

STATE OF NORTH CAROLINA
CUMBERLAND COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16CVS000995-250
MASTER FILE
(related case 16CVS005904-250)

RANDAL MENSCHER;
ERIC MENSCHER; and TROY
MENSCHER, Individually and
Derivatively on behalf of STAR
LEASING, INC., a North Carolina
Corporation,
Plaintiffs,

v.

PACIFIC ALLIANCE
CORPORATION, a Utah Corporation;
STEVEN K. CLARK; REX
WILHOITE; CORY PAYNE; BURKE
PERRETT; and MARQUETTE
TRANSPORTATION FINANCE, LLC,
a Missouri Limited Liability
Company,
Defendants,

and

STAR LEASING, INC., a North
Carolina Corporation,
Nominal Defendant.

PACIFIC ALLIANCE
CORPORATION,
Plaintiff,

v.

STAR LEASING, INC.,
Defendant.

**ORDER AND OPINION
ON PLAINTIFFS' MOTION
TO DISMISS APPEAL AND
ALL CLAIMS ASSERTED BY
CERTAIN DEFENDANTS**

1. Nine years ago, this Court entered an order that partly granted and partly denied Plaintiffs Randal Menscer, Eric Menscer, and Troy Menscer's motion for partial summary judgment. Following that decision, Defendants Pacific Alliance Corporation, Steven Clark, Rex Wilhoite, Cory Payne, and Burke Perrett filed a notice of interlocutory appeal. That is as far as the appeal ever went. In late 2017, Pacific Alliance filed for Chapter 11 bankruptcy, triggering a stay that lasted through the end of the bankruptcy proceedings earlier this year. The question now is how to move forward after such a long delay, given the existence of a nine-year-old appeal that was never perfected and other, unadjudicated claims that remain in limbo.

2. The Menscers contend that Pacific Alliance, Clark, Wilhoite, Payne, and Perrett have stopped participating in this matter and are no longer prosecuting their appeal and any claims for relief. For that reason, the Menscers have moved to dismiss the appeal under Rule 25(a) of the North Carolina Rules of Appellate Procedure and to dismiss whatever claims may be pending under Rule 41(b) of the North Carolina Rules of Civil Procedure. (See ECF No. 177.) As discussed below, the Court **GRANTS** the motion.

Player McLean, LLP, by Lonnie M. Player, Jr., and Stevens Martin Vaughn & Tadych, PLLC, by Michael J. Tadych, for Plaintiffs Randal Menscer, Eric Menscer, and Troy Menscer.

McGuireWoods LLP, by Jodie Hermann Lawson, for Defendant Marquette Transportation Finance, LLC.

Yarborough, Winters & Neville, P.A., by J. Thomas Neville, for Defendant/Nominal Defendant Star Leasing, Inc.

U.S. Department of Justice, Civil Division, Tax Litigation Branch, by Stephen Ho, Matthew Fesak, and Elizabeth Pruitt, for Intervenor United States of America.

No counsel appeared for Defendants Pacific Alliance Corporation, Steven K. Clark, Rex Wilhoite, Cory Payne, or Burke Perrett.

Conrad, Chief Judge.

I. FINDINGS OF FACT

3. This action comprises two consolidated cases that began in 2016. The pleadings are somewhat hard to follow because of a realignment of the parties and a round of partial repleading that occurred after the consolidation. For present purposes, it will suffice to note that the Menscers asserted several claims—directly and derivatively on behalf of Star Leasing, Inc.—against Pacific Alliance, Clark, Wilhoite, Payne, and Perrett, among others. In addition, Pacific Alliance pursued an action to enforce a foreign judgment that had been entered in its favor and against Star Leasing. It does not appear that Clark, Wilhoite, Payne, and Perrett ever asserted any claims for relief.

4. In June 2017, the Court granted in part the Menscers’ motion for partial summary judgment. In the same order, the Court denied Pacific Alliance’s motion to enforce the foreign judgment. *See generally Menscer v. Pac. All. Corp.*, 2017 NCBC LEXIS 53 (N.C. Super. Ct. June 16, 2017) (granting partial summary judgment on the Menscers’ claim for declaratory judgment, denying summary judgment on the

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Menscers' claim for violation of N.C.G.S. § 55D-18, and denying Pacific Alliance's motion to enforce the foreign judgment).

5. Pacific Alliance, Clark, Wilhoite, Payne, and Perrett timely filed a notice of appeal from that interlocutory decision. (*See* ECF No. 118.)

