

1 **IN THE SUPREME COURT OF STATE OF NEVADA**

2 TAE-SI KIM, an Individual, and JIN-SUNG
3 HONG, an Individual.

4 Plaintiffs,

5 v.

6 GIBSON LOWRY BURRIS, LLP, (now
7 known as GIBSON LOWRY, LLP), a Nevada
8 limited liability partnership; DICKINSON
9 WRIGHT, PLLC, a Nevada Professional
10 limited liability company; STEVE A.
11 GIBSON, ESQ., an Individual; JODI
12 DONETTA LOWRY, ESQ. an Individual;
13 JONATHAN M.A. SALLS, ESQ., an
14 Individual; ERIC DOBBERSTEIN, ESQ., an
Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual; and
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES XI through XX,
inclusive,

15 Defendants.

Electronically Filed
Feb 26 2018 08:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 74803

**DOCKETING STATEMENT
CIVIL APPEALS**

16 **ON APPEAL**

17 **From the Eight Judicial District Court**

18 **Clark County, Nevada**

19 **District Court Case No. A-17-756785-C**

20 **The Honorable Judge Jim Crockett**

21 **DOCKETING STATEMENT**

22
23 Brandon L. Phillips

24 Nevada Bar No. 12264

25 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC.

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1. Judicial District Eighth Department 24
County Clark Judge Jim Crockett
District Ct. Case No. A-17-756785-C

2. Attorney filing this docketing statement:

Attorney Brandon L. Phillips, Esq. Telephone (702) 795-0097
Firm Brandon L. Phillips, Attorney at Law, PLLC
Address 1455 E. Tropicana Avenue
Suite 750
Las Vegas, Nevada 89119

Client(s) Tae-Si Kim and Jin-Sun Hong

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Steve Morris, Esq and Ryan Lower, Esq. Telephone (702) 474-9400
Firm Morris Law Group
Address 411 E. Bonneville Avenue
Suite 360
Las Vegas, Nevada 89101

Client(s) Dickinson Wright, PLLC; Jodi Donetta Lowry, Jonathan M.A. Salls
Eric Dobberstein, Michael Vartanian

Attorney Steven A. Gibson & Jodi Donetta Lowry Telephone (702) 541-7888
Firm Gibson Lowry LLP
Address 7495 West Azure Drive
Suite 233
Las Vegas, Nevada 89130

Client(s) Gibson Lowry Burris LLP

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Time Barred</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
Kim et al v. Kearney et al. 2:09-cv-02008-RFB-GWF. Case Terminated September 4, 2015.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellants commenced Eight Judicial District Court Case No. A-17-756785-C when they filed the Complaint asserting primarily Legal Malpractice, Intentional and Negligent Misrepresentation, and Breach of Fiduciary Duties. Appellants claimed that the Respondents had committed malpractice when they failed to timely file a proper State action against former attorney Charles Damus after the Federal case against Damus was dismissed.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The District Court found that Appellants failed to timely file an action against the Respondents, and/or was barred by relevant attorney discretion case law and/or statutes. Appellants hereby appeal the dismissal and the denial of the Motion to Reconsider.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings in this Court raising the same or similar issues.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant does not dispute that this matter should be heard by the Court of Appeals.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? There is no intention, at this time, to ask any Justice to recuse him/herself. Appellant does reserve the right to request the recusal should Appellant become aware of any substantial conflict.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Dec 12, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Dec 12, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Dec 22, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This Court has the authority to hear this matter under NRAP 3A(b)(1). This appeal timely follows the District Court's denial of Plaintiff/Appellant's Motion to Reconsider Defendant/Respondant's Motion to Dismiss.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

(A) Plaintiffs/Appellants- Tae-Si Kim and Jin-Sun Hong

(B) Defendants/Respondants- GIBSON LOWRY BURRIS, LLP, (now known as GIBSON LOWRY, LLP); DICKINSON WRIGHT, PLLC; STEVE A. GIBSON, ESQ.; JODI DONETTA LOWRY, ESQ.; JONATHAN M.A. SALLS, ESQ.; ERIC DOBBERSTEIN, ESQ.; MICHAEL G. VARTANIAN, ESQ.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Tae-Si Kim and Jin-Sun Hong: Legal Malpractice, Intentional and Negligent Misrepresentation, Breach of Fiduciary Duty.

All claims in regards to all Defendants excluding Gibson Lowry Burris, LLP were formally dismissed by the Court's denial of of Plaintiffs/Appellant Motion to Reconsider entered on December 12, 2017. Defendant/Appellant Gibson Lowry Burris, LLP's Motion to Dismiss was not formally entered until January 26, 2018.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Order is appealable under NRAP 3A(b).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Tae-Si Kim and Jin-Sun Hong
Name of appellant

Brandon L. Phillips, Esq.
Name of counsel of record

Feb 23, 2018
Date

/s/ Brandon L. Phillips, Esq.
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 23rd day of February, 2018, I served a copy of this completed docketing statement upon all counsel of record:

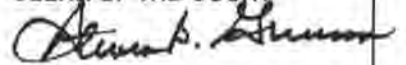
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

MORRIS LAW GROUP
Steve Morris, Esq.
Ryan M. Lower, Esq.
411 E. Bonneville Ave., Suite 360
Las Vegas, Nevada 89101

GIBSON LOWRY LLP
Steven A. Gibson, Esq.
Jodi Donetta Lowry, Esq.
7495 West Azure Drive, Suite 233
Las Vegas, Nevada 89130

Dated this 23rd day of February, 2018


Signature



COMP

BRANDON L. PHILLIPS, ESQ
Nevada Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169
(702) 795-0097, (702) 795-0098 fax
blp@abetterlegalpractice.com
Attorney for Plaintiff, Tae-Si Kim and Jin-Sung Hong

**EIGHT JUDICIAL DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA**

TAE-SI KIM, an Individual, and JIN-SUNG
HONG, an Individual.

Plaintiffs,

v.

GIBSON LOWRY BURRIS, LLP, (now
known as GIBSON LOWRY, LLP), a
Nevada limited liability partnership;
DICKINSON WRIGHT, PLLC, a Nevada
Professional limited liability company;
STEVE A. GIBSON, ESQ., an Individual;
JODI DONETTA LOWRY, ESQ. an
Individual; JONATHAN M.A. SALLS,
ESQ., an Individual; ERIC DOBBERSTEIN,
ESQ., an Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual; and
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES XI through XX,
inclusive,

Defendants.

