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Attorneys for Respondent,
PAT SONGER

Electronically Filed
May 14 2015 03:31 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Respondents

CASE NO: 66858
District Court Case No: CV35969

**ERRATA TO REPLY TO APPELLANTS
DELUCCHI'S AND HOLLIS'
RESPONSE TO ORDER TO SHOW
CAUSE**

The filed reply indicated that attachments were included, which were inadvertently omitted. Enclosed please find the following attachments:

- Exhibit A is a true and correct copy of the email and proposed draft order sent to Glenda Guo.
- Attached as Exhibit B is a true and correct copy of the letter and proposed order sent to Judge Wanker, with a CC to Appellant's counsel.

Dated this 14th day of May, 2015.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.
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Attorneys for Respondent,
PAT SONGER

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2015, service of the foregoing **ERRATA TO REPLY TO APPELLANTS DELUCCHI'S AND HOLLIS' RESPONSE TO ORDER TO SHOW CAUSE** was made by the Supreme Court's electronic filing system to the email address registered to:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Offices of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Attorneys for Appellants



An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

EXHIBIT “A”

EXHIBIT “A”

Talin Ebrahimian

From: Elsa Pena
Sent: Thursday, September 18, 2014 11:27 AM
To: gguo@danielmarks.net
Cc: Todd R. Alexander; Siria Gutierrez
Subject: Songer, et al. adv. Delucchi, et al.
Attachments: (Proposed) Order Granting Songer's Special MTD - 09-18-14.pdf

Dear Ms. Guo,

On behalf of Siria Gutiérrez, please have Mr. Levine review the attached (Proposed) Order and provide his changes or approval by 5 p.m. on Friday, September 19, 2014. Should Mr. Levine have any questions, please have him contact Ms. Gutiérrez directly.

Sincerely,

Lipson|Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

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Siria L. Gutiérrez, Esq.
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OFFICES IN NEVADA & MICHIGAN

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ORDR

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Attorneys for Defendant,
PAT SONGER

IN THE FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez, Esq., appearing on behalf of Defendant Pat Songer, and Daniel Marks, Esq., appearing on behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston, LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings and papers on file, the motion, opposition, and supplemental briefing having heard argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute.” See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
3 (1975).

- 4 2. When a statute’s doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep’t*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada’s anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If Plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The briefing shall be as follows: Defendant Songer has until September 26, 2014, to file a Motion For Fees and Costs; Plaintiffs have until October 26, 2014 to file an opposition, and Defendant Pat Songer has until November 5, 2014, to file a reply. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on November 19, 2014, at 1:30 p.m.

DATED this _____ day of September, 2014.

DISTRICT COURT JUDGE

Submitted by:
LIPSON, NEILSON, COLE, SELTZER
& GARIN, P.C.

Approved as to Form and Content:
LAW OFFICE OF DANIEL MARKS

By: _____
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By: _____
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Las Vegas, NV 89101
(702) 386-0536
*Attorneys for Plaintiffs, RAYMOND
DELUCCI and TOMMY HOLLIS*

Talin Ebrahimian

From: Siria Gutierrez
Sent: Monday, November 10, 2014 2:22 PM
To: 'Glenda Guo'; Joe Garin; Talin Ebrahimian
Subject: RE: Delucchi / Hollis v Songer / ETS

Dear Ms. Guo,

The Court only signed the order granting ETS' Motion. It had not signed the order regarding Mr. Songer's Motion due to your office's delay in approving our proposed order. We had no choice but to proceed with submitting our order.

There were separate motions filed, which require separate orders. I'll leave it up to the Court to decide if she will sign this separate order at this time considering your client's pending appeal.

Very Truly Yours,

Siria

Lipson|Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

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From: Glenda Guo [mailto:gguo@danielmarks.net]
Sent: Monday, November 10, 2014 2:18 PM
To: Joe Garin; Siria Gutierrez; Talin Ebrahimian
Subject: Delucchi / Hollis v Songer / ETS
Importance: High

Good Afternoon:

I am in receipt of your e-mail of today's date regarding the submission of a second Order to the Court. Please be advised that the judge has already signed an Order Granting Summary Judgment and **that Order is already the subject of an appeal**. Therefore there should be no further Order signed or filed in this matter.

GLEND GUO
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Email: gguo@danielmarks.net

EXHIBIT “B”

EXHIBIT “B”

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November 10, 2014

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CHRISTIANA O. OTUWA⁴

1 ADMITTED IN NEVADA
2 ADMITTED IN MICHIGAN
3 ADMITTED IN ILLINOIS
4 ADMITTED IN NEW YORK
5 ADMITTED IN COLORADO
6 ADMITTED IN CALIFORNIA
7 ADMITTED IN FLORIDA
8 ADMITTED IN PENNSYLVANIA
9 ADMITTED IN MASSACHUSETTS
10 ADMITTED IN MARYLAND

Judge Kimberly A. Wanker
Fifth Judicial District Court
1520 E. Basin Ave., Dept. 1
Pahrump, Nevada 89060

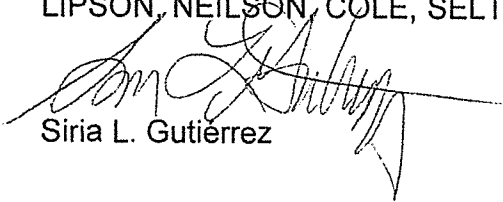
Re: Songer, et al. adv. DeLucchi, et al.
Case No.: CV35969

Dear Honorable Judge Wanker:

Please find enclosed for your review and signature a revised Order Granting Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS § 41.660 with the corrected name and we believe the remainder of the proposed order is accurate. We re-reviewed the audio from the hearing and believe the proposed order reflects the Court's ruling. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.


Siria L. Gutierrez

SLG/te/HI5703-007

Enclosures (As Stated)

cc: Joseph P. Garin (via email only)
Adam Levine (via email only)
Todd Alexander (via email only)

1 **ORDR**
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7
8 *Attorneys for Defendant,*
PAT SONGER

9
10 **IN THE FIFTH JUDICIAL DISTRICT COURT**
NYE COUNTY, NEVADA

11 RAYMOND DELUCCHI and TOMMY
HOLLIS,

12
13 Plaintiffs,

14 v.

15 PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

16 Defendants.

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

17 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
18 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,
19 Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on
20 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and
21 Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston,
22 LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings
23 and papers on file, the motion, opposition, and supplemental briefing having heard
24 argument thereon, and with good cause appearing therefore, find as follows:

25 **CONCLUSIONS OF LAW**

- 26 1. It is well settled in Nevada that "[w]here a former statute is amended, or a
27 doubtful interpretation of a former statute rendered certain by subsequent
28 legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute." See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
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6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).

8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.

10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.

11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.

16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.

19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.

21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
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11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
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13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
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16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
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under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

DATED this _____ day of November, 2014.

DISTRICT COURT JUDGE

Submitted by:

LIPSON, NEILSON, COLE, SELTZER
& GARIN, P.C.

By:

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NEVADA BAR NO. 6653

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