

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Richard A. Hunter,

Appellant,

v.

William Gang,

Respondent.

No. No. 59691

Electronically Filed
Nov 29 2011 12:02 p.m.

Tracie K. Lindeman
Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department VIII
County Clark Judge Douglas Smith
District Ct. Case No. _____

2. Attorney filing this docketing statement:

Attorney Tami D. Cowden Telephone 702-938-6874
Firm Greenberg Traurig, LLP
Address 3773 Howard Hughes Parkway, Suite 400N
Las Vegas, NV 89169

Client(s) Richard Hunter

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Tye Hanseen Telephone (702) 382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, Nevada 89145

Client(s) William Gang

Attorney Albert Marquis Telephone 702) 382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, Nevada 89145

Client(s) William Gang

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input checked="" type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None known.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None known.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Action to quiet title, and also alleging adverse possession and seeking injunctive and declaratory relief. The Court dismissed the action for failure to prosecute.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in granting the motion to dismiss for failure to prosecute, where the action had been filed less than two years prior to the Motion, and where the movant had never filed an answer.

Whether the District Court erred in entering an order containing factual findings and conclusions of law that were wholly unsupported by any evidence presented, and moreover, purported to address the merits of the complaint despite the lack of any answer or motion for summary judgment.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No.

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from November 7, 2011

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served November 8, 2011

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed November 16, 2011

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Court's order dismissed the complaint with prejudice, thereby constituting a final judgment.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Richard A. Hunter
William Gang

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

NA

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Hunter's action sought to determine his right to maintain a berm constructed without objection in 1983 on the property of Gang's predecessor in interest, which berm was necessary to protect Hunter's property from flooding. Hunter's causes of action included quieting title, adverse possession, and sought declaratory and injunctive relief. Following Gang's motion to dismiss for failure to prosecute, the Court entered an order purporting to resolve the matter on the merits and dismissing all claims with prejudice. Gang never filed an answer or counterclaim, so he had no claims

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Richard A. Hunter

Name of appellant

Tammy D. Courley

Name of counsel of record

Nov 29, 2011

Date

[Signature]

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 29th day of November, 2011, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

ALBERT G. MARQUIS, ESQ.
TYE S. HANSEEN, ESQ.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Supreme Court Settlement Judge Carolyn A Worrell
4236 Furgerson Ranch Road
Carson City, Nevada 89701

Dated this 29th day of November, 2011

[Signature]

Signature

1 **COMP**

2 MARK E. FERRARIO, ESQ.

3 NEVADA BAR NO. 1625

4 LUIS A. AYON, ESQ.

5 NEVADA BAR NO. 9752

6 GREENBERG TRAURIG, LLP

7 3773 Howard Hughes Parkway, Suite 400 North

8 Las Vegas, Nevada 89169

9 Telephone: (702) 792-3773

10 Facsimile: (702) 792-9002

11 Email: ferrariom@gtlaw.com

12 ayonl@gtlaw.com

13 *Attorneys for Plaintiff Richard A. Hunter*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 RICHARD A. HUNTER, an individual,

17 Plaintiff,

18 v.

19 WILLIAM GANG, an individual, and DOE
20 DEFENDANTS 1 through 10, and ROE
21 CORPORATIONS 1 through 10, inclusive,

22 Defendants.

Case No. 09-A-

Dept No.

23 **VERIFIED COMPLAINT**

24 Arbitration Exemption

25 Matter Concerns Real Property

26 Injunctive Relief Requested

27 Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of
28 Greenberg Traurig, LLP, hereby complains against Defendant William Gang (hereinafter "Gang"
or "Defendant"), and alleges the following:

29 **PARTIES**

30 1. Plaintiff Richard A. Hunter is, and was at all times relevant hereto, a resident of
31 Clark County, Nevada, and the owner of a certain parcel of real estate, commonly known as 9500
32 Pinion Dr., Clark County, Nevada, with an APN# of 174-20-402-004, which was recorded with

1 the Clark County Recorder's office on or around September of 1980 as instrument number
2 19910910/00588 (the "Property").¹

3 2. Defendant William Gang, upon information and belief, is a resident of Clark
4 County, Nevada, and the owner of a certain parcel of real estate with an APN# of 174-20-303-
5 002, which was recorded with the Clark County Recorder's office on or about March 6, 2002 as
6 instrument number 20020306/00520 (the "Defendant's Property"). Defendant's Property is a
7 vacant lot that shares a common boundary with the Property.

