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8 and Steve Sanson

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Jan 22 2019 10:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

9
10 **IN THE SUPREME COURT OF NEVADA**

11 VETERANS IN POLITICS) SUP. CT. CASE #: 72778
12 INTERNATIONAL, INC.; AND STEVE)
13 W. SANSON) DIST. CT. CASE #:
14) A-17-750171-C

15 Appellants,

16 vs.

17 MARSHAL S. WILLICK; AND
18 WILLICK LAW GROUP,

19 Respondents.

20 **APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION**

21 **TO FILE A SUPPLEMENTAL BRIEF**

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OPPOSITION TO RESPONDENT'S MOTION TO FILE SUPPLEMENTAL BRIEF

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. INTRODUCTION**

4 Appellants Veterans in Politics International, Inc. and it's president, Steve
5 Sanson (collectively, "Appellants") urge the Court to deny Respondents Marshal
6 Willick's and his law firm's (collectively, "Respondents") misnamed "Motion for
7 Leave to File Supplemental Brief Addressing this Court's Requests During Oral
8 Argument."
9

10
11 Respondents seek to file a supplemental brief on three issues. As shown
12 below, two of these issues -- namely, the background of this case and the
13 clarification that VIPI issued to its January 12, 2017 ambiguous internet post¹ –
14 have already been exhaustively briefed and argued. The third issue – the
15 application of *Croker v. Sassone, infra*, to the present case – should have been
16 addressed by Respondents at oral argument on the Court's express invitation, and
17 as shown below, in any event rests on the same arguments Respondents have
18 already made in their Answering Brief.
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24 ¹ The statement was inadvertently published without two commas and read as
25 follows: "Attorney Marshall [sic] Willick and his pal convicted of sexually
26 coercion of a minor Richard Crane was found [sic] guilty of defaming a law
27 student in United States District Court Western District of Virginia signed by US
28 District Judge Norman K. Moon." The post was hyperlinked to Court Orders and a
Review Journal article showing full attribution and was promptly clarified. See, Clarification at AA II:271-300.

1 Further, to the extent that Respondents seek to use these issues to continue
2 (without evidence) to ascribe ill motive to Appellants, such arguments are
3 irrelevant. California courts have long held that consideration of motive undercuts
4 and has no place in anti-SLAPP analysis. *See e.g., Tuszynska v. Cunningham*, 199
5 Cal.App.4th 257, at 269, 131 Cal.Rptr.3d 63 (Cal. App. 2011) (analysis of motive
6 is “untenable and is at odds with the language and purpose of anti-SLAPP
7 statutes”); *People ex rel. Fire Ins. Exch. v. Anapol*, 211 Cal.App.4th 809, 150
8 Cal.Rptr.3d 224 (Cal. App., 2013) (in applying anti-SLAPP statutes, “courts must
9 be careful to distinguish allegations of conduct on which liability is to be based
10 from allegations of motives for such conduct. . . Causes of action do not arise from
11 motives; they arise from acts”); *emphasis added*.

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16 Lastly, no new *evidence*² is being proffered nor can be submitted at this
17 stage. *See, Carson Ready Mix v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476-77,
18 635 P.2d 276, 277-78 (1981) (“We cannot consider matters not properly appearing
19 in the record on appeal.”); *Alderson v. Gilmore*, 13 Nev. 84, 85 (1878) (“We have
20 no power to look outside of the record of a case. We have consistently recognized
21 this limitation.”).

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26 ² Respondents already argued in their Answering Brief (at page 6 paragraph 1 and
27 at page 46 footnote 165) that Appellants purportedly continued to distribute the
28 original ambiguous statement after issuing the clarification. The allegation
continues to be denied and remains unsupported.

1 Belated, duplicative and unnecessary briefings undercut the very purpose of
2 Nevada’s anti-SLAPP statutes – to quickly and to cost-effectively dispose of
3 unmeritorious litigation intended to stifle rights of free speech. *Stubbs v.*
4 *Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013); *see also*, Cal. Code of
5 Civ. Proc. §425.16(a).³

8 Appellants have already spent *considerable resources* in defending this
9 action over the past *two years*, not to mention in defending numerous other actions
10 and proceedings filed by the Respondents to stifle Appellants’ protected speech.
11 Appellants respectfully ask this Court to *end this case*.⁴

18 ³ Cal. Code of Civ. Proc. §425.16 (a): “...it is in the public interest to encourage
19 continued participation in matters of public significance, and . . . this participation
20 should not be chilled through abuse of the judicial process.”

