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Apr 06 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

Roger L. Couch, Circuit Court Judge
R. Keith Kelly, Circuit Court Judge

Cases No. 2012-CP-42-04733 and -04915
Appellate Case No. 2023-000506

Jonathan Bryant,

Petitioner,

v.

Kevin Fountain,

Respondent.

In re:

Southern Wholesale, Inc.,

Plaintiff,

v.

Chad Kerr and Jonathan Bryant,

Defendants,

and

Jonathan Bryant,

Third-Party Plaintiff,

v.

Southern Wholesale, Inc. and Kevin Fountain,

Third-Party Defendants.

Of whom Kevin Fountain, Southern Wholesale, Inc.,
and Speciality Equipment Leasing, Inc., are the

Appellants,

and Jonathan Bryant is the

Respondent.

MOTION FOR EXTENSION OF TIME TO ORDER TRANSCRIPTS

**Counsel identified on the following page*

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-and-

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Attorneys for Appellants

NOW COME Appellants, Kevin Fountain, Southern Wholesale, Inc., and Specialty Equipment Leasing, Inc., by and through their undersigned counsel, pursuant to Rule 263(b), SCACR (providing that, but for certain exceptions irrelevant here, “[t]he time prescribed by these Rules for performing any act . . . may be extended . . . by the appellate court, or by any judge or justice thereof”), and, on the grounds set forth below, hereby move this Honorable Court for an extension of ten (10) days’ time to order (or at least to attempt to order, as further explained below) certain transcripts in this matter.

Appellants served/filed their notice of appeal on March 27, 2023. Appellants’ notice of appeal appeals the following orders of the Honorable Roger L. Couch, Circuit Court Judge (collectively, the “Judge Couch Orders”):

- **Form 4 Order Attaching Formal Order Denying Motion to Remove and Replace Arbitrator**, filed October 9, 2015;
- **Formal Order Denying Motion to Remove and Replace Arbitrator**, filed October 9, 2015; and
- **Order on Motion to Reconsider Order Denying Motion to Remove and Replace Arbitrator**, filed February 12, 2016; and

Appellants’ notice of appeal also appeals the following orders of the Honorable R. Keith Kelly, Circuit Court Judge (collectively, the “Judge Kelly Orders”):

- **Form 4 Order Granting Motion to Affirm the Award of the Arbitrator**, filed October 3, 2022;
- **Formal Order Granting Motion to Confirm the Award of Arbitrator**, filed February 1, 2023, as well as the **Judgment entered pursuant thereto and, out of an abundance of caution, insofar as Appellants may be aggrieved or adversely affected by the same, any other intermediate orders or decrees necessarily affecting the Judgment**;
- **(Original) Order on Respondent and Third-Party Defendant’s Notice of Motion and Motion to Alter, Amend or Reconsider**, filed February 24, 2023; and

- **(Re-filed) Order on Respondent and Third-Party Defendant’s Notice of Motion and Motion to Alter, Amend or Reconsider**, filed March 2, 2023.

Although Appellants have already ordered and received the transcript with respect to their appeal of the Judge Kelly Orders, Appellants have not yet ordered the transcripts with respect to the Judge Couch Orders, which transcripts would be of hearings held before Judge Couch on July 7, 2015, and January 6, 2016, respectively. Due to the length of time since these proceedings took place before Judge Couch, Appellants do not know if transcripts of the proceedings are now available to be ordered, and Appellants are in need of additional time to attempt to answer this question.¹

WHEREFORE, Appellants ask that the Court grant them an extension of ten (10) days from today, April 6, 2023, i.e., an extension through Monday, April 17, 2023, to determine whether transcripts of the aforementioned proceedings before Judge Couch are available to be ordered and, if so, to order them. Appellants submit that there is good cause for the Court to grant such relief, as it is an appropriately modest dispensation, is in furtherance of the interests of justice, and is not unduly prejudicial to Respondent. ADDITIONALLY, and on the grounds

¹ Appellants would note that, regardless of whether transcripts of these proceedings are now available, the Judge Couch Orders are now appealable pursuant to (without limitation) the following authority: S.C. Code Ann. § 15-48-200(a)(3) (“An appeal may be taken from . . . An order confirming . . . confirmation of an award[.]”); S.C. Code Ann. § 15-48-200(a)(6) (“An appeal may be taken from . . . A judgment or decree entered pursuant to the provisions of this chapter.”); S.C. Code Ann. § 15-48-200(b) (“The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.”); S.C. Code Ann. § 14-3-330 (“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from[.]”).

already stated, Appellants ask that the Court hold their briefing deadline in abeyance until it acts upon this motion.

Respectfully submitted,

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Charleston, South Carolina

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PROOF OF SERVICE

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Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **MOTION FOR EXTENSION OF TIME TO ORDER TRANSCRIPTS** was served on Respondent on April 6, 2023, by emailing (see attached service email) a copy of the same to Respondent's counsel of record:

Scott F. Talley, Esquire
TALLEY LAW FIRM, P.A.
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Additional Counsel for Appellants

Respectfully submitted,

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CLEMENT RIVERS, LLP
Attorneys for Appellants

Charleston, South Carolina

April 6, 2023

Hines, Russell

From: Hines, Russell
Sent: Thursday, April 6, 2023 12:44 PM
To: 'scott@talleylawfirm.com'
Cc: 'W. Westbrook Wills III'
Subject: Bryant v. Fountain (2023-000506) -- Motion for Extension of Time to Order Transcripts
Attachments: Bryant v. Fountain (2023-000506) -- Motion to Extend re Transcripts.pdf

Attached for service please find Appellants' **Motion for Extension of Time to Order Transcripts** in the above-referenced matter.

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