

**20220309**  
**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

4201 2 <sup>nd</sup> Avenue W., LLC, d.b.a.	)	
Safari Fuels 105,	)	
Plaintiffs and Appellant,	)	Supreme Court No.: 20210107
	)	
vs.	)	District Court No.: 53-2021-CV-00979
	)	
First State Bank & Trust,	)	
Defendant and Appellee,	)	
	)	
and	)	
	)	
First State Bank & Trust,	)	
Third-Party Plaintiff and Appellee,	)	
	)	
vs.	)	
	)	
4201 2 <sup>nd</sup> Avenue W., LLC,	)	
Third-Party Defendant and	)	
Appellant,	)	
	)	
and	)	
	)	
Safari Fuels Management, LLC, Topped	)	
Off Coffee, LLC,	)	
Third-Party Defendants,	)	
	)	
and	)	
	)	
City of Williston,	)	
Third-Party Defendant and	)	
Appellee.	)	

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Notice of Motion, Motion, and Brief in Support of Motion for Extension of Time Within  
Which to File Third Party Defendant and Appellee's Brief

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**BRIEF OF THIRD-PARTY DEFENDANT AND APPELLEE**

**CITY OF WILLISTON**

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¶1. **COMES NOW**, the City of Williston represented by their attorneys of record Taylor D. Olson and Jordon J. Evert, and hereby makes this Motion pursuant to N.D.R.App. Pro. 26(b) for an Order extending the time within which the City may file their brief under N.D.R.App.Pro. 31(a). The City requests an extension of time to January 12, 2023, to match the extension given to First State Bank & Trust (herein “the Bank”), for the reasons herein.

¶2. Similar to the Bank, our office has been inundated with sickness, school closures, and the like. We have been struck with COVID and RSV and were closed for four days during the blizzard. We believe our brief will be fairly short but we want to make sure we can properly draft and submit a timely brief.

¶3 . Whether the District Court erred in allowing Susan Gordon to testify by telephone at trial despite Plaintiff’s failure to provide notice to Defendant of such request and for Plaintiff’s failure to file a formal motion pursuant to the North Dakota Rules of Court.

¶4. For the reasons contained herein, Third Party Defendant and Appellee City of Williston respectfully requests a continuance until January 12, 2023, to submit their brief.

Dated the 21<sup>st</sup> day of December, 2022.

/s/ Taylor D. Olson

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**Certificate of Service**

Undersigned counsel hereby certifies that on December 21, 2022, she filed this brief and motion electronically, using the North Dakota Supreme Court's E-filing Portal. Through this portal, counsel has served the other parties a copy of the motion and brief.

/s/ Taylor D. Olson

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STATE OF NORTH DAKOTA

4201 2nd Ave. W., LLC, d.b.a. Safari  
Fuels 105,

Plaintiff and Appellant,

vs.

First State Bank & Trust,  
Defendant and Appellee,

and

First State Bank & Trust,  
Third-Party Plaintiff and  
Appellee,

vs.

4201 2<sup>nd</sup> Ave. W., LLC,  
Third-Party Defendant and  
Appellant,

and

Safari Fuels Management, LLC, Topped  
Off Coffee, LLC,  
Third-Party Defendants,

and

City of Williston,  
Third-Pasty Defendant and  
Appellee.

**CERTIFICATE OF SERVICE**

Supreme Court No. 20220309

Williams County District Court  
Civil No. 53-2021-CV-00979

[¶1] Wanda L. Fischer hereby certifies that that the NOTICE AND MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE APPELLEE’S BRIEF were served by electronic means upon the following on December 19, 2022, by the filing of a true and correct copy thereof electronically with the Clerk of the North Dakota Supreme Court:

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Dated this 19th day of December, 2022.

OLSON & BURNS P.C.

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