

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Innovative Waste Management Inc., Crest Energy Partners,
LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Respondent,

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 Petitioners

APPENDIX

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Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

Innovative Waste Management Inc.,

Appellant,

v.

Crest Energy Partners GP, LLC, Crest
Energy Partners LP, Dunhill Products LP,
Henry Wuertz, and Edward H. Girardeau,

Respondents.

RECORD ON APPEAL

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Form 4 Judgment of April 20, 2015

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

FILED - RECORDED
2015 APR 29 PM 3:17
CLERK DORCHESTER COUNTY

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

Crest Energy Partners
Gp, LLC
Dunhill Products GP,
LLC
Henry W. Wartz
Innovative Waste
Management Inc

Crest Energy Partners
LP
Dunhill Products LP

Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Form 4 Judgment of July 22, 2015

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CPI801227

Innovative Waste Management Inc Crest Energy Partners LP	Edward H. Girardeau PH 2: 5	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
---	--------------------------------	--	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

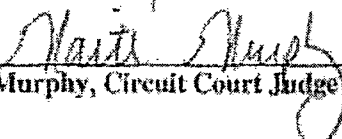
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 Maité Murphy, Circuit Court Judge	2166 Judge Code	7/22/2015 Date
For Clerk of Court Office Use Only		

This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

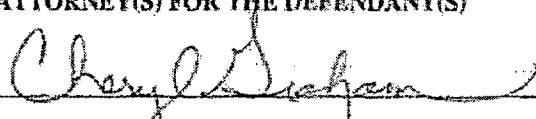
William Michael Gruentloh/Patric Aulton Chisum 192 East
Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Ruth Mott


Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

CERTIFIED

2013 AUG 20 AM 11:14

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

CLERK OF COURT
DORCHESTER COUNTY

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRC; ☐ Rule 41(a), SCRC (Vol. Nonsuit);
☐ Rule 43(k), SCRC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: Pursuant to this Court's authority under Rule 59 SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed

such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

 Maité Murphy, Circuit Court Judge	2166 Judge Code	8/18/2015 ~~8/10/2015~~ Date
For Clerk of Court Office Use Only		

This judgment was entered on 8/20/2015, and a copy mailed first class or placed in the appropriate attorney's box on 8/20/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Hearing Transcript of June 24, 2015

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

2012-CP-16-01227

3
4 INNOVATIVE WASTE
MANAGEMENT, INC.

) TRANSCRIPT OF RECORD
)
)

5 VS.
6

7 CREST ENERGY PARTNERS GP,
8 LLC

) JUNE 24, 2015
) ST. GEORGE, SC
)
)

9
10 B E F O R E:

11 THE HONORABLE MAITÉ MURPHY
12

13 A P P E A R A N C E S:

14 WILLIAM MICHAEL GRUENLOH, ESQUIRE
15 Attorney for the Plaintiff

16 DAVID B. MARVEL, ESQUIRE
17 Attorney for the Defendant

18 Ruth L. Mott, RPR, CRR
19 Certified Court Reporter
20
21
22
23
24
25

1 THE CLERK: Judge, this is Innovative Waste versus Crest
2 Energy Partners, plaintiff's motion to vacate settlement
3 agreement/restore to active docket.

4 THE COURT: All right, counsel.

5 MR. GRUENLOH: Your Honor, Mike Gruenloh for the
6 plaintiff. I have a copy of our motion if you don't have one
7 handy.

8 THE COURT: If you have an extra, that would be perfect.

9 MR. GRUENLOH: Absolutely.

10 THE COURT: All right. You may proceed.

11 MR. GRUENLOH: Your Honor, this is our motion to vacate
12 the settlement agreement and set the matter immediately for
13 trial. Our argument will be very short. You may recall we
14 were before you earlier this year. We were ordered to
15 mediate the case. We mediated it with Angus Lawton.

16 Surprise of all surprises, we reached an agreement at the end
17 of the day. The agreement, in relevant part, was that the
18 defendants would pay \$450,000 within 30 days. At that time
19 and only at that time, when the settlement was consummated,
20 would we file our stipulations of dismissal and our releases.

21 Of course, the payment never came, otherwise we wouldn't
22 be here today. We extended the deadline a couple of times
23 when we were told that the money's coming, the money's
24 coming. The money's not here. It has become increasingly
25 clear to us, this case has been on file for three years, that

1 the only way these defendants are going to pay is when the
2 sheriff goes to their door. They are in breach of the
3 settlement agreement. We've informed them of that. We've
4 informed them of the fact that we intend to vacate the
5 settlement agreement and move forward towards trial. That's
6 what the instructions are that we've received from our
7 client, so that's what we're asking the Court to do today.

8 The case was apparently dismissed, despite the fact that
9 we didn't send in a stipulation of dismissal. I think that
10 that was done because the mediator sent in a statement saying
11 the case was fully settled, but it did not indicate that the
12 case had been dismissed. It indicated that Mr. Marvel would
13 be sending in a stipulation of dismissal, and that's also
14 what he informed the Court. The only communication that
15 either of us had with the Court was an email from Mr. Marvel
16 shortly after the mediation saying, we will send in a
17 stipulation of dismissal once the settlement has been
18 consummated.

19 Settlement has never been consummated, so we, again, are
20 here today asking the Court to put this back on the roster.
21 To the extent that a dismissal was entered in error or
22 otherwise, we'd ask that that be vacated, and we're here
23 asking for a trial date.

24 THE COURT: Let me ask you this: Was the agreement
25 signed by the parties and the attorneys?

1 MR. GRUENLOH: The agreement was signed by the parties
2 and the attorneys. It's a part of our motion that's been
3 attached, and there is, I believe it's No. 5 on the
4 agreement, and it says that the dismissal will only happen
5 upon the receipt of the funds.

6 THE COURT: All right, sir.

7 MR. MARVEL: Your Honor, I had hoped to be able to
8 respond to this motion by showing up here with a certified
9 check and moving to enforce the settlement. The fact of the
10 matter is that my client can't pay the settlement at this
11 time due to some factors outside of their control. During
12 the mediation I can represent to you, Your Honor, that I was
13 on a telephone call in which there was -- my client was
14 restructuring a deal that he had in place and had gotten
15 concessions from some third parties that was going to allow
16 him to be able to fund the settlement. That didn't happen.
17 The deal fell apart. He can't fund it. It would be our
18 position the settlement agreement is what it is. I do think
19 it's enforceable under Rule 43(k). I do think that that's
20 the plaintiff's remedy, and if he wants to turn it into a
21 judgment and enforce that in Texas, we would not contest
22 that; but, Your Honor, if I had a check, I would have a
23 better argument on that. If Your Honor wants to set it for
24 trial...

25 THE COURT: Anything further? Yes, sir, do you have

1 anything to add?

2 MR. MARVEL: No, Your Honor. Thank you.

3 MR. GRUENLOH: Your Honor, I would just say, again, we
4 never communicated any intent to dismiss the case, and I'm
5 not -- I've never had this situation arise before, so I don't
6 know if it's something the mediator did wrong or that we did
7 incorrectly; but without any intent from us to dismiss the
8 case and, I mean, we had real concerns, when we left the
9 mediation, that the payment was going to be here in 30 days.
10 That's why we specifically set out in the settlement
11 agreement that no dismissals would happen, no releases would
12 be signed, until the money came in.

13 And the only other thing that I want to say is I know
14 that we've been a bit of a bother contacting you all about
15 this because it's been a very frustrating experience for
16 this, and I just wanted to thank your staff and everybody for
17 dealing with us on it.

18 THE COURT: Well, it's certainly no bother. That's what
19 we're here for. It's our job to try to facilitate efficient
20 process of these cases. What I will do is I will take a look
21 at the communications that were provided to the Court that
22 led to the dismissal of the case along with the stipulation
23 for the settlement agreement that was signed. I'll notify
24 you of my decision.

25 MR. GRUENLOH: Can I hand up one other -- let me give

1 this to Your Honor. This is the only -- this appears as a
2 note in the court system. This is the only communication
3 that I'm aware of that either party made to the Court
4 regarding the settlement (indicating). And you can see
5 that's Mr. Marvel's words, and he indicates that the
6 dismissal will be sent when the settlement is consummated,
7 and of course it never was.

8 MR. MARVEL: Your Honor, I'd be happy to -- I can make a
9 PDF copy of that email that shows who it was copied to and
10 everything and provide that to Your Honor this afternoon.

11 THE COURT: Thank you.

12 MR. GRUENLOH: One last thing, Your Honor. I know you
13 said that you were going to take this under advisement, but
14 of course we are here seeking a date certain. I don't want
15 to put the cart before the horse, but if Your Honor is able
16 to entertain us on that subject, the case has been filed for
17 three years. It's been a frustrating process.

18 THE COURT: I understand, and my recollection of the
19 case was that you needed a two-week term of court, which of
20 course is like having an act of congress to get a two-week
21 term of court.

22 MR. GRUENLOH: I understand.

23 THE COURT: So, frankly, I don't know what I'm going to
24 do right now without looking at the communications that were
25 provided to the Court. However, if we do need a two-week

1 term of court, we're just going to find what's available and
2 just let you know and you will have to be present. That's
3 all I can say. We'll try to obviously make sure it's
4 convenient for the parties, but it will not be continued for
5 any other reason if it is scheduled to be tried.

6 MR. GRUENLOH: Understood, and I'll talk to Mr. Marvel
7 and see if we can pare that down. Maybe we can do it in a
8 week.

9 THE COURT: That actually would be most helpful if you
10 could.

11 MR. MARVEL: My only request is if I could have 20 or 30
12 days from whenever your decision is made because I may need
13 to sever some issues based on the current status of my
14 client's situation, and I may need to engage other counsel to
15 represent some of the parties, that sort of thing, before the
16 trial.

17 THE COURT: Sure. I'm not going to tell you to show up
18 next week. I understand this is a complex case and you'll
19 need a little bit of time to prepare. I'll give you
20 sufficient notice, obviously, to be ready to proceed. But
21 let's cross that bridge when we get for it.

22 MR. GRUENLOH: And I won't pre-argue Mr. Marvel's motion
23 to withdraw, but when we've been laboring together for three
24 years, and on the eve of trial we would obviously object to
25 any motion to withdraw.

1 MR. MARVEL: Thank you, Your Honor.

2 THE COURT: You all have a good day.

3 MR. MARVEL: For the record, Your Honor, I did not make
4 that motion.

5 THE COURT: It's not before me. That is for sure.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 24th of June, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 19, 2015

16 
17 Ruth L. Mott

18 Certified Court Reporter
19
20
21
22
23
24
25

Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket and Set for Trial

FILE COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)

CASE NO. 2012-CP-18-1227

INNOVATIVE WASTE MANAGEMENT,)
INC.,)

CLEAR OF COURT
DORCHESTER COUNTY
Plaintiff,)

v.)

CREST ENERGY PARTNERS GP, L.L.C.,)
CREST ENERGY PARTNERS L.P.,)
DUNHILL PRODUCTS L.P., HENRY)
WUERTZ, and EDWARD H. GIRARDEAU,)

Defendants.)

**MOTION TO VACATE
SETTLEMENT AGREEMENT,
RESTORE TO ACTIVE DOCKET,
AND SET FOR TRIAL**

The Plaintiff, Innovative Waste Management, Inc., by and through their undersigned counsel hereby moves this Honorable Court to vacate the settlement agreement entered into between Plaintiff and Defendants Crest Energy Partners, GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau (hereinafter "Defendants") pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On April 8, 2015, Plaintiff and Defendants conducted mandatory mediation regarding this action and were able to reach a settlement agreement.
2. On April 8, 2015, Plaintiff and Defendants entered into a binding Settlement Agreement (attached as "Exhibit A") stipulating Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement.
3. On April 20, 2015 and pursuant to the aforementioned mediation and Settlement Agreement, this action was removed from the docket. The parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement.

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

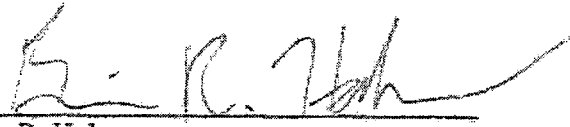
Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

By: 

Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

Plaintiff's Motion to Reconsider

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

MOTION TO RECONSIDER

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)” and states “[t]his order [X] ends . . . the case.” The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as “Exhibit F”). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants’ counsel’s initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants’ failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that “[t]he case was closed out”¹ (See Court E-mail Correspondence, attached as “Exhibit G”). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff’s May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

1. Plaintiff’s counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

STANDARD OF REVIEW

"... Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it "... believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court's dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants' have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants' non-performance. For these reasons, the Court's earlier July 22, 2015 Order was incorrect and should be overturned.

I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed “ . . . by filing a stipulation of dismissal signed by all parties who have appeared in the action” Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff’s failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff’s failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that “[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.” (See “Exhibit A” at Paragraph 5) (emphasis added). Mr. Lawton’s Proof of ADR or Exemption sets forth that there would be a “Voluntary Dismissal to be filed by Arty. Marvel.” (See “Exhibit D”). Finally, Mr. Marvel’s e-mail correspondence with the Court regarding the settlement states that “ . . . we will file a stipulation of dismissal once the settlement is consummated.” (See “Exhibit C”). To date, no dismissal complying with

SCRCP 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Cl. App. 2009) (citing Fruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated. (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCRP 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is "... so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission "... is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract. Silver v. Abstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton-Chisum SCBAR #100571
Brian R. Holmes SCBAR # 102052
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

CLERK OF COURT
DOMESTIC COURT
JUL 31 2015

By:


Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

Exhibit A - Settlement Agreement

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU.

Defendants.

IN THE COURT OF COMMON PLEAS

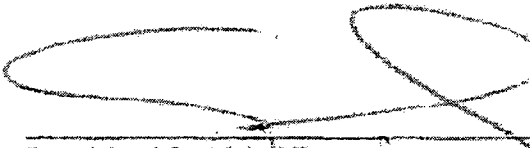
CASE NO.: 2012-CP-18-1227

SETTLEMENT AGREEMENT

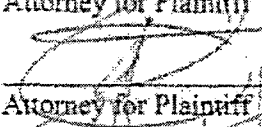
FILED
CLERK OF COURT
DORCHESTER COUNTY
2015 MAY 27 AM 11:29
CERTIFIED COPY

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

Date: April 8, 2015


Russ Lloyd for Plaintiff


Attorney for Plaintiff


Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp/Llc.

Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau


Edward H. Girardeau, Individually


Attorney for Defendant

Exhibit C - Proof of ADR or Exemption

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

PROOF OF ADR OR EXEMPTION

CASE NO.: 2013-CP-18-1897
CLERK OF COURT
DORCHESTER COUNTY

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

☒ Fully Settled.

☐ by Consent Judgment, to be file by _____

or ☒ Voluntary Dismissal to be filed by Atty. Marvel

☐ Partially Settled.

☐ At an impasse.

☐ In need of further ADR I ☐ and ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☒ was present ☐ was not present

Defendant ☒ was present ☐ was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

Exhibit B - April 14, 2015 David Marvel Email



Wm. Michael Gruenloh <mike@gruenlohlaw.com>

IWM v. Crest et al 2012-CP-08-1227

David B. Marvel <dave@prennermarvel.com>

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphylo@sccourts.org>
Cc: "bstevens@dorchestercounty.net" <bstevens@dorchestercounty.net>, Fritz Jekel <fritz@j-law.com>, "Mike Gruenloh (mike@gruenlohlaw.com)" <mike@gruenlohlaw.com>

Tue, Apr 14, 2015 at 11:01 AM

CLEAR OF COURT

DORCHESTER COUNTY

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7260

Fax (843) 722 7260

dave@prennermarvel.com

Exhibit G - Affidavit of Angus Lawton, Esq.

AFFIDAVIT OF
ANGUS LAWTON, ESQ.
3:42

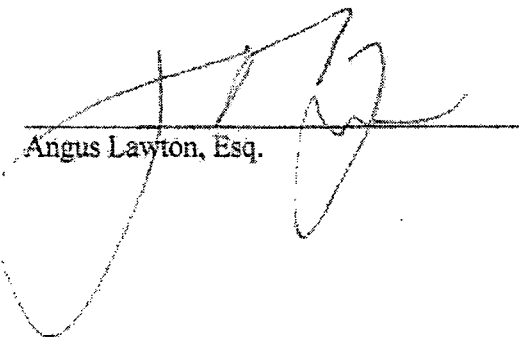
OFFICE OF THE
ATTORNEY GENERAL

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P., Henry Wuertz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.



Angus Lawton, Esq.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina
My Commission Expires 9-4-2023

Exhibit H - Affidavit of C. Russ Lloyd

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) AFFIDAVIT OF
) C. RUSS LLOYD
)

25 JUL 31 PM 3:41

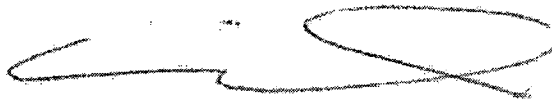
Personally appeared before me, C. Russ Lloyd, who, being duly sworn, deposes and states
as follows:

CLERK OF COURT
DORCHESTER COUNTY

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

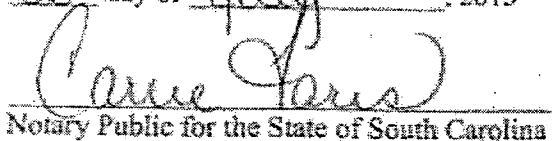
7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President
Innovative Waste Management, Inc.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires My Commission Expires January 23, 2017

RECEIVED

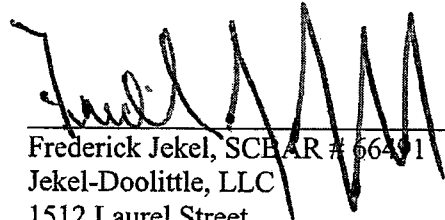
Certificate of Counsel

JUN 13 2016

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 13, 2016


Frederick Jekel, SCBAR # 66491
Jekel-Doolittle, LLC
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Columbia, SC 29201
(803) 888-7130
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And

Wm. M. Gruenloh, SCBAR # 12418
Patrick Aulton Chisum, SCBAR #100571
Brian R. Holmes, SCBAR # 102052
3 Broad Street, Suite 400
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 01 2016

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

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

FINAL BRIEF OF APPELLANT

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I. The Court abused its discretion in denying Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and refusing to set aside the Judgment, and such actions constitute reversible error.	4
a. Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial should have been granted and the Judgment should have been set aside as the Judgment did not comply with the requirements set forth in Rules 41 and 79(f) of the South Carolina Rules of Civil Procedure, and as such the judgment itself was inherently flawed and its entry was procedurally improper.	5
b. Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was based upon clear factual and legal error as the Judgment is ambiguous on its face and it was not the Trial Court's intent to dismiss this action, thereby rendering the Judgment unenforceable.	8
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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court abuse its discretion in denying Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and refusing to set aside the April 20, 2015 Judgment?**
- II. Did the Trial Court abuse its discretion in denying Appellant's Motion to Reconsider and refusing to set aside the April 20, 2015 Judgment?**

STATEMENT OF THE CASE

This matter was filed on May 11, 2012 with the Dorchester County Court of Common Pleas wherein Appellant pled various causes of action, including but not limited to breach of contract, constructive fraud, conversion, and tortious interference with contractual relationships. The case was assigned to The Honorable Maité D. Murphy.

