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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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Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 57641

District Court Case: A579963

**SUPPLEMENT TO ANSWER TO PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION IN LIGHT OF
SUBSTITUTION OF PETITIONERS' TRIAL COUNSEL**

J. Randall Jones
Nevada Bar No. 1927
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*Attorneys for Real Parties in Interest SCOTT
FINANCIAL CORPORATION and
BRADLEY J. SCOTT*

Petitioners challenge an order allowing the Real Parties in Interest – defendants in a civil action brought by Petitioners as a preemptive strike to stave off foreclosure on \$110 million in personal guarantees – to depose two of Petitioners’ attorneys, Lane Morrill and Marty Aronson. Petitioners designated Morrill as a witness with “discoverable information,” and all of Petitioners’ representatives disavowed knowledge of the facts supporting their claims and identified these out-of-state attorneys as the exclusive source of all allegations in Petitioners’ 57-page complaint. Petitioner frames **the issue** in its petition as “whether one party can take the depositions of another party’s **trial attorneys in a pending civil lawsuit**, and if so, the circumstances under which such depositions should be allowed.” Petition at 1 (Statement of Issue) (emphasis added).

But there has been a critical development in this writ proceeding. The proposed deponents are no longer “another party’s trial attorneys in a pending civil lawsuit.” **Morrill and Aronson have been substituted out of this case and replaced by attorneys at Greenberg Traurig, LLP**, (the sixth law firm hired by Petitioners during the two-year, four-month course of this case). The Substitution of Counsel, filed in the trial court by Petitioners on June 9, 2011, states that Petitioners “hereby substitute[] the firm of GREENBERG TRAURIG, LLP as attorneys of record in this matter, in the place and stead of the law firm of MORRILL & ARONSON, P.L.C.” A true and correct copy of the Substitution of Counsel is attached hereto as Exhibit A.

The elimination of Messrs. Morrill and Aronson as trial counsel in this case further undermines Petitioners’ already precarious position in this writ proceeding. Because these lawyers are no longer trial counsel, all of the perceived and alleged dangers that Petitioners prognosticate from allowing an opposing party to take the depositions of trial counsel simply cannot be implicated. For example, Petitioners’ fears that, “if the depositions proceed, Defendants will probably also seek to disqualify attorneys Morrill and Aronson, asserting that these attorneys will be

1 witnesses at trial,” is no longer a plausible concern. As they are no longer counsel of
2 record, the only further involvement that Morrill and Aronson will – or should – have
3 in this trial will be as testifying witnesses.

4 Indeed, it is highly likely that these fact-witness/attorneys have been replaced
5 *because* they intend to provide testimony at trial. *Someone* from Petitioners’ camp
6 will have to testify to the facts that support their elaborate claims as Petitioners’
7 principal witnesses all disclaimed any knowledge of those facts and identified Morrill
8 and Aronson as the only witnesses with such knowledge. Furthermore, these
9 attorneys are the only available choice since, in addition to having been identified by
10 their clients as the only persons known to have knowledge of the facts alleged in the
11 complaint, Morrill affirmatively *designated himself as a witness* with “discoverable
12 information related to dealings between Scott Financial and Tharaldson and related
13 companies.” P. App.¹ 468. Plus, Mr. Morrill’s act of pressuring and intimidating
14 independent witnesses Jim and Vicki Sheppard to sign false affidavits and destroy
15 their communications with him – while he shared with the Sheppards the facts that he
16 alleges support Petitioners’ claims, thereby waiving any privilege or work product
17 protection that could possibly have existed – provides an independent reason that Mr.
18 Morrill will likely be called upon as a fact witness at trial.

19 Whatever the reason for the substitution, the fact that it has occurred should be
20 fatal to this petition. Petitioners argued that writ relief is appropriate because “this
21 writ petition provides the court with an opportunity to determine and clarify the
22 circumstances in which one party in a lawsuit may take the deposition of the opposing
23 party’s attorney in a pending case.” Petition at 7. As Messrs. Morrill and Aronson are
24 no longer the opposing party’s attorneys in this case, that opportunity evaporated and
25 . . .

26
27
28 ¹Petitioners’ Appendix,

1 this petition should be summarily denied.

