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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED
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SC Court of Appeals

Innovative Waste Management Inc., Crest Energy Partners,
LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Appellant,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP,
LLC, Henry Wuertz, Innovative Waste Management, Inc.,
Crest Energy Partners LP, Dunhill Products LP, Edward H.
Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP,
Dunhill Products, LP, Henry Wuertz, and Edward H.
Girardeau are the Respondents.

RESPONDENTS' MOTION TO DISMISS

David B. Marvel, SCBAR # 68803
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 212-6949
Fax (843) 303-8035

COMES NOW RESPONDENTS, Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau, who hereby move this Honorable Court of Appeals for an Order dismissing this appeal for lack of jurisdiction. As grounds for this Motion, Respondents hereby aver before this Honorable Court as follows.

I. FACTS

The Appellant Innovative Waste Management Inc. (hereafter "IWM") filed this action against the Respondents on May 11, 2012, alleging numerous causes of action relating to a series of petroleum transactions in Mobile, Alabama and St. Rose, Louisiana in early 2010.¹ The Respondents filed counter claims and claimed set-off on those transactions and a previous transaction. The parties litigated the matter for nearly three years, during which it was designated a Complex Case and assigned to the Honorable Maite D. Murphy. The parties ultimately reached a settlement agreement during mediation on April 8, 2015. A copy of that settlement agreement is included in the Appellant's Designation of Matter as Exhibit A.

The Mediator, Angus M. Lawton, transmitted a Proof of ADR to the Clerk of Court on April 10, 2015, pursuant to Rule 7(f), SCADR. A copy of the Proof of ADR is included in the Appellant's Designation of Matter as Exhibit C

On April 14, 2015, the Clerk of Court transmitted a Notice of Jury Roster to the parties, setting the case on the May 4, 2015 jury trial roster. In response, the undersigned

¹ The case was filed in the Dorchester County Court of Common Pleas after a case between the parties including the same allegations was dismissed by the United States District Court for the District of South Carolina for lack of subject matter jurisdiction on May 10, 2012. Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC, Civil Action No. 2:11-cv-1023-RMG (D.S.C. May 10, 2012).

transmitted an email to Judge Murphy's Clerk, with a copy to all counsel, informing the Court that parties had reached a settlement. A copy of the email is included in the Appellant's Designation of Matter as Exhibit B. IWM's counsel did not respond.

On April 20, 2015, the Court received the Proof of ADR. The Clerk of Court issued a Form 4 Order dismissing the case on that same date, referring to the Proof of ADR as an "attached order". A copy of the Form 4 is included in the Appellant's Designation of Matter as Exhibit D. IWM's counsel did not respond to the Form 4 Order.

On May 27, 2015, IWM filed "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial" pursuant to Rule 60(b), SCRCF. A copy of that Motion is attached hereto as Exhibit 1. The motion argued simply that the settlement had not been consummated, and therefore the case should be set for trial. This Motion was heard by Judge Murphy on June 24, 2015.

On July 22, 2015, Judge Murphy issued a Form 4 Order denying the 60(b) Motion. The Statement of Judgment in that Order stated "After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion . . . , is hereby denied." A copy of the July 22, 2015 Order is attached hereto as Exhibit 2.

On July 31, 2015, IWM filed a "Motion to Reconsider" pursuant to Rule 59(e), SCRCF, asking the Court once again to vacate the settlement agreement and restore the case to the active docket. A copy of that Motion is attached hereto as Exhibit 3.

On August 18, 2015, Judge Murphy issued a Form 4 Order dismissing IWM's Rule 59 motion, stating as follows:

Pursuant to this Court's authority under Rule 59, SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

A copy of the August 18, 2015 Order is included in the Appellant's Designation of Matter as Exhibit I.

On September 16, 2015, IWM filed and served its Notice of Appeal, purporting to appeal "the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of Court, Cheryl Graham, on April 20, 2015."

II. LAW AND ARGUMENT

IWM has attempted to appeal the relief granted by a Form 4 Order filed on April 20, 2015 by virtue of a Notice of Appeal filed on September 16, 2015. IWM's appeal must be dismissed for lack of jurisdiction pursuant to Rule 203, SCACR(b)(1).