CASE NO.

A-17-756785-C

DEPT. NO.

Department 24

COMPLAINT

COMES NOW, Plaintiffs, TAE-SI KIM and JIN-SUNG HONG, by and through their attorney, BRANDON L. PHILLIPS, ESQ., of the law firm of BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC and hereby claims malpractice and negligent representation, along other causes of action as set forth herein against GIBSON LOWRY BURRIS, LLP, (now known as GIBSON LOWRY, LLP), a Nevada limited liability partnership; DICKINSON WRIGHT, PLLC, a Nevada Professional limited liability company; STEVE A. GIBSON, ESQ., an Individual;

JODI DONETTA LOWRY, ESQ. an Individual; JONATHAN M.A. SALLS, ESQ., an Individual; ERIC DOBBERSTEIN, ESQ., an Individual; and MICHAEL G. VARTANIAN, ESQ., an Individual, DOES I through X, and ROE CORPORATIONS I through X (collectively referred to here as "Defendants"), as follows:

I. PARTIES

1. This lawsuit involves representation originally brought by the firm GIBSON LOWRY BURRIS LLP and then combined with the law firm DICKINSON WRIGHT, PLLC to bring claims on behalf of the Plaintiff in an action filed in the United States District Court, District of Nevada, Case No. 2:09-CV-02008-PMP-PAL.

2. Plaintiffs, TAE-SI KIM and JIN-SUNG HONG, (hereinafter individually as "KIM" or "HONG" or collectively as "Plaintiffs") is, and at all times pertinent hereto were and are residents of Clark County, Nevada.

3. Upon information and belief the firm GIBSON LOWRY BURRIS LLP, now known as GIBSON LOWRY LLP, (hereinafter in as "GLB" or collectively with the other named parties as "DEFENDANTS") is and was a Nevada limited liability partnership, engaged in the practice of law in the State of Nevada.

4. Upon information and belief the firm DICKINSON WRIGHT PLLC, (hereinafter as "DWP" or collectively with the other named parties as "DEFENDANTS") is and was a Nevada professional limited liability company, engaged in the practice of law in the State of Nevada.

5. Upon information and belief Defendant Steve A. Gibson, Esq., (hereinafter "GIBSON" or collectively with the other named parties as "DEFENDANTS") is and was a Nevada attorney retained to represent the Plaintiffs.

6. Upon information and belief Defendant Jodi Donetta Lowry, Esq., (hereinafter

1
2
3 "LOWRY" or collectively with the other named parties as "DEFENDANTS") is and was a Nevada
4 attorney retained to represent the Plaintiffs.

5 7. Upon information and belief Defendant Jonathan M. A. Salls, Esq., (hereinafter
6 "SALLS" or collectively with the other named parties as "DEFENDANTS") is and was a Nevada
7 attorney retained to represent the Plaintiffs.
8

9 8. Upon information and belief Defendant Eric Dobberstein, Esq., (hereinafter
10 "DOBBERSTEIN" or collectively with the other named parties as "DEFENDANTS") is and was
11 a Nevada attorney retained to represent the Plaintiffs.
12

13 9. Upon information and belief Defendant Michael G. Vartanian, Esq., (hereinafter
14 "VARTANIAN" or collectively with the other named parties as "DEFENDANTS") is and was a
15 Nevada attorney retained to represent the Plaintiffs.
16

17 II. VENUE

18 10. Pursuant to the Legal Services Agreement dated August 20, 2009 and the Amended
19 Restated Legal Services Agreement dated May 31, 2012, Section 16 and 17, respectively, any and
20 all disputes that arise out the representation must be decided by binding fee dispute arbitration in
21 accordance with the rules of the State Bar of Nevada.
22

23 III. GENERAL ALLEGATIONS

24 11. On August 20, 2009, Plaintiffs retained the legal services of Defendant, GLB,
25 memorialized through a written agreement.

26 12. In accordance with the terms of the Legal Services Agreement, Plaintiffs were and
27 did tender \$30,000.00 with payments to be paid in six (6) equal monthly payments.
28

13. In accordance with the Agreement the Defendants were to represent the clients in

1
2 litigation against the defendants named in the action.
3

4 14. In accordance with the Agreement "Litigation" was defined as an action in a court
5 in Nevada against the Relevant Persons that the Client and the Firm has a good faith belief have
6 perpetrated civil wrongs against the Client(s) in connection with the Investment and/or breached
7 contractual obligation(s) with respect to Client in connection with the Investment.
8

9 15. In accordance with the Agreement "Relevant Persons" was defined as any Person
10 who solicited (or participated in the solicitation of) the Investment and/or any Person who engaged
11 in effecting the Investment (whether directly or indirectly) during the time period that the Client
12 engaged in activities aimed at securing ownership of the Investment.
13

14 16. In accordance with the Agreement "Defendants" was defined as the Relevant
15 Persons that were named as "defendants" in the Litigation.
16

17 17. On October 15, 2009, GLB filed a Complaint in the United States District Court,
18 District of Nevada under case No. 2:09-cv-02008-RFB-GWF.
19

20 18. On March 2, 2010, GLB filed an Amended Complaint in which additional
21 Defendants were named and additional claims were brought. Specifically, claims against Charles
22 M. Damus, Esq. for legal malpractice and negligent undertaking to perform services.
23

24 19. On December 17, 2008, Plaintiffs had originally retained the services of Charles
25 M. Damus, Esq., to litigate and dispute certain real estate and other related claims regarding real
26 property.
27

28 20. On September of 2009, Plaintiffs terminated Damus due to the fact that no
complaint had been filed.

21. In the Amended Complaint it was alleged that Damus committed legal malpractice

1
2
3 and negligent undertaking to perform services.

4 22. On October 5, 2010, Damus filed a Motion to Dismiss for Lack of Subject Matter
5 Jurisdiction.

6 23. On October 22, 2010, the firm Dickinson Wright, PLLC filed Plaintiffs' Response
7 to Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction.
8

9 24. On November 1, 2010, Damus filed a Reply to the Opposition.

