

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge

RECEIVED

JUL 11 2017

SC Court of Appeals

Case No. 2014-CP-40-6228

Joseph C. Rivett,Respondent,

v.

Bruce Ludlum and Celadon Trucking Services, Inc.,Appellants.

RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Respondent Joseph C. Rivett filed a motion dated July 10, 2017, requesting that the Court dismiss this appeal for failure by Appellants to timely file any initial brief. As is set forth below, Respondent's motion should be denied.

On or about March 24, 2017, this matter was remanded to the South Carolina Circuit Court for 90 days to permit the Circuit Court to rule on Appellant's Rule 60 motion. Thereafter, on April 7, 2017, Appellants filed their Rule 60(b) Motion pursuant to the Court of Appeals' instructions. The motion has been fully briefed by Appellants and is ready for hearing. However, presumably due to the unexpected passing of Judge Tanya Gee, the trial judge in this matter, and the need for this matter to thus be transferred and assigned to a new judge, the matter has not yet been heard.

Through this process, Appellants have been in diligent contact with the Circuit Court regarding the scheduling of this matter, which communications have also been copied to Respondent's counsel. See email chain attached as Exhibit A. Counsel for Appellants also conferred with the Court of Appeals' case manager for this matter by phone on or about June 14, 2017. At that time, undersigned counsel indicated that the matter has been fully briefed but that it had not been scheduled, despite the approaching 90 day deadline. Counsel was informed at that time that no motions or filings were necessary by Appellants, as the matter was in the Circuit Court's hands for scheduling.

Given the Appellants' diligent prosecution of its Rule 60(b) motion, including timely filing and briefing of the motion, Appellant's diligent communication with the Circuit Court and Court of

Appeals regarding the motion, and the tragic passing of Judge Gee, which requires transfer and reassignment of the case, Respondent's Motion to Dismiss should be DENIED.

July 11, 2017

Respectfully,



Mark S. Barrow
Brandon R. Gottschall
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant

Brandon R. Gottschall

From: ANNE HENLEY <HENLEYA@rcgov.us>
Sent: Thursday, June 15, 2017 12:20 PM
To: Brandon R. Gottschall
Subject: RE: Rivett v. Jackson et al, 2014-CP-4006228: Remanded for 60(b) motion hearing

Thank you

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: Brandon R. Gottschall [mailto:BRG@swblaw.com]
Sent: Wednesday, June 14, 2017 8:17 AM
To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)
Cc: ANNE HENLEY; Tucker@playerlawfirm.com; Mark S. Barrow
Subject: RE: Rivett v. Jackson et al, 2014-CP-4006228: Remanded for 60(b) motion hearing

Good morning Ms. Burns,

Thank you again for your help with this matter. We are reaching out to the Court of Appeals for additional time on the remand, and I wanted to be sure we kept you posted. I will let you know once we hear back from the Court of Appeals.

Thank you again.

Respectfully,

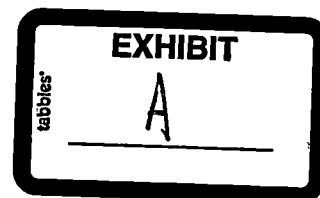
Brandon

S·W·B

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From: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) [<mailto:dbenjaminlc@sccourts.org>]
Sent: Thursday, June 01, 2017 11:00 AM
To: Brandon R. Gottschall <BRG@swblaw.com>
Cc: henleya@rcgov.us; Tucker@playerlawfirm.com; Mark S. Barrow <MSB@swblaw.com>
Subject: RE: Rivett v. Jackson et al, 2014-CP-4006228: Remanded for 60(b) motion hearing

Good morning,

Thank you for your email. I will bring this matter to Judge Benjamin's attention and follow up with you.

Jasmine Burns
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Brandon R. Gottschall [<mailto:BRG@swblaw.com>]
Sent: Wednesday, May 31, 2017 11:57 AM
To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>
Cc: henleya@rcgov.us; Tucker@playerlawfirm.com; Mark S. Barrow <MSB@swblaw.com>
Subject: Rivett v. Jackson et al, 2014-CP-4006228: Remanded for 60(b) motion hearing

Good morning,

I represent the Defendants in the above-referenced matter, which was remanded to the circuit court on March 24, 2017, for 90 days for consideration of Defendants' Rule 60(b) motion. Sadly, the original trial in this matter was handled by Judge Gee. Given the circumstances, the clerk's office recommended I reach out to Judge Benjamin regarding the assignment and scheduling of this matter.

I am at the court's disposal to discuss this matter and to provide any information that would be helpful in assigning and scheduling the matter.

Respectfully,

Brandon Gottschall



Brandon Gottschall | Associate
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# S·W·B

SWEENY WINGATE & BARROW P.A.

July 11, 2017

Reply to: Main Office

**Brandon R. Gottschall**  
(803) 256-2233 x7132  
brg@swblaw.com

RECEIVED  
JUL 11 2017  
SC Court of Appeals

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

RE: Joseph C. Rivett v. Celadon Trucking  
Civil Action No.: 2014-CP-40-6228 - Appellate No.:2016-000462  
Claim No.: BL-108004  
Our File: 2772-9340

Dear Ms. Kitchings:

Please find enclosed an original and one copy of Response In Opposition to Respondent's Motion to Dismiss in the above-referenced matter. Please return a clocked copy to the courier.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours truly,

**SWEENY, WINGATE & BARROW, P.A.**



Brandon R. Gottschall

BRG/brg  
Enclosures

cc: D. Patrick Keating, Jr., Esquire, Keating Law Firm, LLC  
Tucker S. Player, Esquire, Player Law Firm, LLC