

## IN THE SUPREME COURT OF THE STATE OF NEVADA

CLUB VISTA FINANCIAL SERVICES,  
L.L.C., a Nevada limited liability company,  
THARALDSON MOTELS II, INC., a North  
Dakota corporation; and GARY D.  
THARALDSON,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT FOR THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK,  
AND THE HONORABLE MARK R.  
DENTON, DISTRICT JUDGE,

Respondents.

and

SCOTT FINANCIAL CORPORATION, A  
North Dakota corporation; BRADLEY J.  
SCOTT; BANK OF OKLAHOMA, N.A., a  
national bank; GEMSTONE  
DEVELOPMENT WEST, INC., a Nevada  
corporation; ASPHALT PRODUCTS  
CORPORATION, dba APCO  
CONSTRUCTION, a Nevada Corporation

Real Parties in Interest.

Case No.: 57641

Electronically Filed  
Jul 01 2011 08:48 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**PETITIONERS' OPPOSITION TO  
MOTION FOR LEAVE TO FILE  
SUPPLEMENT TO ANSWER TO  
PETITION FOR WRIT OF  
MANDAMUS OR PROHIBITION**

**Marquis Aurbach Coffing**  
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**Morrill & Aronson, P.L.C.**  
K. LAYNE MORRILL, ESQ.  
Arizona Bar No. 4591 (Pro Hac Vice)  
MARTIN A. ARONSON, ESQ.  
Arizona Bar No. 9005 (Pro Hac Vice)  
JOHN T. MOSHIER, ESQ.  
Arizona Bar No. 7460 (Pro Hac Vice)  
One E. Camelback Road, Suite 340  
Phoenix, Arizona 85012

**Cooksey, Toolen, Gage, Duffy & Woog**  
GRIFFITH H. HAYES, ESQ.  
Nevada Bar No. 7374  
MARTIN A. MUCKLEROY, ESQ.  
Nevada Bar No. 9634  
3930 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169

*Attorneys for Petitioners*

Now that the Scott Defendants have successfully orchestrated the substitution of Petitioners' trial counsel Morrill & Aronson, P.L.C. and Cooksey, Toolen, Gage, Duffy & Woog,<sup>1</sup> they ask this Court to somehow treat the substitution as changing the legal issues before this Court. Shortly after this Court entered a stay on March 3, 2011,<sup>2</sup> the Scott Defendants filed yet another lawsuit in Nevada against the lead trial counsel for Petitioners which was initiated on March 30, 2011.<sup>3</sup> Notwithstanding the Scott Defendants' legal maneuverings, the main issues of this original proceeding have not changed or become moot. In order to prove mootness of the issues before this Court, the Scott Defendants have to demonstrate that there is no longer any controversy between the parties *and* that this situation of attempts to take opposing counsel's deposition is not likely to be repeated.<sup>4</sup> The Scott Defendants have not attempted to prove either of these factors, but have relied solely upon the bare argument of their counsel. Tellingly, the Scott Defendants have not identified at any point what facts they believe Petitioners' former counsel may possess beyond what they already have from other sources, or how

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<sup>1</sup> Morrill & Aronson, P.L.C. and Cooksey, Toolen, Gage, Duffy & Woog are still counsel of record for this Supreme Court case and the companion Supreme Court Case No. 57784.

<sup>2</sup> The Court's order granting stay entered in this case on March 3, 2011 is attached as **Exhibit 1**.

<sup>3</sup> The Scott Defendants' lawsuit against Martin A. Muckleroy, Esq. and Layne K. Morrill, Esq. is attached as **Exhibit 2**. As the Court will recall, the Scott Defendants previously filed an Arizona lawsuit against Morrill & Aronson, P.L.C. in an attempt to take their depositions and gather information relevant to this Club Vista Financial Services, L.L.C. litigation. See Petitioners' Appendix ("PA") 1:88-110.

