

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

STAR LAKES ASSOCIATION, INC.,
APPELLANT,

CASE NO.: 3D2023-1521
LOWER CASE NO.: 18-CA-10783

v.

SOUTHERN COATINGS, INC.,
APPELLEE.

_____ /

**APPELLEE’S RESPONSE AND OBJECTION TO
APPELLANT’S MOTION TO REINSTATE APPEAL**

Appellee Southern Coatings, Inc., by and through its undersigned counsel, files this Response to Appellant Star Lakes Association, Inc.’s Motion to Reinstate Appeal and in support thereof, states as follows:

1. On March 21, 2024, the Court entered an Order granting Appellant Star Lakes Association, Inc. (“Appellant”) fifteen (15) additional days in which to file its Initial Brief.

2. Since the Notice of Appeal was filed on August 21, 2023, Appellant has received **five (5) total extensions of time to file its Initial Brief**, and Appellant’s current counsel has received two (2) extensions of time to file the Initial Brief.

3. The March 21, 2024 Order that extended the deadline to file the Initial Brief to April 5, 2024 clearly stated that no further extensions of time would be permitted.

4. On April 5, 2024, the day its Initial Brief was due, Appellant filed a Motion to Supplement the Record, seeking an order permitting Appellant to supplement the record in this appeal with complete transcripts of the two (2) day, jury trial held in the circuit court below.

5. Notably, Appellant did not request a sixth extension of time to file its Initial Brief in its Motion to Supplement the Record although its Initial Brief was due on the motion's filing date.

6. In addition, Appellant's Motion to Supplement the Record indicated that Appellant's counsel had already been in touch with the court reporters "to effectuate production of the full transcripts."

7. On May 1, 2024, the Court granted Appellant's Motion to Supplement the Record, requiring Appellant to supplement the record with the full transcripts of the trial below. No extension of time to file the Initial Brief was given in that Order.

8. On May 29, 2024, the Court entered an Order dismissing this appeal upon its own motion.

9. Fifteen (15) days later and seventy-one (71) days after purportedly initially contacting the court reporters, on June 13, 2024, Appellant filed a Motion to Reinstate Appeal, stating that *after the appeal was dismissed*, Appellant's counsel contacted the court reporter and was sent the full transcripts of the trial below.

10. Appellant further contends that its failure to timely file its Initial Brief was due to a misunderstanding of the Court's May 1, 2024 Order although that Order contained no language altering the time period in which Appellant could file its Initial Brief. This is likely because Appellant never sought a further extension of time in which to file its Initial Brief in its Motion to Supplement the Record.

11. Rule 9.410 of the Florida Rules of Appellate Procedure provide that upon the court's own motion, after ten (10) days' notice, the court may dismiss an appeal for any violation of the procedural rules. Fla. R. App. P. 9.410.

12. In *United Auto. Ins. Co. v. Total Rehab & Medical Center*, this Court provided guidelines for when the circumstances warrant dismissal for a failure to timely file an appellate brief. 870 So. 2d 866, 869 (Fla. 3d DCA 2004). The Court found that "considerations of fairness dictate that if a failure

to file the brief by the deadline may subject the appeal to dismissal, there must be fair warning of that fact in advance.” *Id.*

13. Here, Appellant was provided with a fair warning on March 21, 2024, that no further extensions of time in which to file its Initial Brief would be granted. The March 21, 2024 Order required that the Initial Brief be filed by April 4, 2024. Appellant’s Motion to Supplement the Record did not request a further extension of time to file the Initial Brief, and the Order granting the motion did not extend the time.

14. The Court waited until May 29, 2024 – fifty-four (54) days after the Initial Brief’s due date – to dismiss this appeal. Appellant did not file this motion or its Initial Brief for an additional fifteen (15) days after dismissal.

15. Appellant provides no justification, excusable neglect, or good cause for: (i) its misunderstanding the Court’s May 1, 2024; (ii) the nearly two months it took to obtain the full trial transcript; (iii) its failure to seek and obtain a sixth extension of time to file its Initial Brief; (iv) why it waited an additional fifteen (15) days after this appeal was dismissed to seek a reinstatement of this appeal and to file its Initial Brief; and (v) importantly, why it has not sought reconsideration of the order dismissing its appeal.

WHEREFORE, Appellee Southern Coatings, Inc. respectfully requests that the Court deny Appellant’s Motion to Reinstate Appeal, strike the filing

of Appellant's Initial Brief from the docket, and grant Appellee such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed via the Court's e-filing portal and that a copy of the foregoing has been served via e-mail on counsel for Appellant Star Lakes Association, Inc., Daniel A. Bushell, Esq., of Bushell Law, P.A., dan@bushellappellatelaw.com, on this 21st day of June, 2024.

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