2 DATED this 20th day of June, 2011.

3 Respectfully submitted by:

4 KEMP, JONES & COULTHARD, LLP

5
6 /s/ J. Randall Jones

7 J. RANDALL JONES, ESQ. (1927)
8 JENNIFER C. DORSEY, ESQ. (6456)
9 3800 Howard Hughes Parkway
10 Seventeenth Floor
11 Las Vegas, Nevada 89169
12 *Attorneys for Scott Financial Corporation*
13 *and Bradley J. Scott*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the 20th day of June, 2011, the foregoing **SUPPLEMENT**
16 **TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**
17 **IN LIGHT OF SUBSTITUTION OF PETITIONERS' TRIAL COUNSEL** was
18 served on the following person(s) by U.S. Mail or through this Court's electronic service
19 system:

20 Honorable Mark R. Denton
21 Department 13
22 Eighth Judicial District Court
23 200 Lewis Avenue
24 Las Vegas, Nevada 89155

25 Von Heinz, Esq.
26 LEWIS & ROCA, LLP
27 3993 Howard Hughes Parkway #600
28 Las Vegas, Nevada 89169

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Martin A. Aronson, Esq.
John T. Mossier, Esq.
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Phoenix, Arizona 85012

/s/ Angela Embrey
An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A


CLERK OF THE COURT

SUBT

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Arizona Bar No. 004591

MARTIN A. ARONSON, ESQ.
Arizona Bar No. 009005

JOHN T. MOSHIER, ESQ.
Arizona Bar No. 007460

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Telephone: (602) 263-8993
Attorneys For Plaintiffs

DISTRICT COURT
CLARK COUNTY, 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,)

Plaintiffs,

v.

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; DOE INDIVIDUALS 1-100; and)
ROE BUSINESS ENTITIES 1-100,)

Defendants.

Case No. A579963
Department No. 13
Consolidated With
Case No. A-10-609288-C

SUBSTITUTION OF COUNSEL

1 AND RELATED COUNTERCLAIMS)
2)

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

8 Plaintiffs,

9 v.

10 ALEXANDER EDELSTEIN, an individual,
11 Defendant.

12 **SUBSTITUTION OF COUNSEL**

13 CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada limited liability company;
14 THARALDSON MOTELS II, INC., a North Dakota corporation; and GARY D. THARALDSON hereby
15 substitutes the firm of GREENBERG TRAURIG, LLP as attorneys of record in this matter, in the place
16 and stead of the law firm of MORRILL & ARONSON, P.L.C..

17 Dated this 3rd day of June, 2011.

18 
19 GARY D. THARALDSON, individually

20 CLUB VISTA FINANCIAL SERVICES, L.L.C.
21 By CLUB VISTA HOLDINGS, INC..

22 By 
23 GARY D. THARALDSON

24 THARALDSON MOTELS II, INC.

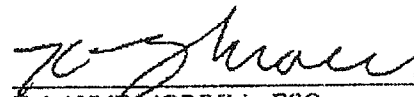
25 By 
26 GARY D. THARALDSON

27 Its: ~~President~~
28

1 MORRILL & ARONSON, P.L.C. agrees and consents to the substitution of as attorneys of
2 record for Plaintiff's CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada limited liability
3 company; THARALDSON MOTELS II, INC., a North Dakota corporation; and GARY D.
4 THARALDSON in this matter.

5 Dated this 2nd day of June, 2011.

6 MORRILL & ARONSON, P.L.C.

7
8 

9 K. LAYNE MORRILL, ESQ.

10 Arizona Bar No. 004591

11 MARTIN A. ARONSON, ESQ.

12 Arizona Bar No. 009005

13 JOHN T. MOSHIER, ESQ.

14 Arizona Bar No. 007460

15 One E. Camelback Road, Suite 340

16 Phoenix, Arizona 85012

17 GREENBERG TRAURIG, LLP, accepts substitution as attorneys of record for Plaintiff's in this
18 matter.

19 Dated this 5th day of June, 2011.

20 GREENBERG TRAURIG, LLP

21
22 

23 Mark E. Ferrario, Esq.

24 Nevada Bar No. 1625

25 Tami D. Cowden, Esq.

26 Nevada Bar No. 8994

27 Brandon E. Roos, Esq.

28 Nevada Bar No. _____

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