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**Nov 16 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

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Shannon M. Phillips, Master-in-Equity

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Appellate Case No. 2022-000393

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U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust,.....Respondent,

v.

Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,.....Defendants,

Of whom Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased, is the.....Appellant.

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REPLY TO LETTER RETURN TO MOTION FOR EXTENSION

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Appellant hereby submits this reply to the letter “return” Respondent submitted to the Appellant’s motion for an additional 10-day extension of the time in which to serve and file the Appellant’s initial brief and designation of matter to be included in the record on appeal. The grounds for this motion are that there is good cause to grant the requested extension, as the following shows:

1. Respondent opposes a short additional extension of time, stating that this extension “would only cause additional prejudice to Respondent[.]” Respondent does not, however, identify how this or any extension has caused any prejudice to Respondent to date, much less how an extension would prejudice it in the future. Prejudice is “[d]amage or detriment to one’s legal rights or claims.” Black’s Law Dictionary 545 (2d pocket ed 2001) (definition of prejudice). A 10-day extension does not alter Respondent’s legal rights and claims, to the bad or to the good. Respondent has not shown it would suffer any prejudice from the extension sought. See id.
2. Respondent’s letter presents no payments being made on the subject mortgage account since 2004 as though that were some reason to deny the 10-day extension sought. If Respondent viewed such a passage of time as problematic, perhaps it should have brought this suit to foreclose the mortgage sooner than midway through 2019, over 15 years later.
3. Respondent writes in its letter as though five extensions of an initial brief deadline is some unheard-of number of extensions. It is not.
4. In this case, the record is complex, large, and involves issues that are not garden-variety. More than five initial briefing extensions are often sought in such a case.
5. Respondent mischaracterizes what is on appeal. Appellant appeals the grant of partial summary judgment against him, not the denial of

Appellant's motions for summary judgment. Appellant refers the court to Respondent's motion to dismiss this appeal and the court's denial of that motion.

6. Life happens. Life happening produced the extraordinary circumstances that led to the motion for an extension. Appellant's counsel is not at liberty to divulge his friend's sensitive situation that took time away from his schedule, but, suffice it to say, it was significant, time-consuming, and time-sensitive. In addition, he took on a new client in an administrative appeal matter that required immediate action at the time that the brief was previously due.
7. It seems Respondent does not believe its return to Appellant's motion must comply with the Appellate Court Rules. Per Rule 240(e), SCACR, returns to motions must comply with Rules 240(c) and 267, SCACR. Respondent's letter does not meet these requirements. The court should not consider this letter as a return. See Rules 240(c)&(e) & 267, SCACR.

WHEREFORE Appellant prays for an order granting his previously made motion to extend the time in which to serve and file the Appellant's initial brief and designation of matter to be included in the record on appeal by 10 days.

Respectfully submitted,

/s/ Andrew S. Radeker  
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Of whom Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased, is the.....Appellant.

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PROOF OF SERVICE

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I certify that I have served the foregoing reply on the date given below by emailing it to counsel for the Respondent at the address(es) noted below.

J. Derrick Jackson, Esq., at dj@tobywardlaw.com  
Reginald P. Corley, Esq., at reggiec@scottandcorley.com  
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/s/ Andrew S. Radeker  
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Attorney for Appellant

November 16, 2022