Rule 203 requires an aggrieved party to serve a Notice of Appeal "within thirty (30) days after receipt of written notice of entry of the order or judgment." This requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772, 775 (S.C. 2004).

While a timely motion to alter or amend the judgment under Rule 52 or 59, SCRC, would have stayed the thirty day period for filing the appeal under Rule 203, IWM's first Motion to Vacate was filed thirty-seven days after the issuance of the Order

dismissing the case. Therefore, that Motion was not a “timely motion to alter or amend the judgment”, as any such motion would have had to have been filed within ten days of receiving written notice of the entry of judgment. See Rule 59, SCRPC.

Notably, the bulk of IWM’s initial brief is directed at Judge Murphy’s July 22, 2015 ruling denying relief under Rule 60(b). However, even if the Court were to construe IWM’s Notice of Appeal to apply to the July 22, 2015 ruling, the Notice of Appeal would still be untimely, as it was filed forty-five days after the issuance of that Order.

IWM’s “Motion to Reconsider” seeking relief under Rule 59, SCRPC cannot be construed to toll the period for filing the Notice of Appeal under Rule 203, SCACR. However captioned, that Motion was nothing more than a successive post-trial motion which South Carolina courts have continually stated do not toll the jurisdictional period for filing a Notice of Appeal. See Elam, 602 S.E.2d at 777-78; Quality Trailer Products v. CSL Equipment Co., 349 S.C. 216, 562 S.E.2d 615 (2002); Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999); Collins Music Co. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

Unlike a Rule 50, 52 or 59, SCRPC, motion, a Rule 60(b) motion does not have any tolling effect on the right to appeal from the challenged judgment. Coward Hund, 518 S.E.2d 56, 59. Regardless of the form in which the request for relief is framed, the substance of the requested relief that matters. Richland County v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). Although a timely Rule 59(e) motion normally will toll the time within which an appellant must serve his notice of appeal, a successive Rule 59(e) motion will not do so. Quality Trailer, 562 S.E.2d at 617. Therefore, when the first post-trial motion “does not result in a substantial alteration of the original judgment,

an appeal will be barred due to untimely service when, instead of appealing the first post-trial motion, the party files a successive Rule 59(e) motion. Elam, 602 S.E. 2d at 778.

IWM's July 31, 2015 Motion to Reconsider was successive, as Judge Murphy's July 22, 2015 ruling did not alter the original judgment in any way, and the motion itself did not state any new grounds for relief that had not already been argued. In fact, Judge Murphy's August 19, 2015 order explicitly found that "all arguments properly raised to the Court have already been ruled upon". As IWM has not challenged this finding in its Initial Brief, it should not be subject to further review.

Judge Murphy's determination that the Motion to Reconsider was successive raises an issue noted by the Elam court:

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling.

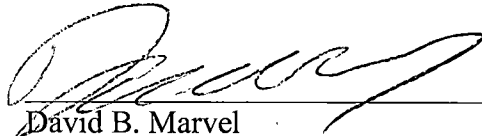
Elam, 602 S.E.2d at 780. In the case at bar, Judge Murphy ruled that the Motion to Reconsider was successive. She did so on August 18, 2015. Perhaps Judge Murphy even ruled without oral argument so that IWM would have more than sufficient time to review the ruling and still file a Notice of Appeal "within thirty (30) days after receipt of written notice of entry" of the July 22, 2015 Order. IWM chose not to do so, instead waiting nearly three weeks to decide to appeal an order it had already challenged twice. Therefore, at the very latest, once the time to file notice of appeal concerning the July 22, 2015 order had expired, that order, "right or wrong," became the law of the case and *res judicata* would preclude any further review on the issues decided therein. See Ulmer v.

Ulmer, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (holding portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case).

III. CONCLUSION

Judge Murphy's July 22, 2015 ruling was within the court's discretion. IWM failed to file a timely Notice of Appeal, and the ruling cannot be challenged at this late date. This Honorable Court of Appeals is without jurisdiction to hear the appeal. Accordingly, IWM's appeal must be dismissed for lack of jurisdiction.

