

Appeal No. 22-CV-34



DISTRICT OF COLUMBIA COURT OF APPEALS

1814 INGLESIDE, LLC. *et al.* )  
 )  
Appellants, )  
 )  
v. ) CAB577-21  
 )  
SANTORINI CAPITAL, LLC, )  
 )  
Appellee. )

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AN APPEAL FROM THE SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
CIVIL DIVISION

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**BRIEF OF APPELLANTS  
1814 INGLESIDE, LLC and  
CHRISTOPHER HARRISON**

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**Certificate Required by Rule 28(a)(2)(A) of the**  
**General Rules of the**  
**District of Columbia Court of Appeals**

The undersigned, counsel of record for Appellant, Walter Woodyard, certifies that the following listed parties appeared below:

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These representations are made in order that judges of this Court, inter alia, may evaluate possible disqualification or recusal.

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1814 INGLESIDE, LLC and  
CHRISTOPHER HARRISON

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|                                      | ) |           |
| Appellee.                            | ) |           |

**BRIEF OF APPELLANTS**

**I. STATEMENT OF JURISDICTION**

Appellants, 1814 INGLESIDE, LLC and Christopher Harrison, assert that this appeal is from a final judgment which disposed of all of the claims of Appellee, SANTORINI CAPITAL, LLC, against the Appellants.

**II. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

1. Whether D.C. Code §42-3191.01, the Coronavirus Support Temporary Amendment Act of 2020, applied to the claim filed by the Appellee.

2. Whether the trial court improperly awarded damages in the amount of \$1,373,717.45.

3. Whether the trial court improperly awarded legal fees to the Appellee.

### **III. STATEMENT OF THE CASE**

On February 25, 2021 Appellee Santorini Capital, LLC (“Santorini”) filed its Complaint against the Appellants, 1814 Ingleside, LLC (hereinafter referred to as the “Ingleside”) and Christopher Harrison (hereinafter referred to as “Harrison”). The basis of the breach of contract claim was that Ingleside defaulted on two (2) Deed of Trust Notes (“Notes”) which were personally guaranteed by Harrison.

The Notes were secured by a residential dwelling located at 1814 Ingleside Terrace, N.W., Washington, D.C (“Property”). In response to the Complaint, on March 31, 2021, Appellants filed a motion to dismiss on the basis of D.C. Code §42-3191.01, the Coronavirus Support Temporary Amendment Act of 2020 (“Act”) which required mortgage holders to develop and implement a deferment plan for the outstanding mortgage loans. On May 3, 2021, the trial court denied the motion to dismiss, not based on the mortgage relief statute, but based on D.C. Code §28-

3814(b)(1A).

On November 1, 2021, Santorini filed a Motion for Summary Judgment. Appellants filed an Opposition to Santorini's Motion for Summary Judgment on November 15, 2021. On November 18, 2021, the trial court entered an order granting the Santorini's Motion for Summary Judgment. Appellants' filed a motion for reconsideration of the summary judgment which the court denied on December 22, 2021. On December 3, 2021 Santorini filed a motion for attorneys' fees and costs which the court granted in part on December 22, 2021. The Appellants' Notice of Appeal was timely filed on January 21, 2022.

#### **IV. STATEMENT OF THE FACTS**

On or about February 5, 2021, Santorini filed its Complaint against Harrison Ingleside for Breach of Contract. The basis of the Breach of Contract claim was that Ingleside defaulted on two (2) Deed of Trust Notes ("Notes") which were personally guaranteed by Harrison. The Notes were secured by a residential dwelling located at 1814 Ingleside Terrace, N.W., Washington, D.C. Santorini's Complaint included a demand for pre- and post-judgment interest.



Prior to the filing of the Complaint, Santorini delivered at least three (3) default letters to the Appellants, including demands for lump sum payments and threats to foreclose on the Property. In one of the default letters dated November 27, 2020, Santorini acknowledges that there was an agreement to extend the maturity date to October 31, 2020. App. at 36. By letter dated January 8, 2021, Santorini was provided with a copy of the current statute regarding restrictions on collection actions regarding both residential and commercial mortgages because of the existing COVID-19 public health emergency. App. at 38.

