



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ABATEMENT ORDER

Appellate case name: Lucrecia Mendia v. Fiesta Mart, LLC
Appellate case number: 01-19-00018-CV
Trial court case number: 2017-63727
Trial court: 333rd District Court of Harris County

On June 30, 2020, we ordered the clerk of the 333rd District Clerk of Harris County to deliver to the Clerk of this court the original of Exhibit D (a DVD) to Plaintiff's Motion for Leave to File Late Response, Response in Opposition to Defendant Fiesta Mart, LLC's First Amended Summary Judgment and Request for Rehearing, filed November 7, 2018. On July 13, 2020, the Civil/Family Post Trial Clerk with the Harris County District Clerk's Office averred to this court that Exhibit D, a DVD, referenced above cannot be located in the court's file. The court clerk further stated that the DVD may not have been filed because the motion was never set on a docket.

Accordingly, the trial court is directed to conduct a hearing to determine the following: (1) whether Exhibit D, a DVD, was filed in the trial court as an exhibit to Plaintiff's Motion for Leave to File Late Response, Response in Opposition to Defendant Fiesta Mart, LLC's First Amended Summary Judgment and Request for Rehearing; (2) if Exhibit D was filed, whether the exhibit has been lost or destroyed; (3) whether the parties can agree on replacement of the missing exhibit with a copy, or if not, whether the trial court can determine that a copy accurately duplicates the missing exhibit with reasonable certainty; and (4) whether Exhibit D (original or a copy) should be included in a supplemental clerk's record. *See* TEX. R. APP. P. 34.5(e). The court is directed to reduce its findings to writing and to have a supplemental clerk's record containing those findings (and Exhibit D if applicable) filed with the clerk of this court, together with a reporter's record from the hearing, within 30 days of the date of this order.

The appeal is abated, treated as a closed case, and removed from this court's active docket. The appeal will be reinstated on this court's active docket when the issue related to the missing exhibit is resolved. The court will also consider an appropriate motion to

reinstate the appeal filed by either party, or the court may reinstate the appeal on its own motion.

It is so ORDERED.

Judge's signature: /s/ Sherry Radack
 Acting individually Acting for the Court

Date: July 23, 2020