

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Mamdouh Sabry Abdelrahman,

Appellant,

vs.

Daufuskie Island Utility Company, Inc.,

Respondent.

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JAN 08 2015

SC Court of Appeals

Appellate Case No. 2014-001587

The Honorable J. Ernest Kinard, Jr.
Beaufort County
Trial Court Case No. 2013-CP-07-02255

**RESPONDENT DAUFUSKIE ISLAND UTILITY COMPANY, INC.'S RETURN TO
PETITION FOR EXTENSION OF TIME TO FILE
APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER**

Overview

The Respondent, Daufuskie Island Utility Company, Inc. ("DIUC" or "Respondent"), hereby opposes Appellant's Petition for Extension of Time to File Appellant's Initial Brief and Designation of Matter. When reviewing the Petition by Appellant, Mamdouh Sabry Abdelrahman, ("Sabry" or "Appellant"), the Respondent requests this Court consider the limited nature of this case below and the fact that the costs and delays caused by Appellant must ultimately be borne by DIUC's utility customers. Because the Appellant failed to file its initial brief within the time prescribed, Respondent also requests the Court enter an order pursuant to Rule 208(a)(4), SCACR, dismissing this Appeal.

As found by the Honorable J. Ernest Kinard, Jr., Circuit Court Judge, this action involves .337 acre tract in Haig Point, Daufuskie Island, South Carolina upon which DIUC operates a

125,000 gallon storage tank and related water system facilities (“the Property”). The Property was sold at public auction to Appellant for the sum of \$526.70.

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-2338, which seeks to condemn the Property (hereafter “the Condemnation Action”). The Condemnation Notice names Sabry as the Landowner-Condemnee and is brought by DIUC pursuant to The South Carolina Eminent Domain Procedure Act and under the authority of S.C. Code §58-7-20 and S.C. Code §58-7-30.

In September of 2012, Sabry filed the underlying action, Civil Action 2013-CP-07-02255, alleging DIUC does not have authority to condemn the Property (“the Challenge Action” or “the underlying action”) because DIUC lacks the authority to bring the Condemnation Action. DIUC timely answered the complaint in Sabry’s Challenge Action, which alleged seven causes of action. By virtue of The Eminent Domain Procedure Act, the Condemnation Action was automatically stayed pending resolution of the Challenge Action.

On November 25, 2013, DIUC filed a Motion for Summary Judgment as to all counts of the Challenge Action. On June 3, 2014, Judge Kinard held a hearing on DIUC’s Motion for Summary Judgment. At the outset of the hearing, Appellant conceded DIUC’s Motion for Summary Judgment as to Counts 2 through 7 of the Complaint. The Court then heard oral argument as to the only remaining count. By Order dated Jun 12, 2014, Judge Kinard granted DIUC’s Motion for Summary Judgment as to the sole remaining cause of action. The Appellant appeals that Order.

Appellant's Motion for Extension

The Appellant has already received one 30-day extension file his initial brief. The initial extension expired on December 31, 2014, without the filing of a brief by the Appellant. Now, at the last hour, Appellant seeks another 10-day extension.

The Appellant has had ample time to determine his grounds for appeal related to the single order entered in the case below. Furthermore, more than three months passed after entry of the order before the transcript of the hearing was secured. That means more than six months have passed since the entry of the single order on appeal.

Rule 208(a)(1), SCACR, provides that the initial brief of an appellant shall be served within 30 days after receiving the transcript. While Respondent fully understands that one extension of 30-days is routinely granted, as it was here, there is no such automatic extension of additional days as requested by Appellant. Rather than rubberstamp Appellant's request for additional time to file his initial brief, Respondent respectfully requests that this Court weigh Appellant's Petition and the grounds asserted therein in light of the fact that the underlying Condemnation Action at issue was filed over 15 months ago.

Additionally, DIUC is a "public utility" under S.C. Code Ann. §58-5-10(4), and is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina. Appellant has delayed the underlying case repeatedly and even attempted unsuccessfully to intervene in DIUC's regulatory matters before the Public Service Commission. Respondent asserts these tactics and delays are part of an effort by Appellant to delay the Condemnation Action in an attempt to extort an unreasonable amount of compensation for the .337 acre parcel purchased by Appellant for only \$526.70. Respondent owes a duty to the public to request this Court act

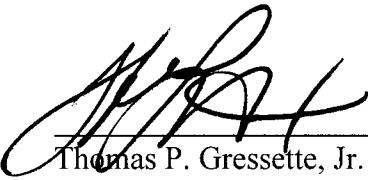
swiftly to avoid further delays which are ultimately damaging to the customers served by DIUC in its capacity as a public utility.

Because Appellant failed to file its initial brief prior to the prescribed date, Respondent requests the Court enter an order pursuant to Rule 208(a)(4), SCACR, dismissing this Appeal. As stated in Rule 240(b), SCACR, the time limits imposed by the Rules “shall not be stayed by the filing of a motion or petition.” As such, the Appellant’s initial brief was due at least by December 31, 2014. Because no brief was filed, the Appeal should be dismissed.

Conclusion

For the foregoing reasons, Respondent asks that this Court deny the Petition for Extension of Time and enter an order pursuant to Rule 208(a)(4), SCACR, dismissing this Appeal.

Respectfully submitted,



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January 6, 2015

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PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Extension of Time to File Appellant's Initial Brief and Designation of Matter in the above matter by United States Mail, First Class, upon the following counsel:

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January 6, 2015

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The Honorable Jenny Abbot Kitchings
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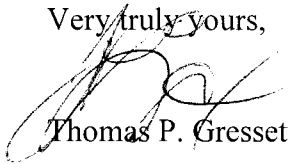
Re: Mamdouh Sabry Abdelrahman vs. Daufuskie Island Utility Company, Inc.
Appellate Case No. 2014-001587

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent Daufuskie Island Utility Company, Inc.'s Return to Petition for Extension of Time to File Appellant's Initial Brief and Designation of Matter in the above referenced appeal. Also enclosed are the original and six copies of the Proof of Service.

Please contact me if you have any questions. Thank you for your assistance.

Very truly yours,



Thomas P. Gressette, Jr.

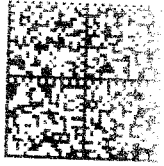
TPG/cam
Enclosures

c: Thomas A. Holloway, Esq. (w/encl.)

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