

IN THE SUPREME COURT OF NEVADA

PRINCIPAL INVESTMENTS, INC. d/b/a RAPID
CASH; GRANITE FINANCIAL SERVICES, INC. d/b/a
RAPID CASH; FMMR INVESTMENTS, INC. d/b/a
RAPID CASH; PRIME GROUP, INC. d/b/a RAPID
CASH; and ADVANCE GROUP, INC. d/b/a RAPID
CASH,

Appellants,

vs.

CASANDRA HARRISON; EUGENE VARCADOS;
CONCEPCION QUINTINO; and MARY DUNGAN,
individually and on behalf of all persons
similarly situated,

Respondents,

Case No. 59837 Electronically Filed
Oct 18 2013 10:21 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
**Response to Rapid
Cash's Motion to
Consolidate with Case
No. 61581**

Introduction

Nearly one month ago this Court issued an order directing the Clerk to schedule oral argument in Rapid Cash's original writ proceeding in Case No. 61581 on the Court's next available *en banc* date. Rather than immediately move to consolidate this case with its writ case, Rapid Cash waited until after argument was scheduled before suggesting consolidation to opposing counsel and, when rebuffed, moving to consolidate its matters. Rapid Cash magnified its delay in seeking relief "by" the date set for the oral argument, not before, and not filing an emergency motion under NRAP 27(e), which is necessary to obtain relief as soon as practicably possible.

Rapid Cash's motion seeks to add several arbitration-based issues from this appeal to a 30 minute oral argument that is already full with the jurisdictional

issues of apparent first impression and multi-factored class-certification issues presented by Rapid Cash's writ in Case No. 61581. If Rapid Cash's motion were granted today, the parties and the *en banc* Court would have only 19 days to prepare for argument on the numerous issues raised between Rapid Cash's writ and its appeal. Rapid Cash's request is far too late as oral argument is concerned. Moreover, the basis Rapid Cash urges for consolidation—both of its matters present jurisdictional issues—is infirm: jurisdiction was not appropriately raised in this appeal.

Ironically, Rapid Cash's request is also premature. The Rules of Appellate Procedure and this Court's decisions indicate that consolidation of an original writ proceeding like Case No. 61581 with an appellate matter like this is only appropriate at the time of disposition of the writ proceeding. As that has not occurred, this Court should not **now** consolidate Rapid Cash's matters.

Argument

A. It is too late to consolidate for the purpose of oral argument.

Were Rapid Cash's non-NRAP 27(e)-compliant motion granted today, the parties and the *en banc* Court would have only 19 days to prepare for oral argument on the issues raised in Rapid Cash's writ in Case No. 61581 and the disparate issues raised in Rapid Cash's appeal in this case. Nineteen days is not a sufficient amount of time. Nor is the 30 minutes the Court set aside for the writ to

be heard on November 5, 2013, enough to cover all of the issues raised between Rapid Cash's writ and its appeal.

Rapid Cash argues that consolidating argument on its writ and appeal will save time because both present jurisdictional issues.¹ Any overlap between Rapid Cash's writ and its appeal is due to Rapid Cash inappropriately rearguing jurisdiction in this appeal after it had been awarded the opportunity to fully brief that issue in its writ proceeding.² When stripped of the district court's interlocutory decisions, Rapid Cash's appeal raises three issues: (1) was waiver properly considered and found; (2) was denial of arbitration based on Rapid Cash's litigation conduct, not a statewide anti-arbitration policy; and (3) was the supplemental finding that the Class's claims fall outside the scope of the arbitration clauses appropriate. Not one is jurisdictional. Overlap is not a valid basis to consolidate Rapid Cash's matters. Rapid Cash's request for immediate consolidation for the purpose of oral argument should be flatly denied.

B. It is premature to consolidate for the purpose of disposition.

NRAP 3(b) permits appeals to be consolidated with other "appeals." *See* Nev. R. App. Proc. 3(b)(2). This Court has cited NRAP 3(b) when consolidating writ petitions with other writ petitions; however that does not suggest combining

¹ Doc 2013-30689 at 3 & 4.

² Case No. 59837, Doc 2013-10342 at xiii–xiv & 43–46, incorporated herein.

original proceedings with appellate matters would be similarly appropriate.³ This Court's precedent instead indicates that consolidating proceedings of dissimilar type is appropriate only at the time of disposition. *See e.g. Karow v. Mitchell*, 878 P.2d 978, 981 (Nev. 1994) (denying Martillaro's petition for writ of mandamus, but allowing "arguments tendered in support of that petition . . . [to] be reviewed in the context of Martillaro's appeal. . . .").

In arguing for immediate consolidation, Rapid Cash points out that a ruling favorable to Rapid Cash on the arbitration issues in this appeal could moot the class-certification question in its writ proceeding. Rapid Cash forgets that the Court can still find the writ does not present the narrow circumstances justifying its extraordinary intervention, thus leaving only this appeal still pending. Rapid Cash also forgets that a ruling favorable to Rapid Cash on the jurisdictional issue in its writ could moot the entirety of this appeal. None of these possible outcomes, however, require consolidation *before* disposition. The Class acknowledges that consolidation might be appropriate at the time of disposition, but that time has not yet arrived.

Conclusion

Rapid Cash filed its motion to consolidate its appeal in this case with its writ in Case No. 61581 far too late to allow oral argument to go forward in both on the

³ *See e.g. Barnes v. District Court*, 748 P.2d 483, 484 (Nev. 1987).

date currently set for argument to be heard in the writ proceeding. Delay will thus ensue if Rapid Cash's matters are consolidated for the purpose of oral argument. Consolidation might be appropriate at the time of disposition, but that time has not yet come. Accordingly, the Class respectfully requests that this Court deny Rapid Cash's instant motion to consolidate these matters.

Dated this 17th day of October, 2013.

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