21 ⁴ Respondents have attached a copy of Judge Duckworth’s recusal order in *Ansell*
22 *v. Ansell*, District Court Case No. D-15-521960-D, as an exhibit to their proposed
23 supplemental brief. In the unlikely event that the Court permits supplemental
24 briefing, this exhibit must be filed under seal pursuant to Rule 5(a)(5) of this
25 Court’s Policy For Handling Filed, Lodged, And Presumptively Confidential
26 Documents. The presiding judge in that case, Sr. Judge Saitta, entered a Sealing
27 Order stating: “Other than the Complaint and the Answer and the Counterclaim,
28 the entire case, including all docket entries, orders, pleadings, exhibits, videos
and/or transcripts, is SEALED and will remain so until ordered otherwise by this
court.” A true and correct copy of this Order is attached hereto. Appellants
respectfully request that the Court require Respondents to file this exhibit under
seal, if at all.

1 **II. RESPONDENTS ADMIT THEY ALREADY FULLY BRIEFED THE**
2 **BACKGROUND OF THIS CASE; FURTHER ARGUMENT SOLELY TO**
3 **CONTINUE TO ASCRIBE “MOTIVE” IS IRRELEVANT.**
4

5 Respondents claim they want to file a supplemental brief that “identifies
6 background materials, detailed in another pending appeal, that explain why the
7 months-long defamation campaign was launched against Mr. Willick.” *Motion* at
8 p. 2; emphasis added.
9

10
11 Yet, “why” Appellants made the statements at issue is *irrelevant*. As
12 explained in *Tuszyńska v. Cunningham*, 199 Cal.App.4th 257, at 269, 131
13 Cal.Rptr.3d 63 (Cal. App. 2011), conflating “motive” with “good faith” is
14 “*untenable in the anti-SLAPP context because it is at odds with the language and*
15 *purpose of the anti-SLAPP statute.*” The Court explained:
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18 The statute applies to claims “based on” or “arising
19 from” statements or writings made in connection with
20 protected speech or petitioning activities, regardless of
21 any motive the defendant may have had in undertaking
22 its activities, or the motive the plaintiff may be ascribing
23 to the defendant's conduct of its activities. (Navellier,
supra, 29 Cal.4th at pp. 89–90, 124 Cal.Rptr.2d 530, 52
P.3d 703; § 425.16, subds. (b)(1), (e).)

24 *See also, People ex rel. Fire Ins. Exch. v. Anapol*, 211 Cal.App.4th 809, 150
25 Cal.Rptr.3d 224 (Cal. App., 2013) (in applying anti-SLAPP statutes “courts must
26 be careful to distinguish allegations of conduct on which liability is to be based
27 from allegations of motives for such conduct. “[C]auses of action do not arise from
28

1 motives; they arise from acts”); emphasis added. The relevant issues are “good
2 faith,” i.e. whether the statements were true or made without knowledge of their
3 falsity at the time they were made, and whether the broad *subject matter of the*
4 *statements*, not the parties’ status, pertain to issues of public interest. NRS
5 §41.637; *Doe v. Gangland Prods., Inc.*, 730 F.3d 946, 956 (9th Cir., 2013) (“the
6 proper inquiry is the broad topic of defendant's conduct”).
7
8

9 Moreover, the background to this case has already been *fully and*
10 *exhaustively briefed by both parties*, including in Respondents’ unsuccessful
11 *motion to consolidate* this case with the pending appeal in *Abrams v. Schneider, et.*
12 *al.*, Sup. Ct. Case no.73838. *See*, docket nos. 17-33125 (Willick’s motion to
13 consolidate), 17-36169 (VIPI’s opposition), and 17-37336 (Willick’s reply).
14
15

16 In Appellants Opening Brief, the background to this case was recited at
17 length at Page 1, line 3 through Page 2, line 11, and in *seven pages* thereafter from
18 page 7, line 8 through page 14, line 2.
19
20

21 In Respondent’s Answering Brief, Respondent devoted 23 pages, from page
22 3 through 26, reciting its version of the background of this case. Respondents
23 expressly represented that their brief was “complete” on this issue:
24

25 As discussed at some length in prior motions filed in this
26 Court, three intertwined and interrelated appeals are now
27 pending. Both this appeal and *Abrams v. Schneider and*
28 *Sanson*, No. 73838 (“*Abrams*”), arise out of facts
occurring in *Saiter v. Saiter*, No.72819 (“*Saiter*”).
Sanson’s Opening Brief makes scattered references to

1 those (and other) cases with no cogent explanation of
2 their relationship or how they inform the decisions to be
3 made in this appeal.