10 25. On December 6, 2010, the Court entered an Order Granting Damus' Motion to
11 Dismiss.
12

13 26. The Defendants never initiated a claim in the District Court against Damus.

14 27. Any claim against Damus for malpractice should have been brought on or before
15 the termination date two years later.
16

17 28. On May 31, 2012, Plaintiffs entered into an Amended and Restated Legal services
18 Agreement with Dickinson Wright PLLC, which combined practices with GLB.

19 28. Defendants continued to pursue claims against the remaining defendants in the
20 case.
21

22 29. On July 30, 2015, Plaintiffs received an email from Defendant Vartanian
23 acknowledging that no suit had been filed against Damus and that as of the date of that email
24 representation of the Plaintiffs had ended.
25

26 **FIRST CLAIM FOR RELIEF**

27 **(Legal Malpractice - Against All Defendants)**

28 30. Plaintiff repeats and realleges the allegations of the preceding paragraphs of the

1
2 complaint as though fully set forth herein and incorporate the same herein by reference.
3

4 31. At all times relevant hereto, Defendants owed a duty of care to Plaintiffs to
5 represent them in legal advice, communications, billing, and guidance in accordance with relevant
6 legal standards of care within the practice of law.
7

8 32. Defendants breached the relevant duty of care by failing to adequately represent
9 Plaintiffs in providing competent legal advice, full and accurate communications, accurate billing,
10 and legal advice in accordance with relevant legal standards within the practice of law, as detailed
11 more fully below.
12

13 33. Specifically, Defendants were retained to file the appropriate complaints against
14 certain Defendants as set forth in the Complaint and Amended Complaint.
15

16 34. Defendants were retained to file claims against defendant Damus, specifically for
17 malpractice and negligent undertaking to perform services.
18

19 35. Defendants sued Damus in the United States District Court of Nevada, despite the
20 Court failing to have subject matter jurisdiction over the claim.
21

22 36. Defendants failed to bring any claim against Damus in the Eighth Judicial District
23 Court of Nevada, or any other State Court with jurisdiction.
24

25 37. A claim against defendant Damus had to brought, pursuant to statute, on or before
26 September of 2011.
27

28 38. By failing to bring a claim against a named defendant, Damus, Defendants
committed malpractice.

39. Defendants represented to Plaintiffs that a claim against Damus could be brought
at the end of the United States District Court case.

1
2
3 40. Such a statement was statutorily false.

4 41. Defendants failed to advise Plaintiffs that the representation did not include filing
5 a state claim against Damus.

6 42. Defendants failed to inform Plaintiffs of any statutory period by which a claim must
7 have been brought against Damus.

8
9 43. By the time Defendants informed Plaintiffs of their obligation to file a claim against
10 Damus the statutory period had expired.

11 44. Due to Defendants actions, Plaintiffs have no recourse against Damus' malpractice
12 and/or negligence.

13
14 45. As a direct and proximate result of Defendants' unlawful act, Plaintiffs have been
15 damaged in a sum in excess of fifty thousand dollars (\$50,000.00).

16
17 46. As a direct and proximate result of Defendants' malpractice, Plaintiffs have been
18 required to retain the services of attorney Brandon L. Phillips, Esq., to prosecute this action, and
19 they have incurred legal fees and costs, which this Arbitrator should require Defendants to pay.

20
21 **SECOND CLAIM FOR RELIEF**

22 **(Intentional and Negligent Misrepresentation – Against all Defendants)**

23 47. Plaintiffs repeat and reallege the allegations of the preceding paragraphs of the
24 complaint as though fully set forth herein and incorporate the same herein by reference.

25
26 48. The actions and representations described above were made intentionally,
27 recklessly, and negligently.

28 49. The actions and representations described above were material.

1
2
3 50. The representations described above were reasonably relied on by Plaintiffs in that
4 they believed the named defendants in the litigation were being prosecuted properly and
5 adequately.

6 51. Said reliance by Plaintiffs actually and proximately caused Plaintiffs damages in an
7 amount to be proven at trial, but no less than the amount of money spent on Damus, Defendants,
8 and amounts unable to recover against the other named defendants in the litigation.
9

10 52. Damus was the only defendant that carried insurance coverage that allowed
11 Plaintiffs certain assurances of recovery.

12 53. In performing the acts and omissions described herein, Defendants acted with
13 oppression, fraud, or malice.
14

15 54. As a direct and proximate result of Defendants' unlawful act, Plaintiffs have been
16 damaged in a sum in excess of fifty thousand dollars (\$50,000.00).
17

18 55. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
19 required to retain the services of attorney Brandon L. Phillips, Esq., to prosecute this action, and
20 they have incurred legal fees and costs, which this Arbitrator should require Defendants to pay.
21

22 **THIRD CLAIM FOR RELIEF**

23 **(Breach of Fiduciary Duties – Against all Defendants)**

24 56. Plaintiffs repeat and reallege the allegations of the preceding paragraphs of the
25 complaint as though fully set forth herein and incorporate the same herein by reference.
26

27 57. Defendants, as attorneys for Plaintiffs, owed Plaintiffs a fiduciary duty to preserve
28 and protect Plaintiffs' interests, rights, and opportunities.

58. Defendants by virtue of the actions and failures to act as described herein, breached

1
2 said fiduciary duties.
3

4 59. As an actual and proximate result of Defendants' breach of fiduciary duties
5 described above, Plaintiffs have been injured in an amount to be proven at Arbitration.

6 60. In breaching said fiduciary duties, Defendants acted with oppression, fraud, or
7 malice.
8

9 61. As a direct and proximate result of Defendants' unlawful acts, Plaintiffs have been
10 damaged in a sum in excess of fifty thousand dollars (\$50,000.00).

11 55. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
12 required to retain the services of attorney Brandon L. Phillips, Esq., to prosecute this action, and
13 they have incurred legal fees and costs, which this Arbitrator should require Defendants to pay.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
17 follows:
18

- 19 1. For damages in excess of \$50,000.00, the exact amount to be proven at binding
20 arbitration.
21
22 2. For interest, attorneys' fees, and costs of suit incurred herein.
23
24 3. For punitive and exemplary damages in an amount to be proven at binding
25 arbitration.

