

CAUSE NO. 2023-18325

ELIAS HERNANDEZ GARCIA, HELI
ORDONEZ, and BMG MARBLE &
GRANITE, INC.,

Petitioners,

v.

R & R PROPERTIES and
CONSTABLE ALAN ROSEN,

Respondents.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

PETITIONERS' VERIFIED MOTION TO REINSTATE CASE ON DOCKET

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioners, ELIAS HERNANDEZ GARCIA, HELI ORDONEZ, and BMG MARBLE & GRANITE, INC., ("Petitioners") hereby file this Motion to Reinstate Case on Docket, moving the Court to reinstate this case on its docket, and respectfully show as follows:

This case was dismissed by an order entered on August 28, 2023 for "failure to comply with the notice dated June 14, 2023." The absence of Petitioners' Counsel on this date, or prior filing of a Motion to Retain, was not intentional or the result of conscious indifference, but was due to failure of receipt of notice. Petitioners' Counsel was unaware of the Court's notice of intent to dismiss dated June 14, 2023; otherwise, Petitioners' Counsel would have acted on the notice accordingly. Petitioners' Counsel only recently discovered that the Court did in fact dismiss the case for want of prosecution upon receipt of a "Case Notification" from the Harris County District Clerk's Office on September 6, 2023. Upon receipt thereof, Petitioners' Counsel scoured their files to confirm whether they had received the Court's notice dated June 14, 2023; however, no such notice was found either electronically or physically. Petitioners' Counsel is in no way

implicating any wrongdoing by the Court, the Court's staff, or the District Clerk's Office in this matter.

A court should grant this motion to reinstate as the Petitioners' non-compliance with the notice dated June 14, 2023 was unintentional and was by accident or mistake. TEX. R. CIV. P. 165a(3); *Smith v. Babcock & Wilcox Constr. Co.*, 913 S.W.2d 467, 468 (Tex. 1995); *Melton v. Ryander*, 727 S.W.2d 299, 301-302 (Tex.App.—Dallas 1987, writ ref'd n.r.e.) To be certain, a party's failure to appear is not intentional or due to conscious indifference within the meaning of Rule 165a merely because it was deliberate. *Smith*, 913 S.W.2d at 468.

Petitioners' Counsel believe that it would be in the interest of justice to reinstate this case and reinstatement would be more efficient both in time and cost, and that, given the circumstances, reinstatement of this matter is proper and the most judicially efficient manner for this case to proceed.

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that the Court grant this Motion to Reinstate Case on Docket, order the reinstatement of this case, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

SOVANY LAW FIRM

/s/Herrick L. Sovany

Herrick L. Sovany

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF CONFERENCE

I certify that counsel for Petitioners have attempted to discuss this matter with with counsel for Respondents by way of requesting a phone call via email to which Petitioners' counsel has received no response as of the timing of the filing of this Motion.

/s/ Herrick L. Sovany
Herrick L. Sovany

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure on all counsel of record on this the 12th day of September 2023.

/s/ Herrick L. Sovany
Herrick L. Sovany


Unofficial Copy Office of Marilyn Burgess District Clerk

VERIFICATION

STATE OF TEXAS §

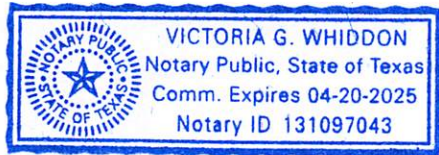
COUNTY OF HARRIS §

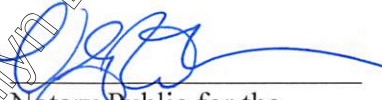
I, Herrick L. Sovany, hereby state that in the above cause and the information provided in the attached Petitioners' Verified Motion to Reinstate Case on Docket is true and correct.



Herrick L. Sovany

SUBSCRIBED AND AFFIRMED to before me this 12th day of September 2023 by Herrick L. Sovany.





Notary Public for the
State of Texas

Unofficial Copy Office of Marlin Burgess District Clerk

Automated Certificate of eService

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Victoria Whiddon on behalf of Herrick Sovany
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Envelope ID: 79481658
Filing Code Description: Motion to Reinstate
Filing Description: Motion to Reinstate Case on Docket
Status as of 9/13/2023 9:28 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jerry Schutza		schutzalaw@yahoo.com	9/12/2023 8:08:54 PM	SENT

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