8 3. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
10 through 10, including, but not limited to, employers, franchisors, agents, employees, or related to
11 persons or entities are not currently known to Plaintiff and therefore cannot yet be named herein,
12 and therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff is informed and
13 believes, and on such basis alleges, that each of the Defendants designated as DOE
14 INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1 through 10 is responsible in some
15 manner for the events and occurrences referred to in this Complaint, and/or owes money to
16 Plaintiff and/or may be affiliated with one of the other Defendants, and/or is the alter-ego of
17 Defendants. Plaintiff will seek leave of this Court to amend this Complaint and insert the true
18 names and capacities of DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
19 through 10, when the same have been ascertained and to join said Defendants in this action.

20 COMMON ALLEGATIONS

21 4. On or around 1980, Plaintiff acquired and became owner of the Property.

22 5. On or around 1983, Plaintiff discussed with Defendant's predecessor in interest
23 that the flow of water was running onto Plaintiff's property such that it was causing flooding on
24 certain parts of the Property.

25 6. Due to the water flow Plaintiff on or around 1983, Plaintiff built a berm on Gang's
26 property.

27
28 ¹ The Clark County Recorder's office lists that the instrument was recorded in 1991, but recorder's website only lists documents that were recorded after 1991.

1 7. Until 2009, no one, including Gang or his predecessor-in-interest, objected to
2 building or existence of the berm.

3 8. The portion of Defendant's Property on which the berm is located (the "Disputed
4 Property") is on or near the boundaries of the parties' property.

5 9. The berm was essential to Plaintiff in order to prevent the natural flow of water
6 from flooding portions of Plaintiff's property and for continued use and enjoyment of the
7 Property.

8 10. The berm has existed on the Disputed Property for approximately 25 years.

9 11. In the 25 years in which the berm existed, Plaintiff never received any complaints
10 concerning the existence of the berm.

11 12. Prior to obtaining ownership to the Defendant's Property, upon information and
12 belief, Defendant was aware of the berm on the Disputed Property.

13 **FIRST CLAIM FOR RELIEF**

14 **(Quiet Title)**

15 13. Plaintiff restates and incorporates herein by reference the allegations contained in
16 the above and foregoing paragraphs.

17 14. In Nevada, actions in which parties with a competing interest in the same property
18 is governed by NRS §40.010.

19 15. The parties, each of them, by their claims and actions, have asserted an ownership
20 interest in the Disputed Property.

21 16. The Plaintiff is seeking a judicial determination that: Plaintiff is the rightful owner
22 of the Disputed Property, and that the Court quiet title to Disputed Property and extinguish any
23 ownership interest the Defendant may have in the Disputed Property in favor of the Plaintiff.

24 17. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
25 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
26 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

27 ///

28 ///

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

18. Plaintiff restates and incorporates herein by reference the allegations contained in the above and foregoing paragraphs.

19. Plaintiff and Defendant's predecessor in interest had an understanding that Plaintiff was permitted to build a berm on the Disputed Property.

20. Based on this understanding, Plaintiff built a berm and relied on the same in developing his property.

21. The understanding between Plaintiff and Defendant's predecessor in interest created an irrevocable license in favor of Plaintiff such that Plaintiff was permitted to use the Disputed Property.

22. Such irrevocable license was relied upon by Plaintiff and Plaintiff has incurred substantial expense in relying on Defendant's predecessor in interest.

23. Moreover, the continued use of the Disputed Property has created an easement on the Disputed Property either implied or by prescription.

24. As such, Plaintiff is entitled to rely on, and has relied on, the conduct of Defendant's predecessor in interest.

25. Defendant is bound and obligated to honor the irrevocable license and/or easement Plaintiff has obtained on the Disputed Property.

26. Defendant's attempt(s) to eject Plaintiff from the Disputed Property, and/or to revoke Plaintiff's irrevocable license or easement is improper and without justification.

27. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

28. Plaintiff does not have an adequate remedy at law if Defendant is permitted to eject Plaintiff from the Disputed Property, and/or revoke the irrevocable license or easement Plaintiff possesses for his use and enjoyment of the Disputed Property.

29. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

1 30. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
2 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
3 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

4 **THIRD CLAIM FOR RELIEF**

5 **(Adverse Possession)**

6 31. Plaintiff restates and incorporates herein by reference the allegations contained in
7 the above and foregoing paragraphs.

8 32. Plaintiff has a hostile claim for title to the Disputed Property which is adverse to
9 Defendant's claim to the same property.

10 33. This is evidence by: (i) Plaintiff's continued use of the Disputed Property for over
11 15 years; (ii) such use of the Disputed Property was open and obvious for anyone to witness; and
12 (iii) such continued use of the Disputed Property was without Defendant's express permission..

13 34. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
14 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
15 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 35. Plaintiff restates and incorporates herein by reference the allegations contained in
19 the above and foregoing paragraphs.

20 36. A dispute and actual controversy exists between the parties relative to the
21 ownership of the Disputed Property.

22 37. Plaintiff are entitled to declaration that either: (i) Plaintiff has adversely possessed
23 the Disputed Property, and therefore, is the owner of the Disputed Property; (ii) Defendant's
24 predecessor in interest granted an irrevocable license to enjoy use of the Disputed Property and
25 Defendant, through the actions of his predecessor in interest, is enjoined from interfering with that
26 irrevocable license; (iii) an easement has been created, through Defendant's predecessor in
27 interest, such that, Plaintiff is entitled to possession and use of the Disputed Property, and
28 Defendant is estopped from revoking the easement; or (iv) that a boundary disputed existed

1 between Plaintiff and Defendant's predecessor in interest, and that, Defendant's predecessor in
2 interest acquiesced to the boundary of the parties' respective properties, such that Plaintiff
3 took possession of the Disputed Property.

4 38. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
5 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
6 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

7 WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against Defendants, as
8 follows.

- 9 1. That the Court quiet title to the Disputed Property;
10 2. For declaratory relief;
11 3. For injunctive relief;
12 4. For attorneys' fees and costs incurred herein, both pursuant to any contract, statute
13 or rule allowing for the same, and also as special damages incurred herein; and
14 5. For such other and further relief as this Court may deem just and proper.

15 DATED this 11th day of December, 2009.

16 GREENBERG TRAURIG, LLP

17
18 By: 

19 MARK E. FERRARIO, ESQ.

20 NEVADA BAR NO. 1625

21 LUIS A. AYON, ESQ.

22 NEVADA BAR NO. 9752

23 3773 Howard Hughes Parkway

24 Suite 400 North

25 Las Vegas, Nevada 89169

26 Telephone: (702) 792-3773

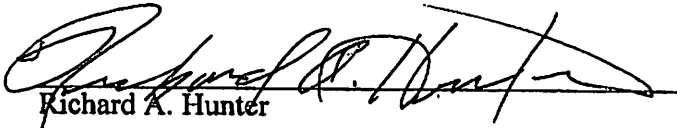
27 Attorneys for Plaintiff Richard A. Hunter
28

VERIFICATION

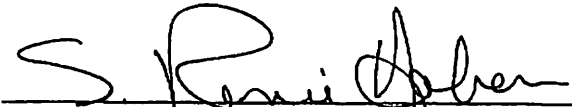
STATE OF NEVADA)
)ss
COUNTY OF CLARK)

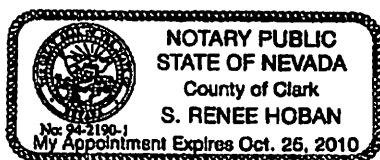
I, Richard A. Hunter, declare, under penalty of perjury, that the following statement is true.

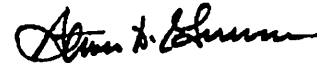
I am the named Plaintiff in the above-entitled action. I have read the COMPLAINT and know of the contents therein. The same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard A. Hunter

SUBSCRIBED and SWORN to before me
this 4th day of December, 2009.


