

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 12 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 RETURN IN OPPOSITION TO APPELLANTS' MOTION
FOR AN ENLARGEMENT OF TIME**

COMES NOW RESPONDENT, Innovative Waste Management Inc., through undersigned counsel and offers its' Return in Opposition to Appellants' Motion for an Enlargement of Time. For the reasons set forth below and in Respondent's Motion to Dismiss, Respondent respectfully requests this Court to deny Appellants' untimely Motion and dismiss Appellants' appeal.

This appeal originates from an October 1, 2019 Order for sanctions pursuant to Rule 37 of South Carolina Rule of Civil Procedure. On October 9, 2019 Appellants filed a one-page Notice of Appeal stating they sought to appeal the October 1, 2019 Order. Appellants did nothing on 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 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) and Respondent filed its Return in Opposition. Appellants' Motion to Reinstate was granted on February 21, 2020. The Court provided Appellants 30 additional 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. *See Appellants Motion for Extension of Time (1st) March 20, 2020*. The Court again granted an extension of time for Appellants to April 13, 2020, this time clearly stating no further extensions would be granted. On the eve of the deadline that this Court ordered would not be extended, Appellant again requested an extension of time. The Court issued another extension stating that no further extensions would be granted absent a showing of "extraordinary circumstances." Appellants failed to file its initial brief or a request for an extension by April 27, 2020. Appellants filed their Motion for Enlargement of Time on May 6, 2020.

I. APPELLANTS' MOTION FOR ENLARGEMENT OF TIME IS UNTIMELY AND SHOULD NOT BE CONSIDERED.

As an initial matter, the now four times extended deadline for Appellants initial brief was April 27, 2020. Appellants failed to file their brief or their Motion for Enlargement prior to that deadline and instead filed their Motion for Enlargement on May 6, 2020. Appellants have offered no plausible justification for why they were unable to request an extension or communicate with the Court (or counsel) until 10 days after the April 27, 2020 deadline. Appellants' suggestion that they did not make a filing prior to April 27, 2020 because they did not want to require "further attention from strained judicial department resources" is neither plausible nor extraordinary

circumstances. As such, their Motion for Enlargement of Time is untimely and should not be considered.

Also, Respondent refers to and incorporates by reference its Motion to Dismiss, which was filed on May 1, 2020. Appellant, who was served with a copy of the Motion to Dismiss on May 1, 2020, has filed no return or request for an extension to respond to that Motion and the deadline to do so has passed.

II. APPELLANTS HAVE FAILED TO SHOW THAT ITS' LATEST MISSED DEADLINE WAS THE RESULT OF EXTRAORDINARY CIRCUMSTANCES.

In this Court's April 10, 2020 Order it stated that no further extensions would be granted absent "extraordinary circumstances." Appellants have failed to provide any new information to this Court that suggests extraordinary circumstances were the cause of his failure to timely file his brief. In his Motion for Enlargement, Appellants' Counsel refers to files he alleges were damaged during Hurricane Matthew, a Hurricane that hit South Carolina on October 8, 2016, and difficulties related to being a single parent during the time of COVID 19. These excuses are not a showing of extraordinary circumstances but, rather, are a continuation of Appellants' disregard for the deadlines and the Rules of this Court.

As it relates to Appellants' contention that a transcript from 2016 was damaged, a diligent attorney would have discovered this issue long ago. Moreover, Appellants previously argued in support of its Motion to Reinstate that there would be no prejudice to Respondents because Appellants were in possession of all the materials necessary to prepare their initial brief. (*See Appellants' Motion for Reinstatement and to File Out of Time November 26, 2019*) In this context, an allegedly damaged transcript from 2016 does not support a finding of extraordinary circumstances or a fifth extended deadline.

Appellants also argue that COVID-19 made it impossible for them to file their initial brief by April 27, 2020. In Appellants' Counsel's prior motions for extension, he requested relief based upon COVID 19 and informed the Court of his difficulties professionally and as a parent during this time. (*See Appellants' (1st) Motion for Extension of Time March 20, 2020 & See Appellants' (2nd) Motion for Extension of Time April 9, 2020*) As such, the Court was well aware of those issues when it issued the April 10th Order indicating no further extensions and Appellants have offered no new information on this subject.

Respectfully, Appellants appeal has not been delayed by COVID-19. The original brief was due on November 8, 2020. Appellants have already been granted two extensions due to the COVID-19 situation. In both prior extensions granted on the basis of COVID-19, this Court warned Appellants in writing that no further extensions would be granted. Respondent respectfully requests the Court to do what it has twice stated that it would do if Appellant missed further deadlines in this matter – dismiss this Appeal.

Finally, it is worth noting that Appellants are appealing an Order by the lower court striking their answer and finding them in contempt for their continued abuse and disregard of the rules of civil procedure. Since they filed their notice of appeal on October 9, 2020 they have missed every deadline. They've had their appeal dismissed, reinstated, and have again missed multiple deadlines. This Honorable Court has given them every opportunity to file out of time. There is a clear pattern of abuse or at the very least extreme neglect on the part of Appellants and it continues at the expenses and undue prejudice to Respondent.

III. CONCLUSION

Appellants' Motion for Enlargement of Time should not be considered by this Court as it was not filed prior to the expiration of the April 27, 2020 deadline. In the event that the Court

considers Appellants' Motion, the Motion should be denied as Appellant has failed to make a showing of "extraordinary circumstances." There are many attorneys and staff who are continuing to diligently work (from home in many cases). Appellants have provided no real reason for their missed deadline, and certainly nothing that would rise to "extraordinary circumstances." Appellants' Motion for Enlargement should be denied and this appeal should be dismissed.

s/Wm.M.Gruenloh
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