IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID DEZZANI AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A. KERN,
Respondents

Supreme Court No. 69410
District Court Case No. CV1500826

Appellants'
in *pro per*
Opening Brief

Statement of Facts.

In July, 2004, Appellants purchased a townhouse in Incline Village, Nevada and thereby became members of the McCloud Condominium Homeowners' Association ("the association"), a common interest community operating under the provisions of NRS 116.

Since becoming members of the association, Appellants have paid monthly fees, totalling thousands of dollars, to the association which have been used to pay agents of the association, including Respondents.

In March, 2013, a dispute arose between the association and Appellants regarding whether the deck adjoining Appellants' townhouse was allowed under the CC&Rs or "Unallowed (sic)", as claimed by the association. Complaint, Exhibit 1.

After the dispute arose, Appellants communicated with the association on many occasions,

expressing their concerns regarding violations of Nevada law and the association's governing documents and, also, recommending that Respondents be replaced as attorneys for the association. See: e.g. Exhibits 2 and 3 of the Complaint.

In setting forth their reasoning and recommendation that Respondents be replaced, Appellants were highly critical of Respondent Gayle Kern, describing her as "an attorney who has faulty knowledge of the facts and the law, a propensity to presume matters without evidence and a willingness to espouse legal opinions which ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws." See: Complaint, Exhibit 2, page 2.

Appellants communications, including the recommendation that Respondents be replaced,. were forwarded to Respondents by the association. See: Complaint, Ex. 4)

After becoming aware of Appellants' criticisms and recommendations that they be replaced, Respondents undertook and directed actions, *for the purpose of retaliating against Appellants*, intended to harm Appellants and devalue their property, in violation of Nevada law, including specifically NRS 116.31183 "Retaliatory action prohibited; separate action by unit's owner".*

On May 4, 2015, Appellants filed their Complaint against Respondents and others, relying upon seven provisions of NRS 116, including NRS 116.31183.

On September 9, 2015, Respondents submitted their Motion to Dismiss, arguing that: (i) Respondents' allegedly improper actions were not actionable because they were done "solely" as attorney for the association, and (ii) the Complaint "failed to state a claim against Kern for which relief may be granted".

On November 19, 2025, the District Court entered a four-page ORDER, granting that the Complaint "be DISMISSED in its entirety"**, without mentioning, discussing or referring to any of the seven provisions of the NRS relied upon in the Complaint and, instead, erroneously citing an inapplicable, never before-mentioned, NRS provision, NRS 116.3118. (ORDER, page 3)***

On February 8, 2016, the District Court entered a second four-page ORDER, granting "attorneys fees and costs" in excess of $13,000.00, to Respondents, despite Respondents' Motion to Dismiss having been filed "in *pro per*" and without providing Appellants with opportunity to challenge the reasonableness or reality of the purported fees and costs. (See: ORDER, February 8, 2016, attached to Docketing Statement in Supreme Court No. 69896)

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*Because the District Court dismissed Appellants' Complaint without allowing discovery, only limited information is presently available or in the record regarding what actions Respondents took and/or directed for *the purpose of retaliating* against Appellants. However, the content and tenor of Respondents' many emails and letters to Respondents, when considered in context with Respondents actions, advice and

directions after becoming aware of Appellants' recommendations, strongly suggest that intense animosity towards Appellants motivated Respondents to retaliate against them, as prohibited by NRS116.31183. Indeed, the "Reply in Support of Motion to Dismiss Complaint, filed byRespondents "in *pro per*", implicitly concedes the existence of factual disputes regarding Respondents' motivations and purposes, by asserting that "Kern *merely responded* to the allegations contained in Plaintiffs' numerous emails and letters". (id at page 5, italics added), whereas the issue whether Respondents "merely responded" or intentionally mishandled evidence and/or consciously misdirected others *for the purpose of retaliation*, as contended by Appellants, is a factual question, inappropriate for summary disposition without permitting discovery.

**The ORDER does not address Appellants' claims against several "Doe"defendants or Respondents' request for the dismissal be "with Prejudice", nor does it make clear whether the dismissal was based upon argument (i) or (ii), urged by Respondents.

*** The District Court's citation of "NRS116.3118" is perplexing because that provision of the NRS was not alleged in the complaint, never briefed or argued by the parties and seems irrelevant to the seven provisions of the NRS actually cited and placed at issue by the Complaint.

Statement of District Court Error.

A. The District Court erroneously failed to address any of the provisions of the NRS cited and placed at issue by the Complaint.