RESPECTFULLY SUBMITTED:



David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 212-6949
Fax (843) 303-8035
Email dave@marvel.lawyer

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

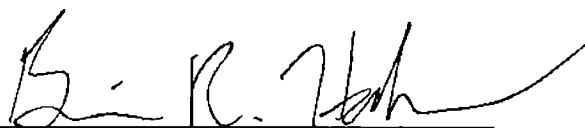
2015 MAY 27 AM 11:20

CLERK OF COURT
DORCHESTER COUNTY

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

By:



Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

2015 MAY 27 AM 11:20

CLERK OF COURT
DORCHESTER COUNTY

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS


CASE NO.: 2012-CP-18-1227

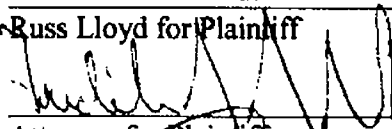
SETTLEMENT AGREEMENT

FILED IN COURT
DORCHESTER COUNTY
2015 MAY 27 AM 11:20

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

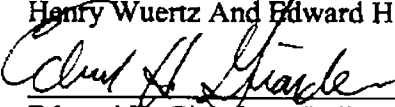
Date: April 8, 2015


Russ Lloyd for Plaintiff


Attorney for Plaintiff


Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp, Llc,
Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau

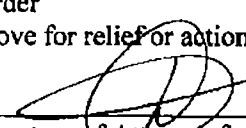

Edward H. Girardeau, Individually


Attorney for Defendant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
INNOVATIVE WASTE MANAGEMENT, INC.,)
 Plaintiff,)
 vs.)
)
CREST ENERGY PARTNERS GP, L.L.C.,)
CREST ENERGY PARTNERS L.P., DUNHILL)
PRODUCTS L.P., HENRY WUERTZ, AND)
EDWARD H. GIRARDEAU)
 Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
 CASE NO.: 2012 -CP-18-1227
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

2015 MAY 27
 11:20 AM
 CLERK OF COURT
 DORCHESTER COUNTY

Plaintiff's Attorney: Wm. Michael Gruenloh, Bar No. 12418 Address: <u>192 Easy Bay Street, Suite 202</u> <u>Charleston, South Carolina 29401</u> Phone: (843) 577-0027 Fax 843-577-0721 E-mail: <u>Mike@gruenlohlaw.com</u> Other:	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial</u> Estimated Time Needed: <u>10 Minutes</u> Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type <input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div> <u></u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant </div> <div> <u>May 21, 2015</u> Date submitted </div> </div>	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE _____ Date:

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP1801227

Innovative Waste Management Inc
 Crest Energy Partners LP

Edward H Girardeau

Crest Energy Partners Gp, LLC
 Dunhill Products GP, LLC
 Henry Wuertz
 Innovative Waste Management Inc

Crest Energy Partners LP
 Dunhill Products LP
 Edward H Girardeau
 C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order, (formal order to follow) Statement of Judgment by the Court: **After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.**

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

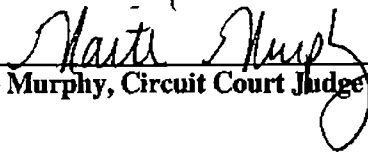
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2166	7/22/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

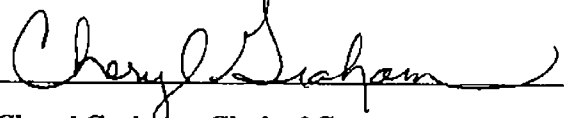
This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patric Aulton Chisum 192 East Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Ruth Mott

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

7-31-15
7:16 JUL 31 PM 3:33
DORCHESTER COUNTY
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

✓ INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

MOTION TO RECONSIDER

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)” and states “[t]his order [X] ends . . . the case.” The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as “Exhibit F”). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants’ counsel’s initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants’ failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that “[t]he case was closed out”¹ (See Court E-mail Correspondence, attached as “Exhibit G”). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff’s May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

1. Plaintiff’s counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

STANDARD OF REVIEW

“ . . . Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal.” Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it “ . . . believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court’s dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants’ have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants’ non-performance. For these reasons, the Court’s earlier July 22, 2015 Order was incorrect and should be overturned.

