

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

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APR 03 2009

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,

ORIGINAL
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Appellant,

CASE NO: 53264

v.

GILBERT P. HYATT,

Respondent

**ERRATA TO APPELLANT'S REQUEST FOR PERMISSION
TO FILE REPLY, AND TO PROPOSED REPLY, REGARDING
MOTION FOR A STAY WITHOUT A BOND**

On March 27, 2009, FTB filed a request for permission to file a reply, and FTB submitted a proposed reply, regarding FTB's motion for a stay without a bond. These documents contained an argument, among others, indicating that respondent Hyatt's opposition had referred to three new papers that were not part of the district court record (namely, a letter dated October 30, 2008; a letter dated November 3, 2008; and a proposed stipulation). Hyatt has now filed an objection to FTB's request for permission to file the reply. Hyatt observes that two of the papers (letter dated October 30, 2008, and proposed stipulation) were, in fact, part of the district court record.

Upon review of Exhibit 8 attached to Hyatt's objection, it appears that FTB was partially incorrect in its request with this court for permission to file the reply, and in the proposed reply -- at least with respect to two of the papers in question. Hyatt's Exhibit 8 shows that on November 4, 2008, he filed a district court motion to continue a hearing on the stay issue, and he requested permission to file a surreply on the motion. Attached to his November 4, 2008 district court motion were approximately 165 pages of exhibits. The October 30, 2008 letter and the proposed stipulation were contained within these exhibits.

On March 27, 2009, FTB filed its request for permission to file the reply. By that time FTB's counsel had simply forgotten about the fact that the October 30, 2008 letter and the proposed stipulation were contained in the 165 pages of exhibits attached to Hyatt's district

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1 court procedural motion (for a continuance of a hearing and for permission to file a surreply)
2 filed nearly five months earlier. FTB's attorneys were not reminded of this fact during
3 preparation of the proposed reply or the request for permission to file the reply in this court.
4 At that time FTB's attorneys reviewed the transcript of the district court hearing on the no-
5 bond motion. The letters and the proposed stipulation (and any negative inference from FTB's
6 failure to respond) were never discussed at the hearing. Nor were FTB's attorneys reminded
7 of this fact when they reviewed Hyatt's opposition filed in this court, because the opposition
8 did not indicate that the letters and the proposed stipulation were somewhere in the district
9 court record.

10 Upon reflection, FTB agrees with Hyatt that the request for permission to file the reply,
11 and the proposed reply, were incorrect regarding our argument that two of the three papers at
12 issue here -- the letter of October 30, 2008 and the proposed stipulation -- were not part of
13 the district court record. FTB's attorneys were wrong on this point. FTB's attorneys
14 apologize to the court for this mistake, which was inadvertent. We did not try to mislead the
15 court in any way. Accordingly, to the extent necessary, we submit this errata regarding the
16 mistake with regard to the two papers that are actually in the district court record.¹

17 Finally, Hyatt's objection contends that the "entire premise" of FTB's request to file
18 the reply was the fact that the three documents were not part of the district court record.
19 FTB's request for permission to file the reply was not based solely on this premise. Instead,
20 the request to file the reply was also based on the following arguments:

21 Additionally, the complexity of the issues on this motion, coupled with
22 the constitutional ramifications, justifies granting FTB permission to file a reply.
23 FTB's motion raises complex and unusual issues dealing with comity between
24 sister states, the law of the case doctrine, judicial estoppel, and the scope and
25 application of *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). The motion
26 also raises constitutional issues involving the Full Faith and Credit Clause and
27 the Due Process Clause of the United States Constitution.

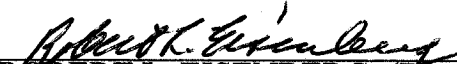
28 ¹
FTB's proposed reply and the request for permission to file the reply were correct with
regard to the third document, i.e., the letter dated November 3, 2008. This letter does not
appear within the exhibits attached to Hyatt's objection. Accordingly, this errata is not
intended to correct any contentions regarding the third document.

1 As noted above, this court's decision on the present motion could have
2 a huge impact of Nevada's neighboring sister state and on the millions of
3 citizens who live in California. Of course, this court's ultimate goal must be to
4 reach the correct decision on whether FTB should be required to post a
supersedeas bond. To assist the court in reaching the correct decision on the
motion for stay pending appeal without a bond, FTB respectfully requests
permission to file a reply.

5 (Request for permission to file reply, pp. 2-3.)

6 According, this errata should not be considered any type of concession that Hyatt is
7 correct in his argument that the mistake is FTB's "entire premise" of the request for
8 permission to file the reply. Nor should FTB's filing of this errata be considered a concession
9 that the mistake by FTB's counsel (regarding the October 30, 2008 letter and the proposed
10 stipulation) somehow justifies a denial of FTB's request for permission to file the reply.
11 Rather, we are filing this errata to acknowledge the mistake on the record, to apologize to the
12 court, and to let the court know that the mistake was not intentional.

13 DATED: April 2, 2009

14 
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CERTIFICATE OF MAILING

Pursuant to NRAP 25, I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date I caused to be deposited for mailing at Reno, Nevada, and via facsimile, a true copy of the foregoing addressed to:

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DATED: 4/3/09

William Styrud