

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

In the Matter of the Estates of Thelma
Ailene Sarge and Edwin John Sarge.

No.: 73286

District Court No. 16 RP 000091B

ESTATE OF THELMA AILENE SARGE;
ESTATE OF EDWIN JOHN SARGE;
AND BY AND THROUGH THE
PROPOSED EXECUTRIX, JILL SARGE,

Appellants,

vs.

QUALITY LOAN SERVICE
CORPORATION;
and ROSEHILL, LLC,

Respondents.

JAMES M. WALSH
Nevada State Bar No. 796
ANTHONY J. WALSH
Nevada State Bar No. 14128
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Attorneys for Respondent
Rosehill, LLC.

RESPONDENT ROSEHILL, LLC’S MOTION TO DISMISS AND
OPPOSITION TO APPELLANT’S REQUEST FOR EXTENSION OF TIME
TO FILE OPENING BRIEF

Respondent, Rosehill, LLC, by and through its counsel, James M. Walsh, Esq. and Anthony J. Walsh, Esq. of Walsh, Baker and Rosevear, hereby Opposes Appellant's Request for Extension of Time to File Opening Brief filed on March 12, 2019 and moves to dismiss the appeal pursuant to Nevada Rule of Appellate Procedure 31(d)(1).

PROCEDURAL BACKGROUND

Pursuant to this Court’s Order entered on February 25, 2019, Appellant was granted an extension until March 11, 2019 to file an Opening Brief. No Opening Brief has been filed.

Appellant has moved for and been granted four extensions in this appeal:

- 1) Appellant filed the Notice of Appeal on June 20, 2017, 1 year, 7 months and 21 days ago.
- 2) On November 22, 2017, Appellant first moved for an extension of time to file an opening brief (Document 2017-40351). This Court approved Appellant’s request, setting a new due date for an opening brief for December 21, 2017. (Document 2017-40364).

3) That same day, this Court entered an Order to Show Cause, directing Appellant to answer within 30 days and suspending other briefing. (Document 2017-40395)

4) On May 9, 2018, this court entered an Order directing the parties to file supplemental briefing regarding the Order to Show Cause, in which Appellant was given 15 days to file and Respondent 10 days thereafter to file the requested briefing. (Document 2018-17587)

5) On May 25, 2018, Appellant requested an extension of time to file supplemental briefing. (Document 2018-20128) Appellant's request was granted by this Court on May 30, 2018, and set a new due date of June 7, 2018. (Document 2018-20465)

6) On June 15, 2018, Appellant requested another extension of time to file supplemental briefing. (Document 2018-22891) Appellant's request was granted by this Court on June 26, 2018, allowing Appellant 10 more days to file. (Document 2018-24288)

7) On December 27, 2018, this Court entered an Order that the Appeal May Proceed, setting a new briefing schedule in which Appellant's opening brief would be due within 60 days. (Document 2018-910516)

8) On February 25, 2019, the Clerk of this Court allowed Appellant, per telephonic request, an extension of time to file opening brief, setting a new due date of March 11, 2019. (Document 2019-08557)

9) On March 12, 2019, Appellant moved for a 32 day extension to file opening brief pursuant to NRAP 31(b)(3). (Document 2019-10904)

ARGUMENT

Pursuant to NRAP 31(b)(3)(B) "applications for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) are not favored. **The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.**" (Emphasis added)

Counsel's caseload normally will not be deemed such a circumstance. Cf. *Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974).

Here Appellant requests a 32 day extension, just beyond the 30 day limit for stipulation under NRAP 31(b)(2). Appellant's motion for extension is untimely because it has been filed the day after the due date of the Opening Brief, set by this Court for March 11, 2019. Appellant's request is also an additional request devoid of extraordinary circumstances and extreme need pursuant to NRAP 31(b)(3).

If this Court allows Appellant another extension of time, it will be the 5th time this Court has granted Appellant an extension to file a brief related to this appeal. Further, an extension will be a burden on Respondents who have been patient and diligent in every aspect of this Appeal. Appellant's motions for extension on file throughout this appeal have all been based on Appellant's Counsel's statements that he is a solo practitioner with difficulty finding other legal counsel to cover existing obligations, and that on two separate occasions, including the instant request, that he has been surprised with other unexpected legal obligations. (See Document 2017-40351 at ¶ 5; Document 2018-20128 at ¶ 5; Document 2018-22891 at ¶ 5; Document 2019-10904 at ¶ 5).

In the instant Motion for Extension of Time, Appellant's Counsel states that he became "distracted" with other legal work only served upon him on March 8, 2018. Because of other legal work, Appellant's Counsel asserts that he could therefore not file the opening brief, and that such a distraction merits another 32 days with which to prepare and file the opening brief. (Document 2019-10904 at ¶¶ 1, 2 and 5)

Such repeated behavior, requests and assertions have led to consistent delays in this appeal and have not been accompanied by extreme circumstances or need under NRAP 31(b)(3) or *Grady*, 90 Nev. 374 and the cases cited therein.

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CONCLUSION

Based on the foregoing, it is respectfully requested that this Court deny Appellant's untimely Motion for Extension of Time to File Opening Brief, and in the absence of extraordinary circumstances and extreme need dismiss the appeal.

Respectfully submitted this 11th day of July, 2018.

/s/ Anthony J. Walsh
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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

Respectfully submitted this 11th day of July, 2018.

/s/ Anthony J. Walsh

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CERTIFICATE OF MAILING

I hereby certify that on the 12th day of March, 2019, I served a true and correct copy of **RESPONDENT ROSEHILL, LLC'S SUPPLEMENTAL BRIEF** upon all counsel of record by:

- ☒ Electronic filing with the Clerk of the Court by using the E-Flex system which will send a notice of electronic filing to the following individuals at the email addresses set forth below.

addressed as follows:

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