I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed “. . . by filing a stipulation of dismissal signed by all parties who have appeared in the action” Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff’s failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff’s failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that “[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.” (See “Exhibit A” at Paragraph 5) (emphasis added). Mr. Lawton’s Proof of ADR or Exemption sets forth that there would be a “Voluntary Dismissal to be filed by Atty. Marvel.” (See “Exhibit D”). Finally, Mr. Marvel’s e-mail correspondence with the Court regarding the settlement states that “. . . we will file a stipulation of dismissal once the settlement is consummated.” (See “Exhibit C”). To date, no dismissal complying with

SCRCP 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated. (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCR 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is ". . . so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission ". . . is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract. Silver v. Aabstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
Brian R. Holmes SCBAR # 102052
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

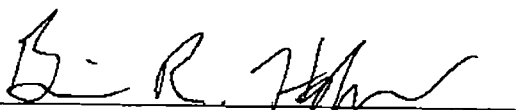
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

FILED
JUL 31 PM 3:33
CLERK OF COURT
DORCHESTER COUNTY

By:



Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

RECORD

2015 JUL 31 PM 3:33

CHESTER
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

RECORDED IN THE COURT OF COMMON PLEAS

2015 JUL 31 PM 3:33

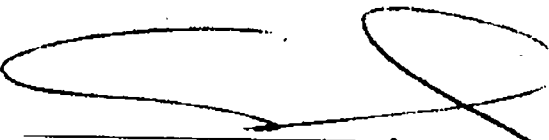
CASE NO.: 2012-CP-18-1227

CLERK OF COURT
DORCHESTER COUNTY

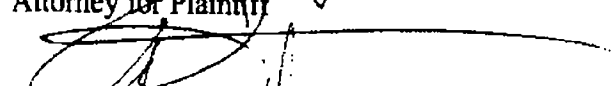
SETTLEMENT AGREEMENT

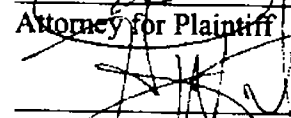
1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

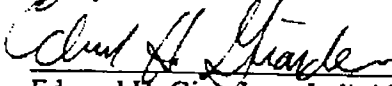
Date: April 8, 2015

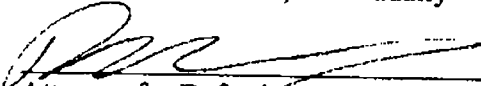

Russ Lloyd for Plaintiff


Attorney for Plaintiff


Attorney for Plaintiff


Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp, Llc,
Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau


Edward H. Girardeau, Individually


Attorney for Defendant

RECORDED

2015 JUL 31 PM 3:33

CHARLENE L. WILSON
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF RECORD
C. RUSS LLOYD
2015 JUL 31 PM 3:33

CHERYL L. SHAW
CLERK OF COURT
DORCHESTER COUNTY

Personally appeared before me, C. Russ Lloyd, who, being duly sworn, deposes and states as follows:

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

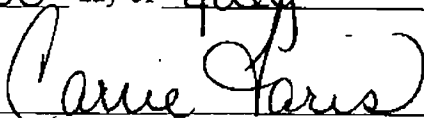
7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President
Innovative Waste Management, Inc.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires My Commission Expires January 23, 2017

FILED RECORD
2015 JUL 31 PM 3:33
CHERYL S. GAY
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT C



Wm. Michael Gruenloh <mike@gruenlohlaw.com>

IWM v. Crest et al 2012-CP-08-1227

2015 JUL 31 PM 3:33

David B. Marvel <dave@prennermarvel.com>

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@sccourts.org>

Cc: "bstevens@dorchestercounty.net" <bstevens@dorchestercounty.net>, Fritz Jekel <fritz@j-dlaw.com>, "Mike Gruenloh (mike@gruenlohlaw.com)" <mike@gruenlohlaw.com>

CLERK OF COURT
DORCHESTER COUNTY

Tue, Apr 14, 2015 at 11:01 AM

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

RECORDED

2015 JUL 31 PM 3:53

OFERYL B. ...
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

RECORDED

INNOVATIVE WASTE MANAGEMENT, INC.,

2015 JUL 31 PM 3:33

PROOF OF ADR OR EXEMPTION

CLERK OF COURT
DORCHESTER COUNTY

CASE NO.: 2013-CP-18-1897

2012 CP 18-1227

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

2015 JUL 20 PM 3:23
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.
() by Consent Judgment, to be file by _____
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- () Partially Settled.
() At an impasse.
() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present
Defendant [X] was present [] was not present