26 ///

27 ///

28 //

1
2
3 4. For such other and further relief as the Court may deem proper.

4 DATED this 18th day of May, 2017.

5 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

6
7 /S/ Brandon L Phillips

8 BRANDON L. PHILLIPS, ESQ.

9 Nevada Bar No. 12264

10 1455 E. Tropicana Ave., Suite 750

11 Las Vegas, Nevada 89119

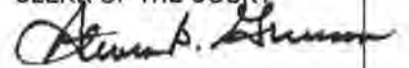
12 *Attorney for Plaintiffs, Kim and Hong*

1
2
3 **VERIFICATION**

4 I, Tae-Si Kim, have reviewed the Complaint and verify under penalty of perjury that the
5 facts alleged in the foregoing Complaint are true and correct to the best of my information,
6 knowledge, and/or belief.
7

8 Dated: May 1, 2017.

9 
10 _____
11 Mrs. Tae-Si Kim
12
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24
25
26
27
28



1 NEO

2 Steve Morris, NV Bar No. 1543

3 Ryan M. Lower, NV Bar No. 9108

4 MORRIS LAW GROUP

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Email: sm@morrislawgroup.com

9 Email: rml@morrislawgroup.com

10 Attorneys for Defendants

11 Dickinson Wright, PLLC,

12 Jodi Donetta Lowry, Jonathan M.A.

13 Salls, Eric Dobberstein, and

14 Michael G. Vartanian

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 TAE-SI KIM, an Individual, and JIN-
18 SUNG HONG, an Individual,

19 Plaintiffs,

20 v.

21 GIBSON LOWRY BURRIS, LLP,
22 (now known as GIBSON LOWRY,
23 LLP), a Nevada limited liability
24 partnership; DICKINSON WRIGHT,
25 PLLC, a Nevada Professional
26 limited liability company; STEVE A.
27 GIBSON, ESQ., an Individual; JODI
28 DONETTA LOWRY, ESQ., an
Individual; JONATHAN M.A.
SALLS, ESQ., an Individual; ERIC
DOBBERSTEIN, ESQ., an
Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual;
and DOES I through X, inclusive,
and ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

) Case No. A-17-756785-C

)

) Dept. No. XXIV

)

)

)

) NOTICE OF ENTRY OF ORDER

)

)

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1 PLEASE TAKE NOTICE that an Order Granting Dickinson
2 Wright's Motion to Dismiss ("Order") was entered in this action on the 17th
3 day of October, 2017. A copy of the Order is attached hereto as Exhibit A.

4 MORRIS LAW GROUP

5
6 By: 

7 Steve Morris, NV Bar No. 1543
8 Ryan M. Lower, NV Bar No. 9108
9 411 E. Bonneville Ave., Ste. 360
10 Las Vegas, Nevada 89101

11 Attorneys for Defendants
12 Dickinson Wright, PLLC,
13 Jodi Donetta Lowry, Jonathan M.A.
14 Salls, Eric Dobberstein, and
15 Michael G. Vartanian
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I
certify that I am an employee of MORRIS LAW GROUP and that on the
date below, I caused the following document to be served via the Court's
Odyssey E-Filing system: **NOTICE OF ENTRY OF ORDER**. The date and
time of the electronic proof of service is in place of the date and place of
deposit in the mail.

TO:

Brandon L. Phillips, NV Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169
blb@abetterlegalpractice.com

Attorneys for Plaintiffs

DATED this 17th day of October, 2017.

By: Patty Cammer

MORRIS LAW GROUP

4111 E. BONNEVILLE AVE., STE. 360 - LAS VEGAS, NEVADA 89101
702/474-9400 - FAX 702/474-9422

EXHIBIT A

MORRIS LAW GROUP

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702/474-9400 · FAX 702/474-9422

1 **OGM**

2 Steve Morris, NV Bar No. 1543
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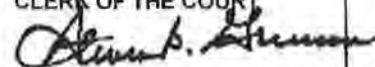
7 Attorneys for Defendants
8 Dickinson Wright, PLLC,
9 Jodi Donetta Lowry, Jonathan M.A.
10 Salls, Eric Dobberstein, and
11 Michael G. Vartanian

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

13 TAE-SI KIM, an Individual, and) Case No. A-17-756785-C
14 JIN-SUNG HONG, an Individual,)
15 Plaintiffs,)
16 v.)

17 GIBSON LOWRY BURRIS, LLP,) **ORDER GRANTING DICKINSON**
18 (now known as GIBSON LOWRY,) **WRIGHT'S MOTION TO DISMISS**
19 LLP), a Nevada limited liability)
20 partnership; DICKINSON)
21 WRIGHT, PLLC, a Nevada)
22 Professional limited liability)
23 company; STEVE A. GIBSON, ESQ.,)
24 an Individual; JODI DONETTA)
25 LOWRY, ESQ., an Individual;)
26 JONATHAN M.A. SALLS, ESQ., an)
27 Individual; ERIC DOBBERSTEIN,)
28 ESQ., an Individual; and MICHAEL)
G. VARTANIAN, ESQ., an)
Individual; and DOES I through X,)
inclusive, and ROE BUSINESS)
ENTITIES XI through XX, inclusive,)
Defendants.)

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Steven D. Grierson
CLERK OF THE COURT



1 This matter came before the Court on September 26, 2017 for
2 hearing on Defendants Dickinson Wright, PLLC, Jodi Donetta Lowry,
3 Jonathan M.A. Salls, Eric Dobberstein, and Michael G. Vartanian's
4 (collectively "Dickinson Wright") Motion to Dismiss. Brandon Phillips
5 appeared for Plaintiffs. Ryan Lower appeared for Dickinson Wright. The
6 Court, having considered the motion papers filed in support of and in
7 opposition to Dickinson Wright's motion to dismiss, and having heard the
8 argument of counsel, HEREBY FINDS:

9 (1) The plaintiffs allege the defendants committed malpractice
10 because they did not file a legal malpractice action in state court against
11 attorney Charles Damus on or before September 2011, after that claim
12 against Damus in a multi-party case in federal court had been dismissed on
13 December 6, 2010 in a non-final and non-appealable order;

