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Elizabeth A. Brown
Clerk of Supreme Court

6
7 COURT OF APPEALS

8
9 STATE OF NEVADA

10 NICKEL MINE AVENUE TRUST, a
Nevada irrevocable trust;
11 TRAVERTINE LANE TRUST, a
Nevada irrevocable trust; MAHOGANY
12 MEADOWS AVENUE TRUST, a
Nevada irrevocable trust; SATICOY
13 BAY LLC, a Nevada Limited Liability
Company,

14 Appellants,

15 vs.

16
17 COPPER CREEK HOMEOWNERS
ASSOCIATION,

18 Respondent.
19
20

No. 82205-COA

APPELLANTS' RESPONSE TO
ORDER TO SHOW CAUSE; and
REQUEST FOR AN EXTENSION
TO OBTAIN RULE 54(b)
CERTIFICATION

21 Nickel Mine Avenue Trust, Travertine Lane Trust, Mahogany Meadows
22 Avenue Trust, and Saticoy Bay LLC (hereinafter "defendants"), by and through their
23 attorney, the Law Offices of Michael F. Bohn, Esq., Ltd., respond to the order to show
24 cause issued by the court on December 3, 2021 as follows:

25 **FACTS**

26 On March 13, 2019, Copper Creek Homeowners Association (hereinafter
27 "plaintiff") filed its complaint for damages that included five causes of action: 1)
28 breach of a confidential Settlement Agreement, dated September 16, 2017; 2) breach
of covenant of good faith and fair dealing; 3) fraud in the inducement/intentional

1 misrepresentation; 4) negligent misrepresentation; and 5) civil conspiracy.
2 (Appellants' Appendix Volume 1 (hereinafter "AA1"), pgs. AA000001-AA000018)

3 On July 30, 2019, defendants filed an answer to plaintiff's complaint. (AA1,
4 pgs. AA000030-AA000034)

5 On October 22, 2019, plaintiff filed plaintiff's motion for summary judgment
6 (AA1, pgs. AA000098-AA000161), which motion requested that plaintiff be granted
7 judgment for the following amounts for six (6) specific properties:

- | | | | |
|----|----|------------------------------|------------|
| 8 | 1. | 6838 Nickel Mine Avenue | \$7,113.00 |
| 9 | 2. | 6892 Nickel Mine Avenue | 5,328.00 |
| 10 | 3. | 6777 Travertine Lane | 4,170.00 |
| 11 | 4. | 6896 Mahogany Meadows Avenue | 3,195.00 |
| 12 | 5. | 6773 Granite River Lane | 4,170.00 |
| 13 | 6. | 6915 Silver State Avenue | 4,345.00 |

14 Plaintiff also requested that it be awarded attorney's fees for the following
15 amounts:

- | | | | |
|----|----|---|------------|
| 16 | 1. | 6838 Nickel Mine Avenue &
6892 Nickel Mine Avenue | \$5,962.66 |
| 17 | | | |
| 18 | 2. | 6777 Travertine Lane | 2,981.33 |
| 19 | 3. | 6896 Mahogany Meadows Avenue | 2,981.33 |
| 20 | 4. | 6773 Granite River Lane &
6915 Silver State Avenue | 5,962.66 |
| 21 | | | |
| 22 | | | |

23 At page 5 of the unredacted version of its motion for summary judgment,
24 plaintiff stated that it had filed a complaint alleging five causes of action, but that
25 plaintiff was seeking judgment only on "Plaintiff's breach of contract claim":

26 On March 13, 2019, Plaintiff filed a Complaint against Defendants
27 alleging claims of (1) breach of contract; (2) breach of covenant of good
28 faith and fair dealing; (3) fraud in the inducement/intentional
misrepresentation; (4) negligent misrepresentations; and (5) civil

1 conspiracy. **As highlighted above, the operative facts related to**
2 **Plaintiff's claim for breach of contract are undisputed,** as Defendants
3 are continuing to rent their priorities within the Copper Creek common-
4 interest community, which is explicitly prohibited by the express terms
5 of the Settlement Agreement. As such, **summary judgment on**
6 **Plaintiff's breach of contract claim is ripe and proper** pursuant to
7 NRCP 56(c). (emphasis added)

8 (See redacted version of page 5 at AA1, pg. AA000102)

9 On February 25, 2020, the court held an evidentiary hearing where counsel for
10 both parties made oral arguments, but no witnesses testified and no exhibits were
11 admitted into evidence. (AA1, pgs. AA000231-AA000240)

12 On April 3, 2020, the court entered an order granting, in part, and denying, in
13 part, plaintiff's motion for summary judgment. (AA1, pgs. AA000241-AA000243)
14 This order granted plaintiff's motion for summary judgment "in part, in that
15 Defendants have materially breached the *Settlement Agreement and Release* in that
16 Defendants used the Subject Homes as rentals."

