

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESLEY RUSCH,  
  
Appellant,  
  
vs.

THE MARTIN CONDOMINIUM UNIT  
OWNERS' ASSOCIATION,  
  
Respondent.

No. 85821 -COA

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Elizabeth A. Brown  
Clerk of Supreme Court

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**OPPOSITION TO APPELLANT'S APPLICATION AND  
MOTION FOR DEFAULT JUDGMENT**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **INTRODUCTION**

The present appeal arises out of entry of summary judgment in favor of Appellee The Martin Condominium Unit Owners' Association ("Martin CUOA") and against Appellant Wesley Rusch ("Rusch") and his partner, Oliver Longboy ("Longboy") (who is not an Appellant), in Rusch and Longboy's lawsuit against Martin CUOA in the District Court, Clark County, Nevada (Eighth Judicial District), Case No. A-21-840526-C, by the Honorable Judge Nancy L. Allf of Department 27. The subject lawsuit was the second lawsuit dismissed by Judge Allf, as she previously dismissed an identical lawsuit (Case No. A-20-826568-C) which Rusch and Longboy did not appeal.

The appeal in the present action is fully-briefed and awaiting decision by the Court of Appeals of the State of Nevada (this "Court"). On November 6, 2023, Rusch filed a document in this Court entitled "Application and Motion for Default Judgment" (hereinafter the "Motion").<sup>1</sup> This Motion is essentially a re-filing of a motion Rusch filed multiple times in the lower court of the underlying consolidated

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<sup>1</sup> Rusch claims in a "Proof of Service" attached to the last page that he served counsel for Martin CUOA with a copy of the Motion on October 28, 2023. This is untrue. As reflected in the court record of the underlying action, Rusch has a history of filing false proofs of service. Counsel for Martin CUOA first learned of Rusch's Motion on November 6, 2023, when the Clerk of this Court e-served the motion.

action, which was denied by the Honorable Nancy L. Allf on June 22, 2021 (RA-2020-ONE-138-142).<sup>2</sup> A copy of Judge Allf's Order is attached hereto as **Exhibit A**.<sup>3</sup> As will be demonstrated below, Rusch's Motion can summarily be disposed of and denied by this Court.

## II.

### ARGUMENT

Rusch's Motion filed in this Court is an obvious end around of the denial of his efforts to have the relief requested in the Motion granted by the lower court in the underlying consolidated action. Moreover, Rusch's appeal in this matter challenges the lower court's entry of summary judgment in favor of Martin CUOA and against Rusch and his partner, Longboy (who is not a party to this appeal).<sup>4</sup> Rusch's Notice of Appeal did not also specifically note Rusch was appealing Judge Allf's Order denying entry of default and a default judgment against Martin CUOA. For all of the following reasons, Rusch's motion should be denied.

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<sup>2</sup> The abbreviation stand for Record on Appeal-related to Rusch's 2020 Action-Volume One-Page Numbers.

<sup>3</sup> Rusch has now changed at least one date in his Motion (e.g., claiming to have submitted an Application for Entry of Default on January 25, 2022, a date which is not reflected in either of the consolidated actions). Rusch's tactics should be rejected by this Court.

<sup>4</sup> *See* Order Entered by the Nevada Supreme Court in this matter entered on January 20, 2023.

First, it is not within the jurisdiction of this Court to enter a default and default judgment against a defendant named in a lower court proceeding. Such powers only lie within the original jurisdiction of the District Courts in the several Judicial Districts in the State of Nevada. *See Nevada Constitution, Article 6, Section 6, Subsection 1.* This Court's jurisdiction is that of an appellate court having appellate jurisdiction in all civil cases arising in district courts. *See Nevada Constitution, Article 6, Section 4, Subsection 1. See, also, Stephens v. First Nat'l Bank, 64 Nev. 292, 298-300, 182 P.2d 146, 149 (1947) (holding that an appellate tribunal has no power or jurisdiction to change or alter the record of the underlying case in any material particulars).* Thus, Rusch's Motion should be denied, because this Court in the first instance does not have jurisdiction to enter a default and/or default judgment against Martin CUOA, and may only review the actions of the lower court permitted within its appellate jurisdiction.

Second, in Nevada, an appellate court is a court of limited jurisdiction. *See Valley Bank of Nev. v. Ginsburg, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994).* An appellate court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *See Brown v. MHC Stagecoach, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013).* NRAP 3A does not make provision for an independent appeal of a denial of a default or default judgment. Also, NRCP 55 does not provide for an independent and/or automatic right of appeal of a denial

entry of a default or default judgment. *See Canterbury v. United States Marshal Serv.*, 2018 Nev. Unpub. LEXIS 811, \*1, 425 P.3d 384, 134 Nev. 921 (Nev. 2018) (“No statute or court rule provides for an appeal from an order denying a motion for default judgment.”). Thus, if this Court were to treat Rusch’s motion as some form of a Notice of Appeal rather than as a motion per the title of Rusch’s Motion (since Rusch is a pro per appellant), this Court lacks jurisdiction to specifically consider an appeal from an order denying entry of default or a motion for default judgment. *Id.* Thus, Rusch’s Motion is fatally flawed, even if construed as some form of a Notice of Appeal, and should be denied.

