

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUG 08 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORIGINAL

PETER M. SOUTHWORTH,

Petitioner,

S.C. No.: _____

D.C. No.: A-17-754175-A

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE ROB
BARE, DISTRICT COURT JUDGE,

Respondents,

and

LAS VEGAS PAVING CORPORATION,

Real Party in Interest.

PETITIONER'S APPENDIX

TO: The Supreme Court of the State of Nevada:

COMES NOW, Petitioner, PETER M. SOUTHWORTH, and hereby
respectfully submits this Appendix in support of his *Petition for Writ of Mandamus*
or Prohibition.

RECEIVED
AUG 08 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

DATED this 4th day of AUGUST, 2017.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Peter M. Southworth", is written over a horizontal line.

PETER M. SOUTHWORTH

406 S Desert Candles St

Ridgecrest, CA 93555

(760) 608-3986

No fax number

peter.m.southworth@gmail.com

Petitioner, In Proper Person

CERTIFICATE OF MAILING

Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 4th day of AUGUST, 2017, I placed a true and correct copy of the above **PETITIONER'S APPENDIX**, in the United States Mail, with first-class postage prepaid, addressed to the following:

PHILLIP R. EMERSON, ESQ.
1055 Whitney Ranch Drive, Suite 120
Henderson, NV 89014
Attorney for Real Party in Interest,
LAS VEGAS PAVING CORPORATION

The Honorable ROB BARE
Eighth Judicial District Court, Department 32
200 Lewis Avenue
Las Vegas, NV 89155
Respondent District Court Judge

DATED this 4th day of AUGUST, 2017.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.


PETER M. SOUTHWORTH

406 S Desert Candles St
Ridgecrest, CA 93555
(760) 608-3986
No fax number
peter.m.southworth@gmail.com
Petitioner, In Proper Person

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JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County, Nevada

Case No. 15A002996

Department No. Department #: LVJC 7

Name and Address of Plaintiff(s):
Peter M. Southworth
406 S Desert Candles St
Ridgecrest, CA 93555

(Plaintiff's(s) Email Address) peter.m.southworth@gmail.com

Plaintiff's(s) Telephone Number) (760) 608-3986

VERSUS

Name and Address of Defendant(s)
Las Vegas Paving Corporation
4420 S Decatur Blvd
Las Vegas, NV 89103

(Defendant's(s) Telephone Number) (702) 251-5800

**SMALL CLAIMS
COMPLAINT**

STATE OF NEVADA)
COUNTY OF CLARK)

I, Peter M. Southworth, STATE THAT Defendant(s) owes Plaintiff(s) the sum of \$ 7500.00

for damages arising from a traffic incident on 19 AUG 2012 caused by Las Vegas Paving Corporation. The \$7500.00 sum is comprised of the following: a hotel stay, 2 one-way rental cars, gasoline, 2 meals, loss of wages, driving time, the NHP accident report, a Carfax report, the post-repair diminished value of my vehicle, and the value of a rental car during repairs. These costs are directly attributable to the incident referenced above.

that a letter demanding payment has been sent; that Defendant(s) refuses to pay; and that Defendant(s) either currently resides, works or does business in the Las Vegas Township, County of Clark, State of Nevada.

* * * * *

(Signature) Peter M. Southworth

(Dated) 17 AUG 2015

Print Name: Peter M. Southworth

Attorney for Pro Se

You MUST have this affidavit notarized (block on the left) OR sign the unsworn declaration per NRS 53.045 (block on the right):

SUBSCRIBED AND SWORN to before me this
_____ day _____, 20____.

NOTARY PUBLIC in and for the
County of _____, State of _____

OR: UNSWORN DECLARATION Per NRS 53.045

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

(Date) 17 AUG 2015

(Signature) Peter M. Southworth

(Typed or printed name) Peter M. Southworth

The Plaintiff(s) must serve three (3) documents: (Small Claims Complaint, Instructions to Plaintiff or Defendant, and Small Claims Answer), on each Defendant.

To the above-named DEFENDANT(S):

A SMALL CLAIMS ACTION HAS BEEN COMMENCED AGAINST YOU!

YOU ARE DIRECTED TO E-FILE (electronically file), with the Las Vegas Justice Court Clerk's Office, AN ANSWER WITHIN TWENTY (20) CALENDAR DAYS from the date of service of the Complaint. Use the attached ANSWER form. You must mail a copy of your Answer to Plaintiff(s) immediately after E-Filing your Answer with the Las Vegas Justice Court. Your failure to Answer (respond to) the Complaint within 20 calendar days may result in the Plaintiff(s) filing a Motion for Default Judgment against you. This means the Referee or Judge may grant a Judgment for the Plaintiff(s) based on the claims/allegations in the Complaint and without considering your possible defense(s) or explanation(s)

LVJCVL Form -15 Revised 6/14

Pursuant to JCRCP 12(a)(3), the State of Nevada or any political subdivision thereof, and any officer, employee, board or commission member of the State of Nevada or political subdivision, and any state legislator shall file an answer or other responsive pleading within 45 days after their respective dates of service

Case Number: 15A002996

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

15A002996

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation,
Defendant(s)

REFEREE'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS

After hearing the above matter, this referee submits the following:

FINDINGS OF FACT: *Defendant stipulated that they were liable for traffic incident. Plaintiff provided ample evidence of damages for rental, food, lost wages, gas, hotel, & reports.*

CONCLUSIONS OF LAW: *Case law does not allow for recovery of diminished value + potential rental car repairs for a person making significant income. Defense did not prove by showing Plaintiff's hourly wage that he could afford a rental, so the Court will mitigate some of the rental, but not all.*

REFEREE'S RECOMMENDATIONS:

- ☒ Plaintiff should be awarded 2,572 in damages and in costs.
☐ Plaintiff should be awarded nothing against Defendant.
☐ Confession ☐ Default ☐ Dismissed With Prejudice ☐ Dismissed Without Prejudice
☐ Plaintiff should be awarded in damages and in costs on Defendant's Counterclaim (If applicable)
☐ Defendant should be awarded in damages and in costs on Defendant's Counterclaim (If applicable)
☐ Defendant should be awarded nothing on Defendant's Counterclaim (If applicable).
☐ Other:

DATED:

Referee:

This form was ☐ HANDED TO ☒ MAILED TO ☒ THE PARTIES ☐ THE FRONT COUNTER on 12/5/16 by

NOTICE

If either Plaintiff or Defendant has failed to appear for the scheduled court date, the party that failed to appear may not file a formal objection. Instead, relief must be sought from the referee who presided on that date.

If both the Plaintiff and Defendant have appeared for hearing before the referee, either party may object to the referee's findings of fact, conclusions of law, and recommendations by filing a formal objection within 5 days after the receipt of this document. Because of this rule, two outcomes are possible.

- (1) A timely objection can be filed, and a justice of the peace will review the matter by a trial de novo before issuing a final judgment.
- OR
- (2) If a timely objection is not filed, the Court will automatically accept these findings, and this referee's decision will become a judgment. At that time, copies of the final judgment can be obtained at the Justice Court Front Counter and the case can be appealed to District Court. However, a notice of appeal must be filed within 5 days from the entry of the judgment. (Detailed information relating to small claims appeals is contained in the small claims information packet).

PLEASE NOTE THAT THIS REFEREE'S DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED.

JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County Nevada

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation, Defendant(s)



L007351620

CASE NO.: 15A002996

DEPT NO.: 07

Certificate of Mailing

I, Angela Farris, hereby certify that I am an employee of the Las Vegas Justice Court and that on **December 05, 2016** I deposited for mailing a true and correct copy of the foregoing, **Referee's Findings of Fact, Conclusions of Law and Recommendations** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:

COURT CLERK

Las Vegas Paving Corporation
4420 S Decatur Blvd
Las Vegas, NV 89103

JUSTICE COURT, LAS VEGAS TOWNSHIP

Clark County Nevada

)
)
) CASE NO.: 15A002996

) DEPT NO.: 07
)
)
)
)
)
)

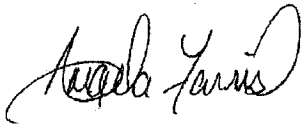
Peter M Southworth, Plaintiff(s)

vs.

Las Vegas Paving Corporation, Defendant(s)

Certificate of Mailing

I, Angela Farris, hereby certify that I am an employee of the Las Vegas Justice Court and that on **December 05, 2016** I deposited for mailing a true and correct copy of the foregoing, **Referee's Findings of Fact, Conclusions of Law and Recommendations** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:



COURT CLERK

Southworth, Peter M
406 S Desert Candles St
Ridgecrest, CA 93555

JUSTICE COURT, LAS VEGAS TOWNSHIP

Clark County Nevada

CASE NO.: 15A002996

DEPT NO.: 07

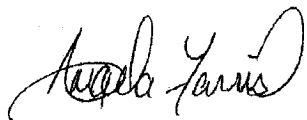
Peter M Southworth, Plaintiff(s)

vs.

Las Vegas Paving Corporation, Defendant(s)

Certificate of Mailing

I, Angela Farris, hereby certify that I am an employee of the Las Vegas Justice Court and that on **December 05, 2016** I deposited for mailing a true and correct copy of the foregoing, **Referee's Findings of Fact, Conclusions of Law and Recommendations** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:



COURT CLERK

BIRK, ANNE-MARIE

1055 Whitney Ranch Dr #120
Henderson, NV 89014

This document to which this certificate is attached is a full, true and correct copy of the original on file and of record in Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada.

By:  Deputy
Date: 5/26/17

Justice Court, Las Vegas Township
CLARK COUNTY, NEVADA

Peter M. Southworth)

PLAINTIFF)

-VS-)

Las Vegas Paving Corp.)

DEFENDANT)

CASE NO: 15A002996

FORMAL OBJECTION NOTICE

The Plaintiff, Peter M. Southworth, In the above entitled matter formally objects to the decision

entered on the 2nd Day of December, 20 16 In the above entitled Court and requests

A new Trial.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth
Name

406 S Desert Candles St

(Type Address)

Ridgecrest, CA 93555

CERTIFICATION OF MAILING

The Undersigned certifies that on the 7th Day of December, 20 16, a copy of the foregoing Notice

Of Formal Objection was mailed to Attorney for Las Vegas Paving Corp. at 1055 Whitney Ranch Dr.,

Suite 120, Henderson, NV 89014 By depositing a copy in the United States Mail in an addressed sealed envelope,

Postage prepaid.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth
Name

TO BE COMPLETED BY COURT STAFF ONLY

Courtroom No: _____ At the hour of _____ On _____, 20

JC- (Civil) Rev. 08/01

This document to which this certificate is attached is a full, true and correct copy of the original on file and of record in Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada.
By: [Signature] Deputy
Date: 5/26/17

JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County, Nevada

Case No. 15A002996
JC DEPARTMENT 7

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation, Defendant(s)

**ORDER: SMALL CLAIMS
FORMAL OBJECTION
HEARING**

The Court having reviewed the Formal Objection filed herein and good cause appearing therefore,

IT IS HEREBY ORDERED that:

☒ The Formal Objection Hearing is approved to be placed on calendar and shall be set for hearing on
the 8th day of February, 2017 at 1:00 P. M. in
Courtroom 1B of the Las Vegas Justice Court.

☐ The Small Claims Formal Objection is **DENIED** to be placed on calendar for the following reason(s):

☐ The formal objection was not timely filed.

☐ A formal objection may not be filed in response to the denial of a Motion for Exemption from
Mandatory Small-Claims Mediation.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside Default
Judgment when the Defendant has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside
Dismissal when the Plaintiff has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a motion to dismiss
before a referee.

☐ Other: _____

DATED this 8 day of Dec, 2016

JUSTICE OF THE PEACE
Adam Vander Hayden - Pro Tempore

Original-File

This document to which this certificate is
attached is a full, true and correct copy of
the original on file and of record in Justice
Court of Las Vegas Township, in and
for the County of Clark, State of Nevada.

By: _____ Deputy

Date: 5/26/17

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

Southworth, Peter M.

Plaintiff,

v.

Las Vegas Paving Corporation

Defendant.

Case No. 15A002996

Dept. No. JC IV

SMALL CLAIMS JUDGMENT

After hearing the above matter, the Court finds the following:

FINDINGS OF FACT:

On August 19, 2012, Mr. Southworth drove his BMW M3 from Las Vegas to Southern California and at approximately mile marker 21 (which was reduced to a single lane) Las Vegas Paving caused a foreign object of some size, weight, and heft to cause significant damage to Mr. Southworth's vehicle. The vehicle was drivable but not at highway speeds. This incident forced Mr. Southworth to bring the vehicle back to Las Vegas for repair. Mr. Southworth had to spend the night in Las Vegas and undergo considerable inconvenience in going back and forth while dealing with the damage to his vehicle.

It is worth noting that Mr. Southworth's insurance paid for the actual repairs to the vehicle in the sum of \$8,791, which was subrogated from Las Vegas Paving's insurance carrier. Therefore, Mr. Southworth does not seek the actual damage to his car, but rather reimbursement for a number of different items and expenses incurred concurrent to the accident.

The following expenses are not in dispute, and Defendant does not dispute liability for them.

<u>Expense</u>	<u>Cost</u>
Hotel	\$172.48
Rental Car from Las Vegas	\$150.60
Gasoline	\$112.04
Meals	\$ 65.13
Rental Car to Las Vegas	\$179.25
Nevada Highway Report	\$10.00

CERTIFIED COPY
The document to which this certificate is attached
is a full, true and correct copy of the original
on file and of record in Justice Court of Las
Vegas Township, in and for the County of Clark,
State of Nevada.

By [Signature] Deputy
Date 4.19.17

The expenses in dispute are:

<u>Expense</u>	<u>Cost</u>
Loss of wages	\$340.65
Driving Time	\$302.80
Carfax Report	\$39.99
Diminished Value to Plaintiff's Car	\$4275.00
Rental car value or loss of use	\$4,859.77

1.0 CONCLUSIONS OF LAW:

1.1 Calculation of Damages

"It is widely recognized, however, that if the insurer has paid only part of the loss, both the insured and insurer have substantive rights against the tortfeasor which qualify them as real parties in interest." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 367, 252 P.3d 206, 207 (2011). While Mr. Southworth was compensated for the damage to his car, he does have other damages available to him in order to make him whole, as if the negligent act had not occurred.

1.1.2 Loss of wages

In Nevada, wages are defined as the amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time. NRS 608.012.

Mr. Southworth did not actually lose wages. Mr. Southworth was able to take vacation time for which he was paid. However, Mr. Southworth testified that in taking this time off, he lost vacation time that he would have taken in the future. It would be absurd to require Mr. Southworth to request an unpaid day off for the sole purpose of maintaining his right to lost wages, because Mr. Southworth in fact lost the equivalent of wages: earned vacation time. Paid time off is earned by an employee, per the amount that an employer agrees to pay an employee for the time the employee worked.

Therefore, it is legally not important whether he took the day off without pay or took the day off with pay but lost a vacation day in the bargain. Had Las Vegas Paving not been negligent, Mr. Southworth would not have had to take the day off from work. Therefore, I find that he should be reimbursed for this loss of wages.

1.1.3 Driving Time

Mr. Southworth testified that he was charging \$302.80 for his time in driving to retrieve his vehicle. He comes to this amount by multiplying his normal hourly wage by the time spent transporting the vehicle. I might not normally find that he should be paid for engaging in this activity in itself. However, Southworth testified and provided credible evidence that had he paid

for his car to be transported, the standard price for this from Direct Express Auto Transport would have been \$330, and it would have taken more time. Accordingly, by providing the service himself, he saved the defendant \$27.20. Accordingly, I find that Mr. Southworth is properly owed the \$302.80.

1.1.4 Diminished Value

The Carfax Report and diminished value to his vehicle fall under one theory: the diminished value of the vehicle. The Defense provided citation to the administrative code stating that insurance companies were not required to pay for diminished value, however, that was a citation to the insurance code. In the case of *Dugan v. Gotsopoulos*, 117 Nev. 285, 22 P.3d 205 (2001), the Nevada Supreme court suggested that diminished value is an available remedy in Nevada.