17 The court did not make any ruling on plaintiff's separate causes of action for
18 Breach of the Covenant of Good Faith and Fair Dealing, Fraud in the
19 Inducement/Intentional Misrepresentation, Negligent Misrepresentation, or Civil
20 Conspiracy. This order was not certified as final pursuant to Nev. R. Civ. P. 54(b).

21 On April 6, 2020, plaintiff served and filed notice of entry of order granting, in
22 part, and denying, in part, plaintiff's motion for summary judgment. (AA1, pgs.
23 AA000244-AA000248)

24 On April 27, 2020, plaintiff filed a motion for an award of attorneys' fees and
25 costs. (AA2, pgs. AA000264-AA000299)

26 On May 15, 2020, defendants filed an opposition to plaintiff's motion for
27 attorney's fees and costs. (AA2, pgs. AA000300-AA000310)

28 On June 3, 2020, plaintiff filed a reply in support of plaintiff's motion for
attorney's fees and costs. (AA2, pgs. AA000321-AA000325)

1 On September 25, 2020, the court entered an order granting plaintiff's motion
2 for an award of attorney's fees and costs. (AA2, pgs. AA000347-AA000353)

3 On October 1, 2020, plaintiff served and filed notice of entry of the order
4 granting plaintiff's motion for an award of attorney's fees and costs. (AA2, pgs.
5 AA000354-AA000358)

6 On November 6, 2020, the court entered judgment in favor of plaintiff against
7 Saticoy Bay LLC for \$2,000.00 for "Damages" and \$13,571.35 for "Attorneys' Fees
8 & Costs." (AA2, pgs. AA000363-AA000377) This judgment was not certified as
9 final pursuant to Nev. R. Civ. P. 54(b).

10 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
11 (AA2, pgs. AA000440-AA000456)

12 On November 6, 2020, the court entered judgment in favor of plaintiff against
13 Mahogany Meadows Avenue Trust for \$1,000.00 for "Damages" and \$6,785.68 for
14 "Attorneys' Fees & Costs Incurred." (AA2, pgs. AA000378-AA000392) This
15 judgment was not certified as final pursuant to Nev. R. Civ. P. 54(b).

16 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
17 (AA2, pgs. AA000423-AA000439)

18 On November 6, 2020, the court entered judgment in favor of plaintiff against
19 Nickel Mine Avenue Trust for \$2,000.00 for "Damages" and \$13,571.35 for
20 "Attorneys' Fees & Costs Incurred." (AA2, pgs. AA000393-AA000407) This
21 judgment was not certified as final pursuant to Nev. R. Civ. P. 54(b).

22 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
23 (AA2, pgs. AA000474-AA000490)

24 On November 6, 2020, the court entered judgment in favor of plaintiff against
25 Travertine Lane Trust for \$1,000.00 for "Damages" and \$6,785.68 for "Attorneys'
26 Fees & Costs Incurred." (AA2, pgs. AA000408-AA000422) This judgment was not
27 certified as final pursuant to Nev. R. Civ. P. 54(b).
28

1 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
2 (AA2, pgs. AA000457-AA000473)

3 On December 7, 2020, defendants collectively filed a notice of appeal from
4 each of the four judgments entered on November 6, 2020. (AA2, pgs. AA000491-
5 AA000492)

6 POINTS AND AUTHORITIES

7 **This appeal should not be dismissed, and defendants should be**
8 **granted an extension of time to have the district court certify each**
9 **judgment entered on November 6, 2020 as final pursuant to Nev. R.**
10 **Civ. P. 54(b).**

11 Nev. R. Civ. P. 54(b) provides in part:

12 **(b) Judgment on Multiple Claims or Involving Multiple Parties.**
13 **When an action presents more than one claim for relief** – whether as
14 a claim, counterclaim, crossclaim, or third-party claim – or when
15 multiple parties are involved, **the court may direct the entry of a final**
16 **judgment** as to one or more, but fewer than all, claims or parties only if
17 the court expressly determines that there is no just reason for delay.
18 Otherwise, any order or other decision, however designated, **that**
19 **adjudicates fewer than all the claims** or the rights and liabilities of
20 fewer than all the parties does not end the action as to any of the claims
21 or parties and **may be revised at any time** before the entry of a
22 judgment adjudicating all the claims and all the parties’ rights and
23 liabilities. (emphasis added)

24 As quoted at page 3 above, plaintiff clearly stated at page 5 of its motion for
25 summary judgment (AA1, pg. AA000102) that plaintiff had filed a complaint alleging
26 five causes of action, but that plaintiff was seeking judgment only on “Plaintiff’s
27 breach of contract claim.”

