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ATTORNEY AT LAW

May 19, 2014

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MAY 19 2014

SC Court of Appeals

VIA FAX AND U.S. MAIL

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Request for status of motion and clarification of rule 240(b)
D&C Builders, Inc. v. Richard M. Buckley, et al.
Greenville County Case #: 2013-CP-23-1833
Appellate Case No. 2023-001645

Dear Ms. Kitchings:

I am writing of behalf of Appellant to request the status of the Respondent's motion for extension of time to file initial brief and designation of matter. This motion was filed by the Respondent on April 9, 2014 which was the expiration of the previous thirty (30) day time frame in which Respondent was provided by the Court to file its initial brief and designation after denial of Respondent's motion to dismiss by Order of March 10, 2014.

Respondent's motion for extension of time requested an additional thirty (30) days to file the initial brief and designation of matter. Appellant filed a return to this motion objecting to any extra time, but that objection would now seem moot as it has now been forty (40) days since Respondent asked for an additional thirty (30) days. Although no ruling has been made on the motion for extension of time, to my knowledge Respondent has still not filed the initial brief or designation of matter. I am aware that Respondent has filed a motion seeking an order granting partial relief, however Rule 240(b) SCACR provides "time limits imposed by these Rules shall not be stayed by the filing of a motion or petition" unless ordered by the Court. Respondent's motion states it was based on having had a busy schedule and because of alleged ongoing settlement discussions; it did not ask for more time to file additional motions or for any other reason, and I'm not aware of any other Order of the Court extending the time. As the matter has not settled and the additional thirty (30) days has passed, I'm unsure as to current standing of the matter and what, if any, action is required on my part to continue moving the appeal forward.

I am aware that along with the motion for partial relief, Respondent also filed a new motion to dismiss which under Rule 240(b) would normally automatically stay the time limits for filing the initial brief. However, I do not understand it having that effect in this situation since (1) Respondent's first motion to dismiss was denied March 10, 2014 and (2) the new motion to dismiss is specifically

predicated on the granting of the motion for order granting partial relief, which does not automatically stay time under Rule 240(b).

It certainly doesn't seem logical that Rule 240(b) would allow a Respondent having had their motion to dismiss denied to automatically stay further proceedings by simply filing a new motion to dismiss citing a different reason. Such an interpretation would allow a Respondent to stay the proceedings indefinitely by simply continuing to file new motions to dismiss after each denial using a different reason each time. Additionally, in this case, the new motion to dismiss is specifically acknowledged by Respondent as being dependant on the Court granting Respondent's motion for an order granting partial relief; a motion which specifically does not automatically stay any time limits under Rule 240(b).

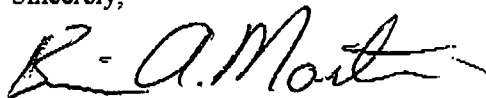
1 The Respondent readily acknowledges this Court's denial of Respondent's Motion to Dismiss on Appellant's Issue pertaining to injunctive relief (A copy of said Order is attached hereto and incorporated herein by reference as Exhibit C). Based upon the herein described consent of Respondent to the appellant's requested relief on that injunction issue, it is Respondent's position that this Motion to Dismiss is properly before the Court with respect to the Remaining Issue. (Respondent's Memorandum p. 4)

It sure seems like allowing a motion that doesn't automatically stay time limits to piggyback on a motion to dismiss (after the motion to dismiss has already been denied) to stay the time limits would defeat the purpose of Rule 240(b).

Respondent specifically requested more time in which to file the initial brief and designation due to counsel's busy schedule. The requested thirty (30) days has now passed without any filing of the initial brief or designation and no additional request or explanation for needing even more time. Therefore, I would appreciate some assistance in understanding the current status of the case. Is Respondent's initial brief and designation now due or is the case being treating as if the time limit has been automatically stayed under Rule 240(b)? If so, in light of the above information, can you help me understand why it's receiving such treatment? Any information, explanation or assistance you can provide me to understand the current status of this matter will be greatly appreciated so that I can take any action necessary to move the case forward.

Thank you in advance for your assistance. Please don't hesitate to let me know if you need further information or have any questions.

Sincerely,



Brian A. Martin

Enclosures

cc: M. Stokely Holder, Esquire
H. Stewart James, Esquire
Thomas A. Shook, Esquire