14 (2) Under 28 U.S.C. § 1367(d), the statute of limitations against
15 Damus was tolled until September 4, 2015 when the federal action was
16 finally dismissed. Plaintiffs' claims against Damus could have been
17 brought in state court at that time and thereafter, as Dickinson Wright
18 clearly advised plaintiffs when the firm terminated its representation of
19 them on July 30, 2015;

20 (3) Based on Nevada's litigation tolling rule, plaintiffs' legal
21 malpractice claim against Damus did not accrue until the conclusion of the
22 federal action when their damages became certain;

23 (4) Under the attorney judgment rule, Dickinson Wright's
24 exercise of professional judgment as to when plaintiffs could re-file their
25 claims against Damus in state court is not, as a matter of law, actionable in
26 this case;

27 (5) The plaintiffs' claims against Dickinson Wright are time-
28 barred under NRS 11.270;
²⁰⁷
(NRS)

(6) Plaintiffs included new allegations in their opposition (Opp. 2:27-3:11, 5:17-22, 8:11-9:2, 10:14-11:7) that were not alleged in the complaint and an improper request for leave to amend (Opp. 12:4-9) that did not comply with EDCR 2.30(a); nevertheless, the new allegations did not plead any facts or legal theories that would overcome the deficiencies in the complaint or require the Court to deny this motion.

Based on these FINDINGS, and good cause appearing IT IS
HEREBY ORDERED that:

- (1) Dickinson Wright's Motion to Dismiss is GRANTED;
- (2) The action is DISMISSED, without prejudice; and
- (3) Plaintiffs' request for leave to amend is DENIED.


DISTRICT COURT JUDGE

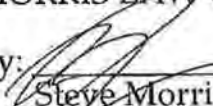
DATED: October 12, 2017

Approved by:
BRANDON L. PHILLIPS,
ATTORNEY AT LAW, PLLC

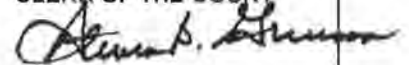
By: **NOT SIGNED**

Brandon L. Phillips, NV Bar No. 12264
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169

Submitted by:
MORRIS LAW GROUP

By: 
Steve Morris, NV Bar No. 1543
Ryan M. Lower, NV Bar No. 9108
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Attorneys for Defendants
Dickinson Wright, PLLC,
Jodi Donetta Lowry, Jonathan M.A.
Salls, Eric Dobberstein, and
Michael G. Vartanian



MOT

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Attorney for Plaintiffs, Tae-Si Kim and Jin-Sung Hong

**EIGHT JUDICIAL DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA**

TAE-SI KIM, an Individual, and JIN-SUNG
HONG, an Individual.

CASE NO. A-17-756785-C

DEPT. NO. XXIV

Plaintiffs,

v.

GIBSON LOWRY BURRIS, LLP, (now
known as GIBSON LOWRY, LLP), a Nevada
limited liability partnership; DICKINSON
WRIGHT, PLLC, a Nevada Professional
limited liability company; STEVE A.
GIBSON, ESQ., an Individual; JODI
DONETTA LOWRY, ESQ. an Individual;
JONATHAN M.A. SALLS, ESQ., an
Individual; ERIC DOBBERSTEIN, ESQ., an
Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual; and
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES XI through XX,
inclusive,

Defendants.

**PLAINTIFFS' MOTION TO RECONSIDER DISMISSAL OF PLAINTIFFS' CLAIMS
AGAINST DICKINSON WRIGHT**

COMES NOW, Plaintiffs TAE-SI KIM and JIN-SUNG HONG, by and through their
counsel of record, Brandon L. Phillips, Esq., of Brandon L. Phillips, PLLC, and hereby submit
their Motion for Reconsideration of this Court's Order Granting Dismissal of Plaintiff's Claims
Against Dickinson Wright.

...

1 This Motion is made and based upon the pleadings and papers on file herein, the
2 accompanying Memorandum of Points and Authorities, the attached exhibits, including an and
3 any and all oral argument, this Court may entertain at the time of the hearing on this matter.
4

5 DATED this 6th day of November, 2017.

6 **BRANDON L. PHILLIPS,**
7 **ATTORNEY AT LAW, PLLC**

8 

9 BRANDON L. PHILLIPS, ESQ.
10 Nevada Bar No. 12264
11 1455 E. Tropicana Ave., Suite 750
12 Las Vegas, Nevada 89119
13 Phone: (702) 795-0097, Fax: (702) 795-0098
14 *Attorney for Plaintiffs*

15 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PLAINTIFFS'**
18 **MOTION FOR RECONSIDERATION**, on for hearing before the above-entitled Court on the
19 7 day of **DEC.**, 2017, at the hour of 9:00 a.m/p.m., in Department No. XXIV,
20 or as soon thereafter as counsel for Plaintiff can be heard.

21 DATED this 6th day of November, 2017.

22 **BRANDON L. PHILLIPS,**
23 **ATTORNEY AT LAW, PLLC**

24 

25 BRANDON L. PHILLIPS, ESQ.
26 Nevada Bar No. 12264
27 1455 E. Tropicana Ave., Suite 750
28 Las Vegas, Nevada 89119
(702) 795-0097, (702) 795-0098 fax
Attorney for Plaintiffs

I.

Introduction

Plaintiffs bring the instant Motion for Reconsideration pursuant to EDCR 2.24 and NRC 15, and request that the Court reconsider its decision granting Defendants' Motion to Dismiss. It is Plaintiffs' position that Defendants' Motion should have been denied based on the legal authority cited by Defendants. In particular, Defendants' Motion should have been denied as there were multiple factual issues that should have prevented this Court from granting the Motion, which includes:

1. Whether an underlying action existed. Plaintiffs' argue herein that there was no underlying action, in which, the malpractice had been committed because the malpractice alleged against Damus arose out of the fact that he failed to timely file any action prior expiration of the statutory period to prevent the sale of Plaintiffs' property. Thus, the conclusion of the Federal case was irrelevant and did not toll the action against Damus.
2. Whether Plaintiffs' damages against Damus were realized at the time Defendants' filed the action against Damus. Plaintiffs' argue their damages were realized since they had lost their real property due to foreclosure. The loss of real property causes irreparable harm. Since, Plaintiffs had their real property there was no need to look any further than filing a claim against Damus. Failure to properly proceed with a claim against Damus was malpractice.
3. Whether the attorney judgment rule was applicable to the instant circumstances. There is no dispute that Plaintiffs' hired the Defendants to pursue an action against Damus. Defendants in fact did pursue a claim against Damus, confirming their obligation to sue Damus. Defendants were paid by Plaintiffs to sue. The fact that Defendants' sued Damus in federal court, which had no jurisdiction, does not relieve Defendants responsibility to sue Damus in a proper venue.
4. Whether Plaintiffs' Claims Were Barred by NRS 11.207.

