding filing dates." There has been no mix up in filing dates in this case. There have been a series of failures to follow clear filing dates by Appellant. 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 and have led to more delays. Altogether, ten deficiency letters have been sent relating to Appellant's filings. Appellant wonders how Respondent estimated 100 days of delay resulting from its actions. The total is actually more than that.

Nine months after the Notice of Appeal was filed, when it became clear that a part of the transcript of proceedings was not going to be produced by the court reporter, this appeal entered onto the path of normal briefing. The Clerk announced that the Appellant's initial brief would be due on December 2, 2021. Using that as a starting point, briefing should have been complete in 90 days. The final filing by Appellant, which was to correct the deficiency of not having filed a Certificate of Counsel with their final brief, was filed on July 11, 221 days after December 2, 2021. As this was filed outside the time allowed by the previous deficiency letter from the clerk dated June 23, 2022, it is unclear to Respondent if that late filing had the effect of setting the appeal up to move forward or merely set the stage for another motion for extension of time to file a late document.

Even using July 11, 2022, as a date to measure when the appeal was ready to proceed beyond briefing, that is 221 days after December 2, 2021, or 131 days beyond the date when briefing should have been concluded. Appellant is correct that Respondent did not object to any of their requests for extensions. Respondent does not believe this deprives it of the ability, in light of an unprecedented string of uncalled for delays, to raise an objection to continual delays in moving this appeal along.

Appellant apparently seeks to excuse these delays because of the COVID pandemic. Yet, there is no indication if, or, as importantly, how, the virus could have contributed to these delays. None of these delays were due to an inability to appear in person or deal with people at all. All of these requirements were for filing only.

CONCLUSION

Respondent reluctantly filed this motion in the face of a series of delays in meeting filing deadlines which have caused it harm and with an uncertainty as to whether those delays are at an end. For these reasons, Respondent respectfully requests the appeal be dismissed.

Respectfully submitted,

August 12, 2022

s/ Stan Barnett

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ATTORNEY FOR RESPONDENT

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

PROOF OF SERVICE

I certify that I have served the Respondent’s Reply to the Appellant’s Return to 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 12, 2022

s/ Stan Barnett
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Attorney for Respondent