4 In the interest of completeness, and assuming that this
5 Court takes judicial notice of the events occurring in
6 *Saiter* and Abrams, this Statement of Facts recites the
7 material facts leading up to this appeal.

8 *Respondent's Answering Brief* at p. 2; emphasis added.

9 If Respondents have anything they can possibly add on the subject, they had
10 the opportunity to do so at oral argument, and should not be permitted to do so via
11 supplemental briefing.
12

13 **III. VIPI'S "CLARIFICATION" HAS ALSO BEEN**
14 **FULLY BRIEFED AND ARGUED.**
15

16 Respondents state that their supplemental brief will argue that the
17 clarification that VIPI issued on January 18, 2017⁵ was "smaller," and that the
18 original ambiguous statement either stayed on the internet or was reposted after the
19 clarification was issued.
20

21 First, no evidence was submitted in the lower court to substantiate these
22 claims, and Appellants deny these allegations.⁶
23

24
25 ⁵ The Clarification is set forth at AA II:271-300.

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27 ⁶ Respondent's evidence in the district court is set forth at AA VII 1443 (Willick's
28 form declaration), AA VII 1465 (the statements at issue), AA VII 1454 (Sanson
asking for help with the litigation), and AAVII 1466-67 (Sanson's exchange with a
third party stating that he believes what he wrote is true and to read the hyperlinked

1 Second, Respondents, already fully briefed and argued this issue, as well as
2 the relevance of NRS §41.336 et. seq.: In Appellant’s Opening Brief, the
3
4 ambiguous post and its clarifications were discussed at:

- 5 • Page 18, lines 11-17;
- 6 • Page 21, lines 4-7;
- 7 • Page 41 line 7- page 43, line 7;
- 8 • Page 42 footnote 140;
- 9 • Page 53, line 9- page 54, line 4;
- 10 • Page 55, lines 5-14;
- 11 • Page 57, lines 14-21; and
- 12 • Page 58, lines 8-14.

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17 In Respondent’s Answering Brief, the clarification and its alleged reposting was
18 briefed at:

- 19 • Page 12, paragraph 1;

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22 documents). At page 12, para. 1 of their Answering Brief, Respondents cite to AA
23 VII 1509-1512 as purported evidence that Appellants reposted the original
24 ambiguous statement after issuing their clarification on January 18, 2017. But the
25 citation is actually to an untimely affidavit that Willick filed in the district court the
26 day before the anti-SLAPP hearing. As explained in Appellant’s Opening Brief at
27 pp. 4:18-5:12, the affidavit was the subject of VIPI’s motion to strike (AA 1591),
28 was not considered by the district court, and should not be considered by this
Court. Moreover, nothing therein shows a *posting date* of the original statement
after the clarification was issued on January 18, 2017.

- Page 16, paragraph 1;
- Page 17, footnote 76; and
- Page 46, footnote 165.

In Appellants’ Reply Brief, the Clarification was discussed at:

- Page 9, lines 8-21, citing Sanson’s Declaration at AA I at page 85, line 25 through page 86, line 8, which confirms that, contrary to Willick’s claim, VIPI redistributed the Clarification in all the same channels as the original ambiguous post. (See Clarification at AA I 271);
- Page 24, lines 1-5; and
- Page 25, lines 1-4.

In addition, both parties addressed these issues (including the import of NRS 41.336 et. seq.) at oral argument. Repeating legal argument would be duplicative, a waste of resources and improper.

IV. IMPLICATIONS OF *CROKER v. SASSONE*

Respondents belated request to brief the purported impact of *Coker v. Sassone*, 135 Nev. Adv. Op. 2 (Jan. 3, 2019) on this case (Motion at p. 1) should likewise fail.