## **V. ARGUMENT**

### **A. Standards of Appellate Review**

The Court of Appeals reviews denial of a motion to dismiss based on interpretation of a statute *de novo*. Pardue v. The Center City Consortium Schools of the Archdiocese of Washington, Inc., 875 A.2d 669 (2005); Fred F. Blanken & Co. v. District of Columbia Dept. of Employment Services, 825 A.2d 894 (2003). Likewise, this Court reviews summary judgments *de novo*. Liu v. U.S. Bank National Association, 179 A. 3d 871 (2018). Therefore, this Court must independently determine the validity of the denial of the Appellants' motion to dismiss, and the granting of Santorini's motion

summary judgment. It is the Appellants' contention that upon conducting an independent review of the record, and the current state of the law, this Court will find that the Complaint should have been dismissed, and that the summary judgment entered by the trial court should be reversed.

In reviewing the summary judgment, this Court applies the same standard as the trial court did in ruling on the motion. Bartel v. Bank of America Corporation, 193 A.3d 767, 770-771 (2018) citing Washington v. District of Columbia, 137 A.3d 170, 173 (D.C. 2016). As with the trial court, this Court is required to review the record in the light most favorable to the party opposing summary judgment. Bartel, *supra*. "Summary judgment may be granted 'only if' the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Qatar National Bank v. Winmar, Inc., 650 F.Supp.2d 1, 5 (2009). In other words, the moving party must satisfy two requirements: first, demonstrate that there is no "genuine" factual dispute and, second, that if there is it is "material" to the case. "A dispute over a material fact is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the non-moving party.'" Arrington v. United States, 473 F.3d

329, 333 (D.C.Cir.2006) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). “A fact is ‘material’ if it might affect the outcome of the case under the substantive governing law.” Liberty Lobby, 477 U.S. at 248, 106 S.Ct. 2505. Santorini did not meet this standard. As set forth below, there were material facts which were in dispute which should have precluded the entry of summary judgment in Santorini’s favor.

“It is axiomatic that summary judgment is an extreme remedy which is appropriate only when the moving party is clearly entitled to judgment as a matter of law. The movant in such a case must bear the burden of proving that no genuine issue of material fact exists. Moreover, all inferences which may be drawn from subsidiary facts are to be resolved against him.” Howard v. Riggs Nat'l Bank, 432 A.2d 701, 705-706 (D.C.1981). It is Appellants’ contention that upon conducting an independent review of the record, and the current state of the law, this Court will find that summary judgment entered by the trial court against Ingleside and Harrison in favor of Santorini should be reversed in its entirety.

**B. Santorini Was Precluded From Pursuing Collection of the Full Amount Due On the Deed of Trust Notes During the COVID-19 Emergency Period and for Sixty (60) Days Thereafter.**

Among the many restrictions that were enacted in response to the global COVID-19 pandemic, the District of Columbia enacted the Coronavirus Support Temporary Amendment Act of 2020 (“Act”) which became effective on October 9, 2020. The Act included Chapter 31H - Mortgage Relief During a Public Health Emergency which was codified at D.C. Code §42-3191.01. The Mortgage Relief provisions were in effect for a period of sixty (60) days after the end of a declared public health emergency. The declaration by the Mayor of the COVID-19 public health emergency was in effect at the time of the filing of the Complaint by Santorini, and did not expire until April 16, 2022. App. 146-149.

The loan maturity was at the earliest October 31, 2020 and the January 31, 2021, which was after the date of enactment of the Covid-19 emergency legislation on October 9, 2020. App. 36, 39-41. The emergency legislation applied to both residential and commercial loans. D.C. Code §42-3191.01 (a). Therefore, the mortgage loans were subject to the provisions of the mortgage relief provisions as outlined in the Act.

The statute specifically required that mortgage lenders establish an application criteria and procedures to allow borrowers to apply for deferment. D.C. Code §42-3191.01(b). Prior to the filing of the lawsuit, although aware of the statutory requirements, Santorini failed to offer a payment plan in compliance with the mortgage deferment requirements. Having failed to comply with the statute, Santorini should have been prohibited from pursuing the breach of contract lawsuit.

Appellants filed their motion to dismiss on the basis that Santorini failed to comply with the Act. App. 28-52. In opposition to the motion, Santorini conceded that it failed to establish application criteria and procedures for a deferment program. App. 53-60. Although Santorini requested that the motion to dismiss be denied, it requested in the alternative that the court stay the case until Act expired.

Rather than address the application of the Act in denying the motion, the trial court inexplicably applied D.C. Code §28-3814(b)(1A) regarding the stay on collection lawsuits, and concluded that since mortgages were not included in that statute, then the lawsuit would not be dismissed. Record at 24.

