

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James C. Williams, Jr., Special Referee

Case No. 2010-CP-40-8621

C.R. Meyer and Sons Company, Plaintiff,

v.

Custom Mechanical CSRA, LLC Defendant,

And

Custom Mechanical CSRA, LLC is Respondent,

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund; Plumbers & Steam Fitters Local #150 Pension Fund; Plumbers & Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these funds; Plumbers & Steam Fitters Local #150 Vacation Fund and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge Structural, Ornamental and Reinforcing Iron

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Workers; Southeastern Carpenters and Millwrights Health Trust, Southeastern Carpenters and Millwrights Pension Trust, Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc.; Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Griffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Bruce Pollock, Jr.; and, Security Federal Bank, . . . Third Party Defendants,

Of Whom

Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Griffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Bruce Pollock, Jr. are Appellants

And Presidential Financial Corporation and Security Federal Bank, are also Respondents.

RESPONDENTS PRESIDENTIAL FINANCIAL CORPORATION'S AND SECURITY FEDERAL BANK'S RETURN IN OPPOSITION TO APPELLANTS' THIRD MOTION FOR EXTENSION

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (“SCACR”), Respondents Presidential Financial Corporation (“Presidential”) and Security Federal Bank (“Security Federal”) oppose Appellants’ Motion for Extension to serve their initial brief and designation of matter filed and served on December 19, 2013. As acknowledged in Appellants’ Motion, this is Appellants’ third motion for extension. If granted, Appellants would have received 105 additional days to file their initial brief and designation of matter in a case that was decided before trial. No extraordinary circumstances were shown to extend the deadline for the first two extensions and none have been shown for this third request. Respondents are prejudiced by the delay Appellants have created as they are owed money being held in trust, which cannot be released until the matter between Appellants and Respondents has been resolved. Accordingly, Respondents oppose Appellants’ Motion for Extension and respectfully request the Court refuse to exercise its discretion to grant another extension.

PROCEDURAL BACKGROUND

The Honorable James C. Williams, Jr., appointed as special referee in this matter, granted Respondents Presidential’s and Security Federal’s Motion for Summary Judgment and denied Appellants’ Motion for Summary Judgment by Order dated and filed May 28, 2013. Thereafter, Appellants filed a Motion to Alter or Amend Judgment, which was denied by Order dated July 10, 2013 and filed on July 16, 2013. Appellants filed a Notice of Appeal concerning the denial of their Motion for Summary Judgment and the grant of Presidential and Security Federal’s Motion for Summary Judgment on August 15, 2013. The original deadline for the initial brief and designation of matter was September 20, 2013. On September 19, 2013, Appellants filed and served their first

motion for extension requesting sixty days to file their initial brief and designation of matter, which was granted by the Clerk of Court for the Court of Appeals on October 23, 2013. Therefore, the new deadline for initial brief and designation of matter became November 19, 2013. On November 18, 2013, Appellants filed their second motion for extension, this time requesting thirty days to file their initial brief and designation of matter. Chief Judge Few granted the motion on December 4, 2013, making the new deadline December 19, 2013. Appellants filed this Motion for Extension on December 19, 2013, requesting an additional fifteen days.

ANALYSIS

Rule 240, SCACR, governs all appellate court motions and provides the Court with the discretion to determine whether such relief should be granted. “Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.” Rule 240(e), SCACR. Respondents Presidential and Security Federal do not consent to a third extension of time for Appellants to file an initial brief and designation of matter.

The December 4, 2013 Order signed by Chief Judge Few specifically stated that “[n]o further extensions will be granted absent *extraordinary circumstances*.” (Emphasis added). Appellants’ motion vaguely cites “several unexpected business and personal matters” as the basis for their Motion for Extension; however, Appellants’ counsel did not elaborate as to what made those usual life occurrences amount to “extraordinary circumstances.” Additionally, Appellants’ counsel did not reach out to counsel for either Presidential or Security Federal to discuss these supposed “unexpected business and personal matters.” Therefore, without more, Appellants cannot show extraordinary

circumstances existed such that they were unable to draft an initial brief and designation of matter for an appeal that was noticed in August. Appellants are simply using delay tactics to avoid filing their initial brief and designation of matter.

Finally, to grant an additional extension when Appellants have already had *ninety (90) additional* days to file their initial brief and designation of matter prejudices Respondents Presidential and Security Federal, who have been fighting since 2011 to recover money loaned in 2006-2007 to Custom Mechanical CSRA, LCC (“Custom Mechanical”). Moreover, Judge Williams granted Presidential and Security Federal’s Motion for Summary Judgment over seven months ago, and the issues that are presented in this appeal are the same as those that were fully briefed in the cross-motions for summary judgment. Appellants have had ample time to draft an initial brief and designation of matter and their failure to do so in a timely manner prejudices Respondents Presidential and Security Federal, who have been forced to continue to defend this action during this delay created by Appellants. Accordingly, pursuant to the Court’s own Order, no further extension should be granted.

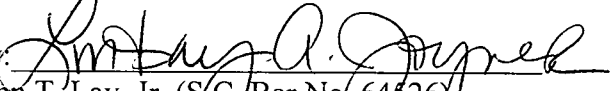
CONCLUSION

Respondents Presidential and Security Federal respectfully request the Court refuse to exercise its discretion and deny Appellants’ third Motion for Extension. Appellants have already had ninety (90) additional days to file their initial brief and have not shown “extraordinary circumstances” warranting an additional extension.

[Signature on Following Page]

Respectfully submitted,

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**ATTORNEY FOR RESPONDENT
SECURITY FEDERAL BANK**

Columbia, South Carolina
December 30, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

v.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC

Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-40-8621

CERTIFICATE OF SERVICE

Hall, Jr.; Ralph D. Black; Thomas Brittingham;
Arthur C. Carlson; Chris Cullipher; David W.
Cullipher; Charles R. Ellzey; Clayton W.
Google, Jr.; Martin Granger; Williams R. Griffin,
Jr.; Jack E. Hegler; George G. Lever; Matt
Lever; Ernest H. Lewis, III; William R.
McFerrin; Daniel Nichols; Kinda Phommachanh;
Raleigh B. Roye; Nicholas Stewart; Timothy P.
Stock; James Waltemath; Al Tiska; Al
Carpenter; and Bruce Pollock, Jr.,

Third-Party Defendants.

I hereby certify that a copy of the foregoing **THIRD-PARTY DEFENDANTS AND CROSSCLAIMANTS PRESIDENTIAL FINANCIAL CORPORATION'S AND SECURITY FEDERAL BANK'S RETURN IN OPPOSITION TO APPELLANTS' THIRD MOTION FOR EXTENSION** has been served upon the following by depositing same in the United States Mail, properly addressed and postage prepaid, on this the 30th day of December, 2013:

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December 30, 2013

Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *C.R. Meyer and Sons Company v. Custom Mechanical CSRA, LLC, et al.*
C.A. No. 10-CP-40-8621
GWB File No. 6992-1

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of Respondents Presidential Financial Corporation and Security Federal Bank's Return in Opposition to Appellants' Third Motion for Extension in the above-referenced matter. Please return the time-stamped copy to my courier.

By copy of this letter, we are today serving all counsel of record with same.

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Lindsay A. Joyner
Direct Dial: 803-724-1706
Email Address: ljoyner@gwblawfirm.com

LAJ/lla
Enclosures

cc: Francis M. Mack, Esq. (w/encl.)
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Nekki Shutt, Esq. (w/encl.)
John S. Nichols, Esq. (w/encl.)

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