

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2018-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Plaintiffs,

Heidi Gersten, Ivanka Ayoub,Appellants.

v.

Kevin Carter, Richard Davis,
Joseph Tirbovich, Nationwide
Mutual Insurance Co.,
Interinsurance Exchange of
the Automobile Club, John
Ammendola, Trustgard
Insurance Co., SC Dept. of
Public Safety, Blackwell,
Unknown John
Does.....

Respondents.

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SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS'
RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO
DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

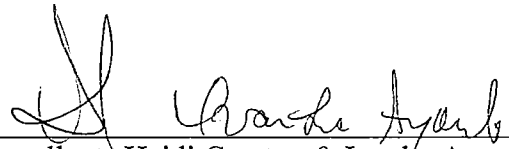
NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to serve and file their return of the Respondents Carter and Davis' Motion to Dismiss Appeal and to comply with the

Court's noted requests in their timely response to the Court's letter dated February 15, 2019.

The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: February 25, 2019



Appellants Heidi Gersten & Ivanka Ayoub
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Lantana, FL 33462
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO EXTEND TIME TO SERVE AND FILE APPELLANTS' RETURN OF THE RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND TO COMPLY WITH THE COURT'S NOTED REQUESTS IN THEIR TIMELY RESPONSE TO THE COURT'S LETTER DATED FEBRUARY 15, 2019.

As grounds therefore, the Appellants show the following good cause:

1. The Appellants received a letter from the Court dated February 15, 2019 on February 23, 2019 instructing a mandatory list of requests to be made including a request to serve and file a return to the motion to dismiss however did not specify which motion to dismiss it was referring to. There are two (2) motions to dismiss pending in this matter. The request has been satisfied as far as a return to the Respondent AAA's Motion to Dismiss served and filed on February 14, 2019, one (1) day before the Court's letter was sent. As far as, the motion to dismiss filed by the Respondents Carter and Davis on January 31, 2019, and received by the Appellants on February 13, 2019, additional time is needed to perfect the Appellants' Return.
2. The appellate case number that Respondents Carter and Davis listed in their Motion to Dismiss is incorrect however the Appellants are unaware of a similar notice to cure served on them by the Court as sent to the Appellants for this same reason.
3. The Court's letter dated February 15, 2019 also requests specific individual dates for when the Appellants received written notice of entry of each of the separate orders on appeal.
4. The Appellants motion for reconsideration was timely made in the circuit court pursuant to Rules 59 and 60, SCRCP, and the Appellants require additional time to properly and accurately prove this.

5. The Appellant Gersten was paralyzed as a result of the collision in controversy in this matter. She has no caregiver or physical help with daily functions like bowel movements, bathing, eating and other regular activities able-bodied people perform. She lives under extraordinary circumstances.
6. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.
7. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been diligently working on this appeal with Appellant Ayoub. Given that the Court's notice for was received on the eighth day of the ten (10) days allowed to satisfy the requests, the Appellants request an additional ten (10) days to comply, which would be March 7, 2019.
8. The Appellant Gersten also has a pressure wound on her left buttocks the size of a quarter which prevents her from sitting up for more than a few hours at a time.
9. The Appellants are not South Carolina residents.
10. This may be considered excusable neglect.
11. The Doctrine of Equitable Tolling as well as Title II of the American Disabilities Act permit this Court to grant an extension of time for such axiomatic situations.
12. This request is not unheard of.
13. This request is made before the expiration of the time due.
14. The Appellants prefer not to file a Motion for Reinstatement, which would more than likely be granted given the extraordinary circumstances and good cause shown.
15. **RULE 263, SCACR, TIME(b) Extending and Diminishing Time Prescribed by These Rules.** The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened

by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

16. Unlike the case of **WADE V. GORE**, 151 S.E. 470 (S.C. 1930), the Appellants are requesting this extension before the expiration of the date due.

17. The South Carolina Supreme Court recently adopted this doctrine. **HOOPER V. EBENEZER SR. SERVS. & REHAB. CTR.**, 386 S.C. 108, 687 S.E.2D 29 (2009). The court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations “to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits.” Id. at 115, 687 S.E.2D AT 32. The court explained:

THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE TOLLING MAY BE APPLIED WHERE IT IS JUSTIFIED UNDER ALL THE CIRCUMSTANCES.

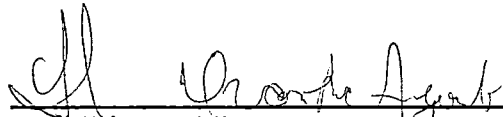
If the Doctrine of Equitable Tolling may be applied to the Statute of Limitations, surely it can be applied to an extension of time to file corrections to deficiencies, such as in this matter.

THEREFORE, having shown good cause, the Appellants respectfully request and move the Court for an extension of time to, and including, February 14, 2019; an extension of ten (10) days from the date of December 25, 2019, to allow enough time to correctly

and competently complete the Court's instructions.

This motion is not made to cause undue delay. It is made in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 25th day of February 2019.



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CERTIFICATE OF SERVICE
(Appellate Case NO: 2018-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2019-002115 MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS' RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS

along with Letter to Court by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Wesley Brian Sawyer, Esquire
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By: 

Boca Raton, Florida
February 25, 2019

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SC Court of Appeals

February 25, 2019
1438 W. Lantana Rd., #330
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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
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(843)662-3258 Fax (843)662-1342

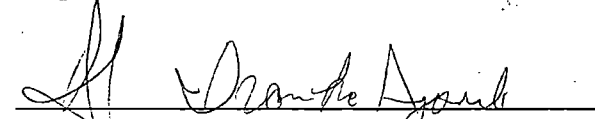
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings:

Good day to you.

Please find an enclosed U.S. postal money order in the amount of \$50.00 for the enclosed original MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS' RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS , along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,



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HG/Enclosures

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HONORABLE Jenny Abbott Kitchings
Clerk OF Court
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Columbia, SC 29211

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