On April 8, 2015, the parties conducted court-ordered mediation and were able to reach a settlement agreement. The settlement agreement stipulated that the Respondents would make a payment of \$450,000.00 within thirty (30) days of the execution of the settlement agreement, and that dismissal of the action was conditioned upon Respondents' payment under the agreement. (R. pp. 35-37). Only two communications were made to the Trial Court regarding the settlement agreement following the execution of the agreement. The first was an e-mail from Mr. David Marvel, counsel for Respondents, advising the Trial Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (R. pp. 41-42). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton, which indicated that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (R. pp. 38-40).

On April 20, 2015, a Form 4 Judgment was entered, referred to hereinafter as the “Judgment.” The Judgment was signed by the Dorchester County Clerk of Court, Ms. Cheryl Graham, and did not include the signature of Judge Murphy. The entry of the Judgment was unsolicited, and none of parties to this action executed or filed a stipulation of dismissal. The Judgment directs the reader to “[X] See attached order; (formal order to follow)” and states “[t]his order [X] ends . . . the case.” These were the only two boxes that were checked and completed within the entirety of the Judgment, and other boxes, most notably the box which sets forth “[] ACTION DISMISSED: CHECK REASON,” were left incomplete. (R. pp. 1-3). The formal order alluded to within the body of the Judgment was never attached and no such formal order has ever been executed by the Trial Court. The only attachment to the Judgment was Mr. Lawton’s Proof of ADR or Exemption. (R. pp. 38-40). No further reasoning was provided within the Judgment. (R. pp. 1-3).

On May 8, 2015, thirty (30) days elapsed from the execution of the settlement agreement with no payment received. Due to Respondents’ breach of the settlement agreement, Appellant sought to have the action restored to the active trial docket. On May 20, 2015, Appellant contacted the Trial Court and requested the first available date certain trial date. It was on that date that Appellant was notified for the first time of the Judgment.

Upon discovering that the Clerk of Court had dismissed the case, Appellant contacted Judge Murphy’s law clerk and requested a conference to bring to the Trial Court’s attention what appeared to be a clear clerical mistake. Plaintiff was advised by the Trial Court to file a motion and that no conference with Judge Murphy would occur.

On May 27, 2015, Appellant filed its Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. The Respondents filed no opposition to this motion. On June 24, 2015, the Trial Court heard arguments from counsel where Appellant sought for the Trial Court to vacate both the settlement agreement and the Judgment, thereby restoring this matter to the active trial docket. (R. pp. 10-19). Appellant also sought for the Judgment to be set aside pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and stated “[t]o the extent that a dismissal was entered in error or otherwise, we’d ask that that be vacated” (R. p. 13, lines 21-23). On July 22, 2015, the Trial Court entered an order denying Appellant’s motion. The Trial Court’s July 22, 2015 order was a form order and contained no reasoning supporting the Trial Court’s ruling. (R. pp. 4-6). Furthermore, the transcript of the June 24, 2015 hearing reveals the Trial Court never provided any rationale to support the denial of Plaintiff’s Motion. (R. pp. 10-19).

On July 31, 2015, Appellant filed its Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and asked the Trial Court to reevaluate its ruling on Appellant’s Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial. Of note, the Motion contained two new pieces of evidence for the Trial Court to consider, namely the affidavits of Angus Lawton, the mediator for this case, and C. Russ Lloyd, the owner and president of Appellant. (R. pp. 43-45; R. pp. 46-48). On August 18, 2015, the Trial Court denied Appellant’s Motion to Reconsider without hearing oral arguments and entered another form order that contained no reasoning supporting the Trial Court’s ruling. Notably, this order also did not address the issues raised in the new affidavits. (R. pp. 7-9).

On September 17, 2015, Appellant filed its notice of appeal regarding the Trial Court's aforementioned rulings with the Dorchester County Clerk of Court and the South Carolina Court of Appeals. On October 21, 2015, Appellant received delivery of the transcript of the June 24, 2015 arguments. (R. pp. 10-19). Appellant now files its initial brief in a timely manner within thirty (30) days of receipt of the relevant transcript in accordance with Rule 208 of the South Carolina Appellate Court Rules.

ARGUMENT

I. The Court abused its discretion in denying Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and refusing to set aside the Judgment, and such actions constitute reversible error.

The decision whether to grant or deny a motion requesting relief under Rule 60(b) of the South Carolina Rules of Civil Procedure lies within the sound discretion of the trial court. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004). The standard of review upon appeal is limited to determining whether there was an abuse of discretion. Id. An abuse of discretion occurs when the decision of the trial judge is unsupported by the evidence or controlled by an error of law. Ledford v. Pa. Life Ins. Co., 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976). Furthermore, " . . . Rule 59(e), SCRPC, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992).

Appellant contends that the trial court abused its discretion in denying Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and

refusing to set aside the Judgment. Appellant sets forth four (4) arguments to support its position, presented in the alternative and in the order of importance. First and foremost, Appellant contends that the Judgment did not comply with the requirements set forth in Rules 41 and 79(f) of the South Carolina Rules of Civil Procedure, and as such the judgment itself was inherently flawed and its entry was procedurally improper. Second and should the Court determine that the Judgment was properly entered, Appellant contends in the alternative that the Judgment is ambiguous on its face and it was not the Trial Court's intent to dismiss this action; therefore the Judgment is unenforceable and the Trial Court's decision to deny Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was based upon clear factual and legal error. Third, Appellant contends that the Trial Court's ruling was contrary to the written terms of the settlement agreement and completely disregarded the plainly stated intent of all interested parties as forth within the language of the settlement agreement. Fourth and finally, Appellant contends that Respondents breached a material term of the settlement agreement between the parties, and the Trial Court abused its discretion by preventing Appellant from rescinding the agreement due to Respondents' non-performance. As such, the Trial Court has committed an abuse of discretion that constitutes reversible error, and the Trial Court's ruling should be overturned.

- a. Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial should have been granted and the Judgment should have been set aside as the Judgment did not comply with the requirements set forth in Rules 41 and 79(f) of the South Carolina Rules of Civil Procedure, and as such the Judgment itself was inherently flawed and its entry was procedurally improper.**

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which courts may dismiss a lawsuit. Rule

41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed “. . . by filing a stipulation of dismissal signed by all parties who have appeared in the action” Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff’s failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff’s failure to show a right to relief. Notably absent from the provisions contained within Rule 41(b), however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal executed or filed by either the Appellant or Respondents. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made to Appellant as set forth within the settlement agreement. In the settlement agreement, the parties explicitly agree that “[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.” (R. p. 36, paragraph 5) (emphasis added). Mr. Lawton’s Proof of ADR or Exemption sets forth that there would be a “Voluntary Dismissal to be filed by Atty. Marvel.” (R. p. 40). Finally, Mr. Marvel’s April 14, 2015 e-mail correspondence with the Court regarding the settlement agreement states that “. . . we will file a stipulation of dismissal once the settlement is consummated.” (R. p. 42).

As there is no evidence within the record that any party to this action solicited the dismissal of the case, the only logical conclusion is that the Dorchester County Clerk of Court unilaterally entered the Judgment dismissing this case upon the filing of Mr. Lawton's Proof of ADR or Exemption. This conclusion is further supported by the fact that the lone document attached to the Judgment is Mr. Lawton's Proof of ADR or Exemption. (R. pp. 38-40). Rule 79(f) of the South Carolina Rules of Civil Procedure which governs records kept by the clerk states that "[n]o action listed in the file book . . . shall be . . . stricken . . . unless and until: (1) plaintiff shall file and serve a notice . . . or stipulation of dismissal . . . ; or (2) counsel . . . have prepared and filed an order . . . bearing the written consent of all interested parties . . . ; or (3) dismissal is ordered by the court." See generally Goodwin v. Landquest Dev., LLC, No. 2013-001644, 2015 WL 4747156 (Ct. App. Aug. 12, 2015) (a South Carolina Appellate Court decision overturning the Circuit Court's denial of Plaintiffs' Motion to Restore in a case dismissed through the unilateral acts of the court with no consent of the parties). Mr. Lawton's Proof of ADR or Exemption does not satisfy any of the three requirements set forth in Rule 79(f), and as such the Clerk of Court should not have stricken this case from the file book. (R. pp. 38-40). The Clerk does not possess the authority to unilaterally dismiss a case, and as such the Judgment is inherently flawed and its entry was procedurally improper. Based upon the foregoing, the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was unsupported by the evidence and was based upon clear legal error, and the Judgment should be set aside, thereby restoring this matter to the active docket.

- b. The Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was based upon clear factual and legal error as the Judgment is ambiguous on its face and it was not the Trial Court's intent to dismiss this action, thereby rendering the Judgment unenforceable.**

Appellant contends that the Judgment is ambiguous on its face and it was not the Trial Court's intent to dismiss this action, thereby rendering the Judgment unenforceable. South Carolina courts have analyzed the issue of incomplete judgments and orders in the past, and in so doing the courts have determined that incomplete orders may be construed to be ambiguous. See generally Widewater Square Assoc. v. Opening Break of America, Inc., 314 S.C. 149, 442 S.E.2d 185 (Ct. App. 1994) (wherein the South Carolina Court of Appeals determined that a Form 4 Judgment was ambiguous as the judgment only indicated on its face that the case at hand was "settled" but not dismissed). When the Appellate Court is presented with an ambiguous judgment or order for purposes of review, "... the determinative factor is to ascertain the intent of the judge who wrote the order." Eddins v. Eddins, 304 S.C. 133, 135, 403 S.E.2d 164, 166 (Ct. App. 1991).

In the instant case, the Judgment was filled out incompletely and is ambiguous on its face. As set forth above, the Judgment directs the reader to "[X] See attached order; (formal order to follow)" and states "[t]his order [X] ends . . . the case." These were the only two boxes that were checked and completed within the entirety of the Judgment, and others boxes, most notably the box which sets forth "[] ACTION DISMISSED: CHECK REASON," were left incomplete. (R. p. 2). Furthermore, the formal order alluded to within the body of the Judgment was never attached and no further reasoning was provided. (R. p. 2). As such, the Judgment is ambiguous on its face and the intent of the judge who wrote the order is dispositive.

An analysis of Judge Murphy's intent is impossible, however, as there is no evidence within the record that Judge Murphy wrote, reviewed, or was even aware of the entry of the Judgment prior to Appellant's motions. As set forth above, Ms. Cheryl Graham, the Dorchester County Clerk of Court, signed the Judgment and no formal order that might indicate any involvement by the Trial Court was attached. The only logical conclusion is that the Clerk of Court entered the Judgment unilaterally in response to Mr. Lawton's Proof of ADR or Exemption. As such, there is no evidence, and it is in fact factually and legally impossible, that the Trial Court or Judge Murphy possessed any intent to dismiss this case.

Furthermore, the remainder of the record fails to provide any further evidence of the Trial Court or Judge Murphy's intent. The Trial Court heard sparse oral arguments regarding Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial on June 24, 2015, and Judge Murphy declined to make any ruling or issue any opinion on the merits of the issue during this hearing. (R. pp. 16-17, lines 23-5). The Trial Court later denied Appellant's motion on July 22, 2015 by issuing of a form order that contained no reasoning. (R. pp. 4-6). On August 18, 2015, the Trial Court denied Appellant's Motion to Reconsider without hearing any oral arguments, and again issued a form order containing no reasoning. (R. pp. 7-9). As such, there is no evidence setting forth the Trial Court or Judge Murphy's intent to dismiss this case, and the Judgment is therefore unenforceable. Based upon the foregoing, the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was unsupported by the evidence and was based upon clear legal error, and the Judgment should be set aside, thereby restoring this matter to the active docket.

c. Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial should have been granted and the Judgment should have been set aside as dismissal of this case is contrary to the intent of all interested parties.

Appellant contends that dismissal of this case is improper as it is contrary to the intent of all interested parties as plainly stated within the settlement agreement. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the settlement agreement is clear and unambiguous, and its plain reading sets forth the parties' express intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the settlement agreement explicitly states that "[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (R. p. 36, paragraph 5) (emphasis added). The plain language

contained within the settlement agreement clearly indicates that the parties did not intend for the case to be dismissed until payment was made.

Furthermore, there are numerous other examples within the record that reaffirm and support this clear expression of the parties' intent, including Mr. Marvel's April 14, 2015 e-mail correspondence with the Trial Court, Mr. Lawton's Proof of ADR or Exemption, and Mr. Lawton's affidavit. In his April 14, 2015 e-mail correspondence, Mr. Marvel informed the Trial Court that a stipulation of dismissal would be submitted when the settlement was consummated. (R. pp. 41-42). Mr. Lawton's Proof of ADR or Exemption indicated that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (R. p. 40). Furthermore, Mr. Lawton clearly stated in his sworn affidavit that he did not intend for the Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under Rule 41 of the South Carolina Rules of Civil Procedure. (R. p. 45, paragraph 7). As such, the Trial Court disregarded the clearly expressed intent of the parties, and in so doing abused its discretion.

Based upon the foregoing, the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was unsupported by the evidence and was based upon clear legal error, and the Judgment should be set aside, thereby restoring this matter to the active docket.

- d. Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial should have been granted and the Judgment should have been set aside as Respondent breached the terms of the settlement agreement and Appellant elected to rescind the agreement due to non-performance.**

As set forth above, settlement agreements are viewed as contracts under South Carolina law. (Supra Argument at 1b). In situations where a breach of a contract is "... so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission "... is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract constitutes a substantial breach of contract. Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008).

In this case, Appellant agreed to settle its multi-million dollar claim for \$450,000.00 based upon the representations and assurances of the Respondents and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (R. p. 47, paragraph 6). Absent these promises, Appellant would not have executed the settlement agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the settlement agreement, and the Respondents failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but also has defeated Appellant's entire purpose for entering into the settlement agreement in the first place. (R. p. 47, paragraph 6).

The Respondents have yet to pay any money to Appellant and are clearly in breach of the settlement agreement. As such, it was an improper abuse of discretion for

the Trial Court to shackle Appellant to the irreparably breached settlement agreement which represented a significant discount of Appellant's claim. The only equitable and proper course of action for the Trial Court to undertake would have been to vacate the settlement agreement, return this case to the active docket and set it for trial. Based upon the foregoing, the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was unsupported by the evidence and was based upon clear legal error, and the Judgment should be set aside, thereby restoring this matter to the active docket.

II. The Court abused its discretion in denying Appellant's Motion to Reconsider and refusing to set aside the Judgment, and such actions constitute reversible error.

" . . . Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Build Centers, 311 S.C. at 60, 427 S.E.2d at 675 (1993). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold, 309 S.C. at 172, 420 S.E.2d at 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it " . . . believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold, 309 S.C. 157, 420 S.E.2d 834 (1992)).

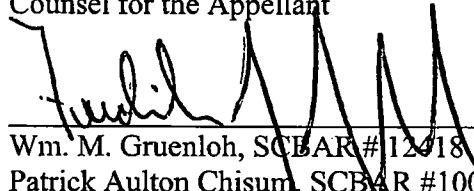
Appellant filed its Motion to Reconsider seeking relief under Rule 59(e) of the South Carolina Rules of Civil Procedure requesting the court to reconsider its prior ruling on Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial. Based on the foregoing arguments. As noted above, the Appellant submitted

additional pieces of newly obtained evidence to the Trial Court with its Motion to Reconsider. (R. pp. 43-45; R. pp. 46-48). The Trial Court did not allow for oral argument on the motion and it issued a Form 4 Order denying Appellant's motion with no rationale. The lack of any rationale does not allow for this Court to determine if the denial was based on erroneous factual conclusions or if the Trial Court considered the new evidence at all. Based upon the foregoing, the Trial Court's denial of Appellant's Motion to Reconsider was unsupported by the evidence and was based upon clear legal error, and the Judgment should be set aside, thereby restoring this matter to the active docket.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests this Court to reverse the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial, vacate the Judgment, and remand this action back to the Dorchester County Court of Common Pleas thereby restoring it to the active docket.

Respectfully Submitted
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Date: July 1, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

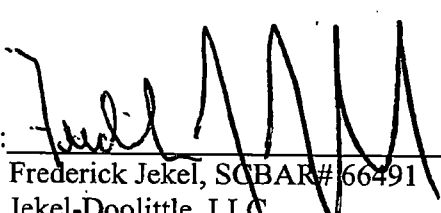
The undersigned hereby certifies that a true and correct copy of **Final Brief of Appellant** in the above-referenced matter was served on the below named parties and/or their respective counsel and/or agents by depositing true and accurate copies of the same in the U.S. mail, first class, properly addressed, with sufficient postage affixed, on the date below.

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RECEIVED

JUL 01 2016

SC Court of Appeals

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Date: July 1, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED

JUL 14 2016

SC Court of Appeals

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

RESPONDENTS' FINAL BRIEF

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STATEMENT OF THE CASE

Appellant Innovative Waste Management Inc. (hereafter “IWM”) filed this action against the Respondents on May 11, 2012, alleging numerous causes of action relating to a series of petroleum transactions in Mobile, Alabama and St. Rose, Louisiana in early 2010.¹ The Respondents filed counter claims and claimed set-off on those transactions and a previous transaction. The parties litigated the matter for nearly three years, during which it was designated a Complex Case and assigned to the Honorable Maite D. Murphy. The parties ultimately reached a settlement agreement during mediation on April 8, 2015. The Mediator, Angus M. Lawton, transmitted a Proof of ADR to the Clerk of Court on April 10, 2015, pursuant to Rule 7(f), SCADR.