The Court said that the owner of the vehicle could introduce evidence of fair market value including market "tabulations, lists, directories or other published compilations generally used and relied upon by the public or persons in particular occupations." *Id.* at 288. The Court ruled that the trial court abused its discretion by failing to permit Dugan to present evidence about both the value of her car before and after the accident. *Id.* at 290. Thus, diminished value is properly awarded to the victim of another party's negligence.

Mr. Southworth provided credible evidence of the diminished value. He provided a printout from DV assess, a website that provided a report that his loss of market value of his vehicle be \$4,275 and a printout from Desert BMW of Las Vegas that his car's actual value was \$35,000 and that the CarFax report diminished the value by \$5,000. He also provided Blue Book estimates from the Kelley Blue Book, Auto Nation Smart Pricing and his own personal testimony. While Mr. Southworth did not provide any basis for his personal testimony to be given any weight, the documentary evidence that he gave sustains (at least) his claim for \$4,275 in diminished value.

1.1.5 Loss of Use Value

Mr. Southworth claims that although he did not rent a vehicle during the time that his car was out of commission, he sustained significant inconvenience. Again, relying on *Dugan v. Gotsopoulos*, 117 Nev. 285, 22 P.3d 205 (2001), Mr. Southworth claimed that the law supports his position. Las Vegas Paving argues that a Plaintiff can only collect loss of use if one does not rent a vehicle *and* that failure to rent a replacement vehicle is due to the Plaintiff's financial inability to do so.

Mr. Southworth did not testify as to his income but I do not find strong support in the *Gotsopolos* case that this is a remedy only available to those who are unable to afford to rent a replacement vehicle. *Gotsopolos* does say that, "A party need not actually rent a vehicle to recover loss of use damages if that party is financially unable to rent a substitute vehicle." However it does not seem to limit its application or have a means test. This suggests to me that the *Gotsopolos* court specifically excused a party from being forced to either rent a replacement vehicle or forego the ability to recover. Just because the *Gotsopolos* court dealt with an impecunious plaintiff does not mean the *Gotsopolos* rule is limited to the poverty stricken. I read the *Gotsopolos* case to stand for the proposition that one need not actually rent a vehicle to recover for loss of use of one's own vehicle. Mr. Southworth was subjected to significant inconvenience due to the loss of his vehicle, and he should not have been forced to rent one in order to recover. As quoted in the *Gotsopolos* case, "The owner has suffered compensable inconvenience and deprivation of the right to possess

and use her chattel whether or not a substitute was obtained." *Id.* at 206. There is no means test requirement in *Gotsopolos*.

That said even if there were a means test, which I could apply, I do not know that Mr. Southworth would not qualify for it. While he clearly earns a good income, he has significant expenses and I do not believe it would be proper to subject him to a quasi-bankruptcy interrogation in order to determine whether he should recover a remedy that *Gotsopolos* grants him.

Mr. Southworth provided ample evidence of what a rental car would have cost for that period of time; a BMW comparable to his own would have cost \$4,859.77. That said, this would have been a brand-new BMW, although it would not have been the more expensive and sporty M3 model to which he is accustomed. He also provided evidence of a perfectly adequate economy car that he could have driven during this period of time. That amount was \$3,224.53. Accordingly, I believe that somewhere between the average of the two is an adequate compensation to Mr. Southworth for the lack of use of his vehicle and therefore he should be compensated in the amount of \$4,059.

2.0 Damages

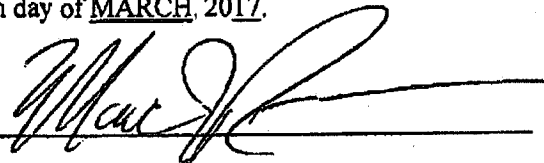
I award Mr. Southworth \$9706.94 in damages plus court costs of \$129, for a total of \$9835.94.

JUDGMENT:

On Plaintiff's Claim(s)	On Defendant's Counterclaim(s) (if applicable)
<p>X Plaintiff is awarded <u>\$9706.94</u> in damages from Defendant <u>Las Vegas Paving</u>.</p> <p>X Plaintiff is awarded <u>\$129.00</u> in costs from Defendant <u>Las Vegas Paving</u>.</p>	

DATED this 20th day of MARCH, 2017.

Marc J. Randazza, PRO TEMPORE:



JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County Nevada

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation, Defendant(s)



L007783925

CASE NO.: **15A002996**

DEPT NO.: **04**

Certificate of Mailing

I, Eva Cervantes, hereby certify that I am an employee of the Las Vegas Justice Court and that on **March 24, 2017** I deposited for mailing a true and correct copy of the foregoing, **Small Claims Judgment** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:

COURT CLERK

Las Vegas Paving Corporation

4420 S Decatur Blvd
Las Vegas, NV 89103

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada.

By  Deputy
Date 4-17-17

Clark County Nevada

DEPT NO.: 04

VS.

Certificate of Mailing

I, Eva Cervantes, hereby certify that I am an employee of the Las Vegas Justice Court and that on **March 24, 2017** I deposited for mailing a true and correct copy of the foregoing, **Small Claims Judgment** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:

Laurent

COURT CLERK

406 S Desert Candles St
Ridgecrest, CA 93555

Clark County Nevada

DEPT NO.: 04

VS.

Certificate of Mailing

Laurent

COURT CLERK

1055 Whitney Ranch Dr #120
Hendersson, NV 89014

1 PHILLIP R. EMERSON, ESQ.

2 Nevada Bar No. 5940

3 EMERSON LAW GROUP

4 1055 Whitney Ranch Drive, Suite 120

5 Henderson, Nevada 89014

6 receptionist@emersonlawgroup.com

7 Attorney for Defendant,

8 LAS VEGAS PAVING CORPORATION

FILED

2017 APR -7 A 10:05

JUSTICE COURT
LAS VEGAS, NEVADA
BY [Signature]
DEPUTY

JUSTICE COURT
LAS VEGAS TOWNSHIP

9 PETER SOUTHWORTH,

Case No. 15A002996

Dept No. LVJC VII

Plaintiff,

vs.

11 LAS VEGAS PAVING CORPORATION,

15A002996

CVNOAS

Notice of Appeal

7841112



Defendant.

NOTICE OF APPEAL

Notice is hereby given that Defendant LAS VEGAS PAVING CORPORATION appeals to the District Court from the following judgments and orders:

1. Small Claims Judgment entered on March 22, 2016 (attached as Exhibit 1)

Defendant also appeals from all other rulings and orders made final and appealable by the foregoing.

The basis for the appeal is the fact that Nevada does not recognize diminished value or loss of use value. The Court's rulings was based on a misreading of Dugan v. Gotsopoulos, 117 Nev. 285, 22 P.3d 203 (2001). Dugan does not address diminished value and only provides for loss of use in the event that a

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Plaintiff cannot afford a rental car. Plaintiff was offered but
2 declined a rental car and the vehicle was restored to pre-
3 accident condition thus eliminating both loss of use and
4 diminished value claims.

5
6 In addition to the above, there were also several procedural
7 missteps. Plaintiff repeatedly referenced a "brief" that had been
8 filed and apparently reviewed by the Court that had not been
9 served upon Defendant. Defendant was prejudiced as it was not
10 permitted to review or respond to this filing.

11 With respect to the evidence presented at trial, Defendant
12 was not afforded an opportunity to review the copious exhibits
13 prior to the court appearance. Plaintiff appeared at the trial
14 with three binders of documents supporting his claim that had not
15 been provided to Defendant. Defendant objected to the admission
16 of these documents but was informed that the Court had the
17 prerogative to review any documents. Defendant should have been
18 provided an opportunity to review these documents prior to the
19 hearing.
20

21 DATED this 6th day of April, 2017.

22 EMERSON LAW GROUP

23 /s/ Phillip R. Emerson

24
25 PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
1055 Whitney Ranch Drive, Suite 120
Henderson, Nevada 89014
Attorney for Defendant,

26 CERTIFIED COPY

27 The document to which this certificate is attached
is a full, true and correct copy of the original
on file and of record in Justice Court of Las
28 Vegas Township, in and for the County of Clark,
State of Nevada.

By [Signature] Deputy

Date 4.19.17

CERTIFICATE OF SERVICE

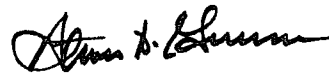
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
certify that service of the foregoing, **NOTICE OF APPEAL**, was made
this 6th day of April, 2017 via mailing addressed as follows:

Peter Southworth
406 South Desert Candles Street
Ridgecrest, California 93555
Plaintiff

/s/ Veronica Pacheco
An Employee of EMERSON LAW GROUP

EMERSON LAW GROUP

ATTORNEYS AT LAW
1035 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447



CLERK OF THE COURT

MDSM
PETER M. SOUTHWORTH
406 S Desert Candles St
Ridgecrest, CA 93555
(760) 608-3986
No fax number
peter.m.southworth@gmail.com
Respondent, In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS PAVING CORPORATION,)	Case No. A-17-754175-A
)	Dept. No. XXXII
Appellant,)	
)	
vs.)	
)	
PETER M. SOUTHWORTH,)	
)	
Respondent.)	

RESPONDENT'S MOTION TO DISMISS APPEAL

Date of Hearing:

Time of Hearing:

COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper person, and submits this Motion to Dismiss Appeal and respectfully requests that this Honorable Court enter an Order dismissing Appellant's Appeal for lack of jurisdiction.

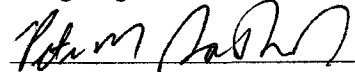
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///

1 This Motion to Dismiss Appeal is based upon the following Memorandum of Points and
2 Authorities, the pleadings and papers on file in this case, and the argument allowed by the Court
3 at the time of hearing.

4 DATED this 24th day of APRIL, 2017.

5 Pursuant to NRS 53.045, I declare under penalty of
6 perjury under the law of the State of Nevada that the
foregoing is true and correct.

7 

8 PETER M. SOUTHWORTH

406 S Desert Candles St

Ridgecrest, CA 93555

(760) 608-3986

No fax number

peter.m.southworth@gmail.com

Respondent, In Proper Person

1 NOTICE OF MOTION

2 TO: LAS VEGAS PAVING CORPORATION, Appellant

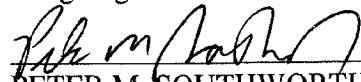
3 PHILLIP R. EMERSON, ESQ., Attorney for Appellant

4 YOU AND EACH OF YOU take notice that on the 31 day of MAY
5 20 17, at the hour of 10:00 o'clock A.m., of said day, the above RESPONDENT'S MOTION

6 TO DISMISS APPEAL will be heard in Department XXXII of the above-entitled Court.

7 DATED this 24th day of APRIL, 2017.

8 Pursuant to NRS 53.045, I declare under penalty of
9 perjury under the law of the State of Nevada that the
foregoing is true and correct.

10 
11 PETER M. SOUTHWORTH
406 S Desert Candles St
12 Ridgecrest, CA 93555
(760) 608-3986
13 No fax number
peter.m.southworth@gmail.com
14 Respondent, In Proper Person
15
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25

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Appellant purports to appeal from the adverse Small Claims Judgment entered March 22,
4 2017, in Las Vegas Justice Court (LVJC) in a small claims action. Appellant's Notice of Appeal
5 was untimely filed under Justice Court Rules of Civil Procedure (JCRCP) 98. As such, the Court
6 lacks jurisdiction to hear the matter and Respondent moves to dismiss the Appeal.

7 **II. STATEMENT OF FACTS**

8 **A. Relevant Facts and Procedural History**

9 Only those facts necessary to facilitate a preliminary determination are presented here.
10 Respondent filed a small claims complaint in LVJC (Case No. 15A002996) on August 17, 2015.
11 Numerous actions transpired before trial but the matter was heard on the merits March 17, 2017.
12 The case was taken under advisement and the Small Claims Judgment in favor of Respondent was
13 entered on March 22, 2017. The LVJC Clerk served the Small Claims Judgment by mail to both
14 parties on March 24, 2017. Appellant filed a Notice of Appeal on April 7, 2017 and served same
15 by mail to Respondent thereafter.

16 **III. ARGUMENT**

17 **A. Appellant's Notice of Appeal Was Untimely Filed**

18 Small claims appeals from Justice Court to District Court are governed by JCRCP 98
19 through JCRCP 100. The requirement to initiate a small claims appeal from Justice Court to
20 District Court is timely filing a Notice of Appeal pursuant to JCRCP 98. JCRCP 98 states:

21 A plaintiff or defendant may appeal from the judgment against him or her to the district
22 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that
23 the filing of a notice of appeal must be done within 5 days from the entry of the judgment,
24 rather than the 20-day period provided for in Rule 72B. No formal Notice of Entry of
25 Judgment is required. The form of appeal and appeal bond shall be pursuant to Rules 99
and 100. [As amended; effective July 1, 2005.]

1 The procedure to calculate such a deadline is given in *Winston Products Co. v. DeBoer*,
2 122 Nev. 517, 134 P.3d 726 (2006). Pursuant to JCRCP 6(a), the 5 days to file a Notice of Appeal
3 under JCRCP 98 are to be judicial days. As the Small Claims Judgment was mailed, an additional
4 3 calendar days are appended to the prescribed period pursuant to JCRCP 6(e). The LVJC Clerk
5 served the Small Claims Judgment by mail to both parties on Friday, March 24, 2017 and this day
6 must be excluded from any deadline calculation. Therefore, the period for filing a Notice of Appeal
7 from this Small Claims Judgment was Monday, March 27, 2017 through Monday, April 3, 2017.
8 Even construing all 8 days of the filing period as judicial, the deadline would extend only through
9 Wednesday, April 5, 2017. Appellant filed the Notice of Appeal on Friday, April 7, 2017, making
10 the filing untimely and infecting it with an incurable jurisdictional defect.

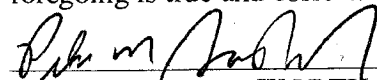
11 Under JCRCP 6(b), Appellant could have petitioned for an extension of the filing deadline,
12 but did not, and no extension was granted. Appellant, represented by experienced counsel, has
13 failed to meet the mandatory deadline for appealing a small claims judgment thus depriving the
14 Court of jurisdiction to hear the matter. Appellant is culpable for its actions.

15 IV. CONCLUSION

16 For the above reason, Respondent respectfully requests that this Honorable Court enter an
17 Order dismissing Appellant's untimely small claims Appeal for lack of jurisdiction.

18 DATED this 24th day of APRIL, 2017.

19 Pursuant to NRS 53.045, I declare under penalty of
20 perjury under the law of the State of Nevada that the
foregoing is true and correct.

21 
PETER M. SOUTHWORTH

22 406 S Desert Candles St
23 Ridgecrest, CA 93555
(760) 608-3986

24 No fax number
peter.m.southworth@gmail.com
25 Respondent, In Proper Person

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 24th day of APRIL,
3 2017, I placed a true and correct copy of the above **RESPONDENT'S MOTION TO DISMISS**
4 **APPEAL**, in the United States Mail, with first-class postage prepaid, addressed to the following:

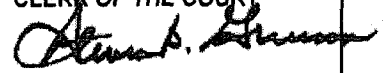
5 PHILLIP R. EMERSON, ESQ.
6 Nevada Bar No. 5940
7 1055 Whitney Ranch Drive, Suite 120
8 Henderson, NV 89014
9 Attorney for Appellant,
10 LAS VEGAS PAVING CORPORATION

11 DATED this 24th day of APRIL, 2017.

12 Pursuant to NRS 53.045, I declare under penalty of
13 perjury under the law of the State of Nevada that the
14 foregoing is true and correct.