Notary Public in and for said County and State





CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 **ALBERT G. MARQUIS, ESQ.**
3 **TYE S. HANSEEN, ESQ.**
4 Nevada Bar No. 10365
5 10001 Park Run Drive
6 Las Vegas, Nevada 89145
7 Telephone: (702) 382-0711
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9 amarquis@maclaw.com
10 thanseen@maclaw.com
11 Attorneys for William Gang

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **RICHARD A. HUNTER, an individual,**

15 **Plaintiff,**

16 **vs.**

17 **WILLIAM GANG, an individual, and DOE**
18 **DEFENDANTS 1 through 10, and ROE**
19 **CORPORATIONS 1 through 10, inclusive,**

20 **Defendants.**

Case No.: A-09-604877-C
Dept. No.: VIII

21 **FINDINGS OF FACT, CONCLUSIONS OF**
22 **LAW AND ORDER GRANTING**
23 **WILLIAM GANG'S MOTION TO**
24 **DISMISS**

25 This matter having come for hearing before the Honorable Douglas Smith on September
26 13, 2011, the Plaintiff Richard A. Hunter ("Hunter") represented by his counsel of record Mark
27 Ferrario, Esq. of the law firm of Greenberg Traurig, LLP, and Defendant William Gang
28 ("Gang") represented by his counsel of record Tye Hanseen, Esq. of the law firm of Marquis
Aurbach Coffing. The Court having read the pleadings filed by the parties, and considered the
oral arguments of counsel, hereby makes the following findings of facts, conclusions of law, and
orders as follows:

29 **FINDINGS OF FACT**

30 1. Gang is the owner of 20.47 acres of real property described in the office of the
31 Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002
32 ("Gang Property").

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input checked="" type="checkbox"/> Mtn to Dis (by def)	<input type="checkbox"/> Transferred		

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MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. The Hunter Family Trust is the owner of 2.65 acres of real property described in
2 the office of the Clark County Assessor as: 9500 Pinion Dr., Unincorporated County, Lot 1 &
3 Vac. Rd., Sec 20 Twp 22 Rng 58—APN 174-20-402-004 ("Hunter Property").

4 3. The subject properties are located in the community of Mountain Springs, which
5 is located off of Highway 160 in the Spring Mountains between Las Vegas and Pahrump.

6 4. The north side of the Hunter Property borders the south side of the Gang Property.

7 5. Hunter built his home on the Hunter Property within eight inches of the property
8 line between the Hunter Property and Gang Property.

9 6. Hunter landscaped on the Gang Property, which landscape includes trees, shrubs,
10 ~~and a watering system complete with sprinklers for the landscape (hereinafter referred to as the~~
11 "Encroachment"). In essence, Hunter created a back yard for himself on property he did not
12 own.

13 7. The Encroachment encompasses an area on the Gang Property of approximately
14 200' by 40'.

15 8. On December 4, 2009, Hunter filed this suit against Gang alleging claims for
16 quiet title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to
17 the Encroachment.

18 9. Other than filing the Complaint, Hunter has not taken any action.

19 10. Hunter gave Gang an extension to respond to the suit while the parties discussed
20 a potential resolution. The discussions, however, broke down over a year ago. After that point,
21 Hunter became, for the most part, unresponsive for extended periods of time while the Gang
22 Property remained encumbered by this legal action which was filed for no apparent reason other
23 than to force a settlement favorable to Hunter.

24 11. Due to the suit, the Gang Property has now been encumbered for almost two
25 years—while property values in Clark County have continued to decrease.

26 12. The Encroachment on the Gang Property was part of a pattern of encroachment
27 by Hunter, who also constructed a building and other improvements on Forest Service land that
28

1 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
2 structure and improvements.

3 13. Hunter also landscaped on the Forest Service land, as he did on the Gang
4 Property, and with the same disregard for ownership and property rights.

5 14. Even as this lawsuit was pending, Hunter continued to disregard Gang's property
6 rights, staging a construction project for the Hunter Property on Gang's property.

7 15. During the project, Hunter dug a trench utilizing the Gang Property and installed
8 a 24" diameter drainage pipe, a portion of which appears to be on the Gang Property.

