

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

OPPOSITION TO APPELLANT'S REQUEST TO NULLIFY SALE

Marc S. Cwik
Nevada Bar No. 6946
Marc.Cwik@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
(702) 893-3383
Attorney for Respondent,
The Martin Condominium Unit Owners' Association

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 became fully-briefed as of July 5, 2023 (when Rusch filed his Reply Brief (which he later revised on July 21, 2023 without requesting leave). While awaiting the decision of this Court, Rusch has been engaging in a pattern of filing improper motions. In particular, on November 6, 2023, Rusch filed a document entitled "Application and Motion for Default Judgment," which this Court denied on November 17, 2023. Immediately after this Court's Order, Rusch filed a document on November 28, 2023 (signed on November 17, 2023) entitled "Revised Application and Motion for Default Judgment," which this Court denied on December 4, 2023. On December 11, 2023, Rusch filed a

document entitled “Proper Person Motion – Request to Nullify Sale Based on Violation of Nevada Law and Constitutional Right of Due Process and Restore Possession of the Condo to It’s Rightful Owner Rusch and Longboy and Reversed UD Request for Hearing” (hereinafter the “Request”).¹ This Request is essentially a re-filing of a request Rusch filed in the lower court of the underlying consolidated action (*see* RA-2020-FOUR-932-937, hereinafter the “Request to Nullify”), which was denied by the Honorable Nancy L. Allf on March 31, 2022 (*see* RA-2020-FIVE-1143-1150).² A copy of Judge Allf’s Order is attached hereto as **Exhibit A**.

It should be noted here for the benefit of this Court that in the underlying consolidated action, Rusch was deemed to be a vexatious litigant by Judge Allf, who entered a Pre-Filing Order. *See* RA-2020-TWELVE-2704-2727. This Order resulted from Rusch’s constant filing of meritless documents and motions, and

¹ On December 11, 2023, the Clerk of this Court issued a Notice to Provide Proof of Service,” since Rusch did not file a Proof of Service with his Request. Rusch did not serve Martin CUOA with a copy of his Request. Rusch has a history of not serving documents, or falsely claiming documents were served, as reflected in the court record in the underlying action. However, in an abundance of caution, Martin CUOA is filing this Opposition to protect the court record and to provide pertinent background to enable this Court to promptly dispose of Rusch’s Request and to be on notice of Rusch’s *modus operandi* in his many court proceedings against Martin CUOA so the Court may take whatever steps it deems appropriate in the premises.

² The abbreviation used here and elsewhere in this Opposition corresponds to Record on Appeal-related to the 2020 Action in the underlying consolidated action-Volume Number-Page Numbers. Documents were typically filed in the lowest case number, per EDCR 2.50(b)(2).

Rusch's failures to comply with Nevada civil procedure law. *Id.* Rusch is now engaging in the same improper conduct by filing motions which are not properly filed in this Court.

As will be demonstrated below, Rusch's present Request can summarily be disposed of and denied by this Court.

II.

ARGUMENT

Rusch's Request filed in this Court is an obvious end around of the denial of his same basic Request in 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). Rusch's Notice of Appeal did not also specifically designate that Rusch was appealing Judge Alf's Order denying his Request to Nullify Sale filed in the underlying consolidated action.³ As will be demonstrated below, Rusch's motion should be denied.

It is not within the jurisdiction of this Court during the pendency of an appeal to entertain a request/motion which was denied by the lower court. The power to

³ The Nevada Supreme Court has interpreted Rusch's Notice of Appeal as an appeal of the Judge Alf's Order Granting Martin CUOA's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, which was entered by the District Court on June 30, 2023. *See* Order, January 20, 2023; and RA-2020-TWELVE-2670-2684 (Case No. A-20-826568-C).

adjudicate requests/motions such as Rusch's Request only lies 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 Request should be denied, because this Court does not have jurisdiction to nullify a sale by way of a motion/request of the Plaintiff during the pendency of an appeal of the dismissal of his/her action concerning subject real property (which is also fully briefed). *See, e.g., Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1016 (9th Cir. 1997) ("One of the fundamental precepts of appellate analysis is review based on a closed record."). This Court may only review the actions of the lower court permitted within its appellate jurisdiction subject to the applicable standard of review.

In addition, this Court, which is 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). Therefore, this 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 a separate appeal, after a lawsuit has already been dismissed (and the dismissal has already been appealed and briefed), of the denial of a request/motion to nullify sale. Thus, if this Court were to in some manner treat Rusch's motion as an attempt to appeal Judge Allf's Order denying Rusch's Request to Nullify Sale filed in the underlying consolidated action, or some type of amended Notice of Appeal, such appeal should be rejected as inapposite Nevada appellate law.

For all of the foregoing reasons, Rusch's Request is clearly fatally-flawed and should be denied.

IV.

CONCLUSION

As demonstrated above, Rusch's Request is improperly filed in this Court and, therefore, defective as a matter of law. In addition, Judge Allf's Order Denying Rusch's Request to Nullify Sale in the underlying consolidated action is not even an order designated for appeal by Rusch in his Notice of Appeal, nor recognized as a separately appealable order under NRAP 3A.