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II.
Statement of Facts

On August 20, 2009, Plaintiffs retained the legal services of Defendant, GLB, memorialized through a written agreement. In accordance with the terms of the Legal Services Agreement, Plaintiffs were required to and did tender \$30,000.00 with payments to be paid in six (6) equal monthly payments. In accordance with the Agreement the Defendants were to represent the clients in litigation against the defendants named in the action.

In accordance with the Agreement "Litigation" was defined as an action in a court in Nevada against the Relevant Persons that the Client and the Firm has a good faith belief have perpetrated civil wrongs against the Client(s) in connection with the Investment and/or breached contractual obligation(s) with respect to Client in connection with the Investment.

In accordance with the Agreement "Relevant Persons" was defined as any Person who solicited (or participated in the solicitation of) the Investment and/or any Person who engaged in effecting the Investment (whether directly or indirectly) during the time period that the Client engaged in activities aimed at securing ownership of the Investment.

In accordance with the Agreement "Defendants" was defined as the Relevant Persons that were named as "defendants" in the Litigation.

On October 15, 2009, GLB filed a Complaint in the United States District Court, District of Nevada under case No. 2:09-cv-02008-RFB-GWF. On March 2, 2010, GLB filed an Amended Complaint in which additional Defendants were named and additional claims were brought. Specifically, claims against Charles M. Damus, Esq. for legal malpractice and negligent undertaking to perform services.

On December 17, 2008, Plaintiffs had originally retained the services of Charles M.

1 Damus, Esq., to litigate and dispute certain real estate and other related claims regarding real
2 property. Importantly, Damus was retained to prevent the foreclosure of the Property of which
3 Plaintiffs had tendered all payments. On September of 2009, Plaintiffs terminated Damus due to
4 the fact that no complaint had been filed and the foreclosure had occurred.

5
6 In the Amended Complaint it was alleged that Damus committed legal malpractice and
7 negligent undertaking to perform services. In Damus' Motion to Dismiss for Lack of Subject
8 Matter Jurisdiction it was admitted that he attempted to negotiate with Adam Kearney and was
9 aware of the pending foreclosure. After the foreclosure sale, without the filing of case to prevent
10 the foreclosure, Damus was terminated. Since Plaintiffs lost title to the Property and Damus had
11 taken no reasonable steps to prevent the foreclosure sale, malpractice was clear and obvious.

12
13 On October 5, 2010, Damus filed a Motion to Dismiss for Lack of Subject Matter
14 Jurisdiction. On October 22, 2010, the firm Dickinson Wright, PLLC filed Plaintiffs' Response
15 to Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter
16 Jurisdiction.

17
18 On November 1, 2010, Damus filed a Reply to the Opposition. On December 6, 2010, the Court
19 entered an Order Granting Damus' Motion to Dismiss.

20
21 The Defendants admitted they never initiated a claim in the District Court against Damus.
22 Any claim against Damus for malpractice should have been brought on or before the termination
23 date two years later.

24
25 On May 31, 2012, Plaintiffs entered into an Amended and Restated Legal services
26 Agreement with Dickinson Wright PLLC, which combined practices with GLB. Defendants
27 continued to pursue claims against the remaining defendants in the case. On July 30, 2015,
28

1 Plaintiffs received an email from Defendant Vartanian acknowledging that no suit had been filed
2 against Damus and that as of the date of that email representation of the Plaintiffs had ended.

3
4 **III.**

5 **Legal Argument**

6 **A. EDCR 2.24 Provides This Court Authority to Reconsider Its Order Granting**
7 **Defendant's Motions to Dismiss.**

8 EDCR 2.24, entitled "Rehearing of motions," governs the instant Motion for
9 Reconsideration, and provides this Court with the authority to reconsider its decision granting
10 Defendants' Motion to Dismiss. Specifically, EDCR 2.24 states, in pertinent part, as follows:

12 (a) No motions once heard and disposed of may be renewed in the
13 same cause, nor may the same matters therein embraced be reheard,
14 **unless by leave of the court granted upon motion therefor**, after
notice of such motion to the adverse parties.

15
16 (c) If a motion for rehearing is granted, the court may make a final
17 disposition of the cause without reargument or may reset it for
18 reargument or resubmission or **may make such other orders as**
19 **are deemed appropriate under the circumstances of the**
particular case.

20 EDCR 2.24(a) (emphasis added). Thus, the Nevada Supreme Court has long held, "A district
21 court may reconsider a previously decided issue if substantially different evidence is
22 subsequently introduced or the decision is clearly erroneous." *Masonry and Tile Contractor's*
23 *Association of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,
24 489 (1997). Therefore, this Court has the authority, pursuant to EDCR 2.24 to reconsider the
25 previously decided issues raised in Defendant's Motion to Dismiss and to make such other
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1 orders as are deemed appropriate under the circumstances of this case, specifically to confirm
2 that issues of fact exist and a motion to dismiss at this stage in the litigation is improper.