On April 14, 2015, the Clerk of Court transmitted a Notice of Jury Roster to the parties, setting the case on the May 4, 2015 jury trial roster. In response, the undersigned transmitted an email to Judge Murphy’s Clerk, with a copy to all counsel, informing the Court that parties had reached a settlement. (R. p. 42) On April 20, 2015, the Court received the Proof of ADR. (R. pp. 39-40). The Clerk of Court issued a Form 4 Order dismissing the case on that same date, referring to the Proof of ADR as an “attached order”. (R. pp. 2-3). IWM’s counsel did not respond to the Form 4 Order.

On May 27, 2015, IWM filed “Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial” pursuant to Rule 60(b), SCRPC. (R.p.20-23). The

¹ The case was filed in the Dorchester County Court of Common Pleas after a case between the parties including the same allegations was dismissed by the United States District Court for the District of South Carolina for lack of subject matter jurisdiction on May 10, 2012. Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC, Civil Action No. 2:11-cv-1023-RMG (D.S.C. May 10, 2012).

motion argued simply that the settlement had not been consummated, and therefore the case should be set for trial. This Motion was heard by Judge Murphy on June 24, 2015.

On July 22, 2015, Judge Murphy issued a Form 4 Order denying the 60(b) Motion. (R. pp. 5-6). The Statement of Judgment in that Order stated “After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff’s 60(b) motion . . . is hereby denied.” (R. p. 5).

On July 31, 2015, IWM filed a “Motion to Reconsider” pursuant to Rule 59(e), SCRC, asking the Court once again to vacate the settlement agreement and restore the case to the active docket. (R. pp. 24, *et seq.*). On August 18, 2015, Judge Murphy issued a Form 4 Order dismissing IWM’s Rule 59 motion, stating as follows:

Pursuant to this Court’s authority under Rule 59, SCRC, the Plaintiff’s Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

(R. pp. 7-8).

On September 16, 2015, IWM filed and served its Notice of Appeal, purporting to appeal “the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of Court, Cheryl Graham, on April 20, 2015.” Respondents filed a Motion to Dismiss, contending that this Court lacked subject matter jurisdiction because IWM’s Rule 59(e) motion was a successive post-trial motion that failed to toll the time for filing a Notice of Appeal. The Court denied respondents’ motion on March 4, 2016. This brief follows.

LAW AND ARGUMENT

I. IWM's Arguments Are Not Preserved for Appellate Review

An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Any objections and arguments must be sufficiently specific to inform the trial court of the point being urged by the objecting party. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997); Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986)). Further, an otherwise unpreserved argument may not be preserved in a Rule 59(e) motion, if it was not raised to the circuit court prior to the issuance of that court's ruling. Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015) (citing Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C., 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004)).

As the appellant, IWM bears the burden of furnishing the Court with a sufficient record on which this Court can base its decision. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339-340, 611 S.E.2d 485, 487-488 (S.C. 2005). If it fails in this burden, the Court must assume the regularity of the proceedings below and the correctness of the ruling appealed from. Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 97, 352 S.E.2d 302, 304-305, (Ct. App. 1986) (citing Germain v. Nichol, 278 S.C. 508, 299 S.E. (2d) 335 (1983). 5 Am. Jur. (2d) Appeal and Error § 704 at 151 (1962)).

In its brief, IWM argues that the circuit court erred in denying its Rule 60(b) and 59(e) motions because

- 1) the Judgment does not comply with Rules 41 and 79(f), SCRCF;
- 2) the trial court did not intend to dismiss the case;
- 3) the parties did not intend for the lower court to dismiss the case; and
- 4) the Respondents breached the settlement agreement.

The Record on Appeal establishes that the only argument properly raised below was that the case should be restored and set for trial because the respondents were unable to fund the agreed settlement. The respondents countered that the settlement agreement fully complied with Rule 43(k), and was enforceable by any party. (R. p. 20, line 11-p. 15, line 2).

When IWM was given the opportunity to make any argument it could, its counsel explicitly stated “[o]ur argument will be very short.” (R. p. 12, line 13). IWM’s own brief admits that the record is insufficient to ascertain the lower court’s intent. (Appellant’s Final Brief, p. 9). IWM’s brief also urges the court to assume the intent of other parties, while the respondents have always contended that IWM’s remedy was to seek enforcement of the settlement agreement. (Appellant’s Final Brief p.10-11; R. p. 14, lines 18-22). The only thing that can actually be gleaned from the record is that, when given the opportunity to rescind the April 20, 2015 Form 4 Order dismissing the case and/or to restore the case to the trial docket, the lower court declined.

The only argument IWM properly raised below was that respondents breached the settlement agreement, and the case should have been set for trial. The lower court properly held that this was an insufficient basis to grant IWM’s Rule 60(b) motion. Therefore, the arguments raised in IWM’s brief are not preserved for review, and the lower court’s ruling must be affirmed.

II. IWM has Failed to Meet its Burden of Establishing that the Lower Court Abused its Discretion.

Substantively, IWM has appealed the circuit court's Order denying its "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial". IWM sought this relief from the lower court under Rule 60(b).

Rule 60(b) allows a trial court to relieve a party from a final judgment or order when the moving party establishes one of the following grounds:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60, SCRPC.

The decision to grant relief pursuant to Rule 60(b) lies within the sound discretion of the circuit court, and this Court will not reverse a trial court's decision regarding the grant or denial of a Rule 60(b) motion unless it amounts to an abuse of discretion. E.g., Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (2005).

As the party seeking relief under Rule 60(b), IWM bore the burden to present evidence entitling it to the requested relief. Jamison v. Ford Motor Co., 373 S.C. 248, 271-272, 644 S.E.2d 755, 767 (Ct. App. 2007); Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 46, 590 S.E.2d 502, 504 (Ct. App. 2003). As part of that burden, the party seeking relief pursuant to Rule 60(b) must establish the applicability of one of the

qualifying grounds. Paul Davis Sys. v. Deepwater of Hilton Head, LLC, 362 S.C. 220, 225, 607 S.E.2d 358, 360-361 (Ct. App. 2004)

IWM's brief fails to identify a single portion of the Record on Appeal establishing that it was entitled to relief under any of the grounds contained in Rule 60(b). This is because IWM failed to identify any such grounds before the circuit court, and never even mentioned Rule 60(b) other than a passing reference in its Motion. In fact, as the caption of its Rule 60(b) motion indicated, IWM sought relief from a settlement agreement, not a "final judgment, order, or proceeding". See Rule 60, SCRPC.

Presumably, IWM intended to seek relief from the April 20, 2015 Form 4 Order under Rule 60(b)(1), SCRPC, which allows for relief from a final order if it was induced by mistake, inadvertence, surprise, or excusable neglect.² This rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met. See Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986). However, in order to gain relief under Rule 60(b)(1), SCRPC, a party must first show a good faith mistake of fact has been made. Williams v. Watkins, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009). A party may not use Rule 60(b)(1) as a vehicle for relief from an error of law. Hillman v. Pinion, 347 S.C. 253, 256-257, 554 S.E.2d 427, 429 (Ct. App. 2001).

During the hearing on its motion, IWM's counsel did not articulate a single mistake or impropriety that induced the April 20, 2015 order. More importantly, there was no evidence before the lower court, and there is none before this court, supporting a

² A Form 4 order is a final order within the meaning of Rule 60. See Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 604, 567 S.E.2d 514, 518 (Ct. App. 2002)

conclusion that there was a mistake of fact, or any other ground for relief contemplated by Rule 60(b).

IWM failed to meet its burden under Rule 60(b) before the trial court, and it has patently failed to meet its burden of establishing an abuse of discretion here. The record simply contains no evidence that would support relief under that Rule. Accordingly, this Court must affirm the decision of the trial court.

III. The Settlement Agreement is Binding on All Parties and Enforceable

The settlement agreement appears as Exhibit A in the Record on Appeal. During the hearing on its motion, IWM's counsel admitted that it was agreed to and signed by the parties and their attorneys. (R. p. 13, line 24-p. 14, line 3). Therefore, the agreement satisfies Rule 43(k), SCRPC, and is enforceable, as it is "reduced to writing and signed by the parties and their counsel." Cf. Ashfort Corp. v. Palmetto Constr. Group, 318 S.C. 492, 493-494, 458 S.E.2d 533, 534, (1995).

Settlement agreements are viewed as contracts between the parties. Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177-178, 557 S.E.2d 708, 711, (Ct. App. 2001)

As such, the breach of a settlement agreement will support a separate action at law. See Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 540 S.E.2d 843 (2001). Once a case is proper and enforceable settlement is reached, the settlement cannot be repudiated unless fraud exists. Arnold v. Yarborough, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984).

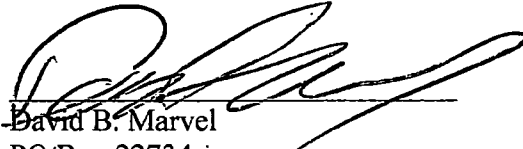
In this matter, the parties reached a settlement that contemplated the dismissal of claims, counter-claims, and third party claims, in addition to a certain payment from

respondent Crest Energy Partners, L.P. (“Crest”) to IWM. This settlement was properly documented according to Rule 43(k). Crest was unable to fund the settlement due to factors outside of the control of the settling parties. As such, IWM’s remedy is to seek a judgment on the contractual settlement agreement, as there is no evidence in the record supporting a Rule 60(b) motion for relief from the Court’s order dismissing the case. Without having done so, IWM has no avenue for redress in this Court, and the lower court’s orders must be affirmed.

CONCLUSION

IWM has failed to preserve its issues for appeal, has failed in its burden to provide this Court with a record sufficient for review, and has failed to make any argument on the merits sufficient to justify a finding that the lower court has abused its discretion. Accordingly, Respondents Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau, hereby respectfully request that this Honorable Court AFFIRM the rulings of the Honorable Maite D. Murphy in the court below.

RESPECTFULLY SUBMITTED:



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED
JUL 14 2016
SC Court of Appeals

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that on the Thirteenth day of July, 2016, he served
appellants' counsel with the respondents' Final Brief, by U.S. Mail, postage pre-paid, as follows:

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED

JUL 14 2016

SC Court of Appeals

Innovative Waste Management Inc., Crest Energy Partners,
LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Appellant,

v.

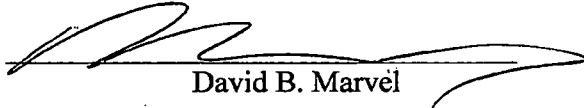
Crest Energy Partners, GP, LLC, Dunhill Products GP,
LLC, Henry Wuertz, Innovative Waste Management, Inc.,
Crest Energy Partners LP, Dunhill Products LP, Edward H.
Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP,
Dunhill Products, LP, Henry Wuertz, and Edward H.
Girardeau are the Respondents.

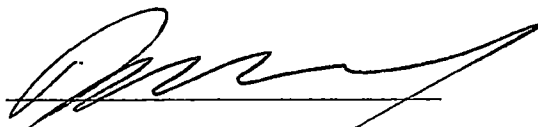
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this Thirteenth day of July, 2016, I
served appellants' counsel with Respondent's Motion to File out of Time by mailing a
copy to their counsel, fill in, by U.S. Mail, postage prepaid, at the following address:

Wm. Michael Gruenloh
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David B. Marvel

The Undersigned further certifies, pursuant to Rule 211(b), SCACR, that the Final Brief is identical to the Initial Brief with the exception of References to the Record and edits of minor typographical errors.

A handwritten signature in black ink, appearing to read 'David B. Marvel', is written over a horizontal line.

David B. Marvel

July 13, 2016
Charleston, South Carolina

9
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

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

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SC Court of Appeals

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INTRODUCTION

Innovative Waste Management (hereinafter referred to as “Appellant”), in response to the Respondents’ Initial Brief of Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products LP, Henry Wuertz, and Edward H. Girardeau (hereinafter collectively referred to as “Respondents”) hereby submits this Initial Reply Brief of Appellant.

ARGUMENT

I. Respondents’ Initial Brief was not properly served upon Appellant or filed with this Court in compliance with the South Carolina Appellate Court Rules.

As a threshold issue, Appellant contends that Respondents’ Initial Brief was not properly served upon Appellant or filed with this Court in compliance with the South Carolina Appellate Court Rules. This issue is twofold, in that: (A) Appellant contends that a Motion to Dismiss merely stays the timing requirements imposed by the South Carolina Appellate Court Rules and does not provide Respondents with an additional thirty (30) day period to serve upon Appellant and file with the Court Respondents’ Initial Brief, and as such Respondents have taken an untimely and improper sixty-three (63) days in total to serve and file Respondents’ Initial Brief; and (B) even if a Motion to Dismiss provides Respondents with an additional thirty (30) days to serve and file Respondents’ Initial Brief, Respondents served and filed Respondents’ Initial Brief in an untimely and improper fashion. These arguments will be addressed in turn.

A. Respondent’s Motion to Dismiss merely stayed the timing requirements imposed by the South Carolina Appellate Court Rules and did not provide Respondents with an additional thirty (30) day period to serve upon Appellant and file with the Court Respondents’ Initial Brief.

Rule 208(a)(2) of the South Carolina Appellate Court Rules states, in relevant part, that “[w]ithin thirty (30) days after service of appellant’s brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.” “A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.” SCACR 240(b). Black’s Law Dictionary defines the term “stay” as, “1. The postponement or halting of a proceeding . . . [or] 2. [a]n order to suspend all or part of a judicial proceeding” *Stay*, *Black’s Law Dictionary* (9th ed. 2011). Notably absent from the South Carolina jurisprudence or the South Carolina Appellate Court Rules, however, is any authority that would indicate that a respondent receives an additional thirty (30) days to file their initial brief after the Court has entered a decision on such a motion.

In the instant case, Appellant served upon Respondents and filed with the Court Appellant’s Initial Brief on November 20, 2015. Pursuant to Rule 208(a)(2), Respondents’ Initial Brief, or in the alternative a Motion to Dismiss or Motion to Relieve Counsel, was due to be served upon Appellant and filed with the Court within thirty (30) days – in other words, by no later than December 20, 2015. Respondents filed and served their Motion to Dismiss at the last possible moment on December 21, 2015, thereby automatically staying time limits imposed by the South Carolina Appellate Court Rules.¹

The Court issued its Order denying Respondents’ Motion to Dismiss on March 4, 2016. Upon the entrance of this Order, the automatic stay on the filing and service

¹ The allotted thirty (30) day response period elapsed on Sunday, December 20, 2015. Monday, December 21, 2015 was the next business day and, as such, Respondents’ Motion to Dismiss was served and filed in a timely fashion pursuant to Rule 263(a) of the South Carolina Appellate Court Rules.

requirements of Respondents' Initial Brief was lifted. Appellant contends that, in the absence of a provision granting Respondents more time to serve and file Respondents' Initial Brief, the normal calculation of time limits resumed as set forth within the South Carolina Appellate Court Rules. As Respondents utilized the entirety of the allotted thirty (30) day response period provided by SCACR 208(a)(2) to draft their Motion to Dismiss, Respondents' Initial Brief became due upon Respondents' receipt of service of the Court's Order. Respondents did not file Respondents' Initial Brief upon receipt of service of the Court's Order, however, as Respondents' Initial Brief was not served upon Appellant or filed with the Court until April 5, 2016, or thirty-two (32) days after the entrance of the Court's Order.

In total, Respondents have taken sixty-three (63) days to draft and submit Respondents' Initial Brief.² Appellant contends that this extensive amount of time has unduly delayed these proceedings and has provided Respondents with an unfair advantage, thereby prejudicing Appellant. Rule 208(a)(4) of the South Carolina Appellate Court Rules states that "[u]pon the failure of a respondent to timely file a brief, the appellate court may take such action as it deems proper." Based upon the foregoing, Appellant requests that the Court exercise its authority and grant Appellant any such relief it may deem proper, including but not limited to striking Respondents' Initial Brief.

B. Should the Court rule that a Motion to Dismiss provides Respondents with an additional thirty (30) day period to serve upon Appellant and file with the Court Respondents' Initial Brief, Respondents' Initial Brief was still served and filed in an untimely and improper fashion.

² Respondents served and filed their Motion to Dismiss thirty-one (31) days after the service and filing of Initial Brief of Appellant as further set forth above within footnote 1; Respondents served and filed Respondents' Initial Brief thirty-two (32) days after the entrance of the Court's Order dismissing Respondents' Motion to Dismiss.

Should the Court disagree with Appellant's argument regarding SCACR 240(b) as set forth above and determine that Respondents were indeed allotted an additional thirty (30) day period following the entrance of the Court's Order denying Respondents' Motion to Dismiss, Respondents' Initial Brief was still not served upon Appellant or filed with the Court in a timely manner. Rule 262(a) of the South Carolina Appellate Court Rules states that "... filing may be accomplished by: (1) Delivering the document to the clerk of the appellate court. . . . [or] (2) By depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached. The date of filing shall be the date of delivery or the date of mailing." Furthermore, Rule 262(b) states that "[s]ervice upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address Service by mail is complete upon mailing." SCACR 262(b).

As set forth above, the Court issued its Order denying Respondents' Motion to Dismiss on March 4, 2016, and, if Respondent was in fact granted an additional thirty (30) days under the South Carolina Appellate Court Rules, Respondents' Initial Brief was due to be served upon Appellant and filed by no later than April 4, 2016.³ Respondents failed to comply with this date, however, and both served and filed Respondents' Initial Brief on April 5, 2016. Respondents incorrectly listed April 4, 2016 as the date of service within the Certificate of Service accompanying Respondents' Initial Brief that was filed with the Court, when in fact the postage placed upon the envelope in which Appellant received service of Respondents' Initial Brief was not printed until April 5, 2016.

³ The allotted thirty (30) day time period would have expired on Sunday, April 3, 2016. Monday, April 4, 2016 was the next business day and, as such, was the date upon which Respondents' Initial Brief was due pursuant Rule 263(a) of the South Carolina Appellate Court Rules.

Furthermore, Respondents' Initial Brief was not filed with the Court until April 5, 2016, as evidenced by the date on the accompanying Fed Ex Express shipping label that was filed with the Court.

Appellant contends that is another example of a pattern of untimeliness and purposeful delay that has been exhibited by Respondents throughout all levels of these proceedings. Based upon the foregoing, Appellant requests that the Court exercise its authority and grant Appellant any such relief it may deem proper, including but not limited to striking Respondents' Initial Brief.

II. Appellant properly preserved all of the arguments contained within its Rule 59(e) Motion for Reconsideration for appeal, as all arguments were raised and ruled upon by the Trial Court within the scope of the drafting and oral arguments regarding Appellant's underlying Rule 60(b) Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial.

