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Elizabeth A. Brown
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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,

vs.

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

Respondents.

Supreme Court Case No. 69333
Supreme Court Case No. 69889
Supreme Court Case No. 70864
District Court Case No. 11 CV 0296

**RESPONDENTS' OPPOSITION TO
MOTION TO STRIKE RESPONSE, OR
ALTERNATIVELY, FOR PERMISSION
TO FILE A REPLY TO THE RESPONSE**

Respondents RICHARD PRICE and MICKEY SHACKELFORD, by and through their counsel, Mark Forsberg, Esq. and Oshinski & Forsberg, Ltd., hereby oppose Appellants' motion to strike their Court-ordered response to Appellants' Supplemental Authorities.

Appellants filed their Notice of Supplemental Authorities on September 19, 2017. Oral argument was conducted September 25, 2017. Appellants drew the Court's attention to the Restatement (Second) of Contracts § 309 (1981) for the proposition that a third-party beneficiary of a bilateral contract may not receive the benefit of a release provision in that contract where the contracting party granting the release does not receive consideration from the other party to the contract. Appellants acknowledged in the Notice that it was filed less than 10 days before oral argument and that, therefore, it was not assured of consideration by the Court.

At oral argument, it was clear that the supplemental authorities *were* being considered by the Court. The supplemental authorities were the subject of argument presented by Appellants' counsel, thus removing those authorities from the restrictions set forth in NRAP 31(e). Specifically, the supplemental authorities no longer were before the Court "without argument" as contemplated by NRAP 31(e). Moreover, the Court questioned both counsel regarding the effect of the supplemental authorities on the issues presented.

After oral argument, the Court issued its order directing Respondents to respond to the supplement authorities. Respondents construed the order to mean that the Court was seeking a response to the argument made orally before the Court and not restricted to the authorities themselves, since the Court had entertained argument not permitted by the rule allowing supplemental authorities to be submitted.

Respondents' Response therefore provided not only a mere citation to authorities countervailing those presented by Appellants, but argument in opposition to that presented for the first time at oral argument by Appellants. Under these circumstances, Respondents' Response should not be viewed as violating NRAP 31(e) nor should the Response be stricken.

Appellants challenge Respondents' citation to *Clark v. Clark* (Wash. App. Div. 1, 1999) because it is an unpublished opinion. While *Clark* is an unpublished opinion, Respondents also cited the published decision, *Oman v. Yates*, 70 Wn.2d 181, 422 P.2d 489 (1967) for the same proposition. More important, *Clark* was not cited for the holding of the court in that case but for its reference to the very authorities presented and argued by Appellants -- the Restatement (Second) Contracts, § 309 -- and the fact that the cited section of the Restatement does not stand for the proposition argued by Appellants. It is simply not "grossly unfair" for Respondents to be permitted to respond to arguments presented by Appellants for the first time at oral argument.

Similarly, it is not improper even under the restrictions of FRAP 31(e) to draw the Court's attention to the fact that the arguments supported by the supplemental authorities were waived and expressly renounced by Appellants in the district court. It was not improper to present authorities supporting the position that the supplemental authorities were inapplicable to the circumstance of this case.

Conclusion

For the above reasons, Respondents urge that the Motion to Strike the response be denied in its entirety. To the extent that the Court considers the reply, which Appellants have placed before the Court by attaching it to their Motion to Strike without permission of the Court to file such a reply, the arguments raised therein were addressed by the district court and Respondents' brief and are not supported by the record.

Dated this 19th day of October, 2017.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg, Esq.
Mark Forsberg, Esq., NSB 4265
*Attorneys for Respondents Richard
Price and Mickey Shackelford*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on October 19, 2017, I filed a true and correct copy of the foregoing **Respondents' Opposition to Motion To Strike Response, Or Alternatively, For Permission to File A Reply To The Response** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

/s/ Linda Gilbertson
Linda Gilbertson