9 16. Hunter's landscape, watering system, and drainage pipe all sit on the Gang
10 Property.

11 17. Gang never authorized Hunter to landscape, install a watering system, or install a
12 drainage pipe on the Gang Property.

13 CONCLUSIONS OF LAW

14 1. The duty was on Hunter to use diligence at every stage of the proceeding to
15 expedite the case to final determination.

16 2. Gang was required to meet Hunter step by step as Hunter proceeded.

17 3. Hunter neglected and failed to reasonably prosecute the case.

18 4. There was no adequate excuse for Hunter's neglect and failure to reasonably
19 prosecute the case.

20 5. Hunter's neglect and failure adversely impacted Gang's ability to market the
21 Gang Property.

22 6. Hunter failed to diligently pursue the claims as well as request the matter be
23 brought to trial.

24 7. Hunter's claims for quiet title, injunctive relief, adverse possession, and
25 declaratory relief to attempt to obtain title to the Encroachment lack merit.

26 ///

27 ///

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 NOW, THEREFORE, IT IS HEREBY ORDERED, that the Motion to Dismiss is hereby
2 GRANTED and the Complaint is dismissed with prejudice.

3 Dated this 3 day of ^{November} October, 2011.

4
5 
6 DISTRICT COURT JUDGE 

7 Respectfully submitted by

8 MARQUIS AURBACH COFFING

9
10 By 

11 Albert G. Marquis, Esq.
12 Nevada Bar No. 1919
13 Tye S. Hanseen, Esq.
14 Nevada Bar No. 10365
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145
17 Attorneys for William Gang

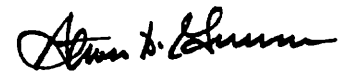
18 Approved as to form and content:

19 GREENBERG TRAURIG, LLP

20
21 By _____

22 Mark E. Ferrario, Esq.
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28 Attorneys for Richard A. Hunter

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CLERK OF THE COURT

Marquis Aurbach Coffing
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

RICHARD A. HUNTER, an individual,

Plaintiff,

Case No.: A-09-604877-C

Dept. No.: VIII

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

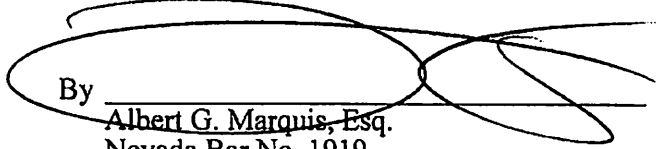
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER GRANTING WILLIAM GANG'S MOTION TO DISMISS**

Please take notice that a Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss was entered in the above-captioned matter on the 7th day of November, 2011, a copy of which is attached hereto.

Dated this 8 day of November, 2011.

MARQUIS AURBACH COFFING

By



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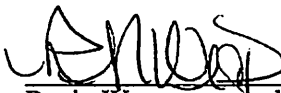
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING WILLIAM GANG'S MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of November, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

N/A

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

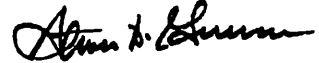
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Rosie Wesp, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

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CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 **ALBERT G. MARQUIS, ESQ.**
3 **Nevada Bar No. 1919**
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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **RICHARD A. HUNTER, an individual,**

16 **Plaintiff,**

17 **vs.**

18 **WILLIAM GANG, an individual, and DOE**
19 **DEFENDANTS 1 through 10, and ROE**
20 **CORPORATIONS 1 through 10, inclusive,**

21 **Defendants.**

Case No.: A-09-604877-C
Dept. No.: VIII

22 **FINDINGS OF FACT, CONCLUSIONS OF**
23 **LAW AND ORDER GRANTING**
24 **WILLIAM GANG'S MOTION TO**
25 **DISMISS**

26 This matter having come for hearing before the Honorable Douglas Smith on September
27 13, 2011, the Plaintiff Richard A. Hunter ("Hunter") represented by his counsel of record Mark
28 Ferrario, Esq. of the law firm of Greenberg Traurig, LLP, and Defendant William Gang
("Gang") represented by his counsel of record Tye Hanseen, Esq. of the law firm of Marquis
Aurbach Coffing. The Court having read the pleadings filed by the parties, and considered the
oral arguments of counsel, hereby makes the following findings of facts, conclusions of law, and
orders as follows:

29 **FINDINGS OF FACT**

30 1. Gang is the owner of 20.47 acres of real property described in the office of the
31 Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002
32 ("Gang Property").