Respondents allege within Respondents' Initial Brief that Appellant should be barred from making several legal arguments set forth within Initial Brief of Appellant as said arguments were only raised within Appellant's Rule 59(e) Motion to Reconsider and were absent from Appellant's underlying Rule 60(b) Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial. Specifically, Respondents contend that the following arguments were not preserved for appellate review: (1) that the Trial Court's April 20, 2015 Form 4 Order (hereinafter the "Judgment") does not comply with Rules 41 and 79(f), SCRCP; (2) that the Trial Court did not intend to dismiss this case; and (3) that the parties did not intend for the Trial Court to dismiss this case. This allegation is incorrect, however, as Appellant addressed all of these issues within its written Rule 60(b) motion, the evidence submitted by the Appellant that accompanied the

written Rule 60(b) motion, and the hearing conducted before the Trial Court on June 24, 2015.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [appellate courts] with a platform for meaningful appellate review.” Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (S.C. 2012) (*quoting* Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. Elam v. S. Carolina dep't of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Such “[i]ssues and arguments are preserved for appellate review . . . when they are raised to and ruled on by the lower court.” *Id.* at 9, 23, 602 S.E.2d at 772, 779-80.

An exception to this rule exists, however, “. . . when an issue or argument has been raised, but not ruled on” *Id.* at 9, 24, 602 S.E.2d at 772, 780. In such a situation, a party must bring a Rule 59(e) motion to preserve such an issue for appellate review. *Id.* “. . . Rule 59(e), SCRCp, provides for a motion to alter or amend judgment and preserve the record for appeal.” Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (S.C. 1993). “Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.” Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) (*quoting* James F. Flanagan, South Carolina Civil Procedure 475 (2d ed. 1996)).

The South Carolina Supreme Court has acknowledged that it is “. . . good practice for [appellate courts] to reach the merits of an issue when error preservation is

doubtful” Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (S.C. 2012). Chief Justice Toal addressed the application of appellate preservation at length within a separate, written opinion in Atlantic Coast Builders & Contractors, LLC v. Lewis:

In my opinion, an over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice. To be clear, I do not discount the importance of our issue preservation rules. As an appellate court, we sit to review decisions of lower courts for error. As such, “it is axiomatic that an issue cannot be raised for the first time on appeal.” However, I do not believe it is our place to scour the records before us for the purpose of avoiding issues or, even worse, to play a “gotcha” game with attorneys by showcasing their alleged mistakes, at the expense of their clients. This practice ignores the fact that behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests. In light of my view, I believe that where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.”

398 S.C. 323, 730 S.E.2d 282 (S.C. 2012) (Toal, C.J., concurring in part, dissenting in part).

In the instant case, the record is replete with instances wherein the Appellant has plainly and openly contended that the Judgment dismissing this case was entered in error and should be vacated. Appellant’s Rule 60(b) motion and its related arguments are no exception. Each of the three arguments, which are set forth above, that Respondents contend are not preserved for appeal were raised and adjudicated on by the Trial Court within the scope of Appellant’s Rule 60(b) motion.

First and foremost, Appellant argued within its initial brief that the Judgment was entered in error, more specifically due to its failure to comply with Rules 41 and 79(f) of the South Carolina Rules of Civil Procedure, and as such should be vacated. Appellant

argued this very point at the June 24, 2015 hearing regarding Appellant's Rule 60(b) motion. At the hearing, Attorney Wm. M. Gruenloh, Counsel for Appellant, specifically stated that "[t]o the extent that a dismissal was entered in error or otherwise, we'd ask that that be vacated, and we're here asking for a trial date." (R. p. 13, lines 21-23). Appellant specifically addressed the topic of the Judgment's validity and asked that it be vacated, and as such this issue has been preserved for purposes of appeal.

Second, Appellant contends within its Initial Brief that the Trial Court did not intend to dismiss this case. Once again, Appellant addressed this issue at the June 24th hearing by stating that "[t]he case was apparently dismissed, despite the fact that we didn't send in a stipulation of dismissal. I think that was done because the mediator sent in a statement saying the case was fully settled, but it did not indicate that the case had been dismissed." (R. p. 13, lines 8-12). The Trial Court indicated that it would "... take a look at the communications that were provided to the Court that led to the dismissal of the case along with the stipulation for the settlement agreement that was signed." (R. p. 15, lines 20-23). This exchange indicates that the Trial Court examined the totality of the communications with the Court regarding the dismissal of this case, and presumably evaluated its own intent within its ruling. As such, this issue was properly raised and has been preserved for purposes of appeal.

Third and finally, Appellant contends within its Initial Brief that the parties did not intend for the Trial Court to dismiss this case. This fact is clearly set forth within Appellant's written 60(b) motion and the attached Settlement Agreement. Appellant's 60(b) motion states that "[t]he parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement." (R. p.

21, paragraph 3). Additionally, a copy of the Settlement Agreement was attached to Appellant's Rule 60(b) motion and was provided to the Trial Court. The Settlement Agreement states, in relevant part, that "[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000.00 payment, once payment is made." (R. p. 36, paragraph 5) (emphasis added). Appellant also explicitly stated at the June 24th hearing that the parties " . . . never communicated any intent to dismiss the case" (R. p. 15, lines 3-4). 5:3-4. Attorney David Marvel, Counsel for Respondents, did not dispute this assertion. As such, this issue has also been preserved for purposes of appeal.

Furthermore, not only was each of these topics addressed by Appellant's within the scope of its Rule 60(b) motion, but each was adjudicated on by means of the Trial Court's July 22, 2015 Order denying Appellant's Rule 60(b) motion. In relevant part, the Order states that the Trial Court " . . . review[ed] all the testimony and other evidence presented at the hearing, along with the records provided to the Court . . . " in ruling against Appellant. (R. p. 5). As such, the Trial Court took into account all of Appellant's aforementioned arguments, including those made orally at the June 24, 2015 hearing, in issuing a final ruling. As each argument was raised and adjudicated upon by the Trial Court, they are all preserved for purposes of appeal. In the alternative, however, should this Court determine that the any of the aforementioned issues was raised but not adjudicated on within the Trial Court's July 22, 2015 Order, they were again raised in further detail within Appellant's Rule 59(e) motion and are still properly preserved for appeal.

As such, Appellant properly raised all of its arguments within the scope of its Rule 60(b) motion and the Trial Court ruled upon such arguments within a final order. Based upon the foregoing, each of the issues raised within the Initial Brief of Appellant was preserved for purposes of appeal. Additionally, any further elaboration upon such arguments contained within Appellant's Rule 59(e) motion was also proper and any such elaboration is also preserved for purposes of appeal.

III. Appellant provided sufficient evidence to establish that the Trial Court abused its discretion in denying Appellant's Rule 60(b) motion under numerous grounds, which were properly raised and argued within the scope of Appellant's Rule 60(b) Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and further detailed within Appellant's Rule 59(e) Motion to Reconsider and Initial Brief of Appellant.

Rule 60(b) of the South Carolina Rules of Civil Procedure allows a trial court, upon motion, to relieve a party from a final judgment for the following reasons:

- (1) [M]istake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The decision whether to grant or deny a motion requesting relief under Rule 60(b) of the South Carolina Rules of Civil Procedure lies within the sound discretion of the trial court. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (S.C. 2004). The standard of review upon appeal is limited to determining whether there was an abuse of discretion. Id.

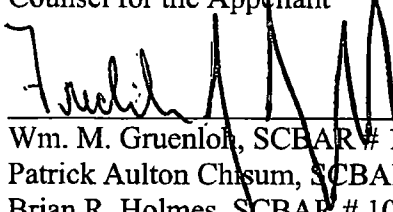
As set forth above, Appellant addressed a number of issues within the scope of its Rule 60(b) motion that would indicate that the Trial Court abused its discretion in

denying Appellant's Rule 60(b) motion and upholding the Judgment. *See* Argument Section II, supra pg. 5. All of these relevant arguments were presented to the Trial Court within the scope of the Rule 60(b) motion and were ruled upon within the Trial Court's July 22, 2015 Order. Appellant then provided further detail to the Trial Court by means of its Rule 59(e) motion. All of Appellant's arguments regarding the Trial Court's abuse of discretion in denying both its Rule 60(b) and Rule 59(e) are preserved for purposes of appeal and are set forth in full detail within Initial Brief of Appellant, which is incorporated by reference herein and upon which Appellant hereby relies.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests this Court to reverse the Trial Court's denial of Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial, vacate the Judgment, and remand this action back to the Dorchester County Court of Common Pleas thereby restoring it to the active docket.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Appellant

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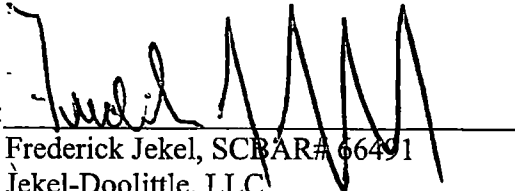
Date: July 1, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **Final Reply Brief of Appellant** in the above-referenced matter was served on the below named parties and/or their respective counsel and/or agents by depositing true and accurate copies of the same in the U.S. mail, first class, properly addressed, with sufficient postage affixed, on the date below.

David B. Marvel
Marvel Et Al., LLC
P.O. Box 22734
Charleston, SC 29413

RECEIVED
JUL 01 2016
SC Court of Appeals

By: 

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Date: July 1, 2016
Charleston, South Carolina

18235

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED
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SC Court of Appeals

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

RESPONDENTS' MOTION TO DISMISS

David B. Marvel, SCBAR # 68803
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Charleston, South Carolina 29413
Ph. (843) 212-6949
Fax (843) 303-8035

COMES NOW RESPONDENTS, Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau, who hereby move this Honorable Court of Appeals for an Order dismissing this appeal for lack of jurisdiction. As grounds for this Motion, Respondents hereby aver before this Honorable Court as follows.

I. FACTS

The Appellant Innovative Waste Management Inc. (hereafter "IWM") filed this action against the Respondents on May 11, 2012, alleging numerous causes of action relating to a series of petroleum transactions in Mobile, Alabama and St. Rose, Louisiana in early 2010.¹ The Respondents filed counter claims and claimed set-off on those transactions and a previous transaction. The parties litigated the matter for nearly three years, during which it was designated a Complex Case and assigned to the Honorable Maite D. Murphy. The parties ultimately reached a settlement agreement during mediation on April 8, 2015. A copy of that settlement agreement is included in the Appellant's Designation of Matter as Exhibit A.

The Mediator, Angus M. Lawton, transmitted a Proof of ADR to the Clerk of Court on April 10, 2015, pursuant to Rule 7(f), SCADR. A copy of the Proof of ADR is included in the Appellant's Designation of Matter as Exhibit C

On April 14, 2015, the Clerk of Court transmitted a Notice of Jury Roster to the parties, setting the case on the May 4, 2015 jury trial roster. In response, the undersigned

¹ The case was filed in the Dorchester County Court of Common Pleas after a case between the parties including the same allegations was dismissed by the United States District Court for the District of South Carolina for lack of subject matter jurisdiction on May 10, 2012. Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC, Civil Action No. 2:11-cv-1023-RMG (D.S.C. May 10, 2012).

transmitted an email to Judge Murphy's Clerk, with a copy to all counsel, informing the Court that parties had reached a settlement. A copy of the email is included in the Appellant's Designation of Matter as Exhibit B. IWM's counsel did not respond.

On April 20, 2015, the Court received the Proof of ADR. The Clerk of Court issued a Form 4 Order dismissing the case on that same date, referring to the Proof of ADR as an "attached order". A copy of the Form 4 is included in the Appellant's Designation of Matter as Exhibit D. IWM's counsel did not respond to the Form 4 Order.

On May 27, 2015, IWM filed "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial" pursuant to Rule 60(b), SCRCPP. A copy of that Motion is attached hereto as Exhibit 1. The motion argued simply that the settlement had not been consummated, and therefore the case should be set for trial. This Motion was heard by Judge Murphy on June 24, 2015.

On July 22, 2015, Judge Murphy issued a Form 4 Order denying the 60(b) Motion. The Statement of Judgment in that Order stated "After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion . . . , is hereby denied." A copy of the July 22, 2015 Order is attached hereto as Exhibit 2.

On July 31, 2015, IWM filed a "Motion to Reconsider" pursuant to Rule 59(e), SCRCPP, asking the Court once again to vacate the settlement agreement and restore the case to the active docket. A copy of that Motion is attached hereto as Exhibit 3.

On August 18, 2015, Judge Murphy issued a Form 4 Order dismissing IWM's Rule 59 motion, stating as follows:

Pursuant to this Court's authority under Rule 59, SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

A copy of the August 18, 2015 Order is included in the Appellant's Designation of Matter as Exhibit I.

On September 16, 2015, IWM filed and served its Notice of Appeal, purporting to appeal "the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of Court, Cheryl Graham, on April 20, 2015."

II. LAW AND ARGUMENT

IWM has attempted to appeal the relief granted by a Form 4 Order filed on April 20, 2015 by virtue of a Notice of Appeal filed on September 16, 2015. IWM's appeal must be dismissed for lack of jurisdiction pursuant to Rule 203, SCACR(b)(1).

Rule 203 requires an aggrieved party to serve a Notice of Appeal "within thirty (30) days after receipt of written notice of entry of the order or judgment." This requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772, 775 (S.C. 2004).

While a timely motion to alter or amend the judgment under Rule 52 or 59, SCRC, would have stayed the thirty day period for filing the appeal under Rule 203, IWM's first Motion to Vacate was filed thirty-seven days after the issuance of the Order

dismissing the case. Therefore, that Motion was not a “timely motion to alter or amend the judgment”, as any such motion would have had to have been filed within ten days of receiving written notice of the entry of judgment. See Rule 59, SCRCP.

Notably, the bulk of IWM’s initial brief is directed at Judge Murphy’s July 22, 2015 ruling denying relief under Rule 60(b). However, even if the Court were to construe IWM’s Notice of Appeal to apply to the July 22, 2015 ruling, the Notice of Appeal would still be untimely, as it was filed forty-five days after the issuance of that Order.

IWM’s “Motion to Reconsider” seeking relief under Rule 59, SCRCP cannot be construed to toll the period for filing the Notice of Appeal under Rule 203, SCACR. However captioned, that Motion was nothing more than a successive post-trial motion which South Carolina courts have continually stated do not toll the jurisdictional period for filing a Notice of Appeal. See Elam, 602 S.E.2d at 777-78; Quality Trailer Products v. CSL Equipment Co., 349 S.C. 216, 562 S.E.2d 615 (2002); Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999); Collins Music Co. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

Unlike a Rule 50, 52 or 59, SCRCP, motion, a Rule 60(b) motion does not have any tolling effect on the right to appeal from the challenged judgment. Coward Hund, 518 S.E.2d 56, 59. Regardless of the form in which the request for relief is framed, the substance of the requested relief that matters. Richland County v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). Although a timely Rule 59(e) motion normally will toll the time within which an appellant must serve his notice of appeal, a successive Rule 59(e) motion will not do so. Quality Trailer, 562 S.E.2d at 617. Therefore, when the first post-trial motion “does not result in a substantial alteration of the original judgment,

an appeal will be barred due to untimely service when, instead of appealing the first post-trial motion, the party files a successive Rule 59(e) motion. Elam, 602 S.E. 2d at 778.

IWM's July 31, 2015 Motion to Reconsider was successive, as Judge Murphy's July 22, 2015 ruling did not alter the original judgment in any way, and the motion itself did not state any new grounds for relief that had not already been argued. In fact, Judge Murphy's August 19, 2015 order explicitly found that "all arguments properly raised to the Court have already been ruled upon". As IWM has not challenged this finding in its Initial Brief, it should not be subject to further review.

Judge Murphy's determination that the Motion to Reconsider was successive raises an issue noted by the Elam court:

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling.

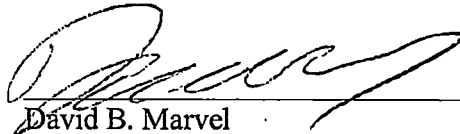
Elam, 602 S.E.2d at 780. In the case at bar, Judge Murphy ruled that the Motion to Reconsider was successive. She did so on August 18, 2015. Perhaps Judge Murphy even ruled without oral argument so that IWM would have more than sufficient time to review the ruling and still file a Notice of Appeal "within thirty (30) days after receipt of written notice of entry" of the July 22, 2015 Order. IWM chose not to do so, instead waiting nearly three weeks to decide to appeal an order it had already challenged twice. Therefore, at the very latest, once the time to file notice of appeal concerning the July 22, 2015 order had expired, that order, "right or wrong," became the law of the case and *res judicata* would preclude any further review on the issues decided therein. See Ulmer v.

Ulmer, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (holding portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case).

III. CONCLUSION

Judge Murphy's July 22, 2015 ruling was within the court's discretion. IWM failed to file a timely Notice of Appeal, and the ruling cannot be challenged at this late date. This Honorable Court of Appeals is without jurisdiction to hear the appeal. Accordingly, IWM's appeal must be dismissed for lack of jurisdiction.

RESPECTFULLY SUBMITTED:



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IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

2015 MAY 27 AM 11:19

CLERK OF COURT
DORCHESTER COUNTY

**MOTION TO VACATE
SETTLEMENT AGREEMENT,
RESTORE TO ACTIVE DOCKET,
AND SET FOR TRIAL**

V.

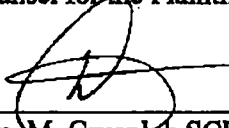
Defendants.

1. On April 8, 2015, Plaintiff and Defendants conducted mandatory mediation regarding this action and were able to reach a settlement agreement.
2. On April 8, 2015, Plaintiff and Defendants entered into a binding Settlement Agreement (attached as "Exhibit A") stipulating Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement.
3. On April 20, 2015 and pursuant to the aforementioned mediation and Settlement Agreement, this action was removed from the docket. The parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement.