6. Other parties were:

- X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

- X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

FILED RECORD

2015 JUL 31 PM 3:33

CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

FILED - RECORDED
2015 APR 29 11 31 AM '15
CLERK OF COURT
DORCHESTER COUNTY

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau
Crest Energy Partners
Gp, LLC
Dunhill Products GP,
LLC
Henry Wertz
Innovative Waste
Management Inc

Crest Energy Partners
LP
Dunhill Products LP
Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Greenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

CASE NO.: ~~2013-CP-18-1897~~

2012-CP-18-1227

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL GIRARDEAU
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.
() by Consent Judgment, to be file by _____
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- () Partially Settled.
() At an impasse.
() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present
Defendant [X] was present [] was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

RECORDED
2015 JUL 31 PM 3:33
CHERYL A. JAMES
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) AFFIDAVIT OF
) ANGUS LAWTON, ESQ.
) 2015 JUL 31 PM 3:33

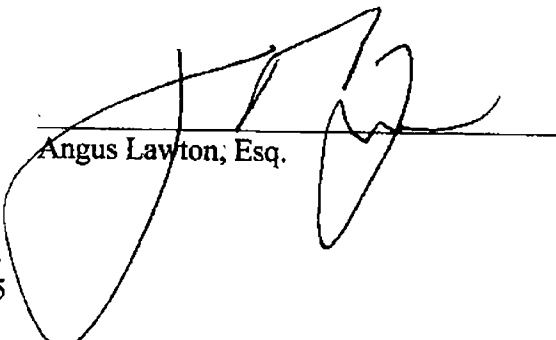
Personally appeared before me, Angus Lawton, Esq. who, being duly sworn deposes and states as follows:

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P., Henry Wuertz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.



Angus Lawton, Esq.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina
My Commission Expires 9-4-2023

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227
CASE NO.: ~~2013-CP-18-1897~~

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL BRADSHAW
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

_____	_____
Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
_____	_____
Print Name	Print Name
_____	_____
Phone/Fax	Phone/Fax
Date: _____	

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION
(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.
() by Consent Judgment, to be file by _____
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- () Partially Settled.
() At an impasse.
() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present
Defendant [X] was present [] was not present

6. Other parties were:

- X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

- X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED - RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

2015 APR 20

Crest Energy Partners
Gp, LLC

Crest Energy Partners
LP

Dunhill Products GP,

Dunhill Products LP

CHERYL
CLERK
DORCHESTER

COURT

Henry W. Wertz
Innovative Waste
Management Inc

Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099
Judge Code

4/20/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227
CASE NO.: ~~2013-CP-18-1897~~

FILED - RECORDED
2015 APR 20 PM 3:14
CHERYL SNAPE
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

Fully Settled.
 by Consent Judgment, to be file by _____
or Voluntary Dismissal to be filed by Atty. Marvel

Partially Settled.
 At an impasse.
 In need of further ADR I and am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff was present was not present
Defendant was present was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

RECORD

2015 JUL 31 PM 3:34

CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT G



RECORDED

2015 JUL 31 PM 3:34

IWM v. Crest et al 2012-CP-08-1227

CHERYL L. ...
CLERK OF COURT
DORCHESTER COUNTY

David B. Marvel <dave@prennermarvel.com>

Wed, May 20, 2015 at 10:02 AM

To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Becky Stevens <BStevens@dorchestercounty.net>, "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@lccourts.org>

Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, Brian Holmes <brian@gruenlohlaw.com>, Sarah Pendleton <sarah@prennermarvel.com>

Dear William and Becky,

To clarify, my client has had some difficulty funding the settlement due to factors outside of its control. However, Crest has every intention of standing by the agreement and hopes to have funding in the next ten days. The settlement agreement is attached for your review. My clients have executed the release, although Mr. Gruenloh's clients have not. The settlement agreement fully complies with Rule 43(k) and the case has been dismissed. While the plaintiff is certainly within its rights to move to enforce the settlement, I believe that is their only remedy and the matter cannot simply be set for trial. I am available for a status conference at the court's convenience.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com



