Exhibit "2"

Exhibit "2"

Exhibit "2"

REGISTER OF ACTIONS
CASE NO. 09A579963

Club Vista Financial Services LLC, Tharaldson Motels II Inc, et al vs Scott Financial Corp, Bradley Scott, et al

Case Type:	**Business Court**
Subtype:	**Other Business Court Matters**
Date Filed:	**01/13/2009**
Location:	**Department 13**
Conversion Case Number:	**A579963**

RELATED CASE INFORMATION

Related Cases

A-10-608563-C (Consolidated)

A-10-609288-C (Consolidated)

PARTY INFORMATION

		Lead Attorneys
Counter Claimant	**Bank Of Oklahoma NA**	**Abran E. Vigil** *Retained* 702-471-7000(W)
Counter Defendant	**Tharaldson, Gary D**	**Griffith H. Hayes** *Retained* 7029493100(W)
Cross Claimant	**APCO Construction**	**Gwen Rutar Mullins** *Retained* 702-257-1483(W)
Cross Claimant	**Asphalt Products Corporation**	~~**Gwen Rutar Mullins**~~ ~~*Retained*~~ ~~702-257-1483(W)~~
Cross Defendant	**Gemstone Development West Inc**	
Cross Defendant	**Scott Financial Corporation**	**Jon Randall Jones** *Retained* 7023856000(W)
Defendant	**Asphalt Products Corporation**	**Gwen Rutar Mullins** *Retained* 702-257-1483(W)
Defendant	**Bank Of Oklahoma NA**	**Abran E. Vigil**

		Retained 702-471-7000(W)
Defendant	**Gemstone Development West Inc**	
Defendant	**Scott Financial Corp**	**Jon Randall Jones** *Retained* 7023856000(W)
Defendant	**Scott, Bradley J**	**Jon Randall Jones** *Retained* 7023856000(W)
Doing Business As	**APCO**	**Robert L. Rosenthal** *Retained* 7022571483(W)
Doing Business As	**APCO**	**Gwen Rutar Mullins** *Retained* 702-257-1483(W)
Doing Business As	**APCO Construction**	**Gwen Rutar Mullins** *Retained* 702-257-1483(W)
Plaintiff	**Club Vista Financial Services LLC**	**Mark E. Ferrario, ESQ** *Retained* 702-792-3773(W)
Plaintiff	**Tharaldson Motels II Inc**	**John T. Moshier** *Retained* 602-650-4123(W)
Plaintiff	**Tharaldson, Gary D**	**Griffith H. Hayes** *Retained* 7029493100(W)

EVENTS & ORDERS OF THE COURT

06/02/2011 **All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)
All Pending Motions (06-02-2011)

Minutes

06/02/2011 9:00 AM

- Plaintiff's Motion for Extension of Time for All Motion Deadlines until June 1, 2011 and Continuing Oral Argument on all Motions until June 16, 2011, or Later ... Defendants Bradley J Scott and Scott Financial Corporation's Motion To Strike Second Amended Complaint ... Defendants Scott Financial Corporation, Bradley J. Scott, and Bank of Oklahoma, N .A.'s Motion to Strike and Exclude Plaintiffs' Expert John Loper ... Defendants Scott Financial Corporation and Bradley J Scott's Motion In Limine To Preclude Statements By Trial Counsel Conflating Parties And/Or Claims ... Defendant Bank of Oklahoma, N.A.'s Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Statements by Trial Counsel Conflating Parties and/or Claims ... Defendant APCO Construction's Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Statements by Trial Counsel Conflating Parties and/or Claims ... Defendants Scott Financial Corporation and Bradley J Scott's Motion In Limine To Preclude Any References That Defendants Are The Agents For Plaintiffs Or Each Other ... Defendant APCO Construction's Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Any References that Defendants are the Agents for Plaintiffs or Each Other ... Defendant Bank of Oklahoma, N.A.'s Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Any References That Defendants Are the Agents for Plaintiffs or Each Other ... Defendants Scott Financial Corporation and Bradley J Scott's Motion In Limine To Preclude Evidence Of Damages To Plaintiff Club Vista Financial Services As A Result Of Its Participation In The Manhattan West Senior Loan ... Defendant APCO Construction's Joinder to Defendants Scott Financial Corporation and Bradley J. Scott Motion in Limine to Preclude Evidence of Damages to Plaintiff Club Vista Financial Services as a Result of its Participation in the Manhattan West Senior Loan ... Defendant Bank of Oklahoma, N.A.'s Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Evidence of Damages to Plaintiff Club Vista Financial Services as a Result of Its Participation in the Manhattan West Senior Loan ... Defendants Scott Financial Corporation and Bradley J Scott's Motion For Summary Judgment Regarding Priority Of Liens Against The Manhattan West Property ... Defendants Scott Financial Corporation and Bradley J Scott's Motion In Limine To Preclude Reference To Post-Litigation E-Mails Inadvertently Sent To Plaintiffs ... Defendants Scott Financial Corporation and Bradley J Scott's Motion In Limine To Preclude Reference To Damages To Club Vista Resulting From Participation In Mezzanine Loans ... Defendant APCO Construction's Joinder to Defendants Scott Financial Corporation and Bradley J Scott's Motion in Limine to Preclude Reference to Damages to Club Vista Resulting from Participation in Mezzanine Loans ... Defendant Bank of Oklahoma, N.A.'s Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion in Limine to Preclude Reference to Damages to Club Vista Resulting From Participation in Mezzanine Loans ... Defendants Scott Financial Corporation and Bradley J Scott's Motion to Strike Plaintiffs' Expert Joe Crawford ... Defendant APCO Construction's Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion to Strike Plaintiffs' Expert Joe Crawford ...Defendant Bank of Oklahoma N.A.'s Joinder to Defendants Scott Financial Corporation and Bradley J. Scott's Motion to Strike Plaintiffs' Expert Joe Crawford ... Defendants Scott Financial Corporation and Bradley J Scott's Motion For Clarification Of Order Denying In Part The Scott Defendants' Motion For Summary Judgment Regarding Plaintiffs' First (Fraud), Second (Concealment) And Third (Constructive Fraud) Claims For Relief ... Defendants Scott Financial Corporation and Bradley J Scott's Motion For Clarification Of This Court's Order Denying, In Part, Defendants Scott Financial Corporation And Bradley J. Scott's Motion For Summary Judgment On Tharaldson's And Tharaldson Motels, II, Inc.'s Third And Eleventh Claims For Relief, And For Partial Summary Judgment On Their Seventh Claim For Relief (Re: Fiduciary Duty) ... Defendant APCO's Motion to Dismiss or, Alternatively, Motion for Summary Judgment on Plaintiff's Second Claim for Relief (Fraudulent Concealment/Fraudulent Omissions) Also present: Thomas F. Kummer, Esq. and Brandon Roos, Esq., on behalf of Plaintiffs. Mr. Kummer stated he will be filing a Substitution of Counsel for the Cooksey and the Morrill law firm later this week; and noted that Mr. Ferrario will basically be handling the bulk of this case. Mr. Coffing concurred; and made statements as to same. Court noted he will be hearing three (3) motions today and if there is time, he could possibly hear more; noted it was the Court's understanding that there was a pending bankruptcy and now his understanding is that it may not come to a bankruptcy. Mr. Coffing stated that is an issue that is still in flux; made statements as to same, referring to bankruptcy counsel's statements to Judge Gonzalez at the Settlement Conference; and stated that if there is going to be a substitution of counsel, he would request an opportunity for new counsel to get up-to-speed. As to Plaintiff's Motion for Extension of Time for All Motion Deadlines until June 1, 2011: Mr. Coffing referred to the current trial date set for July 6; noted the extension granted by opposing counsel; made statements as to the extensions; and requested the deadline be extended. Mr. Jones made statements as to the case, noting Mr. Tharaldson has continued to try to manipulate the Court system and the parties since the beginning of this case and since before this case was filed, and requested the Court not condone it; referred to the trial date that was set for March, the Writ filed with the Supreme Court, the representation at the Settlement Conference that Mr. Tharaldson was going to file bankruptcy and that the Petition was being drafted the same day; and argued that Plaintiff did not file their Motions in Limine and responses to the Motions in Limine, noting the extension was given to May 16 for Plaintiffs to file their briefs and in the meantime, Defendants continued to file their Motions in a timely manner; referred to the bankruptcy counsel and new counsel for Plaintiff; and argued as to the delay and prejudice to Defendants who have followed the rules. Court noted that if Motions in Limine are not filed, they can be addressed at trial. Further arguments by Mr. Jones that there are Motions in Limine on evidentiary issues; referred to the Motion to Exclude Damages Expert, and trial delays; and the question for the Court has to determine is where the biggest prejudice. Court referred to the bifurcation, and upon Court's inquiry as to whether these motions relate to the non-jury portion or the jury trial aspect, Mr. Jones stated he does not know; made statements as to the many motions; argued as to prejudice; and requested the Court enforce the rules that all are supposed to play by.

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Mr. Clayman referred to the litigation issues over two (2) Guarantees; and argued Plaintiffs have not been following the rules. Court noted the number of motions set for June 27, June 30 and July 5; and noted this motion does not go to responses or oppositions but to deadlines for Plaintiffs' motions. Further arguments by Mr. Clayman that the related motions should not be allowed. Court read from Plaintiffs' Motion as to Requests to file Motions or Responses, and stated he was focusing on the deadline of the motions. Mr. Jones stated he intends to argue that the Oppositions are also untimely. Mr. Gochnour stated they stipulated to give Plaintiffs additional time, until the 16th, to oppose motions and Plaintiffs filed an Opposition to the motion Friday; made statements as to preparing Replies to the Oppositions; noted the various motions that have been pending for months; and stated they only want to know what the playing field is before the trial date. Mr. Smith referred to the Stipulation, noting they were discussing a date certain as to when bankruptcy would be filed; his client does not have the resources to hire additional counsel; they stipulated to give Plaintiffs extra

time and at the end of the time, were told that Plaintiff would be filing bankruptcy, so he did not file his motions; and argued as to extreme prejudice to all the Defendants, but especially Apco and Edelstein. Court noted that if the motion goes not only to filing motions by Plaintiffs but also oppositions to the Defendants' motions, Defendants would only have to file Replies to the Oppositions; and inquired if the prejudice would be that Defendants would have to file a Reply, if Defendants have already done what they need to do on the motions. Mr. Jones stated the prejudice is two-fold as to seeking Plaintiffs' compliance with the rules as he would have to file a Reply to the Oppositions, noting many of the motions have been on file for quite a while and Mr. Smith is a one-man shop; and secondly, what the date these are set to be heard, noting some of them have been set for July 5, and referred to the problems of filing a Reply; and argued as to gamesmanship and real work consequences as to having to file Replies to the Opposition. Mr. Gochnour stated the deadlines are set by a Court Order, and Plaintiffs chose to ignore the Court s order. Mr. Coffing replied as to the difference between filing a motion on the 1st and the 16th; referred to the motions set for June 27; and argued these are issues in this case that the Court will have to consider, either in motion practice or at time of trial. Upon Court's inquiry, Mr. Coffing stated several motions were filed yesterday. COURT finds he will look at this from the Court's ability to assess and understand the aspect in undertaking the management of the case; and ORDERED, motion taken UNDER ADVISEMENT; he will go through all the motions to see which ones he should hear to give him a clear understanding to assess the development of this case for trial; noted it may be some that he may want to hear, some that are too late, and some that the Oppositions are too late, but appreciates Defendants' position regarding the rules and deadlines established and that these are coming on the eve of trial; he will either have a minute order or Order as to which ones he will allow and which Oppositions he will allow. Mr. Coffing requested the Court not consider the statements that the bankruptcy was somehow a ruse on the parties. Court concurred. Court stated he will also be looking at whether these motions pertain to the Non-Jury or Jury Trial. As to the Continuing Oral Arguments on All Motions Until June 16, 2011, or Later: Mr. Coffing stated the same reasons that the Court continued this trial still exist; referred to the Court's ruling on the bifurcation, noting that it has not been even a week since the Supreme Court has had that issue fully briefed; noted it is highly unlikely that the Supreme Court will have a ruling on that matter before July 6; and if they do not have a ruling by July 5 they would go forward; and argued that a brief continuance of the trial for that purpose is warranted. As to the substitution of counsel, Mr. Coffing stated Defendants Bradley Scott and Scott Financial filed a separate case against co-counsel; and his client has made a decision to obtain other counsel; he is not asking for a year but is asking this be moved until the Supreme Court can rule and new counsel to get up to speed in a hotly contested litigation case. He further noted that two (2) Writs are pending; one of which was fully briefed in March and the other fully briefed last week; and requested the Court continue this for a brief period. Court referred to continuances. Mr. Coffing argued that the pivotal issue in the case is pending before the Supreme Court; if the trial proceeds as scheduled, it becomes moot; this issue needs to be heard; and requested a continuance for new counsel to get up to speed and let the Supreme Court rule. Mr. Jones referred to the Writ as to bifurcation and the Supreme Court caseload; noted the Reply brief was filed last week but Plaintiffs asked for an extension of time to file their brief; and argued that there is no stay in place as a Writ is pending there; and if the Motion for Bifurcation is not denied by the time they go to trial, the Writ is moot. As to the lawsuit, his client filed a case that is based on defamation per se that Mr. Morrow and Mr. Muckleroy subpoenaed material witnesses in this case and then withdrew the subpoenas without Defendants' knowledge, asked to meet with the witnesses indicating they had completed bank fraud, and that is defamation per se; made statements as to the depositions, noting that when the witnesses would not sign the Affidavits as true, they destroyed the evidence; and noted that Mr. Morrow had put him on the witness list in the 16.1 as a witness in this case. Mr. Jones further referred to the Rules of the 8th Judicial District Court that it is improper and prohibitive to use the substitution of counsel as a basis for continuance; and requested to go forward, noting there is plenty of time between now and July 6 for the Supreme Court to make a ruling, and if not, they are ready for trial. Mr. Clayman stated he is ready for trial. Mr. Coffing replied that starting a trial when there is a Writ with the Supreme Court makes the matter moot; noted the law suit against co-counsel was a factor in obtaining new counsel; and argued further. COURT ORDERED, Motion DENIED; counsel can seek a stay with the Supreme Court. Court noted this is on a trial stack. Colloquy regarding whether this was given a firm setting. Upon Mr. Coffing's inquiry as to this being a stack or a firm setting, Court stated he will check with his JEA. Following colloquy regarding same, Court stated the Law Clerk checked with the JEA and apparently both this case and the 40/40 case are firm on this stack; stated counsel can make a Writ with the Supreme Court; and noted the Calendar Call is June 27.

