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Mar 15 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2020-CP-10-05443

Appellate Case No. 2021-001069

Mary and John Doe, Individually and as husband and wife, Respondents,

v.

Massage Envy Franchising, LLC; Jaxh, LLC d/b/a Massage Envy Spa (Long Grove Dr.); and
Michael E. Hughes, Defendants.

Of whom Massage Envy Franchising, LLC is the Appellant.

**SECOND CONSENT MOTION TO STAY APPEAL, OR IN THE ALTERNATIVE TO
EXTEND THE TIME FOR BRIEFING**

Appellant Massage Envy Franchising, LLC (“MEF”), with the consent of Respondents Mary and John Doe, respectfully moves pursuant to Rule 240 of the South Carolina Appellate Court Rules for an order from this Honorable Court staying all proceedings in this matter until April 15, 2022, or in the alternative, to extend the time for Appellant to file its Initial Brief until April 15, 2022. The reason for the request is that Appellant and Respondents have reached a global settlement in principle, pending approval and execution of the release language presently circulating. The Parties have been working diligently toward finalizing such documentation, and

they believe they will be able to complete this process within the next month. In support of this motion, Appellant MEF shows as follows:

1. Respondents initially filed the underlying litigation in the Court of Common Pleas of Charleston County on or around December 11, 2020. MEF timely filed a Motion to Dismiss, or in the Alternative, Stay Litigation and to Compel Arbitration of Plaintiff Mary Doe's Claims, and/or in the Alternative to Dismiss Plaintiffs' Claims Pursuant to Rule 12(b)(6) ("Motion to Compel Arbitration") on May 24, 2021.

2. Following briefing and a hearing, the Circuit Court entered an order denying the Motion to Compel Arbitration on August 25, 2021.

3. On September 22, 2021, MEF filed a timely Notice of Appeal of the Circuit Court's decision.

4. This Court has granted MEF two extensions to file its Initial Brief, such that currently, Appellant's Initial Brief is due on or before December 22, 2021.

5. On December 10, 2021, Appellant, with the consent of Respondents, asked the Court to continue to hold the deadlines in this matter in abeyance until March 15, 2022, which the Court generously granted on January 27, 2022, to afford the Parties the opportunity to resolve this matter globally.

6. The Parties participated in a mediation on February 1, 2022. As of February 15, 2022, the matter settled in principle.

7. An order granting a stay or extension until April 15, 2021, will permit the Parties to conserve resources and finalize the settlement documents in the hopes of avoiding the need for this Court's involvement.

8. Counsel for MEF has consulted with counsel for Respondents regarding the relief requested in this motion, and Respondents consent to this relief.

9. Pursuant to Supreme Court Orders 2021-08-25-01 and 2021-08-25-02, Appellant files and serves this motion via email using the email addresses listed in the Attorney Information System, and it will separately send motion the \$50 filing fee by U.S. Mail.

WHEREFORE, MEF respectfully requests this Court stay all proceedings in this case until April 15, 2022, or in the alternative, extends the deadline for Appellant's initial brief until April 15, 2022, to allow MEF and Respondents to finalize settlement documents which allows for the conservation of judicial resources and promotion of efficiency. MEF will notify the Court on or before April 15, 2022, as to the results of the approval and execution of the settlement documents. This stay would be without prejudice to either party's rights in this appeal.

Respectfully Submitted,

/s Lindsay A. Joyner

John T. Lay, SC BAR NO. 64526
Lindsay A. Joyner, SC BAR NO. 77437
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
jlay@GWBlawfirm.com
ljoyner@GWBlawfirm.com

Robert A. Atkins (*admitted pro hac vice*)
**Paul, Weiss, Rifkind, Wharton &
Garrison LLP**
1285 Avenue of the Americas
New York, NY 10019-6064
ratkins@paulweiss.com
(212) 372-3183 Ofc
(212) 492-0183 Fax

*Attorneys for Appellant Massage Envy
Franchising, LLC*

March 15, 2022
Columbia, South Carolina

Other Counsel of Record:

David L. Savage, SC BAR NO. 10450
LAW OFFICE OF DAVID L. SAVAGE
171 Church Street, Suite 330
Charleston, SC 29401
dsavage@savagelawchs.com

Andrew J. Savage, III, SC BAR NO. 4946
15 Prioleau Street
Charleston, South Carolina 29401
andy@savlaw.com
Attorneys for Respondents

Molly H. Craig, SC BAR NO. 6960
Jean Marie Jennings, SC BAR NO. 100651
HOOD LAW FIRM, LLC
172 Meeting Street
P.O. Box 1508
Charleston, SC 29402
Molly.craig@hoodlaw.com
Jeanmarie.jennings@hoodlaw.com
*Attorneys for Jmbh, LLC, Jaxh LLC d/b/a Massage
Envy Spa (Long Grove Dr.), and
Michael Hughes*

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Mary and John Doe, Individually and as husband and wife, Respondents,

v.