28 In the order granting, in part, and denying, in part, plaintiff’s motion for
summary judgment, filed on April 3, 2020, the court granted plaintiff’s motion for
summary judgment “in part, in that Defendants have materially breached the
Settlement Agreement and Release in that Defendants used the Subject Homes as
rentals.” (AA1, pgs. AA000241-AA000243) The court did not make any ruling on
plaintiff’s separate causes of action for Breach of the Covenant of Good Faith and
Fair Dealing, Fraud in the Inducement/Intentional Misrepresentation, Negligent

1 Misrepresentation, or Civil Conspiracy.

2 Furthermore, none of the judgments entered on November 6, 2020 include any
3 language that resolved in any way the plaintiff’s separate causes of action for Breach
4 of the Covenant of Good Faith and Fair Dealing, Fraud in the Inducement/Intentional
5 Misrepresentation, Negligent Misrepresentation, and Civil Conspiracy.

6 Plaintiff has also not dismissed its causes of action for Breach of the Covenant
7 of Good Faith and Fair Dealing, Fraud in the Inducement/Intentional
8 Misrepresentation, Negligent Misrepresentation, and Civil Conspiracy.

9 All of those causes of action remain pending and unresolved by the district
10 court.

11 Applying the holding in Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416,
12 417 (2000) to the present case, the order entered on April 3, 2020, the order entered
13 on September 25, 2020, and the judgments entered on November 6, 2020 are not final,
14 appealable judgments because they did not “adjudicate[] the rights and liabilities of
15 all parties and dispose [] of all issues presented in the case.”

16 Pursuant to Nev. R. Civ. P. 54(b), because the action has not ended as to all of
17 the claims or parties, the order entered on April 3, 2020, the order entered on
18 September 25, 2020, and the judgments entered on November 6, 2020 “may be
19 revised at any time.”

20 With respect to the order entered on September 25, 2020, which granted
21 plaintiff’s motion for an award of attorney’s fees and costs (AA2, pgs. AA000347-
22 AA000353), that order is not separately appealable pursuant to Nev. R. App. P.
23 3A(b)(8) as “[a] special order entered after final judgment” because the order entered
24 on April 3, 2020 is not a “final judgment.”

25 With respect to the holding in Campos-Garcia v. Johnson, 130 Nev. 610, 612,
26 331 P.3d 890, 891 (2014), the judgments entered on November 6, 2020 are not
27 “duplicative or superfluous” because the “legal rights and obligations of the parties”
28

1 were not yet settled on November 6, 2020. For that reason, defendants agree with the
2 court's statement that "the notice of appeal would appear to be premature. NRAP
3 4(a)."

4 In order to correct this problem, defendants filed a motion for Rule 54(b)
5 determination with the district court on December 21, 2021 and requested that the
6 district court expressly determine that there is no just reason for delay and direct the
7 entry of a final judgment as to the contract claims resolved by the four judgments
8 entered on November 6, 2020.

9 Defendants respectfully submit that this alternative serves the interests of
10 judicial economy because all of the appeal briefs for Case No. 82205-COA have
11 already been filed with the Court.

12 Because the hearing on defendants' motion for Rule 54(b) determination has
13 been scheduled for January 27, 2022, defendants respectfully request that this court
14 extend the time for defendants to respond to the order to show cause until a date after
15 January 27, 2022, so that defendants can supplement this response after the district
16 court grants defendants' motion for Rule 54(b) determination.

17 DATED this 23rd day of December, 2021.

18
19 LAW OFFICES OF
20 MICHAEL F. BOHN, ESQ., LTD.

21 By: / s / Michael F. Bohn, Esq. /
22 Michael F. Bohn, Esq.
23 2260 Corporate Circle, Ste. 480
24 Henderson, Nevada 89074
25 Attorney for defendants/appellants
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1 **CERTIFICATE OF SERVICE**

2 In accordance with N.R.A.P. 25, I hereby certify that I am an employee of the
3 Law Offices of Michael F. Bohn, Esq., Ltd., and that on the 23rd day of December,
4 2021, a copy of the foregoing APPELLANTS' RESPONSE TO ORDER TO SHOW
5 CAUSE; and REQUEST FOR AN EXTENSION OF TIME TO OBTAIN RULE
6 54(b) CERTIFICATION was served electronically through the Court's electronic
7 filing system to the following individuals:

8
9 David M. Bray, Esq.
10 BRAY LAW GROUP, LLC
11 1180 N. Town Center Drive, Ste. 100
12 Las Vegas, NV 89144

13 /s/ /Maurice Mazza/
14 An Employee of the LAW OFFICES OF
15 MICHAEL F. BOHN, ESQ., LTD.
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