3 **B. The Was No Underlying Action.**

4 Defendants' Motion to Dismiss and Reply argue that the claims against Damus were tolled
5 until the underlying lawsuit in which the malpractice allegedly occurred had been resolved. *Brady*,
6 *Vorwerck, Ryder & Caspino v. New Albertson's Inc.*, 130 Nev. Adv. Op. 68, 333 P.3d 229, 235
7 (2014). In Defendant's Reply they state, "The underlying federal litigation in which Damus was
8 alleged to have committed malpractice did not finally conclude until September 4, 2015, when it
9 was dismissed with prejudice." (Reply Pg. 6, Ln. 7-9). The argument misconstrues the facts of the
10 present action. In the *Brady* case, the malpractice occurred during the litigation process, thus the
11 plaintiff therein was not required to bring an action for malpractice until the case had concluded,
12 the claim for malpractice was tolled. Those issues are substantially factually different than the
13 present set of facts. Specifically, Damus had allegedly committed malpractice prior to the
14 institution of the Federal case against him, he did not commit malpractice during the Federal
15 litigation, his alleged malpractice had already been committed. Therefore, there was no action to
16 toll against Damus because Damus could not cure the malpractice. As Plaintiffs' referenced in
17 their Opposition, it is important that their damages were realized because it is an essential element
18 of the malpractice claim. The only tolling that would have occurred, would be by Plaintiffs' claims
19 against the present Defendants. Not Plaintiffs' alleged claims against Damus.

20 Further, Plaintiffs' argument is supported by *Semenza v. Nev. Med. Liab. Ins. Co.*, 104
21 Nev. 666, 668, 765 P.2d 184, 186 (1998). The Court in *Semenza*, again details that a claim of
22 malpractice is speculative when the underlying case is still pending. In applying that same
23 reasoning to the instant matter, this Court must determine whether Plaintiffs' claims against Damus
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1 were speculative, even though there was no underlying action, essentially, could Damus cure his
2 malpractice by resolution of the case. The answer to the question is a resounding, negative. The
3 claims against Damus were realized in that Plaintiffs' had lost their property to foreclosure by
4 failure of Damus to timely file suit. (This is the underlying action. Damus failed to file that action,
5 thus sealing his fate, a valid malpractice claim, as Plaintiffs' were statutorily barred from bringing
6 their claims to prevent the foreclosure or set aside the foreclosure).

8 Since, Plaintiffs' claims against Damus were realized, his dismissal from the Federal Court
9 action allowed the statute to continue to run. There could be no tolling of Plaintiffs' malpractice
10 claims against Damus as the damages had already been realized. Therefore, Defendants' argument
11 that Plaintiff's claims must be dismissed as they still could bring suit against Damus do not hold
12 water. The resolution of the underlying case, using the term loosely as there was no actual
13 underlying case, had been completed or worded alternatively the malpractice had been completed,
14 the damages were realized, and Damus had no ability to cure/offset the damages. Thus, a claim
15 had to brought against Damus no later than December 6, 2012.

17 **C. Plaintiffs' Damages Were Realized.**

18
19 As alluded to above, Plaintiffs' damages were realized thereby setting in motion the
20 malpractice claims against Damus. This is a critical factor in Plaintiffs' claims against the present
21 Defendants. In *Brady* and *Semenza*, the Court's focused on the fact that the plaintiffs therein had
22 speculative damages because the underlying case was not procedurally completed and there were
23 still reasonable alternatives for resolution of the matters. Those factual matters are in contrast to
24 the Plaintiffs' claims against Damus. The claims against Damus were valid as the malpractice had
25 been committed and the statutory time to cure that malpractice had run. Since, Plaintiffs could no
26 longer reacquire their real property, their damages were realized. Therefore, Plaintiffs' claims for
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1 malpractice against Damus were valid and not speculative. Defendants confuse this matter by
2 claiming the underlying action was the Federal suit. Damus did not commit malpractice during
3 the Federal suit as he did not represent the Plaintiffs during that action. The only malpractice
4 claims that could be tolled during the Federal action would be claims against the present
5 Defendants.
6

7 **D. Attorney Judgment Rule is Not Applicable.**

8 Defendants allege that they informed Plaintiffs that they could sue Damus at the
9 conclusion of the Federal Action. (*Defendants' Reply*, Pg. 7, Ln. 5-6). Defendants' allege that
10 they reviewed the alleged relevant statutes and concluded that Plaintiffs could bring their claims
11 against Damus at the conclusion of the Federal Action. This alone does not relieve the Defendants
12 of a possible malpractice claim. Based the cases, as referenced above, it is clear that since there
13 was no underlying action, the claims against Damus should have been brought prior to the
14 conclusion of the Federal action. Further, as Plaintiffs' alleged in the Complaint, malpractice was
15 committed when Defendants brought suit against Damus in Federal Court. The Federal Court had
16 no jurisdiction over Damus based on the state law claims of malpractice and unjust enrichment
17 and the lack of diversity between the parties. Since the Defendants had been retained to bring an
18 action against Damus there remains a factual dispute as to whether the filing of the Federal Action
19 against Damus constituted malpractice. Additionally, a factual issue remains regarding whether
20 the Defendants had a duty, within their scope of their representation of the Plaintiffs, to bring a
21 state action against Damus.
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25 **E. Plaintiff's Malpractice Claim Was Timely Filed.**

26 Dickinson Wright alleged that they terminated their representation as of July 30, 2015.
27 Plaintiffs brought their cause of action against the Defendants on June 12, 2017. As detailed
28

1 above, any claim against the Defendants for malpractice were tolled so long as the action was
2 pending. The Federal Action was not dismissed until September of 2017. NRS 11.207, requires
3 that a claim of malpractice be brought ". . . 4 years after the plaintiff sustains damage or within 2
4 years after the plaintiff discovers or through the use of reasonable diligence should have
5 discovered the material facts which constitute the cause of action, whichever occurs earlier."
6 Defendants cannot have it both ways. Defendants allege this prevents Plaintiffs from bringing
7 their cause of action of malpractice because they knew their damages in 2011. Assuming that is
8 true, which was also confirmed by Defendants filing the complaint against Damus, it remained
9 Defendants responsibility to sue Damus in Federal Court. Unless, as Plaintiffs' argue their claims
10 of malpractice were tolled as confirmed by *Bradley and Semenza*. Thus, Plaintiffs' action was
11 timely.
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14
15 **IV.**

16 **CONCLUSION**

17 Based on the foregoing reasons, Plaintiffs respectfully requests this Court reconsider its
18 decision granting Defendants' Motion to Dismiss and find that factual and legal issues exists as
19 to whether Defendants committed malpractice.

