Court of Appeals
of the State of Georgia

ATLANTA, January 04, 2017

The Court of Appeals hereby passes the following order:

A17D0189. SK EMPIRE, LLC v. SOHAN ENTERPRISES, INC.

Sohan Enterprises, Inc. filed a dispossessory action against SK Empire, LLC in magistrate court. Following an adverse ruling, SK Empire appealed to the superior court. On November 15, 2016, the superior court entered a judgment in favor of Sohan Enterprises. On December 5, 2016, SK Empire filed this application for discretionary appeal. Sohan Enterprises has filed a motion to dismiss the application as untimely filed.

Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994). The underlying subject matter here is a dispossessory action. OCGA § 44-7-56 provides that "*any*" appeal from a dispossessory judgment must be filed within seven days of the date the judgment was entered. *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521, 522 (521 SE2d 456) (1999) (emphasis supplied); see also *Radio Sandy Springs v. Allen Road Joint Venture*, 311 Ga. App. 334 (715 SE2d 752) (2011).

Because this application was filed 20 days after the superior court's order was entered, it is untimely. "The filing deadline is jurisdictional, and this Court is unable to accept an untimely application." *In the Interest of B. R. F.*, 338 Ga. App. 762 (791

SE2d 859) (2016). Accordingly, the motion to dismiss filed by Sohan Enterprises is hereby GRANTED, and this application is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 01/04/2017
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen , *Clerk.*