- As to Defendants Bradley J Scott and Scott Financial Corporation's Motion To Strike Second Amended Complaint: Court stated it is his understanding that after the Court made rulings as to some claims, Plaintiffs filed their Second Amended Complaint which included things that the Court already addressed. Mr. Jones concurred; read from Rule 12(f); and requested it be stricken. Upon Court's inquiry as to why there cannot be an order that certain claims in the Second Amended Complaint have been dealt with instead of striking, Mr. Jones stated he wants to make sure that the pleadings filed are not read to the Jury, noting that if there is a jury trial, the pleadings can be read to the jury; and stated he is fine with striking. Mr. Coffing responded that he can find no precedent that Mr. Jones is asking for in striking allegations in a Complaint that the Court allowed to be filed; noted Bank of Oklahoma filed an Answer; there is no precedent for this motion; there is an order in place that the Court ruled on some claims; there is no need to strike. Mr. Jones replied that the pleadings should conform to the rulings of the Court; and argued that prior to filing this Motion to Strike, Matt Carter, an associate in his office, contacted Christine Tarradon as to the Amended Complaint that does not conform to the Court's Order; referred to the 56-page Complaint and noted that Plaintiffs had deleted some of the things that Plaintiffs never told the Court or counsel about; and requested an Order that the Complaint should conform with the latest version of the rulings of the Court. Further statements by Mr. Jones and Mr. Coffing. COURT ORDERED, motion DENIED but the Court will entertain an Order that refutes the causes of action that are the subject of the motion and indicate that they have been adjudicated. Mr. Jones stated he will prepare the Order and have counsel review. Further statements by Mr. Coffing. Court stated for the record that it should be made clear that this relates to the amended pleadings that have not been revived by the Amended Complaint; and will stand by his ruling. Further statements by Mr. Jones that the Receiver's motions were late-filed and have nothing to do with this motion. As to Defendants Scott Financial Corporation, Bradley J. Scott, and Bank of Oklahoma, N .A.'s Motion to Strike and Exclude Plaintiffs' Expert John Loper: Mr. Jones stated this is a straight-forward motion and referred to the letter to the State Board of Appraisers; referred to violations of law as he is not licensed here and is testifying as to value; referred to page 98 of the deposition that an appraiser must be licensed in that State to conduct an appraisal; cited 645(c) that makes it a violation and a crime; and argued he has never been licensed in Nevada and additionally he has not done an appraisal in the State of Nevada for 20 years; much of what he is talking about in his report is speculation and read from the deposition; he is not qualified and cannot testify as an appraiser in the State of Nevada. Mr. Clayman noted the appraiser's experience for a number of

years has not had anything to do with banks, but condemnations; and argued that he should not be allowed to testify just because he understands some sort of uniform procedures. Mr. Coffing noted that in his brief, he pointed out the substance of his opposition; there is no argument that he has been asked as an expert 30 times and was working in Nevada; it goes to weight, not whether this person should be allowed to testify. Mr. Jones requested the Court look at Exhibit B of the motion. Court stated this is coming to the Court in a bench trial. Mr. Jones concurred, and noted that Courts have stricken an appraiser who is not licensed. Court stated there are other things that benefit the value of real estate that are being talked about; when it comes to that, counsel can make an objection at the time as to what he is doing but there are other aspects to his report. Mr. Jones stated his report says he was hired to evaluate an appraisal; read from Exhibit B; read from the response from Brendon Kindreth; and argued the State has said he needs a license to review; and as a matter of law, he cannot testify as his license expired and is not licensed. COURT finds he will not preclude Plaintiffs from endeavoring to lay a foundation for what would be admissible testimony; and ORDERED, motion DENIED WITHOUT PREJUDICE to any contentions made at time of trial. Mr. Jones to prepare the Order on the Motion to Continue, which the Court denied, and also on the Motion to Strike and have Plaintiffs' counsel review; Plaintiffs ' counsel to prepare an Order on what the Court just ruled on as to the witness. Further statements by Mr. Coffing. As to the other motions scheduled for today, Mr. Jones requested the motions be heard earlier than June 27. COURT ORDERED, the remaining motions MOVED to June 9; and in the meantime, he will be going through them to determine what to do with the motions as to deadlines. Mr. Jones stated that if they can agree, they will advise the Court as to the Order. Upon Court's inquiry as to a Settlement Conference, Mr. Jones stated it is his understanding that on June 22, Scott Financial, Bradley Scott and the Tharaldson parties will be meeting without counsel. Mr. Coffing stated that is his understanding also. 06-09-2011 9:00 AM Remaining Motions (Not Heard Today)

Parties Present
Return to Register of Actions

Exhibit "3"

Exhibit "3"

Exhibit "3"

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CLERK OF THE COURT

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Attorneys for Scott Financial Corporation and Bradley J. Scott

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; DOES INDIVIDUALS 1-100; and ROE BUSINESS ENTITIES 1-100, Defendants. AND ALL RELATED MATTERS.	Case No.: A579963 Dept. No.: XIII Consolidated with Case Nos.: A608563 A609288 **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Countermotion for Trial Continuance was entered in the above-entitled matter on the 13th day of June, 2011, a copy of which

. . .

. . .

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is attached hereto.

DATED this 13th day of June, 2011.

Respectfully submitted,

KEMP, JONES & COULTHARD

/s/ Matthew S. Carter

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2011, the foregoing **NOTICE OF ENTRY OF ORDER** was served on the following persons by e-mailing to the e-mail addresses listed as follows:

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CLERK OF THE COURT

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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; DOES INDIVIDUALS 1-100; and ROE BUSINESS ENTITIES 1-100, Defendants. AND ALL RELATED MATTERS.	Case No.: A579963 Dept. No.: XIII Consolidated with Case No.: A609288 **ORDER DENYING PLAINTIFFS' COUNTERMOTION FOR TRIAL CONTINUANCE**

This matter having come before this Court on June 2, 2011, regarding Plaintiffs' Countermotion for Trial Continuance, the Court having reviewed the pleadings and papers on file herein, and having heard the arguments of counsel for Plaintiffs, Terry Coffing, Esq.; and of counsel for Defendants Scott Financial Corporation and Bradley J. Scott, J. Randall Jones, Esq.; Bank of

Oklahoma, N.A., John Clayman, Esq., and Jennifer Hostetler, Esq.; Alex Edelstein, Kyle Smith, Esq.; and APCO Construction, Wade Gouchnour, Esq.; and with good cause appearing and there being no just cause for delay, the Court finds as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Countermotion for Trial Continuance is DENIED.

DATED this 6th day of June, 2011.

DISTRICT COURT JUDGE

Submitted by:

KEMP, JONES & COULTHARD, LLP

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Exhibit “1”

Exhibit “1”

Exhibit “1”

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CLUB VISTA FINANCIAL SERVICES LLC, et al. Plaintiffs vs. SCOTT FINANCIAL CORP., et al. Defendants And related cases and parties	CASE NO. A-579963 A-608563 A-609288 DEPT. NO. XIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, JUNE 2, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	TERRY A. COFFING, ESQ.
FOR THE DEFENDANTS:	J. RANDALL JONES, ESQ. JOHN D. CLAYMAN, ESQ. JENNIFER HOSTETLER, ESQ. KYLE SMITH, ESQ. WADE GOCHNOUR, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
CYNTHIA GEORGILAS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, JUNE 2, 2011, 10:03 A.M.

(Court was called to order)

THE COURT: Good morning. You may be seated. Calling Club Vista Financial Services LLC, et al., versus Scott Financial Corp., et al. Please state appearances.

MR. COFFING: Good morning, Your Honor. Terry Coffing on behalf of the plaintiffs. And also a notice of association was filed yesterday in which Greenberg Traurig will be coming in as counsel. Mr. Kummer and Mr. Roos are here today, as well.

MR. KUMMER: Yes, Your Honor. Mr. Ferrario's probably going to be handling the bulk of this matter, but he's in California this weekend for the marriage of his daughter. And we're going to eventually, hopefully the end of this week, first part of next, be actually filing a substitution of counsel for the Cooksey law firm and for the Morrill law firm.

MR. COFFING: Morrill Aronson.

THE COURT: All right.

MR. JONES: 'Morning, Your Honor. Randall Jones on behalf of Scott Financial and Brad Scott individually.

MR. CLAYMAN: John Clayman and Jennifer Hostetler on behalf of Bank of Oklahoma, Judge.

MR. SMITH: Good morning, Your Honor. Kyle Smith on behalf of Alex Edelstein.

MR. GOCHNOUR: Good morning, Your Honor. Wade Gochnour on behalf of APCO Construction.

THE COURT: All right. I've got many motions on the calendar, but I believe we notified you that I was only going to be prepared for three today. And depending on the time, I suppose I could hear some others and then take them under advisement or whatever, utilize the time to a certain point. But I have to say that because it was our understanding that there was an impending bankruptcy, I mean, it didn't make sense to spend hours going through a lot of things only to be told that there was a bankruptcy that had been filed. And now our understanding is that maybe the -- maybe it's not going to come to a bankruptcy. So I'm not sure what the situation is.

MR. COFFING: Well, Your Honor, candidly, that is an issue that is still in flux. But we are in the same position as the Court in some respects. We have not actively litigated the case with this understanding, and opposing counsel was in direct communication with bankruptcy counsel even at the settlement conference that you ordered with Judge Gonzalez. So the decision not to file came as a surprise, I think, to many people, myself included.

But as far as today, I'm prepared to argue these three motions. We did not prepare any others.

THE COURT: Very well.

MR. COFFING: And candidly, I think if there is

going to be a substitution of counsel, it would be my position that new counsel be allowed to get up to speed and argue those motions as they are my clients' current choice. So --

THE COURT: All right. Very well. So I'll just take them in order, then, the three that I have here. First I've got plaintiffs' motion for extension of time for all motion deadlines until June 1, 2011, and continuing oral argument on all motions until June 16 or later; right?

MR. COFFING: Correct, Your Honor. And it's -- also there's been a countermotion within that to continue the trial. The current trial date is set for July 6th. And so I can address -- the necessity of this motion came about when the extensions that were graciously granted by opposing counsel were running out and we were on a Friday deadline for a Monday filing, we had to get something on file, because obviously we were not prepared to make all these filings at the last minute. However, in the last week or so I think I've counted no less than 30 filings in an attempt to make sure that all motions are indeed filed and briefed for the Court. We are simply asking that the deadline that had passed be extended so that those documents that have no been filed can be accepted without an argument that they're untimely, as has been made by counsel. So we simply filed the motion in the abundance of caution. We didn't think it was going to come to this, but we did file the motion to extend those deadlines.

We have since filed all the required briefs, and they'll stand as submitted for this Court to consider. So that is the -- that is the gist of our motion. And I assume they want to address that first, and then we can talk about the motion to continue.

THE COURT: All right.

MR. JONES: Good morning again, Your Honor. I don't know where to begin, Judge. And I certainly have -- this is not directed at counsel for the plaintiffs by any means, but you know and I won't bore the Court with what I believe to be the sordid details of the genesis of this case other than to say that, as we have explained to you in the past, we believe this whole case is a -- is a contrived lawsuit based on an attempt to get a strategic advantage by filing a lawsuit first, knowing that the guarantors were going to be sued for the guaranties, for defaulting on the guaranties. And this is simply another aspect of that kind of strategy.

Judge, you know it's -- and I give the Court a lot of credit. You've been extremely patient with all of us and have heard probably more motions in this case than any judge that I've been involved with in almost 30 years of practice. So you've heard so much from the parties about details of this case and you've made many, many rulings. And this is just -- I would almost say that this is a perfect example of the point we've been trying to make to you.

Mr. Tharaldson -- and again, I'm not pointing this at counsel by any means. Mr. Tharaldson has continued to try to manipulate the court systems and the parties and certainly our clients on the defense side since the beginning of this case, in fact, since before this case was originally filed. This is just one more episode of this. And we would ask this Court to not condone that.

So you know the history of this, and I think you know some of it, but I want to add a few points here, we were set to go to trial, as you know, in March. They filed motion to bifurcate -- excuse me. They filed writs with the Supreme Court. Judge, I believe --

THE COURT: I'm not hearing the motion to continue now. I'm only hearing on these deadlines.

