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Mar 18 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable G. D. Morgan, Circuit Court Judge

Case No. 2020-CP-39-00266

Appellate Case No. 2024-000870

Click Properties, LLC and Hyper Formance, LLC Respondents-Appellants,

v.

Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC.. Appellants-Respondents.

RESPONDENTS'-APPELLANTS' RETURN TO
MOTION FOR APPEAL TO BE HELD IN ABEYANCE
AND TO SERVE INITIAL BRIEF OUT OF TIME

Respondents-Appellants object to Appellants-Respondents' Motion to hold this appeal in abeyance, or in the alternative to grant them a third extension to file their Initial Brief and Designation of Matter on the following grounds:

The Motion for Abeyance is Moot

1. The parties were involved in litigation filed in February 2020 which culminated in a trial and a jury verdict in favor of Respondents-Appellants on May 26, 2022.

Post-trial motions were filed and heard before the Honorable Perry Gravely. Judge Gravely issued an order on September 21, 2022 affirming the Jury's Verdict.

2. Appellants-Respondents appealed the verdict and orders issued by the lower court on October 21, 2022. (Appellate Case No. 2022-001499).
3. Appellants-Respondents on March 11, 2025 asked this Court to hold the present appeal (2024-000870) in abeyance pending the resolution of Appellate Case No. 2022-001499 on the ground that the contempt orders in the present appeal arise from the September 21, 2022 order of the Honorable Judge Perry Gravely and the decision in that appeal could affect this case.
4. This Court has unanimously affirmed the orders issued by the lower court in Appellate Case No. 2022-001499, including the September 21, 2022 order (Court of Appeals Opinion No. 6105 filed March 12, 2025), making Appellants-Respondents request for abeyance moot.
5. In order to prevail on a Petition for Rehearing, Appellants-Respondents must demonstrate the Court of Appeals overlooked or misapprehended their argument. Rule 221(a), SCACR. Petitions for Writ of Certiorari are granted only where special reasons justify the exercise of that discretion. Rule 242(b), SCACR. The Court of Appeals did not overlook or misapprehend Appellants-Respondents argument. Nor does any special reasons justifying the exercise of discretion by the South Carolina Supreme Court exist.
6. Additionally, Appellants-Respondents filed their appeal of the lower court's March 1, 2024 contempt order on May 27, 2024 and the October 1, 2024 contempt order on November 18, 2024. (consolidated as Case No. 2024-000870). This is the first

time in almost a year that Appellants-Respondents have suggested the present matter should be held in abeyance.

7. Respondents-Appellants respectfully request that the Court proceed with this appeal.

Appellants-Respondents' Third Request to File out of Time

8. Appellants-Respondents filed their appeal of the lower court's March 1, 2024 contempt order on May 27, 2024. (Appellate Case No. 2024-000870)
9. Appellants-Respondents have ignored the Appellate Court Rules and demonstrated a strategy of delay. "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794 (1992).
10. Appellants-Respondents did not timely request the Transcripts following their appeal of the March 1, 2024 order, causing delay.
 - a. They filed a Motion to Order the Transcripts out of time on June 27, 2024, after receiving correspondence that they had not timely complied with the Rule. Rule 207(a)(1), SCACR (Transcripts must be ordered within 10 days after service of Notice of Appeal).
 - b. Rule 207(a)(5), SCACR provides an Appellant is required to notify the Office of Court Administration, the Clerk of the Appellate Court, and the Court Reporter in writing if Appellant has not received the Transcript within the allotted time nor received notification of an extension within ten days thereafter.

- c. Appellants-Respondents failed to inform this Court whether the relevant Transcripts had been received. The Clerk's office notified Appellants-Respondents on September 3, 2024 that the time for the Transcripts to be delivered had expired and this Court had not received the Initial Brief nor any correspondence that the Transcript wasn't received.
 - d. Appellants-Respondents replied on September 13, 2024 that one of the requested Transcripts had not been received. They did not indicate they had notified the Court Reporter or Office of Court Administration that the Transcript had not been received.
 - e. The Court of Appeals' Clerk's Office sent another letter to Appellants-Respondents on October 16, 2024 informing them that this Court had not received the Initial Brief nor notice that the Transcript had not been received.
 - f. Appellants-Respondents replied on October 24, 2024 that one of the Transcripts had not been received. Appellants-Respondents referenced their June 27, 2024 letter requesting the Transcripts to the Court of Appeals, but again provided no written correspondence to the Court Reporter or Court Administration notifying them the Transcripts had not been timely received.
 - g. Appellants-Respondents were notified by letter from the Court of Appeals' Clerk's office on November 20, 2024 that the Transcripts should have been received and that the Initial Brief and Designation were due by December 20, 2024.
11. Appellants-Respondents filed a Motion for Extension on December 20, 2024, which was granted until January 21, 2025.

12. All parties appealed from the lower court's October 1, 2024 contempt order and October 18, 2024 Denial of Reconsideration on November 18, 2024. The three appeals were consolidated under Appellate Case No. 2024-000870.
13. Appellants-Respondents did not timely file their Initial Brief on January 21, 2025 and were notified by the Court of Appeals' Clerk's office on January 27, 2025 that they had ten days to respond.
14. Appellants-Respondents filed a Motion to File Out of Time on February 6, 2025. They requested a second extension which was granted until March 10, 2025. This Court noted no further extensions would be granted absent extraordinary circumstances.
15. Appellants-Respondents did not file their Initial Brief and Designation when due but once again moved to file out of time on March 11, 2025. They also requested a third extension to file their Initial Brief and Designation until March 31, 2025.
16. Appellant-Respondents did not cite any extraordinary circumstances for the request. They instead raised the issue of abeyance almost a year after filing their Notice of Appeal in Case No. 2024-000870, and more than two years after the Notice of Appeal in Appellate Case No. 2022-001499 was filed. As set forth above, the request for abeyance is moot.
17. Appellants-Respondents should not be permitted to continuously delay this appeal. Respondents-Appellants respectfully object to their Motion to File Out of Time for a third time.

Respectfully submitted,

18 March, 2025

A handwritten signature in blue ink that reads "Bradford N. Martin". The signature is written in a cursive style with a horizontal line underneath it.

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990

ATTORNEYS FOR
RESPONDENTS-APPELLANTS
CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC

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Click Properties, LLC and Hyper Formance, LLC..... Respondents-Appellants,

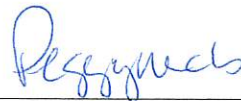
v.

Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC .. Appellants-Respondents.

PROOF OF SERVICE

I, Peggy McComb, Legal Assistant to attorneys for Respondents-Appellants' Click Properties, LLC and Hyper Formance, LLC, certify that I have served a copy of Respondents'-Appellants' Return to Motion for Appeal to be Held in Abeyance and to Service Initial Brief Out of Time *via email* and by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on March 18, 2025 addressed to James C. Alexander, Esq., The Alexander Law Firm, Post Office Box 898, Pickens, SC 29671, and Scarlet Bell Moore, Esq., P.O. Box 17615, Greenville, SC 29606.

March 18, 2025



Peggy McComb, Legal Assistant to
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990