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

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Patrick Aulton Chisum SCBAR #100571
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And

Frederick Jekel, Esq.,
Jekel-Doolittle
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(843) 654-7700
(888) 567-1129 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

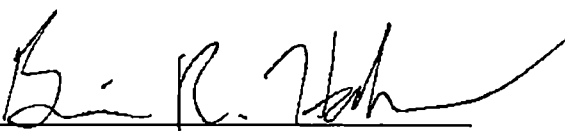
2015 MAY 27 AM 11:20

CLERK OF COURT
DORCHESTER COUNTY

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

By:



Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

2015 MAY 27 AM 11:20

CLERK OF COURT
DORCHESTER COUNTY

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

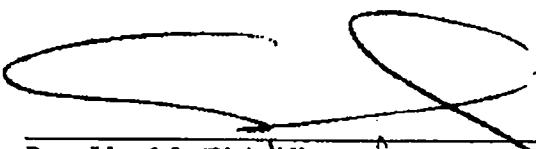
CASE NO.: 2012-CP-18-1227

SETTLEMENT AGREEMENT

2015 MAY 27 AM 11:20
CLERK OF COURT
DORCHESTER COUNTY

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

Date: April 8, 2015

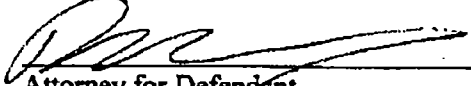

Russ Lloyd for Plaintiff


Attorney for Plaintiff


Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp/Llc,
Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau


Edward H. Girardeau, Individually


Attorney for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P., DUNHILL
PRODUCTS L.P., HENRY WUERTZ, AND
EDWARD H. GIRARDEAU

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18-1227

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2015 MAY 27
CLERK OF COURT
DORCHESTER COUNTY
AM 11:20

Plaintiff's Attorney: Wm. Michael Gruenloh, Bar No. 12418 Address: <u>192 Easy Bay Street, Suite 202</u> <u>Charleston, South Carolina 29401</u> Phone: <u>(843) 577-0027</u> Fax <u>843-577-0721</u> E-mail: <u>Mike@gruenlohlaw.com</u> Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial</u> Estimated Time Needed: <u>10 Minutes</u> Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. May 21, 2015 Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>\$25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227**

**Innovative Waste
Management Inc
Crest Energy Partners LP**

Edward H Girardeau

**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**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: **After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

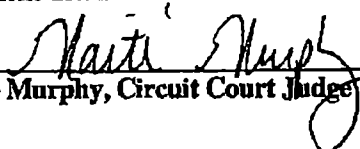
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Maité Murphy, Circuit Court Judge

2166

Judge Code

7/22/2015

Date

For Clerk of Court Office Use Only

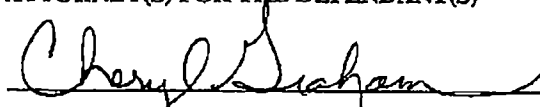
This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patric Aulton Chisum 192 East
Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Ruth Mott

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

RECORDED
2015 JUL 31 PM 3:33
CHERYL J. JONES
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

✓ INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

MOTION TO RECONSIDER

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)” and states “[t]his order [X] ends . . . the case.” The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as “Exhibit F”). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants’ counsel’s initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants’ failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that “[t]he case was closed out”¹ (See Court E-mail Correspondence, attached as “Exhibit G”). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff’s May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

1. Plaintiff’s counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

STANDARD OF REVIEW

“ . . . Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal.” Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it “ . . . believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court’s dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants’ have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants’ non-performance. For these reasons, the Court’s earlier July 22, 2015 Order was incorrect and should be overturned.

I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed "... by filing a stipulation of dismissal signed by all parties who have appeared in the action" Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff's failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff's failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that "[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). Mr. Lawton's Proof of ADR or Exemption sets forth that there would be a "Voluntary Dismissal to be filed by Atty. Marvel." (See "Exhibit D"). Finally, Mr. Marvel's e-mail correspondence with the Court regarding the settlement states that "... we will file a stipulation of dismissal once the settlement is consummated." (See "Exhibit C"). To date, no dismissal complying with

SCRCP 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated. (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCRP 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is " . . . so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission " . . . is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract, Silver v. Aabstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

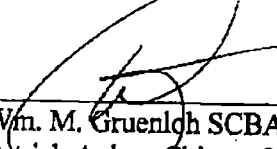
In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
Brian R. Holmes SCBAR # 102052
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

RECORDED
JUL 31 PM 3:33
CLERK OF COURT
NORCHES TER COURTY

By:


Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

RECORD
2015 JUL 31 PM 3:33

CHESTER
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

RECORDED IN THE COURT OF COMMON PLEAS

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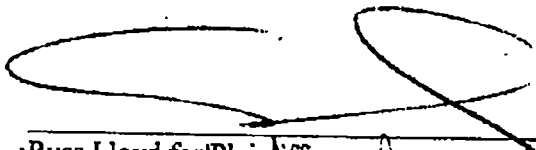
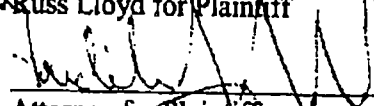
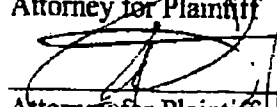
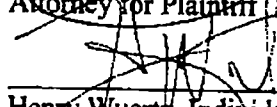
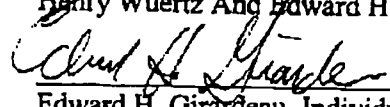
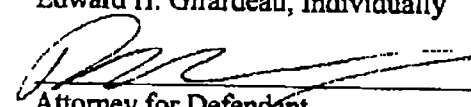
CASE NO.: 2012-CP-18-1227

CHERYL L. BROWN
CLERK OF COURT
DORCHESTER COUNTY

SETTLEMENT AGREEMENT

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

Date: April 8, 2015


Russ Lloyd for Plaintiff
Attorney for Plaintiff
Attorney for Plaintiff
Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp, Llc,
Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau
Edward H. Girardeau, Individually
Attorney for Defendant

RECORDED
2016 JUL 31 PM 3:33

CHERYL L. SMITH
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) AFFIDAVIT OF
) C. RUSS LLOYD
)

RECORDED
2015 JUL 31 PM 3:33

Personally appeared before me, C. Russ Lloyd, who, being duly sworn, deposes and states as follows:

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

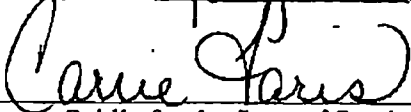
7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President
Innovative Waste Management, Inc.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires My Commission Expires January 23, 2017

FILED
2015 JUL 31 PM 3:33

CHEY L. SMITH
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT C

7/31/2015

Gruenloh Law Mail - IWM v. Crest et al 2012-CP-08-1227



Wm. Michael Gruenloh <mike@gruenlohlaw.com>

IWM v. Crest et al 2012-CP-08-1227

2015 JUL 31 PM 3:33

David B. Marvel <dave@prennermarvel.com>

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@sccourts.org>

Cc: "bstevens@dorchestercounty.net" <bstevens@dorchestercounty.net>, Fritz Jekel <fritz@j-dlaw.com>, "Mike Gruenloh (mike@gruenlohlaw.com)" <mike@gruenlohlaw.com>

2015 APR 14 AM 11:01
CLEAN OF RECORD
DORCHESTER COUNTY

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

REC'D

2015 JUL 31 PM 3:53

SPERYL A. BROWN
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

RECORDED

INNOVATIVE WASTE MANAGEMENT,
INC.,

2015 JUL 31 PM 3:35 PROOF OF ADR OR EXEMPTION

CERYLE W. JONES
CLERK OF COURT
DORCHESTER COUNTY

CASE NO. 2013-CP-18-1897

2012-CP-18-1227

Plaintiff.

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

FILED
JUL 20 PM 3:23
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

 MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

(X) Fully Settled.

() by Consent Judgment, to be file by _____

or (X) Voluntary Dismissal to be filed by Atty. Marvel

() Partially Settled.

() At an impasse.

() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present

Defendant [X] was present [] was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

FILED RECORD

2015 JUL 31 PM 3:33

CMEP
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT E

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

Crest Energy Partners
Gp, LLC
Danhill Products GP,
LLC
Henry W. Wertz
Innovative Waste
Management Inc

Crest Energy Partners
LP
Danhill Products LP
Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Greenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

CASE NO. 2012-CP-18-1227
~~2013-CP-18-1897~~

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date:

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

☒ Fully Settled.

☐ by Consent Judgment, to be file by _____

or ☒ Voluntary Dismissal to be filed by Atty. Marvel

☐ Partially Settled.

☐ At an impasse.

☐ In need of further ADR I ☐ and ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

RECORDED

2015 JUL 31 PM 3:33

CHERYL A. BELL
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) AFFIDAVIT OF
) ANGUS LAWTON, ESQ.
) 2015 JUL 31 PM 3:33
DORCHESTER COUNTY

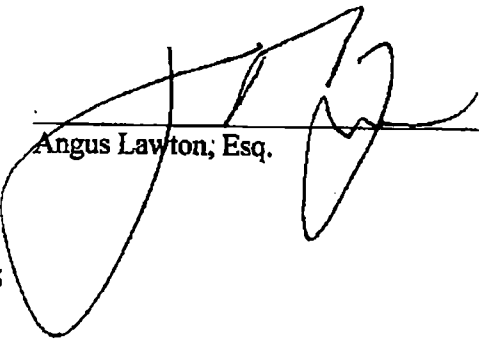
Personally appeared before me, Angus Lawton, Esq. who, being duly sworn deposes and states as follows:

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P. , Henry Wuertz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

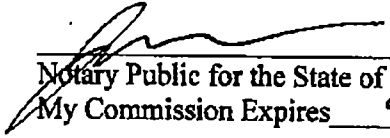
8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.



Angus Lawton, Esq.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina
My Commission Expires 9-4-2023

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227
CASE NO.: 2013-CP-18-1897

FILED - RECORDED
2015 APR 20 PM 3:13
CHERYL BRADY
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

☒ Fully Settled.

☐ by Consent Judgment, to be file by _____

or ☒ Voluntary Dismissal to be filed by Atty. Marvel

☐ Partially Settled.

☐ At an impasse.

☐ In need of further ADR I ☐ and ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff ☒ was present ☐ was not present

Defendant ☒ was present ☐ was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

Exhibit B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227
FILED - RECORDED

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

2015 APR 29 PM 3:17
CHERYL
CLERK
DORCHESTER
Crest Energy Partners
Gp, LLC
Dunhill Products GP,
Henry Wertz
Innovative Waste
Management Inc

Crest Energy Partners
LP
Dunhill Products LP
Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

CASE NO.: ~~2013-CP-18-1897~~

2012-CP-18-1227

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

☒ Fully Settled.

☐ by Consent Judgment, to be file by _____

or ☒ Voluntary Dismissal to be filed by Atty. Marvel

☐ Partially Settled.

☐ At an impasse.

☐ In need of further ADR I ☐ and ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff ☒ was present ☐ was not present

Defendant ☒ was present ☐ was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

RECORDS

2015 JUL 31 PM 3:34

CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT G

7/31/15, 11:25 AM



RECEIVED

2015 JUL 31 PM 3:34

IWM v. Crest et al 2012-CP-08-1227

CHERYL L. MURPHY
CLERK OF COURT
DORCHESTER COUNTY

David B. Marvel <dave@prennermarvel.com>

Wed, May 20, 2015 at 10:02 AM

To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Becky Stevens <BStevens@dorchestercounty.net>, "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@sccourts.org>

Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, Brian Holmes <brian@gruenlohlaw.com>, Sarah Pendleton <sarah@prennermarvel.com>

Dear William and Becky,

To clarify, my client has had some difficulty funding the settlement due to factors outside of its control. However, Crest has every intention of standing by the agreement and hopes to have funding in the next ten days. The settlement agreement is attached for your review. My clients have executed the release, although Mr. Gruenloh's clients have not. The settlement agreement fully complies with Rule 43(k) and the case has been dismissed. While the plaintiff is certainly within its rights to move to enforce the settlement, I believe that is their only remedy and the matter cannot simply be set for trial. I am available for a status conference at the court's convenience.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com



IWM v. Crest et al 2012-CP-08-1227

Mike Gruenloh <mike@gruenlohlaw.com>

Thu, May 28, 2015 at 2:15 PM

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphy1c@sccourts.org>, Becky Stevens <BStevens@dorchestercounty.net>

Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, Brian Holmes <brian@gruenlohlaw.com>, Sarah Pendleton <sarah@prennermarvel.com>, "David B. Marvel" <dave@prennermarvel.com>

Thank you Becky. It sounds to me like any dismissal would have been an inadvertent admin error as the plaintiff never consented to the dismissal of this matter. I'm not relishing the thought of telling my client that we must now wait three weeks to have that sorted out before we can set this 3 year old case for trial. Is it possible for us to have a short teleconference with Judge Murphy? Thank you and sorry to be a bother.

Mike

On May 28, 2015, at 1:46 PM, Becky Stevens <BStevens@dorchestercounty.net> wrote:

The case was closed out with the Mediator's Report which indicated the case was fully settled.

Rebecca (Becky) Stevens

Assistant Civil Court Coordinator

Office of the Clerk of Court

for Dorchester County

5200 E. Jim Bilton Blvd.

St. George, South Carolina 29477

843-832-0126

From: Wm. Michael Gruenloh [mailto:mike@gruenlohlaw.com]

Sent: Thursday, May 28, 2015 12:58 PM

To: Becky Stevens

Cc: Murphy, Maite Law Clerk (William Crantford); Fritz Jekel; Patrick Chisum; Brian Holmes; Sarah Pendleton; David B. Marvel

Subject: Re: IWM v. Crest et al 2012-CP-08-1227

7/31/15, 10:51 AM

Becky,

I'm a bit confused by that as the Plaintiff never consented to a dismissal but only that it be removed from the jury roster. Any explanation you have is appreciated. Thank you.

<image001.jpg>

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

<image001.jpg>

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

<image001.jpg>

GRUENLOH LAW

Wm. Michael Gruenloh, Esq.

T 843.577-0027

F 843.577.0721

E mike@gruenlohlaw.com

A 192 E. Bay Street, Suite 202, Charleston, SC 29401

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or

<https://mail.google.com/mail/u/0/?ui=2&ik=f598b1c1b9&view=pt&q=m...qs=true&search=query&msg=14d9bbcfcaeca5e9&siml=14d9bbcfcaeca5e9&siml=14d9bbcfcaeca5e9>
Case No. 2015-002024

\$25.00 MB ✓

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015 JUL 31 PM 3:33

CASE NO.: 2012-CP-18-1227

✓ INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P., DUNHILL
PRODUCTS L.P., HENRY WUERTZ, AND
EDWARD H. GIRARDEAU

Defendants.

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

DORCHESTER COUNTY

Plaintiff's Attorney:

Wm. Michael Gruenloh, Bar No. 12418

Address:

192 Easy Bay Street, Suite 202

Charleston, South Carolina 29401

Phone: (843) 577-0027 Fax 843-577-0721

E-mail: Mike@gruenlohlaw.com Other:

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 Minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 31, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ \$25.00**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date:

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Case No. 2015-002024

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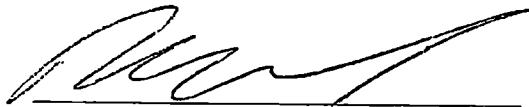
DEC 22 2015

SC Court of Appeals

The undersigned hereby certifies that on the 21st day of December, 2015 the undersigned served counsel for the Appellant with the foregoing Motion to Dismiss by sending a copy to counsel for Appellant via email and U.S. mail, postage prepaid to counsel at the addresses below:

Wm. Michael Gruenloh, Esquire
Gruenloh Law Firm, LLC
192 East Bay Street, Suite 202
Charleston, South Carolina 29401

Frederick J. Jekel, Esquire
Jekel-Doolittle, LLC
1512 Laurel Street
PO Box 2597
Columbia, SC 29201



David B. Marvel

David B. Marvel
Attorney at Law – Proctor in Admiralty

December 21, 2015

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

RECEIVED

DEC 22 2015

SC Court of Appeals

Re: Innovative Waste Management v. Crest Energy Partners GP, LLC
Case No. 2015-002024

Dear Ms. Kitchings,

I hope this finds you well and enjoying the holiday season. I have enclosed an original and six copies of a Motion to Dismiss for the Court's consideration, along with the \$25.00 filing fee. Please file this in your usual prompt and efficient manner, and enclose a clocked copy in the self-addressed, stamped envelope provided.

If you have any questions, comments, or concerns, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,



David B. Marvel

cc: Wm. Michael Gruenloh
Fritz Jekel

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IWM v. Crest Energy Partners
Respondents' Motion to Dismiss

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Appendix p. 162

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

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.

APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS

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COMES NOW APPELLANT, Innovative Waste Mangement, Inc., who hereby files this Return in opposition to Respondents' Motion to Dismiss. As grounds for this Return, Appellant states as follows.

FACTUAL BACKGROUND

This matter was filed on May 11, 2012 with the Dorchester County Court of Common Pleas wherein Appellant pled various causes of action, including but not limited to breach of contract, constructive fraud, conversion, and tortious interference with contractual relationships. The case was assigned to The Honorable Maité D. Murphy.

On April 8, 2015, the parties conducted court-ordered mediation and were able to reach a settlement agreement. The settlement agreement stipulated that the Respondents would make a payment of \$450,000.00 within thirty (30) days of the execution of the settlement agreement, and that dismissal of the action was conditioned upon Respondents' payment under the agreement. (See "Exhibit A"). Only two communications were made to the Trial Court regarding the settlement agreement following the execution of the agreement. The first was an e-mail from Mr. David Marvel, counsel for Respondents, advising the Trial Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See "Exhibit B"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton, which indicated that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See "Exhibit C").

On April 20, 2015, a Form 4 Judgment was entered, referred to hereinafter as the "April 20th Judgment." The April 20th Judgment was signed by the Dorchester County

Clerk of Court, Ms. Cheryl Graham, and did not include the signature of Judge Murphy. The entry of the April 20th Judgment was unsolicited, and none of parties to this action executed or filed a stipulation of dismissal. The Judgment directs the reader to “[X] See attached order; (formal order to follow)” and states “[t]his order [X] ends . . . the case.” These were the only two boxes that were checked and completed within the entirety of the Judgment, and other boxes, most notably the box which sets forth “[] ACTION DISMISSED: CHECK REASON,” were left incomplete. (See “Exhibit D”). The formal order alluded to within the body of the Judgment was never attached and no such formal order has ever been executed by the Trial Court. The only attachment to the Judgment was Mr. Lawton’s Proof of ADR or Exemption. (See “Exhibit C”). No further reasoning was provided within the April 20th Judgment. (See “Exhibit D”)

On May 8, 2015, thirty (30) days elapsed from the execution of the settlement agreement with no payment received. Due to Respondents’ breach of the settlement agreement, Appellant sought to have the action restored to the active trial docket. On May 20, 2015, Appellant contacted the Trial Court and requested the first available date certain trial date. It was on that date that Appellant was notified for the first time of the Judgment.