<sup>4</sup> City of Reno v. Dist. Ct., 58 Nev. 325, 78 P.2d 101, 101 (1938); Nat'l Collegiate Athl. Ass'n v. Univ. of Nev., Reno, 97 Nev. 56, 58, 624 P.2d 10, 11(1981) (concluding that an issue is not moot if there is an actual controversy, or if an issue is likely to reoccur, mootness concerns do not prevent a court from issuing a ruling on the merits).

the lack of such “unknown” information has actually affected their ability to defend against Petitioners’ claims.<sup>5</sup> Therefore, the issues before this Court are not moot.

Upon issuing a temporary stay and directing the real parties in interest to answer the writ petition, the Court asked the real parties in interest to focus on (1) the three-factor test set forth in Shelton v. American Motors Corp.,<sup>6</sup> and (2) the timing of real parties in interest’s attempts to depose petitioners’ counsel.<sup>7</sup> Despite the Scott Defendants’ unsupported claim that the issues before this Court are now moot, they have not identified any legal authority suggesting that the issues are different now that the Morrill and Cooksey firms are no longer counsel of record in the District Court.<sup>8</sup> The truth is that the same rules and the factors set forth in Shelton are not affected by the substitution of counsel. After all, the mental impressions and other privileged information held by an attorney do not simply become available to the public once the formal attorney-client relationship terminates in one forum out of many.<sup>9</sup> In fact, this

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<sup>5</sup> The Scott Defendants have never made a request under NRCP 56(f) requesting additional discovery, much less discovery from Petitioners’ former trial counsel.

<sup>6</sup> 805 F.2d 1323 (8th Cir. 1986).

<sup>7</sup> The Court’s order granting temporary stay and directing answer entered in this case on January 31, 2011 is attached as **Exhibit 3**.

<sup>8</sup> See Sheriff, Humbolt County v. Gleave, 104 Nev. 496, 498, 761 P.2d 416, 418 (1988) (stating that this Court does not consider arguments that are not supported by legal authority).

<sup>9</sup> See Nevada Rules of Professional Conduct, Rule 1.9:

**Rule 1.9. Duties to Former Clients.**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

1 Court granted extraordinary relief in Wardleigh v. District Court prohibiting the  
2 deposition of a *former* attorney.<sup>10</sup> Therefore, since there is no legal basis for this Court to  
3 accept the Scott Defendants' supplement to answer to petition for writ of mandamus or  
4 prohibition, the Court should deny their motion for leave to file the supplement. If for  
5 some reason the Court were to allow the Scott Defendants' supplement to be filed, the  
6 Court should similarly allow Petitioners a period of at least 15 days from the Court's  
7 order to file a reply.

8 Dated this 30th day of June, 2011.

9  
10 MARQUIS AURBACH COFFING

11 By /s/ Terry A. Coffing  
12 TERRY A. COFFING, ESQ.  
13 Nevada Bar No. 4949  
14 MICAH S. ECHOLS, ESQ.  
15 Nevada Bar No. 8437  
16 DAVID T. DUNCAN, ESQ.  
17 Nevada Bar No. 9546  
18 10001 Park Run Drive  
19 Las Vegas, Nevada 89145  
20 *Attorneys for Petitioners*

- 
- 21 (1) Whose interests are materially adverse to that person; and  
22 (2) About whom the lawyer had acquired information protected by Rules 1.6 and  
23 1.9(c) that is material to the matter;  
24 (3) Unless the former client gives informed consent, confirmed in writing.  
25 (c) A lawyer who has formerly represented a client in a matter or whose present or  
26 former firm has formerly represented a client in a matter shall not thereafter:  
(1) Use information relating to the representation to the disadvantage of the  
former client except as these Rules would permit or require with respect to a client, or  
when the information has become generally known; or

(continued)

- (2) Reveal information relating to the representation except as these Rules would  
permit or require with respect to a client.

<sup>10</sup> 111 Nev. 345, 891 P.2d 1180 (1995).

