

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant/Cross-Respondent

v.

GILBERT P. HYATT

Respondent/Cross-Appellant

APPEAL FROM JUDGMENT – EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

**APPELLANT’S REPLY IN SUPPORT OF
SECOND REQUEST FOR JUDICIAL NOTICE
(Oral argument scheduled for May 2, 2017, at 10:30 a.m.)**

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Hyatt's opposition to FTB's second request for judicial notice highlights the prejudicial effect of sister-state hostility embodied in the 2014 Opinion, which is precisely why FTB believes that the document of which FTB seeks judicial notice is relevant to the disposition of this case. At the outset of this case, this Court held that the Nevada courts lacked jurisdiction over Hyatt's negligence and declaratory relief claims because they would interfere with FTB's decision-making process in the assessment and collection of taxes. Yet in the 2014 Opinion, this Court recognized that the district court's evidentiary and instructional errors allowed the trial on Hyatt's intentional tort claims to do just that. Hyatt now contends that the jury verdict resulting from those errors, as affirmed by this Court, has preclusive effect on FTB's ability to assess and collect the taxes that Hyatt owes.

In his opposition, Hyatt does not dispute that, before the Ninth Circuit, he points to the doctrine of collateral estoppel to avoid his tax liability. Indeed, Hyatt repeats the same language cited by FTB in which Hyatt trumpets this Court's now-vacated 2014 Opinion as purporting to have preclusive effect regarding the issue of delay. Opp. at 2, *quoting* RJN 618 n.2. In other words, Hyatt seeks to capitalize on what this Court acknowledged were erroneous evidentiary and instructional rulings that exceeded the jurisdictional boundaries of this case to avoid his tax liability. Hyatt's conduct before the Ninth Circuit, along with similar conduct before the

State Board of Equalization, underscores that the district court's errors were prejudicial.

NRS 47.130(2) allows the Court to take judicial notice of a readily ascertainable fact, and NRS 47.150(2) requires the Court to do so "if requested by a party and supplied with the necessary information." Hyatt does not object to the Court taking judicial notice of his contention to the Ninth Circuit that this Court's 2014 Opinion has preclusive effect as to the issue of delay. Hyatt's assertion regarding collateral estoppel, which is found in a publicly available document the accuracy of which cannot be reasonably questioned, is judicially noticeable under the statutory standard.

Although he does not object to the Court taking judicial notice of his assertion of collateral estoppel, Hyatt accuses FTB of making "misrepresentations" regarding his statements. Hyatt does not contend that FTB misquotes Hyatt's own words. Instead, he takes issue with how FTB has interpreted them. Hyatt's words speak for themselves, and the Court can read them to observe Hyatt's litigation conduct and determine whether Hyatt is accurately representing that conduct.

Whether or not the Court chooses to take judicial notice of the entire document or simply Hyatt's statements in that document regarding the purported preclusive effect of the Nevada proceedings on FTB's ability to collect the tax Hyatt owes (found at RJN 618, 620-621), judicial notice of this particular fact is

appropriate. Because FTB has satisfied the requirements of NRS 47.150, and Hyatt does not object to the Court taking judicial notice, FTB respectfully asks that the Court grant its request.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 28th day of April, 2017.

McDONALD CARANO LLP

By: /s/_____

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of April, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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