

DEFENDANT'S MOTION TO INFORM THE COURT OF LACK OF JURISDICTION PENDING APPEAL

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA**

ANTONIO DE ANDRADE,
Plaintiff,

CASE NO: 50-2023-SC-011007-XXXX-SB

vs.

APPEAL NO: 4D2024-3229

MARCIO SOUSA SALES,
Defendant,

_____/

**DEFENDANT'S MOTION TO INFORM THE COURT OF LACK OF
JURISDICTION PENDING APPEAL**

COMES NOW, the Defendant, **Marcio Sousa Sales**, and respectfully moves this Honorable Court to acknowledge that it lacks jurisdiction over this matter while the appeal of its prior order is pending before the Fourth District Court of Appeal. In support of this Motion, the Defendant states as follows:

I. Background

1. The Circuit Court entered an **Order Directing the Defendant to Complete and Return the Fact Information Sheet** (the "Order") on **November 7, 2024**.
 2. Defendant timely filed a **Notice of Appeal** on **December 13, 2024**, appealing to the Order to the Fourth District Court of Appeal, where the matter is currently pending.
 3. The Court has scheduled a hearing for **February 9, 2025**, despite the appeal remaining unresolved.
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II. Argument

4. Under **Florida Rule of Appellate Procedure 9.130(f)**, the filing of a notice of appeal divests the trial court of jurisdiction over those aspects of the case that are the subject of the appeal. Specifically, the trial court may not take further action that would affect the rights of the parties or the subject matter under review.
 - **Rule 9.130(f)**: "In the absence of a stay pending review, the lower tribunal may proceed with all matters, including the trial or final

hearing, in the action... except that the lower tribunal may not render a final order disposing of the cause pending such review."

5. The Fourth District Court of Appeal has jurisdiction over the Defendant's appeal, which includes the issue of the trial court's authority to require the Fact Information Sheet. Consequently, this Court is precluded from taking further action regarding the enforcement of the appealed Order.
 6. Case law supports the principle that the trial court loses jurisdiction over matters under appellate review:
 - **State ex rel. Cantera v. District Court of Appeal, Third District, 555 So. 2d 360 (Fla. 1990):** The Florida Supreme Court held that once an appeal is filed, jurisdiction over the subject matter of the appeal shifts to the appellate court.
 - **Slatcoff v. Dezen, 74 So. 2d 59 (Fla. 1954):** The court emphasized that the trial court is prohibited from taking further action on matters currently under appellate review.
 - **Bailey v. Bailey, 392 So. 2d 49 (Fla. 3d DCA 1981):** The appellate court confirmed that jurisdiction over a matter on appeal rests solely with the appellate court.
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III. Compliance by Defendant

7. Notwithstanding this procedural issue, the Defendant has complied with the trial court's directive to the extent possible by mailing and emailing the completed **Fact Information Sheet** to the Plaintiff, **Antonio De Andrade**, on **[date of mailing and emailing]**.
 8. Defendant's actions demonstrate good faith and compliance while maintaining his right to appeal the validity of the underlying Order.
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IV. Relief Requested

9. Given that the appeal is pending and this Court lacks jurisdiction over the Order under review, the Defendant respectfully requests this Court to:
 - o Cancel or vacate the scheduled hearing on **February 9, 2025**.
 - o Refrain from taking any further action regarding the enforcement of the appealed Order until the appellate court issues a ruling.
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WHEREFORE, the Defendant, Marcio Sousa Sales, respectfully moves this Honorable Court to acknowledge its lack of jurisdiction over the matter pending

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appeal, cancel the scheduled hearing, and take no further action on the appealed Order.

Marcio Sousa Sales
22187 Aquila Street
Boca Raton, FL 33528
(561) 909-8184

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint for Damages has been furnished via Email to the Plaintiff at the following address:

Email: tjlmarble@yahoo.com on November 11, 2024.

Respectfully submitted,

Marcio Sousa Sales
22187 Aquila Street
Boca Raton, FL 33528
(561) 909-8184