

NO. 02-19-00394-CV

IN THE COURT OF APPEALS
FOR THE SECOND APPELLATE DISTRICT OF TEXAS AT FORT WORTH
~~2nd COURT OF APPEALS
FORT WORTH, TEXAS~~

VICTOR MIGNOGNA
Appellant/Cross-Appellee

2/14/2020 5:11:43 PM
DEBRA SPISAK
Clerk

v.

FUNIMATION PRODUCTIONS, LLC, JAMIE MARCHI, MONICA RIAL,
AND RONALD TOYE
Appellees/Cross-Appellants

FROM 141ST DISTRICT COURT
TARRANT COUNTY, TEXAS
CAUSE NO. 141-307474-19

**APPELLEES/CROSS-APPELLANTS' UNOPPOSED MOTION
TO RETAIN APPEAL AND ENLARGE TIME TO FILE BRIEF**

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**ATTORNEYS FOR APPELLEES/
CROSS-APPELLANTS**

UNOPPOSED MOTION TO RETAIN APPEAL AND TO ENLARGE TIME TO
FILE CROSS-APPELLANTS' OPENING BRIEF AND
RESPONSE TO APPELLANT/CROSS-APPELLEE'S OPENING BRIEF

Appellees/Cross-Appellants in the above-styled and numbered appellate proceeding hereby file this Unopposed Motion to Retain their Appeal and to Enlarge Time to File their Opening Brief and Response to Appellant's Opening Brief ("Motion"), and for same would show as follows:

SUMMARY OF MOTION & REQUESTED RELIEF

1. Appellees/Cross-Appellants Monica Rial and Ronald Toye ("Appellees/Cross-Appellants") respectfully request that the Court retain their appeal and grant an extension of time to March 19, 2020, to file their (1) Opening Brief and (2) Response to Appellant Victor Mignogna's ("Appellant/Cross-Appellee") Opening Brief. This is Appellees/Cross-Appellants' first request for an extension of time to file their brief.

CROSS-APPELLANTS' MOTION TO RETAIN APPEAL AND ENLARGE
TIME TO FILE OPENING AND RESPONSE BRIEFS

2. The matter from which this cross appeal is sought was pending in the 141st Judicial District Court, Tarrant County, Texas.

3. Appellant/Cross-Appellee filed his Notice of Appeal on or about October 24, 2019, before the trial court entered a Final Judgment.

4. The cross appeal is taken from the trial court's Order dated November 25, 2019, in which the trial court awarded attorneys' fees and sanctions to Cross-

Appellants in the amount of \$100,000.00 without considering evidence of time and labor supporting a higher award.

5. Cross-Appellants filed their cross notice of appeal on December 13, 2019.

6. Appellant/Cross-Appellee's deadline to file his Opening Brief was originally set for January 27, 2020. This Court then granted Appellant/Cross-Appellee's unopposed motion to enlarge time, extending the deadline to file his Opening Brief to February 18, 2020. Appellees/Cross-Appellants' Response deadline, therefore, is 30 days after Appellant/Cross-Appellee's extended deadline.

7. Although the deadline for Appellees/Cross-Appellants to file their Opening Brief remained set by the Court for January 27, 2020, Cross-Appellants intended for their Opening Brief to be filed simultaneously and concurrently with their now-extended deadline to respond to Appellant/Cross-Appellee's Opening Brief—on or about March 19, 2020. Appellate courts inquire whether there is a reasonable explanation for the requested extension, as is the case here. *In re J.I.*, 156 S.W.3d 651, 652 (Tex. App.—Fort Worth 2005, no pet.).

8. Appellees/Cross-Appellants never intended to abandon their appeal. Rather, they intended to file all briefs simultaneously. Therefore, to avoid any confusion and ensure consistency, Appellees/Cross-Appellants respectfully request that this Court retain their cross-appeal and enter an order extending the deadline to file their Opening Brief and Response Brief to March 19, 2020—30 days following

the deadline for Appellant/Cross-Appellee to file his Opening Brief. The relief requested is unopposed.

CERTIFICATE OF CONFERENCE

9. The undersigned, via electronic mail, conferenced with counsel for Appellant/Cross-Appellee, on February 11, 2020 regarding the merits of this Motion. Specifically, counsel for Appellees informed Appellant's counsel that they would ask the Court to retain the appeal and enter an order extending Appellees/Cross-Appellants' deadline to file their Opening Brief and Response to Appellant/Cross-Appellee's Opening Brief to March 19, 2020. Counsel for Appellant/Cross-Appellee's responded that he was not opposed to the requested extension. Therefore, this Motion is presented to the Court as unopposed.

WHEREFORE, Appellees/Cross-Appellants pray that this Court enter an order enlarging the time to March 19, 2020, in which they may file their Opening Brief and Response to Appellant/Cross-Appellee's Opening Brief, and for such other relief to which they may be entitled.

Respectfully submitted,

/s/ Rusty J. O'Kane

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, a true and correct copy of the foregoing document was served on counsel of record for all parties through the Court's e-filing system.

/s/ Rusty J. O'Kane

Rusty J. O'Kane