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FILED

APR 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa J. Miller*
DEPUTY CLERK

Appellant

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Case No. 85821-COA

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

7

WESLEY RUSCH, an individual, and

REPLY
IN
SUPPORT
OF

vs.

Plaintiffs,

MOTION
THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION, a domestic

non-profit corporation; DOE Individuals 1
through X; and ROE Corporations and

Organizations 1 through X,

Defendants.

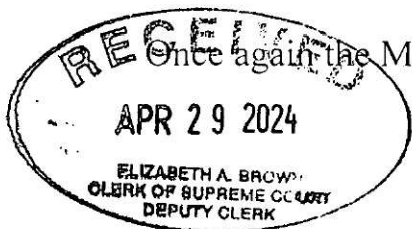
OLIVER LONGBOY, an individual,

DEFENDANT

ON THE PLEADINGS

Appellant Wesley Rusch (hereafter "Rusch") has filed a civil action against The Martin Condominium Unit Owners Association (hereafter The Martin") for breach of written contract for damages as the result of their wrongful and illegal actions.

Once again the Martin has failed to address the facts and issues raised in Rusch's



24-15074

pleading. By their failure to respond they have admitted they are at fault and liable to Rusch,

Rusch is tired of moving from hotel to hotel and wants to live in a home which he will purchase from the judgment for the damages he has sustained out of the wrongful and illegal conduct of the Martin.

The Martin has provided no defense whatsoever to Rusch's claims. Therefore Rusch must be awarded judgement on the pleadings.

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin **without notice to Plaintiffs in violation of Nevada Law. NRS 116.31162 et seq and CCR 17.2**

The complaint seeks damages!

THE COMPLAINT IS PRIMARILY FOR COMPENSATION FOR THE MARTINS WRONGFUL AND ILLEGAL SALE OF RUSCH'S HOME.

Issues raised in Martin's Reply

Rusch is permitted to file motions contrary to the Martin's view.

Nevada Appellate Rules Rule 27 – Motions

a) In General

(1) Application for Relief. application for an order or other relief is made by motion unless these Rules prescribe another form. A motion must be in writing and be accompanied by proof of service.

(2) Contents of a Motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion.

(3) Clerk's Orders.

(A) Procedural Motions. The chief justice or judge may delegate to the clerk authority to decide motions that are subject to disposition by a single justice or judge. An order issued by the clerk under this Rule shall be subject to reconsideration by a single justice or judge pursuant to motion filed within 14 days after entry of the clerk's order.

Motions are permitted under Nevada Appellate Rules!

The **vexatious litigant ruling is bogus** and not consistent with the law as a vexatious litigant is one who files **multiple frivolous** lawsuits. That is not the case here. The Martin states that Rusch filed meritless documents and motions. Rusch did no such thing, Filings do not make one a vexatious litigant. Rusch has been trying to obtain compensation for the damages the Martin has caused him. Rusch is tired of living in a hotel and wants to move into a home. This court should reverse the vexatious litigant ruling as clearly inconsistent with Nevada Law.

The Martin cites Rules which only supports Rusch's case.

NRCPC Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) **Time to Serve a Responsive Pleading.**

(1) **In General.** Unless another time is specified by Rule 4.2(c)(3)(E), this rule, or a statute, the time for serving a responsive pleading is as follows:

(A) **A defendant must serve an answer:**

- (i) **within 21 days after being served with the summons and complaint;** or
- (ii) if the defendant has timely waived service under Rule 4.1, within 60 days after the request for a waiver was sent, or within 90 days after the request for a waiver was sent to the defendant outside of the United States.

A motion for summary judgment is not an answer nor was it filed within 21 days after being served with the complaint. Therefore the Martin is in DEFAULT.

THE MARTIN FAILED TO COMPLY WITH NRCPC 12 AS THEY FAILED TO EVER FILE AN ANSWER TO RUSCH'S COMPLAINT AND ARE IN DEFAULT.

Since the Martin has not filed an answer to the complaint, this court is required to strike all pleadings filed by Martin as they have failed to file an answer.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

THE PLEADINGS ARE CLOSED AND THEREFORE A MOTION FOR JUDGMENT ON THE PLEADINGS IS PERMITTED.

Rule 55. Default; Default Judgment

(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.

(2) **By the Court.**

. A default judgment may be entered against a minor or incapacitated person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

**IT IS CLEAR FROM THE RULE THAT THE COURT SHOULD HAVE AWARDED
RUSCH DEFAULT JUDGMENT AS THE MARTIN NEVER ANSWERED THE
COMPLAINT.**

Contrary to the Martin's belief NRCP 55 does not prohibit an Appeals Court from entering a Default, on the contrary section 2 about states BY THE COURT.

Rule 56. Summary Judgment

(a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. **The court shall grant summary judgment if the movant shows that there is no genuine dispute as to**

any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) **Procedures.**

(1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) **Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.