The District Court's ORDER granting Respondents' Motion to Dismiss Complaint does not cite, mention or discuss any of the provisions of Nevada law relied upon by Appellants.

Instead, the ORDER erroneously cites and relies upon a seemingly irrelevant and inapplicable provision, NRE 116.3118, by stating:

"The Court finds there is no basis in law or fact to support the causes of action alleged against Kern. The Court finds to permit such causes of action against Kern would result in a chilling effect on individuals' ability to hire and retain counsel. NRS 116.3118 does not permit attorneys to be personally liable for actions taken on behalf of an association" (ORDER, page 3)

Because NRS 116.3118 was not one of the seven provisions of the NRS cited in the Complaint, nor mentioned, briefed or discussed in any of the papers submitted regarding the Motion nor is it applicable to the claims for relief actually asserted in the Complaint, the District Court erred by citing and relying upon it to dismiss Appellants' Complaint.

B. It would be improper to speculate that the District Court's ORDER of citation of NRS 116.3118 was merely a typographical error and/or that the Court actually intended to cite NRS 116.31183, one of the provision of the NRS actually cited in the Complaint..

Appellants anticipate that Respondents may argue that the District Court's erroneous citation of "NRS 116.3118" was a typographical error, i.e. omitting the "3" at the end of the citation intended to be "NRS 116.31183". However, such an argument requires speculation and ignoring of the fact that NRS 116.3118 is cited **twice** in the dismissal ORDER (initially on page 2 and again on page 3), and was **repeated, several months later,** when the District Court's awarded attorneys' fees and costs against Appellants. (See February 8, 2016 ORDER, page 2, Docketing Statement, Supreme Court No. 69896).

Therefore, an argument in favor of affirming the District Court's dismissal ORDER on grounds that its erroneous citation of NRS116.3118 was "just a typo" would require speculation resting upon the premise that the District Court actually signed-off on three typographical errors, on two separate occasions, months apart.

Furthermore, even if it be speculated, argued and accepted that the District Court actually intended to cite and rely upon NRS116.31183, cited int the Complaint, rather than "NRS 116.3118", as erroneously stated and signed-off on twice, the ORDER must be reversed because the District Court erroneously disregarded the clear wording and legislative intent of NRS 116.31183.

NRS 116.31183, "**Retaliatory action prohibited; separate action by unit's owner.**", states as follows:

"An ... agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; [or]

(b) Recommended the selection or replacement of an attorney, ..."

NRS 116.31183 specifically authorizes homeowners' association members to "bring a separate action" to recover damages.

The wording of NRS 116.31183 is clear and unequivocal and nothing in it suggests any intention to allow associations' agents to escape liability simply because the agent happens to be an attorney when committing the retaliatory acts.

Therefore, if the District Court actually intended to refer to NRS 116.31183, instead of erroneously citing NRS 116.3118, its holding granting blanket immunity to attorneys would be erroneous, because it ignores the clear wording of the proper provision, would emasculate statutory protections provided to condominium owners, and severely inhibit the flow of information from condominium owners to their associations, by creating fear of retaliation for complaints or recommendation that be their association replace its attorney.

C. The District Court ORDER erroneously decides disputed factual questions without allowing opportunity for discovery.

Although the ORDER correctly describes a Court's obligation when considering a motion to dismiss for failure to state a claim, i.e. to "construe the pleadings liberally and draw every fair inference in favor of the nonmoving party" (ORDER, page 3), the District Court actually acted contrary to that obligation when considering the instant Motion to Dismiss.

The District Court's statement regarding the provision it cited, NRS 116.3118, makes clear that the Court erroneously drew inferences favoring Respondents' version of disputed facts, rather than in favor of Appellants. In the its sentence citing the inapplicable NRS 116.3118, the Court erroneously presumed and decided a fundamental factual issue in movant's favor, accepting and endorsing Respondents' assertion regarding the contested issue of whether Respondent's actions were "on behalf of an association", whereas the Complaint places at issue whether Respondents actions were on their own behalf and/or motivated by their own improper purpose and/or intended to retaliate against Appellants for their complaints, criticisms and recommendation that Respondents be replaced.

The District Court erroneously dismissed the Complaint, without allowing discovery, and must be reversed.

Appellants respectfully request that the District Court's ORDER, dated November 19,2015 set aside, so that they may be allowed to proceed with discovery.

Respectfully Submitted,

David Dezzani, Appellant

Rochelle Dezzani, Appellant

DATED: April 15, 2016