6. Although a Documentation of Transcription Arrangement form appears on the docket, a transcript of the summary-judgment hearing was never completed. (*See* Tadych Aff. ¶ 11, ECF No. 179; *see also* ECF No. 124.)

7. Nor did the appellants prepare a proposed record on appeal or file the record on appeal with the Supreme Court. (*See* Tadych Aff. ¶¶ 12, 13.)

8. In September 2017, counsel for Pacific Alliance, Clark, Wilhoite, Payne, and Perrett filed a motion to withdraw, which the Court granted on 13 October 2017. No counsel has appeared on behalf of these parties since that time. (*See* ECF Nos. 129, 137.)

9. In October 2017, Pacific Alliance filed for Chapter 11 bankruptcy in Utah. (*See* Tadych Aff. ¶ 15.)

10. In November 2017, this Court entered an order recognizing an automatic stay of all matters relating to Pacific Alliance pending completion of the bankruptcy proceedings. (*See* ECF No. 141.)

11. Clark, Wilhoite, Payne, and Perrett filed requests to expand the automatic stay so as to apply to them, but it does not appear that the Court entered an order granting or denying these requests. (*See* ECF Nos. 144–46, 149.)

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12. Clark and Wilhoite died in 2022 (a fact that was only recently disclosed to the Court). (*See* Tadych Aff. ¶ 27.)

13. In January 2026, the bankruptcy court in Utah entered an order closing the bankruptcy proceedings. (*See* Tadych Aff. Ex. C.)

14. In July 2026, the Court held a status conference to address how to resolve the issues that remain pending following the bankruptcy. Notice of the conference was properly given to all parties. Pacific Alliance, Payne, and Perrett did not appear at the conference individually or through counsel, and no one appeared on behalf of the estates of Clark or Wilhoit.

15. At no point before or after the bankruptcy proceedings did Pacific Alliance, Clark, Wilhoite, Payne, and Perrett perfect their appeal. (*See* Tadych Aff. ¶¶ 11–13, 23.)

16. On 23 July 2026, the Menscers filed the present motion seeking to dismiss the appeal and any and all claims that may have been asserted by Pacific Alliance, Clark, Wilhoite, Payne, and Perrett. Defendants Star Leasing and Marquette Transportation Finance, LLC informed the Menscers that they do not oppose the motion. No other party responded to the Menscers' communications and attempts to confer regarding the motion and the requested relief. (*See* Tadych Aff. ¶¶ 26–28.)

17. The time to respond to the motion has passed, and no responsive briefs were filed. The motion will therefore “be considered and decided as an uncontested motion.” BCR 7.6. The Court elects to decide the motion without a hearing. *See* BCR

7.4 (“The Court may rule on a motion without a hearing.”).

II. CONCLUSIONS OF LAW

18. The Court first addresses the request to dismiss the pending appeal before turning to the request to dismiss claims for failure to prosecute.

A. Motion to Dismiss Appeal

19. Although Pacific Alliance, Clark, Wilhoite, Payne, and Perrett filed their notice of appeal almost a decade ago, the appeal has never been docketed with the Supreme Court of North Carolina. As a result, this Court retains jurisdiction to decide the motion to dismiss the appeal, including determining whether the appeal has been abandoned. *See Whitfield v. Todd*, 116 N.C. App. 335, 337 (1994) (discussing trial court’s authority to dismiss “abandoned” appeals under N.C. R. App. P. 25(a)); *see also, e.g., L. Off. of Ashley-Nicole Russell, P.A. v. McLawhorn Legal Servs. PLLC*, 2026 NCBC LEXIS 101, at *3–5 (N.C. Super. Ct. Apr. 29, 2026) (dismissing notice of appeal); *Carter v. Clements Walker PLLC*, 2014 NCBC LEXIS 12, at *10, 18–19 (N.C. Super. Ct. Apr. 30, 2014) (same).

20. There is no need to belabor the issue: the appellants have abandoned their appeal. At no point before or after the conclusion of Pacific Alliance’s bankruptcy did the appellants obtain a transcript of the summary-judgment hearing, serve a proposed record on appeal, or file the record on appeal, as required by governing rules. *See* N.C. R. App. P. 7, 9, 11. They are not currently taking any steps to cure these defects. Nor have they filed anything in opposition to the motion to dismiss or

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otherwise participated in the litigation since the end of the bankruptcy proceedings in January 2026.

