

STATE OF SOUTH CAROLINA

In The Court of Appeals

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Apr 30 2020

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475
Appellate Case No. 2017-001761

Shamsy Madani, Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

APPELLANTS' MOTION FOR EXTENSION OF TIME TO PETITION FOR REHEARING
AND RESPOND TO RESPONDENT'S MOTION FOR COSTS AND FEES

APPELLANTS HEREBY MOVE PURSUANT TO RULE 263(B), SCACR, for this Court to allow the extension of time of twenty (20) days from Rickey Phelps and Christy Phelps's ("Appellants") current due date of April 30, 2020 to file their petition for rehearing of this Court's decision to affirm ("Affirmation") to May 20, 2020 upon the following grounds:

1. By Order of the Supreme Court of South Carolina, Appellate Case No. 2020-000447(1)(1) ("Order"), Appellants' believe a twenty (20) day extension as requested above is appropriate where the Order provides, "since it is important for lawyers . . . appearing before the Appellate Courts to have time to take actions to protect themselves and their families, the due dates for all Appellate Court filings due on or after the effective date of this order are hereby extended for twenty (20) days. (m) Effective Date. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court"

2. In the event the Order has expired or has been amended such that it is no longer in strict effect, Appellants request a twenty (20) extension upon identical sentiment and where Appellants' counsel's firm has been forced to operate on a limited schedule as a result of the current pandemic.

3. Appellants' counsel only first learned of this Court's decision on April 21, 2020 when he received Shamsy Madani's ("Respondent") motion for costs by email and has, otherwise, been deprived of the fifteen (15) days typically enjoyed by a party in filing a petition for rehearing. Please find attached Affidavit of Brian Shealey attached as **Exhibit A**.

4. Absent extension and opportunity to seek rehearing and clarification will create confusion for the trial court below where the Affirmation appears to create an affirmative burden on the magistrate court to pause before the dismissal of jury and entertain objections to the verdict(s);

5. Absent extension and opportunity to seek rehearing and clarification will create confusion for the trial court below where the Affirmation appears to require the retrial of claims which did not receive an award of zero damages leading to any finding of irreconcilability;

6. Absent extension and opportunity to seek rehearing and clarification will deny Appellants the opportunity to seek declaration as to the denial of Respondent's counter-appeal for lack of subject matter jurisdiction further affecting Appellants' response to Respondent's motion for costs and fees;

APPELLANTS FURTHER MOVE PURSUANT TO RULE 263(B), SCACR, for this Court to allow the extension of time of twenty (20) days from appellants', Rickey Phelps and Christy Phelps ("Appellants"), current due date of April 31, 2020 to respond to Respondent's motion ("Motion") for costs and fees to May 20, 2020 upon the following grounds:

1. By Order of the Supreme Court of South Carolina, Appellate Case No. 2020-000447(1)(1) ("Order"), Appellants' believe a twenty (20) day extension as requested above is appropriate where the Order provides, "since it is important for lawyers . . . appearing before the Appellate Courts to have time to take actions to protect themselves and their families, the due dates for all Appellate Court filings due on or after the effective date of this

order are hereby extended for twenty (20) days. (m) Effective Date. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court”

2. In the event the Order has expired or has been amended such that it is no longer in strict effect, Appellants request a twenty (20) extension upon identical sentiment and where Appellants’ counsel’s firm has been forced to operate on a limited schedule as a result of the current pandemic.

3. Absent extension and opportunity to seek rehearing and clarification will deny Appellants the opportunity to properly respond to the Motion as necessary where Respondent appears to be seeking \$5,500.00 in costs for transcript fees obtained in appeal 2016CP0701475 on March 20, 2017 to which they did not seek costs and fees within fifteen days of remittitur issued on August 3, 2017 and did not incur in this appeal filed August 23, 2017;

4. Absent extension and opportunity to seek rehearing and clarification will deny Appellants the opportunity to seek to reduce Respondents request for transcript costs in the amount of \$5,500.00 which are likely subject to reduction pursuant to Rule 222, SCACR where the entire trial transcript was not necessary to adjudicate the issues and, in fact, Appellants were able to submit a limited transcript in this appeal for the costs of \$174.00.

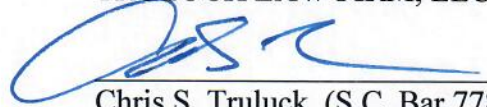
4. Absent extension and opportunity to seek rehearing and clarification will deny Appellants the opportunity to seek to have denied Respondent’s Motion where it is evident from the Affirmation that Respondent’s counter-appeal for lack of subject matter jurisdiction was denied effectively affirming the appellate court’s decision below not to grant similar relief.

WHEREFORE, having fully set forth in this motion to allow Appellants an extension of time to petition for rehearing and respond to Respondent’s Motion, Appellants pray that this Honorable Court order as follows:

1. Appellants’ time to petition the court for rehearing be extended to May 20, 2020;
2. Appellants’ time to respond to Respondent’s motion be extended to May 20, 2020.

(Signature page to follow)

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)

1507 Richland Street

Columbia, SC 29201

(803) 556-7285

Attorney for Appellants

April 30, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA

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AFFIDAVIT IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME

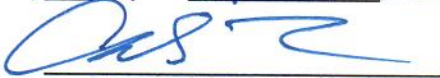
Brian R. Shealey, personally appeared before me, on this day and after being duly sworn, according to law, and upon my oath and states as follows:

1. I am a member of the South Carolina Bar and managing partner at the Shealey Law Firm, LLC located at 1507 Richland Street, Columbia, South Carolina 29201 ("Office").
2. During the month of April, 2020, my law firm has allowed any support staff to work at home and I have taken on the responsibility of receiving and delivering mail within the Office to my law firm and Chris S. Truluck's law firm the Truluck Law Firm, LLC.
3. During the month of April 2020, I have not received or distributed to Mr. Truluck's firm any correspondence from the South Carolina Court of Appeals.

(Signature page to follow)

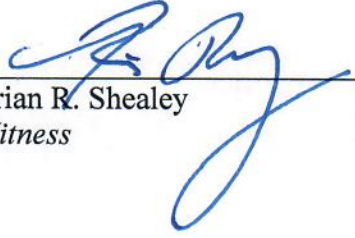
SWORN TO BEFORE ME this

30 day of April, 2020



Notary Public

My commission expires: 4-3-22



Brian R. Shealey
Witness

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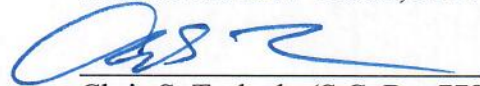
Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Motion for Extension of Time to Petition and Respond in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by Electronic Mail on April 30, 2020 at dtoney@mullenwylie.com.

April 30, 2020

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)
1507 Richland Street
Columbia, SC 29201
(803) 556-7285
Attorney for Appellants