

KT Client Success

Kilpatrick Townsend Wins Separation Motion, Giving Clients an Equitable Chance to Appeal

After assuming an appellate motion's case at almost the eleventh hour, Kilpatrick Townsend — led by Dallas Counsel **Jason Steed** — won a separation motion for our developer clients, granting them ample time to file an opening brief after almost losing the option due to delayed court records.

When developer/company owner and all-but-one of his co-plaintiffs (the group) lost all claims and incurred monetary damages after a four-week trial, the group appealed the entire judgment, while the one co-plaintiff, who won all claims and most attorney fees, only challenged the amount of fees awarded. Next, the winning co-plaintiff requested only the portion of the reporter's record that dealt with fees, while the group requested the full record, arguably a few weeks late. Since the full record was voluminous and required significant time to transcribe, the group requested an extension to submit their opening brief. The court denied the extension, citing the delay in requesting the record.

Over the next several months, the group filed for multiple extensions, while still waiting to receive the full record needed to write the brief, most of which were denied. At one point, the group filed a brief to comply with the court's order, but failed since it contained no citations to the record due to lack of access to the full record. Finally, the court informed the group that it would decide the case based only on the defendants' brief — filed after the court struck the group's brief — but they could seek leave to file a brief later, when the full record was filed. After the

full record was filed several months later, the court still had not issued a decision so the group consulted one of their trial attorneys, who advised them to contact the best appellate attorney he knew — Jason Steed at Kilpatrick Townsend. Within a few days, the group hired the firm to fix the situation.

Two days later, the firm filed a short motion for leave to file a brief, as suggested by the court, which was denied without any explanation. After conferring with Kilpatrick Townsend Houston Counsel **Ed Hubbard**, we filed a motion to reconsider, asking the court to separate the group's appeal from the winning co-plaintiff's appeal, which had been stalled due to the confusion over the record. We also requested a new briefing schedule for our clients' appeal, explaining how the court's refusal went against procedural rules and essentially denied their right to a meaningful appeal since they now had access to the full record to file the brief.

After several weeks passed, the firm considered preemptively filing for mandamus relief at the Texas Supreme Court. Fortunately, the court granted our motion to reconsider in full, separating the appeals and effectively hitting the restart button on the appeal for the group. Regardless of the merits, now our clients have a fair shot at launching an appeal.

To successfully represent our client, Kilpatrick Townsend Counsel Jason Steed, with the assistance of Counsel Ed Hubbard, worked across multiple offices to overcome obstacles and achieve this substantial result.