

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT, COUNTY OF CLARK, STATE OF  
NEVADA, 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 D/B/A APCO  
CONSTRUCTION, a Nevada corporation,

Real Parties in Interest.

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Case No.: 57641

District Court Case: A579963

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT  
TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR  
PROHIBITION IN LIGHT OF SUBSTITUTION OF PETITIONERS'  
TRIAL COUNSEL**

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FINANCIAL CORPORATION and  
BRADLEY J. SCOTT*

1 The gist of Petitioners' opposition to the instant motion is that this Court should not  
2 even allow Real Parties in Interest Scott Financial Corporation ("SFC") and Brad Scott to  
3 supplement their Answer with additional information because the substitution of Layne  
4 Morrill and Marty Aronson as counsel for the Petitioners does not moot the writ proceedings  
5 currently before this Court. Petitioners are engaging in a classic logical fallacy by  
6 constructing a straw-man argument: if they can prove that the object of their writ is no  
7 longer moot, then SFC and Scott's motion to supplement must therefore be worthless to this  
8 Court.

9 This specious argument completely misstates the situation before the Court. The  
10 instant motion does not argue that the current writ proceedings are mooted by the substitution  
11 of counsel for Petitioners. Rather, the substitution is a development that directly impacts the  
12 issues in this case. The most direct impact is on Petitioners' argument that the depositions  
13 of their trial counsel will cause them prejudice, particularly through the disqualification of  
14 that counsel. That particular argument should not be of any further concern to this Court  
15 since Petitioners have already substituted Messrs. Morrill and Aronson out of the case.

16 Furthermore, the substitution also presents another compelling argument why the  
17 depositions should be allowed. SFC and Scott strongly suspect that Petitioners have  
18 substituted Morrill and Aronson out of the case so that they may call those individuals as  
19 witnesses. This appears especially likely because Petitioners' principal witnesses all  
20 disclaimed any knowledge whatsoever of the vast majority of their own allegations, and  
21 attributed that knowledge directly to Morrill and Aronson. If they are indeed going to be  
22 called as witnesses at any stage of this trial, that makes the need to depose these two  
23 attorneys even more compelling than it originally was.

24 Petitioners also make the bizarre assertion that SFC and Scott should have made a  
25 request under NRCP 56(f) prior to attempting to take the depositions of Morrill and Aronson.  
26 Of course, because NRCP 56(f) was designed to assist parties in opposing summary  
27 judgment who may not have access to all relevant discovery at the time of the summary  
28 judgment hearing, it has no application to the instant controversy. Regardless, the Special

1 Master and the District Court ordered the depositions to proceed. Therefore, what possible  
2 Rule 56(f) relief may have been in order is a complete mystery.

3 While Petitioners correctly identify the remaining dispute before this Court as  
4 whether the parties may take depositions of witnesses who have served as attorneys for a  
5 party, the fact is that the Petitioners themselves are the ones who created the issue by  
6 identifying Layne Morrill and Marty Aronson as the witnesses most knowledgeable about  
7 Petitioners' allegations. Because this issue has already been thoroughly briefed for the  
8 Court, SFC and Scott will not repeat their argument here. It should be apparent, however,  
9 that the deposition of **former** trial counsel is far less intrusive than the deposition of **current**  
10 trial counsel a development that clearly impacts the propriety of extraordinary relief.<sup>1</sup>  
11 Accordingly, and for all the foregoing reasons, SFC and Scott respectfully request that this  
12 Court grant the instant motion in its entirety and allow the filing of the supplement to their  
13 Answer.

14 DATED this 6<sup>th</sup> day of July, 2011.

15 Respectfully submitted by:

16 KEMP, JONES & COULTHARD, LLP

17  
18 /s/ J. Randall Jones  
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25 *and Bradley J. Scott*

26 <sup>1</sup> Curiously, Messrs. Morrill and Aronson are still listed on Petitioners' opposition  
27 as counsel for Petitioners, despite the fact that both lawyers and the local lawyers  
28 sponsoring them are out of the case. SFC and Scott clarify that their understanding from  
Petitioners is that neither Morrill nor Aronson are still representing any of the Petitioners  
in any capacity.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of July, 2011, the foregoing **REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION IN LIGHT OF SUBSTITUTION OF PETITIONERS' TRIAL COUNSEL** was served via this Court's electronic service system and by mailing a copy thereof, first class mail, postage prepaid on the following:

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