

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.

Electronically Filed  
Aug 22 2011 03:28 p.m.  
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  
GARY THARALDSON'S SWORN TESTIMONY THAT NEITHER  
MORRILL NOR ARONSON ARE COUNSEL FOR PETITIONERS**

J. Randall Jones  
Nevada Bar No. 1927  
Jennifer C. Dorsey  
Nevada Bar No. 6456  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Pkwy. 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169

*Attorneys for Real Parties in Interest SCOTT  
FINANCIAL CORPORATION and  
BRADLEY J. SCOTT*

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

12 As noted in the prior supplement filed by the Scott Parties, the law firm of  
13 Morrill and Aronson has been substituted out of the underlying case. Petitioners  
14 responded that, nonetheless, Marty Aronson and Layne Morrill were still attorneys of  
15 record in this matter, as well as the other writ petition pending before this Court (case  
16 number 57784):

17 The Scott Defendants’ supplemental answer asserts that  
18 Attorneys Morrill and Aronson are completely removed  
19 from this litigation. Yet, Petitioners’ former trial counsel  
20 are still counsel for Petitioners in this original proceeding,  
as well as the companion Supreme Court Case No. 57784,  
which is still pending.

21 Petitioners’ Supplemental Reply in Support of Petition for Writ of Mandamus or  
22 Prohibition, on file herein, at 5:5-8.

23 This assertion, however, is not true. Petitioner Gary Tharaldson himself (who  
24 is also the principal of Petitioners Club Vista Financial Services, LLC, and  
25 Tharaldson Motels II, Inc.) openly stated in the last session of his deposition, taken  
26 August 3, 2011, that neither Layne Morrill nor Marty Aronson are his attorneys in  
27 any matter, and that he does understand them to be representing him before this  
28 Court. See Deposition of Gary Tharaldson, selected portions are attached hereto as

1 Exhibit A, at 1323:25-1325:3. Specifically, Gary Tharaldson testified as follows:

2 Q. Can you tell me why Morrill & Aronson is still  
3 responding to the supreme court writs on your behalf?

4 A. I have no knowledge of it.

5 Q. Were you aware that Morrill & Aronson was still  
6 submitting pleadings to the supreme court?

7 A. No, I was not.

8 Q. On behalf of your entities and yourself?

9 A. No, I was not.

10 Q. Would you consider, if they are doing that, would you  
11 consider that appropriate?

12 MR. KUMMER: Object to the form of the question. It's  
13 vague.

14 BY MR. SMITH:

15 Q. You understand my question?

16 A. I wouldn't have knowledge one way or the other  
17 whether that was appropriate.

18 Q. I guess what I'm saying, have you told Morrill &  
19 Aronson to do more work on your behalf?

20 A. No.

21 Q. You've not told them that?

22 A. No.

23 Q. But it is your understanding they are no longer your  
24 counsel in this litigation; correct?

25 A. That was my understanding.

26 Id. at 1325:22-1326:21. Accordingly, Petitioners cannot continue to maintain that  
27 either Layne Morrill or Marty Aronson is still counsel of record for Petitioners in any  
28 matter.

Despite this, and hopefully to expedite consideration and resolution of this  
matter, the Scott Parties wish to inform this Court that they no longer wish to depose  
Marty Aronson. Rather, they only seek to enforce the district court's order as to

1 Layne Morrill, who was actually identified as a witness in this matter by Petitioners  
2 themselves.<sup>1</sup> Accordingly, the Scott Parties ask that Petitioners' instant writ petition  
3 be summarily denied, and that the deposition of Layne Morrill be ordered to take  
4 place as soon as possible.

5 DATED this 17<sup>th</sup> day of August, 2011.

6 Respectfully submitted by:

7 KEMP, JONES & COULTHARD, LLP

8  
9 /s/ J. Randall Jones

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

17  
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<sup>1</sup> Although Petitioners have since issued a self-serving amended witness list indicating that Morrill has no discoverable information, this Court will surely recall that Gary Tharaldson himself has testified on many occasions that his attorneys were the ones in possession of information relating to the material allegations in this case.

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000  
Fax (702) 385-6001

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of August, 2011, the foregoing **SUPPLEMENT TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION IN LIGHT OF GARY THARALDSON'S SWORN TESTIMONY THAT NEITHER MORRILL NOR ARONSON ARE COUNSEL FOR PETITIONERS** was served via this Court's electronic service system and by mailing a copy thereof, first class mail, postage prepaid on the following:

Honorable Mark R. Denton  
Department 13  
Eighth Judicial District Court  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Terry A. Coffing, Esq.  
MARQUIS AURBACH COFFING  
10001 Park Run Drive  
Las Vegas, Nevada 89145

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

Mark E. Ferrario, Esq.  
Tami D. Cowden, Esq.  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89109

John D. Clayman, Esq.  
Piper Turner, Esq.  
FREDERIC DORWART LAWYERS  
Old City Hall  
124 East Fourth Street  
Tulsa, Oklahoma 74103-5010

Gwen Rutar Mullins, Esq.  
Wade Gouchnour, Esq.  
HOWARD & HOWARD  
3800 Howard Hughes Parkway #1400  
Las Vegas, Nevada 89169

P. Kyle Smith, Esq.  
SMITH LAW OFFICE  
10161 Park Run Drive  
Las Vegas, Nevada 89145

Robert L. Eisenberg, Esq.  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street #300  
Reno, Nevada 89519

