

RECEIVED

Jan 20 2021

SC Court of Appeals

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

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 previous returns in opposition to Appellants' motions for an enlargement of time. 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. 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. Appellants' Motion for Enlargement of time was granted and they ultimately filed their Brief. Following Respondent's Initial Brief Appellants again motioned for an Enlargement of Time in which to file their Reply brief. The Court granted Appellants request and ordered the brief be filed before or on October 23, 2020. Appellants filed on the last day of the extension a brief that failed to comply with the rules and failed to serve that brief on Respondents. Appellants corrected their reply brief, after the Court sent deficiency letters, eventually accepting Appellants filling on November 9, 2020.

Appellants were required to file the Record on Appeal on or before November 23, 2020. On that date Appellants again request an enlargement of time for which to file the record on appeal.

In justification for their failure to prepare a Record on Appeal, Appellants stated that they assumed the date to file the Record was based on the date of their corrected Reply Brief which the Court graciously allowed to be filed, again, late. Appellants requested an additional 30 days, until December 23, 2020 to file the Record on Appeal. The Court reviewed the request and provided Appellants until January 4, 2021 to file the Record on Appeal.

Again the Appellants have delayed and failed to meet the court deadline to file the Record on Appeal, instead requesting permission to file outside of time. Appellants have now requested the Court allow them to file out of time and attached a proposed Record on Appeal. In a brief review by the Respondent it is clear that Appellants have not included all the materials in Respondents Designation of Matter. Appellants have not only failed to file the Record on Appeal on time but failed to file a complete Record on Appeal. The failure to file a full Record on Appeal will necessitate further motions and an amended Record on Appeal, delaying proceedings again.

Appellants' Motion for Enlargement of Time should not be considered by this Court as it was not filed prior to the expiration of the January 4, 2021 deadline and is not a complete Record on Appeal. In the event that the Court considers Appellants' Motion, the Motion should be denied as Appellant has continued their dilatory tactics, which began in the lower Court and have continued on appeal. Appellants' Motion for Enlargement should be denied and this appeal should be dismissed.

(Signature Block on Following Page)

GRUENLOH LAW

s/Thomas F. Drazan _____
Wm. M. Gruenloh, SCBAR # 12418
Thomas F. Drazan, SCBAR #101180
67 Moultrie Street, 2nd Floor
Charleston, South Carolina 29403
(843) 577-0027
(843) 577-0721 (facsimile)
Mike@gruenlohlaw.com
Thomas@gruenlohlaw.com

&

Frederick "Fritz" Jekel, SCBAR #66491
LEVENTIS & RANSOM
PO Box 11067
Columbia, SC 29211
803-765-2383
Fritz@j-dlaw.com

Attorneys for Respondents

Date: January 20, 2021
Charleston, South Carolina