

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13 CVS 5834

VELLEROS, INC., )  
Plaintiff )  
v. )  
TAREN J. PATTERSON, THOMAS C. UHL )  
and FLETCHER CLARK JOHNSTON, )  
Defendants )

**ORDER ON MOTION  
TO DISMISS APPEAL**

THIS MATTER comes before the Court upon Plaintiff's Motion to Dismiss Defendant Fletcher Clark Johnston's Appeal (the "Motion").

THE COURT, having considered the brief in support of the Motion, Defendant Johnston's failure to file an opposition to the Motion, and other appropriate matters of record, FINDS and CONCLUDES as follows:

1. On February 23, 2015, this Court issued an Opinion and Order (the "Order"). The Order was a final judgment and resolved all pending claims. Defendant Johnston subsequently appealed the Order by filing a Notice of Appeal with this Court on March 24, 2015. After electronically submitting a "Certificate of Transcript Documentation" with this Court on April 7, 2015, Defendant Johnston has failed to take any further steps in the pursuit of his appeal. Based Defendant Johnston's failure to fulfill the requirements of the North Carolina Rules of Appellate Procedure (the "Appellate Rule(s)"), Plaintiff filed the Motion with this Court on February 18, 2016.

2. Under Appellate Rule 25, a trial court may dismiss an appeal for failure to take an action required to present the case for appeal within the time limits set by the Appellate Rules. *Carter v. Clements Walker PLLC*, 2014 NCBC LEXIS 12, \*7 (N.C. Super. Ct. 2014) ("Appellate Rule 25 is a further codification of the trial court's common-law authority to

dismiss ‘abandoned’ appeals . . . . [W]hen an appeal has not yet been docketed with the appellate court, the trial court retains jurisdiction over the case.” (internal quotations omitted) (citing *Whitfield v. Todd*, 116 N.C. App. 335, 337, 447 S.E.2d 796, 798 (1994)). According to Appellate Rule 25, an appellee’s motion to dismiss an appeal “shall be allowed unless compliance or a waiver thereof is shown on the record, or unless the appellee shall consent to the action out of time, or unless the court for good cause shall permit the action to be taken out of time.”

3. In light of the length of time since Defendant’s last contact with the Court or other parties regarding the appeal, the notice that Defendant has had to respond to the Motion, and Defendant’s failure to take any action to further his appeal as required by the Appellate Rules, this Court must DISMISS the appeal.

THEREFORE, IT IS ORDERED that the Motion is GRANTED, and Defendant’s appeal in this matter is DISMISSED, with prejudice.

This the 16th day of March, 2016.

/s/ Gregory P. McGuire  
Gregory P. McGuire  
Special Superior Court Judge  
for Complex Business Cases