

IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP, D/B/A BLUE DOG'S PUB,
A NEVADA CORPORATION; STUART
VINCENT, AN INDIVIDUAL; JEFFREY
B. VINCENT, AN INDIVIDUAL; AND
JEFF WHITE, AN INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

TROPICANA INVESTMENTS, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Respondent/Cross-Appellant.

No. 80849

FILED

JAN 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

O R D E R

Appellants/cross-respondents have filed an untimely motion for a second extension of time to file the combined reply brief on appeal and answering brief on cross-appeal. Once a party receives a telephonic extension of time to perform an act, further extensions of time to perform that same act are barred unless the moving party files a motion for an extension of time demonstrating extraordinary and compelling circumstances in support of the requested extension. NRAP 26(b)(1)(B); NRAP 31(b)(3)(A)(iv). Appellants/cross-respondents previously received a telephonic extension of time to file their combined brief and do not demonstrate extraordinary and compelling circumstances in support of the current extension request. Appellants/cross-respondents also do not explain why their motion was not timely filed. *See* NRAP 28.1(f) (providing that motions for extensions of time in cases involving cross-appeals are governed by Rule 31(b)); NRAP 31(b)(3) ("A motion for extension of time for filing a brief may be made no later than the due date for the brief.").

Respondent/cross-appellant opposes the motion, pointing out its untimely filing and counsel's failure to demonstrate extraordinary and compelling circumstances. Respondent/cross-appellant notes that appellants/cross-respondents previously filed an untimely motion for an extension of time to file their opening brief. The order granting that motion specifically reminded counsel for appellants/cross-respondents of the burden to demonstrate extraordinary and compelling circumstances, but appellants/cross-appellants have nevertheless failed to carry their burden. Based on this conduct, respondent/cross-appellant argues, the combined brief should be struck and the extension motion denied. Respondent/cross-appellant also suggests that the appeal should be dismissed.

In reply, counsel for appellants/cross-respondents states that no extension motion was required because the combined brief has already been filed and "[t]he present motion was respectfully submitted out of an abundance of caution." Counsel asserts there is no prejudice from the untimely filing and the filed combined brief addresses the merits of the appeal.

A motion for an extension of time must be filed when a party cannot or does not file a brief by its due date. The motion must be filed on or before the due date for the brief. NRAP 31(b)(3). This is true even if an untimely brief is filed by the clerk's office. Counsel for appellants/cross-respondents is admonished for failing to comply with this court's rules. Counsel is again reminded that once he receives a telephonic extension of time to file a brief, any further extension requests must demonstrate extraordinary and compelling circumstances in support. NRAP 26(b)(1)(B); NRAP 31(b)(3)(A)(iv). Future failure to comply with this court's rules may result in the imposition of sanctions.

Despite counsel's failure to comply with this court's rules, appellants/cross-respondents' extension motion is granted. The combined brief was filed on December 31, 2020. Respondent/cross-appellant's requests to strike the combined brief or dismiss this appeal are denied.

Respondent/cross-appellant's motion for an extension of time to file the reply brief on cross-appeal is granted to the following extent. NRAP 31(b)(3). Respondent/cross-appellant shall have until February 5, 2021, to file and serve the reply brief on cross-appeal. Failure to timely file the reply brief on cross-appeal may result in the imposition of sanctions, including the disposition of this matter without a reply brief on cross-appeal.

It is so ORDERED.

 C.J.

cc: Lovato Law Firm, P.C.
Marquis Aurbach Coffing