15 

16 PETER M. SOUTHWORTH
17 406 S Desert Candles St
18 Ridgecrest, CA 93555
19 (760) 608-3986
20 No fax number
21 peter.m.southworth@gmail.com
22 Respondent, In Proper Person
23
24
25



1 PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
2 EMERSON LAW GROUP
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
receptionist@emersonlawgroup.com
4 Attorney for Defendant,
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 PETER SOUTHWORTH,) Case No. A-17-754175-A
9 Plaintiff,) Dept No. XXXII
10 vs.)
11 LAS VEGAS PAVING CORPORATION,)
12 Defendant.)
13

14
15 APPELLANT/DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION TO DISMISS APPEAL

16 Appellant/Defendant, LAS VEGAS PAVING CORPORATION, by and
17 through its Attorney of Record, Phillip R. Emerson, Esq., of the
18 EMERSON LAW GROUP, hereby submits the following Opposition to
19 Respondent/Plaintiff's Motion to Dismiss Appeal.
20

21 / / /

22 / / /

23 / / /

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL/PROCEDURAL BACKGROUND

This is an action arising from an incident which occurred on August 19, 2012. Respondent/Plaintiff ("Respondent") filed his Small Claims Complaint on August 17, 2015. On December 2, 2016 The Referee's Findings of Fact, Conclusions of Law, and Recommendations were entered. On December 7, 2016 Respondent filed a Formal Objection Notice. On March 17, 2017 The Formal Objection Hearing was heard before Justice Court. Judgment entered on March 22, 2017 and on April 7, 2017 Appellant/Defendant ("Appellant") timely appealed. (See Appellant's Notice of Appeal, attached hereto as "Exhibit A"). Appellant has subsequently submitted a Notice of Posting and Acceptance of Supersedeas Bond, presently pending before Justice Court.

In addition, despite the timing of Appellant's Opposition, Appellant prays this Honorable Court hear the present Motion and Opposition on their merits. On May 1, 2017, Anne Marie Birk, Esq. tendered her resignation to Defense Counsel, Emerson Law Group. Subsequently on May 5, 2017 Defense Counsel's paralegal, Krystina Butenschoen resigned from the Emerson Law Group. Ms. Birk was the assigned attorney and Ms. Butenschoen was the assigned paralegal to the present matter. Due to their resignation and transition out of the Emerson Law Group, Defense

1 Counsel was not made immediately aware of Respondent's Motion,
2 and as such, Appellant's Opposition is tardy. (See Defense
3 Counsel's Affidavit, attached hereto as "Exhibit B"). However,
4 as this Court may know, the transitioning of an attorney and
5 paralegal from a law firm can cause challenges with respect to
6 reassignment of cases, files and tasks. Here, a clerical error
7 was brought on by the resignation of the two principle employees
8 appointed to the subject matter. Accordingly, Appellant prays
9 Your Honor hear the Motion and Opposition on its merits, which
10 warrant a denial of Respondent's Motion.
11

II.

LEGAL ARGUMENT

14
15 A. In this Matter, JRCRP 72B is Applicable, Because This Case
16 Was Appealed to District Court from a Justice Court Trial,
17 and as such, Appellant's Appeal was Timely Filed.

18 Respondent's sole argument is that Appellant filed an
19 untimely Notice of Appeal. Under JRCRP 72(a):

20 (a) Filing the Notice of Appeal. An appeal
21 permitted by law from a justice court to the
22 district court shall be taken by filing a
23 notice of appeal with the clerk or justice of
24 the justice court within the time allowed by
25 Rule 72B. Failure of an appellant to take any
26 step other than the timely filing of a notice
27 of appeal does not affect the validity of the
28 appeal, but is ground only for such action as
the district court deems appropriate which
may include dismissal of the appeal.
(Emphasis added).

1 In addition, under JRCRP 72B(a):

2 (a) **Appeals in Civil Cases.** In a civil case
3 in which an appeal is permitted by law from a
4 justice court to the district court the
5 notice of appeal required by Rule 72(a) shall
6 be filed with the clerk or justice of the
7 justice court within 20 days of the date of
8 service of written notice of the entry of the
9 judgment or order appealed from, except as
10 otherwise provided by law. It shall also be
11 served within the prescribed time. If an
12 applicable statute provides that a notice of
13 appeal must be filed within a different time
14 period, the notice of appeal required by
15 these rules must be filed within the time
16 period established by the statute. If a
17 timely notice of appeal is filed by a party,
18 any other party may file and serve a notice
19 of appeal within 14 days of the date on which
20 the first notice of appeal was served, or
21 within the time otherwise prescribed by this
22 subdivision, whichever period last expires.
(Emphasis added).

23 In this case, a Small Claims hearing was held on November
24 29, 2016. Thereafter, a Referee's Findings of Fact, Conclusions
25 of Law and Recommendations were entered on December 5, 2016.
26 Respondent subsequently filed a timely appeal, in the form of a
27 Formal Objection Notice, pursuant to JRCRP 98, which requires a
28 notice of appeal within 5 days from the entry of the judgment.
However, in this case, JRCRP 72B is applicable.

Following Respondent's appeal, the case was heard before
Justice Court Department IV and an informal Justice Court trial
went forward on March 17, 2017. Thereafter the Judgment was
served on March 24, 2017. Appellants appeal arose from the
Justice Court trial. As such, Appellant's appeal is from Justice

1 Court to District Court, not Small Claims to Justice Court.
2 Thus, the 20 day rule, pursuant to JRCRP 72B applies. Here,
3 Appellant's Notice of Appeal was filed on April 7, 2017, well
4 within 20 days of the date of service of entry of the judgment.

5 Accordingly, Appellant's appeal was timely and Respondent's
6 Motion to Dismiss Appeal should be denied.
7

8 **B. Appellant's Pray This Honorable Court Will Hear the Present**
9 **Motion and Opposition on its Merits, Pursuant to NRCP**
10 **60(b)(1) and Given the Recent Resignation of the Attorney**
11 **and Paralegal Assigned to Handle the Present Matter.**

12 NRCP 60(b)(1) provides, in pertinent part:

13 "On motion and upon such terms as are just,
14 the court may relieve a party or his legal
15 representative from a final judgment, order,
16 or proceeding of the following reasons: (1)
17 mistake, inadvertence surprise, or excusable
18 neglect."

19 The presence of the following factors indicates that the
20 requirements of this rule have been satisfied: (1) a prompt
21 application to remove the judgment; (2) an absence of an intent
22 to delay the proceedings; (3) a lack of knowledge of the
23 procedural requirements on the part of the moving party; and (4)
24 good faith. *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215,
25 1216 (1982). A showing of a meritorious defense to the action is
26 also required. *Deros v. Stern*, 87 Nev. 148, 152, 483 P.2d 648,
27 650 (1971). The district court must consider the state's
28 underlying basic policy of deciding a case on the merits whenever
possible. *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790, 793 (1992).
As a proper guide to the exercise of discretion, the basic

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 underlying policy to have each case decided upon its merits. In
2 the normal course of events, justice is best served by such a
3 policy. *Hotel Last Frontier Corp. v. Frontier Properties*, 79
4 Nev. 150, 156, 380 P.2d 293, 295 (1963).

5 In this case, Appellant's tardy Opposition is the result of
6 mistake and excusable neglect. Ms. Birk, the assigned attorney,
7 and Ms. Butenschoen, the assigned paralegal, resigned from
8 Defense Counsel Office on May 1, 2017 and May 5, 2017,
9 respectively. Unfortunately, their resignation dates fall
10 precisely within the timeline for Appellant's opposition.
11 Moreover, the former employees had previously handled the
12 reception of incoming mail and Motion, along with the drafting
13 and preparing of the responsive pleadings in this case. As a
14 result, a mistake and clerical error occurred in the assignment
15 of Respondent's Motion and Appellant's Opposition.
16

17 Here, Appellant's response is prompt. Although this
18 Opposition was filed after the Opposition deadline, same is filed
19 twelve days prior to the date of the hearing. No Order has been
20 issued granting Respondent's Motion; thus Appellant's response is
21 well before any Order on the present Motion. Moreover, Appellant
22 is willing to stipulate to a continuance of the hearing on
23 Respondent's Motion in order to afford Respondent time to submit
24 a Reply. Accordingly, Appellant's response is prompt, as the
25 Opposition is served twelve days prior to the hearing date and
26 within one week of the original Opposition deadline.
27
28

EMERSON LAW GROUP

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1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

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1 The Second factor is met. There is no intent to delay the
2 proceedings. As noted above, this Opposition is being served
3 well before the date of the hearing on the present Motion.
4 Further, the delay in the Opposition is due to the reassignment
5 of cases, files and assignments following the resignations of the
6 attorney and paralegal originally assigned to this matter.
7 Appellant is willing to go forward with the original hearing
8 date; however, Appellant is also willing to stipulate to a
9 continuance in order to afford Respondent ample time to submit a
10 Reply.
11

12 Here, there was a lack of knowledge of the filing of
13 Respondent's Motion due to the fact that when the Motion was
14 filed Defense Counsel's office was in the midst of transitioning
15 from two resigning employees; specifically, the two assigned to
16 the present case. Thus, Appellant and his Defense Counsel were
17 not aware of the status of Respondent's Motion until after the
18 opposition deadline.
19

20 This request pursuant to NRCP 60 (b)(1) is not made for the
21 purposes of delay and is genuinely the result of a clerical error
22 arising out of the resignation of Ms. Birk and Ms. Butenschoen.
23 (See Defense Counsel's Affidavit, attached hereto as "Exhibit
24 B"). Moreover, Appellant does not seek to unnecessarily delay
25 the hearing on this Motion and as token of good faith is amenable
26 to proceeding with the hearing as presently scheduled or to a
27
28

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 continuance to afford Respondent sufficient time to submit a
2 Reply. As such, Appellant's Opposition is made in good faith.

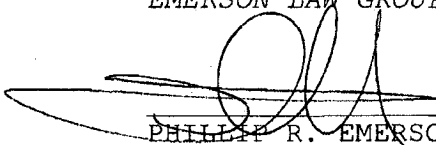
3 In addition, the *Deros* case requires a showing of a
4 meritorious defense. As argued above, Appellant's Appeal from
5 Justice Court to District Court was timely filed, as JRCRP 72B
6 applies rather than JRCRP 98. Here, the appeal is from a
7 judgment in Justice Court not Small Claims. Accordingly,
8 Appellant's Opposition is meritorious. Finally, rejecting
9 Appellant's appeal would prevent the District Court from deciding
10 this case on its merits, as is the States underlying policy under
11 *Kahn*. Pursuant to *Hotel Last Frontier Corp.*, it is this State's
12 policy that justice is best served by hearing cases on the
13 merits. *v. Frontier Properties*, 79 Nev. 150, 156, 380 P.2d 293,
14 295 (1963).
15
16

17 **III.**
18 **CONCLUSION**

19 Based on the foregoing, Appellant respectfully requests this
20 Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to
21 Dismiss Appeal.

22 DATED this 19th day of May, 2017.

23 EMERSON LAW GROUP

24
25 
26 PHILLIP R. EMERSON, ESQ.

27 Nevada Bar No. 5940

28 1055 Whitney Ranch Drive, Suite 120

Henderson, Nevada 89014

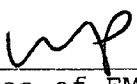
Attorney for Defendant,

LAS VEGAS PAVING CORPORATION

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
4 certify that service of the foregoing, **APPELLANT/DEFENDANT'S**
5 **OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL**, was made this
6 18th day of August, 2017 via mailing addressed as follows:
7

8 Peter Southworth, Esq.
9 406 South Desert Candles Street
10 Ridgecrest, California 93555
11 Plaintiff

12 
13 _____
14 An Employee of EMERSON LAW GROUP
15
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EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

EXHIBIT "A"

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 **PHILLIP R. EMERSON, ESQ.**
Nevada Bar No. 5940
2 **EMERSON LAW GROUP**
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
receptionist@emersonlawgroup.com
4 Attorney for Defendant,
5 **LAS VEGAS PAVING CORPORATION**

6 **JUSTICE COURT**
LAS VEGAS TOWNSHIP

7
8 PETER SOUTHWORTH,) Case No. 15A002996
9 Plaintiff,) Dept No. LVJC VII
10 vs.)
11 LAS VEGAS PAVING CORPORATION,)
12 Defendant.)
13

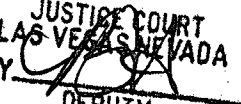
14 **NOTICE OF APPEAL**

15 Notice is hereby given that Defendant LAS VEGAS PAVING
16 CORPORATION appeals to the District Court from the following
17 judgments and orders:

18 1. Small Claims Judgment entered on March 22, 2016
19 (attached as Exhibit 1)

20 Defendant also appeals from all other rulings and orders
21 made final and appealable by the foregoing.

22 The basis for the appeal is the fact that Nevada does not
23 recognize diminished value or loss of use value. The Court's
24 rulings was based on a misreading of Dugan v. Gotsopoulos, 117
25 Nev. 285, 22 P.3d 203 (2001). Dugan does not address diminished
26 value and only provides for loss of use in the event that a
27
28

FILED
2017 APR -7 A 10:05
JUSTICE COURT
LAS VEGAS, NEVADA
BY  DEPUTY

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Plaintiff cannot afford a rental car. Plaintiff was offered but
2 declined a rental car and the vehicle was restored to pre-
3 accident condition thus eliminating both loss of use and
4 diminished value claims.

5 In addition to the above, there were also several procedural
6 missteps. Plaintiff repeatedly referenced a "brief" that had been
7 filed and apparently reviewed by the Court that had not been
8 served upon Defendant. Defendant was prejudiced as it was not
9 permitted to review or respond to this filing.

11 With respect to the evidence presented at trial, Defendant
12 was not afforded an opportunity to review the copious exhibits
13 prior to the court appearance. Plaintiff appeared at the trial
14 with three binders of documents supporting his claim that had not
15 been provided to Defendant. Defendant objected to the admission
16 of these documents but was informed that the Court had the
17 prerogative to review any documents. Defendant should have been
18 provided an opportunity to review these documents prior to the
19 hearing.
20

21 DATED this 6th day of April, 2017.

22 EMERSON LAW GROUP

23 /s/ Phillip R. Emerson

24 PHILLIP R. EMERSON, ESQ.

25 Nevada Bar No. 5940

26 1055 Whitney Ranch Drive, Suite 120

27 Henderson, Nevada 89014

28 Attorney for Defendant,

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
certify that service of the foregoing, **NOTICE OF APPEAL**, was made
this 6th day of April, 2017 via mailing addressed as follows:

Peter Southworth
406 South Desert Candles Street
Ridgecrest, California 93555
Plaintiff

/s/ Veronica Pacheco
An Employee of EMERSON LAW GROUP

EXHIBIT "B"

1 PHILLIP R. EMERSON, ESQ.

Nevada Bar No. 5940

2 EMERSON LAW GROUP

1055 Whitney Ranch Drive, Suite 120

3 Henderson, Nevada 89014

4 receptionist@emersonlawgroup.com

Attorney for Respondent,

5 LAS VEGAS PAVING CORPORATION

6
7 AFFIDAVIT OF PHILLIP R. EMERSON, ESQ. IN SUPPORT OF OPPOSITION TO
8 RESPONDENT'S MOTION TO DISMISS APPEAL

9 STATE OF NEVADA)

) ss:

10 COUNTY OF CLARK)

11 I, PHILLIP R. EMERSON, ESQ., do hereby state and declare as
12 follows:

13 1. I am an attorney licensed to practice law in the state
14 of Nevada, and the managing partner of the law firm Emerson Law
15 Group, attorney of record in this matter for the Defendants;

16 2. Affiant previously employed Anne Marie Birk, Esq., as
17 an associate attorney at Emerson Law Group. Ms. Birk tendered
18 her resignation to Affiant and Emerson Law Group on May 1, 2017.
19 Prior to her resignation, Ms. Birk was the attorney assigned to
20 the present case.

21 3. Affiant previously employed Krystina Butenschoen, as a
22 paralegal at Emerson Law Group. Ms. Butenschoen tendered her
23 resignation to Affiant and Emerson Law Group on May 5, 2017.
24 Prior to her resignation, Ms. Butenschoen was the attorney
25 assigned to the present case.

26 / / /
27
28

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 4. Due to the resignation of the attorney and paralegal
2 assigned to the subject case, a clerical error occurred, whereby
3 Affiant was not made aware of Respondent's Motion to Dismiss
4 Appeal and the Opposition was prepared after the Opposition
5 deadline.

