

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jan 27 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite 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, and Henry Wuertz, are the Appellants.

APPELLANTS' REPLY
RE: MOTION FOR ENLARGEMENT OF TIME

APPELLANTS, through undersigned counsel, hereby offer this brief reply to Respondent's Return in Opposition to Appellants' Motion for Enlargement of time. For all of the reasons previously stated, and stated herein, Appellants respectfully request that this Honorable Court GRANT Appellants' Motion, directing the parties to proceed with the filing of their Final Briefs.

The undersigned recognizes that there have been many missed, extended, and misinterpreted deadlines during the pendency of this appeal, and appellants have and continue to sincerely apologize for their miscues. However, Appellants respectfully state

that Respondent's Return does not appear to contain a cognizable basis for the court to deny the Motion for Enlargement of Time.

As an initial matter, Respondent appears to confuse the concepts of "filing" and "service" as those terms appear in the Appellate Court Rules. Given that the Supreme Court's Orders relating to Appellate Procedure during the COVID-19 pandemic have relaxed certain burdens of service, Respondent can hardly be prejudiced by electronic service of the Record less than twenty-four hours delayed, when that service nonetheless provided Respondent's Counsel with the Record sooner than they would have received traditional service of a paper copy.

As a secondary matter, Respondent's Return states "[i]n a brief review by the respondent it is clear that Appellants have not included all the materials in Respondents' Designation of Matter."¹ Respondent's counter-designation of matter to be included in the Record on Appeal, rather than being produced as an addendum to Appellant's Designation of Matter, was a confusing restatement of Appellant's designation that, in the undersigned's opinion, included materials not relevant to matters on appeal, and materials that were never properly served upon the Appellant when those issues were first argued. Nonetheless, Appellant's counsel spent significant time deciphering Respondent's counter-designation and reconstructing those items for the Record, and included all designated material. Although Appellants served Respondent's counsel with the Record two weeks prior to the filing of Respondent's Return, Respondents only indulged the court with a "brief review" of that record prior to filing the return, and their final briefs are now due

¹ The return provides no factual basis for that comment; Appellants submit that this is a patent violation of Messrs Drazen and Gruenloh's duty of candor to the Court for which they should be sanctioned, up to and including dismissal of Respondent's case, or otherwise referred to the Office of Disciplinary Counsel.

within the week. The undersigned doubts that Respondents' counsel would have noticed the belated service had he not brought it to their attention.

Notably, the Record was filed with the Court well in advance of the date set by the Appellate Court Rules and all Orders in this Case. Appellant's transmittal of the record, attached to the Motion for Enlargement of Time, requested two things: 1) consent to consider service on January 5, instead of January 4, to be timely, and 2) for Respondent's counsel to review the Record and advise if Appellants' counsel had missed something due to the confusion. Respondent's counsel offered no response to the second request, other than the patently false, unsupported, and unethical statement in Respondent's Return.

In the event Respondent states actual facts or cognizable argument in opposition to Appellants' Motion, Appellant respectfully requests and opportunity to respond. Otherwise, Appellants respectfully request that this Honorable Court grant their Motion, and consider the January 5, 2021 service of the Record on Appeal to be timely.

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

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Charleston, South Carolina