21. Even if the appellants wished to pursue their appeal, it is doubtful whether they could do so. Clark and Wilhoite are deceased. Payne and Perrett have not retained new counsel and have stopped responding to communications from the Menscers and notices from the Court. Likewise, Pacific Alliance has not retained new counsel and may not represent itself in this litigation. *See LexisNexis, Div. of Reed Elsevier, Inc. v. TRaviSHan Corp.*, 155 N.C. App. 205, 209 (2002) (holding that a corporation “must be represented by a duly admitted and licensed attorney-at-law”).

22. For all these reasons, the Court concludes that Pacific Alliance, Clark, Wilhoite, Payne, and Perrett failed to perfect their appeal and have since abandoned the appeal. The Court therefore grants the Menscers’ motion to dismiss the appeal.

B. Motion to Dismiss Claims for Failure to Prosecute

23. A party “may move for dismissal of an action or of any claim therein against him” due to the claimant’s “failure . . . to prosecute.” N.C. R. Civ. P. 41(b). In deciding whether to dismiss claims for failure to prosecute, the Court must address whether the claimant “acted in a manner which deliberately or unreasonably delayed the matter”; “the amount of prejudice, if any, to the” moving party; and “the reason, if one exists, that sanctions short of dismissal would not suffice.” *Greenshields, Inc. v. Travelers Prop. Cas. Co. of Am.*, 245 N.C. App. 25, 33 (2016) (citation and quotation marks omitted).

24. The only matter that appears to be at issue is Pacific Alliance's action to enforce a foreign judgment against Star Leasing. (*See* ECF No. 70.) As best the Court can tell, no claims for relief have ever been asserted by Clark, Wilhoite, Payne, and Perrett.

25. The Court concludes that Pacific Alliance has unreasonably delayed the litigation of its action to enforce the foreign judgment because it has ceased to participate in the litigation in any way. As noted, Pacific Alliance abandoned its appeal, failed to respond to the pending motion to dismiss, is no longer responding to communications from other parties and the Court, and did not appear at a properly noticed conference in July 2026. Furthermore, Pacific Alliance has not retained counsel and is not permitted to represent itself in this litigation. This "goes beyond a 'mere passage of time' and constitutes an unreasonable delay," amounting to an abandonment of the action. *Brunner v. Lodge on Lake Lure, LLC*, 2016 NCBC LEXIS 86, at *7 (N.C. Super. Ct. Nov. 3, 2016) ("Brunner's abandonment of his claims in this case and the other Related Cases deliberately and unreasonably delays the final adjudication of this action.").

26. In addition, the Court concludes that Pacific Alliance's lack of participation has caused unfair prejudice to the Menscers by unnecessarily delaying the final resolution of this litigation. The Court has considered lesser sanctions but concludes that they would be insufficient. Any attempt to compel participation by Pacific Alliance would be ineffective for the reasons discussed, doing little more than

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prolonging matters and forcing the Menscers to continue litigating abandoned claims against absent, unresponsive parties. *See, e.g., Cowen v. McLawhorn*, 208 N.C. App. 492, 498–505 (2010) (affirming dismissal for failure to prosecute, noting that “wholesale failure to prosecute can constitute a delaying tactic”); *Greenshields*, 245 N.C. App. at 33–34 (affirming dismissal for dilatory tactics); *Badillo v. Cunningham*, 177 N.C. App. 732, 735 (2006) (holding that a court need not explicitly reject every lesser sanction before dismissing). In an abundance of caution, and to ensure that there is no undue prejudice, the Court will dismiss the action without prejudice.

27. The Court therefore grants the motion to dismiss for failure to prosecute.

III. CONCLUSION

28. For all these reasons, the Court **GRANTS** the motion; **DISMISSES** the appeal by Pacific Alliance, Clark, Wilhoite, Payne, and Perrett; and **DISMISSES** without prejudice Pacific Alliance’s action to enforce a foreign judgment.

29. The Court **ORDERS** the parties to jointly tender a status report no later than 14 September 2026 detailing the matters that remain for judicial resolution and proposing appropriate steps to conclude this case efficiently.

30. Finally, to the extent that Clark, Wilhoite, Payne, and Perrett’s requests to expand the automatic bankruptcy stay were never decided, the Court now **DENIES** them as moot. (ECF Nos. 144, 145, 146, 149.)

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SO ORDERED, this the 31st day of August, 2026.

/s/ Adam M. Conrad
Adam M. Conrad
Chief Business Court Judge