(4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

[Amended; effective March 1, 2019.]

The District Court never seriously considered Rusch's Motion for Summary Judgment. Just look at the rule it is clear that

Rusch should have been granted summary judgment. There is absolutely no legal basis to award the Martin summary judgment.

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in violation of Nevada Law. NRS 116.31162 et seq and CCR 17.2**

The complaint seeks damages

THE COMPLAINT IS PRIMARILY FOR COMPENSATION FOR THE MARTINS WRONGFUL AND ILLEGAL SALE OF HIS HOME.

Now lets examine the cases the Martin has cited. They do no stand for the propositions that the Martin cites them for whatsoever. One can not look up a case on Lexis and cite them, without reading the case to ensure it support the proposition you cite it for,

Haas v. Chaiyaphakdiphon

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

Feb 28, 2013

Case No. 2:12-cv-01309-LDG (CWH)

DEANA M. HAAS, Plaintiff, v. NAYAKON CHAIYAPHAKDIPHON, et al., Defendants.

ORDER

The plaintiff, Deana M. Haas, moves for default judgment against defendant Nayakon Chaiyaphakdiphon (#13). Having reviewed the motion and the record, the Court will deny the motion and will vacate the default against Chaiyaphakdiphon as improvidently entered.

"When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *In re Tuli*, 172 F.3d 707, 712 (citing *Williams v. Life Sav. and Loan*, 802 F.2d 1200 (10th Cir.1986)). In so doing, "the court does not assert a personal defense of the parties; rather, the court exercises its responsibility to determine that it has the power to enter the default judgment." *Williams*, at 1203. The Court's exercise of its responsibility to establish that it has the power to enter a default judgment against the defendant reveals both minor defects in Haas's application for default and a critical defect in Haas's attempt to serve the defendant, as the attempted service did not comply with the Federal Rules of Civil Procedure governing the service by mail of a summons and complaint on an individual in a foreign country.

As established by the complaint and other documents in the record, the defendant, Chaiyaphakdiphon, presently resides in Thailand. Haas's motion for entry of clerk's default (#11) indicates that she served the defendant in Thailand pursuant to Fed. R. Civ. P. 4(f)(2)(C)(ii). Rule 4(f)(2)(C)(ii) specifically allows service "using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt."

The first defect apparent on the face of the motion for default and its affidavit is that it fails to establish that Haas could serve the defendant by mail, which is one of the methods set forth in Rule 4(f)(2). Any of the methods of service outlined in Rule 4(f)(2) may be used only "if there is no internationally agreed means, or if an international agreement allows but does not specify other means." Haas's motion for entry of clerk's default, and its accompanying affidavit (required by Rule 55), fails to establish that the United States and Thailand have not entered into an agreement that establishes an exclusive means by which a summons and complaint must be served upon a person residing in Thailand.

The second defect in the application for default is similar. Service by one of the means outlined in Rule 4(f)(2)(C) is appropriate "unless prohibited by the foreign country's law." Haas's application fails to establish the law of Thailand does not prohibit service by mail that requires a signed receipt.

This case has nothing to do with the current case before the court!

The Martin cites cases which do not stand for the propositions they say they do.

The Stephens case deals with US Savings Bonds and the right of the United States to intervene in the action.

Once again the following case has nothing to do with the current case:

Stephens v. Bank

Supreme Court of Nevada

Jun 20, 1947

182 P.2d 146 (Nev. 1947) No. 3479

June 20, 1947.

Appeal from First Judicial District Court, Ormsby County;

This court, however, does not wish to convey the impression that we are unmindful of the reasons so earnestly advanced by counsel for the United States in support of the motion to appear and participate in the litigation. After all, their fundamental desire in this matter is to accomplish the application in the instant case of the second liberty bond act, as amended, 31 U.S.C.A. sec. 757c, and the regulations promulgated thereunder by the secretary of the treasury (Treas. Dept. Car. No. 530, 5th Revision), and preceding and succeeding revisions thereof. The prevention of the consequences which counsel for the government envisage if such application is not made, would thereby be accomplished.

It is needless to say that this court, in passing upon the appeal in the instant case, earnestly desires to apply the federal constitution, laws, and regulations, and the state laws, each in their own proper sphere and to the extent that sound rules and principles of constitutional and statutory interpretation and construction indicate to be correct. To that end, we would welcome such enlightenment and assistance as counsel for the United States may furnish us, should they be willing to file a brief in this court as amici curiae.

For the reasons indicated, it is ordered that the motion of the United States attorney for leave to appear and to participate in the instant litigation, for the protection of the interest of the United States be, and same is, hereby denied.

Once again this case has nothing to do with the current case.