Upon discovering that the Clerk of Court had dismissed the case, Appellant contacted Judge Murphy’s law clerk and requested a conference to bring to the Trial Court’s attention what appeared to be a clear clerical mistake. Plaintiff was advised by the Trial Court to file a motion and that no conference with Judge Murphy would occur. On May 27, 2015, Appellant filed its Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial pursuant to Rule 60(b), SCRCP. (See “Exhibit E”). The

Respondents filed no opposition to Appellant's Rule 60(b) motion. On June 24, 2015, the Trial Court heard arguments from counsel where Appellant sought for the Trial Court to vacate both the settlement agreement and the April 20th Judgment, thereby restoring this matter to the active trial docket. (See "Exhibit F"). On July 22, 2015, the Trial Court entered an Order denying Appellant's Rule 60(b) motion, hereinafter referred to as the "July 22nd Judgment." The July 22nd Judgment was a form order and contained no reasoning supporting the Trial Court's ruling. (See "Exhibit G"). Furthermore, the transcript of the June 24, 2015 hearing reveals the Trial Court never provided any rationale to support the denial of Plaintiff's Rule 60(b) Motion. (See "Exhibit F"). Of note, the July 22, 2015 Order is the first occasion in which any circuit court judge made any ruling regarding the issues of which Appellant complains of herein – the improper dismissal of this case.

On July 31, 2015, Appellant filed its Motion to Reconsider pursuant to Rule 59(e), SCRCF, and asked the Trial Court to reevaluate its ruling on Appellant's Rule 60(b) motion, the entry of the July 22nd Judgment, and the overall validity of the April 20th Judgment. In its Rule 59(e) motion, Appellant set forth arguments that the April 20th Judgment was void as it was not entered properly and in accordance with Rule 41, SCRCF, that the entry of the April 20th Judgment was contrary to the intent of all parties to this action, and that the Appellant had legal right to rescind the settlement agreement due to the Respondents' non-performance. (See "Exhibit H"). Many of these arguments were either newly presented to the Trial Court or further fleshed out in order to provide the Trial Court with a better understanding of Appellant's position. Appellant's Rule 59(e) Motion also contained two new pieces of evidence for the Trial Court to consider,

namely the affidavits of the Angus Lawton, the mediator for this case, and C. Russ Lloyd, the owner and president of Appellant. (See "Exhibit I", "Exhibit J").

On August 18, 2015, the Trial Court denied Appellant's Rule 59(e) motion without hearing oral arguments and entered another Form 4 Judgment that contained no reasoning to the Trial Court's ruling, hereinafter referred to as the "August 18th Judgment." Notably, the August 18th Judgment did not specifically address any of Appellant's new legal arguments, nor did it address the issues raised in the new affidavits. (See "Exhibit K").

On September 17, 2015, Appellant filed its Notice of Appeal regarding the Trial Court's aforementioned rulings with the Dorchester County Clerk of Court and the South Carolina Court of Appeals. On October 21, 2015, Appellant received delivery of the transcript of the June 24, 2015 arguments. (See "Exhibit F"). On November 20, 2015 Appellant filed its Initial Brief in a timely manner within thirty (30) days of the receipt of the relevant transcript. On December 21, 2015, Respondents filed their Motion to Dismiss to which Appellant now responds.

ARGUMENT

In their Motion to Dismiss, Respondents allege that Appellant failed to comply with the required timing provisions set forth in Rule 203 of the South Carolina Appellate Court Rules, and as such this Honorable Court lacks jurisdiction to hear Appellant's arguments. In support of this allegation, Respondents set forth two arguments: (1) that the April 20th Judgment was the subject of Appellant's Notice of Appeal, and as such Appellant failed to file in a timely fashion, and (2) should this Honorable Court determine that the July 22nd Judgment was the subject of Appellant's Notice of Appeal,

Appellant's Appellant's Rule 59(e) motion was successive and cannot toll the jurisdiction time period for filing, thereby rendering the filing of Appellant's Notice of Appeal untimely. Appellant contends, however, that (1) the July 22nd Judgment, not the April 20th Judgment, is the subject of Appellant's appeal, and (2) that Appellant's Rule 59(e) Motion to Reconsider was not successive as it was Appellant's first post-trial motion that was appropriately filed in a timely manner, and as such it properly tolled the jurisdictional time period for filing the Notice of Appeal and Appellant's Notice of Appeal was filed in a timely manner. Appellant shall address these arguments in turn.

I. The July 22nd Judgment, not the April 20th Judgment, is the subject of Appellant's Appeal.

In the opening line of Section II of Respondents' Motion to Dismiss entitled "Law and Argument," Respondents state that "IWM has attempted to appeal the relief granted by a Form 4 Order filed on April 20, 2015 by virtue of a Notice of Appeal filed on September 16, 2015." (See "Respondents' Motion to Dismiss" at p. 4). Respondents go on to argue that, as the Appellant filed its Notice of Appeal on September 17, 2015, the Appellant filed outside of the jurisdictional time period of thirty (30) days and, as such, the Court lacks jurisdiction over this matter. This statement and Respondents' logic are incorrect, however, and grossly mischaracterize the relief sought by Appellant that is the subject of this appeal.

Appellant filed its Notice of Appeal seeking relief from the July 22nd Judgment denying Appellant's Rule 60(b) motion, not the April 20th Judgment. This fact is clearly set forth in Appellant's Notice of Appeal, in which Appellant stated, "Innovative Waste Management, Inc., appeals the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of

Court, Cheryl Graham on April 20, 2015, all of which are attached hereto.” (See “Appellant’s Notice of Appeal”). As set forth above, the July 22nd Judgment was entered in response to Appellant’s Rule 60(b) motion, and the crux of Appellant’s Rule 60(b) motion was that the April 20th Judgment was improperly entered pursuant to the South Carolina Rules of Civil Procedure, thereby rendering it void pursuant to Rule 60(b)(4), SCRPC.

Appellant only made reference to the April 20th Judgment and August 18th Judgment within its Notice of Appeal insofar as the two orders are inexorably intertwined with the July 22nd Judgment. Had the Trial Court ruled in Appellant’s favor in response to Appellant’s Rule 60(b) motion, the April 20th Judgment would have been declared void and presumably would have been rescinded. Furthermore, had the Trial Court ruled in Appellant’s favor in response to Appellant’s Rule 59(e) motion, a similar chain of events would likely have occurred. The same is true for this appeal should this Honorable Court rule in favor of Appellant.

As the July 22nd Judgment is the true subject of Appellant’s appeal, any allegation that the calculation of the jurisdictional time period for filing a Notice of Appeal should be predicated upon the entrance of the April 20th Judgment is incorrect. Based upon the foregoing, Respondents’ Motion to Dismiss should be denied.

II. Appellant’s Rule 59(e) Motion to Reconsider was not successive as it was Appellant’s first post-trial motion that was appropriately filed in a timely manner, and as such it properly tolled the jurisdictional time period for filing the Notice of Appeal and Appellant’s Notice of Appeal was filed in a timely manner.

As set forth above, Appellant first became aware of the April 20th Judgment on May 20, 2015 when Appellant’s counsel sought to have this case restored to the active

docket following Respondents' breach of the settlement agreement. The Trial Court advised the Appellant that no conference would occur with Judge Murphy and that Appellant's only recourse was to file a motion. As such, Appellant filed its Rule 60(b) motion on May 27, 2015, oral arguments regarding the motion were heard on June 24, 2015, and the motion was ruled upon with the entrance of the July 22nd Judgment. Appellant timely filed its first and only Rule 59(e) motion on July 31, 2015, and the Trial Court ruled on this motion by entering the August 18th Judgment. Appellant then timely filed its Notice of Appeal regarding the July 22nd Judgment on September 17, 2015.

In their Motion to Dismiss, Respondents argue that Appellant's Rule 59(e) Motion was merely a successive post-trial motion, and therefore does not toll the jurisdictional time period to file a Notice of Appeal. In support of this assertion, Respondent cites numerous cases, including Coward Hund Construction Co., Inc. v. Ball Corp., Quality Trailer Products v. CSL Equipment Co., and Elam v. S.C. Dept. of Transportation. 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999); 349 S.C. 216, 562 S.E.2d 615 (2002); 361 S.C. 9, 602 S.E.2d 772 (2004). These cases represent the bulk of South Carolina authority on this issue, and set forth that a successive Rule 59(e) motion does not toll the jurisdictional time period for filing a Notice of Appeal in certain circumstances. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 617. The facts of this case, however, are notably different from any of the cited cases, and a close review of the cited cases and their underlying reasoning reveals that Appellant's Rule 59(e) motion was timely, appropriate, and therefore properly stayed the jurisdictional time period for filing a Notice of Appeal.

Coward Hund represents the first time that South Carolina court's addressed the issue of successive post trial motions and their ability to stay the jurisdictional time period for filing a Notice of Appeal. Elam, 361 S.C. at 15, 602 S.E.2d at 775. In Coward Hund, defendants filed a motion for summary judgment with the trial court, which was subsequently granted. 336 S.C. at 2, 518 S.E.2d at 57. The plaintiff timely filed a motion for reconsideration pursuant to Rule 59(e), SCRCP, which, following oral arguments, was denied. Id. The plaintiff then filed a second motion for reconsideration pursuant to Rule 59(e), SCRCP, seeking clarification on a matter upon which the trial court had already ruled. Id. Plaintiff's second motion to reconsider was denied, and the plaintiff filed its notice of appeal within thirty (30) days of receiving the trial courts ruling on its second Rule 59(e) motion. Id. In addressing this novel issue of whether the Notice of Appeal was filed in a timely fashion, the South Carolina Court of Appeals chose to adopt and apply the prevailing rule in the federal courts that a second motion for reconsideration is appropriate "... only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration." Id. at 3, 518 S.E.2d at 58. In support of its decision, the South Carolina Court of Appeals notably stated that the plaintiff "... [was] not challenging a new ruling in its second motion," declared that plaintiff's second Rule 59(e) motion was merely successive, and dismissed the appeal. Id. at 4-6, 518 S.E.2d at 58-59.

South Carolina courts further extended the rationale set forth in Coward Hund in Quality Trailer. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 615 (2002). In Quality Trailer, a jury returned a verdict in favor of the plaintiff at trial and the defendant timely filed post trial motions, including motions for judgment notwithstanding the

verdict, new trial absolute, and new trial nisi remittitur. Elam at 16, 602 S.E.2d at 774-75. The trial court ruled against the defendants, and in turn filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. Id. at 16, 602 S.E.2d at 774-76. The Supreme Court held that a “. . . first, written, virtually identical Rule 59(e) motion . . .” is merely successive and that appeal may be barred if the Rule 59(e) motion does not “. . . result in a substantial alteration of the original judgment . . .” or the moving party merely “. . . recaptions a written JNOV/new trial motion, which has been ruled upon . . .” Id.

In each of the aforementioned cases, substantive arguments were heard before the trial court, either at a hearing or at trial, which were then followed by two separate instances of subsequent post-trial motions. In each case, the final motion made by the appellant was a Rule 59(e) motion that the court deemed to be successive, thereby refusing to extend the jurisdictional time period for filing a Notice of Appeal. In Coward Hund, the plaintiffs lost a motion for summary judgment argued before the trial court, then filed two separate Rule 59(e) motions. The South Carolina Appellate Court ruled that the second Rule 59(e) motion, or the third argument on the issues, was merely a successive post-trial motion and therefore could not stay the jurisdictional time period. *See generally* Coward Hund, 336 S.C. 1, 518 S.E.2d 56. Similarly, in Quality Trailer a full trial on the issues occurred and a jury verdict was awarded, followed by post-trial motions and, inevitably, a written Rule 59(e) motion. The South Carolina Supreme Court ruled that the Rule 59(e) motion was merely successive and could not stay the calculation of the jurisdictional time period for an appeal. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 615.

In 2004, however, the South Carolina Supreme Court took issue with the unwarranted expansion of the reasoning set forth in Quality Trailer in its holding in Elam v. S.C. Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004). In Elam, a jury entered a verdict in favor of the plaintiff and the defendant immediately made oral motions for JNOV, new trial absolute, and new trial nisi remittitur. Id. at 13-14, 602 S.E.2d at 774. The trial judge denied all of the defendant's motions in a ruling from the bench. Id. The defendant then entered a Rule 59(e) motion to reconsider the trial judge's ruling in a timely fashion, and this motion was subsequently denied. Id. The defendant filed a notice of appeal in a timely fashion, however the South Carolina Court of Appeals raised the issue of timeliness *sua sponte* and proceeded to apply the precedent set forth in Quality Trailer. Id. The Court of Appeals declared that the defendant's – now the appellant – Rule 59(e) motion was merely successive and dismissed the appellant's appeal as untimely. Id. The case was then submitted to the South Carolina Supreme Court for further review. Id.

The Supreme Court inevitably reversed the Court of Appeals ruling, holding that the appellant's Rule 59(e) motion was not merely successive and therefore the appellant's notice of appeal was filed in a timely manner. *See generally* Elam, 361 S.C. 9, 602 S.E.2d 772. In so ruling, the Supreme Court provided a detailed analysis of South Carolina jurisprudence on the issue and arrived at the conclusion that “. . . civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of Quality Trailer.” Elam, 361 S.C. at 25, 602 S.E.2d at 780. Furthermore, the Supreme Court stated that it “. . . strive[s] to avoid an

interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.” Id. at 25, 602 S.E.2d at 780-81. The Supreme Court held that a Rule 59(e) motion may properly be used “ . . . as a vehicle to seek ‘reconsideration’ of issues and arguments.” Id. at 21, 602 S.E.2d at 778. “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.” Id. at 22, 602 S.E.2d at 779. “ . . . [A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” Id. at 21, 602 S.E.2d 778-79. Additionally, “ . . . 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. at 21, 602 S.E.2d at 778.

The instant case is notably different from those presented in Coward Hund or Quality Trailer, and is far more similar to the circumstances presented in Elam. No trial, hearing, or any substantive argument was ever held regarding the dismissal of this matter, nor were any of the substantive issues presented herein heard by the Court prior to the entry of the April 20th Judgment. As set forth above and in Appellant’s prior motions, the Dorchester County Clerk of Court, Ms. Cheryl Graham, improperly entered the April 20th Judgment absent any affirmative action taken by any party to induce her to do so and without the parties’ consent. Furthermore, as the April 20th Judgment was not signed by Judge Murphy, there is no evidence that the Trial Court or Judge Murphy ordered or even knew about the entry of the April 20th Judgment. Based upon these facts, it is Appellant’s

contention that the April 20th Judgment is void pursuant to Rule 60(b)(4), SCRPC, and this contention was the subject of Appellant's 60(b) motion. Appellant's Rule 60(b) motion was its first opportunity to argue or even address the April 20th Judgment before the Trial Court, and, as such, the July 22nd Judgment denying Appellant's Rule 60(b) motion was the first ruling on the merits of this issue. As noted above, the July 22nd Judgment was the first ruling made by a circuit court judge on the issues Appellant has brought before this Court.

As in Elam, Appellant's filed a single Rule 59(e) motion on July 31, 2015 in a timely manner. Contrary to the situation presented in Coward Hund, this motion was filed to challenge a new ruling, as the July 22nd Judgment was the first ruling on the substantive matters regarding the improper dismissal of this case. Furthermore, Appellant's Rule 59(e) motion was not merely the Appellant's attempt to " . . . recaption[] a written JNOV/new trial motion, which has been ruled upon . . . ," but in fact provided new, substantive arguments regarding the invalidity of the April 20th Judgment and new evidence in the form of the affidavits of Angus Lawton, the mediator for this case, and C. Russ Lloyd, the owner and president of Appellant. Elam, 361 S.C. at 16, 602 S.E.2d at 774-76) (See "Exhibit I", "Exhibit J").

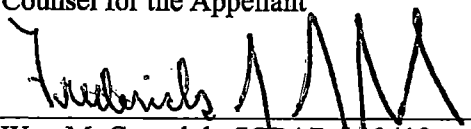
Appellant responded immediately once the April 20th Judgment was discovered, and acted within the bounds of the South Carolina Rules of Civil procedure when it filed its Rule 60(b) motion at the Trial Court's instruction. Furthermore, Appellant's Rule 59(e) motion was an appropriate and timely attempt under the Supreme Court's ruling in Elam to induce the Trial Court to reconsider the issues raised in its earlier Rule 60(b) motion. As such, Appellant properly filed its Notice of Appeal within the thirty (30) day

jurisdictional time period and Respondents' Motion to Dismiss should be denied. Any ruling to the contrary could only be reached using an "... interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place," and such a result would surely be unjust. Elam, 361 S.C. at 25, 602 S.E.2d at 780-81.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that this Honorable Court to deny Respondents' Motion to Dismiss.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Appellant

By: 

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And

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1512 Laurel Street
Columbia, SC 29201
(803) 888-7130
(888) 567-1129 (facsimile)

Date: December 31, 2015.
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC.
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

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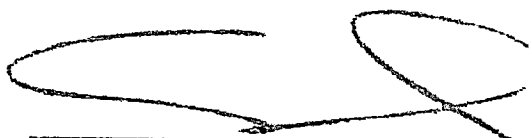
CASE NO.: 2012-CP-18-1227

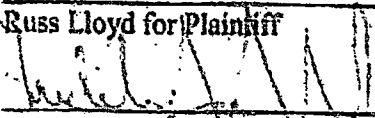
CLERK OF COURT
DORCHESTER COUNTY

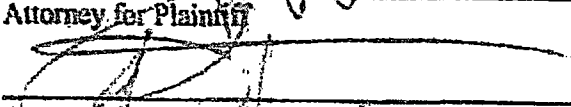
SETTLEMENT AGREEMENT

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

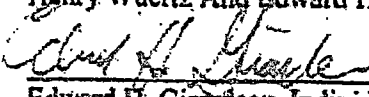
Date: April 8, 2015



Russ Lloyd for Plaintiff

Attorney for Plaintiff

Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp/Llc,
Crest Energy Partners L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau

Edward H. Girardeau, Individually

Attorney for Defendant

EXHIBIT B

7/3/2015

Gruenloh Law Mail - IWM v. Crest et al 2012-CP-08-1227



Wm. Michael Gruenloh <mike@gruenlohlaw.com>

IWM v. Crest et al 2012-CP-08-1227

David B. Marvel <dave@prennermarvel.com>

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphytc@sccourts.org>

Cc: "bstevens@dorchestercounty.net" <bstevens@dorchestercounty.net>, Fritz Jekel <fritz@j-dlaw.com>, "Mike Gruenloh (mike@gruenlohlaw.com)" <mike@gruenlohlaw.com>

Tue, Apr 14, 2015 at 11:01 AM

CLERK OF COURT

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

EXHIBIT C

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

2015 JUL 31 PM 3:21 PROOF OF ADR OR EXEMPTION

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

CLERK OF COURT
DORCHESTER COUNTY

CASE NO.: 2013-CP-18-1897

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.
() by Consent Judgment, to be file by _____
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- () Partially Settled.
() At an impasse.
() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present
Defendant [X] was present [] was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

EXHIBIT D

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227**

FILED - RECORDED

**Innovative Waste
Management Inc
Crest Energy Partners LP**

Edward H Girardeau

**Crest Energy Partners
Gp, LLC
Dunhill Products GP,
Henry W. Wertz
Innovative Waste
Management Inc**

**Crest Energy Partners
LP
Dunhill Products LP

Edward H Girardeau
C. Russ Lloyd**

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order, (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT E

FILE COPY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT
INC.,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

CERTIFIED COPY
MAY 27 AM 11:29

CLERK OF COURT
DORCHESTER COUNTY
Plaintiff,

**MOTION TO VACATE
SETTLEMENT AGREEMENT,
RESTORE TO ACTIVE DOCKET,
AND SET FOR TRIAL**

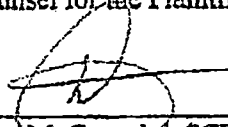
The Plaintiff, Innovative Waste Management, Inc., by and through their undersigned counsel hereby moves this Honorable Court to vacate the settlement agreement entered into between Plaintiff and Defendants Crest Energy Partners, GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau (hereinafter "Defendants") pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On April 8, 2015, Plaintiff and Defendants conducted mandatory mediation regarding this action and were able to reach a settlement agreement.
2. On April 8, 2015, Plaintiff and Defendants entered into a binding Settlement Agreement (attached as "Exhibit A") stipulating Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement.
3. On April 20, 2015 and pursuant to the aforementioned mediation and Settlement Agreement, this action was removed from the docket. The parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement.

