

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 CLUB VISTA FINANCIAL SERVICES,
3 L.L.C., a Nevada Limited Liability Company;
4 THARALDSON MOTELS II, INC., a North
Dakota corporation, and GARY D. THARALDSON,

5 Petitioners,

6 vs.

7 THE EIGHTH JUDICIAL DISTRICT COURT,
8 COUNTY OF CLARK, STATE OF NEVADA,
AND THE HONORABLE MARK R. DENTON,
9 DISTRICT JUDGE,

10 Respondents,

and


11 SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J. SCOTT;
12 BANK OF OKLAHOMA, N.A., a national bank;
GEMSTONE DEVELOPMENT WEST, INC., a
13 Nevada corporation; ASPHALT PRODUCTS
CORPORATION D/B/A APCO CONSTRUCTION,
14 a Nevada corporation,

15 Real Parties in Interest

16 REQUEST FOR RECONSIDERATION OF ORDER ENTERED ON
17 FEBRUARY 9, 2011

18 Pursuant to NRAP 27(b), Petitioners hereby request reconsideration of the order entered on
19 February 9, 2011. Real parties in interest requested an order shortening the time for the reply to the
20 answer. The court's order, which was issued before Petitioners had an opportunity to respond, shortens
21 the time even more than real parties in interest requested. For the reasons discussed in Petitioners'
22 opposition (Exhibit 1), which was submitted electronically on February 9, 2011, compliance with the
23 order will be virtually impossible.

24 DATED: Feb. 9, 2011

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4 L.L.C., a Nevada Limited Liability Company;
5 THARALDSON MOTELS II, INC., a North
6 Dakota corporation, and GARY D. THARALDSON,

7 Petitioners,

Case No. 57641

8 vs.

9 THE EIGHTH JUDICIAL DISTRICT COURT,
10 COUNTY OF CLARK, STATE OF NEVADA,
11 AND THE HONORABLE MARK R. DENTON,
12 DISTRICT JUDGE,

13 Respondents,

14 and

15 SCOTT FINANCIAL CORPORATION, a
16 North Dakota corporation; BRADLEY J. SCOTT;
17 BANK OF OKLAHOMA, N.A., a national bank;
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20 CORPORATION D/B/A APCO CONSTRUCTION,
21 a Nevada corporation,

22 Real Parties in Interest

23 /

24 **OPPOSITION TO MOTION FOR MODIFICATION OF**
25 **DUE DATE FOR REPLY BRIEF**

26 Petitioners hereby oppose the motion filed by the real parties in interest (defendants) on
27 February 9, 2011, seeking to modify the due date for petitioners' reply.

28 The motion is filled with irrelevant hyperbole and exaggerations, casting aspersions on
petitioners and their attorneys, and thereby attempting to taint this court in its decision on the
relatively simple and unemotional issue here, i.e., whether the 15-day deadline for the reply
should be shortened. For example, the defendants argue that one of the delays in this litigation
was a result of "Mr. Morrill and Mr. Aronson's detour to their home court in Arizona for an
order quashing the subpoenas" (Motion, page 2, lines 8-9) The motion ignores the fact
that attorneys Morrill and Aronson did not file the action in Arizona. Defendants filed the

1 Arizona action, in which the defendants sought and obtained Arizona subpoenas. Moreover,
2 the subpoenas that the defendants obtained in Arizona specifically and expressly informed the
3 deponents that Arizona procedures were available for challenging the subpoenas. Attorneys
4 Morrill and Aronson did nothing more than follow the Arizona procedures expressly allowed
5 by the subpoenas that the defendants obtained in the Arizona action filed by the defendants.

6 Other examples of irrelevant hyperbole, obviously intended for no legitimate purpose in
7 the motion, include discussions of the wealth and business sophistication of some of the
8 petitioners (Motion, page 3, lines 10-15), and exaggerated commentary regarding the merits of
9 the underlying lawsuit (Motion, page 3, lines 15-20).

10 It is also apparent that the defendants' motion to shorten the time for the reply is intended
11 to gain an important tactical advantage wholly unrelated to the writ petition in this docket. One
12 of the real motivations for defendants' motion is defendants' attempt to divert Petitioners'
13 counsels' time and energy from preparation of another writ petition, which will challenge yet
14 another recent gross abuse of discretion by the district court – this time depriving Petitioners
15 of their constitutional right to a jury trial. The district court recently issued a ruling that
16 Petitioners believe is an appropriate subject for a writ petition, and Petitioners informed the
17 district court and the defendants that Petitioners would be preparing and filing another writ
18 petition, with a target date of February 17 for the new petition. As defendants acknowledge in
19 their motion, "Petitioners appear to be gearing up for another petition filing" challenging the
20 district court's rulings on bifurcation and jury trial issues. (Motion, p. 3, lines 22-25.) With full
21 awareness of our February 17 target date for the new petition, the defendants now suddenly
22 want a shortened deadline of February 15 for our reply in the present writ docket. This is hardly
23 a coincidence.

24 The simple issue here is whether the time for petitioners' reply should be shortened to
25 less than half the 15-day time frame allowed in this court's order of January 31, 2011. Despite
26 the defendants' repeated complaints about delay, the defendants offer no excuse for their nine-
27 day delay in filing the motion. The defendants received electronic notification of this court's
28 order on January 31, 2011. At that time they became aware of the 15-day time frame for the

1 reply. If the defendants truly wanted to expedite these proceedings -- rather than gaining
2 tactical advantages by shortening the time for the reply -- the defendants could have, and should
3 have, filed their motion immediately upon receipt of this court's January 31, 2011 order. Had
4 they done so, Petitioners could have filed a response, and this court could have issued its ruling
5 before the defendants filed their answer to the writ petition. In that situation, Petitioners'
6 appellate counsel would have been able to arrange his work schedule and his calendar, to
7 accommodate an expedited time limit for the reply.