Vizcaino v. Microsoft Corp. 120 F.3d 1006 (9th Cir. 1997)

We review the district court's grant of summary judgment de novo. See Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996). However, when reviewing the decision of a plan administrator who has discretion, "the exercise of that discretion is reviewed under the arbitrary or capricious standard, or for abuse of discretion, which comes to the same thing." Snow v. Standard Ins. Co., 87 F.3d 327, 330 (9th Cir. 1996); see also Saffle v. Sierra Pac. Power Co. Bargaining Unit Long Term Disability Income Plan, 85 F.3d 455, 458 (9th Cir. 1996).

There is nothing in this case to support the statement that this court does not have jurisdiction to rule on the pending motion.

It is totally appropriate to refile motions rejected by the lower court, where the lower court failed to apply the facts and law to the motion. That is what this appeal is all about. The Lower Court failed to apply the true facts to the law and therefore the lower courts ruling must be overturned and Rusch must be awarded Judgment.

Decisions that can be appealed · The evidence in the case did not support the verdict; · The trial was unfair; or · The judge made legal or factual errors.

The district court failed to apply strict scrutiny to the case.

STRICT SCRUTINY IS REQUIRED

Nevada Courts Require Strict Statutory Compliance to Lien and Foreclosure

It is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process.**

ANALYSIS OF RUSCH'S CLAIM

The Martin has No excuse for letting water run for over three hours forcing Rusch to relocate for over three months while repairs were made.

The Martin has no excuse for failing to comply with Nevada Law when they sold Rusch's home as there was No Notice of the August 10 Sale as required by Nevada Law resulting in Rusch's wrongful eviction forcing Rusch to live in a hotel for years.

**Rusch did not receive any written or oral notice of a proposed sale of his property .
Rusch first learned of the sale by a call from an attorney's office. Therefore the sale
was illegal and must be reversed.**

**The sale of Rusch's condo was in violation of Nevada Law. Red Rock was required to comply with
Nevada Law and they did not therefore the sale is invalid and the sale must be reversed and Rusch must
be returned to his condo.**

**Rusch should be compensated for the time he has been homeless and forced to
stay in hotels since his wrongful eviction.**

**THEREFORE SINCE THE MARTIN HAS NO DEFENSE TO CLAIMS
STATED IN RUSCH'S COMPAIN T THE COURT IS REQUIRED TO
AWARD RUSCH JUDGMENT**

**As a final note, it should be noted that Rusch telephoned the Clerk of the Appeals
Court to inquire of the status of the case and if there was anything Rusch was
required to do. She suggested to Rusch to file another motion to move the case
along, so therefore Rusch file his Motion for judgment on the pleadings.**

MARC S. CWIK, Martin's Attorney has violated the NEVADA RULES OF PROFESSIONAL CONDUCT

Rule 3.1. Meritorious Claims and Contentions. 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, which includes a good faith argument for an extension, modification or reversal of existing law.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) 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 following is from the transcript of the Hearing held on January 6 2022

The follow comments demonstrates his violation of the rules

Obviously, we went through a whole process. We argued for quite a while back in September 1 in this case.

NOT TRUE And, so, I know the Court is very familiar with the plaintiffs' claims,**NOT TRUE** the issues that exist in this case, **NOT TRUE** the defenses of my client.**NOT TRUE**

N O A N S W E R F I L E D

This Court, before I even filed that Motion that you had granted back in September 1, you

had filed three prior Orders, actually, addressing these issues. **NOT TRUE** So, there's been actually four Orders entered by you, **NOT TRUE** Your Honor, related to the -- what I call the 2020 action, which is the one pending in Department 27.

RUSCH OBJECTED TO ORDERS DRAFTED BY THE MARTIN AS NOT BEING ACCURATE YET JUDGE ALFFE WENT AHEAD AND SIGNED THEM ANYWAYS WITHOUT CORRECTING ANY OF THE ERRORS THEREIN.

ALL OF THE "TRUE FACTS" AND THE APPLICATION OF THE LAW REQUIRES RUSCH TO BE COMPENSATED FOR HIS DAMAGES CAUSED BY THE MARTIN.

Based upon the Findings of Fact and Conclusions of Law both under

procedural law and substantive law, and good cause appearing, this Court orders, as

follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

RUSCH IS AWARDED AGAINST THE MARTIN CUQA

For monetary damages as a result of the Flood, in an amount of \$25,442.92.

For monetary damages as a result of Defendant's illegal sale of his home causing the wrongful eviction in an amount of \$Eight Million Dollars.

The following amount is due and owing on Plaintiff's claim as of this date. Eight Million Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on the Complaint

Total Attorney Fees \$ \$43,577.02. Amount Bryan Naddafi wrongful took from proceeds

Total \$8,069,019.94

Judges Signature

Respectfully Submitted

/S/ Wesley Rusch

Wesley Rusch

Proof of service

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 April 20,,2024 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