

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Hon. Maité D. Murphy, Circuit Court Judge

Case No. 2019-001719

RECEIVED

May 01 2020

SC Court of Appeals

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, Henry Wuertz, are the Appellants.

RESPONDENT'S MOTION TO DISMISS

COMES NOW RESPONDENT, Innovative Waste Management Inc., through undersigned counsel and respectfully requests this Court to Dismiss Appellants' Appeal on the basis that Appellant has failed to file his initial brief by April 27, 2020 as instructed by the Court. On April 13, 2020 the Court granted Appellant another extension until April 27, 2020 and, for the second time, stated no further extensions would be granted.

Appellants' Counsel has continuously disregarded deadlines and court orders and this is only the most recent chapter of his ongoing, decade-long, pattern of dilatory tactics. This case was originally filed in United States District Court for the District of South Carolina on April 29, 2011. It was dismissed on jurisdictional grounds and refiled in the South Carolina Court of Common

Pleas on May 11, 2012. This case has been litigated since 2011 including one previous appeal to this Court. The current appeal originates from an October 1, 2019 Order for sanctions pursuant to Rule 37 of South Carolina Rule of Civil Procedure. The October 1st Order entered by Judge Maité Murphy granted Respondent's Motion for Sanctions and struck the Appellants' pleadings as a sanction for Appellants' pattern of abusive litigation tactics and noncompliance with court orders. For the sake of brevity, Respondents will note only that the list of noncompliance with court orders and other abusive tactics that formed the basis of Judge Murphy's October 1st Order is a long one. On October 9, 2019 Appellants filed a one-page Notice of Appeal stating they sought to appeal the October 1, 2019 Order.

Appellants failed to take the necessary steps to pursue their appeal and, on November 21, 2019, the Deputy Clerk of Court for the Court of Appeals issued an order dismissing the appeal for failure to order the transcripts in accordance with S.C.A.C.R. 207. Prior to that date, the Deputy Clerk wrote to Appellants' Counsel notifying him of his noncompliance and gave Appellants an opportunity to cure the procedural failures. Appellants' Counsel did not respond and did nothing to cure the failures. On November 26, 2019, Appellants filed their Motion to reinstate the appeal pursuant South Carolina Appellate Court Rule 260(a). Appellants argued that there would be no prejudice to Respondents because they now had all the materials necessary to prepare their initial brief prior to the reinstatement order.

Respondent opposed Appellants' Motion to Reinstate and Respondent hereby references and incorporates its Return in Opposition, in particular, Respondent's arguments that that there was no justification or good cause for Appellants' ongoing noncompliance and dilatory tactics. Those same arguments apply to Appellants' latest disregard of court deadlines.

Appellants' Motion to Reinstate was granted on February 21, 2020 over Respondent's

objection. The Court granted Appellants an additional 30 days to serve their initial brief and designation of matter. On March 20, 2020, one day prior to the deadline set by the Court, Appellants' Counsel again requested additional time to file his initial brief. Appellants' Counsel stated that while he was prepared to draft the initial brief, the COVID-19 virus had required shifting of responsibilities in counsel's personal life and changed professional obligations. *See Appellants' Motion for Extension of Time (1st) March 20, 2020.* The Court yet again granted an extension of time for Appellants until April 13, 2020, this time clearly stating no further extensions would be granted. On the eve of that deadline, Appellant again requested an extension of time. The Court granted an extension until April 27, 2020, again stating that no further extensions would be granted.

Appellant's Counsel has again failed to file an initial brief this time offering no reasoning or requesting an extension of time. Nothing has been provided to Respondent's counsel and as of today the Court has no record of having received Appellants initial brief and designation. Appellants have now had nearly seven months to draft and file an initial brief and designation of matters. Appellant has now had his appeal dismissed, reinstated and has received multiple extensions. While Respondent is mindful of the difficulties created by COVID-19, there is no good reason to continue to give Appellants extension after extension. As noted above, Respondents argued in their Motion for Reinstatement that there would be no prejudice to Respondent because they had all of the materials necessary to draft and file their initial brief. That was nearly five months ago. It has now become clear that Appellants have used the COVID crisis to continue its decade-long pattern of delay and noncompliance. The Court should not allow this to continue and Respondent's appeal should be dismissed.

Respondent respectfully requests that this Court dismiss Appellants' Appeal for repeated failure to meet the Court's deadlines and its failure to file an initial brief and designation of matter

on appeal. Respondent further requests that the Court remand this case to the Circuit Court for further proceedings and trial.

s/Wm. M. Gruenloh

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Date: May 1, 2020
Charleston, South Carolina

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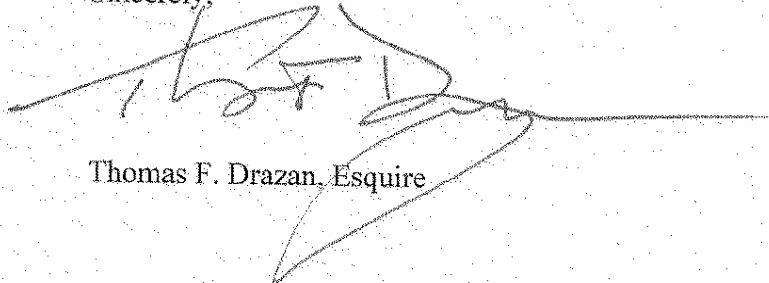
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Crest Energy Partners GP, LLC, Crest Energy Partners, LP, Dunhill Products LP, Henry Wuertz, are the Appellants.

FAX COVER SHEET

Please find attached the following four (4) pages representing Respondent's Motion to Dismiss in the above captioned case. Please feel free to call at 843-577-0027 or e-mail me at thomas@gruenlohlaw.com with any questions or concerns.

Sincerely,



Thomas F. Drazan, Esquire

SC Bar # 101180