IWM v. Crest et al 2012-CP-08-1227

Mike Gruenloh <mike@gruenlohlaw.com>

Thu, May 28, 2015 at 2:15 PM

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@cscourts.org>, Becky Stevens <BStevens@dorchestercounty.net>

Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, Brian Holmes <brian@gruenlohlaw.com>, Sarah Pendleton <sarah@prennermarvel.com>, "David B. Marvel" <dave@prennermarvel.com>

Thank you Becky. It sounds to me like any dismissal would have been an inadvertent admin error as the plaintiff never consented to the dismissal of this matter. I'm not relishing the thought of telling my client that we must now wait three weeks to have that sorted out before we can set this 3 year old case for trial. Is it possible for us to have a short teleconference with Judge Murphy? Thank you and sorry to be a bother.

Mike

On May 28, 2015, at 1:46 PM, Becky Stevens <BStevens@dorchestercounty.net> wrote:

The case was closed out with the Mediator's Report which indicated the case was fully settled.

Rebecca (Becky) Stevens

Assistant Civil Court Coordinator

Office of the Clerk of Court

for Dorchester County

5200 E. Jim Bilton Blvd.

St. George, South Carolina 29477

843-832-0126

From: Wm. Michael Gruenloh [mailto:mike@gruenlohlaw.com]

Sent: Thursday, May 28, 2015 12:58 PM

To: Becky Stevens

Cc: Murphy, Maite Law Clerk (William Crantford); Fritz Jekel; Patrick Chisum; Brian Holmes; Sarah Pendleton; David B. Marvel

Subject: Re: IWM v. Crest et al 2012-CP-08-1227

\$25.00 MB ✓

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

2015 JUL 31 PM 3:33

CASE NO.: 2012-CP-18-1227

✓ INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

MOTION AND ORDER INFORMATION

vs.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P., DUNHILL
PRODUCTS L.P., HENRY WUERTZ, AND
EDWARD H. GIRARDEAU
Defendants.

FORM AND COVERSHEET

Plaintiff's Attorney:
Wm. Michael Gruenloh, Bar No. 12418
Address:
192 Easy Bay Street, Suite 202
Charleston, South Carolina 29401
Phone: (843) 577-0027 Fax 843-577-0721
E-mail: Mike@gruenlohlaw.com Other:

Defendant's Attorney:
_____, Bar No. _____
Address:

Phone: _____ Fax _____
E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 30 Minutes

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

July 31, 2015
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ \$25.00
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE CODE _____

Date: _____

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Case No. 2015-002024

CERTIFICATE OF SERVICE

RECEIVED


DEC 22 2015

SC Court of Appeals

The undersigned hereby certifies that on the 21st day of December, 2015 the undersigned served counsel for the Appellant with the foregoing Motion to Dismiss by sending a copy to counsel for Appellant via email and U.S. mail, postage prepaid to counsel at the addresses below:

Wm. Michael Gruenloh, Esquire
Gruenloh Law Firm, LLC
192 East Bay Street, Suite 202
Charleston, South Carolina 29401

Frederick J. Jekel, Esquire
Jekel-Doolittle, LLC
1512 Laurel Street
PO Box 2597
Columbia, SC 29201



David B. Marvel

David B. Marvel
Attorney at Law – Proctor in Admiralty

December 21, 2015

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

DEC 22 2015

SC Court of Appeals

Re: Innovative Waste Management v. Crest Energy Partners GP, LLC
Case No. 2015-002024

Dear Ms. Kitchings,

I hope this finds you well and enjoying the holiday season. I have enclosed an original and six copies of a Motion to Dismiss for the Court's consideration, along with the \$25.00 filing fee. Please file this in your usual prompt and efficient manner, and enclose a clocked copy in the self-addressed, stamped envelope provided.

If you have any questions, comments, or concerns, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,



David B. Marvel

cc: Wm. Michael Gruenloh
Fritz Jekel

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David B. Marvel
PO Box 82 734
Charleston SC 29413

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Columbia SC 29201

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