

SUPREME COURT OF LOUISIANA

No. 2007-C-1225

BASS, LTD.

VERSUS

TIM GERALD and TRIANGLE VENTURE ASSOCIATES, INC.

ON APPLICATION FOR RECONSIDERATION

CALOGERO, Chief Justice, concurs and assigns reasons.

I concur in the granting of Relator's second application for reconsideration of our initial action dismissing the writ application as untimely filed. Now that the majority has found the writ application to have been timely filed under La. Sup. Ct. Rule X, § 5(d), the merits of the writ application will be considered by the court in due course.

The writ application was received "by mail" from the United States Postal Service (USPS) in this court on Monday, June 11, 2007, the first legal day following the expiration of the 30-day delay for timely filing on Friday, June 8, 2007. Accordingly, the application is entitled to a rebuttable presumption of timeliness under Rule X, § 5(d). In our initial action on the writ application, we deemed it not timely filed and, thus, did not consider the merits of the writ application. Our disposition was based on the only indication of mailing retained by our court, the Clerk's Office having discarded the front of the package. That evidence was an "Express Mail" mailing label from the USPS showing a date of acceptance at the main Pensacola station as June 9, 2007, a Saturday. Assuming the application was actually mailed on that day, the application would not have been timely filed, presumably even in light of the presumption of timeliness set forth in Rule X, § 5(d).

However, in Relator's application for reconsideration, counsel included

affidavits from himself and his wife attesting that the postage was purchased at a Pensacola post office on Friday evening, June 8, 2007, the postage was affixed on the package, and the package was placed in a USPS mailbox. We denied the application for reconsideration.

In Relator's second application for reconsideration, counsel included the Automated Postal Center (APC) receipt that he had inadvertently neglected to include in the first application for reconsideration. This receipt shows that postage was purchased from a Pensacola post office on June 8, 2007, at 10:35 p.m. for \$45.25, with a weight of 8 pounds and 8.8 ounces, with delivery to the 70130 zip code, the court's zip code. This postage amount and weight correlates with the express mail mailing label showing a total postage of \$45.25, a weight of 8 pounds and 9 ounces, and delivery to the court in the 70130 zip code. With the inclusion of this postage receipt, along with the affidavits and other evidence, I believe the presumption of timeliness to which the application is entitled by our rule was not sufficiently rebutted. Accordingly, I concur in granting the application for reconsideration, accepting the application as timely filed, and taking up the merits of the writ application in due course.