

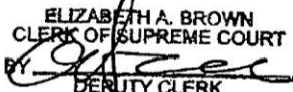
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Supreme Court No. 85821-COA

Clark County District Court
Case No. A-21-850526-C
(consolidated with A-20-826568-C)

FILED

NOV 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

APPELANT'S RESPOND TO MARTINS REPLY TO
APPLICATION AND MOTION FOR DEFAULT JUDGMENT

WESLEY RUSCH
APPELANTS
PO BOX 30907
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RECEIVED
NOV 13 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

23-36948

Appellant Wesley Rusch hereinafter "Rusch" responds to the Martin Condominium Unit Owners Association hereinafter "The Martin or Martin" reply

Martin's Attorney has once again violated NRPC Rule 3.1 and 3.3 for his false and misleading statements

The Martin has continued its history of making false and misleading statements

Marc S Cwik has violated NRPC Rule 3.1 and 3.3 A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous and Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.*

The Martin has not denied making false statements to mislead the court.

Once again The Martin attempts to confuse the court by referencing Rusch's First Complaint which was dismissed without prejudice on a technical issue dealing with service. So Rusch filed a nearly identical complaint and had the complaint was served on Red Rock Financial, the Martin's Agent for Service of Process. The Martin has failed to file an answer to the second complaint.

The Martin attaches Judge Allf's Order filed June 22, 2021 which is in reference to Rusch's First Complaint and not the current complaint in issue in this appeal. That motion was not filed in the consolidated action which once again the Martin wrongfully states, Therefore the Order should be stricken from the appellate record. Rusch is not appealing that Order, Rusch has remedied all issues raised in this order and therefore the current motion for default judgment must be granted,

Through the failure of the Martin to answer Rusch's complaint the Martin has forfeited its right to defend its actions and therefore a default judgment is required to be entered pursuant to NRAP Rule 55

NRCPC Rule 55 - Default; Default **Judgment** states as follows

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk** must enter the party's default.

(b) Entering a Default Judgment. (1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, **the clerk** on the plaintiff's request, with an affidavit showing the amount due, must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incapacitated person.

Please note the foregoing rule does not require the Clerk to be a District Court but rather any clerk including the Clerk of the Supreme Court or the Clerk of the Appeals Court.

Since the Martin has failed to file an answer after being served with a summons and complaint the clerk is required to enter default against The Martin

Respectfully Submitted

Wesley Rusch

Proof of service

Wesley Rusch being duly sworn and deposed and say that at all times herein affiant was and is a citizen of the United States and over 18 years of age

On November 9, 2023 I served attached document to the following address

MARC S. CWIK, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

/S/ Wesley Rusch
Wesley Rusch