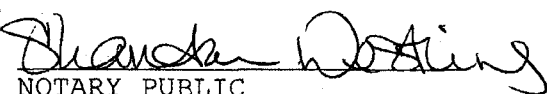
6
7 5. This Opposition is made in good faith and not merely
8 for purposes of delay, but that justice may be done and this
9 matter may be heard on its merits.

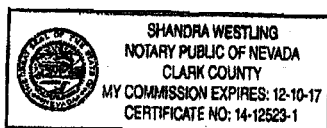
10 Further Affiant sayeth naught.

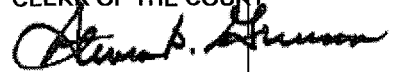
11 Dated this 8th day of May, 2017.

12
13
14 
15 PHILLIP R. EMERSON, ESQ.

16 SUBSCRIBED AND SWORN to before
17 me this 18th day of May, 2017.

18 
19 NOTARY PUBLIC





ROPP
PETER M. SOUTHWORTH
406 S Desert Candles St
Ridgecrest, CA 93555
(760) 608-3986
No fax number
peter.m.southworth@gmail.com
Respondent, In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS PAVING CORPORATION,)	Case No. A-17-754175-A
)	Dept. No. XXXII
Appellant,)	
)	
vs.)	
)	
PETER M. SOUTHWORTH,)	
)	
Respondent.)	

RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS APPEAL

Date of Hearing: June 1, 2017

Time of Hearing: 9:30 a.m.

COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper person, and submits this Reply to Appellant's Opposition to Respondent's Motion to Dismiss Appeal.

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Appellant purports to appeal from the adverse Small Claims Judgment entered March 22,
4 2017, in Las Vegas Justice Court ("LVJC") in a small claims action. Respondent filed the Motion
5 to Dismiss Appeal as a result of Appellant's untimely filed Notice of Appeal. In its additionally
6 untimely Opposition to Respondent's Motion to Dismiss Appeal ("Opposition"), Appellant
7 contends that the Notice of Appeal was timely because the deadline to file the Notice of Appeal
8 was governed by Justice Court Rules of Civil Procedure ("JCRCP") 72B(a) instead of the more
9 restrictive JCRCP 98 specifically addressing small claims appeals. Appellant's argument is
10 baseless and must not prevail. Respondent reiterates that the Notice of Appeal was untimely and,
11 as such, the Court lacks jurisdiction to hear the matter and must grant Respondent's Motion to
12 Dismiss Appeal.

13 **II. STATEMENT OF FACTS**

14 **A. Relevant Facts and Procedural History**

15 Only those facts necessary to facilitate a preliminary determination are presented here.
16 Plaintiff/Respondent filed a small claims complaint in LVJC (Case No. 15A002996) on August
17 17, 2015. A hearing on the merits was conducted November 29, 2016. The case was taken under
18 advisement and the Referee's Findings of Fact, Conclusions of Law and Recommendations
19 ("Referee's Findings") was entered December 2, 2016, and is attached as Exhibit 1. The LVJC
20 served the Referee's Findings by mail to both parties on December 5, 2016. Plaintiff/Respondent
21 filed a Formal Objection Notice on December 7, 2016. The matter was then heard on the merits
22 March 17, 2017, as a trial de novo. The case was taken under advisement and the Small Claims
23 Judgment in favor of Respondent was entered on March 22, 2017. The LVJC Clerk served the
24 Small Claims Judgment by mail to both parties on March 24, 2017. Appellant subsequently filed
25

1 a Notice of Appeal on April 7, 2017, and the Appeal was filed in District Court on April 19, 2017.
2 Respondent then filed a Motion to Dismiss Appeal on April 24, 2017. After the expiration of the
3 deadline to file a response to the Motion to Dismiss, Respondent filed a Notice of Appellant's
4 Non-Opposition to Respondent's Motion to Dismiss on May 12, 2017. Appellant filed an
5 Opposition to Respondent's Motion to Dismiss on May 19, 2017 and served same by mail to
6 Respondent thereafter.

7 **III. ARGUMENT**

8 **A. Appellant's Notice of Appeal Was Untimely Filed**

9 In its Opposition, Appellant contends that the Notice of Appeal was timely because the
10 Formal Objection Hearing transpired in Justice Court and the deadline to file the Notice of Appeal
11 was thus governed by JCRCP 72B(a). Appellant contends that the Formal Objection Notice filed
12 by Plaintiff/Respondent constitutes an appeal, is governed by JCRCP 98, and that jurisdiction is
13 transferred from small claims court to Justice Court as a result. Appellant is incorrect on all
14 assertions.

15 Under JCRCP 72A(b)(1), "[a]n appeal may be taken: [f]rom a final judgment in an action
16 or proceeding commenced in the court in which the judgment is rendered." Here, the Formal
17 Objection Notice cannot be construed as an appeal because the Referee's Findings is not a Final
18 Order. As shown in Exhibit 1, the Referee's Findings plainly states: "PLEASE NOTE THAT THIS
19 REFEREE'S DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN
20 ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED."
21 Plaintiff/Respondent's timely Formal Objection Notice thus precluded the Referee's Findings
22 from becoming a Final Order.

23 The Formal Objection process is governed by NRS 4.355(4), not JCRCP 98 as Appellant
24 contends. NRS 4.355(4) states:

1 The findings of fact, conclusions of law and recommendations of the referee must be
2 furnished to each party or his or her attorney at the conclusion of the proceeding or as soon
3 thereafter as possible. Within 5 days after receipt of the findings of fact, conclusions of law
4 and recommendations, a party may file a written objection. If no objection is filed, the court
5 shall accept the findings, unless clearly erroneous, and the judgment may be entered
thereon. If an objection is filed within the 5-day period, the justice of the peace shall review
the matter by trial de novo, except that if all of the parties so stipulate, the review must be
confined to the record.

6 Here, as there was no stipulation, the Formal Objection Notice can be thought of as a Motion for
7 New Trial, as opposed to an appeal, and therefore does not change the venue. Appellant contends
8 that the Formal Objection process transfers jurisdiction from small claims court to Justice Court.
9 There is no mention in NRS 4.355(4) of a transfer of jurisdiction because small claims court is
10 Justice Court. This is codified in NRS 4.370. In part, NRS 4.370 states:

11 1. Except as otherwise provided in subsection 2, justice courts have jurisdiction of the
12 following civil actions and proceedings and no others except as otherwise provided by
specific statute: ...

13 (c) In small claims actions under the provisions of chapter 73 of NRS. . . .
14 [Effective January 1, 2017]

15 The distinction between proceedings in Justice Court versus small claims court is merely in the
16 purpose. According to JCRCP 96, the sole purpose of small claims court is to dispense “fair and
17 speedy justice between the parties.” This is manifested by a relaxation of formality and rigor.

18 The mechanism to formally appeal a small claims judgment is governed by JCRCP 98.
19 JCRCP 98 states:

20 A plaintiff or defendant may appeal from the judgment against him or her to the district
21 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that
22 the filing of a notice of appeal must be done within 5 days from the entry of the judgment,
rather than the 20-day period provided for in Rule 72B. No formal Notice of Entry of
Judgment is required. The form of appeal and appeal bond shall be pursuant to Rules 99
23 and 100. [As amended; effective July 1, 2005.]
24
25

1 A Formal Objection Notice can therefore never be filed pursuant to JCRCP 98 as that would
2 precipitate transfer of jurisdiction from Justice Court to District Court.

3 As the Formal Objection Hearing did not take place in District Court, was a trial de novo
4 not presided over by a Justice of the Peace, and there is no vehicle to “move” a case from small
5 claims court to Justice Court, the Formal Objection Hearing can only have been a small claims
6 court action. This is further reflected in the Case Summary, attached as Exhibit 2, where the Formal
7 Objection Hearing conducted March 17, 2017, is entitled “Small Claims Individual.” As can also
8 be seen in Exhibit 2, the case type is “Small Claims – General Individual Plaintiff,” the Hearing
9 Master is “Referee, Small Claims,” the LVJC Clerk’s certificate of mailing is called “Small Claims
10 Certificate of Mailing – Clerk,” and indeed even the judgment Appellant purports to appeal from
11 is entitled “Small Claims Judgment.” It is curious how it could be construed that the proceedings
12 took place anywhere other than small claims court. Here then, the requirement to initiate a small
13 claims appeal from Justice Court to District Court is timely filing a Notice of Appeal pursuant to
14 JCRCP 98 not JCRCP 72B(a).

15 The procedure to calculate the deadline under JCRCP 98 is given in *Winston Products Co.*
16 *v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006). Pursuant to JCRCP 6(a), the 5 days to file a Notice
17 of Appeal under JCRCP 98 are to be judicial days. As the Small Claims Judgment was mailed, an
18 additional 3 calendar days are appended to the prescribed period pursuant to JCRCP 6(e). The
19 LVJC Clerk served the Small Claims Judgment by mail to both parties on Friday, March 24, 2017
20 and this day must be excluded from any deadline calculation. Therefore, the period for filing a
21 Notice of Appeal from this Small Claims Judgment was Monday, March 27, 2017, through
22 Monday, April 3, 2017. Even construing all 8 days of the filing period as judicial, the deadline
23 would extend only through Wednesday, April 5, 2017. Appellant filed the Notice of Appeal on
24
25

1 Friday, April 7, 2017, making the filing untimely and infecting it with an incurable jurisdictional
2 defect. Despite Appellant's prayer, an Appellate Court can bestow no relief for an untimely Notice
3 of Appeal; in *Walker v. Scully*, 99 Nev. 45, 657 P.2d 94 (1983), the Supreme Court of Nevada
4 writes "[a]ccordingly, the notice of appeal was untimely. We are therefore without jurisdiction to
5 entertain the appeal."

6 Appellant, represented by experienced counsel, has failed to meet the mandatory deadline
7 for appealing a small claims judgment thus depriving the Court of jurisdiction to hear the matter.
8 Appellant is culpable for its actions.

9 IV. CONCLUSION

10 For the above reason, Respondent respectfully requests that this Honorable Court grant the
11 Motion to Dismiss Appeal.

12 DATED this 24th day of MAY, 2017.

13 Pursuant to NRS 53.045, I declare under penalty of
14 perjury under the law of the State of Nevada that the
foregoing is true and correct.

15 

16 PETER M. SOUTHWORTH

17 406 S Desert Candles St

18 Ridgecrest, CA 93555

19 (760) 608-3986

20 No fax number

21 peter.m.southworth@gmail.com

22 Respondent, In Proper Person

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 24th day of MAY, 2017,


3 I placed a true and correct copy of the above **RESPONDENT'S REPLY TO APPELLANT'S**
4 **OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL**, in the United States

5 Mail, with first-class postage prepaid, addressed to the following:

6 PHILLIP R. EMERSON, ESQ.
7 Nevada Bar No. 5940
8 1055 Whitney Ranch Drive, Suite 120
9 Henderson, NV 89014
10 Attorney for Appellant,
11 LAS VEGAS PAVING CORPORATION

12 DATED this 24th day of MAY, 2017.

13 Pursuant to NRS 53.045, I declare under penalty of
14 perjury under the law of the State of Nevada that the
15 foregoing is true and correct.

16 
17 PETER M. SOUTHWORTH

18 406 S Desert Candles St
19 Ridgecrest, CA 93555
20 (760) 608-3986
21 No fax number
22 peter.m.southworth@gmail.com
23 Respondent, In Proper Person
24
25

EXHIBIT 1

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

15A002996

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation,
Defendant(s)

REFeree's FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS

After hearing the above matter, this referee submits the following:

FINDINGS OF FACT:

for Defense stipulated that they were liable for traffic incident. Plaintiff provides ample evidence of damages for rental, food, lost wages, gas, hotel, & reports.

CONCLUSIONS OF LAW:

Case law does not allow for recovery of diminished value + potential rental car repairs for a person making significant income. Defense did not move by showing Plaintiff's hourly wage that he could afford a car rental, so the Court will mitigate some of the rental, but not all.

REFeree's RECOMMENDATIONS:

- ☒ Plaintiff should be awarded 2,572 in damages and — in costs.
☐ Plaintiff should be awarded nothing against Defendant.
☐ Confession ☐ Default ☐ Dismissed With Prejudice ☐ Dismissed Without Prejudice
☐ Plaintiff should be awarded — in damages and — in costs on Defendant's Counterclaim (if applicable)
☐ Defendant should be awarded — in damages and — in costs on Defendant's Counterclaim (if applicable)
☐ Defendant should be awarded nothing on Defendant's Counterclaim (if applicable).
☐ Other: —

DATED: 12/5/16

Referee: [Signature]

This form was ☐ HANDED TO ☒ MAILED TO ☒ THE PARTIES ☐ THE FRONT COUNTER on 12/5/16 by [Signature]

NOTICE

If either Plaintiff or Defendant has failed to appear for the scheduled court date, the party that failed to appear may not file a formal objection. Instead, relief must be sought from the referee who presided on that date.

If both the Plaintiff and Defendant have appeared for hearing before the referee, either party may object to the referee's findings of fact, conclusions of law, and recommendations by filing a formal objection within 5 days after the receipt of this document. Because of this rule, two outcomes are possible.

- (1) A timely objection can be filed, and a justice of the peace will review the matter by a trial de novo before issuing a final judgment.

OR

- (2) If a timely objection is not filed, the Court will automatically accept these findings, and this referee's decision will become a judgment. At that time, copies of the final judgment can be obtained at the Justice Court Front Counter and the case can be appealed to District Court. However, a notice of appeal must be filed within 5 days from the entry of the judgment. (Detailed information relating to small claims appeals is contained in the small claims information packet).

PLEASE NOTE THAT THIS REFeree's DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED.

EXHIBIT 2

JC DEPARTMENT 4
CASE SUMMARY
CASE NO. 15A002996

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation, Defendant(s)

§
§
§
§

Location: **JC Department 4**
Judicial Officer: **Saragosa, Melissa**
Hearing Master: **Referee, Small Claims**
Filed on: **08/17/2015**
Case Number History:

CASE INFORMATION

Statistical Closures

03/23/2017 Bench Trial - Judgment Reached
12/02/2016 Bench Trial - Judgment Reached

Case Type: **Small Claims - General
Individual Plaintiff**

Case Status: **03/23/2017 Closed**

Case Flags: **Notice of Appeal Filed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number 15A002996
Court JC Department 4
Date Assigned 12/09/2016
Judicial Officer Saragosa, Melissa
Hearing Master Referee, Small Claims

PARTY INFORMATION

Plaintiff Southworth, Peter M

Lead Attorneys
Pro Se
760-608-3986(H)





Defendant Las Vegas Paving Corporation

BIRK, ANNE-MARIE
Retained
702-384-7000(W)

DATE

EVENTS & ORDERS OF THE COURT


INDEX

06/21/2017	Small Claims Examination of Judgment Debtor (2:30 PM) (Judicial Officer: Pro Tempore, Judge) Events: 04/04/2017 Ex Parte Motion for Examination of Judgment Debtor
04/19/2017	 Certification on Appeal Party: Defendant Las Vegas Paving Corporation <i>Certification of Appeal</i>
04/07/2017	 Notice of Appeal Assess To: Defendant Las Vegas Paving Corporation
04/04/2017	 Ex Parte Motion for Examination of Judgment Debtor Party: Plaintiff Southworth, Peter M <i>Motion for Examination of Judgment Debtor</i>
03/24/2017	 Small Claims Certificate of Mailing - Clerk Party: Attorney BIRK, ANNE-MARIE; Plaintiff Southworth, Peter M; Defendant Las Vegas Paving Corporation <i>Small Claims Judgment</i>
03/22/2017	Order for Judgment (Judicial Officer: Randazza, Marc) Debtors: Las Vegas Paving Corporation (Defendant)


JC DEPARTMENT 4
CASE SUMMARY
CASE No. 15A002996

Creditors: Peter M Southworth (Plaintiff)
Judgment: 03/22/2017, Docketed: 03/23/2017
Total Judgment: 9,835.94


03/22/2017

 Judgment
Small Claims Judgment

03/17/2017

 **Small Claims Individual** (10:00 AM) (Judicial Officer: Randazza, Marc)
Events: 12/07/2016 Formal Objection
Formal Objection Hearing - CONTINUED PER THE REQUEST OF THE DEFENDANT


MINUTES

 Formal Objection
Filed by: Plaintiff Southworth, Peter M
Formal Objection Notice
Case Taken Under Advisement
Under Advisement;
Journal Entry Details:
Matter called at 11:19 a.m. Parties sworn in. Amanda Bell, witness present on behalf of the Plaintiff. Defendant's exhibits received and marked. A- White binder of exhibits B- White binder of exhibits Matter heard. Case taken under advisement. ;
Parties Present: Attorney BIRK, ANNE-MARIE
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


03/17/2017

Case Taken Under Advisement


01/31/2017

 Order
Party: Defendant Las Vegas Paving Corporation
Order Regarding Motion to Continue Formal Objection Hearing - GRANTED


01/31/2017

 Civil Notice to Appear

01/27/2017

 Motion
Party: Defendant Las Vegas Paving Corporation
Defendant, Las Vegas Paving Corporation's Motion to Continue Formal Objection Hearing

12/12/2016

 Civil Notice to Appear


12/09/2016

Administrative Reassignment to Department 4
Case reassigned from Department 07 (Judge Karen P. Bennett-Haron)


12/09/2016

Amended Set Aside: Order for Judgment (Judicial Officer: Vander Heyden, Adam)
Debtors: Peter M Southworth (Plaintiff)
Creditors: Peter M Southworth (Plaintiff)
Judgment: 12/09/2016, Docketed: 12/02/2016
Comment: Formal Objection to be heard.


