

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE RICHLAND COUNTY
COURT OF COMMON PLEAS

RECEIVED

The Honorable Joseph M. Strickland, Master-in-Equity

APR 08 2019

SC Court of Appeals

Appellate Case No.: 2017-001795

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

**RESPONDENT’S RETURN TO APPELLANT’S MOTION TO STAY APPEAL,
OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME TO FILE
APPELLANT’S BRIEF**

Respondent Country Properties, LLC (hereinafter “Respondent”) respectfully submits this Return to Appellant’s Motion to Stay Appeal, or, in the Alternative, for an Extension of Time to File Appellant’s Brief. For the reasons stated herein, the motion to stay should be denied. Respondent consents to the extension of time for Appellant to file and serve its initial brief.

Statement of the Case

This case was filed in the Trial Court on March 18, 2014. The Trial Court entered its final order in this case on September 27, 2016. The final order found that the

Respondent had a prescriptive easement over the property of the Appellant, Respondent had an easement by grant over the property of the Appellant, and that the road in question was dedicated to the public. *See* September 27, 2016 Order. Appellant filed a Rule 59(e) and Rule 52(b), SCRCPP, motion on November 9, 2016. That motion was denied on July 21, 2017. The Appellant served its Notice of Appeal on August 22, 2017 (“First Appeal”). Appellant was granted leave to file a Rule 60(b), SCRCPP motion for a new trial by this Court on October 5, 2017. Appellant filed its Rule 60(b), SCRCPP motion with the Trial Court on October 24, 2017. The Trial Court granted the Rule 60(b) motion on January 28, 2019. Respondent filed a timely Rule 59(e), SCRCPP motion to alter or amend the Order granting the Rule 60(b) motion for a new trial. That motion was denied on March 20, 2019. Respondent then appealed the Rule 60(b) Order and the Order denying the Rule 59(e) motion on March 26, 2019 (“Second Appeal”). Appellant now seeks to stay the present appeal until this Court issues a decision in the Second Appeal.

Argument

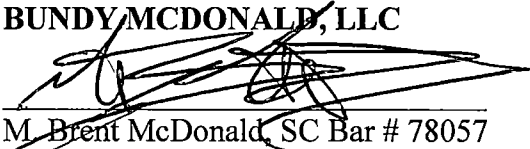
This case was originally filed in 2014—over 5 years ago. The sole reason given by Appellant for seeking to stay the First Appeal is that there may be unnecessary costs uncured by the parties in briefing the First Appeal at the same time as briefing the issues with the granting of the new trial in the Second Appeal. The additional briefing would only be the unnecessary if the order granting the new trial, which is the subject of the Second Appeal, is affirmed by this Court. However, should this Court reverse the order granting the new trial it could then turn immediately to the issues in the First Appeal in the same opinion. If this Court stays the First Appeal and reverses the grant of a new trial in

the Second Appeal, then the parties will be subject to consecutive appeals—possibly adding two or more years to a final resolution of this matter.

Respondent asserts that the risk of consecutive appeals and the time associated therewith far outweighs the potential of unnecessary additional briefing associated with the First Appeal. To this end, Respondent requests this Court deny the Motion to Stay and consolidate the First Appeal and the Second Appeal pursuant to Rule 214, SCACR. Respondent further requests that this Court issue a briefing schedule that facilitates the consolidation of the appeals. Respondent consents to the extension of time for the Appellant to file and serve its initial brief in this Appeal.

Respectfully Submitted,

BUNDY MCDONALD, LLC



M. Brent McDonald, SC Bar # 78057
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Telephone: 888-552-1559
brent@bundymcdonald.com

BAXLEY PRATT & WELLS, P.A.

John Wells, Esq.
3 The Commons
Lugoff, SC 29078
Telephone: (803)438-4200
JWells@baxleywell.com

**Attorneys for Respondent Country
Properties, LLC**

April 5, 2019

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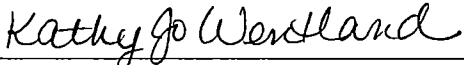
PROOF OF SERVICE

I, the undersigned Paralegal at the law offices of Bundy McDonald, LLC, attorneys for Respondent Country Properties, LLC do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Respondent's Return to Appellant's Motion To Stay Appeal, Or, In The Alternative, For An Extension Of Time To File Appellant's Brief

Counsel Served: John W. Wells, Esquire
Baxley, Pratt & Wells, P.A
P.O. Box 10
Lugoff, SC 29078
Telephone No.: 803-438-4200
Attorney for Respondent

Joey D. Floyd
Wesley D. Peel
Robert C. Osborne, III
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Telephone No.: 803-252-7693
Attorneys for Appellant



Kathy J. Wentland

April 5, 2019

Bundy McDonald
TRIAL LAWYERS

M. BRENT MCDONALD
brent@bundymcdonald.com
843-492-0221 (Direct)
843-901-9233 (Cell)

April 5, 2019

Via Fed-Ex Overnight Delivery

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

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RE: Country Properties, LLC. v. Nancy Dunn Martin
Appellate Case No.: 2017-001795

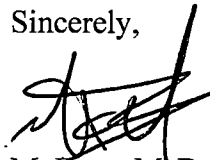
Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondent's Return to Appellant's Motion To Stay Appeal, Or, In The Alternative, For An Extension Of Time To File Appellant's Brief, and Proof of Service of the same upon all counsel of record.

Please file the original and return a filed stamped copy to us in the enclosed self-addressed envelope.

Thank you for your attention to this matter, and please do not hesitate to call me should you require anything further. With kindest regards, I remain

Sincerely,



M. Brent McDonald
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
(843) 492-0221
Attorney for Respondent

MBM/kjw

Enclosure

cc: John Wells, Esquire
Joey R. Floyd, Esquire
Wesley D. Peel, Esquire
Robert C. Osborne, III, Esquire

ORIGIN ID:CHSA (888) 552-1559
KATHY WENTLAND

1516 OLD TROLLEY ROAD, 2ND FLO

SUMMERVILLE, SC 29485
UNITED STATES US

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BILL SENDER

TO THE HONORABLE JENNY KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29201

(803) 734-1890

REF: COUNTRY PROPERTIES

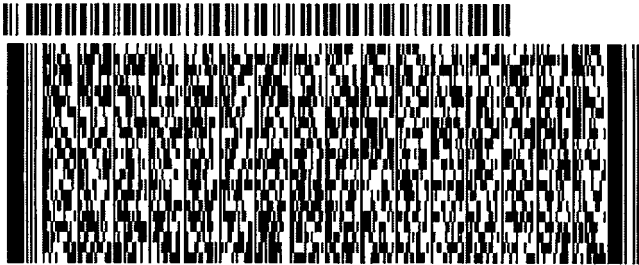
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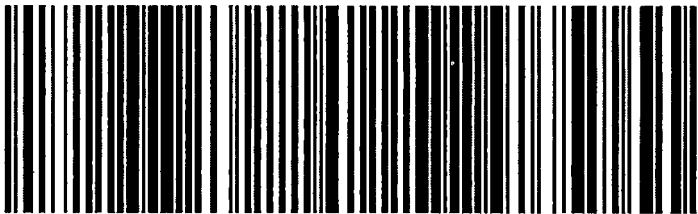
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