**C. The Trial Court's Findings of Fact are Not Supported by the Record.**

A trial court's findings of fact are clearly erroneous and should be reversed if they are not supported by the substantial evidence in the record. Anderson, supra. In this case, the trial court supported its summary judgment decision based on disputed factual findings which were not supported by the evidence in the record and a misapprehension of the law.

In Santorini's unverified Complaint, filed on March 8, 2021, it alleged that Appellants owed a total sum of \$1,278,372.73 on two unpaid Promissory Notes. Santorini filed its Motion for Summary Judgment on November 1, 2021. Rec. at 46. In support of its motion, Santorini failed to state the amount it claimed to be due. The Statement of Undisputed Facts simply states the existence of the loans, and the breach of the loans, but makes no mention of the amount due as of the date of the motion. The Affidavit of Steven Snider filed in support of the motion likewise did not provide a statement as to the amount then due on the two (2) Promissory Notes as of the date of the Affidavit. The only place in which an amount is claimed is in the proposed Order submitted with the motion in which Santorini includes a figure of \$1,373,717.45. Santorini wholly failed to state under oath how the proposed judgment amount was calculated.

In opposition to the motion for summary judgment, Appellants' submitted the Affidavit of Christopher Harrison in which he stated under oath that he continued to make payments on the loans during the course of the litigation. Rec. at 48. Appellants filed their opposition on November 15, 2021. Santorini did not file a Reply to the Opposition contesting Harrison's sworn statement that he continued to make payments on the Promissory Notes. A Reply would have been due on November 22, 2021. However, prior to any response from Santorini, and prior to the due date for a Reply, the trial court entered judgment on the amount Santorini included in its proposed Order with absolutely no sworn statement as to how that amount was calculated. Rec. at 50.

It is without a doubt a material fact as to the amount to which Santorini was entitled, even if there is no dispute that a contract was breached. Santorini wholly failed to even address the issue of the amount in its motion. As the trial court acknowledged in its Order granting the motion, it is the movant's burden to prove that it is entitled to judgment. That burden includes not only undisputed proof as to the breach of contract, but also undisputed proof as to the amount of damages.

In its opposition to the motion, in addition to providing a sworn statement that payments were made on the loans during the course of the litigation, Appellants made the argument that the Act among other things, governed the calculation of the amount due. In granting the motion for summary judgment, the trial court misinterpreted Appellants' argument. The trial court referred back to its denial of Appellants' motion to dismiss the Complaint based on the Act. In denying the motion to dismiss, the trial court merely held that the COVID Support Act did not preclude the filing of the case. There was no determination that the Act did not apply at all with respect to prohibited charges against both commercial and residential loans during the public health emergency.

For instance, D.C. Code §42-3191.01(a)(2) required, among other things, that the lender waive late fees, processing fees, or any other fees accrued during the public health emergency. There is no means by which the court could conclude that all such fees were waived. Santorini simply included a figure for the total amount claimed to be due with no itemization as to how they calculated the amount. Therefore, the request was wholly deficient. No representative of Santorini swore to any amount claimed to be due. No representative of Santorini swore to an itemization of the requested



judgment amount showing that it complied, not only with the terms of the loans, but also the provisions of the Act.

Without knowing how Santorini determined the amount that was due, Appellants were at a disadvantage in opposing the motion in full other than to inform the court that payments were made during the litigation. If Santorini had provided a sworn statement as to how it calculated the amounts due, as should be required prior to entering judgment on its behalf, then Appellants would have been in position to substantively present its argument in opposition to the manner of the calculation. SCR-Civil 56(e) specifically provides that if “a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56 (c)” then the court should issue an appropriate order to address the deficiency.

In view of the foregoing, the Appellants’ take the position that the entry of summary judgment should be reversed. At a minimum, even if this Court were to find that this lawsuit was proper, Santorini should have been required to provide a sworn statement setting forth how it calculated the amount claimed to be due, including all charges assessed to the balances on the loans. Given the state of the record, it was impossible for either the

Appellants or the trial court to know that the amount claimed was accurate based on either the terms of the Promissory Notes, or the COVID Support Act.

As such, this Court shall find that the summary judgment entered by the trial court against the Ingleside and Harrison in favor of Santorini should be reversed in its entirety.

