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 Darrell T. Coker

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL T. COKER;

SUPREME COURT NO.: 73863

Appellant,

**APPEAL FROM THE DISTRICT
 COURT FOR CLARK COUNTY,
 NEVADA, CASE NO.:
 A-16-724853-C**

vs.

MARCO SASSONE;

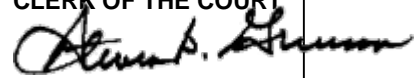
Respondent.

**SUPPLEMENTAL APPENDIX OF
 APPELLANT DARRELL T. COKER**

(VOLUME I OF I)

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Reply to Plaintiff’s Response to Notice of Supplemental Authority Vol. 1, Pg. 1



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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

MARCO SASSONE,

Plaintiff,

vs.

DARRELL T. COKER, *et al.*,

Defendants.

Case No. A-16-742853-C

Dept. No. XXXII

**DEFENDANT DARRELL T. COKER'S
REPLY TO PLAINTIFF'S RESPONSE TO
NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF MOTION
TO DISMISS PLAINTIFF SASSONE'S
COMPLAINT PURSUANT TO NRCP
12(b)(1) & NRCP 12(b)(5)**

Plaintiff's Response to Coker's Notice of Supplemental Authority is an improper attempt to supplement the record and to try and supplement the hearing arguments. The Court should not allow this.

1.0 INTRODUCTION

While Mr. Coker does not agree with Plaintiff's discussion of *Century Surety Company v. Prince*, Case No. 2:16-cv-2465-JCM-PAL, he has no objection to Plaintiff making his position *on that case* known. However, that is not what his response is.

Plaintiff uses his Response to relitigate issues addressed at the hearing on the pending Motion to Dismiss and Anti-SLAPP Motion and, more improperly, to try and supplement the record with "evidence" (such as it is) that he could have, and should have, provided prior to the hearing.

He attaches as "Exhibit 1" to the Response the alleged "Certificate of Authenticity that witness' [sic] Jelena Popovic, Diane Nelson-Menniger, and Sarah Burton-Sousa attested they received with the purported 'original lithographs.'" (Response at 6, fn. 8.) There are two problems with the submission of this evidence: (1) Plaintiff cannot introduce evidence he claims to have had at the beginning of this case after the hearing on the motions, and (2) this evidence is not authenticated and is thus inadmissible.

2.0 PLAINTIFF CANNOT NOW INTRODUCE ADDITIONAL EVIDENCE

Preliminarily, Coker does not concede that "Exhibit 1" is even admissible evidence. However, even assuming *arguendo* that it is, Sassone missed the opportunity to put it in the record.

An Anti-SLAPP motion is treated as a motion for summary judgment, meaning that the non-moving party must provide competent, admissible evidence to oppose it; simply making or denying factual assertions without support is insufficient. See *Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013); see also *John v. Douglas County Sch. Dist.*, 125 Nev. 746, 753-54 (2009) (stating that "the nonmoving party" to an Anti-SLAPP motion must "provide more than general allegations and conclusions; it must submit specific factual evidence").

A party opposing an Anti-SLAPP motion must present evidence of their claims, and must do so before the hearing, or at the very least during the hearing, so as to allow the moving party an opportunity to challenge the evidence. The non-moving party does not have the luxury of hiding the evidence until weeks after the hearing, and then springing it on the Court and the moving party.

Plaintiff claims that he had this purported Certificate of Authenticity in his possession at the time he filed his Opposition to the pending motions; he claims that this certificate is the same one that his declarant witnesses received. (See Response at 6, fn. 8.) He, tellingly, does not have declarations from the witnesses, but simply makes this argument in a footnote. This is the only document that even potentially supports Plaintiff's claims, yet Plaintiff decided to hide it when filing his complaint, continued to hide it when filing his Amended Complaint, hid it still later, when filing his Opposition to the pending motions, and did not even introduce it at the hearing on the motions.

Instead, he waited until responding to a notice of supplemental authority after the hearing took place to introduce this document. He provides no explanation or justification for this untimely presentation.

There is no reason for the Court to allow this late-filed document, which (if Plaintiff is being candid) he has sat on since before he filed the Complaint. There is no legitimate reason for failing to provide this document prior to the hearing on the pending motions. It would be unjust to consider this document at this point. Mr. Coker requests that the Court disregard this evidence; as explained below, it is inadmissible and does not assist the Court in ruling on the motions.

3.0 PLAINTIFF'S NEW EVIDENCE IS INADMISSIBLE

Plaintiff's "Exhibit 1" to its Response is a document. NRS 52.015 requires that documentary evidence be authenticated by various possible means, such as

testimony of a witness with knowledge.¹ See *Sanders v. Sears-Page*, 2015 Nev. App. LEXIS 8, *27 (Nev. Ct. App. July 16, 2015).

Plaintiff's "Exhibit 1" is a largely illegible sheet of paper that contains some biographical information about Plaintiff and contains the language "This is to certify that, to the best of our knowledge, the information and statements contained herein are true and correct." It does not contain the name of any Defendant. It does not appear to identify any artistic work to which it allegedly refers. It does not provide any context for where or how anyone may have seen this document. Its relevance is thus far from self-evident and requires authentication.

Plaintiff provides no such authentication. It is not accompanied by any declaration or affidavit from any witness. Rather, Plaintiff merely provides argument of counsel, claiming that "Exhibit 1" is "a true and correct copy" of the "Certificate of Authenticity." There is no sworn testimony from anyone with personal knowledge as to the authenticity of "Exhibit 1." Plaintiff's attempt to rehabilitate the declarations attached to his Anti-SLAPP Opposition by claiming that "Exhibit 1" is the document those declarants were describing is unavailing, as the document was not attached to those declarations. There is thus no way for the Court to know whether "Exhibit 1" is a true and correct copy of the document referred to in those declarations. For all the Court knows, Plaintiff could have simply drafted this "certificate" himself and claimed that Mr. Coker sent it. Without any authentication, this scenario is just as likely as the one put forward by Plaintiff, and would explain why he did not produce this document earlier.

¹ No other method of authentication from NRS 52.025 to NRS 52.105 applies, and there are no applicable presumptions of authenticity laid out in NRS 52.115 to 52.175.

Without proper authentication, "Exhibit 1" to Plaintiff's Response is inadmissible. And since an Anti-SLAPP motion is treated as a motion for summary judgment, the Court should disregard this document.

4.0 CONCLUSION

For the foregoing reasons, the Court should disregard "Exhibit 1" to Plaintiff's Response in ruling on the pending Motion to Dismiss and Anti-SLAPP Motion. Similarly, it should disregard the arguments added to it that do not directly pertain to the reasons why Sassone believes that *Century Surety Company v. Prince* does not have any instructive value for this Court. His additional attempts to have a "do over" for his submissions and arguments are improper.

Dated: July 19, 2017.

Respectfully submitted,

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July 2017, I served a true and correct copy of the foregoing document via the Eighth Judicial District Court's Odyssey electronic filing system or, if necessary, via electronic mail and U.S. Mail, on the attorneys listed below:

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Respectfully submitted,



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