12/09/2016


 Order
Party: Plaintiff Southworth, Peter M
Order: Small claims Formal Objection Hearing



12/07/2016

 Formal Objection
Filed by: Plaintiff Southworth, Peter M
Formal Objection Notice





JC DEPARTMENT 4
CASE SUMMARY
CASE NO. 15A002996


12/05/2016  **Small Claims Certificate of Mailing - Clerk**
Party: Attorney BIRK, ANNE-MARIE; Plaintiff Southworth, Peter M; Defendant Las Vegas Paving Corporation
Referee's Findings of Fact, Conclusions of Law and Recommendations

12/02/2016  **Referee Findings of Fact Conclusions of Law and Recomm**
Referee's Findings of Fact, Conclusions of Law and Recommendations

11/29/2016  **Small Claims Individual (12:55 PM)** (Judicial Officer: Vander Heyden, Adam)
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
MINUTES
 **Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500**
Assess To: Plaintiff Southworth, Peter M
Small Claims Complaint \$7,500.00
Case Taken Under Advisement
Under Advisement;
Journal Entry Details:
Matter called at 1:28 p.m. Both parties duly sworn in. Kim lovelady present on behalf of the Defendant. Matter heard. Case taken under advisement. ;
Parties Present: Attorney Emerson, Phillip R.
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


11/29/2016 Case Taken Under Advisement

10/24/2016  **Small Claims Mediation (8:30 AM)**
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
MINUTES
 **Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500**
Assess To: Plaintiff Southworth, Peter M
Small Claims Complaint \$7,500.00
 **Small Claims Individual (11/29/2016 at 12:55 PM)** (Judicial Officer: Vander Heyden, Adam)
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
Parties Present: Attorney Emerson, Phillip R.
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation
 **Civil Notice to Appear**
No Agreement;
Journal Entry Details:
Interpreter, Brittany Walker and Tina Zhang, present. Parties unable to reach agreement. Small Claims Referee Hearing scheduled.;
Parties Present: Attorney Emerson, Phillip R.
Attorney BIRK, ANNE-MARIE
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


SCHEDULED HEARINGS
 **Small Claims Individual (11/29/2016 at 12:55 PM)** (Judicial Officer: Vander Heyden, Adam)
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
Parties Present: Attorney Emerson, Phillip R.
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


10/24/2016

JC DEPARTMENT 4
CASE SUMMARY
CASE NO. 15A002996


 Civil Notice to Appear


10/24/2016 Mediation Outcome: No Agreement


10/24/2016  Mediator's Statement


09/27/2016  **Small Claims Referee Motion** (1:00 PM) (Judicial Officer: Vander Heyden, Adam)
Events: 09/07/2016 Motion
09/20/2016 Opposition
Motion to Set Aside Default


MINUTES


 Motion
Party: Defendant Las Vegas Paving Corporation
Motion for Reconsideration of Denial of Motion to Set Aside

 Opposition
Filed By: Plaintiff Southworth, Peter M
Opposition to Motion for Reconsideration

 **Small Claims Mediation** (10/24/2016 at 8:30 AM)
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
Parties Present: Attorney Emerson, Phillip R.
Attorney BIRK, ANNE-MARIE
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


 Order
Referee's Order Regarding Motion to Set Aside Clerk's Default


 Civil Notice to Appear


 Summons & Order to Appear


Motion Granted;
Journal Entry Details:
Matter called at 1:01 p.m. All parties sworn in. Motion to Set Aside Default Judgment - Granted. Referee's Order Regarding Motion to Set Aside Clerk's Default signed/filed in open court. Copies of Order to be mailed to the parties on 09/28/16. Case set for mandatory Mediation. All parties notified in open court and by mail.;
Parties Present: Attorney BIRK, ANNE-MARIE
Plaintiff Southworth, Peter M


SCHEDULED HEARINGS

 **Small Claims Mediation** (10/24/2016 at 8:30 AM)
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500
Parties Present: Attorney Emerson, Phillip R.
Attorney BIRK, ANNE-MARIE
Plaintiff Southworth, Peter M
Defendant Las Vegas Paving Corporation


09/27/2016  Summons & Order to Appear


09/27/2016  Civil Notice to Appear


09/27/2016  Order
Referee's Order Regarding Motion to Set Aside Clerk's Default

09/20/2016  Opposition
Filed By: Plaintiff Southworth, Peter M
Opposition to Motion for Reconsideration


JC DEPARTMENT 4
CASE SUMMARY
CASE No. 15A002996


09/09/2016  Civil Notice to Appear


09/08/2016  Order
Party: Defendant Las Vegas Paving Corporation
Order Setting Hearing of Defendant's Motion to Reconsider Their Motion to Set Aside Clerk's Default

09/07/2016  **Small Claims Referee Motion (1:00 PM)** (Judicial Officer: Stoebling, David)
Events: 08/10/2016 Motion
08/22/2016 Opposition
Motion to Set Aside Default


MINUTES


 Motion
Party: Defendant Las Vegas Paving Corporation
Motion to Set Aside Default


 Opposition
Filed By: Plaintiff Southworth, Peter M
Opposition to Motion to Set Aside Default


 Order
Referees Order Regarding Motion to Set Aside Default signed/filed in open court.
DENIED.


Motion Denied;
Journal Entry Details:
Matter called at 1:33 p.m. Plaintiff parties sworn in. Defendant not present. Counsel for the Defendant arrived at 1:50 p.m. after case had been called already. Motion to Set Aside Default Judgment - Denied Referee's Order Regarding Motion to Set Aside Default signed/filed in open court. Copies of Order to be mailed to the parties on 09/08/16;
Parties Present: Plaintiff Southworth, Peter M


09/07/2016  Motion
Party: Defendant Las Vegas Paving Corporation
Motion for Reconsideration of Denial of Motion to Set Aside


09/07/2016  Order
Referees Order Regarding Motion to Set Aside Default signed/filed in open court. DENIED.

08/22/2016  Opposition
Filed By: Plaintiff Southworth, Peter M
Opposition to Motion to Set Aside Default




08/12/2016  Civil Notice to Appear

08/11/2016  Order
Order Regarding Motion to Set Aside Default

08/10/2016  Motion
Party: Defendant Las Vegas Paving Corporation
Motion to Set Aside Default

08/09/2016  **Small Claims Motion for Default Judgment**
Party: Plaintiff Southworth, Peter M
Motion and Declaration for Judgment by Default

JC DEPARTMENT 4
CASE SUMMARY
CASE NO. 15A002996

08/09/2016	 Default Party: Plaintiff Southworth, Peter M <i>Small Claims Default</i>
07/20/2016	 Affidavit of Service Party: Plaintiff Southworth, Peter M <i>Affidavit of Service</i>
08/17/2015	 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500 Assess To: Plaintiff Southworth, Peter M <i>Small Claims Complaint \$7,500.00</i>
08/17/2015	Start Time Tracking: JCRCP 93
08/17/2015	Start Time Tracking: JCRCP 4(i)
08/17/2015	Start Time Tracking: JCRCP 41(e) - 2 years

DATE		FINANCIAL INFORMATION	
	Defendant Las Vegas Paving Corporation		
	Total Charges		97.00
	Total Payments and Credits		97.00
	Balance Due as of 4/19/2017		0.00
04/07/2017	Charge	Defendant Las Vegas Paving Corporation	97.00
04/07/2017	Payment (Window) Receipt # CIV-2017-37492	Defendant Las Vegas Paving Corporation	(97.00)
	Plaintiff Southworth, Peter M		
	Total Charges		146.00
	Total Payments and Credits		146.00
	Balance Due as of 4/19/2017		0.00
08/17/2015	Charge	Plaintiff Southworth, Peter M	146.00
08/17/2015	File and Serve Receipt # CIV-2015-76729 Payments	Plaintiff Southworth, Peter M	(146.00)
	Defendant Las Vegas Paving Corporation		
	Appeal Bond \$250 Balance as of 4/19/2017		250.00
	Registry Deposit		250.00



1 PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
2 EMERSON LAW GROUP
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
receptionist@emersonlawgroup.com
4 Attorney for Defendant,
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 PETER SOUTHWORTH,) Case No. A-17-754175-A
9 Plaintiff,) Dept No. XXXII
10 vs.)
11 LAS VEGAS PAVING CORPORATION,)
12 Defendant.)
13

14 APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION
15 TO PLAINTIFF'S MOTION TO DISMISS APPEAL

16 Appellant/Defendant, LAS VEGAS PAVING CORPORATION, by and
17 through its Attorney of Record, Phillip R. Emerson, Esq., of the
18 EMERSON LAW GROUP, hereby submits the following Supplement to
19 Opposition to Respondent/Plaintiff's Motion to Dismiss Appeal.
20

21 / / /

22 / / /

23 / / /

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL/PROCEDURAL BACKGROUND

This is an action arising from an incident, which occurred on August 19, 2012.

The parties appeared before this Court on June 1, 2017 for the hearing on Respondent's present Motion. Oral arguments were made by Appellant's Counsel regarding the ambiguity of applying JCRCP 72B or JCRCP 98 to the issue before this Court in Respondent's Motion. Accordingly, this brief shall serve as a supplement to same.

II.

LEGAL ARGUMENT

A. The Application of JCRCP 72B or JCRCP 98 is Ambiguous, As Demonstrated by the Civil Law Self-Help Center Website, In Which 72B(a) is Cited as the Applicable Rule to Appeals of a Judgment Entered in Justice Court.

As noted in Appellant's Opposition, Respondent's sole argument is that Appellant filed an untimely Notice of Appeal. However, there is ambiguity and vagueness as to whether JCRCP 72B or JCRCP 98 should apply regarding the time afforded to appeal a judgment. In fact, the procedural ambiguity was conceded by this Court at the hearing on Respondent's present Motion. Specifically, the ambiguity arises out of the fact that JCRCP 72B governs appeals of judgments from Justice Court. As this court knows, a trial de novo on this matter was previously held before

1 Justice Court. As such, Appellant filed a notice of appeal of
2 the judgment under the twenty day rule provided by JCRCP 72B.

3 There is limited case law addressing this very issue.
4 Moreover, there is also some confusion in the Civil Law Self-Help
5 Center. Specifically, on the website under the section *Appealing*
6 *The Case*, there is an explanation of "Step 2: Calculate your time
7 limit to appeal," in which it is stated that in order to appeal a
8 judgment entered in Justice Court, a notice of appeal must be
9 filed within twenty days. (See *Civil Law Self-Help Website -*
10 *Appealing The Case*, attached here to as Exhibit A, page 2).

12 There is also a section in the Civil Law Self-Help Center
13 website for "Appealing A Small Claims Judgment." (See *Civil Law*
14 *Self-Help Website - Appealing A Small Claims Judgment*, attached
15 here to as Exhibit B, page 1). The website explains that either
16 party has five business days to **object or appeal** the decision.
17 *Id.* (Emphasis added). As this Court knows, Respondent appealed
18 the original small claims referee's decision via an objection in
19 December, 2016. Appellant's Opposition argued this demonstrated
20 its appeal was an appeal of a judgment made in Justice Court,
21 distinguishable from Respondent's earlier appeal or objection
22 from small claims court.
23

25 Overall, this demonstrates an unclear ambiguity on the
26 applicability of JCRCP 72B or JCRCP 98. As the Civil Law Help
27 Center noted that an appeal or objection could be made within
28 five days following a small claims judgment, Appellant naturally

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 deduced that the appeal of a small claims judgment had already
2 occurred and that an appeal of a Justice Court judgment was now
3 appropriate. Thus, Appellant filed its notice of appeal pursuant
4 to JCRCP 72B.

5
6 In the event that this Court is inclined to rule JCRCP 98 is
7 applicable, the interest of justness and fairness are better
8 served by this Court hearing the matter of appeal on its merits.
9 In the event JCRCP 98 is deemed to be applicable, this instance
10 is most accurately described by excusable neglect. The issue is
11 vague as both JCRCP 72B and JCRCP 98 fall within the purview of
12 civil procedure rules in Justice Court. Moreover, the erroneous
13 interpretation is the result of a genuine mistake, given that the
14 Civil Law Help Center Website advises of the twenty day rule for
15 appeals of judgments in Justice Court. The website also adds to
16 the ambiguity by advising readers that either party can appeal or
17 object a small claims decision. This is exactly what Respondent
18 did following the original hearing of this matter before Small
19 Claims. Naturally, when the matter was heard again as trial de
20 novo before Justice Court, Appellant believed JCRCP 72B was now
21 applicable.
22

23
24 Moreover, assuming JCRCP 98 is applicable, Appellant's
25 Notice of Appeal was two days tardy. This further demonstrates
26 an error arising out of a reasonable misinterpretation of the
27 rule. As this Court knows, this not an issue that is commonly
28 addressed before Your Honor and thus there is a lack of

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 established case law interpreting the distinction between the two
2 rules. As this Court stated at the June 1, 2017 hearing on the
3 present Motion, under JCRCP 1: "Whenever it is made to appear to
4 the court that a particular situation does not fall within any of
5 these rules or that the literal application of a rule would work
6 hardship or injustice in a particular situation, the court shall
7 make such order as the interests of justice require."
8

9 Here, the fact that under JCRCP 98 Appellant's Notice of
10 Appeal was only two days tardy, the lack of case law history
11 establishing a clear interpretation of the rule and the added
12 ambiguity in relying upon the Self-Help website all weigh in
13 favor of excusable neglect. As such, the interests of justice
14 would be served by hearing Appellant's appeal on its merits and
15 not disposing of it due to clerical error or excusable neglect.
16 Accordingly, Appellant prays Your Honor find JCRCP 72B is
17 applicable and deny Respondent's Motion. In the alternative,
18 Appellant prays Your Honor find excusable neglect exists whereby
19 Appellant's two-day tardy Notice of Appeal did not cause
20 prejudice to Appellant.
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III.
CONCLUSION

Based on the foregoing, Appellant respectfully requests this Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to Dismiss Appeal.

DATED this 1st day of June, 2017.

EMERSON LAW GROUP

PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
1055 Whitney Ranch Drive, Suite 120
Henderson, Nevada 89014
Attorney for Defendant,
LAS VEGAS PAVING CORPORATION

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
certify that service of the foregoing, **APPELLANT/DEFENDANT'S**
OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL, was made this
1st day of June, 2017 via mailing addressed as follows:

Peter Southworth, Esq.
406 South Desert Candles Street
Ridgecrest, California 93555
Plaintiff

Veronica Pacheco
An Employee of EMERSON LAW GROUP

EXHIBIT "A"

[Home](#) | [Self-Help](#) | [Lawsuits For Money](#) | [Post-Trial Stage: After The Dust Settles](#) | [Appealing The Case](#)

Appealing The Case

Learn how to "appeal" your case if you disagree with the decision reached by the judge (or jury) after your trial.