MR. JONES: I understand. But this all plays together. This goes back to this whole process of manipulation. They wanted to stop the trial date. They don't want to go to trial. So the first -- the first line of defense is file these writs. For the life of me I can't believe it, but the Supreme Court accepted them for some reason. And I have to tell you the reason I think they did is because of the misrepresentations made in those writs to the Supreme Court. So the Supreme Court, they get the writ, we don't get to respond to it until it's accepted or rejected. And they see these statements that make it look like you did

something ridiculous, and so they accept it. Then they get to hear from us, only after they accept the writ. They have not granted the writ. So that's the first attempt. And what happened, you delayed the trial. So we got it kicked out. We had a date certain, and you gave us that date certain many, many, many -- over a year ago at the parties' -- all the parties' request for a date certain. But you kicked it out till July 6th.

And then we start getting ready to go to trial. We continue to have these motions. And what happens, Judge? The defendants continued to win the motions. So they've got to change strategies. We're coming up on a new trial date. So what are we going to do? We're going to file bankruptcy. Now, if they're right, Judge, if they're right, why does Mr. Tharaldson want to file bankruptcy? If he's got a meritorious claim and a meritorious defense against the guaranties, why is he going to file bankruptcy? But that's his choice. And he represents that to you, he represents that to us, he represents it to his counsel, and we all believe it. And I'm sure that his bankruptcy counsel believed it. For reasons that are unknown to all of us, including apparently has current counsel, he decides to change that strategy.

In the meantime, his current counsel, I think somewhat prudently, says, well, look, if we're going to have a bankruptcy it doesn't make sense to file all these responses

to the -- or, excuse me, the defendants' motions. Got to remember they didn't file their motions in limine. They didn't file their motions in limine, they didn't file responses to our motions in limine. So Mr. Coffing calls me up and says, look, can I have an extension. And I have to tell you there was some controversy in our camp in terms of all the defendants talking about this as to whether or not we should grant that continuance. But I have to tell you, unfortunately, I prevailed on the other parties and said, look, if we're going to have a bankruptcy and they're telling us categorically, unequivocally there's going to be a bankruptcy, does it make sense for our clients to spend a bunch of money on doing this and having all these responses come in and then we have to respond to them, so if they're going to file bankruptcy, let's give them the extension.

So we gave them the extension to the 16th of May to file their briefs. And, by the way, the original representation was they were going to file that bankruptcy way back then. So by the time the extension expired they were going to have the bankruptcy filed. And we're waiting and we're waiting and we're being told it's coming. And in the meantime, to be careful because we don't trust this plaintiff, we continued to file our motions in a timely manner and consistent with this Court's orders, extended orders. Remember, these were now pushed out already at their -- as a

result of their strategies and tactics.

What happens? The 16th comes and goes. Not only do they not respond to any of these motions, they don't file bankruptcy. And we continue to go and we continue to go, and we start having phone calls among counsel, going, what's going on, there's no bankruptcy. I called Brett Axelrod, counsel for -- bankruptcy counsel for Mr. Tharaldson, and she said, well, we've got some things we need to -- we're still going to do it, we're waiting on some information. She told us at the settlement conference that they actually had the petitions all prepared, and I believed her when she said it to me, but they were waiting on some information from accountants. We've got a trial date. We are concerned. We want to go to trial at least against the guarantor, Tharaldson Motels II, Inc., because they've never said that entity's going to go into bankruptcy. We hire, based upon their representations, bankruptcy counsel at substantial expense based upon their repeated representations. And we get bankruptcy counsel up to speed at considerable expense, anticipating this is going to happen.

And then finally, towards the end of the last week, I started getting some phone calls saying, it doesn't look like we're going to have a bankruptcy, at least not now and maybe not ever. And I talked to Mr. Ferrario, who is a long-time friend of mine, on Friday, and he says, I think I'm

coming into this case, I'm hearing all kinds of rumors about this. Well, who's going to be the new counsel? New counsel? We're six weeks out from trial, the second trial date. You're going to bring in new counsel? What's going to happen to Mr. Coffing, who is the new counsel? The new local counsel was going to be trial counsel with the Arizona lawyers that's been in this case now for almost six months, who is a -- as you well know, a very competent trial lawyer. Now they're going to have another local lawyer after the one they had, Mr. Muckleroy, who's been in the case since the beginning?

And by the way, Mr. Ferrario was very candid with me, as I would expect him to do. He said, well, I want an extension of the time to answer these motions because I've got to -- my daughter's getting married. And I certainly empathize and sympathize with that situation. I said, Mark I would do anything I could for you, this is an issue with my client, this is a very, very big, important case, there's lots at stake here and we've already been pushed out once and I can't give you that extension. And he said, well, I also am going to tell you I'm going to ask for a trial continuance. And I said, well, you understand the rule, Mark, if you ask for a trial continuance based on substitution of counsel, the rule itself says you cannot substitute counsel in and use that as the justification for a continuance of the trial date. And I know we're not talking about that particular issue, Judge,

but they're all interrelated. It's all delay, it's all avoidable delay that was created by the party that is now asking you for this particular substantial relief with great prejudice to the defendants, all the defendants.

So we said, we can't do that Mark. They want to bring in new counsel. Mr. Coffing just told you, one of the reasons I want to delay these -- some of these other hearings is so new counsel can get up to speed. We're a month now out from trial. Now it's the 2nd of June. Now we're a month out from trial. So, Judge, we did what we were supposed to do, we did what you asked us to do, we gave them relief, we gave them an extension, a two-week extension to file their motions, to file their motions in limine against everybody's best -- I think best wishes and better judgment. We gave them that time, and they never filed.

This is a conundrum of their own creation. It is going to cause substantial prejudice to the defendants. We followed the rules. They have repeatedly refused to follow the rules. You had to sanction them for refusing to comply with subpoenas going back to the -- some of the first depositions ever set in this case where Arizona counsel unilaterally told properly subpoenaed witnesses not to appear. And that conduct has been repeated throughout this case by these plaintiffs. It cannot be sanctioned, it should not be sanctioned by this Court. Any prejudice that they are

experiencing is a result of their own bad, improper strategies and tactics. And if you grant them the opportunity to have these motions now put into the court --

THE COURT: These are motions that were filed yesterday? They've not been filed?

MR. JONES: Yes.

THE COURT: All right. Okay.

MR. JONES: If you allow them to let those motions stand, then you are rewarding them for their repeated bad behavior, the repeated ignoring --

THE COURT: What motions have been filed?

MR. JONES: Oh, my God, Your Honor, there's motion in limine --

THE COURT: Are they all motions in limine, or are you there dispositive motions? What kind of motions?

MR. JONES: They're a mixed bag of just about everything from -- I can't recall if there's dispositive motions. There's been so many of them. Mr. Coffing I think just admitted, I wrote it down, approximately 30 filings. Some are oppositions to our motions, some of them are their own motions in limine, many motions in limine on critical issues. There's no excuse for this, Judge.

THE COURT: And the motions that you're talking about -- let's see. There are a bunch of motions that are apparently coming up on the 27th; right? Those are

oppositions that they've --

MR. JONES: Yes, Your Honor. And here's the interesting part of this. By doing this not only do they -- these motions -- some of them are actually I think set for as late as the day before the trial starts, July 5th they've got them set for.

THE COURT: Well, let's -- I mean, a motion in limine is usually directed to evidence, evidentiary issues; right?

MR. JONES: It is.

THE COURT: So if they're not -- if rulings aren't made on the motions in limine, they'll be made during trial; right? I mean, motions in limine can save time, can't they?

MR. JONES: They can, Judge. And I guess -- well, we have motions that -- motions in limine on evidentiary issues that if they're argued our position is, first of all, under the rules, the clear rules, failure to respond to the motion in a timely manner means it's deemed to be meritorious [sic]. So that's the rule they've got to get over. So if we have the hearings on those motions, they want to get up here and argue it, and you want to let them argue the motion, that's one thing. We think that would be improper. But letting them file a brief in opposition to that motion is untimely as it is. And with the clear just refusal to acknowledge and recognize -- and again, I'm not pointing this

out at counsel, but at the client, to thwart the authority of the Court, the rules of the Court, the rules of procedure to what end, Judge? If they want to -- if they want to argue those motions at the time of trial, then I guess my position would be that that would be preferable, even though it may take some more time, and don't want to delay the trial by any means, but that means essentially that they're coming in here saying, well, again our bad conduct is going to now -- if you don't reward our bad conduct, then our bad conduct is going to make the trial more lengthy and so rather than do that, our bad conduct slowing down the trial, reward our bad conduct by letting us have these motions in limine filed now. And I just think that's improper.

I think the full issue here is you let -- we go down that slippery slope -- and especially -- if this was the first time, Judge, it would be a whole different matter. Your Honor, many a time I filed a late motion in limine. Sometimes the court lets us go forward with it, sometimes they don't. Many a times I've been cases where opposing parties have filed motions in limine late and the Court has allowed those to go forward. Many times.

THE COURT: Well, the point with motions in limine that are directed to evidentiary questions is that it gives counsel and the Court an opportunity to deal with the issue without interrupting the trial. If it's not done on a motion

in limine, then it comes up during the trial, and it can be lengthy and interrupt the course of the trial.

MR. JONES: It can be. And let me give you an example. They've moved to exclude Brad Scott as a damages expert, saying that -- and actually it was a retaliatory motion, because we had moved to exclude their damages expert because, again, they never designated a damages expert timely, and they didn't even do it within the time period of the rebuttal witnesses, expert witnesses. So when we finally moved to exclude their damages expert, they went, uh-oh, we don't have any damages expert, we'd better try to get rid of their guy. And so that presumably, if you don't accept that motion in limine now and have it heard before trial, when I put Brad Scott on the witness stand I'm going to ask him about damages, an issue that they've been well aware of prior to the end of the discovery deadline, that it's been -- he's been deposed on those issues, had his deposition taken, and they made direct inquiry into those issues. So they're going to presumably stand up and say, objection, Your Honor, we would move to strike any testimony from Mr. Scott with respect to damages. And the Court is going to hear that, and it's going to make a ruling.

I think that that will delay the trial for maybe five minutes. Even if they do an offer of proof -- or I do an offer of proof -- and again, remember, the first part of this

trial is a bench trial, so I get up and say, you know, did you prepare a report, here's the report on damages, when did you do it, when did we submit it, when did we give it to the other side, did you have your deposition taken on this; yes, I did. So you were cross-examined on these very issues; yes. Are you the owner of the business; yes, I am. So -- and, as you know, caselaw in Nevada is clear, the owner of a business can testify as to the damages to the company. If you have a third party that's going to testify about damages, they need to be an expert, and they need to prepare an expert witness report.

THE COURT: So in effect what you're saying is that even though these motions were filed yesterday or as of yesterday, I should not consider them?

MR. JONES: And here's the other reason, Judge. It is the prejudice to us. By considering them we're going to have to have a hearing date; right? Which means we're going to have to file an opposition to them, and then they're going to have a reply, which we're going to have to read and review and prepare for motions. Thirty motions, Judge. By their own estimation, 30 motions between now and July 6th. What does that mean? That means that the resources of all the defendants are going to be completely distracted by having to deal with these improperly fugitive motions in limine. So even if it comes up during the trial of this case, the question you have to ponder is where is the biggest prejudice,

is the prejudice biggest to the defendants, who have done nothing wrong, in fact who've done everything right and followed the rules repeatedly, versus the prejudice potentially to the defendant -- excuse me, to the plaintiff in this case, who has knowingly and blatantly refused to follow the rules. And I say blatantly because of the extension. This was not an unknown thing that snuck up on them. They asked for the extension because they knew the deadline was looming. And they've had the extra several months to deal with this issue since you continued the trial in the first place.

So what stands to happen is all these defendant parties are going to have their lawyers focused on these motions instead of getting ready for trial, which is I think a huge prejudice to my client and to the other defendants, versus the prejudice, potential prejudice to the plaintiffs to have to make their objection during the time of trial.

THE COURT: Well, let me ask you a question about the bifurcation.

MR. JONES: Okay.

THE COURT: We've got the non-jury portion that's --

MR. JONES: Yes, Your Honor.

THE COURT: -- that's scheduled for July 6th; right?

MR. JONES: Yes.

THE COURT: Do all of this motions relate to the

non-jury portion of the trial, or do some of them relate to other aspects of the case, the jury portion?

MR. JONES: Your Honor, I'll be candid with you. I don't know. Because I have been busy doing other things when all these motions have come in in the last two days basically. And so I haven't had a chance to read even the caption or the title of about half of these motions. So I couldn't even tell you. That's one of the problems I'm dealing with. So I would presume that some of these 30 different motions and oppositions have to deal with issues that would be dealt with in a jury trial, but I can't tell you that accurately, unfortunately. And that's part of the prejudice I'm talking about. If they would have filed -- going out to the 16th of May was a prejudicial situation for us to begin with. That was going to mean we had a very compressed time frame to deal with these motions and address them. But now I'm in full trial mode, and I didn't know if I was going to be or not. We've been starting and stopping, and again, because of this so-called bankruptcy.

