

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2018-000907

241-243 E. Bay Holdings, LLC, Appellant,

v.

The City of Charleston, The City of Charleston Board of Zoning Appeals-
Zoning, Apex Real Property, LLC and East Bay 7, LLC, Respondents.

RESPONDENT APEX REAL PROPERTY, LLC'S
RETURN TO MOTION FOR EXTENSION OF
TIME TO ORDER TRANSCRIPT

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SC Court of Appeals

Respondent Apex Real Property, LLC (now known as Pearce Development, LLC), in accordance with Rule 240(e) of the South Carolina Appellate Court Rules, submits this Return to Motion for Extension of Time to Order Transcript served by the Appellant, 241-243 E. Bay Holdings, LLC, on June 13, 2018. For the following reasons, Respondent opposes the motion and requests that the Court dismiss the appeal due to Appellant's failure to timely order the transcript of the proceedings in the circuit court.

On May 7, 2018, Circuit Judge Roger M. Young filed the Order from which this appeal is taken. The matter before Judge Young was itself an appeal from a decision of the City of Charleston Board of Zoning Appeals – Zoning (“BZA”). In that Order, the circuit court concluded that there was

evidence in the record which supported the BZA's decision to approve a special exception for the hotel project in question.¹

Appellant received the Order on May 9, 2018, and almost immediately filed its Notice of Appeal on May 11, 2018, just two days later. As such, the ten-day deadline for Appellant to order the transcript was May 21, 2018. Appellant did not order the transcript until June 8, 2018, well beyond the deadline provided in Rule 207(a) of the South Carolina Appellate Court Rules. Appellant now seeks an after-the-fact extension of time to order the transcript for the sole reason that Appellant's counsel was out of the country between May 15 and May 30, 2018, and did not realize the transcript had not been ordered for more than a week after returning. Appellant offers no reason that the transcript could not have been ordered between May 11 and May 15 or even earlier.²

The delay associated with late receipt of the transcript prejudices Respondent by adding to the already extraordinary delay of its hotel project.³ Respondent initially sought BZA approval of the special exception for its hotel in November 2016. Largely due to objections raised by Appellant, the BZA deferred a decision on Respondent's application at hearings in December 2016 and January 2017. At a third hearing on July 17, 2017, the BZA unanimously approved the special exception but, due to a malfunction of the City's recording equipment, Appellant's initial appeal to the circuit court was remanded to reconstruct the record. Finally, at a hearing on January 16, 2018, the BZA confirmed its July 2017 decision, and the appeal to circuit court resumed.

¹ In doing so, the circuit court applied the applicable standard of review by which it "must uphold a decision by the [BZA] unless there is no evidence to support it." *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013).

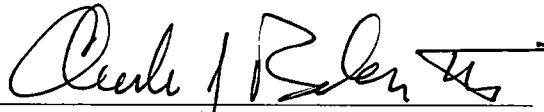
² Although the written order was not filed until May 9, 2018, Judge Young announced his decision at the hearing on April 16, 2018. Appellant knew what the decision was and could have ordered the transcript at any time after April 16.

³ On June 4, 2018, Respondent agreed to Appellant's request for one extension to file its initial brief. At that time, however, Respondent did not know Appellant had not timely ordered the transcript. It is now reasonable to assume that Appellant will need yet another extension for the initial brief, causing further delay.

In summary, the matter currently on appeal was considered on four separate occasions by the BZA and again on appeal by the circuit court, which upheld the BZA's decision under the "any evidence" standard. Further delay in this matter serves simply to prejudice the rights of Respondent to a just and speedy determination of its application for a special exception.

For the foregoing reasons, Respondent respectfully requests that the Court deny the motion and dismiss the appeal.

WOMBLE BOND DICKINSON (US) LLP



Charles J. Baker III (S.C. Bar No. 486)

P.O. Box 999

Charleston, South Carolina 29402

(843) 722-3400

chuck.baker@wbd-us.com

Dated: June 22, 2018
Charleston, South Carolina

Attorneys for Respondent Apex Real Property, LLC

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Court of Common Pleas

Roger M. Young, Circuit Court Judge

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v.

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I certify that, on June 22, 2018, I have served the *Return to Motion for Extension of Time to Order Transcript* on the Appellant, 241-243 E. Bay Holdings, LLC, by depositing a copy in the United States Mail, postage prepaid, addressed to its attorney of record, Alice F. Paylor, P.O. Box 893, Charleston, SC 29402 and on Respondents The City of Charleston and The City of Charleston Board of Zoning Appeals-Zoning by depositing a copy in the United States Mail, postage prepaid, addressed to their attorney of record, Daniel S. McQueeney, Jr., 50 Broad St., Charleston, SC 29401.



Charles J. Baker III (S.C. Bar No. 486)
Womble Bond Dickinson (US) LLP
Post Office Box 999
Charleston, South Carolina 29402
(843) 722-3400

*Attorneys for Respondent Apex Real
Property, LLC*

June 22, 2018



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Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400

f: 843.723.7398

Charles J. Baker III

Direct Dial: 843-720-4619

Chuck.Baker@wbd-us.com

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *241-243 E. Bay Holdings, LLC v. The City of Charleston, The City of Charleston Board of Zoning Appeals-Zoning, Apex Real Property, LLC, and East Bay 7, LLC*
Appellate Case No. 2018-000907
WBD File No. 80833.0045.1

Dear Ms. Kitchings:

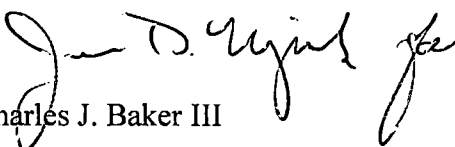
Enclosed for filing are the original and six (6) copies of *Respondent Apex Real Property, LLC's Return to Motion for Extension of Time to Order Transcript*, along with a *Proof of Service* in the above-referenced case. Upon filing, please return a file-stamped copy of each to me via the self-addressed, stamped envelope provided herein.

By copy of this letter with enclosures, I am serving all counsel of record with one copy of the Return and Proof of Service.

Thanking you in advance for your cooperation in this regard, I remain

Very truly yours,

WOMBLE BOND DICKINSON (US) LLP


Charles J. Baker III

CJB/kbl

Enclosures

cc: Alice F. Paylor, Esquire w/encl.
Daniel S. "Chip" McQueeney, Jr., Esquire w/encl.



WOMBLE
BOND
DICKINSON

Womble Bond Dickinson (US) LLP
Post Office Box 999
Charleston, SC 29402

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The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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