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input checked="" type="checkbox"/> Min to Dis (by def)	<input type="checkbox"/> Transferred		

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1 2. The Hunter Family Trust is the owner of 2.65 acres of real property described in
2 the office of the Clark County Assessor as: 9500 Pinion Dr., Unincorporated County, Lot 1 &
3 Vac. Rd., Sec 20 Twp 22 Rng 58—APN 174-20-402-004 ("Hunter Property").

4 3. The subject properties are located in the community of Mountain Springs, which
5 is located off of Highway 160 in the Spring Mountains between Las Vegas and Pahrump.

6 4. The north side of the Hunter Property borders the south side of the Gang Property.

7 5. Hunter built his home on the Hunter Property within eight inches of the property
8 line between the Hunter Property and Gang Property.

9 6. Hunter landscaped on the Gang Property, which landscape includes trees, shrubs,
10 ~~and a watering system complete with sprinklers for the landscape (hereinafter referred to as the~~
11 "Encroachment"). In essence, Hunter created a back yard for himself on property he did not
12 own.

13 7. The Encroachment encompasses an area on the Gang Property of approximately
14 200' by 40'.

15 8. On December 4, 2009, Hunter filed this suit against Gang alleging claims for
16 quiet title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to
17 the Encroachment.

18 9. Other than filing the Complaint, Hunter has not taken any action.

19 10. Hunter gave Gang an extension to respond to the suit while the parties discussed
20 a potential resolution. The discussions, however, broke down over a year ago. After that point,
21 Hunter became, for the most part, unresponsive for extended periods of time while the Gang
22 Property remained encumbered by this legal action which was filed for no apparent reason other
23 than to force a settlement favorable to Hunter.

24 11. Due to the suit, the Gang Property has now been encumbered for almost two
25 years—while property values in Clark County have continued to decrease.

26 12. The Encroachment on the Gang Property was part of a pattern of encroachment
27 by Hunter, who also constructed a building and other improvements on Forest Service land that
28

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1 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
2 structure and improvements.

3 13. Hunter also landscaped on the Forest Service land, as he did on the Gang
4 Property, and with the same disregard for ownership and property rights.

5 14. Even as this lawsuit was pending, Hunter continued to disregard Gang's property
6 rights, staging a construction project for the Hunter Property on Gang's property.

7 15. During the project, Hunter dug a trench utilizing the Gang Property and installed
8 a 24" diameter drainage pipe, a portion of which appears to be on the Gang Property.

9 16. Hunter's landscape, watering system, and drainage pipe all sit on the Gang
10 Property.

11 17. Gang never authorized Hunter to landscape, install a watering system, or install a
12 drainage pipe on the Gang Property.

13 CONCLUSIONS OF LAW

14 1. The duty was on Hunter to use diligence at every stage of the proceeding to
15 expedite the case to final determination.

16 2. Gang was required to meet Hunter step by step as Hunter proceeded.

17 3. Hunter neglected and failed to reasonably prosecute the case.

18 4. There was no adequate excuse for Hunter's neglect and failure to reasonably
19 prosecute the case.

20 5. Hunter's neglect and failure adversely impacted Gang's ability to market the
21 Gang Property.

22 6. Hunter failed to diligently pursue the claims as well as request the matter be
23 brought to trial.

24 7. Hunter's claims for quiet title, injunctive relief, adverse possession, and
25 declaratory relief to attempt to obtain title to the Encroachment lack merit.

26 ///

27 ///

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NOW, THEREFORE, IT IS HEREBY ORDERED, that the Motion to Dismiss is hereby
GRANTED and the Complaint is dismissed with prejudice.

Dated this ^{November} 2 day of October, 2011.


DISTRICT COURT JUDGE *PCJ*

Respectfully submitted by
MARQUIS AURBACH COFFING

By 
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Approved as to form and content:
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