Overview

If you disagree with the decision reached after your trial, you can file an "appeal." An "appeal" is a request to have a higher court change or reverse a judgment of a lower court.

When you appeal, the entire case is reviewed by a higher court. The appeals court will look at the evidence that was presented to the trial court to decide whether some legal error was made. Depending on what the appeals court decides, it can set aside, confirm, or modify the trial court's judgment and could even order a new trial.

CAUTION! An appeal doesn't allow you to re-do your trial. You won't be able to introduce any new evidence. All the appeals judge is going to look at is what you submitted to the trial judge. So at your hearing or trial make sure your exhibits are filed as part of the court's record, that your written submissions are as thorough as possible, and that you have preserved any objections to the trial court proceedings.

If your case is in district court, both sides normally have thirty days from the written notice of entry of the judgment to appeal to the Nevada Supreme Court. The Nevada Supreme Court has the option of assigning your case to the Nevada Court of Appeals to handle instead. If your case is in justice court, you typically have twenty days to appeal to the district court. It is important to make sure you are applying the correct appeal time for your type of case and calculating it correctly. Missing your appeal deadline can preclude your appeal.

Broadly speaking, to appeal a civil judgment you need to take the following steps:

- Step 1: Determine whether you can file an appeal
- Step 2: Calculate your time limit to appeal
- Step 3: File a notice of appeal and a cost bond
- Step 4: Serve the notice of appeal
- Step 5: Decide whether to "stay" execution of the judgment
- Step 6: Order a transcript or file a statement of evidence and points on appeal
- Step 7: File a brief to the supreme court or wait for instructions from the district court

An in-depth discussion of appeals is beyond this website's scope. This page provides only a general overview. Appeals can be complicated. So make sure you understand all the rules you must comply with for your type of case and appeal.

FYI! There's a great resource available at your local law library called the *Nevada Appellate Practice Manual*. It's basically a "how to" guide for appeals in Nevada and will be an invaluable resources, especially if you're appealing your case to the Nevada Supreme Court. Click to visit [Law Libraries](#) for location and contact information.

Step 1: Determine whether you can file an appeal

Not every court order can be appealed. For a list of many of the orders that you can appeal, study Rule 3A(b) of the Nevada Rules of Appellate Procedure (if you are appealing a district court judgment) and Rule 72A of the Justice Court Rules of Civil Procedure (if you are appealing a justice court judgment). Click to visit [Rules and Laws](#) to find these rules.

Even though you may not be able to appeal a particular court order, there might be other avenues you can use to challenge the order. Talking to a lawyer about your case is the best way to evaluate your options. Click to visit [Lawyers and Legal Help](#).

Step 2: Calculate your time limit to appeal

The time you have to appeal a civil judgment depends on when the judgment was "entered" and "noticed." Missing your appeal deadline can preclude your appeal. Click to visit [After the Trial](#) for more information about entering and noticing a judgment.

- If the judgment was entered in the justice court, you must typically file your Notice of Appeal (Step 3 below) within twenty days after the date of service of the written notice of entry of the judgment. (JCRCP 72B(a).)
- If the judgment was entered in the district court, you must typically file your notice of appeal within thirty days after service of the notice of entry of the judgment or order. (NRAP 4(a)(1).)

To locate the rules governing time to appeal, click to visit [Rules and Laws](#).

Step 3: File a notice of appeal and a cost bond

- If you are appealing a justice court judgment:

To appeal a justice court case, file a Notice of Appeal with the justice court that heard your case. A form Notice of Appeal is available for free at the Self-Help Center, or you can download the form by clicking one of the formats underneath the form's title below:

JUSTICE COURT NOTICE OF APPEAL

[Pdf Fillable](#)

[Pdf Nonfillable](#)

When you file the Notice of Appeal, you must pay a filing fee of \$97 to the court clerk. If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

JUSTICE COURT APPLICATION TO WAIVE FILING FEE (OTHER THAN LAS VEGAS)

[Pdf Fillable](#)

[Pdf Nonfillable](#)

JUSTICE COURT APPLICATION TO WAIVE FILING FEE (LAS VEGAS ONLY)

[LV Pdf Fillable](#)

You must also post a bond with the court clerk for the costs on appeal of \$250. (JCRCP 73.) A "bond" is a guarantee for payment that you obtain from a bonding company for a fee. You can also post the \$250 in cash. The \$250 cost bond cannot be waived with a fee waiver application.

- If you are appealing a district court judgment:

To appeal a district court case, you must file a Notice of Appeal with the district court that heard your case. The Self-Help Center does not currently have forms for an appeal from the district court to the Nevada Supreme Court. But the supreme court has samples on its website that you can use to draft your own. Click to visit the [Appellate Practice Forms](#) website.

When you file the Notice of Appeal, you must pay a filing fee of \$24 to the district court and \$250 to the supreme court. (NRAP 3 (e).) If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

DISTRICT COURT APPLICATION TO WAIVE FILING FEES

AUTOMATED FORMS INTERVIEW AVAILABLE!

There is an automated interview for applicants filling out the Fee Waiver. This interview will complete the fee waiver forms for you after you answer a series of questions. To use the interview, click here and select the "Clark County District Court Fee Waiver" interview. At the end of the interview, you will have to print your forms, sign them, and file them. This interview will only generate the Fee Waiver forms.

[Pdf Fillable](#)

[Pdf Nonfillable](#)

You must also post a bond with the court clerk for the costs on appeal of \$500. (NRAP 7.) A "bond" is a guarantee for payment that you obtain from a bonding company for a fee. You can also post the \$500 in cash. The \$500 cost bond cannot be waived with a fee waiver application.

You must also prepare and file a Case Appeal Statement with the district court clerk. (NRAP 3(f).) If you are representing yourself, the district court clerk will complete this for you. (NRAP 3(f)(2).) Click to visit the Appellate Practice Forms website for an example of a Case Appeal Statement.

Step 4: Serve the notice of appeal

You must mail a copy of the filed Notice of Appeal (stamped by the court clerk) to the other side's attorney or, if there is no attorney, to the other side directly. (NRAP 3(d); JCRCP 72(d).)

Step 5: Decide whether to "stay" execution of the judgment

Your filing of an appeal does not automatically prevent the other side from collecting a judgment in their favor. In other words, after a short period (usually ten days after service of notice of entry of a judgment), the other side can try to execute the judgment and collect it by garnishing your wages or attaching your bank accounts.

If you want to prevent the other side from collecting the judgment while you appeal, you must take steps to "stay" (pause) enforcement of the judgment:

- A justice court judgment can be stayed by filing a "supersedeas bond" with the justice court clerk. (JCRCP 73A.) A "supersedeas bond" is a guarantee for payment that you obtain from a bonding company for a fee. The amount of the bond you will need depends on the type of judgment you are appealing. If you are appealing from a judgment that awarded money to the other side, you must file a bond in the entire amount of the judgment, plus costs and interest.

A form Notice of Posting and Acceptance of Bond on Appeal, which you should file with your bond, is available for free at the Self-Help Center, or you can download it by clicking one of the formats underneath the form's title below:

NOTICE OF POSTING AND ACCEPTANCE OF BOND ON APPEAL

[Pdf Fillable](#)

[Pdf Nonfillable](#)

- A district court judgment can be stayed by filing a motion in the district court asking the judge to stay the judgment pending appeal. (NRAP 8(a)(1).) The request for a stay can also be filed directly with the supreme court under certain circumstances. (NRAP 8(a)(2).) The district court will typically require the party asking for the stay to post a "supersedeas bond" to guarantee payment of any money judgment in the case.

To learn more about filing motions, click to visit [Filing Motions to Resolve the Case or Narrow Issues](#).

Step 6: Order a transcript or file a statement of evidence and points

The deadlines and procedures for this step depend on which court you are appealing from and whether the trial or hearing was recorded.

- If you are appealing from a justice court judgment:

Within ten days after you file the Notice of Appeal, you must do one of the following:

1. Order a transcript of the proceedings (the trial or hearing) and deposit \$100 with the justice court to absorb the cost of the transcript. (JCRCP 74(b)(1).) If the cost of the transcript is less, you will get a refund. If it is more, you will need to pay the additional amount. You must provide a copy of the transcript to every other party (or their attorney) in the case.
2. If the proceedings were not recorded, prepare a Statement of the Evidence or Proceedings which must be served on the opposing party. (JCRCP 74(c).) You should also file a Certificate of No Transcript on Appeal.

A form Statement of the Evidence or Proceedings and a form Certificate of No Transcript on Appeal are available for free at the Self-Help Center, or you can download them by clicking one of the formats underneath the form's title below:

JUSTICE COURT STATEMENT OF EVIDENCE OR PROCEEDINGS

Pdf Fillable	Pdf Nonfillable
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JUSTICE COURT CERTIFICATE OF NO TRANSCRIPT ON APPEAL

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3. Regardless of whether the proceedings were recorded, the parties can agree and prepare a signed Statement of the Case showing how the issues presented by the appeal arose and were decided by the justice court. (JCRCP 74(e).)

If there are no findings of facts and conclusions in the record (and if the parties cannot agree on findings), you must also prepare, file, and serve a Statement of Points on Appeal. (JCRCP 74(d).) This statement must include all important facts of the appeal and a general statement of why appellate relief is sought.

A form Statement of the Points on Appeal is available for free at the Self-Help Center, or you can download it by clicking one of the formats underneath the form's title below:

JUSTICE COURT STATEMENT OF POINTS ON APPEAL

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• **If you are appealing from a district court judgment:**

Within fifteen days after the appeal is docketed with the Nevada Supreme Court, you must do one of the following:

1. If the proceedings were recorded, file an original Transcript Request Form with the district court and file a copy with the supreme court clerk. (NRAP 9(a)(3).) You must serve a copy of the form on all parties to the case and to the court reporter who recorded the proceeding, along with a deposit for the transcript. If your fees have been waived, do not serve the court reporter. The appellate court will determine which transcripts are needed and will issue an order directing that they be prepared. Click to visit the Appellate Practice Forms website for an example of a Transcript Request Form. You must provide a copy of the completed transcript to all other parties (or their attorneys) in the case. (NRAP 9(a)(4).)
2. If you do not want any transcripts, file a "Certificate of No Transcript Request" with the appellate court. Visit the Appellate Practice Forms website for an example.
3. If the trial or hearing was not recorded, prepare a Statement of the Evidence or Proceedings, which must be served on all other parties. (NRAP 9(d).)

Step 7:

File a brief to the supreme court or wait for instructions from the district court

• **If you are appealing from a justice court judgment:**

The parties may or may not be required to file briefs. The district court can send the parties a briefing schedule, instructing the parties to prepare briefs and giving them their deadlines.

If the court orders you to submit a brief, a form Appellate Brief is available, free of charge, at the Self-Help Center, or you can download it on your computer by clicking one of the formats underneath the form's title below:

DISTRICT COURT APPELLATE BRIEF

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• **If you are appealing from a district court judgment:**

In the supreme court, the parties are required to file briefs with the supreme court clerk and to serve them on the other side.

1. The appellant must file an opening brief within 120 days after the date that the appeal was docketed in the supreme court.
2. The respondent then has thirty days from the date that the opening brief was served to file an answering brief.
3. The appellant then has thirty days from the date the answering brief was served to file a reply brief.

Your case can be referred to the Nevada Court of Appeals or the Nevada Supreme Court might handle the case. The appellate court can reach a decision based solely on the briefs, or the court can decide to hear from the parties at an oral argument. If the Supreme Court decides to hear your case, oral argument will take place before the entire Supreme Court or a panel of three Justices. The court will issue its ruling in writing once it has made a decision.

To learn more about supreme court briefs and what you must include in them, study Rule 28 of the Nevada Rules of Appellate Procedure. Click to visit Rules and Laws.

EXHIBIT "B"

[Home](#) | [Self-Help](#) | [Small Claims](#) | [Appealing A Small Claims Judgment](#)

Appealing A Small Claims Judgment

Overview

If you disagree with the decision reached by the judge after your small claims trial, you can file an appeal. The court's decision will not be binding or enforceable until the appeal period has expired. Both the plaintiff and the defendant have five business days from the date the decision was filed (plus three calendar days if the decision was mailed) to object or appeal the decision.

Filing An Appeal

If you disagree with the decision made by the justice of the peace, you will need to file an appeal.

When you appeal, the entire case is reviewed by a district court judge. The judge will look at the evidence that was presented to the justice of the peace to decide whether some legal error was made. Depending on what the district court judge decides, the judge can set aside, confirm, or modify the small claims judgment, and could even order a new trial.

CAUTION! An appeal doesn't allow you to re-do your hearing. You won't be able to introduce any new evidence. All the new judge is going to look at is what you submitted to the justice of the peace. So at your small claims hearing make sure your exhibits are filed as part of the court's record and that your written submissions are as thorough as possible.

To file an appeal you must pay a filing fee of \$97 to the justice court where your case was filed. If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Civil Law Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

APPLICATION TO WAIVE FILING FEE (OTHER THAN LAS VEGAS)

[Pdf Fillable](#)[Pdf Nonfillable](#)

APPLICATION TO WAIVE FILING FEE (LAS VEGAS ONLY)

[LV Pdf Fillable](#)

You must also post a cost bond of \$250 at the time you file your appeal. The \$250 cost bond cannot be waived with a fee waiver application.

If the justice of the peace entered a judgment for money against you, and if you want to prevent the other side from collecting that money during your appeal (called a "stay of execution"), you will also have to post the entire amount of the judgment with the justice court (in cash or by obtaining a bond), including costs and interest, unless the court orders something else.

In order to file an appeal, you will need to complete several forms and file them with the justice court. A simplified, combined version of these forms is available, free of charge, at the Self-Help Center, or you can download it on your computer by clicking one of the formats underneath the form's title below:

APPEAL OF SMALL CLAIMS CASE

[PDF NONFILLABLE](#)[INSTRUCTIONS](#)

Alternatively, you can prepare each of the following forms individually (instead of using the combined form above):

NOTICE OF APPEAL TO DISTRICT COURT

[PDF FILLABLE](#)[PDF NONFILLABLE](#)

STATEMENT OF EVIDENCE OR PROCEEDINGS

PDF FILLABLE	PDF NONFILLABLE
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STATEMENT OF POINTS ON APPEAL

PDF FILLABLE	PDF NONFILLABLE
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CERTIFICATE OF NO TRANSCRIPT ON APPEAL

PDF FILLABLE	PDF NONFILLABLE
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NOTICE OF POSTING AND ACCEPTANCE OF BOND ON APPEAL

PDF FILLABLE	PDF NONFILLABLE
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APPELLATE BRIEF

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Click to visit **Basics of Court Forms and Filing** to learn about filling out legal forms and filing with the justice courts, or click to visit **Justice Courts** for links and contact information for your court.

TIP! Different justice courts may have different filing requirements, so be sure to familiarize yourself with your court's procedures. The Las Vegas Justice Court, for instance, requires all documents to be filed electronically, so anyone filing in that court needs an e-mail address to set up an electronic filing account. To learn more about electronic filing, visit the Las Vegas Justice Court website.

Once your small claims has been appealed to the district court, there is no further appeal available to you.



1 PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
2 EMERSON LAW GROUP
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
4 receptionist@emersonlawgroup.com
Attorney for Defendant,
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 PETER SOUTHWORTH,) Case No. A-17-754175-A
9 Plaintiff,) Dept No. XXXII
10 vs.)
11 LAS VEGAS PAVING CORPORATION,)
12 Defendant.)
13

14 ERRATA TO APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION

15 TO PLAINTIFF'S MOTION TO DISMISS APPEAL

16
17 Appellant/Defendant, LAS VEGAS PAVING CORPORATION, by and
18 through its Attorney of Record, Phillip R. Emerson, Esq., of the
19 EMERSON LAW GROUP, hereby submits this errata to
20 Appellant/Defendant's Supplement to Opposition to Plaintiff's
21 Motion to Dismiss Appeal. Phillip R. Emerson, Esq.'s electronic
22 signature was inadvertently omitted from the document which was
23

24 / / /

25 / / /

26 / / /

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

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filed on June 1, 2017. The e-signed document is submitted with
this errata.