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **PETITIONERS' OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENT TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** was filed electronically with the Nevada Supreme Court on the 30th day of June, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Tami Cowden, Esq.  
Mark Ferrario, Esq.  
Wade Gouchnour, Esq.  
Matthew Carter, Esq.  
Robert Eisenberg, Esq.  
Gwen Mullins, Esq.  
Matthew Carter, Esq.  
J. Randall Jones, Esq.  
Von Heinz, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

The Honorable Mark R. Denton  
Eighth Judicial District Court, Dept. 13  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
*Respondents*

Griffith H. Hayes, Esq.  
Martin A. Muckleroy, Esq.  
Cooksey, Toolen, Gage, Duffy & Woog  
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Las Vegas, NV 89169  
*Attorneys for Petitioners*

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*Attorneys for Petitioners*

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Mark M. Jones, Esq.  
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3800 Howard Hughes Parkway, Seventeenth Floor  
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Piper Turner, Esq.  
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P. Kyle Smith, Esq.  
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Las Vegas, NV 89145  
*Attorneys for Gemstone Development West, Inc.*

/s/ Leah Dell  
Leah Dell, an employee of  
Marquis Aurbach Coffing

**Exhibit “1”**

**Exhibit “1”**

**Exhibit “1”**



IN THE SUPREME COURT OF THE STATE OF NEVADA

CLUB VISTA FINANCIAL  
SERVICES, LLC., A NEVADA  
LIMITED LIABILITY COMPANY;  
THARALDSON MOTELS II, INC., A  
NORTH DAKOTA CORPORATION;  
AND GARY D. THARALDSON,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE MARK R. DENTON,  
DISTRICT JUDGE,

Respondents,

and

SCOTT FINANCIAL  
CORPORATION, A NORTH  
DAKOTA CORPORATION;  
BRADLEY J. SCOTT; BANK OF  
OKLAHOMA, N.A., A NATIONAL  
BANK; GEMSTONE  
DEVELOPMENT WEST, INC., A  
NEVADA CORPORATION; AND  
ASPHALT PRODUCTS CORP.  
D/B/A APCO CONSTRUCTION, A  
NEVADA CORPORATION,  
Real Parties in Interest.

No. 57641

**FILED**

**MAR 03 2011**

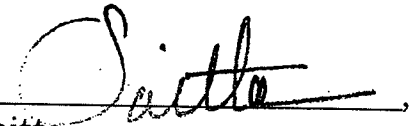
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

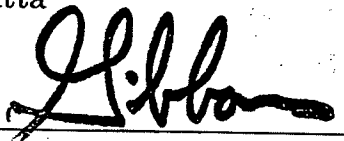
ORDER GRANTING STAY

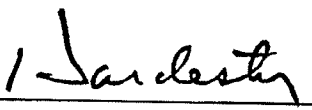
On January 31, 2011, we granted a temporary stay of counsel's depositions, pending receipt and consideration of any opposition and reply to the stay motion. Having considered real parties in interest's opposition and petitioners' reply, we conclude that a stay is warranted.

NRAP 8(c). Accordingly, the depositions are stayed pending further order of this court.

It is so ORDERED.

  
Saitta J.

  
Gibbons J.

  
Hardesty J.

cc: Hon. Mark R. Denton, District Judge  
Cooksey, Toolen, Gage, Duffy & Woog  
Lemons, Grundy & Eisenberg  
Marquis & Aurbach  
Morrill & Aronson, P.L.C.  
Frederic Dorwart Lawyers  
Howard & Howard  
Kemp, Jones & Coulthard, LLP  
Lewis & Roca, LLP/Las Vegas  
Patrick K. Smith  
Eighth District Court Clerk

**Exhibit “2”**

**Exhibit “2”**

**Exhibit “2”**

<b>Plaintiff(s) (name/address/phone):</b> Scott Financial Corporation; Bradley J. Scott <b>Attorney (name/address/phone):</b> J. Randall Jones Kemp, Jones & Coulthard 3800 Howard Hughes Pkwy., 17 <sup>th</sup> Floor Las Vegas, NV 89169 (702) 385-6000	<b>Defendant(s) (name/address/phone):</b> Martin A. Muckleroy Layne K. Morrill  <b>Attorney (name/address/phone):</b>
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☐ **Arbitration Requested**

