

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM A.D., 2004

LUIS ANIBAL KELLY d/b/a
BRAZOS HONDURAS

**

Appellant,

**

vs.

** CASE NO. 3D03-2524

OSCAR G. VICTORIA, Individually
and as the last officer and
director of VICTORIA EQUIPMENT
and PARTS, INC., a dissolved
Florida corporation,

**

LOWER TRIBUNAL
CASE NO. 01-22551 CA 01

**

**

Appellee.

**

Opinion filed July 14, 2004.

An Appeal from the Circuit Court for Miami-Dade County, Marc
Schumacher, Judge.

Louis C. Arslanian (Ft. Lauderdale), for appellant.

Millie Laguna, for appellee.

Before LEVY, GERSTEN, and FLETCHER, JJ.

FLETCHER, Judge.

Luis Anibal Kelly d/b/a Brazos Honduras appeals from a final
order of the trial court dismissing his lawsuit for lack of
prosecution. We affirm.

Kelly contends that the court, in applying Florida Rule of Civil Procedure 1.420(e)¹, should utilize a "lenient standard against dismissal" to allow adjudication on the merits if the limitation period for refiling has run. Kelly does not cite to any relevant case law to support this proposition. The trial court rejected Kelly's contention. We see no reason to effectively modify the rule - even if we could do so. (Which we can't.) Failure to prosecute is failure to prosecute notwithstanding the status of the case vis-à-vis the applicable limitations period.

Affirmed.

¹ "All actions in which it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 1 year shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a stipulation staying the action is approved by the court or a stay order has been filed or a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year shall not be sufficient cause for dismissal for failure to prosecute."