Massage Envy Franchising, LLC; Jaxh, LLC d/b/a Massage Envy Spa (Long Grove Dr.); and
Michael E. Hughes, Defendants.

Of whom Massage Envy Franchising, LLC is the Appellant.

PROOF OF SERVICE

This is to certify that the undersigned counsel has caused to be served this day (1) copy of Second Consent Motion to Stay Appeal, or in the Alternative to Extend the Time for Briefing via electronic mail at the address stated in Supreme Court Order, 2021-08-25-02, Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, and as set forth below to the following:

David L. Savage, SC BAR NO. 10450
LAW OFFICE OF DAVID L. SAVAGE
171 Church Street, Suite 330
Charleston, SC 29401
dsavage@savagelawchs.com

Andrew J. Savage, III, SC BAR NO. 4946
15 Prioleau Street
Charleston, South Carolina 29401
andy@savlaw.com
Attorneys for Respondents

Molly H. Craig, SC BAR NO. 6960
Jean Marie Jennings, SC BAR NO. 100651
HOOD LAW FIRM, LLC
172 Meeting Street
P.O. Box 1508
Charleston, SC 29402
Molly.craig@hoodlaw.com
Jeanmarie.jennings@hoodlaw.com
*Attorneys for Jmbh, LLC, Jaxh LLC d/b/a Massage
Envy Spa (Long Grove Dr.) and Michael Hughes*

A copy of the email serving counsel for Respondents is attached hereto.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

/s Lindsay A. Joyner
John T. Lay, SC BAR NO. 64526
Lindsay A. Joyner, SC BAR NO. 77437
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
jlay@GWBlawfirm.com
ljoyner@GWBlawfirm.com

March 15, 2022

*Attorneys for Appellant Massage Envy
Franchising, LLC*

Lindsay Joyner

From: Lindsay Joyner
Sent: Tuesday, March 15, 2022 3:48 PM
To: Savage Law Firm Paralegal (paralegal@savagelawchs.com); 'David Savage'; 'Andrew J. Savage'
Cc: John T. Lay (jlay@GWBlawfirm.com); Atkins, Robert A (ratkins@paulweiss.com); 'Molly Craig'; jeanmarie.jennings@hoodlaw.com; Jillian Hansen
Subject: RE: Mary Doe , plaintiff, et al VS Massage Envy Franchising Llc , defendant, et al C/A No. 2020CP1005443 App Case No 2021-001069 [GWB-IMANMAIN.FID868967]
Attachments: 2022.03.15 Ltr to the COA re second consent motion to stay.pdf; 2022.03.15 Second Consent Motion to Stay.pdf

David and Andy,

As permitted by Supreme Court Order 2021-08-25-03, part (d) and as discussed previously, I am herewith serving via email Appellant Massage Envy Franchising, LLC's Second Consent Motion to Stay Appeal, or in the Alternative to Extend the Time for Briefing in the above-captioned matter. Shortly, I will be filing this document with the Court of Appeals as permitted by Order 2021-08-25-03, part (b)(2), and will attach this email to the proof of service of the same. The filing fee will be forwarded separately, and we will provide you with a copy of that correspondence in accordance with the Rules.

Should you have any issues opening the attachments, please let me know. Thank you.

With warmest regards,

Lindsay



Lindsay Anne Joyner
Partner
ljoyner@GWBlawfirm.com

Gallivan, White & Boyd P.A.
Office 1201 Main Street | Suite 1200 |
Columbia SC 29201
803 724 1706 Direct | 803 779 1833 Main | 803
779 1767 Fax
Mailing Post Office Box 7368 | Columbia SC 29202
[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

March 15, 2022

VIA ELECTRONIC FILING (ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1229 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: *Mary and John Doe, Individually and as husband and wife, Respondents v. Massage Envy Franchising, LLC; Jaxh, LLC d/b/a Massage Envy Spa (Long Grove Dr.); and Michael E. Hughes, Defendants, Of whom Massage Envy Franchising, LLC is the Appellant.*
Appellate Case No. 2021-001069
GWB File No. 9461-3

Dear Ms. Kitchings:

Attached for electronic filing in accordance with Supreme Court Order 2021-08-25-02, part (b)(2), and pursuant to Rule 203 of the South Carolina Appellate Court Rules, please find a Second Consent Motion to Stay Appeal, or in the Alternative to Extend the Time for Briefing in the above-captioned matter. As permitted by Order 2021-08-25-03, no other copies, whether paper or electronic, are being provided, unless requested by the Court.

By copy of this letter, we are serving counsel for Respondents via email as permitted by Order 2021-08-25-02, part (d)(1), and attached is a proof of service to that effect.

A check in the amount of \$50.00 for the filing fee associated with this Motion for Extension of Time is being forwarded to your attention via U.S. Mail.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Lindsay A. Joyner

Page 2

LAJ/
Enclosure

cc: David L. Savage
Andrew J. Savage, III
Molly H. Craig
Jean Marie Jennings
John T. Lay, Jr.
Robert Atkins