

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-34-00367

Sharon Thompson,

Appellant,

v.

Sprint Food Store #728,

Respondent.

REPLY TO RESPONDENT'S MOTION TO DISMISS

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Attorney for Appellant

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PROCEDURAL BACKGROUND

On December 6, 2017, Plaintiff, Sharon Thompson, brought this action alleging Premises Liability and Negligence against the Defendant. The Defendant answered the Plaintiff's Complaint on January 23, 2018 and subsequently filed a Motion for Summary Judgment on June 14, 2018. Oral arguments for Defendant's Motion for Summary Judgment were heard on September 25, 2018 and the Court entered an Order granting Summary Judgment on May 13, 2019. On May 24, 2019, Appellant filed a Notice of Appeal, appealing the Summary Judgment Order of the Circuit Court. On July 15, 2019, the Court dismissed the Appeal for failing "[t]o provide the Court with a copy of the transcript order, as required by Rule 207." Appellant then filed a Motion to Reopen and the Court issued an Order Reinstating the Appeal on October 25, 2019. That is the only instance in which this matter was dismissed for any period of time. Any and all other deficiencies relating to Appellant's initial brief were corrected and filed with the Court in accordance with the instructions provided by the Court.

LAW/ANALYSIS

SCRCF, Rule 6(b)(2) states, "when by these rules or by notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (2) upon motion made after the expiration of the specified period, for 'good cause' shown, permit the act to be done. [...] The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order."

Therefore, pursuant to Rule 6(b)(2), the only filing that is not subject to a time extension is the notice of intent to appeal. In this case, the Appellant's Notice of intent to Appeal was filed in a timely manner, and the Court clearly has jurisdiction to extend time limits for other filings when "good cause" is shown. The other "deficiencies" which Defendant states as a basis for the motion to dismiss, are precisely that; non-substantive "deficiencies." It is the Appellant's position that Rule 6(b)(2) grants time extensions specifically so "deficiencies" will not be fatal to a cause of action. The Appellant concedes that there have been "deficiencies," however, the South Carolina Rules of Civil Procedure allow for them, thereby rendering the Respondent's Motion to Dismiss moot.

Finally, pursuant to SCACR, Rule 240(e), "any party opposing a motion of petition shall have ten (10) days from the date of service thereof to file an original and six copies of his return with the clerk and serve on all parties a copy of the return."

On December 16, 2019, the Appellant received the Respondent's Motion to Dismiss via e-mail. If the time began to run on that date, the Respondent's "Reply" would have to be filed before December 27, 2019. The Motion to Dismiss was not received in first class mail until December 30, 2019. Appellant's counsel attributes this to the holiday mail schedule and the holiday schedule of Appellant's counsel, which removed him from his office for the observation of Christmas holiday with his family. Because the Motion to Dismiss was not received until December 30 (Monday following Christmas observation), it is Respondent's position that this Reply is filed in conformity with SCACR, Rule 240(e).

CONCLUSION

Wherefore, based on the foregoing, the Appellant respectfully requests the Court deny Respondents Motion to Dismiss.

January 6, 2020

Respectfully submitted,



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PROOF OF SERVICE OF REPLY TO RESPONDENT'S MOTION TO DISMISS

THE STATE OF SOUTH CAROLINA

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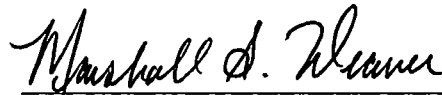
v.

Sprint Food Store #728, Defendant, Respondent.

PROOF OF SERVICE

I certify that I have served the Reply to Respondent's Motion to Dismiss on Kelsey J. Brudvig, Esq., attorney of record for the Respondent, by depositing a copy of it in the United States Mail, postage prepaid on January 6, 2020, addressed as Kelsey J. Brudvig, Esq., Collins & Lacy, P. C., Post Office Box 12487, Columbia, South Carolina 29211.

January 6, 2020



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