So now I want to get in a position, Judge, where I focus my attention on trial. We have a million and a half documents that we've had to deal with in this case. We've had over 50 depositions. Many of those depositions were multiple-day depositions. We still have discovery that has never been answered by this plaintiff -- or these plaintiffs, which -- we

had a motion as recently as last Thursday, and in fact counsel for the plaintiffs didn't even show up, and I presume it was because of the confusion created by Mr. Tharaldson as to who his counsel even was going to be at that point. So we had a hearing in front of Floyd Hale on a reconsideration of an order that -- a recommendation that he made back I believe in January that you affirmed after their appeal back in January, and they still refuse to answer this discovery, important discovery. And he not only reaffirmed that, he said -- when I asked him -- that's only part of it. We've still got the metadata, the computer information they've refused to give us after an order from you. Do I bring that back to you? Mr. Hale said, no, don't bring it to me, do an order to show cause, you've already had an order, you've had an order for months that they had to produce this information and they still haven't, I've got nothing else to say, I've already made my ruling and so has Judge Denton. So we've still got discovery abuses we have to deal with before trial of important, discoverable information that they have failed to produce even after having been ordered by you to do so months ago.

So, Judge, we are here today asking you for help to get this plaintiff in line. This plaintiff chose this forum. This plaintiff chose to file a preemptive strike. This plaintiff decided the strategies they wanted to employ when

they brought this case before you. They need to follow the rules like the other parties that they've sued here. So all we're asking you, Judge -- we're not asking you, we don't think, for much. We're asking you to enforce the rules that we're all supposed to play by that they have continually thwarted, ignored, and violated. We're simply asking you to enforce the rules. And if we don't have the rules enforced, what we end up having, Judge, is chaos. And that chaos that they have already created to a great extent and they're trying to further today is very prejudicial to our clients.

So we don't think we're asking for anything other than for you to simply make them live by the rules that we're all supposed to live by that supposedly creates a fair and level playing field that Mr. Tharaldson clearly has no interest in doing. And we believe that it's time for you to tell them again that, Mr. Tharaldson, you can't get away with this and you can't come in here and cry prejudice when you are the one who has created the prejudice that you are now asking relief from. It's as simple as that, Judge. It's really simple. Follow the rules, and you don't have a problem. Continue to violate the rules, and presumably at some point the Court's going to say, enough is enough.

We think that the time has more than come for you to say enough is enough, don't -- you can't get away with this, these motions, you had your time, you missed it, if you want

to try to play that game then you're going to have deal with it at the time of trial, you can raise your issues on your objection to the evidence. But, Your Honor, if -- and I don't want to -- I know how busy you are, so -- the difficulty here is that it puts the onus now on the Court and the defendants. If it delays the trial because of their bad strategies, that's certainly not a good thing. And I don't like to see that happen. But my job here is to make sure that my client is protected. And the means by which I protect my client is to ask you to enforce the rules.

THE COURT: All right. Thank you.

MR. JONES: Thank you, Judge.

MR. CLAYMAN: Good morning, Judge. I think Mr. Jones appropriately said what needed to be said. We have someone who has not followed the rules. And I don't know what in this case would give this Court any concern that it would not be fair if it struck all these motions. You've been incredibly open minded throughout this entire process on what are two simple documents, guaranties. And we have had the most vast, expensive, extensive litigation over two documents that I can ever imagine. We're here just because they haven't been able to get an idea of whether they want to go to trial, go bankruptcy, go whatever; but whatever they've done, they haven't followed your rules. And I think your rules are worth enforcing.

You had and gave parties deadlines to file things by. We cooperated in providing an extension. One of the things Mr. Jones didn't mention is I doubted that there was ever going to be a bankruptcy filing. Doubted it totally. And we are here today with this particular motion exactly as I predicted.

Now, what does this mean to our clients, who have already spent several million dollars responding to all kinds of motions and extensive discovery? Well, it means we've got to respond to -- as of May 27th I've got about 14 different motions in limine that I have to respond to between now and approximately June 20th or June 23rd.

Let me tell you why this is prejudicial to me. I'm very adamant about this, and I am -- I'm going to be angry, excuse me, if -- I've had a son in Afghanistan for seven months. He's going to be in Tulsa June 14th. I'm going to see him for two weeks. I don't want to be spending every minute of my day responding to motions and getting ready for trial. It's not fair to me. Now, I haven't talked to him or seen him since November.

THE COURT: You're aware of the fact that the calendar shows that there are -- looks like about 25 things on the 27th, another seven or so on the 30th?

MR. CLAYMAN: Yeah.

THE COURT: You're aware of those; right?

MR. CLAYMAN: Yes. Yeah.

THE COURT: Okay. And then on the 5th of July there's some other things, a couple other things.

MR. CLAYMAN: Yeah. And if you -- if you allow these things to stand, these responses and these motions that are out of time, then that --

THE COURT: This motion doesn't go to responses. This motion goes to deadlines for plaintiffs' motions.

MR. CLAYMAN: Well, the deadlines also go to the --

THE COURT: Doesn't go to oppositions.

MR. CLAYMAN: What?

THE COURT: It doesn't go to oppositions. I don't see anything in this -- it says, plaintiffs' motion for extension --

MR. CLAYMAN: Their oppositions are out of time.

THE COURT: This is plaintiffs' motion for extension of time for all motion deadlines.

MR. CLAYMAN: Right. And they're --

THE COURT: That's what I'm hearing now.

MR. CLAYMAN: Right. But the responses are out of time, too.

THE COURT: Well, yeah. But that's not --

MR. CLAYMAN: Well, let's talk about their motions, then.

THE COURT: -- before the Court now on this motion,

I don't see, at least as I looked at the title of the motion.

MR. CLAYMAN: Well, their responses are still out of time, and their motions are out of time. And I don't think, given what we have done throughout this litigation, to be entirely candid with this Court, to play by the rules and to do what we were supposed to do, that this Court should condone and allow these late motions. They should not be allowed. They are prejudicial to our clients and to the lawyers personally. Thank you, Judge.

THE COURT: All right.

MR. GOCHNOUR: I just want to clarify to the Court. My understanding is that they were also seeking issues regarding oppositions. And if they're not, that might help the Court, because I've got --

THE COURT: Well, I'm just looking at the motion here that --

MR. GOCHNOUR: I'm fine with that, Your Honor. I would be happy to say that. And the only reason I wanted to talk is because I've got a pending motion that was set for today, but not one of the ones you listed that was --

THE COURT: Well, the introductory --

MR. GOCHNOUR: Yeah. And that is in their motion, Your Honor, I'll tell you right now. So again, this is the problem that I think --

THE COURT: Continuing the brief, okay.

MR. GOCHNOUR: Then I think I have to join in -- based on what Mr. Coffing showed me it isn't the fact that they are asking for additional time to file responses, you know. We have a pending motion that was set for today. We had granted as part of the stipulation and order to extend the deadlines to the 16th for them to respond to our motion for -- do dismiss or alternatively summary judgment on their new second claim for relief. We got that opposition Thursday afternoon as I'm about to leave the office. Again, holiday on Monday. It was supposed to be heard today, but luckily it's not. We busted our bums and --

THE COURT: All right. It says, "Therefore, plaintiffs request an order that they have until June 1 to file any motions or respond to any motions that were due on May 9 or May 16 or that will become due at any time before June 1. Okay.

MR. GOCHNOUR: And this is the problem.

THE COURT: So I stand corrected there, because I was focusing on the title of the motion here, which is for an extension of time for all motion deadlines.

MR. JONES: And, Your Honor, I'm sorry, but just for the record, and I didn't pick up on that distinction, so, you know, that was my intent, was to argue that the oppositions were also untimely. I apologize if I didn't make that clear.

MR. GOCHNOUR: And that's the problem we have with

it, Your Honor. We stipulated to give them additional time to oppose at least one of our APCO motions to the 16th. That was a stipulation and order of the Court. They then come forward and don't bother to meet that deadline that they requested, that the Court ordered, and then they file an opposition to our motion not on the 16th, but last Thursday for a hearing that was set for today. These are the kind of prejudicial things that we have. I had to spend all day Tuesday trying to pump out a reply brief to deal with the nonsense that they put in their opposition. And this is the kind of thing that's going to happen over and over again now that we have this vast mass of not only motions in limine, but oppositions to various other motions that have been pending for months now.

So it is extremely prejudicial, Your Honor. The motion in limine, I can understand the point that the Court is making. Again, we're going to be trying to prepare for trial, you know. And, as the Court knows, I've got two cases on the same date in this department, so I've got to figure out which case I'm even trying to get ready for. So I'm doubly prejudiced. So I think it's just prejudicial, Your Honor, and it I think it's untimely, it's prejudicial, it creates havoc amongst the defendants who have followed the rules, and all we want is to know what the playing field is at this point, because we got such a short time before trial, Your Honor. Thank you.

THE COURT: All right. Mr. Coffing.

Oh. I'm sorry. Counsel?

MR. SMITH: No. I promised your staff I wasn't going to talk, so I'm just going to say a real quick word. And I didn't file a formal joinder. I apologize to that. But we did stipulate. We were told there was a date certain that bankruptcy was going to be filed, and then we were told, well, it's going to be a week after that. So, you know, I don't have -- my client doesn't have the resources to hire multiple local firms, multiple outside-of-state or, you know, foreign firms, different firms for the beginning of the case, firms for the middle of the case, and firms for the end of the case. They just have me, and I'm all by myself. And so every day my client's making decisions on how to cost effectively get to trial so that we can deal with these claims.

And what came down in this case is we stipulated to give them extra time, we reached the end of the stipulation, we're going to be filing bankruptcy, we're told, and so, you know, I make the decision to not file a slew of motions in limine because I don't have the additional resources, not just associates, but whole extra firms at my beck and call to, you know, follow the deadlines. So I just -- you know, when this is sort of put in front of Your Honor, you know, there's extreme prejudice, I would say, for all of the defendants, but particularly I think the defendants like APCO and Edelstein,

who are having to make those calls and feel like we're being whipsawed in this case based on whatever the -- whatever the -- you know, Mr. Tharaldson's wishes are for that week on what he thinks he's going to do. And I think it's happened time and time again.

THE COURT: All right. Before I get to Mr. Coffing, Mr. Jones, one thing I want to make sure I understand here. Since the motion goes not only to filing of motions by the plaintiffs, but also opposing motions that have been filed by the defendants, the defendants have already gone to the work of filing their motions; right?

MR. JONES: Judge --

THE COURT: So your motions have been filed.

MR. JONES: Yes.

THE COURT: So the only thing you'd need to do would be to file a reply to an opposition, right, on things that you've already filed? I mean, that's what I'm trying to make sure. Where is the prejudice if there's an extension given for opposing motions? I know there was a settlement conference, I know things were put on hold for that and a bunch of other stuff. Where's the prejudice if -- since you've already done what you need to do on your motion, if they're allowed to file an opposition, where's the prejudice? Is it that you then have to file a reply? Is that -- is that what it is?

MR. JONES: Well, two things, Judge. And I think this is important.

THE COURT: These are already on calendar, all these motions.

MR. JONES: Your Honor, these -- that's true. There are two issues here that I think are important to address, and I think it's important to get this on the record, because, depending upon what your ruling is, one side or the other may try to use this as a basis for appeal. And I think the Court would be on absolute solid ground by making the plaintiff comply with the rules. Because the prejudice is at least twofold and probably more, if I had time to think about it. One is I have to file a reply. I have to file lots of replies to those motions.

Just so you know, the motions we filed, some of those motions weren't filed on the deadline, they went back months. They were there for a long time. So they waited until literally the last minute before this hearing to file oppositions. So now I've got to get my people to do the research, not focus on getting ready for trial, to do the research and start preparing a response to that document, to the opposition. So it takes away my client's ability to prepare for trial, because those very same people I'm going to use to help -- just getting through the documents and getting all the documents lined up with the witnesses for trial is a

monumental task. That will be a distraction, clearly, that we'll have to deal with. And that goes doubly for especially people -- Mr. Smith's got a good point. His client -- he is -- he has a one-man shop he's working with. So they have to deal with that.

But secondly, what's going to happen to the date these are set to be heard?

THE COURT: You're talking about the plaintiffs' motions now?

MR. JONES: Yes.

THE COURT: Okay.

MR. JONES: Yes. So -- or even --

THE COURT: In other words, they've been set for after --

MR. JONES: -- even the motions that we had set. If -- some of these were theoretically set for today or they're set for next week or they're going to have to be pushed out because then you won't have had an opportunity to read the replies.

THE COURT: Well, things that were filed yesterday may have been set for after the trial; right? I don't know when they were set.

MR. JONES: Some of them were set for literally July 5th, the day before trial. But that's their motions. You were asking me about our oppositions -- their oppositions

that we then have to reply to. So if said theoretically some of those motions have already been set that we filed, they're set for a hearing, and so all we have to do is do a reply. I've already explained why that reply is very problematic for us to have to deal with between now and July 6th, a month away literally; but, secondly, it depends on when those motions are set, my motions are set.

So they file a reply -- let's just use Mr. Gochnour's comment about last Thursday. So it's over the holiday weekend. I was in depositions in Los Angeles on Friday, by the way, and I was out of town on Monday. So now we start trying to put together a reply, and maybe the hearing's the end of next, I don't know, on a particular motion we had filed some time ago. So either one of two things is going to happen. Either you're going to get a reply and your clerk is going to have to burn the midnight oil trying to read that and get you up to speed before that hearing, meaning that you won't have the required five days' notice prior to the hearing to get your reply and start reading it, or they're going to do what they always do and they're going to ask that that hearing date be kicked because now it's too close to the time of the hearing for a reply to be considered.

Or they're going to put us in the position of, because we think a reply is so important for you to consider

that we're going to be forced to say, Judge, we think this is so important now we think we need to kick that hearing date another week so that you have appropriate time to consider the reply. That is totally inappropriate. That's the kind of gamesmanship we believe Mr. Tharaldson has repeatedly played here, and it has real-world consequences. This is not a hypothetical situation. This is not a potential maybe it's going to happen. These are real-world consequences. And that's the position that Mr. Tharaldson is putting us all in, putting you in, your clerk, and all of these parties and their counsel. It's not fair, it's not right.