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# **EXHIBIT A**



1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**  
4 \* \* \* \*

CASE NO.: A-20-826568-C  
DEPARTMENT 27

5 WESLEY RUSCH, an individual, and  
6 OLIVER LONGBOY, an individual

7 Plaintiffs,

8 vs.

9 THE MARTIN CONDOMINIUM UNIT  
10 OWNERS' ASSOCIATION, a domestic non-  
11 profit corporation; DOE individuals I through  
12 X; and ROE Corporations and Organizations I  
through X,

13 Defendants.

14  
15 **ORDER DENYING APPLICATIONS FOR DEFAULT JUDGMENT FILED JUNE 15,**  
16 **2021 AND JUNE 20, 2021 WITHOUT PREJUDICE**

17 **COURT FINDS** after review that on or about December 16, 2020, the Plaintiffs, in  
18 proper person, filed their Complaint in this case called New Complaint for Compensation.

19 **COURT FURTHER FINDS** after review that a summons was later issued on or about  
20 February 15, 2021. However, before the summons was issued, the Plaintiff filed an Affidavit of  
21 Service on February 2, 2021, and the second Affidavit of Service on March 9, 2021. Both  
22 affidavits were insufficient for the following reasons:

- 23 - At the time the server claimed to have served Defendant, December 24, 2020, no  
24 summons had yet been issued
- 25 - The affidavits are unsigned and unverified
- 26 - There is no explanation of the server's authority
- 27 - The server's name is only referred to as Stephanie, and her identity is unknown
- 28 - The Nevada Rules of Civil Procedure (NRCP) 4.2 (c) requires service upon an  
agent authorized to accept service or an officer or director of the entity
- The Civil Rules require the summons to be served with the Complaint

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- The summons was not served in accord with NRCP 4 and 5

**COURT FURTHER FINDS** after review that Plaintiffs have filed two Requests for Default on January 25, 2021, and February 2, 2021, a Notice of Default on February 13, 2021, a Notice of Entry of Default on February 18, 2021, and two Writs of Execution on May 15, 2021, and June 3, 2021. None of these filings are appropriate and none have been granted because of the inadequate service of the summons and complaint upon the Defendant and failure to follow the Nevada Rules of Civil Procedure.

**COURT FURTHER FINDS** after review that Plaintiffs have filed a Summons on or about April 12, 2021. Summons issued and filed but it was ineffective under the rules of NRCP 4 because there was no proof of service of the summons and complaint, nor was it signed by the clerk.

**COURT FURTHER FINDS** after review that under the rules of NRCP 7, a Defendant must have sufficient time after service of a summons and complaint to answer the complaint. A default will not lie until that time runs. The actions of the Plaintiffs have not yet triggered a deadline to answer or otherwise plead.

**COURT FINDS** after review that Plaintiffs have filed Applications for Default Judgment on June 15, 2021, and June 20, 2021. However, relief is inappropriate since service of the summons and complaint is required under the NRCP 4, and is denied without prejudice.

**COURT FURTHER FINDS** after review that any entry of default in this case, without proper summons on Defendant is improper, and would violate due process.

**THEREFORE, COURT ORDERS** for good cause appearing and after review for these reasons, all pending motions filed by Plaintiffs are denied without prejudice. Plaintiffs are reminded of the requirement in NRCP 6 that the summons and Complaint are required to be timely served, or the case may be dismissed with prejudice. Plaintiffs must comply with the Nevada Rules for Summons and Services should they seek to file again. Plaintiffs may seek

1 assistance with this matter through the Civil Law Self-Help Center located at the Regional  
2 Justice Center.

3  
4 June 22, 2021

Dated this 22nd day of June, 2021

*Nancy L Allf*

TW

649 3AD BE38 76C8  
Nancy Allf  
District Court Judge

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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to

*/s/* \_\_\_\_\_  
Deborah Bedgood-Ealy  
Judicial Executive Assistant

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 **Wesley Rusch, Plaintiff(s)**

**CASE NO: A-20-826568-C**

7 **vs.**

**DEPT. NO. Department 27**

8 **The Martin Condominium Unit**  
9 **Owners' Association,**  
10 **Defendant(s)**

11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Denying was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 **Service Date: 6/22/2021**

16 **Wesley Rusch**

**dirofcomp@yahoo.com**

17  
18 If indicated below, a copy of the above mentioned filings were also served by mail  
19 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 6/23/2021

20 **The Martin Condominium Unit Owners' Association**

**4471 dean martin**  
**las vegas, NV, 89103**