DATED this 7th day of June, 2017.

EMERSON LAW GROUP

/s/ Phillip R. Emerson

PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
1055 Whitney Ranch Drive, Suite 120
Henderson, Nevada 89014
Attorney for Defendant,
LAS VEGAS PAVING CORPORATION

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
certify that service of the foregoing, ERRATA TO
APPELLANT/DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS
APPEAL, was made this 7th day of June, 2017 via mailing addressed
as follows:

Peter Southworth, Esq.
406 South Desert Candles Street
Ridgecrest, California 93555
Plaintiff

Veronica Pacheco
An Employee of EMERSON LAW GROUP

1 **PHILLIP R. EMERSON, ESQ.**
Nevada Bar No. 5940
2 **EMERSON LAW GROUP**
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
4 receptionist@emersonlawgroup.com
Attorney for Defendant,
5 **LAS VEGAS PAVING CORPORATION**

6 **DISTRICT COURT**
CLARK COUNTY, NEVADA

7
8 PETER SOUTHWORTH,) Case No. A-17-754175-A
) Dept No. XXXII
9 Plaintiff,)
)
10 vs.)
)
11 LAS VEGAS PAVING CORPORATION,)
)
12)
13 Defendant.)
14

15 **APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION**
TO PLAINTIFF'S MOTION TO DISMISS APPEAL

16 Appellant/Defendant, **LAS VEGAS PAVING CORPORATION**, by and
17 through its Attorney of Record, Phillip R. Emerson, Esq., of the
18 **EMERSON LAW GROUP**, hereby submits the following Supplement to
19 Opposition to Respondent/Plaintiff's Motion to Dismiss Appeal.
20

21 / / /

22 / / /

23 / / /

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL/PROCEDURAL BACKGROUND

This is an action arising from an incident, which occurred on August 19, 2012.

The parties appeared before this Court on June 1, 2017 for the hearing on Respondent's present Motion. Oral arguments were made by Appellant's Counsel regarding the ambiguity of applying JCRCP 72B or JCRCP 98 to the issue before this Court in Respondent's Motion. Accordingly, this brief shall serve as a supplement to same.

II.

LEGAL ARGUMENT

A. The Application of JCRCP 72B or JCRCP 98 is Ambiguous, As Demonstrated by the Civil Law Self-Help Center Website, In Which 72B(a) is Cited as the Applicable Rule to Appeals of a Judgment Entered in Justice Court.

As noted in Appellant's Opposition, Respondent's sole argument is that Appellant filed an untimely Notice of Appeal. However, there is ambiguity and vagueness as to whether JRCRP 72B or JRCRP 98 should apply regarding the time afforded to appeal a judgment. In fact, the procedural ambiguity was conceded by this Court at the hearing on Respondent's present Motion. Specifically, the ambiguity arises out of the fact that JRCRP 72B governs appeals of judgments from Justice Court. As this court knows, a trial de novo on this matter was previously held before

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Justice Court. As such, Appellant filed a notice of appeal of
2 the judgment under the twenty day rule provided by JCRCP 72B.

3 There is limited case law addressing this very issue.
4 Moreover, there is also some confusion in the Civil Law Self-Help
5 Center. Specifically, on the website under the section *Appealing*
6 *The Case*, there is an explanation of "Step 2: Calculate your time
7 limit to appeal," in which it is stated that in order to appeal a
8 judgment entered in Justice Court, a notice of appeal must be
9 filed within twenty days. (See *Civil Law Self-Help Website -*
10 *Appealing The Case*, attached here to as Exhibit A, page 2).

12 There is also a section in the Civil Law Self-Help Center
13 website for "Appealing A Small Claims Judgment." (See *Civil Law*
14 *Self-Help Website - Appealing A Small Claims Judgment*, attached
15 here to as Exhibit B, page 1). The website explains that either
16 party has five business days to **object or appeal** the decision.
17 *Id.* (Emphasis added). As this Court knows, Respondent appealed
18 the original small claims referee's decision via an objection in
19 December, 2016. Appellant's Opposition argued this demonstrated
20 its appeal was an appeal of a judgment made in Justice Court,
21 distinguishable from Respondent's earlier appeal or objection
22 from small claims court.

25 Overall, this demonstrates an unclear ambiguity on the
26 applicability of JCRCP 72B or JCRCP 98. As the Civil Law Help
27 Center noted that an appeal or objection could be made within
28 five days following a small claims judgment, Appellant naturally

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 deduced that the appeal of a small claims judgment had already
2 occurred and that an appeal of a Justice Court judgment was now
3 appropriate. Thus, Appellant filed its notice of appeal pursuant
4 to JCRCP 72B.

5
6 In the event that this Court is inclined to rule JCRCP 98 is
7 applicable, the interest of justness and fairness are better
8 served by this Court hearing the matter of appeal on its merits.
9 In the event JCRCP 98 is deemed to be applicable, this instance
10 is most accurately described by excusable neglect. The issue is
11 vague as both JCRCP 72B and JCRCP 98 fall within the purview of
12 civil procedure rules in Justice Court. Moreover, the erroneous
13 interpretation is the result of a genuine mistake, given that the
14 Civil Law Help Center Website advises of the twenty day rule for
15 appeals of judgments in Justice Court. The website also adds to
16 the ambiguity by advising readers that either party can appeal or
17 object a small claims decision. This is exactly what Respondent
18 did following the original hearing of this matter before Small
19 Claims. Naturally, when the matter was heard again as trial de
20 novo before Justice Court, Appellant believed JCRCP 72B was now
21 applicable.
22

23
24 Moreover, assuming JCRCP 98 is applicable, Appellant's
25 Notice of Appeal was two days tardy. This further demonstrates
26 an error arising out of a reasonable misinterpretation of the
27 rule. As this Court knows, this not an issue that is commonly
28 addressed before Your Honor and thus there is a lack of

EMERSON LAW GROUP

ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 established case law interpreting the distinction between the two
2 rules. As this Court stated at the June 1, 2017 hearing on the
3 present Motion, under JCRCP 1: "Whenever it is made to appear to
4 the court that a particular situation does not fall within any of
5 these rules or that the literal application of a rule would work
6 hardship or injustice in a particular situation, the court shall
7 make such order as the interests of justice require."
8

9 Here, the fact that under JCRCP 98 Appellant's Notice of
10 Appeal was only two days tardy, the lack of case law history
11 establishing a clear interpretation of the rule and the added
12 ambiguity in relying upon the Self-Help website all weigh in
13 favor of excusable neglect. As such, the interests of justice
14 would be served by hearing Appellant's appeal on its merits and
15 not disposing of it due to clerical error or excusable neglect.
16 Accordingly, Appellant prays Your Honor find JCRCP 72B is
17 applicable and deny Respondent's Motion. In the alternative,
18 Appellant prays Your Honor find excusable neglect exists whereby
19 Appellant's two-day tardy Notice of Appeal did not cause
20 prejudice to Appellant.
21

22 / / /

23 / / /

24 / / /

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

**III.
CONCLUSION**

Based on the foregoing, Appellant respectfully requests this Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to Dismiss Appeal.

DATED this 1st day of June, 2017.

EMERSON LAW GROUP

/s/ Phillip R. Emerson

PHILLIP R. EMERSON, ESQ.

Nevada Bar No. 5940

1055 Whitney Ranch Drive, Suite 120

Henderson, Nevada 89014

Attorney for Defendant,

LAS VEGAS PAVING CORPORATION

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

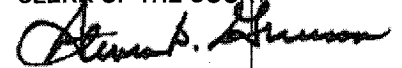
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby
certify that service of the foregoing, **APPELLANT/DEFENDANT'S**
OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL, was made this
1st day of June, 2017 via mailing addressed as follows:

Peter Southworth, Esq.
406 South Desert Candles Street
Ridgecrest, California 93555
Plaintiff

Veronica Pacheco
An Employee of EMERSON LAW GROUP



RPLY
PETER M. SOUTHWORTH
406 S Desert Candles St
Ridgecrest, CA 93555
(760) 608-3986
No fax number
peter.m.southworth@gmail.com
Respondent, In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS PAVING CORPORATION,)	Case No. A-17-754175-A
)	Dept. No. XXXII
Appellant,)	
)	
vs.)	
)	
PETER M. SOUTHWORTH,)	
)	
Respondent.)	

RESPONDENT'S REPLY TO APPELLANT'S SUPPLEMENT TO OPPOSITION TO

RESPONDENT'S MOTION TO DISMISS APPEAL

COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper person, and submits this Reply to Appellant's Supplement to Opposition to Respondent's Motion to Dismiss Appeal.

///

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1 Formal Objection process and the Formal Appeal process when they are, in fact, two distinct
2 courses of action. There can be no doubt that if the original Referee's Findings of Facts,
3 Conclusions of Law, and Recommendations had been formally appealed, JCRCP 98 would have
4 applied and jurisdiction transferred to District Court. Instead, a Notice of Objection was filed
5 (attached as Exhibit 2). As can be seen in Exhibit 2, the Notice of Objection is merely a request
6 for a new trial. The Order granting the Formal Objection Hearing is attached as Exhibit 3. It is
7 the judgment from the Formal Objection Hearing that Appellant has attempted to appeal
8 claiming that JCRCP 72B governed the appeal deadline.

9 The only mechanism for JCRCP 72B to apply in the instant matter would be to have had
10 the Formal Objection process somehow elevate the proceedings from "small claims action" to
11 "civil action". While Appellant may have mistakenly believed the Formal Objection process did
12 just that, it is an absurd conclusion supported neither by documentation in the record nor the
13 authoritative NRS or JCRCP and one that would have at least two far-reaching consequences if
14 true.

15 While the JCRCP is silent on Formal Objections, the Formal Objection process is
16 codified in NRS 4.355(4). NRS 4.355(4) states:

17 The findings of fact, conclusions of law and recommendations of the referee must be
18 furnished to each party or his or her attorney at the conclusion of the proceeding or as
19 soon thereafter as possible. Within 5 days after receipt of the findings of fact, conclusions
20 of law and recommendations, a party may file a written objection. If no objection is filed,
21 the court shall accept the findings, unless clearly erroneous, and the judgment may be
22 entered thereon. If an objection is filed within the 5-day period, the justice of the peace
23 shall review the matter by trial de novo, except that if all of the parties so stipulate, the
24 review must be confined to the record.

25 Neither the Notice of Objection (Exhibit 2) nor the Order granting the Formal Objection Hearing
(Exhibit 3) mention any sort of metamorphosis from "small claims action" to "civil action" and
this cannot be inferred from NRS 4.355(4).

1 Additionally, if the Formal Objection process could transform a “small claims action”
2 into a “civil action,” two far-reaching consequences would be engendered. First, as NRS Chapter
3 73 would no longer apply, attorney’s fees could now be pursued. Second, a defendant could now
4 request a jury trial. In *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 124 P.3d 550 (2005),
5 the Nevada Supreme Court ruled that there is no right to a jury trial in “small claims actions.”
6 Surely it cannot be the interpretation that the Legislature intended to create a vehicle that could
7 be used to allow a Defendant to circumvent both statute and Nevada Supreme Court opinion.

8 Any ambiguity that may have arisen in the instant matter is manufactured by Appellant.
9 At the Hearing and in its Supplement, Appellant cited the Civil Law Self-Help Center website as
10 its source of information regarding the appeal process. Appellant attached excerpts from the
11 website entitled “Appealing The Case” and “Appealing A Small Claims Judgment” as exhibits in
12 its Supplement. However, Appellant conveniently did not include the disclaimer from the very
13 same website. As can be seen at the bottom of the attached Exhibit 4, the disclaimer states:

14 This website was designed and is maintained by Legal Aid Center of Southern Nevada,
15 Inc., a private, nonprofit, 501(c) (3) organization that operates the Civil Law Self-Help
16 Center through a contract with Clark County, Nevada. This website is intended to provide
17 general information, forms, and resources for people who are representing themselves in
18 a Clark County court without a lawyer. The information on this website is NOT a
19 substitute for legal advice. Talk with a lawyer licensed in Nevada to get legal advice on
20 your situation.

21 Appellant’s admitted reliance upon a court-affiliated but non-official website must doom
22 its argument. The website may indeed have played a role in creating an ambiguity in Appellant’s
23 mind, but that does not abdicate responsibility from utilizing an authoritative source to
24 understand the procedural requirements of the mechanism Appellant attempted to invoke.
25 Respondent, a Pro Se litigant with no legal background, was able to navigate the Civil Law Self-
Help website for information regarding small claims but was always cognizant of the disclaimer
and applied diligent searching and careful study of the authoritative JCRCP freely available at

1 <https://www.leg.state.nv.us/courtrules/JCRCP.html>. Here, Appellant must not be the beneficiary
2 of its own incompetence.

3 Should this Court decide JCRCP 98 applies to the instant matter, thus making Appellant's
4 Notice of Appeal untimely, the issue then becomes one of jurisdiction. Appellant may be correct
5 when it states that case law on the instant matter is limited. There is, however, case law relating
6 to the topic of appeal timeliness in Municipal Court. Since the legislature created "conformity of
7 practice and proceedings" between Justice Courts and Municipal Courts in NRS 5.073(1), that
8 case law should apply here. NRS 5.073(1) states:

9 The practice and proceedings in the municipal court must conform, as nearly as
10 practicable, to the practice and proceedings of justice courts in similar cases. An appeal
11 perfected transfers the action to the district court for trial anew, unless the municipal
12 court is designated as a court of record as provided in NRS 5.010. The municipal court
must be treated and considered as a justice court whenever the proceedings thereof are
called into question.

13 In *City of Las Vegas v. Eighth Judicial Dist. Court*, 107 Nev. 885, 822 P.2d 115 (1991),
14 the Supreme Court of Nevada writes: "[i]n this case, the district court is exceeding its jurisdiction
15 by entertaining defendants' untimely appeals from their judgments of conviction." *See also Root*
16 *v. City of Las Vegas*, 84 Nev. 258, 439 P.2d 219 (1968) (timely filing a notice of appeal from a
17 judgment of the municipal court is jurisdictional).

18 NRS 189.010 governs the deadline to appeal a Municipal Court judgment. NRS 189.010
19 states:

20 Except as otherwise provided in NRS 177.015, a defendant in a criminal action tried
21 before a justice of the peace may appeal from the final judgment therein to the district
22 court of the county where the court of the justice of the peace is held, at any time within
10 days from the time of the rendition of the judgment.

23 The language in NRS 189.010 is remarkably similar to that contained in JCRCP 98 which
24 governs small claims appeals. JCRCP 98 states:

1 A plaintiff or defendant may appeal from the judgment against him or her to the district
2 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that
3 the filing of a notice of appeal must be done within 5 days from the entry of the
4 judgment, rather than the 20-day period provided for in Rule 72B. No formal Notice of
5 Entry of Judgment is required. The form of appeal and appeal bond shall be pursuant to
6 Rules 99 and 100.

7 The same Municipal Court timeliness standard should therefore apply to an appeal from Justice
8 Court. This standard would also be consistent with appeals from District Court to the Nevada
9 Supreme Court. In *Alvis v. State Gaming Control Board*, 99 Nev. 184, 660 P.2d 980 (1983), the
10 Supreme Court of Nevada writes: "[t]he notice of appeal is untimely and this court may not,
11 therefore, consider the appeal." See *Walker v. Scully*, 99 Nev. 45, 657 P.2d 94 (1983); see also
12 *Healy v. Volkswagenwerk*, 103 Nev. 329, 741 P.2d 482 (1987). The Supreme Court of Nevada
13 does not discuss the idea of "relative untimeliness," whether it is two days or three weeks,
14 because the issue is binary with respect to jurisdiction; an appellate court can bestow no relief for
15 an untimely Notice of Appeal. Accordingly, this Court lacks jurisdiction to entertain the matter
16 and Appellant's untimely Appeal should be dismissed.