And there's a simple answer. You know, follow the rules and you get rewarded for following the rules. You don't follow the rules, and you pay a penalty. I don't know how in the world, especially with the history of this case that's been so well documented and your immense patience with this plaintiff over the course of the last two and a half years for their abuses, how the Supreme Court could ever fault you for saying, okay, Tharaldson, time's up, this time you're going to have to pay the price, you're going to have to live the rules, you created this problem, so you have nobody to blame but yourself. I believe that that would be not only justified conclusion by this Court, but the Supreme Court would back you up a hundred percent.

So, Judge, there are real consequences to having to

respond to the oppositions that they filed late, real consequences.

THE COURT: All right. Thank you.

MR. GOCHNOUR: Very briefly, Your Honor, I would like to just reiterate on that point that the deadline was set by a Court order. We stipulated and you ordered that they have those oppositions on by the 16th. They chose to ignore your order.

THE COURT: All right. Thank you.

MR. COFFING: Your Honor, I understand the umbrage, but I think it is greatly exaggerated. The sky is not falling here. And depending on how you rule on our motion to continue the trial, any argument of prejudice is really nonexistent.

But I would say a couple of things. First of all, we're dealing with the difference between filing motions on the 1st and the 16th. It's not like this Court wasn't going to have to consider them at some point in time. There are a ton of motions already set for the 27th. And when I referenced 30-plus filings, many of those were oppositions, not brand-new motions. So these are issues in this case that the Court is going to have to consider. You're either going to consider it on motion practice or you're going to consider it at the time of trial. And if that means I'm taking my motion and handing it to you as a bench brief in support of an argument, that seems like a colossal waste of time, depending

on how this trial proceeds as either a bench or a jury.

These issues are important. We've briefed every issue imaginable, as you are well aware, and my clients' liability -- potential liability is over 110 million. His potential upside is probably in the $40 million range. So it's important. Both sides want to make sure that they have an accurate record, a complete record. And for this Court to say by virtue of a delay in filing oppositions and motions that they're not to be considered, I would disagree vehemently with Mr. Jones and say that that would not be reversible error, especially when this Court has the ability to fashion remedies that eliminate any claims of prejudice.

THE COURT: So you filed a bunch of motions yesterday; right? Because they're not on the calendar yet.

MR. COFFING: Correct. There were -- there were several that were filed yesterday, Your Honor. We wanted -- we asked for --

THE COURT: All right. Here's what I'm going to do. I'm going to take a look at it from the standpoint of the Court's ability to assimilate and understand and assist in the management of -- actually undertake the management of the trial of the case. So what I'm going to do is I'm going to take this motion for extension of deadlines having to do with filing of motions by the plaintiff and oppositions to defendants' motions by the plaintiff under advisement, and I'm

going to go through them all, and I'm going to see which ones I think I ought to hear to give me a clear understanding and assist in the economic development of this case for trial.

So it may be that I'll determine that some of them I want to hear, it may be that there are some here that it's just too late, it may be that I'll determine, no, these oppositions are just too late, it may be that I'll look at one and I'll say, well, you know, I really need to hear that one before the trial. But I appreciate the defendants' position regarding the rules, the deadlines that were established, and the fact that this is all coming on the eve of trial and they shouldn't be having to put aside their trial preparation in order to address a bunch of motions and things that should have been filed earlier.

Okay. Now, I'm going to put that to the side right now. In other words, your motion for extension is under advisement. And I'm going to come up with either a minute order or a decision that indicates I'll allow these motions and I won't allow these, and I'll allow these oppositions and I won't allow these. But I've got to go through them all first. I've got to see what's been filed.

MR. COFFING: And I appreciate your decision there. But can I add one thing, Your Honor? This notion that the bankruptcy was simply a ruse to somehow prejudice the parties, I need to dispel that, because that is absolutely

categorically false.

THE COURT: Okay. And I'm not making a -- I'm not making a determination on that point. I realize that kind of stuff can come up real fast and people have to make decisions real fast. And I understand.

But let me now hear the motion for continuance. It's a countermotion, I believe.

MR. COFFING: Correct, Your Honor.

THE COURT: Let me hear that real quick.

MR. COFFING: Your Honor, there's two things, and setting aside -- first of all --

THE COURT: And again, before I get to that, I also want to -- in looking at these motions I'll be focusing, too, on does this relate to the non-jury trial that's now scheduled for July 6 or does it relate to something else. Because those types of things can be put on -- and I'll look at that, because we're going to be running out of time here. So -- but it occurs to me that some may relate to a facet of the case that's not coming up for trial at this time.

MR. COFFING: Well, and then let's talk about the continuance, Your Honor. Because the very same reasons you continued this trial previously still exist. We -- I came here before you and I said, you've made a ruling on the bifurcation issue, I respect your ruling, we disagreed with it. You allowed me five days to file a writ application. We

did that. The Supreme Court determined that there's arguable merit to it and ordered a reply. They allowed me -- or ordered a response, and they allowed me the opportunity to file a reply. That was filed on the 25th, Your Honor. It hasn't even been a week since the Supreme Court has had this matter fully briefed. And if you would go forward with the trial as you've presently ordered, then the writ becomes moot, it is of no merit --

THE COURT: Well, the trial's not till July 6th. I mean, there's some time between now and --

MR. COFFING: Certainly, Your Honor. But in Supreme Court time I think this Court needs --

THE COURT: Well, I get them real fast sometimes.

MR. COFFING: I have, too. But I have also got a case up there that's four years old. So you know how that works. There's no rhyme or reason. We're in the middle of an election cycle, there are at least a dozen expedited writs on calendar now. I think it's highly unlikely that this Court is going to have -- the Supreme Court is going to have any ruling on that matter before July 6th. And if we want to go up to that brink and spend all the time and money getting ready for it in light of all these other issues, I guess you could order that. But it really -- it seems to make no sense, because - for the identical reasons you continued it previously. It's been fully briefed as of last Wednesday. That's it. And if

they make a ruling in a week, great, we've got a ruling, we know if it's going to be bench, jury, how it's going to go forward. But if we're at July 5th and there's no ruling, how do we commence the trial? How do we do that?

And of course the defendants are standing here before you saying, you know, we want to go forward, we want to go forward. But this case is not that old. Other than the amount of money involved, it has no statutory or other preference that I'm aware of, and brief continuance of the trial for that purpose alone is warranted.

Now let me talk next about the substitution of counsel here. Again, my client has made a decision he's bringing in new counsel. And why is that? Well, in large part it's because Brad Scott, Scott Financial, have filed a separate lawsuit against my co-counsel. They've filed a defamation claim related to this case against Lane Morrill and Martin Muckleroy. And so they're put in the position of having to go forward in a trial while at the same time being defendants. And that was a huge factor in my client's decision to get other counsel. And that's something that they created, Your Honor, not my client. They chose to sue after they were unsuccessful in getting the opportunity to depose my co-counsel. So that and again is a reason for the change in counsel. We're not asking for a year. We're asking for enough time for the Supreme Court to rule, number one, and for

new counsel to get up to speed in what is admittedly a hotly contested, heavily litigated case that deserves to be heard in full so we can get it right the first time and not have issues -- additional issues that stem from any type of appeal.

We have two writs pending, Your Honor, one of which was fully briefed in March, the other one was fully briefed just last week. And the Court should allow the time for those issues to be decided, let my new counsel come in, get up to speed, and have a hearing that is full and fair for everyone. And if the Court decides to continue this for a brief period of time until the Supreme Court --

THE COURT: See, that's the problem with continuances, you know. You get things set, you discuss with counsel how long is it going to take and, you know, what are the logistics here and everything else and get it set, and then it goes away, and then it's --

MR. COFFING: Agreed, Your Honor. And I'm not here telling you that I want a continuance because my client's on vacation. That's not what we're here for. We have -- perhaps the pivotal issue in this case is pending before the Nevada Supreme Court. From our perspective whether this is a bench or a jury trial is obviously the very crux of part of our case, and that issue needs to be decided. They didn't reject my writ out of hand. They ordered a response and even allowed the rare instance of a reply. So clearly they're going to

take it seriously. And if they're going to take it seriously, we can assume that it's going to take more than the 30 days we have before this trial is set to begin. And if you begin the trial in the manner that you've currently ordered, that whole process becomes moot. And it's not fair to -- it's not fair to my client, and we can eliminate any claims of prejudice to the defendants. They had -- this is a monetary case. They're going to get a monetary judgment, and you can cure any type of prejudice on that side if we -- if and when we get to trial. But this issue needs to be heard, it needs to be resolved, and for that reason I'd ask that the Court continue the trial briefly, allow new counsel to get up to speed, let the Supreme Court rule, and we can eliminate the prejudice that we just heard about with these motions and move on. We're not asking for a lot here, Your Honor. It's a simple continuance to allow what this Court previously continued the trial to do.

THE COURT: All right. Thank you.

MR. JONES: Mr. Coffing's first comment was, "The same reason to continue the first trial -- or continue the trial the first instance still exists," as he refers to the writ on the bifurcation.

First of all, Judge, as I said earlier, I'm surprised that the Supreme Court accepted that writ on the one hand. On the other hand, I'm not so surprised when you read what they said in that writ. And that wasn't -- I don't

believe it was drafted by Mr. Coffing's office, I believe it was drafted by counsel out of Arizona. In any event, I believe that they so distorted reality that the Supreme Court was probably surprised at why Judge Denton would ever do such a thing.

But I am absolutely convinced that you will be vindicated. The caselaw from the Supreme Court is abundantly clear. How you run your courtroom is within your discretion. The Supreme Court has told us that. In fact, they've told us that in a case that I was on the other side of the issue, in front of Judge Glass. And they said, no, no, no, the court controls the issue of bifurcation, whether or not the jury trial should go first or otherwise.

But let's just talk about some of the other details related to that. Mr. Coffing said they filed a reply brief just last week. What he didn't tell you is that the reason they got to file it last week is because they asked the Supreme Court for an extension of time. So there's another extension they asked for. They've asked for more delay. So the reason that it just got briefed last week, fully briefed, is because of their delay again.

But he goes on to say, well, how do we commence a trial if there's no ruling from the Supreme Court. Well, you come in, you call the case, and we have opening statements, and then we call the first witness. I'm sure Mr. Coffing has

done that before. It's a very simple process. We're all trial lawyers here, we all know how to try a case. And the very fact that there's a motion or a writ pending does not -- as you well know, Judge, and you've sort of implied or alluded to it in your responses or questions of Mr. Coffing, there's no stay in place. They could go and ask the Supreme Court for a stay if they think it's appropriate. But if the motion for bifurcation is not decided by the time we have the trial, then, guess what, and Mr. Coffing knows this, the writ is moot. So what? That's not like that's some big deal that's going to cause, you know, dogs and cats to be living together, I mean, some sort of catastrophic circumstance.

And then he goes on and says, so let's just give us a brief continuance of the trial, "a brief continuance of the trial is warranted." Well, first of all, as I've already said, it's not warranted, it's not justified, there's no stay in place, and there's no legal basis for it. But secondly, what does that mean, Judge? They've already got away with that once because of their motion to bifurcate. They got a brief continuance. And again, there's that slippery slope. If we get a continuance, I know what your docket generally looks like, and I know it's not very easy for you to fit a case in in any time probably in the next year. So what does that mean? Who knows how long it'll be before we ever get a chance to be back in front of you, Judge. That is clearly the

strategy that's employed here.

And I want to address this issue about the lawsuit that my client filed. My client did file a lawsuit for defamation. We talked about it for a long time. That lawsuit, Judge, just so you know, is based upon the defamation per se that Mr. Morrill and Mr. Muckleroy -- and I hate -- it's unfortunate that there's local counsel involved, but I had no -- well, I don't believe I had any choice. Certainly my client had a claim there. Mr. Muckleroy and Mr. Morrill subpoenaed witnesses. And you know a little bit about this subject, because it was the motion -- it had to do with the motion for -- to take the deposition of the attorneys. Mr. Morrill and Mr. Muckleroy subpoenaed material witnesses in this case. They then withdrew those subpoenas without our knowledge and asked to meet with these witnesses. They met with those witnesses, and they repeatedly said, and I have this on a videotaped deposition from those witnesses, which we didn't find out about until we ended up taking the depositions later of those witnesses, that Mr. Muckleroy and Mr. Morrill said my client and Bank of Oklahoma and Alex Edelstein -- well, actually my client and Bank of Oklahoma had committed bank fraud. That's defamation per se. And I asked those witnesses, did they qualify it, did they express it any way as an opinion; absolutely not, they told us those people were crooks, they used other pretty extreme pejoratives, but they

accused my client of committing a crime in connection with their business. That's a double defamation per se. That's the kind of extreme conduct that we were dealing with from Arizona counsel.

In addition, during that discussion we found out that Mr. Morrill -- when they wouldn't sign the affidavits that Mr. Morrill kept trying to force them to sign, which had material inaccuracies, in other words, they weren't true, and when the witnesses refused to sign those inaccurate affidavits Mr. Morrill told the witnesses to destroy the evidence. So, yeah, my client sued them for defamation.