First, the Court *expressly invited the parties to comment on the Croker case* during oral argument, and Respondents chose not to. *Croker* was brought to the parties’ attention on January 3, 2019, its very day of publication and six days before oral argument, when amicus filed “Amicus Curiae The Reporters

1 Committee for Freedom of the Press' Notice of Supplemental Authority and of
2 Intent Not to Attend Oral Argument” (*see*, docket no. 19-00439), and
3
4 electronically served it on the parties. There is no reason Respondents could not
5 have addressed this at oral argument.

6
7 Further, any analogy between Sassone’s claim for unfair competition in
8 connection with Croker’s illegal distribution of counterfeit art in the *Croker* case,
9 and Willick’s claim of defamation in connection with VIPI’s lawful, substantiated,
10 and hyperlinked free speech reporting of his work practices in this case, would be
11 sorely misplaced. Respondents have already made the irrelevant (fails to relate to
12 any of their causes of action) and unsubstantiated (no evidence) argument that
13
14 VIPI is a purported criminal enterprise that is not entitled to anti-SLAPP protection
15 (*see, Answering Brief* at pages 21-24). Therefore any such argument they want to
16
17 make to somehow analogize *Croker* and this case would again be repetitive
18
19 anyway.

20 21 **V. CONCLUSION**

22 For all of the reasons stated above, Appellants respectfully request that this
23 Court deny Respondents’ request for supplemental briefing.

24
25 Appellants pray that this Court exercise its authority to finally put an end to
26 this case and to remand it to the district court solely for a determination of the
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1 amount of attorney's fees, costs and statutory damages payable to Appellants.

2 Respectfully submitted,

3
4 Dated: January 22, 2019

ANAT LEVY & ASSOCIATES, P.C.

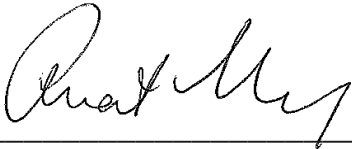
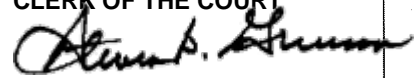
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EXHIBIT A

Original

Electronically Filed
5/25/2018 11:16 AM
Steven D. Grierson
CLERK OF THE COURT

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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 IRINA ANSELL,

13 Plaintiff,

14 vs.

15 DOUGLAS ANSELL,

16 Defendant.

Case No.: D-15-521960-D
Dept No.: Senior Judge

Before the Honorable Judge
Nancy Saitta

FAMILY DIVISION

17 **ORDER REGARDING MOTION TO SEAL**

18 This matter, having come before the Court on May 9, 2018, on the Non-Parties', InCorp
19 Services, Inc., Inenvi, Inc. and Technoir, LLC (hereinafter "Non-Parties"), Ex-Parte Motion to
20 Seal on an Order Shortening Time, the Motion being unopposed, the Court having considered the
21 pleadings and papers on file herein, and for good cause appearing, the Court hereby finds and
22 orders as follows:

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1. The Ex-Parte Motion to Seal is hereby GRANTED; and

2. Other than the Complaint and the Answer and Counterclaim, the entire case, including all docket entries, orders, pleadings, exhibits, videos and/or transcripts, is SEALED and will remain so until ordered otherwise by this court.

IT IS SO ORDERED.

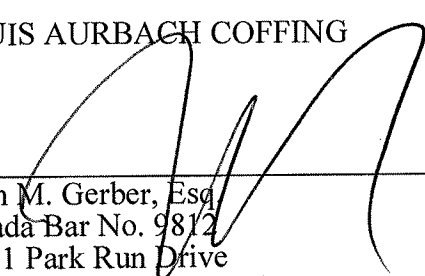
Dated this 24 day of May, 2018.


DISTRICT COURT JUDGE

Respectfully Submitted by:

MARQUIS AURBACH COFFING

By


Jason M. Gerber, Esq.
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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I am over the age of 18 and am not a party to the within action. On the date
3
4 indicated below I caused to be served a true and correct electronic copy of the
5 document entitled **APPELLANT’S OPPOSITION TO RESPONDENT’S**
6 **MOTION TO FILE A SUPPLEMENTAL BRIEF** on the below listed recipients
7
8 via the master transmission list with the Nevada Supreme Court:

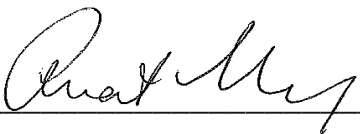
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21 I declare under penalty of perjury under the laws of the State of Nevada that
22 the foregoing is true and correct.

23 Executed this 22nd day of January, 2019, in Las Vegas, NV

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25 
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