

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC04-2443

SAIA MOTOR FREIGHT LINE, INC. etc., et al.,

Petitioners,

vs.

KEICHAN LEWIS and LESLIE REID,

Respondents.

PETITIONER'S REPLY BRIEF ON THE MERITS

ON REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL
CASE NO.: 3D03-2140 and 3D03-2713

HINDA KLEIN, ESQUIRE
CONROY, SIMBERG, GANON, KREVANS & ABEL, P.A.
3440 Hollywood Boulevard
Second Floor
Hollywood, Florida 33021
(954) 961-1400 (Broward)
(305) 940-4821 (Dade)

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POINT ON APPEAL

**THIS COURT SHOULD RESOLVE THE
CERTIFIED CONFLICT BY DETERMINING
THAT, PURSUANT TO FLORIDA RULE OF CIVIL
PROCEDURE 1.525, A MOTION TO TAX COSTS
MUST BE FILED WITHIN 30 DAYS OF ENTRY OF
THE FINAL JUDGMENT AND THAT A MOTION
FILED THEREAFTER IS DEEMED UNTIMELY
UNLESS THE MOVANT HAS COMPLIED WITH
FLORIDA RULE OF CIVIL PROCEDURE 1.090
AND PROPERLY MOVED FOR AN
ENLARGEMENT OF TIME TO FILE THE
MOTION.**

ARGUMENT

THIS COURT SHOULD RESOLVE THE CERTIFIED CONFLICT BY DETERMINING THAT, PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.525, A MOTION TO TAX COSTS MUST BE FILED WITHIN 30 DAYS OF ENTRY OF THE FINAL JUDGMENT AND THAT A MOTION FILED THEREAFTER IS DEEMED UNTIMELY UNLESS THE MOVANT HAS COMPLIED WITH FLORIDA RULE OF CIVIL PROCEDURE 1.090 AND PROPERLY MOVED FOR AN ENLARGEMENT OF TIME TO FILE THE MOTION.

In the Respondents' Brief, they simply reassert, as they did below, that this Court's decision in Gulliver Academy Inc. v. Bodek, 845 So. 2d 344 (Fla. 1997) stands for the proposition that where the Court reserves jurisdiction to tax costs in its Final Judgment, the Court retains jurisdiction to award costs on motion filed after thirty (30) days. We have never disputed that Gulliver says that. What we dispute is whether Gulliver remains good law in light of the Supreme Court's subsequent adoption of Florida Rule of Civil Procedure 1.442. We submit that it does not for the simple reason that this Court approved the mandatory wording of that Rule without any qualification.

The Respondents have also argued, unnecessarily, that courts have the discretion to extend the time period set forth in Rule 1.442, on motion to extend

that time period served pursuant to Rule 1.090. Once again, we have not disputed that issue. However, since the record in this case clearly indicates that at no time did the Respondents ever file such a motion or even verbalize a reason for the court to have granted such a motion, this argument is simply apropos of nothing and is certainly not dispositive of the issue raised in this case.

Rule 1.090 permits a **Court** and not a **party** to grant an extension of time to a party who files a **motion** where that party demonstrates its **excusable neglect** in failing to file a motion or other paper in a timely manner. There is nothing in the language of that rule which permits a party to unilaterally flout the rules of procedure simply because the trial court retains jurisdiction over the case, and yet that is precisely what the lower court held in this case and what the Respondents urge in their Brief. Such a finding by this Court would render that rule, as well as Rule 1.525, entirely meaningless and there is nothing in Gulliver which would indicate this Court's intent to invalidate future procedural rules setting forth a definitive time limitation on the filing of motions to tax costs. The only way Rules 1.090 and 1.525 may fairly be construed together is to require a party seeking an enlargement of time under Rule 1.525 to comply with the requirements of Rule 1.090, which is the only authority which permits such an enlargement of time. See, State, DOT v. Southtrust Bank, 886 So. 2d 393 (Fla. 1st DCA 2004)(rules 1.090 and 1.525 must be construed together and ignoring Rule 1.090(b) would render it meaningless). What the Respondents argue is that this Court should simply ignore **both** rules as long as the trial court reserves jurisdiction. Absent anything in either rule indicating that this Court intended for the rules to apply only where the trial court loses jurisdiction, there is simply no good reason why this Court should

adopt the Respondents' arguments. This is especially true in light of the complete absence of any policy to be served in doing so.

It is respectfully requested that this Court accept jurisdiction to resolve the conflict between the District Courts of Appeal and hold that Rule 1.525 requires a timely motion to tax costs or fees, absent a proper motion for an enlargement of time under Rule 1.090(b). Application of the rule in this case mandates that the cost judgment, based as it was on an untimely motion for which no enlargement of time was sought, be reversed.

CONCLUSION

For the foregoing reasons, the Petitioners SAIA MOTOR FREIGHT LINE, INC. and RAY CHARLES SELLARS respectfully request that this Court accept jurisdiction and reverse the cost judgment on the grounds that the motion to tax costs was untimely filed.

Respectfully submitted,

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 9th day of May, 2005, to: Marc Cooper, Esquire, Counsel for Plaintiff, Colson, Hicks, Eidson, Colson, Matthews, Martinez & Mendoza, 255 Aragon Avenue, Second Floor, Coral Gables, Florida 33134-5008; Patrick S. Cousins, Esquire, Cousins & Associates, 330 Clematis Street, Suite 218, West Palm Beach, Florida 33401-4602; Barbara Silverman, Colson, Hicks, Eidson, Colson, Matthews, Martinez & Mendoza, 255 Aragon Avenue, 2nd Floor, Coral Gables, Florida 33134-5008; Scott C. Murray, Esquire, Ricci, Hubbard, Leopold, Frankel & Farmer, P.A., 2925 PGA Boulevard, Suite 200, Palm Beach Gardens, Florida 33410.

CONROY, SIMBERG, GANON,
KREVANS & ABEL, P.A.
Attorneys for Petitioner
Venture Corporate Center I
Second Floor
3440 Hollywood Boulevard
Hollywood, Florida 33021
(954) 961-1400 (Broward)
(305) 940-4821 (Dade)

BY:
HINDA KLEIN, ESQUIRE

CERTIFICATE OF TYPEFACE COMPLIANCE

The undersigned hereby certifies that this brief is filed in compliance with the requirements set forth in Rule 9.210 of the Florida Rules of Appellate Procedure. The brief is presented in the Times New Roman, 14-point font.

Hinda Klein, Esquire

Florida Bar No.: 510815