But, Judge, what does that have to do with this case? We weren't going to bring up the defamation suit against Mr. Morrill as a witness in the case. Mr. Morrill was a witness in the case because Mr. Morrill had put himself on the original 16.1 disclosures as a witness in the case. So Mr. Coffing's comment that the reason that they had to change out counsel was because of my client's defamation suit, that is complete nonsense. That was not going to come up in this trial. It's an unrelated case. And moreover, he said that because my client chose to -- I'm sorry, was unable -- was unsuccessful in getting to depose counsel. That's not true. We were successful. Both the special master said we could take those attorneys' depositions, and you concurred. That's up on appeal under another writ which was also full of I

believe gross misrepresentations to the Supreme Court. So you ruled we could take those depositions.

So the reason that they're changing counsel, I don't know what it is, but they had plenty of time to get new counsel before yesterday. If they really thought Mr. Morrill was going to be a problem and as far as being trial counsel, why didn't they get rid of him months ago? So that's just a completely nonsensical excuse as to why they want to continue the trial.

Finally, Judge, the rules of the District Court, Eighth Judicial District Court provide it is improper, in fact it is prohibited to use as a basis of a continuance the substitution of counsel. You cannot say, I need a continuance because I'm substituting counsel. It's the old adage we've been talking about in the first motion. You cannot create the circumstance that you then use to say you're going to be suffering prejudice. It's the old adage of the guy who murdered his parents and then throws himself on the mercy of the court because he's an orphan. You can't do that, Judge.

So there's no need for a continuance. Who knows what the Supreme Court's going to do? But again, we would ask you to abide by the rules, make them live by the rules, we go forward. There's plenty of time between now and July 6th for the Supreme Court to make a ruling, and if they don't, so be it, we try the case. It's very simple.

MR. CLAYMAN: Just real quick, we're ready for trial on July 5th.

THE COURT: All right.

MR. COFFING: Your Honor, I think Mr. Jones makes the point. He said, you know, how do we start the trial. Well, if we're successful on the writ, we start the trial by picking a jury. If we're unsuccessful on the writ, he's right, we make opening statements, call a witness. But he can't argue because -- he didn't argue and he can't argue it makes the entire process moot. And the same reason you continued it before exists. There's no reason why a brief delay in this trial to allow the Supreme Court to rule would cause them any different prejudice, and it really hones the issues as far as that.

Certainly the lawsuit against my client -- my co-counsel, it was a factor. It is not the only factor that led to the change of counsel. And when I got into this case I didn't come in here and say, Judge, I'm new, continue the trial. That's not what's going on here. My client is entitled to counsel of their choice. He believes vehemently that he's entitled to a jury of his peers to hear this case, and that's why we filed the extensive briefing at the Supreme Court.

Now, I know Mr. Jones isn't sitting here telling you he can predict what the Supreme Court does, because I know

he's been surprised just like I've been surprised and I'm sure you have, too. So coming here and saying, well, we're going to win there, is really of no basis and should be given no weight by this Court. There's no prejudice to them for a brief continuance to allow the writ process to be finalized. And if you want to set a drop dead date in two weeks, you can do that. If you want to -- if you want -- can go ahead and continue it now, I think that that is the prudent thing to do so people don't waste further time and resources.

THE COURT: All right. Thank you.

The countermotion, as it's called, to continue is denied.

Now, you can seek a stay in the Supreme Court, and maybe if you do that it will bring home to the Supreme Court their need to take a look at this issue. If they haven't ruled, we'll just -- I mean, this is on a stack, I think. I don't know that this is a firm setting.

MR. JONES: Well, Your Honor, I believe you gave us a firm trial setting when we were talking last time, although I think you did say you had at least one matter that was -- that had precedent, if I recall correctly.

THE COURT: I think it may be the one that Mr. Gochnour's involved in. I'm not sure.

MR. GOCHNOUR: No, Your Honor. That one was actually set as a tail to this one.

THE COURT: Okay. Well, in any event, I'll have to review my trial calendar. But I'm not -- given the history of the case, the fact that it's been continued, the -- what's been going on, the difficulty in rescheduling, you know, all of these logistical issues, I'm denying that motion.

MR. COFFING: Your Honor, are we stacked, or do we have a firm setting then?

THE COURT: I'll have to figure that out with my JEA. I don't have it right before me right now. I thought it was on a stack, but I'll have to take a look.

MR. COFFING: I think Mr. Jones is correct. I think you did give us some indication that you were going to give it at least some level of priority.

THE COURT: Oh. I think I'm -- there's no question there. I'm just not sure if it was given firm. That's -- that's the thing I've got to check, because I know I have another case Mr. Gochnour's involved in, 40-40 Club case.

MR. GOCHNOUR: It was my understanding that this case was a firm setting for three weeks, that because of the fact that we had the upcoming settlement conference and [inaudible] something may happen, you took my other case, put it behind this one. In case something happened to this one, you could use those dates that you had set aside, as I understood, again, as a firm setting for that other matter. So --

THE COURT: Okay. Well, I'll review that. I've got a lot of cases, so I'll have to review what it is.

MR. COFFING: When is our calendar call, then, Your Honor?

THE COURT: My recollection is the case did have a firm setting at one time. Right?

MR. COFFING: Well, you -- I think that was some confusion. You had originally set it on a firm setting in March, but then it was set on a jury stack. And then when they made the decision that it was going to proceed as a bench trial --

THE COURT: All right. Here's what the situation is. My law clerk has checked with the JEA. Apparently both cases are firm, all right. I think the thinking was that I'd be able to give some time to the 40-40 case on that stack, but that this one was the one that had been previously set, as I recall. Okay.

So, in any event, you know, you can seek a stay in the Supreme Court. And I agree with what Mr. Jones has said. If the -- if no stay has been issued, we can go ahead and start the trial, and maybe they'll -- maybe they'll make a ruling during the course of the trial or maybe it will make the issue moot and it'll be something to be taken up on appeal.

MR. COFFING: Then when is our calendar call? So

we'll know whether were on --

MR. JONES: Your Honor, I was just informed by Ms. Mamer that it's on the 27th.

MR. COFFING: June 27th?

THE COURT: That is right. June 27th at 2:00 o'clock.

All right. Now let me hear -- the next motion is the defendants' -- the Scott defendants' motion to strike second amended complaint.

MR. JONES: Your Honor, I prepared a chart that hopefully will hope you kind of understand where we're at with this.

THE COURT: My understanding is -- I just want to cut to the chase here. My understanding here is that after I had made rulings as to various claims the plaintiffs filed their second amended complaint, which included things that I'd already addressed; right?

MR. JONES: Right. Right. That's exactly right. It's real simple.

THE COURT: Okay.

MR. JONES: We're asking you under Rule 12(f) that, as you know, the court may strike from any pleading any redundant, immaterial, or impertinent or scandalous matter. We believe this is immaterial and impertinent.

THE COURT: Now, when the plaintiffs sought leave to

file a second amended complaint they would have attached a proposed second amended complaint to their motion; right?

MR. JONES: They did.

THE COURT: So all they did was file what they'd been given leave to file; right? So they can't really be faulted for doing that; right?

MR. JONES: Your Honor, at this point I'll back away from any suggestion of fault. We just want to have a pleading that reflects the current status.

THE COURT: Why can't there just be an order that indicates that certain claims that are alleged in the second amended complaint have been dealt with --

MR. JONES: I think that --

THE COURT: -- instead of striking?

MR. JONES: Your Honor, I guess that that was the appropriate vehicle, if you will, that I thought I was supposed to file. But what we want to do, we want to make sure the pleadings that were filed sometime well after these decisions were made reflect the status of the case so that they can't replead. Because there's -- as you know, I mean, one of the things that could be done if there ever is a jury trial in this case, you can read the pleadings to the jury. That's one of the issues. You could get up and actually read the pleadings. I don't want the jury to hear things that you've already said are not a part of this case. So it's

pretty simple. If that's the -- if you think that's the more appropriate way to handle this, I'm fine with that.

THE COURT: Okay. Well, let me see what Mr. Coffing has to say about that.

MR. COFFING: Your Honor, I was just chastised -- or my client was just chastised for vexatiously multiplying this litigation. And I have to deal with what really is an unprecedented motion that I've ever seen in asking to strike allegations in a complaint that the Court allowed to be filed based upon subsequent rulings of the Court. And as we pointed out in our briefing, motions to strike are not favored within the law, and I could find no precedent for what Mr. Jones is asking. And I note that Bank of Oklahoma simply filed an answer. So there's -- this motion, I suggest to you, is useless and should be denied, because there is no prejudice, there's no basis for it, 12(f) was not designed to make your pleadings continually conform to the rulings of the Court. And if the Court doesn't want to read it to a jury, if we ever get to that point, then so be it. But there are orders in place that you've already ruled on in motions that have eliminated some claims. There's no need for us to go back and repeatedly amend the complaint each time the Court makes an order.

THE COURT: All right.

MR. COFFING: Just like I won't be asking you to

strike their affirmative defenses if they fail to prove them.

MR. JONES: Well, actually the last point, Your Honor, just because Mr. Coffing isn't going to do it doesn't mean he's not entitled to or doesn't have a right to do it. Pleadings should conform to the rulings of the Court.

But Ms. Mamer also pointed something else out to me that I'd forgotten that I think really brought this issue to a head. Prior to filing this motion to strike Matt Carter, an associate in my office who's primarily responsible for this case along with me, contacted Christine Taradash, the associate at Morrill & Aronson, to express concern about the amended complaint form that clearly did not conform with your orders. And we asked her to just make sure -- it wasn't a big deal, because, Judge, what they aren't telling you, as well, there was an allegation that Mr. Tharaldson had been taken advantage of because he was in some kind of drug-induced fog. That was an allegation that was in the original complaint. We, as you could expect, decided to do discovery on that and asked for all of his prescriptions. These were lengthy factual details in this 56-page complaint about how he was unduly influenced by my client because my client knew he'd had knee surgery and was in terrible pain and was on drugs and therefore didn't know what he was signing when he signed some of the critical documents in this case.

Well, as soon as we asked for this information,

interestingly enough they said, well, we don't want to pursue that claim anymore. And when they, you know, filed their proposed amended complaint they didn't tell you that they just deleted that. They didn't point it out to us. The only way we knew what even happened in the 56-page complaint, we had to read line by line, because we didn't trust them, candidly, and only then did we find out that they had deleted certain things out of their amended complaint they didn't tell you about or us about. And so we didn't think it was inappropriate to say, look, since you took out that one allegation that you now decided that you don't want to pursue because it's completely bogus, then you ought to probably make sure that the new complaint you filed, now that you know that the Court has ruled that these claims are not -- no longer part of this case, should do that. And she said, no. So we filed a motion to strike. And if the Court thinks that was inappropriate, so be it. We felt it was totally appropriate under these circumstances.

I'm happy with your suggestion, though, Judge. This was we believe the appropriate way to bring this to the Court's attention. It's one more abuse tactic by this party, and so I would ask the Court to at least allow us to have an order that says the complaint should conform with the latest version of the rulings of this Court. I don't think that's too much to ask, and I think that's what we're supposedly

going to try the case on.

THE COURT: Why don't you just submit an order that indicates the causes of action have been -- that are listed here have been adjudicated?

MR. JONES: Your Honor, I'd be happy to do that and present it to opposing counsel, see what they feel about it. We tried to do that voluntarily with Mr. Taradash, and she's flatly refused to accept that.

In terms of submitting the order, it was -- they were granted the motion to amend the complaint, so they got to file the amended complaint. And that's how this whole thing evolved. And Mr. Coffing, by the way, was not involved in any respect in that discussion.

THE COURT: I understand. What they filed was what they were given leave to file. That's the point. So that's why I'm not inclined to strike things.

MR. JONES: And I -- as I said at the beginning --

THE COURT: But if I've made rulings that have resolved the claims that are the subject of your motion, then you can submit an order to me that indicates that -- that so orders.

MR. JONES: And, Your Honor, I guess it seemed to me and I still believe that Rule 12(f) says that the Court may strike any immaterial or impertinent information from a pleadings. This is clearly immaterial. It just is. As a

matter of the holdings of the Court at this point, the rule of law in this case at this point in time is those matters in that pleading are impertinent. We've asked you to strike only those issues. And so I'm not --

THE COURT: All right. The motion to strike is denied, but the Court will entertain an order that references the causes of action the subject of the motion and which indicates that they have been adjudicated.

MR. JONES: I will run it by both Mr. Coffing and new counsel before I ever submit it to the Court, Your Honor.

THE COURT: All right.

MR. COFFING: Your Honor, before you make that decision there are several of the motions that are pending. I believe there are at least two for reconsideration and two for clarification. So before -- before we consider any such order by Mr. Jones, I think it would be important for the Court to consider all the pending motions --

THE COURT: Well, if I reconsider or whatever, then that could, you know, go back to this thing that I've just asked you.

MR. COFFING: It's simply just an unnecessary order at that point. If you've ruled that one of my claims is dismissed, it's dismissed, you sign an order.

THE COURT: Well, I think for the record, though, it should be made clear that it relates also to the amended

pleading, in other words, it hasn't been reinstated or revived by the filing of a second amended complaint.

MR. COFFING: Understood. And that was not -- that is not a -- that is not something we'd assert, Your Honor.

THE COURT: All right. So I'll go ahead and stand by my ruling. So if you'll submit that order. Run it by counsel, if you would, Mr. Jones.

MR. JONES: I certainly will, Your Honor. I certainly will.

THE COURT: All right. And if I reconsider something, then that means I would also be reconsidering this thing.

MR. COFFING: Exactly. That's why I say it's premature at this point.

THE COURT: But at least the record will be clear.