REAL PROPERTY		TORTS	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> <b>Negligence - Auto</b> <input type="checkbox"/> <b>Negligence - Medical/Dental</b> <input type="checkbox"/> <b>Negligence - Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence - Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability  <input type="checkbox"/> <b>Intentional Misconduct</b> <input checked="" type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights  <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition	
PROBATE		OTHER CIVIL FILING TYPES	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Employer's Insurance of Nevada	<input type="checkbox"/> <b>Appeal from Lower Court</b> ( <i>also check applicable civil case box</i> ) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal  <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Pleading  <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> <b>Compromise of Minor's Claim</b> <input type="checkbox"/> Conversion to Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

(Please check applicable category; for Clark or Washoe Counties only)

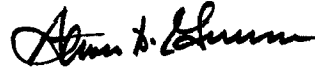
- ☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

3-30-11

Date \_\_\_\_\_

Signature of initiating party or representative

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CLERK OF THE COURT

1 J. RANDALL JONES, ESQ.  
Nevada Bar No.: 001927  
2 MARK M. JONES, ESQ.  
Nevada Bar No.: 000267  
3 MATTHEW S. CARTER, ESQ.  
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6 Tel. (702) 385-6000  
*Attorneys for Scott Financial Corporation*  
7 *and Bradley J. Scott*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 SCOTT FINANCIAL CORPORATION, a North  
Dakota corporation; and BRADLEY J. SCOTT,  
12 an individual,

13 Plaintiffs,

14 vs.

15 MARTIN A. MUCKLERROY, an individual; and  
LAYNE K. MORRILL, an individual, DOES I  
16 through V; and ROE CORPORATIONS VI  
through X, inclusive,

17 Defendants.  
18

Case No.: A - 1 1 - 6 3 8 6 8 9 - C  
Dept. No.: X X X

COMPLAINT AND JURY DEMAND

**[EXEMPT FROM ARBITRATION:  
AMOUNT IN CONTROVERSY IN  
EXCESS OF \$50,000.00]**

19  
20 COME NOW Plaintiffs SCOTT FINANCIAL CORPORATION and BRADLEY J. SCOTT  
21 ("Plaintiffs"), by and through their counsel, J. Randall Jones, Esq., Mark M. Jones, Esq. and Matthew  
22 S. Carter, Esq. of KEMP, JONES & COULTHARD, LLP, and for their claims for relief against the  
23 Defendants herein, assert and allege as follows:

24 1. Plaintiff SCOTT FINANCIAL is a North Dakota corporation licensed to do business in  
25 the State of Nevada.

26 2. Plaintiff BRADLEY J. SCOTT is, and at all times relevant hereto, has been a resident  
27 of North Dakota and is the President of Scott Financial Corporation.

28 3. Defendant MARTIN A. MUCKLERROY is, and at all times relevant hereto has been, a

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1 resident of Clark County, State of Nevada.

2 4. Defendant LAYNE K. MORRILL is and at all times relevant hereto has been, a resident  
3 of Arizona and was admitted *Pro Hac Vice* to practice law in the Eighth Judicial District Court, and has  
4 been actively practicing law in Nevada since January, 2009.

5 5. The true names and capacities, whether individual, corporate, associate, or otherwise,  
6 of Defendants herein designated as DOES I through V, and ROES VI through X, are Defendant  
7 individuals, corporations, partnerships and other business entities unknown to Plaintiffs at this time, who  
8 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon  
9 allege that each of said Defendants is responsible in some manner for the events and happenings and  
10 proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend this  
11 Complaint to allege their true names and capacities when ascertained, and will further ask leave to join said  
12 Defendants in these proceedings.

13 6. The Eighth Judicial District Court is the proper venue for this matter in that this action  
14 involves a dispute in which all events took place in Clark County, Nevada.

15 **FACTUAL ALLEGATIONS**

16 7. On or about January 13, 2009, Club Vista Financial Services, L.L.C. ("CVFS"), Gary  
17 Tharaldson, and Tharaldson Motels, II, Inc. ("TM2I") (collectively the "Tharaldson Entities") filed a  
18 lawsuit in the Eighth Judicial District Court, identified as Case No. A579963, (the "Tharaldson Lawsuit").

