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TINA M. CUNDARI

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January 31, 2017

RECEIVED

JAN 31 2017

SC Court of Appeals

By Hand Delivery

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

Re: Pavilion Development Corp. & Larry McNair v. Nexsen Pruet
Appellate Case No. 2016-001632
SGSL No.: 5347/1509

Dear Ms. Kitchings:

This firm represents Nexsen Pruet in the above-referenced matter. We are in receipt of the Court's order dated January 27, 2017, denying the motion to dismiss the appeal, as well as the cover letter from the Court stating that initial briefs are due in 30 days.

In the meantime, Nexsen Pruet's motion to transfer the case to the Supreme Court of South Carolina remains pending. Nexsen Pruet filed the motion on November 21, 2017, asking the supreme court to decide the motion to dismiss (as well as the appeal, should the motion be denied) given that the case was before the supreme court the first time around, and the motion to dismiss (and the appeal) relates directly to the supreme court's opinion and post-opinion order. On December 12, 2017, Appellants filed a response to the motion to transfer stating that they consented to the transfer "because the motion involves the meaning and effect of [the supreme court's] decisions." Appellants later filed a motion to file the response out of time, which the supreme court granted. I did not see this motion or the supreme court's order on C-track, so I am enclosing them here.

Given these circumstances, I respectfully request guidance on the status of the motion to transfer and on whether the motion impacts this Court's January 27, 2017 order and cover letter.

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



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January 31, 2017
Page: 2

Sincerely,

Tina Cundari
TMC:cls

Enclosures

cc: The Honorable Daniel E. Shearouse (by hand delivery)
Andrew K. Epting, Jr., Esq. (by email)
George J. Kefalos, Esq. (by email)
Michelle N. Endemann, Esq. (by email)
James G. Long, Esq. (by email)

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JAN 31 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Thomas Russo, Circuit Court Judge

CASE NO. 2011-CP-10-05774
APPELLATE CASE NO. 2016-001632

PAVILION DEVELOPMENT CORP. & LARRY MCNAIR,.....Plaintiff/
Appellant,

v.

NEXSEN PRUET, LLC.....Defendant/ Respondent,

AND

DC & SONS, LLCCounterclaim Defendant.

**APPELLANTS' MOTION TO FILE OUT OF TIME
ITS CONSENT TO
RESPONDENT'S MOTION TO TRANSFER**

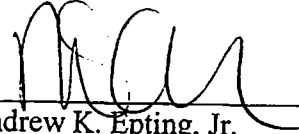
Appellants Pavilion Development Corp. ("Pavilion") and Larry McNair respectfully request an order allowing them to file out of time their consent to the Respondent's motion to transfer this matter to the Supreme Court pursuant to Rule 204(b) SCACR. Respondent filed a motion to transfer in this Court and a motion to dismiss in the Court of Appeals. Appellants sought and received permission for an extension of time from the Court of Appeals, but inadvertently omitted to file a request with this Court. Appellants respectfully request that this

motion be granted and its return to Respondent's motion to transfer, which was received by this Court on December 13, 2016, be accepted.

Respondent has been consulted and consents to the motion to file out of time.

Respectfully submitted by:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr.

Michelle N. Endemann

46A State Street, Charleston, SC 29401

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GEORGE J. KEFALOS, PA

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46A State Street, Charleston, SC 29401

Phone: 843-722-6612; Fax 843-377-1310

George@kefaloslaw.com

ATTORNEYS FOR APPELLANTS

On this 14 day of December, 2016
Charleston, SC

The Supreme Court of South Carolina

Pavilion Development Corp. & Larry McNair,
Appellants,

v.

Nexsen Pruet, LLC, Respondent,

v.

DC & Sons, LLC, Counterclaim Defendant.

Appellate Case No. 2016-002340

ORDER

Appellant's Motion to File Out of Time Its Consent to Respondent's Motion to Transfer is granted.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

December 16, 2016

cc:

Michelle Nicole Endemann, Esquire

Andrew K. Epting, Jr., Esquire

George J. Kefalos, Esquire
Elizabeth Van Doren Gray, Esquire
Tina Marie Cundari, Esquire
Benjamin Rogers Gooding, Esquire

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Thomas Russo, Circuit Court Judge

CASE NO. 2011-CP-10-05774
APPELLATE CASE NO. 2016-001632

PAVILION DEVELOPMENT CORP. & LARRY MCNAIR,.....Plaintiff/
Appellant,

v.

NEXSEN PRUET, LLC.....Defendant/ Respondent,


AND

DC & SONS, LLCCounterclaim Defendant.

PROOF OF SERVICE

I certify that I have served the Appellants' Motion to File Out of Time its Consent to Respondent's Motion to Transfer by depositing a copy in the United States Mail, Postage prepaid, on December 14, 2016, addressed to Respondent's attorneys of record as follows:

Elizabeth Van Doren Gray, Esquire
Tina M. Cundari, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

By 
Andrew K. Epting, Jr.
Michelle N. Endemann

Attorneys for Appellants

ANDREW K. EPTING, JR., L.L.C.

ATTORNEYS AT LAW

December 14, 2016

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

RE: Pavilion Development Corp. & Larry McNair v. Nexsen Pruet, LLC, et al
CA No.: 2011-CP-10-5774
Appellate Case No.: 2016-001632

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven (7) copies of Appellants' Motion to File Out of Time Their Consent to Respondent's Motion to Transfer together with a Proof of Service and \$25.00 motion fee in the above-referenced appeal.

I would greatly appreciate your filing the original and returning the file-stamped copy to me in the self-addressed, stamped envelope provided. Thank you.

With kindest regards,

ANDREW K. EPTING, JR., LLC



Michelle N. Endemann

MNE/agg

Enclosures – as stated

cc: The Honorable Jenny Abbott-Kitchings
George J. Kefalos, Esquire
Tina Cundari, Esquire
Elizabeth V. Gray, Esquire

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann (*Special Counsel*) · mne@epting-law.com
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