8 Rather than filing their motion immediately, the defendants waited nine days before
9 filing their motion and seeking to cut the reply time in half. The defendants offer no excuse for
10 this delay, and their motion should be denied on this ground alone. The court should also note
11 that the answer -- to which the reply will be directed -- is 26 pages long, containing numerous
12 factual statements that Petitions believe are incorrect, exaggerated or irrelevant, and containing
13 numerous legal citations that need to be reviewed and analyzed. Knowing that they would be
14 filing a lengthy answer, the defendants postponed filing their motion until the day after they
15 filed the 26-page answer; then they filed their motion seeking to cut the reply time by more than
16 half. The court should not allow the defendants to take advantage of their gamesmanship.

17 Additionally, the defendants have not demonstrated that reducing the time for the reply
18 by eight days will make a significant difference in the overall context and decision of this writ
19 case. When this court issued its order of January 31, 2011, this court was fully aware of the trial
20 date. In fact, this court's order expressly recited that "the trial [is] set for March 8, 2011." With
21 full awareness of the upcoming trial date, this court allowed 30 days for the defendants to file
22 an answer to the writ petition, and 15 days for petitioners to file a reply. The defendants now
23 essentially seek reconsideration of the January 31, 2011 order, yet the motion fails to establish
24 that this court misapprehended or overlooked anything regarding the trial date when this court
25 issued its scheduling order.

26 Finally, the court should be aware that an order shortening the time for the reply will
27 cause extreme hardship for the petitioners and their appellate counsel, Robert Eisenberg. At the
28 present time, the reply is due on Wednesday, February 23, 2011 (15 days after the February 8

1 service of the answer). In addition to preparation of the new writ petition discussed above, Mr.
2 Eisenberg has two back-to-back oral arguments before the Southern Panel of this court, in Las
3 Vegas, on Friday, February 18, 2011 (arguments at 10:00 a.m. and 10:30 a.m.). Obviously, Mr.
4 Eisenberg will be spending a significant amount of time during the week of February 14, 2011,
5 preparing for the two oral arguments on Friday of that week. Yet the defendants in the present
6 case are requesting a new due date of Tuesday, February 15, for the reply.

7 Additionally, Mr. Eisenberg recently took a short, four-day weekend personal vacation,
8 from February 4 through February 7, after a Nevada Supreme Court oral argument scheduled
9 for February 7 was vacated (due to the illness of opposing counsel). If Mr. Eisenberg had
10 known that the defendants in this writ proceeding would be seeking a huge reduction in the
11 amount of time available for the preparation of the reply, Mr. Eisenberg could have altered his
12 work schedule, including his vacation plans and activities, to accommodate for work he was
13 planning to do during the week of February 7.


14 Furthermore, Mr. Eisenberg is the attorney coach of a high school mock trial team. The
15 Northern Nevada regional mock trial competition will take place on Friday, February 11. This
16 is an all-day event; Mr. Eisenberg has been working with the high school students on his team
17 for more than five months; and he is committed to this event.

18 If this court changes the due date for the reply from February 23 to February 15, as the
19 defendants are requesting in their belated motion, it will be virtually impossible for Mr.
20 Eisenberg to accommodate the new deadline and other commitments, including preparation for
21 the two oral arguments. Much of this hardship could have been avoided if the defendants had
22 filed their motion in a timely manner, immediately upon receipt of this court's scheduling order,
23 thereby giving Mr. Eisenberg timely and reasonable notice of the request to shorten the reply
24 time limit.

25 Accordingly, there are at least three independent grounds for denial of the defendants'
26 motion to shorten the time limit for the reply (which is already relatively short, considering the
27 length of the defendants' answer). First, the motion was unnecessarily delayed (most likely for
28 tactical reasons); second, the motion does not establish good cause for the extraordinary short

1 time limit the defendants are seeking; and third, such a short time limit will cause severe
2 hardship to Petitioners and their counsel. Therefore, petitioners respectfully ask that the court
3 deny the motion to shorten the reply due date. The February 23 due date should remain in place.


4 DATED: Feb. 9, 2011

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ATTORNEYS FOR PETITIONERS

10 **CERTIFICATE OF COUNSEL FOR PETITIONERS**

11 The undersigned hereby certifies that he prepared this opposition; the facts contained in
12 this opposition regarding counsel's calendar and commitments are true and correct; and that this
13 opposition is not being submitted for the purpose of obtaining an unnecessary delay in this writ
14 proceeding.

15 DATED: Feb. 9, 2011

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1 CERTIFICATE OF SERVICE

2 Pursuant to NRAP 25, I certify that I am an employee of Lemons, Grundy
3 & Eisenberg and that on this 9 day of Feb., 2011, I am causing to be mailed, via U.S.
4 Mail, postage prepaid, a copy of the foregoing addressed to:

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8 Las Vegas, Nevada 89145

9 Honorable Mark R. Denton
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12 Clark County
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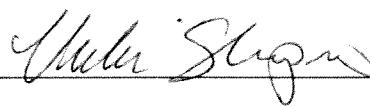
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRAP 25, I certify that I am an employee of Lemons, Grundy
3 & Eisenberg and that on this 9 day of FEB, 2011, I am causing to be sent via facsimile
4 to:

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