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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY

Court of Common Pleas

The Honorable Clifton B. Newman, Presiding Judge

Case No.: 2010-CP-26-10848
Appellate Court Case No.: 2015-001398

PAUL CURRY,

Appellant,

v.

TOWN OF ATLANTIC BEACH,

Respondent.

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SC Court of Appeals

RETURN TO RESPONDENT'S MOTION FOR AN EXTENSION
AND TO FILE INITIAL BRIEF OUT OF TIME

Appellant, by and through the undersigned, by way of Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time, objects to Respondent's request and respectfully requests that this Court deny Respondent's Motion.

Appellant, filed his Notice of Intent to Appeal in this matter on June 23, 2015. Appellant filed and served Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal on October 15, 2015, making Respondent's Initial Brief due on or before November 14, 2015. On November 11, 2015, Respondent's counsel requested a Thirty (30) day extension to file Respondent's Initial Brief which was received by this Court on November 16, 2015. On December 14, 2015, correspondence was sent from Deputy Clerk V. Claire Allen indicating that Respondent's First Motion for Extension was deficient in that Respondent's counsel failed to include the filing fee and directed Respondent's counsel to correct the deficiency within Ten (10) days of the date of the Deficiency Letter, making Respondent's correction due on or before December 24, 2015. Respondent's counsel sent correspondence dated December 23, 2015



enclosing Respondent's Motion for an Extension and to File Initial Brief Out of Time, which was received by Appellant's counsel on December 28, 2015. Respondent's counsel attempted to contact Appellant's counsel concerning whether Appellant's counsel would object to Respondent's Motion on December 23, 2015. Prior to Appellant's counsel's office closing for the Christmas holiday, Appellant's counsel contacted Appellant to determine whether he was inclined to consent to Respondent's counsel's request. He was not so inclined. Due to the lateness of the request; Appellant's counsel's office closing and conference calls concerning other pending cases, Appellant's counsel was unable to return Respondent's counsel's telephone call prior to closing for the Christmas holiday.

Rule 208 (a) (4), South Carolina Appellate Court Rules states, in pertinent part: "upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Appellant would argue that Respondent's failure to abide by the South Carolina Appellate Court Rules represents a continuation of a pattern of dilatory behavior in this matter. During the pendency of this matter in the trial court, Appellant served discovery requests on Respondent which went completely unanswered, until the call of the case for trial, at which time Respondent's counsel attempted to verbally answer the discovery requests at the beginning of the Trial. (*See* Trial Transcript, page 15, line 14– page 20, line 19). Incidentally, prior to the trial of the matter below, Appellant filed a Motion to Compel Discovery Responses on April 7, 2011, which resulted in an Order Compelling Discovery Responses from Respondent within Thirty (30) days of the date of the Order, September 1, 2011, and filed on September 16, 2011. The Order Compelling Discovery Responses also awarded Appellant Eight Hundred Seventy One and 52/100ths Dollars (\$871.52) in attorney's fees for Respondent's non-compliance.¹ (*See* Plaintiff's Exhibit 9; Trial Transcript, page 35, line 24- page 37, line 15). Part of Respondent's failure to answer discovery requests propounded in this case included the failure by Respondent to identify any witnesses it intended to produce at the Trial of this matter, which resulted in a fair amount of discussion at the onset of the Trial, and which is one of the issues on Appeal.² (*See* Trial Transcript page 4, line 6- page 5, line 1; page 6, line 23- page 8, line 1; page 10, lines 1-25).

¹ Respondent did not pay the outstanding award of attorney's fees until after the conclusion of the trial, on January 21, 2014.

² Respondent likewise failed to file a pre-trial brief in this matter below.

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At the conclusion of the Trial, the Trial Judge, from the bench, ordered both parties to submit written orders for consideration to him within Fifteen (15) days of the Trial, which concluded on January 13, 2014, thus making the proposed Orders due by January 28, 2014. Due to the intervention of an ice storm affecting South Carolina, Appellant's counsel was unable to finish drafting the proposed order and did not forward the same to the Trial Court until February 12, 2014. While Appellant's counsel was unable to meet the imposed deadline, all efforts were made to forward the proposed order for consideration in a timely manner. Respondent's counsel, however, did not forward the proposed order until April 30, 2014.

Due to the pattern of dilatory behavior as shown above, Appellant believes that further extensions and continuances in this matter would serve only to further delay the resolution of this matter and reflects a failure to abide by the Rules of this Court. As such, Appellant respectfully requests that this Court deny Respondent's Motion and, pursuant to Rule 208 (a)(4), SCACR, proceed with the Appeal based upon the Briefs actually submitted at this time.

Respectfully submitted,

MULLINS LAW FIRM, P.A.



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Dated: 12/29/15
North Myrtle Beach, South Carolina

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Clifton B. Newman, Common Pleas Court Judge

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PAUL CURRY,

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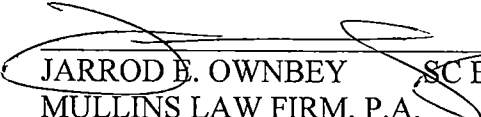
Respondent.

PROOF OF SERVICE

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I certify that I have served a copy of the Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time via regular U.S. Mail addressed to the following:

Leah B. Moody, Esquire
PO Box 1015
Rock Hill SC 29731


JARROD E. OWNBEY SC Bar No.: 75417
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Dated: December 29, 2015
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December 29, 2015

VIA CERTIFIED MAIL

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Paul Curry v. Town of Atlantic Beach
Civil Action No.: 2010-CP-26-10848
Appellate Case No.: 2015-001398
MLF File No.: 2010-312

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SC Court of Appeals

Dear Clerk Kitchings:

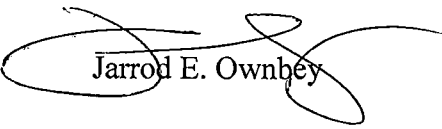
Enclosed please find the original and one (1) copy of the Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time in the above-referenced matter, together with a Proof of Service.

Thank you for your assistance with this matter.

With warmest regards, I remain

Very truly yours,

MULLINS LAW FIRM, PA


Jarrod E. Ownbey

JEO/klc

Encls.

cc: Mr. Paul Curry
Leah B. Moody, Esquire

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