19 8. The lawsuit is related to a \$110 million dollar loan (the "Loan") made by Plaintiff SCOTT  
20 FINANCIAL CORPORATION to Gemstone Development West for the development of a mixed used  
21 condominium project in Las Vegas known as Manhattan West.

22 9. CVFS was a participant in the Loan and Tharaldson and TM2I guaranteed the Loan.

23 10. The Tharaldson entities are represented, in the Tharaldson Lawsuit, by MARTIN A.  
24 MUCKLEROY, an attorney licensed in the State of Nevada, and LAYNE K. MORRILL, an attorney  
25 licensed in the State of Arizona and admitted *Pro Hac Vice* to the Eighth Judicial District Court.

26 11. As a result of Defendants' representation of the Plaintiffs in the Tharaldson Lawsuit the  
27 Defendants became aware of the nature and scope of Brad Scott's and Scott Financial's profession and  
28 business, namely the lending of monies in commercial loan transactions through participation with

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1 commercial banks and lending companies.

2 12. On or about June 15, 2010, Jim Sheppard and Vicki Sheppard, the preferred residential  
3 mortgage lenders on the Manhattan West project, received subpoenas from Mr. Muckleroy to appear for  
4 their depositions related to the Tharaldson Lawsuit. Those depositions were subsequently cancelled by  
5 Mr. Muckleroy and/or Mr. Morrill for unspecified reasons.

6 13. On or about August 16, 2010, Mr. Muckleroy contacted Mr. and Mrs. Sheppard and  
7 requested that they attend a meeting with him and Mr. Morrill at his office allegedly to discuss the  
8 Sheppards' knowledge of the facts of the Tharaldson Lawsuit.

9 14. As arranged by Mr. Muckleroy, on or about August 19, 2010, Mr. and Mrs. Sheppard went  
10 to Mr. Muckleroy's office for what they had been led to believe was a discussion of their knowledge of  
11 facts relevant to the Tharaldson Lawsuit.

12 15. Upon arrival at Mr. Muckleroy's office, Mr. Muckleroy began relating to the Sheppards  
13 certain underlying "facts" of the Tharaldson Lawsuit including conduct of the parties. Among the "facts"  
14 that Mr. Muckleroy initially related to the Sheppards was that Brad Scott, along with certain other  
15 defendants in the Tharaldson Lawsuit "were con artists, scum, had defrauded the system and committed  
16 fraud." See Deposition of James Sheppard, Vol. 1, pg. 59, lines 21-25; pg. 60, lines 1-6 and 16-22  
17 attached hereto as Exhibit "1".

18 16. Mr. Morrill then joined the group and the parties moved into Mr. Muckleroy's conference  
19 room to continue the discussion.

20 17. Mr. Morrill then proceeded to tell the Sheppards that Brad Scott had "used the [Sheppards']  
21 letters to dupe the system; that it was bank fraud;" that Brad Scott, "was receiving a \$2 million  
22 commission to check that box. And so that's [Brad Scott's] motive for doing that."; "that was essentially  
23 the bank fraud Mr. Scott was committing so he could get the \$2 million." See deposition of James  
24 Sheppard, Vol. 1, pg. 64, lines 23-24, pg. 65, lines 1-5; and that "Brad Scott for Scott Financial and Bank  
25 of Oklahoma were in a conspiracy to commit bank fraud," see deposition of James Sheppard, Vol. 1, pg.  
26 66, line 25; pg. 67, lines 1-2.

27 18. All of the above statements by Mr. Muckleroy and Mr. Morrill were made as statements  
28 of fact, without qualification, and not as expressions of the Defendants' opinion.

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1 19. That Defendants made their false and defamatory statements with malice, and the intent  
2 to convince the Sheppards of the bad character of the Plaintiffs in order to induce and convince the  
3 Sheppards to sign affidavits in favor of the Defendants' clients in the Tharldson Lawsuit.

4 20. The Defendants' false and defamatory statements were made with reckless disregard of the  
5 accuracy and truth of the statements made in an attempt to gain an advantage in the Tharldson Lawsuit.