MR. JONES: And, Your Honor, of course, as you noted earlier, we would -- our position is that those motions for reconsideration were very late filed, and those have nothing to do with motions in limine. Those are motions for reconsideration that we'd already extended the deadline once at their request.

THE COURT: All right.

MR. JONES: So that goes to that issue, as well, Judge.

THE COURT: Now, the final one that I had for

hearing today is defendants' -- the Scott defendants and Bank of Oklahoma motion to strike and exclude plaintiffs' expert John Loper.

MR. JONES: Your Honor, in order to again move this along, I think this is a very straightforward motion. If the Court has any questions, I'd be happy to answer them, but this man -- and I saw what he said to the -- the letter he sent to the State. I don't know if you had a chance to read that, but this is his letter to the State Board of Appraisers on February 15th saying that, look, I didn't do anything wrong here and therefore I shouldn't be sanctioned by the State. And he gets a response from the State saying, okay, well, based on what you told us we're not going to -- we will not follow through at this point in time. They leave open whether they'll do anything in the future.

But I would point out to you that in that letter Mr. Loper says, "The statute is not applicable to the work I performed on a consulting assignment in conjunction with litigation being handled by Arizona counsel in Arizona for the following reasons." He represented to the State Board of Accountants -- or, excuse me, Appraisers that he was handling this matter as a consultant only for Arizona counsel in Arizona. I believe that's a blatant misrepresentation of actually what he was doing, Judge. So I think he just compounded his position, and I think that that may be

something else the State Board of Appraisers might want to know about, as well.

But, having said that, there are plenty of reasons to strike Mr. Loper's testimony in addition to it being a direct violation of Nevada law. Mr. Loper says, and the State Board appears to take him at his word even though it's clear that what he said was incorrect at least in that respect, but he says he didn't put any values, he didn't ever testify as to value.

Well, Judge, we've cited chapter and verse in our motion where Mr. Loper admits repeatedly to addressing the value of the property at issue in this case in direct violation of Nevada law, which, by the way, is actually a misdemeanor. It's not just a violation of law, it's actually a crime for him to do such.

So he is not licensed here, he's testifying as to value. And by the way, he admits at page 98 of his deposition that an appraiser must be licensed in that state in order to do an analysis and appraisal of valuation for compensation. And that statute which makes it both a violation of the law and then a crime are under Chapter 645C, Your Honor, which we've cited in our brief.

But in addition to having issued an appraisal in this case, he's not qualified because he hasn't done any appraisals in == first of all, he's never been licensed in

Nevada, which he could have asked for a license. He could have gone and said, hey, I'd like to get a -- some kind of a reciprocity license for this one job. And he knew he could do that, by the way. He admitted he knew he could have done that. But he admits he hasn't done an appraisal in the state of Nevada for over 20 years, he's never been licensed here, he's never done an appraisal of a piece of property similar to the Manhattan West Project in his entire career, and he admits that much of what he was talking about in his report was speculation.

For example, "Mr. Loper, would you agree that it would be speculation on your part as you sit here today to say that it would be more likely that Criterion would have changed their valuations had they done an updated appraisal in January of 2008?" Answer, "I would agree. Obviously that -- it's speculative, because I'm -- you know, I have perfect hindsight, and they haven't, as far as I know, updated this appraisal."

He repeatedly says he cannot quantify opinions that he gives in his own report. He also continues to admit repeatedly that he did not offer opinions to a reasonable degree of accounting certainty.

For example, where I asked him, "Can you testify here today as far as your concern to a reasonable

degree of appraising -- appraising -- as an appraising expert that the downward trend that you believe to be likely on the value would be a material change in that value?"

Answer, "But I -- I -- I -- so I -- I don't know. Again, I don't know. I'm not trying to be argumentative, but I think it would be a real number, a significant number, I guess, at whether, you know, does it have a material effect down the road. You know, I don't have an opinion on that," et cetera, et cetera, et cetera.

If you read the testimony, he -- for every reason that I can think of he is not qualified and cannot testify as an expert appraiser in the state of Nevada. He is offering value. And they try to disguise what he's offering as a review of somebody else's testimony or appraisal of value.

But, Judge, I just ask you real simply, how do you give an opinion of whether or not somebody else's value is legitimate unless you're giving an opinion about value? It's nonsensical.

THE COURT: Well, it could have something to do with procedures utilized and what's standard and, you know, standard of care in appraisal --

MR. JONES: But he can't testify as to standard of care in the state of Nevada, because he's not licensed. That

goes directly against --

THE COURT: What appraisers do, you know.

MR. JONES: Again, that's the problem. You can't do that in the state of Nevada under Chapter 645C unless you're licensed. And listen, Judge, again, this was a simple solution. First of all, there's lots of qualified appraisers in the state of Nevada. They chose to go out of the state. They have that right. Mr. Loper knows -- Mr. Loper, by the way is a very qualified appraiser in the state of Arizona. This guy goes way back. He was involved, I believe is his testimony, that he was there at the beginning of time, so to speak, when the licensing procedures were first established. He chose -- because he did appraisals back in Nevada before we had the law, and he chose to leave Nevada and not do any more appraisals in the state of Nevada once the licensing requirements came into effect. He also made inquiry for this job with the State Board of Appraisers to determine whether or not he needed a license. And when I asked him, what did you find out, he was very evasive, and he said, well, I didn't really ask them that question. So he knew about reciprocity. He knew he could have gotten licensed. Yet he chose not to.

So, Your Honor, this I think is a slam dunk. This guy is not licensed as an appraiser. He cannot as a matter of law -- real straightforward, as a matter of Nevada law, he can't testify about the appraisal in this case. That's just

as straightforward as it gets.

THE COURT: All right. Thank you.

MR. CLAYMAN: Just a couple things, Your Honor.

One, the plaintiffs make the point that we didn't call the person who authored the report to substantiate why he did it or why he didn't do it. That was one of their initial criticisms of the defendants, that if this report was any good they would have called the guy in. I just want to let you know the guy has passed away, and so it would have been a little difficult for us to depose the author of the Crittenden report. He wasn't living.

It strikes me that what the plaintiffs hold their position that he should be allowed as a witness is because of the uniform standards that are available. And my response to that would be that the uniform standards don't overcome the fact that there is a specific knowledge required in a community at a specific time and place in order for your opinion to be valued. I can come into this courtroom with the blessing of this Court to argue a case, but I can't argue == I can't hold myself out as being a Nevada lawyer, I don't have the background in the civil procedure in order to do that.

And it strikes me that this is not that much different than Mr. Loper. He's an individual that has come into this case after not having done any kind of engagement in Nevada since 1990, and, in addition, his experience has been

for a number of years not dealing with banks and financing, but having to do with condemnation and those particular requisites. I can sit here and tell you that I'm an attorney, but I don't know anything about divorce and I don't know anything about criminal law, and I don't think Mr. Loper really understands anything about commercial real estate financing of a complex, syndicated loan of a multi-use project in Las Vegas in the 2007-2008 the period. I think it is really dangerous to allow him to be in simply because he understands some sort of uniform procedure. It doesn't mean much. Thank you.

THE COURT: All right. Thanks.

MR. COFFING: Well, Your Honor, it is USPAP that governs all appraisers. It is a uniform standard, and it allows appraisers to do work in other communities. What you didn't hear -- and I think I agree with Mr. Jones on one thing, but I really think you should read the briefs, because we've pointed out the substance what his opinions are. And as you've heard, while Mr. Jones thinks he's committed a crime, no accreditation board believes otherwise. So there's no argument that this man has been accepted as an expert in excess of 30 times. He has done work in the state of Nevada. The fact that it was some time ago doesn't matter. And what you're hearing is really fertile grounds for cross-examination. It all goes to weight, not whether or not this

person should be allowed to testify. And I'd urge the Court to review the portions of our brief. And if they want to cross-examine, I'm sure they will. And if at the end of that cross-exam you believe he should be given little or no weight, you're going to make that determination.

THE COURT: Thanks.

MR. COFFING: Thank you.

THE COURT: Quickly.

MR. JONES: Your Honor, I know you've always got lots on your plate, but let me just point out a couple things that I'd like to refer you to, and I'd ask that you then would look at Exhibit -- this is part of Exhibit B of our -- of our motion.

THE COURT: This is coming to the Court in a bench trial; right?

MR. JONES: It is, Judge. But here's the problem I've got with it. The reason I brought this motion, as you know, I've been doing this a while. I've had lots of cases with appraisers. And I have -- every time that a person has tried to give a value in the Eighth Judicial District Court of a piece of property that wasn't a licensed appraiser, the Court has stricken them, period, end of story. No exceptions, no explanations, no excuses. If you weren't licensed, you can't express an opinion on the value of real estate. You can't do it.

So the only reason --

THE COURT: But there are other things besides the value of real estate that are being talked about here.

MR. JONES: Well, that's not -- actually I don't -- I disagree with you, Judge. That's not what Mr. Loper did. Mr. Loper was hired specifically to opine about the value of the real estate made by Criterion.

THE COURT: And when it comes to that, when his testimony comes to that, you can make an objection, and I can make a determination at that time as to whether that's what he's doing. But there are other aspects of what he's being called to do.

MR. JONES: Well, Judge, again, respectfully I disagree. I think that's not what he's -- he's only -- he was hired for one purpose, to evaluate -- and that's his own statement, that's what his report said, I was hired, the scope of my retention was to evaluate the Criterion appraisal, that's what I was hired to do.

THE COURT: So that's evaluating an appraisal, not appraising the property.

MR. JONES: Well, Judge, if you look at Exhibit B, here's the response from Brenda Kindred. She's with the Department of Real Estate, Licensed Real Estate Appraisers. This was sent back in October, when we first heard about this. Ms. Mamer was sent this == sent all the appraisal files, all

his report, and the Criterion report to the State Board and said, we -- this looks like he's giving an appraisal here. This is, quote -- October 26, from Ms. Kindred, from the State, quote, "Yes, a license is required to perform this type of review," quote, unquote, "review."

Now, Mr. Loper then sends his letter February to the State Board and says, hey, you got it wrong because I didn't do anything in Nevada, I did it in Arizona for Arizona lawyers. Well, of course they sent a follow-along letter that said, "Based upon the information, we see no misconduct on your part." Well, the information was his representation that he did it for Arizona lawyers in Arizona. And that's just blatantly not true.

So, Judge, the State has said he needs a license for the kind of review he did, review. He reviewed an appraisal. That was evaluating the property. So we believe that as a matter of law he cannot testify as a licensed appraiser if he's without a license. And so I guess my question to counsel would be, then, what else is he going to do, what else is he going to be called to do. That's what his scope was.

THE COURT: All right. Thank you.

It sounds like defendants are loaded for bear on the weight issue, but I'm not going to preclude the plaintiffs from endeavoring a foundation for testimony by -- for what would be admissible testimony by this witness, all right. So

the motion to strike and exclude plaintiffs' expert John Loper is denied.

MR. JONES: Your Honor, could I ask that that be denied -- although I guess unless it --

THE COURT: Well, it's obviously -- it's without prejudice to any contentions you make at the time of trial, in other words, objections and that kind of thing.

MR. JONES: That's fine. Thank you, Your Honor.

Your Honor --

THE COURT: So I need -- I need an order on the motion -- countermotion to continue from you, Mr. Jones.

MR. JONES: I made a note of that.

THE COURT: And you're also going to submit an order -- and you should run that by plaintiffs' counsel --

MR. JONES: I will.

THE COURT: Also the order relative to the motion to strike, which I didn't strike but I said that you could have an order that indicates that various claims that are the subject of the motion have been adjudicated; right?

MR. JONES: I was planning on that, Your Honor, which I will run by counsel.

THE COURT: And then I need an order from plaintiffs' counsel on what I've just ruled on on the witness.

And then I have under advisement the deadline motion, because I need to go through all these things and

separate --

MR. COFFING: And the motion to continue, Your Honor, can we -- we'll prepare that order denying that?

MR. JONES: No. All Your Honor --

THE COURT: I think I just indicated he should prepare it.

MR. JONES: I'll prepare that, Your Honor.

THE COURT: All right.

MR. JONES: I'll run it by counsel.

THE COURT: Yeah.

MR. COFFING: Your Honor, as we will be seeking further relief, could I just ask that that be done expeditiously.

MR. JONES: I plan on doing it expeditiously, Your Honor.

THE COURT: Let's do it in ASAP mode. And, you know, we've still got to figure out when I'm going to hear all these other motions that are on today that I'm not prepared for and that -- you know, I mean, what I could do is what I've done in the past in this case and just bounce them on to the next time, which we have -- I have motions scheduled for the 27th in this case.

MR. JONES: Your Honor, if we could get -- I know you've got lots on your plate. If there's any way to get those earlier, because some of those are going to be --

THE COURT: I'll try -- you know, what I felt we ought to do is --

(Off-record colloquy - Court and Law Clerk)

THE COURT: I'll just bounce all of these things that are on today's calendar to a week from today, on the 9th. And that'll give me time. And in the meantime I'll be going through and figuring out what I'm going to be doing on your motion, Mr. Coffing, on the deadlines and all that. And some of these I may -- I may dispose of by minute order. Others I -- and I'll just continue to do what I've done in the past. I'll hear as many of them as I can, and then whatever I haven't heard I'll just put on another calendar.

MR. JONES: Your Honor, to the extent that it helps, maybe we'll try to get with counsel. We've sometimes had some success in trying to agree upon some kind of an order so that we could present that to the Court. If we can't do that, we'll let the Court know that we were unable to reach any kind of an agreement as to the order.

