

October 16, 2020

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Supreme Court of the United States
Office of the Clerk
1 First Street, N. E.
Washington, D.C. 20543

Case No. 20-475

**In The
Supreme Court of the United States**

— ♦ —
Stanley V. Campbell,

Petitioner,

v.

Eagle Force Holdings, LLC and
E.F. Investments, LLC,

Respondent.

— ♦ —
**On Petition for Writ of Certiorari
To The Delaware Supreme Court**

— ♦ —
**EMERGENCY MOTION FOR STAY OF RESPONSE TO PETITION FOR WRIT OF
CERTIORARI DUE TO DEATH OF SOLE MEMBER OF RESPONDENT**

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Counsel of Record for Respondents:

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To the Honorable Clerk of United States Supreme Court:

Respondents, Eagle Force Holdings, LLC (“Holdings”) and EF Investments, LLC, (“Investments”) (collectively “Respondents”) by and through their undersigned counsel, hereby move pursuant to Supreme Court Rules 15.3 and 30.4, to extend the time for Respondents to respond to the Petition for Writ of Certiorari, including the filing of a conditional cross-petition pursuant to Supreme Court Rule 12.5, and in support thereof, state as follows.

INTRODUCTION

Petitioner docketed his Petition for a Writ of Certiorari on October 13, 2020. Respondents are two single-member Delaware Limited Liability Companies (“LLC’s”). Richard Kay (“Mr. Kay”) was the single member of both Respondent LLC’s. Mr. Kay died on October 9, 2020, without knowing that this Petition had been filed and without be able to give Respondent’s counsel any instructions or authority regarding how to respond. Until a court of competent jurisdiction appoints personal representatives for the estate of Mr. Kay, counsel for Respondents are unable to confer with a representative of their clients who can authorize them to respond to the Petition. Respondents request a stay until such time as authorized personal representatives can be consulted at which time Respondents will notify the Court so that a deadline for responding to the Petition can be set.

APPLICABLE RULES

Supreme Court Rule 15.3 provides that a brief in opposition to a petition for a writ of certiorari “shall be filed within 30 days after the case has been placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4.” Rule 30.4 provides that a motion to extend the time to file any document or paper other than those specified in Rule 30.3, “may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified.” The documents or papers listed in Supreme Court Rule 30.3 which cannot be presented in a letter to the Clerk does not include an opposition to a petition for a writ of certiorari. Thus, Supreme Court Rule 30.4 is applicable to the present motion and this motion is properly presented to the Clerk of the Court.

Supreme Court Rule 35.1 provides in relevant part that “[i]f a party dies after the filing of a petition for a writ of certiorari to this Court... the authorized representative of the deceased party may appear and, on motion, be substituted as a party.” Although Mr. Kay was not himself a “party” to this action and thus no substitution of party is necessary, this Rule recognizes that until the representative of the deceased party is “authorized,” it is premature for Court to look to those representatives as standing in place of the deceased party.

With regard to the filing of a conditional cross-petition for a writ of certiorari, Supreme Court Rule 12.5 provides that a respondent seeking to file a conditional cross-petition must do so within 30 days after a case has been placed on the docket. As with an opposition to a petition for a writ of certiorari, a conditional cross-petition for a writ of certiorari is not listed in Rule 30.3 as one of the documents or papers about which a request for an extension of time for filing

cannot be presented to the Clerk of the Court. The Rules treat conditional cross-petitions differently than independent cross petitions for a writ of certiorari noting in Supreme Court Rule 12.5 that a conditional cross petition may otherwise be untimely if filed within 30 days of the filing of a petition for writ of certiorari and by associating conditional cross petitions with the date for filing the opposition to a petition for certiorari rather than the date the underlying judgment was entered. See Supreme Court Rule 13.1 & 13.4. So, it would appear to follow that under Rule 30 a conditional petition would not be treated the same way as an independent petition.¹

AT PRESENT THERE IS NO ONE WITH AUTHORITY TO DIRECT COUNSEL ON BEHALF OF THE LLC RESPONDENTS

The Delaware Limited Liability Company Act, 6 Del. C. §18-705, provides that upon the death of a member, that member's personal representatives may exercise all of the member's rights in the LLC for, inter alia, the purpose of administering the member's property. Thus, Mr. Kay's personal representatives will be empowered by applicable law to manage Respondents Holdings and Investments, including providing instructions and authority to Respondent's counsel in the present appeal. However, until a court of competent jurisdiction appoints and confirms Mr. Kay's personal representatives, there is no one with authority to act for Mr. Kay in his capacity as sole member of each Respondent LLC.

¹ In the event that the Clerk determines that the portion of this Motion pertaining to stay of the date by which a conditional cross petition must be presented to the Court or an individual Justice, Respondents request that the Clerk transmit this letter motion as appropriate pursuant to Supreme Court Rule 22 ("An application address to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned....") and Rule 33.2 (as to form).

Respondents' counsel estimate that Mr. Kay's personal representatives will be confirmed in about two months' time, but that estimate may be unduly optimistic given delays being caused by the current Covid-19 public health crisis which is impacting issuance of death certificates and slowing the usual course of courts dealing with management of estates. Additionally, unanticipated factors may cause further delays in confirmation of personal representatives who have the ability to direct counsel regarding this matter including possible challenges to the appointment of personal representatives. Currently, the docket indicates that the Response to the Petition for a Writ of Certiorari in this case is due November 12, 2020. It is highly unlikely that personal representatives for the Mr. Kay's estate will be confirmed by that time, much less sufficiently prior to that date to afford counsel time to consult with those representatives and prepare the documents necessary to implement their instructions and file them with this Court.

PETITIONER DOES NOT OBJECT TO THE GRANTING OF THIS MOTION

Pursuant to Supreme Court Rule 21.1, Respondents' counsel solicited Petitioner's position with regard to disposition of this motion. Petitioner's counsel has authorized this counsel to state that Petitioner does not object to the granting of an extension to allow for confirmation of the appointment of personal representatives for Mr. Kay.

RELIEF REQUESTED

Respondents request that the deadline for a response to the currently docketed Petition for Writ of Certiorari, including the deadline for the filing of a conditional cross-petition pursuant to Supreme Court Rule 12.5, be stayed pending further order of this Court.

Respondents further request that the Court direct Respondents to file a letter update with the Clerk of the Court and copied to Petitioner's counsel, reporting on the status of confirmation of personal representatives for the estate of Richard Kay at the earlier of: ten (10) days after the appointment of a Personal Representative by a court of competent jurisdiction, or no later than December 15, 2020, and to continue to file updates on the 15th of each month thereafter until personal representatives are confirmed by a court of competent jurisdiction or further order of this Court.

Date: October 16, 2020

Respectfully submitted:



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