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

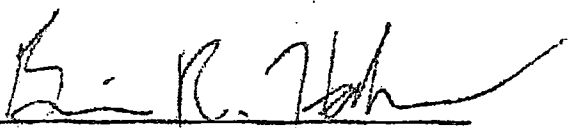
Date: May 21, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

By:


Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

EXHIBIT F

COUNTY OF DORCHESTER

2012-CP-18-01227

VS.

TRANSCRIPT OF RECORD

JUNE 24, 2015
ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITÉ MURPHY

A P P E A R A N C E S:

WILLIAM MICHAEL GRUENLOH, ESQUIRE
Attorney for the Plaintiff

DAVID B. MARVEL, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 THE CLERK: Judge, this is Innovative Waste versus Crest
2 Energy Partners, plaintiff's motion to vacate settlement
3 agreement/restore to active docket.

4 THE COURT: All right, counsel.

5 MR. GRUENLOH: Your Honor, Mike Gruenloh for the
6 plaintiff. I have a copy of our motion if you don't have one
7 handy.

8 THE COURT: If you have an extra, that would be perfect.

9 MR. GRUENLOH: Absolutely.

10 THE COURT: All right. You may proceed.

11 MR. GRUENLOH: Your Honor, this is our motion to vacate
12 the settlement agreement and set the matter immediately for
13 trial. Our argument will be very short. You may recall we
14 were before you earlier this year. We were ordered to
15 mediate the case. We mediated it with Angus Lawton.
16 Surprise of all surprises, we reached an agreement at the end
17 of the day. The agreement, in relevant part, was that the
18 defendants would pay \$450,000 within 30 days. At that time
19 and only at that time, when the settlement was consummated,
20 would we file our stipulations of dismissal and our releases.

21 Of course, the payment never came, otherwise we wouldn't
22 be here today. We extended the deadline a couple of times
23 when we were told that the money's coming, the money's
24 coming. The money's not here. It has become increasingly
25 clear to us, this case has been on file for three years, that

1 the only way these defendants are going to pay is when the
2 sheriff goes to their door. They are in breach of the
3 settlement agreement. We've informed them of that. We've
4 informed them of the fact that we intend to vacate the
5 settlement agreement and move forward towards trial. That's
6 what the instructions are that we've received from our
7 client, so that's what we're asking the Court to do today.

8 The case was apparently dismissed, despite the fact that
9 we didn't send in a stipulation of dismissal. I think that
10 that was done because the mediator sent in a statement saying
11 the case was fully settled, but it did not indicate that the
12 case had been dismissed. It indicated that Mr. Marvel would
13 be sending in a stipulation of dismissal, and that's also
14 what he informed the Court. The only communication that
15 either of us had with the Court was an email from Mr. Marvel
16 shortly after the mediation saying, we will send in a
17 stipulation of dismissal once the settlement has been
18 consummated.

19 Settlement has never been consummated, so we, again, are
20 here today asking the Court to put this back on the roster.
21 To the extent that a dismissal was entered in error or
22 otherwise, we'd ask that that be vacated, and we're here
23 asking for a trial date.

24 THE COURT: Let me ask you this: Was the agreement
25 signed by the parties and the attorneys?

1 MR. GRUENLOH: The agreement was signed by the parties
2 and the attorneys. It's a part of our motion that's been
3 attached, and there is, I believe it's No. 5 on the
4 agreement, and it says that the dismissal will only happen
5 upon the receipt of the funds.

6 THE COURT: All right, sir.

7 MR. MARVEL: Your Honor, I had hoped to be able to
8 respond to this motion by showing up here with a certified
9 check and moving to enforce the settlement. The fact of the
10 matter is that my client can't pay the settlement at this
11 time due to some factors outside of their control. During
12 the mediation I can represent to you, Your Honor, that I was
13 on a telephone call in which there was -- my client was
14 restructuring a deal that he had in place and had gotten
15 concessions from some third parties that was going to allow
16 him to be able to fund the settlement. That didn't happen.
17 The deal fell apart. He can't fund it. It would be our
18 position the settlement agreement is what it is. I do think
19 it's enforceable under Rule 43(k). I do think that that's
20 the plaintiff's remedy, and if he wants to turn it into a
21 judgment and enforce that in Texas, we would not contest
22 that; but, Your Honor, if I had a check, I would have a
23 better argument on that. If Your Honor wants to set it for
24 trial...

25 THE COURT: Anything further? Yes, sir, do you have

1 anything to add?

2 MR. MARVEL: No, Your Honor. Thank you.

3 MR. GRUENLOH: Your Honor, I would just say, again, we
4 never communicated any intent to dismiss the case, and I'm
5 not -- I've never had this situation arise before, so I don't
6 know if it's something the mediator did wrong or that we did
7 incorrectly; but without any intent from us to dismiss the
8 case and, I mean, we had real concerns, when we left the
9 mediation, that the payment was going to be here in 30 days.
10 That's why we specifically set out in the settlement
11 agreement that no dismissals would happen, no releases would
12 be signed, until the money came in.

13 And the only other thing that I want to say is I know
14 that we've been a bit of a bother contacting you all about
15 this because it's been a very frustrating experience for
16 this, and I just wanted to thank your staff and everybody for
17 dealing with us on it.

18 THE COURT: Well, it's certainly no bother. That's what
19 we're here for. It's our job to try to facilitate efficient
20 process of these cases. What I will do is I will take a look
21 at the communications that were provided to the Court that
22 led to the dismissal of the case along with the stipulation
23 for the settlement agreement that was signed. I'll notify
24 you of my decision.

25 MR. GRUENLOH: Can I hand up one other -- let me give

1 this to Your Honor. This is the only -- this appears as a
2 note in the court system. This is the only communication
3 that I'm aware of that either party made to the Court
4 regarding the settlement (indicating). And you can see
5 that's Mr. Marvel's words, and he indicates that the
6 dismissal will be sent when the settlement is consummated,
7 and of course it never was.

8 MR. MARVEL: Your Honor, I'd be happy to -- I can make a
9 PDF copy of that email that shows who it was copied to and
10 everything and provide that to Your Honor this afternoon.

11 THE COURT: Thank you.

12 MR. GRUENLOH: One last thing, Your Honor. I know you
13 said that you were going to take this under advisement, but
14 of course we are here seeking a date certain. I don't want
15 to put the cart before the horse, but if Your Honor is able
16 to entertain us on that subject, the case has been filed for
17 three years. It's been a frustrating process.

18 THE COURT: I understand, and my recollection of the
19 case was that you needed a two-week term of court, which of
20 course is like having an act of congress to get a two-week
21 term of court.

22 MR. GRUENLOH: I understand.

23 THE COURT: So, frankly, I don't know what I'm going to
24 do right now without looking at the communications that were
25 provided to the Court. However, if we do need a two-week

1 term of court, we're just going to find what's available and
2 just let you know and you will have to be present. That's
3 all I can say. We'll try to obviously make sure it's
4 convenient for the parties, but it will not be continued for
5 any other reason if it is scheduled to be tried.

6 MR. GRUENLOH: Understood, and I'll talk to Mr. Marvel
7 and see if we can pare that down. Maybe we can do it in a
8 week.

9 THE COURT: That actually would be most helpful if you
10 could.

11 MR. MARVEL: My only request is if I could have 20 or 30
12 days from whenever your decision is made because I may need
13 to sever some issues based on the current status of my
14 client's situation, and I may need to engage other counsel to
15 represent some of the parties, that sort of thing, before the
16 trial.

17 THE COURT: Sure. I'm not going to tell you to show up
18 next week. I understand this is a complex case and you'll
19 need a little bit of time to prepare. I'll give you
20 sufficient notice, obviously, to be ready to proceed. But
21 let's cross that bridge when we get for it.

22 MR. GRUENLOH: And I won't pre-argue Mr. Marvel's motion
23 to withdraw, but when we've been laboring together for three
24 years, and on the eve of trial we would obviously object to
25 any motion to withdraw.

1 MR. MARVEL: Thank you, Your Honor.

2 THE COURT: You all have a good day.

3 MR. MARVEL: For the record, Your Honor, I did not make
4 that motion.

5 THE COURT: It's not before me. That is for sure.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

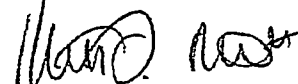
2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 24th of June, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 19, 2015

16 
17 Ruth L. Mott

18 Certified Court Reporter
19
20
21
22
23
24
25

EXHIBIT G

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

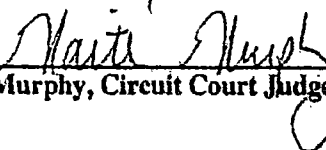
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

	2166	7/22/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		

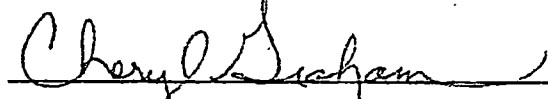
This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patric Aulton Chisum 192 East
Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Ruth Mott

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

2015 JUL 31 PM 3:41

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

INNOVATIVE WASTE MANAGEMENT,
INC.,

CLERK OF COURT
DORCHESTER COUNTY

Plaintiff,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

MOTION TO RECONSIDER

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)" and states "[t]his order [X] ends . . . the case." The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as "Exhibit F"). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants' counsel's initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants' failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that "[t]he case was closed out"¹ (See Court E-mail Correspondence, attached as "Exhibit G"). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff's May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

1. Plaintiff's counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

STANDARD OF REVIEW

"... Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it "... believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court's dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants' have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants' non-performance. For these reasons, the Court's earlier July 22, 2015 Order was incorrect and should be overturned.

I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed "... by filing a stipulation of dismissal signed by all parties who have appeared in the action" Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff's failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff's failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that "[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). Mr. Lawton's Proof of ADR or Exemption sets forth that there would be a "Voluntary Dismissal to be filed by Atty. Marvel." (See "Exhibit D"). Finally, Mr. Marvel's e-mail correspondence with the Court regarding the settlement states that "... we will file a stipulation of dismissal once the settlement is consummated." (See "Exhibit C"). To date, no dismissal complying with

SCRCP 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated, (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCR 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is " . . . so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission " . . . is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract. Silver v. Aabstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

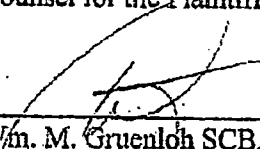
In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted
GRÜENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
Brian R. Holmes SCBAR # 102052
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

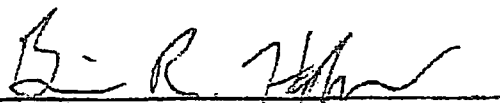
The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

CLERK OF COURT
DOMESTIC EQUITY

2015 JUL 21 PM 3:41

By:


Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

EXHIBIT I

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) AFFIDAVIT OF
) ANGUS LAWTON, ESQ.
) JUNE 31 PM 3:42

Personally appeared before me, Angus Lawton, Esq. who, being duly sworn deposes and states as follows:

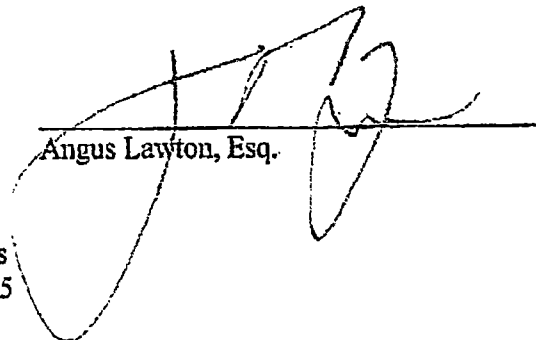
CLERK OF COURT
DORCHESTER COUNTY

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P., Henry Wuerz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

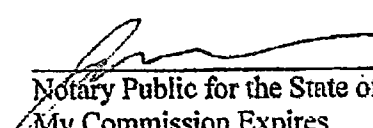
8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.



Angus Lawton, Esq.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina
My Commission Expires 9-4-2023

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff.

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012 CP-18-1227
CASE NO.: ~~2013 CP-18-1897~~

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.

4. As a result of the ADR, this case should be considered (please check one):

☒ Fully Settled:

☐ by Consent Judgment, to be file by _____

or ☒ Voluntary Dismissal to be filed by Atty. Marvel

☐ Partially Settled.

☐ At an impasse.

☐ In need of further ADR I ☐ and ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff ☒ was present ☐ was not present

Defendant ☒ was present ☐ was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel

X Lawyer for Plaintiff M. Gruenloh, F. Jekel

____ Representative for Insurance Carrier _____

____ Guardian *ad Litem* _____

____ Experts _____

____ Others _____

7. Choice of the neutral was by:

X Stipulation

____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

Exhibit B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER. 2012CP1801227
FILED - RECORDED

Innovative Waste Management Inc Crest Energy Partners LP	Edward H Girardeau 2015 APR 29 CHERYL DORCHESTER CLERK Crest Energy Partners Gp, LLC Dunhill Products GP, LLC Henry W. Wertz Innovative Waste Management Inc	Crest Energy Partners LP Dunhill Products LP Edward H Girardeau C. Russ Lloyd
---	---	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227
CASE NO.: ~~2012-CP-18-1897~~

FILED - RECORDED
2015 APR 20 PM 3:11
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

 MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANOUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.
() by Consent Judgment, to be file by _____
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- () Partially Settled.
() At an impasse.
() In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff [X] was present [] was not present
Defendant [X] was present [] was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel
X Lawyer for Plaintiff M. Gruenloh, F. Jekel
____ Representative for Insurance Carrier _____
____ Guardian *ad Litem* _____
____ Experts _____
____ Others _____

7. Choice of the neutral was by:

X Stipulation
____ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

EXHIBIT J

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) AFFIDAVIT OF
) C. RUSS LLOYD
)

2015 JUL 31 PM 3:41

Personally appeared before me, C. Russ Lloyd, who, being duly sworn, deposes and states as follows:

CLERK OF COURT
DORCHESTER COUNTY

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President
Innovative Waste Management, Inc.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires My Commission Expires January 23, 2017

EXHIBIT K

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

CERTIFIED COPY

Innovative Waste
Management Inc
Crest Energy Partners LP

Edward H Girardeau

2013 AUG 20 AM 11:00

Crest Energy Partners
Gp, LLC
Dunhill Products GP,
LLC

Crest Energy Partners
LP
Dunhill Products LP

CLERK OF COURT
DORCHESTER COUNTY

Henry Wuertz
Innovative Waste
Management Inc

Edward H Girardeau
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: Pursuant to this Court's authority under Rule 59 SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed

such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Maité Murphy 2166 8/18/2015
Maité Murphy, Circuit Court Judge Judge Code Date
For Clerk of Court Office Use Only

This judgment was entered on 8/20/2015, and a copy mailed first class or placed in the appropriate attorney's box on 8/20/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CERTIFICATE OF SERVICE

RECEIVED

DEC 31 2015

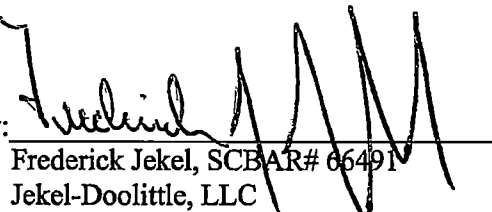
SC Court of Appeals

The undersigned hereby certifies that a true and correct copy of APPELLANT'S

RETURN TO RESPONDENTS' MOTION TO DISMISS in the above-referenced matter was served on the below named parties and/or their respective counsel and/or agents by depositing true and accurate copies of the same in the U.S. mail, first class, properly addressed, with sufficient postage affixed, on the date below.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403

By:


Frederick Jekel, SCBAR# 66491
Jekel-Doolittle, LLC
1512 Laurel Street
Columbia, SC 29201
(803) 888-7130
(888) 567-1129 (facsimile)

Date: December 31, 2015
Charleston, South Carolina

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), SCRCR, 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

THE STATE OF SOUTH CAROLINA
In The 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

Appeal From Dorchester County
Maité Murphy, Circuit Court Judge

Opinion No. 5561
Submitted December 5, 2017 – Filed May 23, 2018

REVERSED AND REMANDED

Frederick John Jekel, of Jekel Law, LLC, of Columbia,
Patrick Aulton Chisum and William Michael Gruenloh,
both of Gruenloh Law Firm, of Charleston, and Brian
Ross Holmes, of Green Law Firm, LLC, of Columbia, all
for Appellant.

David B. Marvel, of Charleston for Respondents.

HILL, J.: After mediation, Innovative Waste Management (IWM) and Respondents signed an agreement promising to settle their claims and dismiss their lawsuit in exchange for Respondents paying IWM \$450,000.00 within 30 days. The agreement further stated the parties "hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice" once payment was received.