/s/ Pamela Lewis  
An employee of Kemp, Jones & Coulthard, LLP

## **EXHIBIT A**

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, ) Case No.  
 ) A579963  
Plaintiffs, ) Dept. No.  
v. ) XIII  
 )

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. )

SCOTT FINANCIAL CORPORATION, a )  
foreign corporation, )  
Counterclaimant, )  
v. )  
 )  
GARY D. THARALDSON, )  
Counterdefendant. )

CONFIDENTIAL  
VIDEOTAPED DEPOSITION OF GARY D. THARALDSON  
VOLUME VI  
PAGES 1316-1487  
LAS VEGAS, NEVADA  
AUGUST 3, 2011  
REPORTED BY: HOLLY LARSEN, CCR NO. 680, RPR, CA CSR  
LST JOB NO. 142675

1 too quickly, please let me know as well. Okay?

2 A. Okay.

3 Q. I take it you probably prepared a little bit  
4 for this deposition with your counsel?

5 A. Yes.

6 Q. Can you tell me how much time you spent with  
7 your counsel preparing for this deposition?

8 A. Yesterday about three hours, three or four  
9 hours I suppose. And you know obviously since the  
10 last deposition, I've read some depositions and I  
11 reread the deposition that you had with me.

12 Q. You said you read some depositions. What  
13 depositions do you recall reading?

14 A. Well, I read my deposition and, you know,  
15 Brad Scott's deposition. There's probably some more.  
16 I just don't remember exactly.

17 Q. Do you recall reading Alex Edelstein's  
18 deposition?

19 A. I don't think I did.

20 Q. At your meeting yesterday, I take it that was  
21 a meeting with your counsel?

22 A. Yes.

23 Q. Can you tell me who was present?

24 A. Tom Kummer and Mark Ferrario at times.

25 Q. I have questions regarding your prior counsel



1 in this litigation, the law firm of Morrill & Aronson  
2 for you.

3 A. Uh-huh.

4 Q. Are they still your counsel in this  
5 litigation?

6 A. No.

7 Q. They've been essentially replaced as your  
8 counsel for all purposes?

9 A. That's the way I understand it, yes.

10 Q. Can you tell me at what point that occurred  
11 roughly?

12 A. I don't know the exact dates. Probably  
13 around somewhere -- was it June? May, June, somewhere  
14 in there, June, May. I don't know.

15 Q. Can you tell me why you decided to replace  
16 Morrill & Aronson?

17 MR. KUMMER: I'm going to object to the form  
18 of the question. I think it calls for invasion of the  
19 attorney-client privilege. I instruct him not to  
20 answer.

21 BY MR. SMITH:

22 Q. Mr. Tharaldson, let me explain. I don't want  
23 to know anything that you told your counsel. I don't  
24 want to know anything that your counsel told you. But  
25 I do want to know why you've decided to bring on new

1 counsel in this litigation.

2 A. I just felt that I needed a more experienced  
3 team.

4 Q. You know, it's my recollection from your  
5 prior deposition that Morrill & Aronson had done a lot  
6 of your due diligence in this litigation.

7 A. That is correct.

8 Q. Essentially they had done a lot of -- you had  
9 relied upon their investigation and due diligence in  
10 bringing claims against the defendants. Is that fair?

11 A. Well, I would say they reviewed -- the real  
12 answer is they reviewed a lot of e-mails and documents  
13 to the case. Now is that due diligence? It depends  
14 on how you classify that.

15 Q. What do you mean by that, the real answer is  
16 that they reviewed documents and e-mails in the case?

17 A. Well, earlier you said that's due diligence  
18 and I'm just not sure that's what you call it as what  
19 I would call it due diligence. I would say they  
20 examined documents and e-mails and so forth to come up  
21 with the conclusions that they did.

22 Q. Can you tell me why Morrill & Aronson is  
23 still responding to the supreme court writs on your  
24 behalf?

25 A. I have no knowledge of it.

1 Q. Were you aware that Morrill & Aronson was  
2 still submitting pleadings to the supreme court?

3 A. No, I was not.

4 Q. On behalf of your entities and yourself?

5 A. No, I was not.

6 Q. Would you consider, if they are doing that,  
7 would you consider that appropriate?

8 MR. KUMMER: Object to the form of the  
9 question. It's vague.

10 BY MR. SMITH:

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13 other whether that was appropriate.

14 Q. I guess what I'm saying, have you told  
15 Morrill & Aronson to do more work on your behalf?

16 A. No.

17 Q. You've not told them that?

18 A. No.

19 Q. But it is your understanding they are no  
20 longer your counsel in this litigation; correct?

21 A. That was my understanding.

22 Q. I can find it in your deposition previously,  
23 but I'll just represent to you in your prior  
24 deposition you told me you relied exclusively upon  
25 Morrill & Aronson's due diligence before bringing suit

CERTIFICATE OF REPORTER

STATE OF NEVADA     )  
                              )  
COUNTY OF CLARK    )

I, Holly Larsen, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the deposition of Gary D. Tharaldson, commencing on August 3, 2011, at 9:06 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth; that I thereafter transcribed my said shorthand notes into typewriting; and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel or any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 15th day of August, 2011.

\_\_\_\_\_  
Holly Larsen, NV CCR NO. 680