

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

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May 07 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, and Henry Wuertz, are the Appellants.

**MOTION FOR ENLARGEMENT OF TIME TO FILE
INITIAL BRIEF AND DESIGNATION OF MATTER
OUT OF TIME**

David B. Marvel
P.O. Box 22734
Charleston, South Carolina 29413
Ph. (843) 853-4877
Fax 843-305-3981
Email: dave@marvel.lawyer

APPELLANTS, through undersigned counsel, hereby move this Honorable Court for an Order, pursuant to Rule 263(b), SCACR, allowing Appellants leave to file their Initial Brief and Designation of Matter out of time. In support of this Motion, Appellants aver and affirm before the Court as follows.

Appellants have filed and served their Initial Brief and Designation of Matter pursuant to Rule 262(a)(2), SCACR. A copy of these filings is attached hereto as Exhibit A.

Appellants' Initial Brief and Designation were originally due on March 23, 2020. On March 20, 2020, Appellants filed their first Motion for Extension of Time. Later that same day, the Supreme Court issued In Re: Operation of the Appellate Courts During the Coronavirus Emergency, Order No 2020-03-20-01 (S.C. Sup. Ct. March 20, 2020), which automatically extended this due date by twenty days. On March 25, 2020, the Court issued an Order granting Appellants previously requested extension commensurate with the same deadline set by the March 20, 2020 Order, re-setting the due date for April 13, 2020.

On April 9, 2020, Appellants requested a second extension, which the Court granted on April 10, 2020. This Order extended the due date to April 27, 2020, and cautioned Appellants that “[n]o further extensions will be granted absent extraordinary circumstances.”

Extraordinary circumstances existed and continued after the Court's Order granting Appellants Second Extension. On April 12, 2020, Governor McMaster issued Executive Order 2020-23 declaring an additional state of emergency on April 12, 2020. On April 22, 2020, Governor McMaster announced that public schools would remain closed for the remainder of the 2019-20 school year. On April 27, 2020, the date Appellants' Initial Brief and Designation were due, Governor McMaster issued Executive Order 2020-29, again declaring an additional state of emergency, stating

based on recent developments, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances, to include the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to declare that a separate and distinct emergency exists in the State of South Carolina

S.C. Exec. Order 2020-29, p.5 (April 27, 2020).

Appellants submit that the executive declaration of extraordinary circumstances, at a minimum, evidences good cause for a judicial finding of extraordinary circumstances justifying an enlargement of time for Appellants to file their Initial Brief and Designation of Matter. Issues and uncertainties relating to the coronavirus emergency continued to result in daily disruptions in the vocational/professional and personal lives of most South Carolinians. Undersigned counsel, a divorced and joint custodial parent, was not excepted from the effects of the general shutdown which significantly diminished the time available to practice law while also creating emergent issues for clients, derailing the resolution of some claims, creating opportunities to resolve others, and causing everyone to reshuffle priorities. To paraphrase Chief Justice Beatty's April 24, 2020 memorandum, we have all "been forced to alter our normal operating procedures in numerous respects . . . , chang[ing] routine practices, schedules, and traditional methods of operation" while attempting to "be patient, cooperative, and practice civility and professionalism."

Appellants note that this Appeal and their forty-six page Initial Brief address issues that span eight years of litigation. Undersigned counsel discovered during preparation of the brief that a portion of the paper file in this matter was affected by Hurricane Matthew flooding while in storage during the prior appeal. Recreating these materials required, among other things, a thorough review of this case's email archive which consists of nearly 4,000 items and over 800

attachments. These issues would likely have required Appellants to request additional time to prepare and file their Initial Brief under normal circumstances.

Recognizing that Rule 263(b) addresses enlargements of time without distinguishing between advance extensions and leave to file out-of-time, Appellants elected to request leave to file once the Initial Brief and Designation were complete. Appellants have thereby eliminated the question of whether additional extensions would be requested. Appellants have also not delayed the further progress of this appeal by the filing of a third motion for extension in advance, which would have likely drawn opposition from Respondents and required further attention from strained judicial department resources.

Appellants hereby respectfully request that the Court grant this Motion for Enlargement of time, and grant Appellants leave to file its Initial Brief and Designation of Matter out of time.

RESPECTFULLY SUBMITTED:

s/ David B. Marvel
David B. Marvel (SCB# 68803)
P.O. Box 22734
Charleston, SC 29413
(P) 843-853-4877
(F) 843-305-3981
dave@marvel.lawyer
ATTORNEY FOR THE APPELLANTS

May 6, 2020
Charleston, South Carolina