6 **FIRST CLAIM FOR RELIEF**  
7 **(Defamation - Against Martin A. Muckleroy)**

8 21. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained  
9 within the paragraphs above.

10 22. Mr. Muckleroy knowingly made false and defamatory statements about the Plaintiffs.

11 23. Mr. Muckleroy's statements were published to Mr. and Mrs. Sheppard.

12 24. The aforementioned accusations and statements made by Mr. Muckleroy would normally  
13 tend to lower the reputation of the Plaintiffs in the community, and in the profession and business or  
14 industry in which Plaintiffs worked, and would excite derogatory opinions about the Plaintiffs, and hold  
15 the Plaintiffs up to contempt.

16 25. Mr. Muckleroy was at least negligent in making the statements.

17 26. As a direct and proximate cause of Mr. Muckleroy's conduct, as described above, Plaintiffs  
18 have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000).

19 27. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the  
20 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving  
21 rise of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

22 28. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the  
23 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving  
24 rise to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

25 **SECOND CLAIM FOR RELIEF**  
26 **(Defamation - Against Layne K. Morrill)**

27 29. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
28 contained within the paragraphs above.



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1           30.     Mr. Morrill knowingly made false and defamatory statements about the Plaintiffs.

2           31.     Mr. Morrill's statements were published to Mr. and Mrs. Sheppard.

3           32.     The aforementioned accusations and statements made by Mr. Morrill would normally tend  
4 to lower the reputation of the Plaintiffs in the community, and in the profession and business or industry  
5 in which Plaintiffs worked, and would excite derogatory opinions about the Plaintiffs and hold the  
6 Plaintiffs up to contempt.

7           33.     Mr. Morrill was at least negligent in making the statements.

8           34.     As a direct and proximate cause of Mr. Morrill's conduct, as described above, Plaintiffs  
9 have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000).

10          35.     Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights  
11 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving rise  
12 of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

13          36.     Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights  
14 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving rise  
15 to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

16                   **THIRD CLAIM FOR RELIEF**  
17                   **(Defamation Per Se - Against Martin A. Muckleroy)**

18          37.     Plaintiffs re-allege and incorporate herein by reference each and every allegation contained  
19 within the paragraphs above.

20          38.     Mr. Muckleroy's statements constitute defamation or slander per se in that they impute to  
21 the Plaintiffs the commission of a crime (bank fraud), and tend to injure the Plaintiffs in their trade,  
22 business and profession.

23          39.     As a direct and proximate cause of Mr. Muckleroy's conduct, as described above, Plaintiffs  
24 suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000).

25          40.     Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the  
26 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving  
27 rise of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

28          ...

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1           41.     Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the  
2 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving  
3 rise to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

4                               **FOURTH CLAIM FOR RELIEF**  
5                               **(Defamation Per Se - Against Layne K. Morrill)**

6           42.     Plaintiffs re-allege and incorporate herein by reference each and every allegation contained  
7 within the paragraphs above.

8           43.     Mr. Morrill's statements constitute defamation or slander per se in that they impute to the  
9 Plaintiffs the commission of a crime (bank fraud), and tend to injure the Plaintiffs in their trade, business  
10 and profession.

11          44.     As a direct and proximate cause of Mr. Morrill's conduct, as described above, Plaintiffs  
12 suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000).

13          45.     Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights  
14 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving rise  
15 of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

16          46.     Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights  
17 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving rise  
18 to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

19                               **DEMAND FOR JURY TRIAL**

20           Plaintiffs hereby requests a jury trial for all issues so triable.

21           **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- 22           1.     General and special damages in an amount in excess of \$10,000.00;  
23           2.     Punitive and exemplary damages in excess of \$10,000.00;  
24           3.     Attorney's fees and costs; and  
25  
26  
27  
28

1           4.       For such other relief that the Court deems just and proper.