A few days later, Respondents' counsel emailed the circuit court's law clerk and copied an employee at the Dorchester County clerk of court, advising of the settlement and noting "we will file a stipulation of dismissal once the settlement is consummated." Less than a week later, the clerk of court generated and filed a Form 4 dismissal order, which reflected: "It is Ordered and Adjudged: ☒ See attached order, (formal order to follow)", and "This order ☒ ends . . . the case." The Form 4, entitled "Judgment in a Civil Case," was signed by the clerk of court, not a circuit judge. No order was attached, but the Form 4 was accompanied by the mediator's "Proof of ADR" form, which indicated: "As a result of the ADR, this case should be considered . . . ☒ Fully Settled . . . ☒ Voluntary Dismissal to be filed by [counsel for Respondents]."

After Respondents failed to meet the payment deadline, IWM's counsel contacted the clerk of court to restore the case to the active roster, only to learn the lawsuit had been dismissed. IWM then filed a Rule 60(b), SCRCF, motion to vacate the settlement and restore the case to the active docket, which the trial court denied after hearing. After the trial court denied its motion to alter or amend, IWM filed this appeal.

I.

Rule 60(b)(4), SCRCF, provides a court may, "upon such terms as are just," relieve a party from a void judgment or order. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017) (quoting *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)). Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process. *Id.* at 617–18, 799 S.E.2d at 316.

A void judgment is far different from one merely "voidable." *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). A voidable judgment is nothing more than one made in error by a court with jurisdiction, as our facts can show.

Given the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP. Consequently, even if, after notice and hearing, a circuit judge had signed the Form 4 purportedly ending the case pursuant to Rule 41(a), it would have been error. But it would have been an error fixable by the trial court on reconsideration, or by this court on appeal: the error not being one of jurisdiction, the judgment would have been voidable, not void. *See Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343 ("Irregularities which do not involve jurisdiction do not render a judgment void."); *Piana v. Piana*, 239 S.C. 367, 372, 123 S.E.2d 297, 299 (1961) ("There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack" (citation omitted)). But the Form 4 ending IWM's case was signed without notice or hearing and by the clerk of court, who had no authority to do so. The tasks of the clerk of court are ministerial, always subject to judicial control and the rules of court. *See* S.C. Code Ann. § 14-7-220 (2017); Rules 58 and 77(c), SCRCP. A clerk of court may only sign and enter judgment without court direction and approval when the judgment merely confirms a jury's general verdict, or upon the court's decision "that a party shall recover only a sum certain or costs or that all relief shall be denied" Rule 58(a)(1), SCRCP.

Lyles v. Bolles, 8 S.C. 258 (1876) endorsed the following language: "A sentence professing on its face to be the sentence of a judicial tribunal, if rendered by a self-constituted body, or a body not empowered by its government to take cognizance of the subject it had decided, could have no legal effect whatever." *Id.* at 262 (quoting *Rose v. Himely*, 8 U.S. 241, 268–69 (1808) (Marshall, C.J.)). Both *Lyles* and *Rose* used the traditional term of art, *coram non iudice*, "'before a person not a judge' —meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*." *Burnham v. Superior Court of California, Cty. of Marin*, 495 U.S. 604, 609 (1990).

The record discloses no action of the court authorizing the Form 4 dismissal, much less after notice and hearing, as due process required. It is therefore void, and "is, in legal effect, nothing." *Turner v. Malone*, 24 S.C. 398, 401 (1886). "All acts performed under it, and all claims flowing out of it, are void." *Id.*; *see also Burke*

v. *C. I. R.*, 301 F.2d 903 (1st Cir. 1962) ("[C]ourts render judgments; clerks only enter them on the court records. What is determinative therefore is the action of the court, not that of the clerk . . ."); *Downing v. O'Brien*, 325 A.2d 526, 528 (Me. 1974) *overruled on other grounds by Architectural Woodcraft Co. v. Read*, 464 A.2d 210 (Me. 1983)("It seems obvious that since the Clerk is performing only a ministerial function and is not empowered to perform a judicial function, whenever a Clerk acts in excess of the authority granted by the Rule and purports to enter a judgment in a case where he has no authority to do so, the judgment so entered is void.").

Although we typically review denials of Rule 60, SCRCp, motions for abuse of discretion, a court has no discretion to perpetuate a void judgment. The Form 4 is vacated, and the order of the trial court denying IWM relief from the void judgment is

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF, J., concur.

87221

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

RECEIVED
JUL 09 2018
SC Court of Appeals

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

PETITION FOR REHEARING

David B. Marvel, SCBAR # 68803
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 212-6949
Fax (843) 303-8035

RESPONDENTS, Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau, hereby respectfully Petition this Honorable Court of Appeals for a rehearing on its Order of May 23, 2018, which Reversed the ruling of the Dorchester County Court of Common Pleas. As grounds for this petition, Respondents hereby aver before this Honorable Court as follows.

I. This Court Lacks Jurisdiction Over the Appeal

As Respondents argued in their December 21, 2015 Motion to Dismiss, the Appeal should have been dismissed for lack of jurisdiction because Appellant Innovative Waster Management (hereafter “IWM”) failed to file a timely Notice of Appeal.

As argued more thoroughly in that Motion, IWM filed a Notice of Appeal on September 16, 2015, which in all aspects sought relief from the April 20, 2015 Form 4 Order dismissing the case or, at best, the lower Court’s July 22, 2015 Form 4 Order denying IWM’s Rule 60(b) motion. IWM contends, and this Court previously held, that the subsequent Rule 59 Motion filed by IWM operated to toll the period for filing a Notice of Appeal. That ruling was error because IWM’s July 31, 2015 “Motion to Reconsider”, however designated, was nothing more than a successive post-trial motion. Therefore, IWM was barred from review in this Court by its failure to file a Notice of Appeal on or before August 22, 2015.

Rule 203(b)(1), SCACR requires an aggrieved party to serve a Notice of Appeal “within thirty (30) days after receipt of written notice of entry of the order or judgment.” This requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority

or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Elam v. S.C. DOT, 602 S.E.2d 772, 775 (S.C. 2004).

While a timely motion to alter or amend the judgment under Rule 52 or 59, SCRCF, would have stayed the thirty-day period for filing the appeal under Rule 203, IWM's first Motion to Vacate was filed thirty-seven days after the issuance of the Order dismissing the case. Therefore, that Motion was not a "timely motion to alter or amend the judgment", as any such motion would have had to have been filed within ten days of receiving written notice of the entry of judgment. See Rule 59, SCRCF. Unlike a Rule 50, 52, or 59, SCRCF, motion, a Rule 60(b) motion does not have any tolling effect on the right to appeal from the challenged judgment. Coward Hund Const. Co. v. Ball Corp., 518 S.E.2d 56,59 (S.C. App. 1999).

Assuming that an appeal from the denial of the Rule 60(b) motion would have been timely if filed within thirty days of that Order, IWM's "Motion to Reconsider" seeking relief under Rule 59, SCRCF cannot be construed to toll the period for filing the Notice of Appeal under Rule 203, SCACR. However captioned, that Motion was nothing more than a successive post-trial motion which South Carolina courts have continually stated do not toll the jurisdictional period for filing a Notice of Appeal. See Elam, 602 S.E.2d at 777-78; Quality Trailer Products v. CSL Equipment Co., 562 S.E.2d 615 (S.C. 2002); Collins Music Co. v. IGT, 579 S.E.2d 524 (S.C. App. 2002); Coward Hund, 518 S.E.2d at 59.

Regardless of the form in which the request for relief is framed, it is the substance of the requested relief that matters. Richland County v. Kaiser, 567 S.E.2d 260, 262 (S.C. 2002). Although a timely Rule 59(e) motion normally will toll the time within which an

appellant must serve his notice of appeal, a successive Rule 59(e) motion will not do so. Quality Trailer, 562 S.E.2d at 617. Therefore, when the first post-trial motion “does not result in a substantial alteration of the original judgment, an appeal will be barred due to untimely service when, instead of appealing the first post-trial motion, the party files a successive Rule 59(e) motion. Elam, 602 S.E. 2d at 778.

IWM’s July 31, 2015 Motion to Reconsider was successive, as Judge Murphy’s July 22, 2015 ruling did not alter the original judgment in any way, and the motion itself did not state any new grounds for relief that had not already been argued. In fact, Judge Murphy’s August 19, 2015 order explicitly found that “all arguments properly raised to the Court have already been ruled upon”. As IWM never challenged this finding in any way, this Court should have found the Motion to Reconsider to be a successive post trial motion and should not have subjected the Case to further review.

This issue should have been foreclosed by the Elam Court’s opinion, which stated

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling.

602 S.E.2d at 780. Following that ruling, this Court should have held that Judge Murphy’s order, “right or wrong,” became the law of the case, precluding any further review on the issues decided therein. See Ulmer v. Ulmer, 632 S.E.2d 858, 861 (S.C. 2006) (holding portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case).

II. The Court's Ruling was Based on Grounds that Were Never Argued by the Appellant.

This Court's May 23, 2018 Opinion reversing the lower court's ruling held that the April 20, 2015 Form 4 Order was void, and therefore was subject to relief in the lower court pursuant to Rule 60(b)(4), SCRCP. Even if the substance of this ruling was correct, this argument was never made by any party or argued to any court, and certainly was not the subject of any ruling below. Therefore, the Court's *sua sponte* ruling on those grounds is improper and must be vacated.

It is axiomatic that, in South Carolina courts, an issue must be raised to and ruled upon in the trial court before it can be heard on appeal. E.g., Wilder Corp. v. Wilke, 497 S.E.2d 71 (1998). The grounds must be specific, clearly stated, and argued in a manner that allows the issue to be reasonably understood by the trial judge. Id.

Any review of the record must compel the conclusion that IWM has never argued that any of the lower court's rulings were void or even voidable as this Court has held in its opinion. IWM never argued *any* specific standard under Rule 60 or 59 below that was properly preserved for review in this Court, and the word "void" appeared inconsequentially, if at all, in the record prior to this Court's opinion. Therefore, Rule 60(b)(4) was an improper grounds for the Court to grant relief to IWM.

III. The Court's Ruling was Legally Incorrect

This Court's opinion reversing the judgment below is based on several incorrect legal precepts. First, the Court's opinion either misstated or misapplied the standard under Rule 60(b)(4) by which a judgment can be held to be void. In Belle Hall Planation

Homeowner's Ass'n Inc. v. Murray, 709 S.E.2d 310 (S.C. App. 2017), cited in the May 23, 2018 opinion, this Court addressed the issue in greater detail, stating as follows:

“A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” Universal Benefits v. McKinney, 561 S.E.2d 659, 661 (S.C. App. 2002) (quoting Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). “The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” Id. (quoting McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)). “Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.” Id.

In the instant case, there was no evidence or argument in the record that the April 20, 2015 order was issued without notice, or without jurisdiction, or that IWM was not granted due process in its opportunity to argue that the order should be vacated. Accordingly, there is no standard recognized by this Court under which the order could be found “void”, as it was in this case.

Second, the Court’s ruling presumes and implies that the Clerk of Court is without authority to issue a Form 4 Order of Dismissal by consent of the parties, as opposed to at the Plaintiff’s insistence. This Court’s ruling appears to be a novel reversal of a routine practice in South Carolina’s trial courts.

Rule 77, SCRCP, explicitly states that “[a]ll motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk”. The voluntary dismissal of a case by consent of the parties, on a form that explicitly provides for the

subsequent filing of a Rule 41(a)(1) voluntary dismissal, falls directly within the Clerk's powers as designated by Rule 77. That rule also includes its own provision for relief from error, allowing any clerks' "action may be suspended or altered or rescinded by the court upon motion for cause shown." Rule 77(c), SCRCP.

Third, the Court's opinion states that "[g]iven the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP." This statement is legally incorrect, as it ignores the fact that Rule 41(a) is only applicable to voluntary dismissal at the request of the Plaintiff, not by consent of the parties, and ignores the power of the Court to enter an Order of Dismissal pursuant to Rule 41(a)(2), SCRCP.

The confluence of these three issues expose the primary errors made by IWM's counsel following the entry of the April 20, 2015 Order. Rather than filing a Rule 77(c) motion to rescind the Clerk of Court's dismissal, IWM filed its "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial". The lower court's summary denial of that motion does not explicitly state grounds for its ruling. Neither does the lower court's subsequent denial of IWM's Rule 59 Motion, although that Order did explicitly point out that all of the argument in that Motion had already been made to and ruled upon by the court. The fact remains that IWM has never actually requested the relief that it may have been most entitled to, the rescinding of the April 20, 2015 Form 4 Order pursuant to a minimal "cause shown" burden under Rule 77(c).

This Court should vacate its prior Opinion and rehear this case because these incorrect (or incomplete) statements of law unnecessarily complicate the issues in the case and confuse the procedures of the Clerks of Court. If IWM's counsel had properly

filed a Rule 77(c) motion, and assuming that motion had been granted, the issue before the trial court would have been to determine what relief was available given that the settlement remained unfunded. Rather, IWM sought, under Rule 60, to have the case immediately restored to the active docket and set for trial, and that relief was denied in addition to the lower court's refusal to vacate the judgment, which was the only issue articulated to or addressed by this Court. Respondents' only substantive argument below was simply that the settlement agreement was binding and enforceable under Rule 43(k), SCRPC and Ashfort Corp. v. Palmetto Const. Grp., Inc., 458 S.E.2d 533, 535 (1995). Accordingly, Respondents contended that the only relief available to IWM was to move to enforce the judgment.

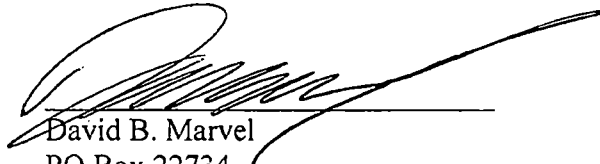
Therefore, denial of IWM's requests to vacate the settlement agreement, and to set the case for trial, have been denied, and were not articulately challenged on appeal. Those portions of the lower court's rulings are the law of the case, and remanding the case to the trial court in its current posture would seem to have little effect. See Anderson v. Short, 476 S.E. 2d 475 (S.C. 1996). Under the two-issue rule, this alone is grounds to vacate this Court's opinion and affirm the ultimate decision of the trial court. See Todd v. South Carolina Farm Bureau Mut., Ins. Co., 336 S.E. 2d 472 (S.C. 1985).

IV. CONCLUSION

The lower court's July 22 and August 19, 2015 rulings were within its discretion, given that IWM failed to follow the correct procedure for vacating the Clerk's order, never articulated a proper standard under which it could be granted relief, and then filed an improper successive post-judgment motion. This Honorable Court's rulings were in

error because the Court lacked jurisdiction over the appeal, reversed the lower court's ruling on grounds that were never argued before it or below, and failed to properly interpret the Rules of Civil Procedure in a manner that allow for the orderly disposition of the duties of the Clerk of Court. In the process, IWM failed to appeal two aspects of the lower court's ruling that bar it from any relief other than to move to enforce the settlement and, if proper, obtain an enforceable judgment upon that motion.¹ Accordingly, Respondents Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau respectfully request that this Honorable Court GRANT this Petition for Rehearing, Vacate its Opinion of May 23, 2018, and Affirm the judgment of the trial court, remanding this matter for further proceedings not inconsistent therewith.

RESPECTFULLY SUBMITTED:



David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 212-6949
Fax (843) 303-8035
Email dave@marvel.lawyer
ATTORNEY FOR THE RESPONDENTS

July 9, 2018
Charleston, South Carolina

¹ Respondents note for the record that IWM is, in fact, seeking such relief in a separate action in the Charleston County Court of Common Pleas captioned Innovative Resources Management v. Crest Energy Partners, et al., Case No 2018CP10001730.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

CASE NO.: 2015-002024

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

CERTIFICATE OF SERVICE

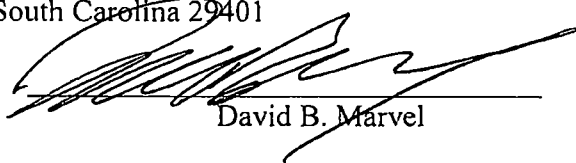
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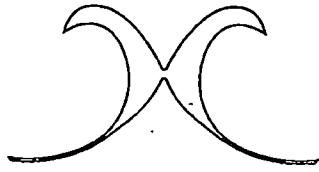
JUL 09 2018

SC Court of Appeals

The undersigned hereby certifies that on this Ninth day of July, 2018, I served appellants' counsel with Respondent's Petition for Rehearing by mailing a copy to their counsel by U.S. Mail, postage prepaid, at the following address:

Wm. Michael Gruenloh
Gruenloh Law Firm, LLC
3 Broad St., Suite 400
Charleston, South Carolina 29401


David B. Marvel



DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

www.marvel.lawyer

July 9, 2018

RECEIVED
JUL 09 2018
SC Court of Appeals

By Hand

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

Re: Innovative Waste Management v. Crest Energy Partners GP, LLC
Case No. 2015-002024

Dear Ms. Kitchings,

I hope this letter finds you well. I have enclosed an original and six copies of a Petition for Rehearing in the referenced case. Please file these in your usual prompt and efficient manner.

If you have any other questions or concerns, please do not hesitate to call. With best regards, I remain

Sincerely,



David B. Marvel

/DBM
Enclosure
Cc: Wm. Michael Gruenloh

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.

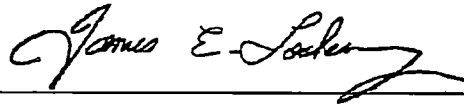
Crest Energy Partners GP, LLC, Dunhill Products GP,
LLC, Henry Wuertz, Innovative Waste Management Inc.,
Crest Energy Partners LP, Dunhill Products LP, Edward
H. Girardeau, C. Russ Lloyd, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy
Partners LP, Dunhill Products LP, Henry Wuertz, and
Edward H. Girardeau are the Respondents.

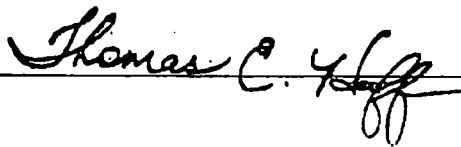
Appellate Case No. 2015-002024

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.

D. Manli

J.

Columbia, South Carolina

cc: William Michael Gruenloh, Esquire
Patrick Aulton Chisum, Esquire
Brian Ross Holmes, Esquire
Frederick John Jekel, Esquire
David B. Marvel, Esquire
The Honorable Maite Murphy

FILED

July 18, 2018