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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**  
In the Supreme Court

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

The Honorable Thomas Russo, Circuit Court Judge

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

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

v.

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

AND

DC & SONS, LLC .....Counterclaim Defendant.

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

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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  
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[George@kefaloslaw.com](mailto: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

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ORDER

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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

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**APPEAL FROM CHARLESTON COUNTY**  
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CASE NO. 2011-CP-10-05774  
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PAVILION DEVELOPMENT CORP. & LARRY MCNAIR,.....Plaintiff/  
Appellant,

v.

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

AND

DC & SONS, LLC .....Counterclaim Defendant.


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**PROOF OF SERVICE**

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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](mailto:ake@epting-law.com)  
Michelle N. Endemann (*Special Counsel*) • [mne@epting-law.com](mailto:mne@epting-law.com)  
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\*Currently Admitted Only In Maryland



**SOWELL GRAY  
ROBINSON**

Litigation + Business

January 31, 2017

**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.

**RECEIVED**

**JAN 31 2017**

DIRECT 803.231.7834 DIRECT FAX 803 231.7863

**S.C. SUPREME COURT**

TINA M. CUNDARI

tcundari@sowellgray.com

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**FEB 01 2017**

**SC Court of Appeals**



SOWELL GRAY  
ROBINSON

Litigation + Business

January 31, 2017  
Page: 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Tina Cundari', written in a cursive style.

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)