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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. 2019-001719

Innovative Waste Management Inc., 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, and Henry Wuertz, are the Appellants.

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**MOTION FOR REINSTATEMENT
AND
TO FILE OUT OF TIME**

COMES NOW APPELLANTS, Crest Energy Partners GP, LLC, Crest Energy Partners
LP, Dunhill Products, LP, and Henry Wuertz, through undersigned counsel, who hereby
respectfully request that this Honorable Court Reinstate the Captioned Appeal, pursuant to Rules
207(a)(1) and 260(a), SCACR, and allow the Appellants to Proceed with the Appeal following
the undersigned's ordering of the hearing transcripts.

Rule 260(a) allows the Court to Reinstate the Appeal pursuant to a procedural default upon
a showing of good cause. Appellants assert that this Motion should be granted pursuant to
Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009), which

interprets the good cause standard applicable to Rule 55, SCRCF. In Sundown Operating, the Supreme Court found that the “mere 'good cause'” standard “requires a party . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Presuming the Court applies that standard, the Court must also consider the timing of the motion for relief; whether the Appellant has a meritorious appeal; and any prejudice to the Respondent if relief is granted. Id.,

While Appellants question whether the standard applicable to administrative or procedural defaults under the South Carolina Appellate Court Rules is in practice, or should be, as stringent as the standard applicable to a default for failure to Answer or Otherwise Defend a Complaint, Appellants can nonetheless show good cause under the Sundown Operating definition.

The subject appeal was dismissed due to the undersigned’s failure to order of the transcript of the proceeding in a timely manner in accordance with Rule 207, SCACR. Appellants do not dispute that failure. However, the undersigned asserts that good cause exists to reinstate the appeal, as follows.

First, this appeal involves novel issues of law and pre-trial civil procedure in the realm of the issues addressed in Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014), its progeny, and the precedent cited therein. The facts involved in those issues span nearly a decade of litigation and spawn from a 2013 Order that Appellants assert has been misinterpreted by other circuit court judges, in a case that this Court ruled was incorrectly dismissed and ultimately reinstated after a delay through the appellate court system. Therefore, Appellant was required to order several transcripts of hearings from several court reporters, as opposed to a single transcript of a lengthy trial that might take longer than sixty days for the reporter to produce.

Compounding this issue, the undersigned was in possession of several transcripts that will

be relevant to the appeal. Unfortunately, it took some time for those transcripts to be reviewed and to determine what other transcripts should be ordered. As it turns out, two of the reporters on those hearings have since retired, compounding the delay.

Admittedly, Appellants could have simply ordered the transcript of the last hearing, which created the first immediately appealable issue, and satisfied Rule 207. In an error of judgment, the undersigned believed it more efficient for counsel and the reporter(s) to determine which transcripts needed to be ordered and then order all at once. In the interim, Appellants were also addressing the clerk's deficiency notice relating to the Notice of Appeal, and the undersigned was in contact with the assigned case manager to address both issues. The Order dismissing the Appeal was unexpected, given the circumstances, and Appellants believe reinstatement would serve the interests of justice.

Appellants believe that this is a timely motion, having been hand filed on the day that counsel received the Court's Order dismissing the appeal, after counsel happened to be concluding an appearance in a neighboring county. Moreover, as of this date, all relevant transcripts have either been received or ordered. See Exhibit A. The Appeal is certainly justified, as it asserts improper rulings by the Court below on several issues that have heretofore gone unaddressed by our appellate courts. Finally, Appellants can see no way in which the Respondent could be prejudiced at this point, as the transcripts are anticipated to be received within sixty days of when they would have been if ordered in a timely fashion and if not, will likely be due to the fact that two of the relevant transcripts are from hearings that took place more than three years ago, and those reporters are retired.

For all of the foregoing reasons, Appellants Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, respectfully request that this Honorable

Court reinstate their Appeal, and allow them to proceed having ordered the transcripts out of time,
in accordance with Rules 207(a)(1) and 260(a), SCACR

RESPECTFULLY SUBMITTED:



David B. Marvel (SCB# 68803)

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ATTORNEY FOR THE APPELLANTS

November 26, 2019
Charleston, South Carolina



DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

November 26, 2019

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VIA HAND

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

Re: Innovative Waste Mgmt. v. Crest Energy Partners, *et al.*
Case No. 2019-001719

Dear Ms. Kitchings,

I hope this letter finds you well. I have enclosed my electronic correspondence to court reporters Kimberlee Mignanelli Williams and Yvestre Torres, as well as my written correspondence with Court Administration regarding retired court reporters Ruth Mott and Hilda Jordan

Please accept my apologies for the delay. This case has been pending in state court since 2012 and as you can see, the resolution of this appeal will require review of several proceedings. I expect that two additional transcripts will be included in the Record on Appeal, but I am already in passion of those transcripts.

Thank you, as always, for your assistance with this matter. 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

/DBM
Enclosures
Cc: Wm. Michael Gruenloh

David B. Marvel

From: David B. Marvel
Sent: Tuesday, November 26, 2019 2:02 PM
To: 'ytorres@sccourts.org'
Subject: IWM v. Crest Energy Case No. 2012CP1801227

Dear Ms. Torres,

I hope this email finds you well. You served as our court reporter for a hearing in this matter before Judge Murphy on June 5, 2019. I need to order a transcript as this case is now on appeal. If you will provide me with an estimated cost of the transcript, I would be happy to pay a deposit or pay for the transcript once completed. Please let me know if you need any further information from me. Thank you!

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Civil Action No.: 2012-CP-18-1227

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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, and Henry Wuertz, are the
Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this 26TH day of November, 2019, Counsel for the Respondents were served with the Motion for Reinstatement and to File out of Time, with exhibits, by Federal Express, Tracking No. 777091562566.



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

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VIA HAND

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

Re: Innovative Waste Mgmt. v. Crest Energy Partners, *et al.*
Case No. 2019-001719

Dear Ms. Kitchings,

I hope this letter finds you well. I have enclosed a Petition for Reinstatement and to File Out of Time in this matter. Please file this in your usual prompt and efficient manner.

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Thank you, as always, for your assistance with this matter. 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

/DBM
Enclosure
Cc: Wm. Michael Gruenloh