



THE STATE OF SOUTH CAROLINA
In The Supreme Court
Appellate Case No.: 2021-000729

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge
Trial Case No.: 2014-CP-26-07617

Opinion No. 2021-UP-167
(S.C. Ct. App. filed May 12, 2021)

Captains Harbour and Racquet Club
Homeowners Association, Inc.Respondent

v.

Jerald W. Jones.....Petitioner

**RESPONDENT’S MOTION TO ALLOW LATE FILING OF
REPLY TO RETURN TO MOTION FOR COSTS**

Respondent Captains Harbour and Racquet Club Homeowners Association, Inc., by and through its undersigned counsel, moves this Court pursuant to Rules 240 and 263(b), SCACR, to extend the time for filing the Reply to Appellant’s Return to the Motion for Costs.

Under Rule 240(f), SCACR, a party should serve and file a reply within five days of receiving the return to a motion. Nevertheless, Rule 263(b) permits an appellate court to extend the time to file a return under Rule 240. *See* Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except . . . under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”). The rule does not specify what grounds must be shown in order to extend the time to reply, and Respondent’s counsel is

unaware of express authority describing or limiting an appellate court's authority to extend deadlines for replies to returns. At least one case pre-dating the Appellate Court Rules indicates a general policy of liberal applying deadlines to enable matters to be heard on their merits. *See generally J.L. Mott Iron Works v. Clark*, 84 S.C. 493, 66 S.E.2d 680 (1910) (noting the supreme court is inclined to liberally construe its rules of court so good faith appeals are heard on the merits).

This Court should construe Rule 263(b) liberally and extend the time to file a reply beyond the five day timeline because doing so will permit the Court to consider the merits of the Motion for Costs and Appellant's Return with a complete understanding of the facts. Here, the Motion for Costs was filed on August 9, 2022, after Appellant had litigated through the Court of Appeals and Supreme Court over the course of many years and the judgment had accrued interest. The return was filed August 18, 2022, and the reply was filed on September 8, 2022. The return to the motion requested the Court refuse to award or reduce the attorney's fees award because Appellant had paid the judgment on January 31, 2022. Appellant, however, did not advise the Court that he was given an opportunity to resolve the dispute after paying the judgment but before the Supreme Court denied his petition for writ of certiorari. Only after Appellant exhausted the appellate process does he now assert he paid the judgment. Respondent's reply merely brings these facts to this Court's attention such that it can consider the merits of all parties' arguments when ruling on the otherwise timely Motion for Costs and Return. Because the matters in Respondent's Reply will enable this Court to consider whether to award the attorney's fee with a full understanding of the facts, Respondent requests this Court to grant the Motion for an extension and accept the Reply.

[SIGNATURE PAGE TO FOLLOW]

This 23rd day of September, 2022.

Respectfully,

COPELAND, STAIR, VALZ & LOVELL, LLP

s/ *Skyler C. Wilson*

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***Attorneys for Respondent Captains Harbour and
Racquet Club Homeowners Association, Inc.***

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PROOF OF SERVICE

I certify that I have served ***Respondent's Motion to Allow Late Filing of Reply to Return to Motion for Costs*** upon the parties below *via electronic mail*, on September 23, 2022, addressed as follows:

John M. Leiter, Esq.
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Myrtle Beach, SC 29572
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[SIGNATURE PAGE TO FOLLOW]

This 23rd day of September, 2022.

COPELAND, STAIR, VALZ& LOVELL, LLP

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***Attorneys for Respondent Captains Harbour and
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Rewt, Teri J.

From: Rewt, Teri J. on behalf of Wilson, Skyler C.
Sent: Friday, September 23, 2022 11:38 AM
To: 'jleiter@48th.com'
Cc: Mackelcan, Douglas W.; Wilson, Skyler C.; Moran, Rosie; 'suzy@48th.com'
Subject: Captain's Harbour and Racquet Club HOA, Inc. v. Jerald W. Jones; Appellate Case No.: 2018-001724; CSVL File No.: 50328
Attachments: Motion to Allow Late Filing of Reply to Return to Motion for Costs (not yet filed) (6913519.1).pdf

Good morning John,

On behalf of Attorneys Doug MacKelcan and Skyler Wilson, I have attached a copy of Respondent's Motion to Allow Late Filing in this case, which will be filed with the Court of Appeals today.

Best regards,



Teri Rewt

Legal Assistant II

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PLEASE NOTE change in Firm Name and email address