2       DATED this 30 day of March, 2011.

3                               Respectfully submitted,

4                               KEMP, JONES & COULTHARD, LLP

5                               

6                               J. RANDALL JONES, ESQ. (#1927)

7                               MARK M. JONES, ESQ. (#267)

8                               MATTHEW S. CARTER, ESQ. (#9524)

9                               3800 Howard Hughes Parkway

10                              Seventeenth Floor

11                              Las Vegas, Nevada 89169

12                              Attorneys for Scott Financial Corporation  
13                              and Bradley J. Scott

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19 kjc@kempjones.com

**Exhibit “3”**

**Exhibit “3”**

**Exhibit “3”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C.,  
A NEVADA LIMITED LIABILITY COMPANY;  
THARALDSON MOTELS II, INC., A NORTH  
DAKOTA CORPORATION; AND GARY D.  
THARALDSON,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE MARK R. DENTON, DISTRICT  
JUDGE,

Respondents,

and

SCOTT FINANCIAL CORPORATION, A  
NORTH DAKOTA CORPORATION;  
BRADLEY J. SCOTT; BANK OF OKLAHOMA,  
N.A., A NATIONAL BANK; GEMSTONE  
DEVELOPMENT WEST, INC., A NEVADA  
CORPORATION; AND ASPHALT PRODUCTS  
CORP. D/B/A APCO CONSTRUCTION, A  
NEVADA CORPORATION,

Real Parties in Interest.

No. 57641

**FILED**

**JAN 31 2011**

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY AND DIRECTING ANSWER


This original petition for a writ of mandamus or prohibition challenges a district court order allowing the depositions of petitioners' counsel. Petitioners seek an emergency stay of the depositions, as a district court stay expires today.

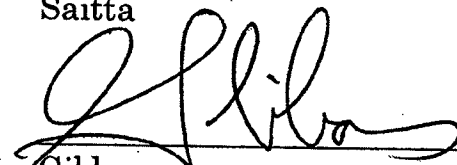
We have considered petitioners' motion for a stay, and we conclude that a temporary stay, pending receipt and consideration of any opposition, is warranted. In determining whether to grant a stay pending review of a writ petition, this court considers the following factors: (1) whether the object of the petition will be defeated if the stay is not granted, (2) whether petitioners will suffer irreparable or serious injury if the stay is denied, (3) whether real parties in interest will suffer irreparable or serious injury if the stay is granted, and (4) whether petitioners are likely to prevail on the merits. NRAP 8(c); see also Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000). At this point, petitioners have demonstrated that these factors militate in favor of a stay. Accordingly, we grant petitioners' motion and temporarily stay the depositions of petitioners' counsel, pending receipt and consideration of any opposition and further order of this court.

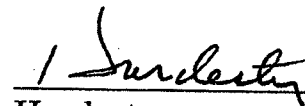
Also, having reviewed the petition, it appears that petitioners have set forth issues of arguable merit and that petitioners may have no plain, speedy, and adequate remedy in the ordinary course of the law. Therefore, the real parties in interest, on behalf of respondents, shall have 30 days from the date of this order within which to file an answer, including authorities, against issuance of the requested writ. In addition to any other points, the answer shall address whether this court should adopt the three-factor test set forth in Shelton v. American Motors Corp., 805 F.2d 1323 (8th Cir. 1986), and include an analysis applying that test to the instant case. The answer shall also explain the timing of real parties in interest's attempts to depose petitioners' counsel, in light of the October 2009 detailed answers to interrogatories, the May 2010

depositions of Gary Tharaldson and Ryan Kucker, the discovery cutoff of November 19, 2010, and the trial set for March 8, 2011. Petitioners shall have 15 days from service of the answer to file and serve any reply.

It is so ORDERED.

  
Saitta, J.

  
Gibbons, J.

  
Hardesty, J.

cc: Hon. Mark R. Denton, District Judge  
Cooksey, Toolen, Gage, Duffy & Woog  
Lemons, Grundy & Eisenberg  
Morrill & Aronson, P.L.C.  
Frederic Dorwart Lawyers  
Howard & Howard  
Kemp, Jones & Coulthard, LLP  
Lewis & Roca, LLP/Las Vegas  
Patrick K. Smith  
Eighth District Court Clerk