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IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Appellant/Cross-Respondent

v.

GILBERT P. HAYTT,

Respondent/Cross-Appellant.

Electronically Filed
Jun 22 2012 09:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No. 53264

APPELLANT'S SUPPLEMENT PROVIDED
AT THE REQUEST OF THE COURT

Pursuant to the court's instruction at the June 18, 2012 oral argument in this matter, Appellant Franchise Tax Board of the State of California (FTB) hereby submits the following supplement to provide the court with citations to the record where the statute of limitations issue was raised as a defense to Hyatt's intentional infliction of emotional distress claim.

Near the beginning of the June 18, 2012 oral argument, Justice Hardesty asked FTB's counsel to provide the court with an appendix citation to a motion for summary judgment on the statute of limitations contention relating to the claim for intentional infliction of emotional distress. FTB's counsel has reviewed the appendix, and counsel has determined that there is no such a motion. Thus, FTB respectfully corrects the statement on page 96, lines 5-6 of the Opening Brief. Nonetheless, if the court is concerned that FTB may have failed to preserve the contention adequately, FTB can assure the court that the statute of limitations contention was fully preserved regarding Hyatt's claim for intentional infliction of emotional distress.

FTB asserted the statute of limitations as an affirmative defense in its Answer to Hyatt's Second Amended Complaint. 14 AA 3437. Before trial, FTB raised the statute of limitations issue with respect to Hyatt's intentional infliction of emotional distress claim in its proposed jury instructions submitted on March 17, 2008. 24 AA 5928.

1 Specifically, FTB’s proposed instruction 112 stated that “the time limitation on Mr.
2 Hyatt’s claims for intrusion upon seclusion, publicity of private facts, false light, abuse
3 of process, intentional infliction of emotional distress and breach of confidential
4 relationship began to run when Mr. Hyatt discovered, or when he reasonably should
5 have discovered, the necessary facts giving rise to these claims.” 24 AA 5928.

6 FTB again raised the statute of limitations issue with respect to all of Hyatt’s
7 non-fraud claims before trial in its trial memorandum. 74 RA 18373. Specifically, FTB
8 asserted that based on the two-year statute of limitations and the fact that Hyatt knew or
9 should have known all the facts related to his claims more than two years before he filed
10 his complaint, “all of Hyatt’s claims, with the exception of the fraudulent
11 misrepresentation claim, are time barred.” 74 RA 18373.

12 FTB again asserted that the two-year statute of limitations barred Hyatt’s
13 intentional infliction of emotional distress claim in its response to Hyatt’s NRCP 50
14 motion at trial, and in its motion for reconsideration of the district court’s ruling on that
15 motion. 50 AA 12486-12492. During the hearing on Hyatt’s Rule 50 motion, counsel
16 for FTB explicitly stated:

17 And, therefore, [Hyatt] knew or was on at minimum inquiry notice to
18 make a determination then whether or not that he needed to investigate
19 further to determination [sic] the scope then of whatever claim that he
20 asserted for invasion of privacy, false light, intrusion upon seclusion,
abuse of process, intentional inflection of emotional distress and breach of
a confidential relationship. All of those facts were known to him in April
of 1995 at the very minimum.

21 50 AA 12486 (17). FTB’s counsel reiterated this point again during the hearing,
22 stating:

23 All of this information, it laid out the full scope of its investigation. And
24 therefore, for purposes both of all the invasion of privacy claims, the false
25 light claims, the intentional infliction of emotional distress claims, the
26 abuse of process claims and the breach of confidential relationship claims,
all of those claims Mr. Hyatt and his representatives were on full notice
then of the scope then of the FTB’s investigation at that time.

1 50 AA 12487 (18) (emphasis added). Again, in FTB’s motion for reconsideration of the
2 district court’s ruling on Hyatt’s Rule 50 motion, counsel for FTB stated:

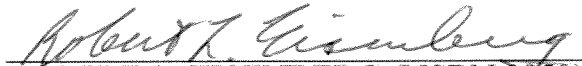
3 There are seven different causes of action that [Hyatt] has before this
4 Court, and with the exception of the fraud cause of action they are all
5 predicated on the demands to furnish. He knew those demands to furnish
 were being sent out to the third parties, and he knew what information was
 being contained to those third parties.

6 50 AA 12489 (27). The “seven different causes of action,” to which FTB’s counsel
7 referred, would have included the claim for intentional infliction of emotional distress.
8 FTB raised this issue yet again during the settling of jury instructions, in which it asked
9 the district court to reconsider its ruling on Hyatt’s Rule 50 motion for a second time
10 and allow FTB’s proposed instruction on the statute of limitations. 51 AA 12647 (62-
11 63). FTB’s objection to the district court’s ruling on this issue was again noted in the
12 record. Id.

13 Finally, FTB raised the statute of limitations issue in reference to Hyatt’s
14 intentional infliction of emotional distress claim in its Motion for Judgment as a Matter
15 of Law or Alternatively, Motion for New Trial. Specifically, FTB asserted in this
16 motion that the district court improperly rejected its proposed statute of limitations
17 instructions (applying to all of Hyatt’s non-fraud claims including intentional infliction
18 of emotional distress) based on the district court’s legally erroneous ruling on Hyatt’s
19 Rule 50 motion. 91 AA 22550-22551.

1 Although FTB did not raise the statute of limitations issue with respect to the
2 intentional infliction of emotional distress claim in its motions for summary judgment, it
3 raised the issue at numerous points throughout the case as detailed in the foregoing.

4 DATED: June 20, 2012.

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CERTIFICATE OF MAILING

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellant's Supplement Provided at the Request of the Court was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master list as follows:

- Carla Higginbotham
- Megan Starich
- Charles Howle
- Peter Bernhard
- Mark Hutchison
- Pat Lundvall
- Michael Wall
- Daniel Polsenberg

I further certify that on this date I served a copy, postage prepaid, by U.S. Mail to:

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DATED: 6/24/12

Valia Stupard