

05/05/2006 “See News Release 025 for any Concurrences and/or Dissents.”

**SUPREME COURT OF LOUISIANA**

**No. 06-C-0175**

**EDWARD BUGGAGE**

**VERSUS**

**VOLKS CONSTRUCTORS, A DIVISION OF AKM, LLC.,  
ABC AND XYZ INSURANCE COMPANIES AND JOHN FRIDGE**

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIRST CIRCUIT, PARISH OF ASCENSION*

PER CURIAM

Writ granted. The ruling of the court of appeal is reversed. The trial court’s ruling granting the motion for summary judgment filed by Volks Constructors, Inc., is reinstated.

The court of appeal erred as a matter of law in considering a late-filed opposition to the motion for summary judgment, which consisted of a memorandum and a purported affidavit of plaintiff, in its *de novo* review of the merits of the summary judgment motion. The opposition had been disallowed by the trial court, which acted within its discretion in excluding an opposition filed a few minutes before the scheduled hearing on the motion.

The time limitation established by La. C.C.P. art. 966(B) for the serving of affidavits in opposition to a motion for summary judgment is mandatory; affidavits not timely filed can be ruled inadmissible and properly excluded by the trial court. See American Bank & Trust Company v. International Development Corporation, Inc., 506 So.2d 1234, 1235-36 (La.App. 1 Cir. 1987). Given the facts and circumstances of this case, we find no abuse of discretion by the trial court in

excluding the opposition, and thus no error in granting the motion for summary judgment in favor of the defendant.