

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEGGY CAIN, an Individual;
JEFFREY CAIN, an Individual;
and HELI OPS INTERNATIONAL,
LLC, an Oregon limited liability
company,

Appellants,

v.

RICHARD PRICE, an Individual; and
MICKEY SHACKELFORD, an
Individual,

Respondents.

NO. 69333
Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

PEGGY CAIN, an Individual;
JEFFREY CAIN, an Individual;
and HELI OPS INTERNATIONAL,
LLC, an Oregon limited liability
company,

Appellants,

v.

RICHARD PRICE, an Individual; and
MICKEY SHACKELFORD, an
Individual,

Respondents.

NO. 69889

PEGGY CAIN, an Individual;
JEFFREY CAIN, an Individual;
and HELI OPS INTERNATIONAL,
LLC, an Oregon limited liability
company,

Appellants,

vs.

RICHARD PRICE, an Individual; and
MICKEY SHACKELFORD, an
Individual,

Respondents.

NO. 70864

APPELLANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
(Oral argument scheduled for September 25, 2017, at 11:00 a.m.)

Appellants hereby submit the following supplemental authority, pursuant to NRAP 31(e). Oral argument is scheduled for September 25, 2017, at 11:00 a.m. Appellants recognize that consideration of the supplemental authority at oral argument is not assured, under NRAP 31(e), because this notice is being filed less than 10 days before oral argument. Nonetheless, the supplemental authority recently came to the attention of appellants' counsel, and the court is requested to consider the supplemental authority, to the extent possible.

Pursuant to Rule 31(e), supplemental authorities must state concisely and without argument the legal proposition for which each supplemental authority is cited, with references to the pages of the party's brief that is being supplemented.

Appellants hereby supplement Appellants' Opening Brief, at pages 25-28, and Appellants' Reply Brief, at pages 10-13, with the following supplemental authority.


The Restatement (Second) of Contracts § 309 (1981) deals with Contract Beneficiaries. Comment b to § 309 is entitled "*Conditions; failure of performance.*" This comment states that "the right of a beneficiary is subject to any limitations imposed by the terms of the contract." The comment further states that such limitations may be imposed "by virtue of considerations of fairness and public policy." The comment then states: "Thus, a failure of the promisee to perform a return promise ordinarily discharges the promisor's duty to a beneficiary to the same extent that it discharges his duty to the promisee."

The Restatement comment then provides an illustration, as follows:

5. B promises A to pay C \$100 in consideration of A's promise to B to perform stated services to him. A substantially breaks his promise to perform these services. Whether or not at the time of B's promise C had a right against A to be paid \$100 he has no right against B.

This Restatement comment is being cited for the legal proposition that a third-party beneficiary does not get the benefit of a release that is part of a contract for payment of money, if the party who is the primary obligor in the contract has failed to perform and has not paid the money to the party who gave the release.

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ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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