

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2014-CP-20-349

RECEIVED

Aug 21 2020

SC Court of Appeals

Broadriver Campground, LLC.....Appellant,

v.

Jenkinsville Water Company, Inc.....Respondent.

RESPONSE TO MOTION TO DISMISS

The order granting summary judgment on the Respondent’s renewed motion for summary judgment was filed on April 30, 2020. Counsel for the Appellant was hospitalized with a serious illness from April 24 – May 5, 2020 during which time he underwent three surgeries. Following discharge from the hospital counsel was under the influence of heavy intravenous and other medications and was essentially incapacitated. See affidavit of counsel attached as Exhibit 1.


The Motion to Alter or Amend the order of April 30, 2020 was filed on May 27, 2020. Judge Gibbons was aware of counsel’s medical condition. Based on Judge Gibbons’ e-mail (see Exhibit 2) counsel assumed that Judge Gibbons excused the late filing of the Motion to Alter or Amend pursuant to Rule 60(b)(1), SCRPC and then denied the motion “on substantive grounds” rather than the procedural ground of untimely filing. Moreover, the Court of Appeals, pursuant to Rule 60(b)(1), SCRPC may grant relief from the late filing under these circumstances, which clearly qualify as mistake, inadvertence or excusable neglect. Furthermore, the Supreme Court’s

order on March 20, 2020 extended the due dates for filings by 20 days and forgave any procedural defaults. The Appellant should not have its appeal dismissed under these circumstances.

August 20, 2020

Respectfully submitted,

By:



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Jonathan Goode, Esq.
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Winnsboro, South Carolina 29180
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Fax: (803) 714-0775
Attorneys for Appellant

Other Counsel of Record:
Reginald Belcher, Esq.
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PO Box 1473
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AFFIDAVIT OF GLENN BOWENS

PERSONALLY APPEARED BEFORE ME, Glenn Bowens, who being duly sworn deposes and says:


1. I, Glenn Bowens, am counsel for the Appellants in the above captioned matter.
2. I am over eighteen years of age and have personal knowledge of the facts set forth herein.
3. The order granting summary judgment on the Respondent’s renewed motion for summary judgment was filed on April 30, 2020.
4. I was hospitalized with a serious illness from April 24 – May 5, 2020 during which time I underwent three surgeries.
5. Following discharge from the hospital I was under the influence of heavy intravenous and other medications and was essentially incapacitated.
6. The Motion to Alter or Amend the order of April 30, 2020 was filed on May 27, 2020.
7. Judge Gibbons was aware of counsel’s medical condition.

Exhibit 1

8. Based on Judge Gibbons' e-mail (see Exhibit 2) I assumed that Judge Gibbons excused the late filing of the Motion to Alter or Amend pursuant to Rule 60(b)(1), SCRPC as due to mistake, inadvertence or excusable neglect and then denied the motion "on substantive grounds" rather than the procedural ground of untimely filing.

FURTHER AFFIANT SAYETH NOT

August 20, 2020

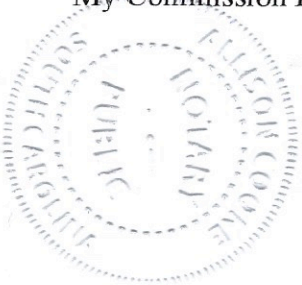


Glenn E. Bowens, Esq.
P.O. Box 424
Winnsboro, South Carolina 29180
Phone: (803) 714-7766
Fax: (803) 714-0775
Attorney for Appellant

Sworn to before me this
20th day of August 2020



Notary Public
My Commission Expires 8/24/2027



From: Gibbons, Brian M. BGibbonsj@sccourts.org

Subject: Broad River's Rule 59 motion

Date: June 9, 2020 at 9:48 AM

To: Glenn Bowens gbowens@bowenslawsc.com, Mark B. Goddard MGoddard@turnerpadget.com, Reginald W. Belcher RBelcher@turnerpadget.com

Cc: Jonathan Goode jonathan@thegoodelawyer.com, tammy.durham@fairfield.sc.gov

BG

Counsel, I have never been provided a copy of the Motion to Alter/Amend as required by Rule 59. In addition, it appears the motion was not timely filed. Even if it was, however, the motion would be denied on substantive grounds.

Mr. Goddard, please prepare an order setting forth the above and upload to my eFiling. Thank you.

Judge Brian M. Gibbons

On Apr 10, 2020, at 4:38 PM, Glenn Bowens <gbowens@bowenslawsc.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Gibbons,

Attached is the Plaintiff's Memorandum in Opposition to the Defendant's Renewed Motion for Summary Judgment. I wanted to thank you and counsel for your consideration during the last few weeks. I just recently got out of the hospital and am still recovering. I do appreciate and thank everyone for their patience. I will hand deliver a flash drive with the exhibits on Monday.

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<Plaintiff's MIO Renewed Motion for Summary Judgment doc.pdf>

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Exhibit 2

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that I served a copy of the Notice of Appeal upon the following:

Reginald Belcher, Esq.  
Hannah Stetson, Esq.  
Mark B. Goddard, Esq.  
PO Box 1473  
Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this the 20<sup>th</sup> Day of August 2020.

August 20, 2020



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Jonathan Goode, Esq.  
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Attorneys for Appellant