



**NUMBER 13-08-00390-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**BENIGNO CERDA, JR. AND FRANCISCO CERDA,**

**Appellants,**

**v.**

**COASTAL KING, LTD.,**

**Appellee.**

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**On appeal from the 370th District Court  
of Hidalgo County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Yañez, Rodriguez, and Benavides  
Memorandum Opinion Per Curiam**

This cause is before the Court on appellee's motion to dismiss appeal. Appellants, Benigno Cerda, Jr. and Francisco Cerda, attempted to perfect an appeal from an order granting summary judgment and entering death penalty sanctions ("summary judgment order") entered by the 370th District Court of Hidalgo County, Texas, in cause number

C-1930-06-G(1). On January 22, 2008, the trial court signed a summary judgment order disposing of all claims and causes of action against appellants. Appellants failed to timely file a motion for new trial or motion to modify judgment within thirty days after the summary judgment order was signed. See Tex. R. Civ. P. 329b(a). On February 22, 2008, appellants filed an untimely motion to modify the judgment. On May 20, 2008, the trial court signed a second order granting summary judgment and entering death penalty sanctions. The trial court's plenary power in this matter expired on February 21, 2008. See Tex. R. Civ. P. 329b(d). Accordingly, any orders or judgments entered after that date are void. Appellants filed a notice of appeal from the May 20, 2008, modified order on June 19, 2008. Pursuant to Tex. R. App. P. 26.1, appellants' notice of appeal was due on February 21, 2008, but was not filed until June 19, 2008.

On July 10, 2008, the Clerk of this Court sent notice of this defect so that steps could be taken to correct the defect, if it could be done. Appellants were advised that, if the defect was not corrected within ten days from the date of receipt of this Court's letter, the appeal would be dismissed. Appellee has filed a motion to dismiss indicating this Court does not have jurisdiction. To date, no response has been received from appellants in regards to the Court's letter or appellee's motion to dismiss.

The Court, having examined and fully considered the documents on file, hereby GRANTS appellee's motion to dismiss. Accordingly, the appeal is DISMISSED FOR WANT OF JURISDICTION.

PER CURIAM

Memorandum Opinion delivered and filed this the 16th day of April, 2009.