**D. Santorini Should Not Have Been Awarded Attorneys' Fees As Its Motion for Attorneys' Fees and Costs Failed to Provide Sufficient Information for the Trial Court To Establish A Reasonable Fee**

To merit an award of attorneys' fees the prevailing party must submit the experience of the attorney for the hours worked as "the experience level of the attorney is an integral part of the calculation of attorneys' fees under the Laffey Matrix," which is used in the District of Columbia. Lively v. Packaging Ass'n, 930 A.2d 984, 989. The number of years of practice is only one relevant factor. See Evans v. Sheraton Park Hotel, 503 F.2d 177, 187 (D.C. Cir. 1974). Santorini's motion for attorneys' fees failed to provide sufficient information regarding the experience, reputation, hourly rate, and ability of all of the attorneys that provided work on this case in accordance with applicable standards. App. at 106-128. The trial court recognized the deficiency in the motion filed by Santorini, but nonetheless, awarded fees.

Rec. at 62.

The trial court was not provided with any information as to the nature of the experience of each attorney. See Hampton Courts Tenants Ass'n v. District of Columbia Rental Housing Commission, 599 A.2d 1113 (1991). The only representation made in Santorini's request for attorneys' fees is an Affidavit regarding only one attorney, Roger C. Simmons. App. at 115-118. As submitted, Santorini's motion for attorneys' fees was missing the following information for all attorneys that provided work on this case:

- (i) No information was provided as to the number of years each attorney has practiced.
- (ii) No information was provided as to the nature of the experience of each attorney.
- (iii) No Affidavits were submitted in support of the rates claimed by each attorney that provided work on this case.

In order to establish a reasonable fee, the court must exclude hours that are excessive, redundant, or otherwise unnecessary. The attorney seeking fees must maintain contemporaneous, complete and standardized time records which accurately reflect the work done. Craig v. District of Columbia, 197 F. Supp. 3d 268 (2016). Santorini submitted a Ledger in

support of its motion. App. at 119-128. The Ledger largely redacted the actual work performed. Thus, it was impossible for the court to conduct a meaningful analysis of the fees requested, and to determine whether any of the work was excessive, redundant, or otherwise unnecessary.

When determining an award of attorneys' fees, "[t]he Court shall find the facts and state its conclusions of law as provided in Rule 52(a)." SCR-Civil 54(d)(2)(C). "The failure to articulate the reasons for a particular fee award renders the trial court's determination effectively unreviewable and has been held to constitute an abuse of discretion warranting reversal." Frazier v. Franklin Inv. Co., 468 A.2d 1338, 1341 (D.C. 1983). In Coulter v. Gerald Family Care, P.C. 964 A.2d 170 (2009) this Court found that the trial court erred in awarding attorneys' fees without findings of fact and conclusions of law in support of the fee award as Rule 54(d)(2) requires and vacated the entire award of attorneys' fees. *Id.* at 204.

The trial court is required to make an independent determination regarding whether the hours set forth in an attorney's invoice are justified. Briggs v. District of Columbia, 102 F. Supp. 3d 164 (2015). Simply because the attorney claims that he or she has spent the time is not sufficient to justify award of the requested fees. See Dickens v. Friendship-Edison

P.C.S., 724 F. Supp. 2d 113, 124-25 (D.D.C. 2010) (holding that entries such as "conference with parent" and "telephone call to DCPS" were vague, and reducing overall fee award by ten percent); Clark v. District of Columbia, 674 F. Supp. 2d 149, 158-59 (D.D.C. 2009) (holding that time entries such as "preparation for hearing" or "preparation for school visit" were too vague and thereby reducing the overall fee award by twenty-five percent); Coleman v. District of Columbia, 2007 U.S. Dist. LEXIS 32743, 2007 WL 1307834, at \*7 (D.D.C. May 3, 2007) (holding that entries such as "conference with co-counsel" lacked sufficient detail). In re Estate of Delaney, 819 A.2d 968 (2003) (court to make detailed analysis of fees requested). See also, Baker v. D.C. Pub. Sch., 815 F. Supp. 2d 102 (2011); Kingsberry v. District of Columbia, 2005 U.S. Dist. LEXIS 16123, 2005 WL 3276193, at \*4 (D.D.C. Aug. 9, 2005); Miller v. Holzmann, 575 F. Supp. 2d 2. In this case it would have been virtually impossible for the court to make an independent determination of the fee request given the paucity of the information provided by Santorini.

In this matter, Santorini's motion for attorneys' fees did not provide sufficient accounting and billing information in order for the trial court to determine the reasonableness of the fees requested. Santorini's Client Ledger redacted information that showed the *actual* work that was provided on the case. In addition, the submitted ledger failed to clearly show the amount of hours worked on each matter, the hourly fee that was charged, or an accounting for the total number of hours the firm spent allegedly providing work on behalf of Santorini for this case.