17 III. CONCLUSION

18 For the above reasons, Respondent respectfully requests that this Honorable Court grant
19 the Motion to Dismiss Appeal.

20 DATED this 13th day of JUNE, 2017.

21 Pursuant to NRS 53.045, I declare under penalty of
22 perjury under the law of the State of Nevada that the
23 foregoing is true and correct.

24 
25 PETER M. SOUTHWORTH

406 S Desert Candles St
Ridgecrest, CA 93555
(760) 608-3986

No fax number
peter.m.southworth@gmail.com
Respondent, In Proper Person

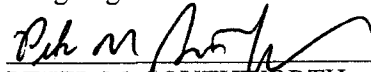
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 13th day of JUNE,
3 2017, I placed a true and correct copy of the above **RESPONDENT'S REPLY TO**
4 **APPELLANT'S SUPPLEMENT TO OPPOSITION TO RESPONDENT'S MOTION TO**
5 **DISMISS APPEAL**, in the United States Mail, with first-class postage prepaid, addressed to the
6 following:

7 PHILLIP R. EMERSON, ESQ.
8 Nevada Bar No. 5940
9 1055 Whitney Ranch Drive, Suite 120
10 Henderson, NV 89014
11 Attorney for Appellant,
12 LAS VEGAS PAVING CORPORATION

13 DATED this 13th day of JUNE, 2017.

14 Pursuant to NRS 53.045, I declare under penalty of
15 perjury under the law of the State of Nevada that the
16 foregoing is true and correct.

17 

18 PETER M. SOUTHWORTH
19 406 S Desert Candles St
20 Ridgecrest, CA 93555
21 (760) 608-3986
22 No fax number
23 peter.m.southworth@gmail.com
24 Respondent, In Proper Person
25

EXHIBIT 1

JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County, Nevada

Case No. 15A002996

Department No. Department #: LVJC 7

Name and Address of Plaintiff(s):
Peter M. Southworth
406 S Desert Candles St
Ridgecrest, CA 93555

(Plaintiff's(s) Email Address) peter.m.southworth@gmail.com

Plaintiff's(s) Telephone Number) (760) 608-3986

VERSUS

Name and Address of Defendant(s)
Las Vegas Paving Corporation
4420 S Decatur Blvd
Las Vegas, NV 89103

(Defendant's(s) Telephone Number) (702) 251-5800

**SMALL CLAIMS
COMPLAINT**


STATE OF NEVADA)
COUNTY OF CLARK)

I, Peter M. Southworth, STATE THAT Defendant(s) owes Plaintiff(s) the sum of \$ 7500.00

for damages arising from a traffic incident on 19 AUG 2012 caused by Las Vegas Paving Corporation. The \$7500.00 sum is comprised of the following: a hotel stay, 2 one-way rental cars, gasoline, 2 meals, loss of wages, driving time, the NHP accident report, a Carfax report, the post-repair diminished value of my vehicle, and the value of a rental car during repairs. These costs are directly attributable to the incident referenced above.

that a letter demanding payment has been sent; that Defendant(s) refuses to pay; and that Defendant(s) either currently resides, works or does business in the Las Vegas Township, County of Clark, State of Nevada.

* * * * *

(Signature) 

(Dated) 17 AUG 2015

Print Name: Peter M. Southworth

Attorney for Pro Se

You MUST have this affidavit notarized (block on the left) OR sign the unsworn declaration per NRS 53.045 (block on the right):

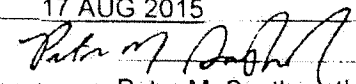
SUBSCRIBED AND SWORN to before me this
_____ day _____, 20____.

NOTARY PUBLIC in and for the
County of _____ State of _____

OR: UNSWORN DECLARATION Per NRS 53.045

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

(Date): 17 AUG 2015

(Signature) 

(Typed or printed name) Peter M. Southworth

The Plaintiff(s) must serve three (3) documents: (Small Claims Complaint, Instructions to Plaintiff or Defendant, and Small Claims Answer), on each Defendant.

To the above-named DEFENDANT(S):

A SMALL CLAIMS ACTION HAS BEEN COMMENCED AGAINST YOU!

YOU ARE DIRECTED TO E-FILE (electronically file), with the Las Vegas Justice Court Clerk's Office, AN ANSWER WITHIN TWENTY (20) CALENDAR DAYS from the date of service of the Complaint. Use the attached ANSWER form. You must mail a copy of your Answer to Plaintiff(s) immediately after E-Filing your Answer with the Las Vegas Justice Court. Your failure to Answer (respond to) the Complaint within 20 calendar days may result in the Plaintiff(s) filing a Motion for Default Judgment against you. This means the Referee or Judge may grant a Judgment for the Plaintiff(s) based on the claims/allegations in the Complaint and without considering your possible defense(s) or explanation(s)

LVJCVL Form -15 Revised 6/14.

Pursuant to JCRCP 12(a)(3), the State of Nevada or any political subdivision thereof, and any officer, employee, board or commission member of the State of Nevada or political subdivision, and any state legislator shall file an answer or other responsive pleading within 45 days after their respective dates of service

EXHIBIT 2

Justice Court, Las Vegas Township
CLARK COUNTY, NEVADA

Peter M. Southworth

PLAINTIFF

-VS-

Las Vegas Paving Corp.

DEFENDANT

CASE NO: 15A002996

FORMAL OBJECTION NOTICE

The Plaintiff, Peter M. Southworth, In the above entitled matter formally objects to the decision entered on the 2nd Day of December, 20 16 In the above entitled Court and requests A new Trial.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth
Name

406 S Desert Candles St

(Type Address)

Ridgecrest, CA 93555

CERTIFICATION OF MAILING

The Undersigned certifies that on the 7th Day of December, 20 16, a copy of the foregoing Notice Of Formal Objection was mailed to Attorney for Las Vegas Paving Corp. at 1055 Whitney Ranch Dr., Suite 120, Henderson, NV 89014 By depositing a copy in the United States Mail in an addressed sealed envelope,

Postage prepaid.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth
Name

TO BE COMPLETED BY COURT STAFF ONLY

Courtroom No: _____ At the hour of _____ On _____, 20 _____

JC- (Civil) Rev. 09/01

This document to which this certificate is attached is a full, true and correct copy of the original on file and of record in Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada.
By: [Signature] Deputy
Date: 5/26/17

EXHIBIT 3

JUSTICE COURT, LAS VEGAS TOWNSHIP
Clark County, Nevada

Case No. 15A002996
JC DEPARTMENT 7

Peter M Southworth, Plaintiff(s)
vs.
Las Vegas Paving Corporation, Defendant(s)

ORDER: SMALL CLAIMS
FORMAL OBJECTION
HEARING

The Court having reviewed the Formal Objection filed herein and good cause appearing therefore,

IT IS HEREBY ORDERED that:

☒ The Formal Objection Hearing is approved to be placed on calendar and shall be set for hearing on
the 8th day of February, 20 17 at 1:00 P. M. in
Courtroom 1B of the Las Vegas Justice Court.

☐ The Small Claims Formal Objection is **DENIED** to be placed on calendar for the following reason(s):

☐ The formal objection was not timely filed.

☐ A formal objection may not be filed in response to the denial of a Motion for Exemption from
Mandatory Small-Claims Mediation.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside Default
Judgment when the Defendant has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside
Dismissal when the Plaintiff has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a motion to dismiss
before a referee.

☐ Other: _____

DATED this 8 day of Dec, 20 16

JUSTICE OF THE PEACE
Adam Vander Hayden - Pro Tempore

Original-File

This document to which this certificate is
attached is a full, true and correct copy of
the original on file and of record in Justice
Court of Las Vegas Township, in and
for the County of Clark, State of Nevada.

By: [Signature] Deputy

Date: 5/26/17

EXHIBIT 4

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- » Filing Your Small Claims Case
- » Mediating A Small Claims Dispute

MORE TOPICS



- » Protection From Stalking, Aggravated Stalking, Or Harassment
- » Extending A Protection Order
- » Modifying, Dissolving, Or Appealing A Protection Order

MORE TOPICS



- » Responding To A Complaint If You've Been Sued
- » Responding To The Other Side's Requests For Information
- » Opposing A Motion Filed Against You

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Civil Law Self-Help Center

www.civillawselfhelpcenter.org

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- » Contesting A Garnishment Or Attachment
- » Garnishing Wages Or Attaching Bank Accounts
- » Setting Aside A Civil Default Judgment

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- » Medical Records
- » Cremation

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- » Foreclosure And Foreclosure Mediation
- » Unlawful Towing
- » Judicial Review Of Unemployment Decisions

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LEGAL AID CENTER

of Southern Nevada

This website was developed and is maintained by Legal Aid Center of Southern Nevada, Inc., a private, nonprofit, 501(c)(3) organization that operates the Civil Law Self-Help Center through a contract with Clark County, Nevada. This website is intended to provide general information, facts, and resources for people who are representing themselves in a Clark County court without a lawyer. The information on this website is NOT a substitute for legal advice. Talk with a lawyer licensed to practice to get legal advice on your situation.

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Site by: PROOF collective

A-17-754175-A

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Appeal from Lower Court

COURT MINUTES

June 26, 2017

A-17-754175-A Las Vegas Paving Corporation, Appellant
vs.
Peter Southworth, Respondent

June 26, 2017 8:01 AM Decision

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Katrina Hernandez

JOURNAL ENTRIES

- This matter came before this Court on June 1, 2017 for Respondent Peter Southworth's Motion to Dismiss Appeal. After hearing oral arguments, the Court ordered supplemental briefing. The Supplemental Briefs were filed on June 1, 2017 and June 13, 2017. After carefully considering the submitted motions, supplemental briefs, evidence, and oral argument Court issued its Decision this 22nd day of June, 2017. COURT ORDERED Respondent's Motion to Dismiss Appeal is DENIED.

In this case, the Small Claims Judgment was entered on March 22, 2017 and mailed to the parties on March 24, 2017. On April 7, 2017, Appellant Las Vegas Paving Corporation filed their Notice of Appeal. At issue in this matter is whether the appeal from lower court was timely filed and what Justice Court Rule of Civil Procedure properly applies to the filing of an appeal from a justice court small claims matter.

Justice Court Rule of Civil Procedure 72B(a) provides that a notice of appeal from a justice court civil case shall be filed within 20 days of the date of service of written notice of the entry of the judgment. Rule 98 provides that, in small claims matters, a notice of appeal must be done within 5 days from the entry of the judgment. Under Rule 72B(a), the Appellant's notice of appeal would have been timely. In this case, under Rule 98, the appeal would have been two days late and, therefore untimely. Based upon a review of these rules and the Justice Court Rules of Civil Procedure as a whole it is clear to this Court that Rule 98 applies to this case and this appeal, and there is a requirement that an appeal from a small claims matter be done within 5 days, as opposed to 20 days.

However, based upon the oral arguments presented on June 1, 2017 and the supplemental briefing, this Court agrees that the timeline to file the appeal in this case may have been ambiguous, given the

PRINT DATE: 06/26/2017

Page 1 of 2

Minutes Date: June 26, 2017

procedure that occurred in the justice court small claims case. Further, Justice Court Rule of Civil Procedure 1 provides that [w]henver it is made to appear to the court that a particular situation does not fall within any of these rules or that the literal application of a rule would work hardship or injustice in a particular situation, the court shall make such order as the interests of justice require. Here, a literal application of the 5 day deadline would work hardship or injustice in this particular situation, given the procedure in the small claims case, and also given that the appeal was filed only 2 days late. Furthermore, in Nevada, there is a public policy favoring adjudication of cases on their merits. *Blanco v. Blanco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170, 1174 (2013).

As such, in the interest of justice, this appeal will go forward on its merits. The Court will issue a new Order Setting Briefing Schedule.

Counsel for Appellant Las Vegas Paving Corporation is directed to submit a proposed order. The Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for July 26, 2017 in chambers for the order. Parties need not appear.

7/26/17 3:00 AM (CHAMBERS) STATUS CHECK: ORDER

*CLERK'S NOTE: Minute Order E-Served./KH 6-26-17

ORIGINAL

Electronically Filed
8/1/2017 10:43 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 PHILLIP R. EMERSON, ESQ.
Nevada Bar No. 5940
2 EMERSON LAW GROUP
1055 Whitney Ranch Drive, Suite 120
3 Henderson, Nevada 89014
4 receptionist@emersonlawgroup.com
Attorney for Defendant,
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 PETER SOUTHWORTH,) Case No. A-17-754175-A
9 Plaintiff,) Dept No. XXXII
10 vs.)
11 LAS VEGAS PAVING CORPORATION,)
12 Defendant.)
13

14
15 ORDER

16 Plaintiff's Motion to Dismiss Appeal, having regularly come
17 on for hearing on June 1, 2017, and the Court having reviewed the
18 papers and pleadings filed by the respective parties, and good
19 cause appearing therefore,

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's
21 Motion to Dismiss Appeal is hereby DENIED.

22 In this case, the Small Claims Judgment was entered on March
23 22, 2017 and mailed to the parties on March 24, 2014. On April
24 7, 2017, Appellant Las Vegas Paving Corporation filed their
25 Notice of Appeal. At issue in this matter is whether the appeal
26 from lower court was timely filed and what Justice Court Rule of
27
28

JUL 26 2017

EMERSON LAW GROUP
ATTORNEYS AT LAW
1055 WHITNEY RANCH DRIVE, SUITE 120
HENDERSON, NEVADA 89014
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 Civil Procedure properly applies to the filing of an appeal from
2 a justice court small claims matter.

3 The Court finds that under Justice Court Rule of Civil
4 Procedure 72B(a), the Appellant's notice of appeal would have
5 been timely. The Court further finds that under Rule 98, the
6 appeal would have been two days late and, therefore untimely.
7 The Court further finds that based upon a review of the Justice
8 Court Rules of Civil Procedure as a whole, it is clear to the
9 Court that Rule 98 applies to this case and this appeal, and
10 there is a requirement that an appeal from a small claims matter
11 be done within 5 days, as opposed to 20 days.
12

13 The Court further finds that the timeline to file the appeal
14 in this case may have been ambiguous, given the procedure that
15 occurred in the justice court small claims case. The Court
16 further finds that under Justice Court Rule of Civil Procedure 1,
17 whenever it is made to appear to the court that a particular
18 situation does not fall within any of these rules or that the
19 literal application of a rule would work hardship or injustice in
20 a particular situation, the court shall make such order as the
21 interests of justice require. The Court further finds that a
22 literal application of the 5 day deadline would work hardship or
23 injustice in this particular situation, given the procedure in
24 the small claims case, and also given the appeal was filed only 2
25 days late. The Court further finds in Nevada, there is a public
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27
28

EMERSON LAW GROUP

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120


HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 policy favoring adjudication of cases on their merits. *Blanco v.*
2 *Blanco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170, 1174 (2013).

3 IT IS FURTHER ORDER that the Court will allow the above
4 referenced matter to proceed on the merits.

5 DATED this 28 day of July, 2017.

6
7 
8 DISTRICT COURT JUDGE

9 ROB BARE

JUDGE, DISTRICT COURT, DEPARTMENT 32

10 Approved as to form and content:

11 PETER SOUTHWORTH

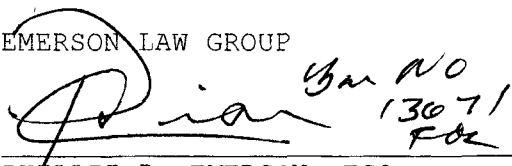
12
13 Signature not received

Peter Southworth

14 406 South Desert Candles Street
15 Ridgecrest, California 93555
16 Plaintiff in Pro Per

17 Submitted by:

18 EMERSON LAW GROUP

19  Bar NO
20 PHILLIP R. EMERSON, ESQ. 13071
21 Nevada Bar No. 5940 FOR

1055 Whitney Ranch Drive,

Suite 120

Henderson, Nevada 89014

Attorneys for Defendant,

LAS VEGAS PAVING CORPORATION