

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case No. 2020-001626

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Feb 17 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2020-001626

Exquis Event Center,

Appellant,

v.

BRE Retail NP Festival Centre,

Respondent.

RESPONSE IN OPPOSITION TO APPELLANT'S PETITION FOR EXTENSION OF TIME
TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER
AND MOTION TO DISMISS APPEAL

NOW COMES Respondent BRE Retail NP Festival Centre Owner, LLC, through counsel, pursuant to Appellate Rules 208, 209, 240 and 260, and hereby submits this response in opposition to Appellant's petition for extension of time to file its initial brief and designation of matter, and also moves to dismiss this appeal. In support thereof, Respondent states the following

- 1) On December 14, 2020, Appellant filed its Notice of Appeal.

2) Appellant admits in its Petition that “[t]here is no transcript from the Court of Common Pleas therefore the Initial Brief and Designation of Matter would have originally been due on January 13, 2021.”

3) Thus, the Petition was filed more than thirty (30) days *after* the original deadline.

4) While Respondent is certainly sympathetic to the personal and family issues cited by Appellant’s counsel in the Petition, Respondent does not believe that, when viewed under the totality of the circumstances, they should excuse the late request or justify an extension of time for Appellant to file its initial brief and designation of the matter.

5) The record reflects that Appellant filed two prior petitions with this Court: (1) a Petition for *Supersedeas* filed on December 15, 2020, and (2) a Petition for *En Banc* Review of the Denial of *Supersedeas* filed on December 31, 2020. These petitions appear to have been filed during the same period of time when Appellant’s counsel was “dealing with a family issue” and otherwise suffering from time constraints in connection with his father’s illness. Yet, Appellant’s counsel contends that he “inadvertently failed to calendar the time limit for the initial brief” and that this “error came to counsel’s attention on February 12, 2021.”

6) On February 12, 2021, this Court emailed a letter to Appellant’s counsel, which letter stated that the time for ordering the transcript has expired and that the appeal would be dismissed in ten (10) days unless proof of transcript order and a motion to order the transcript outside of the deadline were filed within that time period. Presumably, it was this Court’s letter that alerted Appellant’s counsel to the fact that additional action was needed in order to maintain the appeal, and that the applicable deadlines for the initial brief and designation may have already expired, given that there was no transcript to order. Appellant’s counsel emailed the undersigned to request his consent to the Petition on February 16, 2021.

7) To be clear, the prior petitions for *supersedeas* and *en banc* review did not operate to stay or otherwise alter the original thirty (30) day deadline applicable to Appellant’s initial brief and designation of the matter. See Appellate Rule 240(b) (“time limits imposed by these Rules shall not be stayed by the filing of a motion or petition.”) (emphasis added).

8) Additionally, Appellate Rule 208(a)(4) states that “[u]pon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.” (emphasis added). Rule 260 provides that, once an appeal is involuntarily dismissed by the clerk, the appeal shall not be reinstated except by leave of court upon good cause shown.

9) Respectfully, Respondent contends that Appellant cannot demonstrate good cause for reinstating an appeal that, frankly, should have been dismissed on January 14, 2021, more than one month ago. Appellant’s counsel should have calendared the deadline for the initial brief and designation of the matter when the Notice of Appeal was filed on December 14, 2020, or when Appellant’s counsel was otherwise devoting time to this appeal on or about December 15, 2020, and again on December 31, 2020, in connection with the prior petitions.

10) Additionally, counsel have engaged in numerous communications regarding this appeal and/or a related Common Pleas action that remains pending between the parties, in which Respondent seeks to recover money damages from Appellant for breach of the very same commercial lease agreement that is at issue in this appeal (hereinafter, the “damages action”). Such communications include, but are not necessarily limited to, the following:

- a) Counsel communicated via email on January 19-22, 2021, regarding outstanding discovery in the damages action;

- b) Appellant’s counsel served discovery responses in the damages action on January 22, 2021, and on January 29, 2021;
- c) Counsel spoke via telephone on February 3, 2021, to discuss discovery in the damages action and the potential a global settlement and resolution of all pending litigation between their respective clients, including this appeal.

11) One or more of the foregoing communications and case related activities should have alerted Appellant’s counsel to check on the status of this appeal or to otherwise determine if any action was required or if any deadlines had run.

12) The undersigned does not contend that the loss of a parent is anything other than devastating, and had Appellant made a *timely* request for extension of time, the undersigned would certainly have consented to it. The same would hold true had the request been made even a few days after the original deadline, under the circumstances. But where, as here, the request was made more than thirty (30) days after the deadline, and the record and other evidence confirms that Appellant’s counsel was taking other action in the appeal and also in related litigation between the parties, mere “inadvertence” should not be equated with “good cause” or otherwise justify an extension of time for matters as central to the maintenance of the appeal as the initial brief and designation.

13) “[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

WHEREFORE, for all of the foregoing reasons, Appellant’s Petition should be DENIED and the Appeal should be DISMISSED.

This the 17th day of February, 2021.

/s/ Christian H. Staples
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE IN OPPOSITION TO APPELLANT’S PETITION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER AND MOTION TO DISMISS APPEAL was electronically filed by emailing a copy thereof to ctappfilings@sccourts.org, and I further certify that it was served on all counsel of record in this action by emailing a copy to tristan@shafferlawsc.com.

This the 17th day of February, 2021.

/s/ Christian H. Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

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