Santorini also failed to provide a list of attorneys that provided work on the case in addition to the corresponding initials for each attorney for the time that was billed and the fees that were charged for their work. Based on the information provided, it was unclear which attorney worked on the case, what work was completed, and whether such work was done by an attorney, paralegal, or law clerk. It was also impossible to determine if work that was performed by an attorney could have been assigned to a paralegal or clerical staff.

In its motion, Santorini requested \$32,540.96 for attorneys' fees and expenses. This significant request cannot be deemed reasonable based upon the information provided by Santorini. In addition to the aforementioned, Santorini provided insufficient information as outlined below.

First, counsel stated in its motion that the firm was not retained by Santorini until June 17, 2020. App. at p. 116, ¶7. However, the incomplete ledger lists requested fees that date back as early as August 24, 2019. App. at p. 119.

Second, counsel stated in its motion that pursuant to the firm's retainer agreement, Santorini would be billed at "\$250.00 per hour on a uniform basis for all attorneys and \$150.00 for paralegals." App. at p. 116, ¶12. However, in the motion, the fees were not uniform, and ranged from \$225.00 to \$325.00. App. at p. 119-126. It is unclear the work that was performed to justify these fees.

Despite these defects in the motion for attorney's fees, and the trial court's acknowledgement that the documentation in support of the motion was defective, the trial court nonetheless simply arbitrarily awarded to Santorini fifty percent (50%) of the claimed fees. Such an award is not consistent with the court's obligation to make findings of fact and

conclusions of law in support of the fee award.

**E. Appellants Are Entitled to Be Reimbursed for Their Legal Fees and Costs Incurred in Defending the Lawsuit.**

The court has the discretion to award legal fees and costs if it finds that a lawsuit was filed in bad faith. General Federation of Women's Clubs v. Iron Gate Inn, Inc., 536 A. 2d 1123 (D.C. 1988). "An action is brought in bad faith when the claim is entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons." Synanon Foundation, Inc. v. Bernstein, 517 A.2d 28, 40 (D.C. 1986). "It is difficult to imagine a case in which a claim wholly without color could be asserted without an improper motive." General Federation of Women's Clubs v. Iron Gate Inn, Inc., supra. at 1129. As the court held in Fischer v. Flax, 816 A.2d 1 (D.C. 2003), where a party pursues a claim that is wholly unsupportable, fee shifting is warranted as a matter of equity.

Appellants are of the position that since this case was filed in violation of the Act, of which Santorini was aware, they have incurred unnecessary fees and costs that should be reimbursed as a matter of law. Stansel v. American Security Bank, 547 A.2d 990, 995, n.8 (D.C. App. 1988), cert. denied, 490 U.S. 1021 (1989). Haden v. Frazier, 120 WLR 177 (D.C. App., 09/11/92) citing Williams v. Board of Trustees of Mt. Jezreel Baptist



Church, 589 A.2d 901, 910 (D.C. App. 1991), cert denied, 112 S .Ct. 190 (1991). Appellants advised Santorini, through counsel, of the law applicable to its claim for breach of the mortgage loans. Santorini refused to consent to dismissal of the lawsuit prior to the filing of Appellants' Motion to Dismiss. Appellants do not believe the lawsuit was filed in good faith.

## **VI. CONCLUSION**

For all of the reasons articulated herein, the judgment of the trial court should be reversed, and the Complaint should be dismissed with costs and fees assessed against Santorini.

Respectfully submitted,

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| Appellants,                          | ) |           |
|                                      | ) |           |
| v.                                   | ) | CAB577-21 |
|                                      | ) |           |
| SANTORINI CAPITAL, LLC,              | ) |           |
|                                      | ) |           |
| Appellee.                            | ) |           |

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Brief of Appellants, The 1814 INGLESIDE, LLC and CHRISTOPHER HARRISON, was eServed on May 12, 2022 to:

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CHRISTOPHER HARRISON

# District of Columbia Court of Appeals

## REDACTION CERTIFICATE DISCLOSURE FORM

**Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.**

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

- An individual’s social-security number
- Taxpayer-identification number
- Driver’s license or non-driver’s’ license identification card number
- Birth date
- The name of an individual known to be a minor
- Financial account numbers, except that a party or nonparty making the filing may include the following:

- (1) the acronym “SS#” where the individual’s social-security number would have been included;
- (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
- (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
- (4) the year of the individual’s birth;
- (5) the minor’s initials; and
- (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

Vanessa Carpenter Lourie

Signature

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Name

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Email Address

22-CV-34

Case Number(s)

May 12, 2022

Date