THE COURT: Oh. Okay. Yeah. Right.

MR. JONES: And we'll try to do that well ahead of the hearing date.

THE COURT: Yeah. And you've always been very successful in doing that in the past.

MR. JONES: We'll try to let you and your clerk know well ahead of the hearing date --

THE COURT: If there's any reason why I should let Judge Gonzalez know that you're inclined to resume the settlement conference, by all means let me know.

MR. JONES: Your Honor, actually, I would like you to at least be aware of it. It's my understanding that there has been a time set on the 22nd, I believe -- I heard this yesterday, email -- that the parties without counsel, which probably makes some sense, are going to be meeting. I don't know that that includes all the parties, but I believe if the resolution is reached between Scott Financial and Bank of Oklahoma and the Tharaldson parties, that would go a long way to resolving everything. So just so you're aware, I believe they are trying to have some kind of a meeting without counsel, and they've apparently decided that they think that that's a better way to do things. Which is fine with me.

THE COURT: All right. Thank you.

MR. COFFING: Thank you, Your Honor.

MR. GOCHNOUR: And I'm sorry, Your Honor. Everything that was set for today but not heard today has been moved to the 9th.

THE COURT: The 9th. Exactly.

MR. JONES: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 11:39 A.M.

* * * * *

CERTIFICATION

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

6/7/11
DATE

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.: 57784

REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT PROCEEDINGS

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I. INTRODUCTION

Instead of squarely addressing the NRAP 8(c) factors to oppose Plaintiffs' request to stay the District Court proceedings, the Scott Defendants and BOK focus upon irrelevant arguments that are not supported by any evidence. The Scott Defendants and BOK improperly suggest that Plaintiffs' request for a stay is merely a "stall" tactic. However, such an unsubstantiated assertion does not excuse them[1] from directly addressing the merits of Plaintiffs' writ petition dealing with a matter of public importance—jury trial waivers and whether they can be enforced when genuine issues of material fact supporting Plaintiffs' claims for fraudulent inducement and fraudulent concealment exist with regard to the guaranties themselves containing the jury trial waivers.[2]

Very simply, the bifurcated trial set to begin on July 6, 2011 cannot go forward until this Court has decided ***how*** the trial should proceed and whether a preliminary jury first needs to determine the validity of the jury trial waivers.[3] After weighing the four NRAP 8(c) factors in favor of Plaintiffs,[4] this Court should stay the District Court proceedings until after the resolution of this original proceeding.

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[1] See, e.g., Kahn v. Morse & Mowbray, 121 Nev. 464, 480, 117 P.3d 227, 238, n. 24 (2005) (stating that an issue is waived by failing to raise the issue in briefing, and inferring that the failure to dispute an issue is a concession of the issue); see also Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 130 P.3d 1280, 1288, n. 38 (2006).

[2] See Tuxedo Int'l Inc. v. Rosenberg, 127 Nev. Adv. Op. No. 2, at 10–11, n. 4 (Feb. 10, 2011) (stating that this Court disagrees with United States Supreme Court law on the presumption of contractual waivers in that it is not "good policy for Nevada regarding general forum selection clauses, as we do not believe, in reality, a party is likely to be defrauded only in the inclusion of a forum selection clause but not defrauded by the contract as a whole.").

[3] See, e.g., Federal Housecraft, Inc. v. Faria, 216 N.Y.S.2d 113, 114 (N.Y. App. Term 1961) ("[T]he party resisting the contract should be afforded the privilege of a preliminary trial by jury on the defense of fraud.").

[4] (1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether appellant/petitioner will suffer irreparable or serious

II. LEGAL ARGUMENT

A. THE SCOTT DEFENDANTS AGREED IN THE DISTRICT COURT THAT THE OBJECT OF THIS WRIT PETITION WOULD BE DEFEATED IF A STAY IS NOT GRANTED.

With regard to the first NRAP 8(c) factor, the Scott Defendants and BOK surprisingly suggest in their response that the object of this writ petition will ***not*** be defeated if a stay is not granted. However, the Scott Defendants argued just the ***opposite*** in the District Court proceedings:

> They [Plaintiffs] could go and ask the Supreme Court for a stay if they think it's appropriate. But if the motion for bifurcation is not decided by the time we have the trial, then, guess what, and Mr. Coffing knows this, the writ is moot.[5]

So, the Scott Defendants agreed that once the non-jury trial phase of the bifurcated (or trifurcated) proceeding begins, Plaintiffs' right to a jury trial or a preliminary jury trial will be lost. Now, Defendants claim that the non-jury trial phase can still go forward on July 6 without any harm to any party—a proposition that is not only nonsensical but offered without any legal support.[6]

The result of Defendants' conflicted argument is that Plaintiffs could supposedly challenge their right to a jury trial or a preliminary jury in an appeal from a final judgment. However, this Court has already stated that challenges on whether to proceed

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injury if the stay or injunction is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits of the appeal.

[5] The hearing transcript for all matters set for June 2, 2011, including the denial of Plaintiffs' stay request, is attached as **Exhibit 1**. See particularly page 42, lines 6–10. In further satisfaction of NRAP 8(a), Plaintiffs also attach the District Court minutes denying their requested stay as **Exhibit 2**. Finally, the written order denying stay was styled as an order denying Plaintiffs' countermotion for trial continuance and is attached as **Exhibit 3**.

[6] 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).

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by jury trial or non-jury trial should be addressed by writ petition.[7] And, this Court has already ordered discretionary briefing on the merits of Plaintiffs' writ petition. Thus, Defendants' new suggestion in their response to Plaintiffs' stay motion in this Court is not only puzzling but has no bearing on reality. As such, the Scott Defendants actually agreed that the instant writ petition would be moot if this Court does not grant a stay. Therefore, the Court should ignore the new unsupported position the Scott Defendants have offered to this Court suggesting just the opposite.

B. WITHOUT A PRELIMINARY JURY TO DETERMINE THE VALIDITY OF THE JURY TRIAL WAIVERS, PLAINTIFFS WILL SUFFER IRREPARABLE HARM OR SERIOUS INJURY.

With regard to the irreparable harm or serious injury that Plaintiffs will suffer absent a stay, the loss of a jury trial—or at least a preliminary jury to test the validity of the jury trial waivers—affects Plaintiffs' constitutional right to a jury trial. Defendants do not meaningfully oppose this point in their opposition. And, this Court has previously held that an appeal from a final judgment presents too difficult a standard to overcome when deprived of a jury trial.[8]

In Lowe, this Court allowed extraordinary review and concluded:

> [E]xtraordinary review is available in this case because "there is not a plain, speedy and adequate remedy in the ordinary course of law."[9] If petitioners had to wait to challenge the district court's denial of their motion to strike the jury demand on appeal, petitioners would have too difficult a burden to meet upon appellate review. The burden would be too difficult because Nevada case law requires appellants to show that the error complained of substantially affected their rights. Further, Nevada case law requires appellants to show that, in the absence of such error, the outcome of the case would have been different.

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[7] See generally Lowe.

[8] Lowe Enters. Residential Partners, L.P. v. Dist. Ct., 118 Nev. 92, 40 P.3d 405, 407–408 (2002).

[9] NRS 34.170.

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Accordingly, if this Court does not grant a stay, Plaintiffs will suffer irreparable harm or serious injury by losing their jury trial or preliminary jury. A stay will maintain the status quo and allow this Court to determine the proper order of the trial proceeding. Therefore, the Court should stay the District Court proceedings pending the outcome of Plaintiffs' writ petition.

C. DEFENDANTS' LITIGATION EXPENSES DO NOT CONSTITUTE IRREPARABLE HARM OR SERIOUS INJURY.

Defendants claim that they will suffer irreparable harm or serious injury by powering down and re-gearing up for a third trial setting while this Court is deciding Plaintiffs' pending writ petition. Yet, Defendants fail to articulate why their trial preparation will be wasted. In other words, trial exhibits, witness summaries, trial briefs, jury instructions, and legal research will all have to be prepared at some point. So, it is unclear exactly what will be lost by completing some of these tasks now. Moreover, Defendants do not challenge the fact that the July 6, 2011 trial setting is not based on any exigent circumstances. Perhaps most important is the fact that this Court has held that the expenditure of litigation expenses does not constitute irreparable harm or serious injury.[10]

In Fritz Hansen, this Court dispelled arguments that "the expense of lengthy and time-consuming discovery, trial preparation" would cause irreparable harm.[11] In direct opposition to Defendants' arguments, this Court held, "Such litigation expenses, while potentially substantial, are neither irreparable nor serious."[12] And, Defendants do not respond to the argument that Plaintiffs' act of seeking review by this Court also does not

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[10] Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000).

[11] Id., 116 Nev. 650, 6 P.3d at 986–987.

[12] Id. (citing Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C.Cir.1985) (noting that "'[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough'" to show irreparable harm) (other citations omitted)).

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constitute irreparable harm.[13] Even if litigation expenses did constitute irreparable harm or serious injury, the actual completion of many weeks of trial involving over a dozen counsel and multiple expert witnesses would be far more costly than merely preparing for trial. Of course, the prompt issuance of a stay from this Court could prevent even any perceived harm from falling upon Defendants.

In the end, Plaintiffs' constitutional right to a jury trial, or at least a preliminary jury, is an interest that would cause irreparable harm or serious injury if a stay is not granted. In stark contrast, Nevada law characterizes Defendants' only reason of litigation expenses to avoid a stay as ***not*** being irreparable harm or serious injury. Therefore, in weighing these NRAP 8(c) factors, the Court should stay the District Court proceedings pending the resolution of Plaintiffs' writ petition.

D. DEFENDANTS FAIL TO MEANINGFULLY RESPOND TO PLAINTIFFS' ARGUMENT REGARDING THE VOID NATURE OF THE JURY TRIAL WAIVERS UPON WHICH PLAINTIFFS ARE LIKELY TO PREVAIL.

Instead of explaining how Defendants' position can be sustained with respect to the distinction between fraudulent inducement as to an entire document and fraudulent inducement as to a particular provision within the document, they claim that Rosenberg does not "purport to abrogate Nevada's adherence to the federal rule of upholding arbitration clauses where there have been allegations of fraud."[14] Yet, Defendants avoid the fact that in Rosenberg, this Court rejected this same argument with regard to forum-selection clauses.[15] And, Rosenberg's rejection of the distinction between fraud as to a

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[13] See Plaintiffs' motion for stay, pages 4–5 (citing Hansen v. Dist. Ct. ex rel. Cty. of Clark, 116 Nev. 650, 6 P.3d 982 (2000)).

[14] Opposition, page 8, lines 10–12.

[15] See Tuxedo Int'l Inc. v. Rosenberg, 127 Nev. Adv. Op. No. 2, at 10–11, n. 4 (Feb. 10, 2011).

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document and fraud as to provision within the document was based upon a disagreement with United States Supreme Court law that equated forum-selection clauses with arbitration clauses.[16] So, Defendants have completely avoided this Court's implicit rejection of the very argument they rely upon dealing with arbitration clauses.

Finally, Defendants seek refuge in discussing cases that focus on general principles of contract law without acknowledging that this case involves genuine issues of fraud.[17] Defendants' arguments that Plaintiffs have mere allegations of fraud is meaningless in the face of various District Court orders identifying that Plaintiffs' fraud claims with respect to the execution of the guaranties remain intact against the Scott Defendants.[18] Additionally, Nevada courts also do not enforce integration clauses in contracts when fraud is alleged—another indication that Nevada law treats fraud allegations different than other contract claims.[19] Therefore, Plaintiffs are likely to prevail on the merits of their writ petition, and this Court should order a stay of the District Court proceedings.

III. CONCLUSION

The bifurcated trial set to begin on July 6, 2011 cannot go forward until this Court has decided ***how*** the trial should proceed and whether a preliminary jury first needs to determine the validity of the jury trial waivers. Plaintiffs have demonstrated that they will suffer irreparable harm or serious injury if a stay is not granted since they will be deprived of a jury trial, or at least a preliminary jury trial. On the other hand, Defendants

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[16] See Scherk v. Alberto-Culver Co., 417 U.S. 506, 519, n. 14 (1974)

[17] See Havas v. Bernhard, 85 Nev. 627, 631, 461 P.2d 857, 859–860 (1969) (stating that a contract induced by fraud can be voided and rescinded, such that a contract no longer exists).

[18] See **Exhibits 5, 6, 7, 8 & 9** (attached to Plaintiffs' motion for stay).

[19] See Ballard v. Ballard, 108 Nev. 908, 839 P.2d 1320 (1992).

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will not suffer from a stay because their only alleged harm is litigation expenses, which this Court has defined as not being irreparable harm or serious injury.

Finally, Plaintiffs are likely to prevail on the merits of their writ petition because this Court has already implicitly rejected the distinction between fraudulent inducement as to a document and fraudulent inducement as to a provision with the document for jury trial waivers. And, the genuine issues of material fact with regard to Plaintiffs' fraudulent inducement and concealment claims extend to the jury trial waivers themselves that Defendants seek to uphold. So, Plaintiffs are likely to prevail on the merits of their writ petition. Therefore, after weighing the four NRAP 8(c) factors in favor of Plaintiffs, this Court should stay the District Court proceedings until after the resolution of this original proceeding.

Dated this 17th day of June, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT PROCEEDINGS** was filed electronically with the Nevada Supreme Court on the 17th day of June, 2011. Electronic Service of the foregoing documents shall be made in accordance with the Master Service List as follows:

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

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