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EXHIBIT A



1 **NEOJ**
MARC S. CWIK, ESQ.
2 Nevada Bar No. 006946
E-Mail: Marc.Cwik@lewisbrisbois.com
3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
6385 S. Rainbow Boulevard, Suite 600
4 Las Vegas, Nevada 89118
702.893.3383
5 FAX: 702.893.3789
Attorney for Defendant The Martin
6 *Condominium Unit Owners' Association*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 WESLEY RUSCH, an individual, and
10 OLIVER LONGBOY, an individual,

11 Plaintiffs,

12 vs.

13 THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION, domestic non-
14 profit; DOE Individuals I through X; and ROE
Corporations and Organizations I through X,

15 Defendant.

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

Consolidated with:
Case No. A-21-840526-C

**NOTICE OF ENTRY ORDER DENYING
PLAINTIFFS' REQUEST TO NULLIFY
SALE AND RESTORE POSSESSION OF
CONDO**

16 NOTICE IS HEREBY GIVEN that an ORDER DENYING PLAINTIFFS' REQUEST TO
17 NULLIFY SALE AND RESTORE POSSESSION OF CONDO was entered into the above
18 captioned matter on March 31, 2022; a true and correct copy is attached hereto as **Exhibit A**.

19 DATED this 1st day of April, 2022.

20
21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22
23 By /s/ Marc S. Cwik

24 MARC S. CWIK, ESQ.
Nevada Bar No. 006946
6385 S. Rainbow Boulevard, Suite 600
25 Las Vegas, Nevada 89118

26 *Attorney for Defendant The Martin Condominium*
27 *Unit Owners' Association*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP and that on this 1st day of April, 2022, I did cause a true copy of the foregoing **NOTICE OF ENTRY ORDER DENYING PLAINTIFFS' REQUEST TO NULLIFY SALE AND RESTORE POSSESSION OF CONDO** to be served via the Court's electronic filing and service system to all parties on the current service list. This document applies to Case No. A-21-840526-C.

VIA EMAIL AND U.S. MAIL TO:

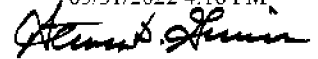
Wesley Rusch and Oliver Longboy
P.O. Box 30907
Las Vegas, NV 89173
(702) 764-0001
dirofcomp@yahoo.com

By /s/ Susan Awe
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP



EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 **ODM**
 2 MARC S. CWIK, ESQ.
 3 Nevada Bar No. 006946
 4 E-Mail: Marc.Cwik@lewisbrisbois.com
 5 LEWIS BRISBOIS BISGAARD & SMITH LLP
 6 6385 S. Rainbow Boulevard, Suite 600
 7 Las Vegas, Nevada 89118
 8 702.893.3383
 9 FAX: 702.893.3789
 10 *Attorneys for Defendant*
 11 *The Martin Condominium Unit Owners'*
 12 *Association*

13
 14 **DISTRICT COURT**
 15
 16 **CLARK COUNTY, NEVADA**
 17

18 WESLEY RUSCH, an individual, and
 19 OLIVER LONGBOY, an individual,

20 Plaintiffs,

21 vs.

22 THE MARTIN CONDOMINIUM UNIT
 23 OWNERS' ASSOCIATION, domestic non-
 24 profit; DOE Individuals I through X; and ROE
 25 Corporations and Organizations I through X,

26 Defendant.

CASE NO. A-20-826568-C
 Dept. No.: 27

Consolidated with:
 Case No. A-21-840526-C

**ORDER DENYING PLAINTIFFS'
 REQUEST TO NULLIFY SALE AND
 RESTORE POSSESSION OF CONDO**

HEARING DATE: March 16, 2022
 HEARING TIME: 9:00 A.M.

27 Plaintiffs Wesley Rusch ("Rusch") and Oliver Longboy's ("Longboy") motion entitled
 28 "Rusch Request To Nullify Sale Based on Violation of Constitutional Right of Due Process and
 Nevada Law and Restore Possession of the Condo to Its Rightful Owners Rusch and Longboy"
 came on for hearing before Department 27 of the Eighth Judicial District Court (Honorable Judge
 Nancy L. Allf) on March 16, 2022, at 9:00 a.m.; Rusch appeared in person; Longboy did not
 appear; Marc S. Cwik of Lewis Brisbois Bisgaard & Smith LLP, counsel for Defendant The Martin
 Condominium Unit Owners' Association ("Martin CUOA"), appeared via the Bluejeans
 conferencing service; and based upon the pleadings and papers on file herein, the oral argument
 taken, and good cause appearing, the Court finds/concludes and orders as follows:

1 **PROCEDURAL HISTORY**

2 1. On December 16, 2020, Plaintiff filed a Complaint in Case No. A-20-826568-C,
3 entitled *Wesley Rusch; Oliver Longboy v. The Martin Condominium Unit Owners' Association*
4 (the "2020 Action"). The 2020 Action was randomly assigned to Department 27. The 2020
5 Action relates to the foreclosure of a condominium located at The Martin (f/k/a Panorama
6 Towers), 4471 Dean Martin Drive, Unit 2206, Las Vegas, Nevada 89103 ("Subject Property").
7

8 2. In the 2020 Action, on August 13, 2021, Martin CUOA filed a Motion to Quash
9 Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss
10 Plaintiffs' New Complaint for Compensation (hereinafter the "Motion to Quash/Strike/Dismiss"),
11 which came on for hearing on September 1, 2021. The Honorable Judge Nancy L. Allf ("Judge
12 Allf") of Department 27 granted the Motion to Quash/Strike/Dismiss in its entirety and she
13 entered her written Order on November 9, 2021.
14

15 3. In her written Order entered on November 9, 2021, Judge Allf ruled that title to
16 the Subject Property was already quieted in Clark County District Court Case No. A-17-764643-
17 *C, Hollyvale Rental Holdings, LLC v. Wesley Rusch and Oliver Longboy*. See Order entered in
18 the 2020 Action on November 9, 2021 at Section A.
19

20 2. On September 2, 2021, before Judge Allf entered her formal Order on the Motion
21 to Quash/Strike/Dismiss, Plaintiffs filed a Complaint in Case No. A-21-840526-C, entitled *Wesley*
22 *Rusch; Oliver Longboy v. The Martin Condominium Unit Owners' Association* ("2021 Action").
23 The 2021 Action was randomly assigned to Department 8. The 2021 Action also relates to the
24 foreclosure of the Subject Property and is very similar to the Complaint filed in the 2020 Action.
25

26 3. The Complaints filed by Plaintiffs in the 2020 Action and the 2021 Action share a
27 commonality of alleged facts and claims. As a result, on December 17, 2021, Martin CUOA filed
28 a Notice of Related Cases and Motion to Consolidate Case No. A-20-826568-C with A-21-840526-

1 C. The Honorable Judge Nancy L. Allf of Department 27 granted the Motion to Consolidate and
2 entered her written Order on February 15, 2022.

3 4. On February 10, 2022, a motion entitled “Rusch Request To Nullify Sale Based on
4 Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the
5 Condo to Its Rightful Owners Rusch and Longboy” was filed. This motion was filed by Rusch on
6 behalf of both himself and Longboy.
7

8 **FINDINGS/CONCLUSIONS**

9 1. This Court again finds that title to the Subject Property was already quieted in
10 Clark County District Court Case No. A-17-764643-C, *Hollyvale Rental Holdings, LLC v. Wesley*
11 *Rusch and Oliver Longboy*. As a result, this Court concludes that Rusch and Longboy no longer
12 have any rights to the Subject Property and, therefore, no rights to pursue the claims set forth in
13 their Complaints against Martin CUOA filed in the 2020 Action and the 2021 Action.

14 2. This Court further finds that Rusch has a right to represent himself and a right to
15 appeal this Court’s decisions.

16 3. This Court further finds that Rusch and Longboy have a right to pursue their former
17 lawyer for malpractice.

18 4. This Court further concludes that in light of its finding that Rusch and Longboy
19 have no right to pursue the claims set forth in their Complaints against Martin CUOA filed in the
20 2020 Action and the 2021 Action, if Rusch and Longboy continue to pursue such claims, this
21 Court will at some point have to take action adverse to Rusch and Longboy and in favor of Martin
22 CUOA.

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ORDER

In light of the forgoing procedural history, findings/conclusions, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Rusch and Longboy have no rights to the Subject Property and, therefore, the motion entitled "Rusch Request To Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to Its Rightful Owners Rusch and Longboy" filed by Rusch on behalf of Rusch and Longboy is DENIED; and

IT IS HEREBY FURTHER DECREED that Rusch and Longboy have been advised by this Court that if Rusch and Longboy continue to pursue the claims set forth in their Complaint against Martin CUOA filed in the 2020 Action and the 2021 Action, this Court will at some point have to take action adverse to Rusch and Longboy and in favor of Martin CUOA.

DATED this 31st day of March, 2022.

Dated this 31st day of March, 2022

By: Nancy L. Alf
DISTRICT COURT JUDGE TW

Respectfully Submitted By:
LEWIS BRISBOIS BISGAARD & SMITH LLP

278 467 E2B4 92F7
~~Nancy L. Alf~~
District Court Judge

FAILED TO RESPOND

By: /s/ Marc S. Cwik
MARC S. CWIK, ESQ.
Nevada Bar No. 06946
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorneys for The Martin Condominium Unit
Owners' Association*

By: _____
WESLEY RUSCH
OLIVER LONGBOY
P.O. Box 30907
Las Vegas, NV 89173
(702) 764-0001
Plaintiffs Pro Per

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**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion 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: 3/31/2022

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

17 Susan Awc

susan.awc@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com