

The South Carolina Court of Appeals

Innovative Waste Management Inc., Crest Energy
Partners LP, Edward H. 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.

Appellate Case No. 2015-002024

ORDER

Respondents filed a motion to dismiss this appeal, arguing Appellant failed to timely serve its notice of appeal from the circuit court's April 20, 2015 Form 4 order. Respondents further contend Appellant failed to timely appeal the circuit court's July 22, 2015 Form 4 order denying Appellant's Rule 60(b), SCRCF, motion to vacate the judgment because Appellant filed a successive post-trial motion that did not toll the time to serve Appellant's notice of appeal.

As to whether Appellant failed to timely appeal the April 20, 2015 Form 4 order, Appellant concedes it is seeking relief from the July 22, 2015 order, not the April 20, 2015 order. According to Appellant, the fact that it is appealing the July 22, 2015 order is "clearly set forth in [its] Notice of Appeal."

As to Respondents' argument that Appellant failed to timely appeal the July 22, 2015 order denying Appellant's Rule 60(b) motion, Appellant filed a timely Rule 59(e), SCRPC, motion, which tolled the time for Appellant to serve its notice of appeal pursuant to Rule 203, SCACR. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) (concluding a party usually is free to file an initial Rule 59(e) motion "without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely"); *id.* (finding the use of oral or written judgment notwithstanding the verdict/new trial motions, followed by an initial Rule 59(e) motion, are "part and parcel of a party's 'single bite at the apple' in presenting [a] case to the trial court"); *id.* at 22, 602 S.E.2d at 779 ("There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity."). Because Appellant's Rule 59(e) motion was not successive and, upon the trial court's denial of Appellant's Rule 59(e) motion, Appellant served a timely notice of appeal, we deny Respondents' motion to dismiss.


FOR THE COURT

Columbia, South Carolina

cc:

William Michael Gruenloh, Esquire
Patrick Aulton Chisum, Esquire
Brian Ross Holmes, Esquire
Frederick John Jekel, Esquire
David B. Marvel, Esquire

FILED

March 4, 2016