

No. 20-304

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

TOWN OF APEX,)	
)	
Plaintiff-Appellee,)	
v.)	<u>From Wake County</u>
)	15-CVS-5836
BEVERLY L. RUBIN,)	
)	
Defendant-Appellant.)	

**MOTION FOR EXTENSION OF TIME TO FILE
PLAINTIFF-APPELLEE'S BRIEF**

NOW COMES Plaintiff-Appellee Town of Apex ("Town"), by and through counsel, pursuant to Rule 27 of the Rules of Appellate Procedure, and hereby requests a thirty (30) day extension of time to file the Town's Appellee Brief up to and including 29 August 2020. In support of said motion, the Town shows to the Court the following:

1. On 29 January 2020 the Defendant-Appellant Beverly L. Rubin ("Rubin") filed a Notice of Appeal of the 21 January 2020 Order Denying Defendant's Motion to Enforce Judgment and Alternative Petition for

Writ of Mandamus and the 21 January 2020 Order Granting Plaintiff's Motion for Relief from Judgment.

2. The Record on Appeal in this matter was filed on 14 May 2020 and the printed Record on Appeal was mailed to the parties 18 May 2020.

3. On 30 June 2020 the Defendant-Appellant filed her brief.

4. The Town's brief is due to be filed in the Court of Appeals on 30 July 2020. The time for filing the Town's brief with the Court of Appeals has not expired.

5. Given counsel for the Town's heavy work load between now and 30 July 2020 which includes, among other things, filing four (4) briefs in this Court all of which are currently due either 30 July 2020 or 31 July 2020 – the brief referenced herein, a response brief to an *Amicus Curiae* brief filed herein, and an appellee brief and a response brief to the same *Amicus Curiae* brief filed in COA20-305, it will be very difficult for counsel for the Town to complete and file the Town's appellee brief by 30 July 2020. Therefore, counsel for the Town requests a thirty (30) day extension to file the Town's appellee brief with the Court, through 29 August 2020.

6. Given the method in which Appellant and the *Amicus* parties prepared their briefs, the four briefs described herein in COA 20-304 and 20-305 should be filed by Appellee at the same time. As such, a similar extension motion has been filed for the other briefs described herein.

7. If the motion is granted, the Town will file their appellee brief with the Court of Appeals on or before 29 August 2020.

8. Counsel for Appellant has been consulted and consents to a fifteen (15) day extension to file this brief; Appellee believes thirty (30) days is necessary for the extension for the reasons stated herein.

Accordingly, for good cause shown, the Town moves the Court pursuant Rule 27(c) of the Rules of Appellate Procedure to extend the time therefore up to and including 29 August 2020 to allow counsel sufficient time to prepare and file the Town's Appellee brief.

Respectfully submitted, this the 17th day of July 2020.

/s/ David P. Ferrell

David P. Ferrell

NC State Bar No. 23097

dferrell@nexsenpruet.com

Norman W. Shearin

NC State Bar No. 3956

nshearin@nexsenpruet.com

- 4 -

Nexsen Pruet PLLC
4141 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Telephone: (919) 755-1800
Facsimile: (919) 890-4540
*Attorneys for Plaintiff-Appellee Town
of Apex*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing **MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF-APPELLEE'S BRIEF** upon the parties by depositing the same in the United States mail, first class postage prepaid, addressed as follows:

Matthew Nis Leerberg
Troy D. Shelton
Fox Rothschild LLP
PO Box 27525
Raleigh, NC 27611
*Attorneys for Defendant-
Appellant*

Kenneth C. Haywood
B. Joan Davis
Howard, Stallings, From Atkins
Angell & Davis, P.A.
5410 Trinity Road, Suite 210
Raleigh, NC 27607
Attorneys for Defendant-Appellant

This the 17th day of July, 2020.

/s David P. Ferrell
David P. Ferrell