20 DATED this 6th day of November, 2017.

21 **BRANDON L. PHILLIPS,**
22 **ATTORNEY AT LAW, PLLC**

23 

24 **BRANDON L. PHILLIPS, ESQ.**

25 Nevada Bar No. 12264

26 1455 E. Tropicana Ave., Suite 750

27 Las Vegas, Nevada 89119

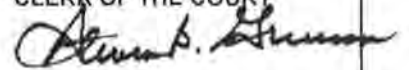
28 Phone: (702) 795-0097, Fax: (702) 795-0098

Attorney for Plaintiffs

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12/12/2017 2:54 PM
Steven D. Grierson
CLERK OF THE COURT



1 NEO

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3 Ryan M. Lower, NV Bar No. 9108
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9 Email: rml@morrislawgroup.com

7 Attorneys for Defendants
8 Dickinson Wright, PLLC,
9 Jodi Donetta Lowry, Jonathan M.A.
10 Salls, Eric Dobberstein, and
11 Michael G. Vartanian

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 TAE-SI KIM, an Individual, and JIN-
15 SUNG HONG, an Individual,

16 Plaintiffs,

17 v.

18 GIBSON LOWRY BURRIS, LLP,
19 (now known as GIBSON LOWRY,
20 LLP), a Nevada limited liability
21 partnership; DICKINSON WRIGHT,
22 PLLC, a Nevada Professional
23 limited liability company; STEVE A.
24 GIBSON, ESQ., an Individual; JODI
25 DONETTA LOWRY, ESQ., an
26 Individual; JONATHAN M.A.
27 SALLS, ESQ., an Individual; ERIC
28 DOBBERSTEIN, ESQ., an
Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual;
and DOES I through X, inclusive,
and ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

) Case No. A-17-756785-C

) Dept. No. XXIV

) NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an Order Denying Plaintiffs'
2 Motion to Reconsider Dismissal of Plaintiffs' Claims Against Dickinson
3 Wright was entered in this action on the 12th day of December, 2017. A
4 copy of the Order is attached hereto as Exhibit A.

5 MORRIS LAW GROUP

6
7 By: 

8 Steve Morris, NV Bar No. 1543
9 Ryan M. Lower, NV Bar No. 9108
411 E. Bonneville Ave., Ste. 360
10 Las Vegas, Nevada 89101

11 Attorneys for Defendants
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I
certify that I am an employee of MORRIS LAW GROUP and that on the
date below, I caused the following document to be served via the Court's
Odyssey E-Filing system: **NOTICE OF ENTRY OF ORDER**. The date and
time of the electronic proof of service is in place of the date and place of
deposit in the mail.

TO:

Brandon L. Phillips, NV Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169
blb@abetterlegalpractice.com

Attorneys for Plaintiffs

DATED this 12th day of December, 2017.


By: 
An employee of Morris Law Group

Exhibit A

Exhibit A

Steven D. Grierson

1 **ODM**

2 Steve Morris, NV Bar No. 1543

3 Ryan M. Lower, NV Bar No. 9108

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8 Email: sm@morrislawgroup.com

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10 Attorneys for Defendants

11 Dickinson Wright, PLLC,

12 Jodi Donetta Lowry, Jonathan M.A.

13 Salls, Eric Dobberstein, and

14 Michael G. Vartanian

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 TAE-SI KIM, an Individual, and
18 JIN-SUNG HONG, an Individual,

19 Plaintiffs,

20 v.

21 GIBSON LOWRY BURRIS, LLP,
22 (now known as GIBSON LOWRY,
23 LLP), a Nevada limited liability
24 partnership; DICKINSON
25 WRIGHT, PLLC, a Nevada
26 Professional limited liability
27 company; STEVE A. GIBSON, ESQ.,
28 an Individual; JODI DONETTA
LOWRY, ESQ., an Individual;
JONATHAN M.A. SALLS, ESQ., an
Individual; ERIC DOBBERSTEIN,
ESQ., an Individual; and MICHAEL
G. VARTANIAN, ESQ., an
Individual; and DOES I through X,
inclusive, and ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.

) Case No. A-17-756785-C

) Dept. No. XXIV

) **ORDER DENYING PLAINTIFFS'**
) **MOTION TO RECONSIDER**
) **DISMISSAL OF PLAINTIFFS'**
) **CLAIMS AGAINST DICKINSON**
) **WRIGHT**

MORRIS LAW GROUP
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This matter came before the Court on December 5, 2017 for hearing on Plaintiffs' Motion to Reconsider Dismissal of Plaintiffs' Claims against Dickinson Wright. Brandon Phillips appeared for Plaintiffs. Ryan Lower appeared for Dickinson Wright, PLLC, Jodi Donetta Lowry, Jonathan M.A. Salls, Eric Dobberstein, and Michael G. Vartanian (collectively "Dickinson Wright"). Jodi Donetta Lowry appeared for Gibson Lowry Burris LLP, a non-existent entity. The Court, having considered the motion papers filed in support of and in opposition to the motion, and having heard the argument of counsel, HEREBY FINDS:

(1) Plaintiffs' motion fails to address 28 U.S.C. § 1367(d)—a dispositive part of the court's October 17, 2017 order—which renders reconsideration a moot point;

(2) Plaintiffs' motion does not meet the standard for reconsideration;

(3) Plaintiffs' motion does not present any newly discovery or substantially different evidence;

(4) Plaintiffs' motion re-argues their prior opposition to the motion to dismiss and makes arguments they could have raised before; and

(5) Plaintiffs fail to show that the dismissal order was clearly erroneous.

Based on these FINDINGS, and good cause appearing IT IS HEREBY ORDERED that:

(1) Plaintiffs' Motion to Reconsider Dismissal of Plaintiffs' Claims against Dickinson Wright is DENIED;

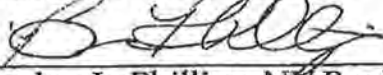
(2) Dickinson Wright's request for sanctions is DENIED.




12/11/17
DISTRICT COURT JUDGE

DATED: _____

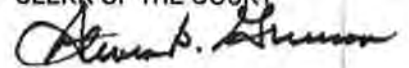
Approved by:
BRANDON L. PHILLIPS,
ATTORNEY AT LAW, PLLC

By: 
Brandon L. Phillips, NV Bar No. 12264
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169

Submitted by:
MORRIS LAW GROUP

By: 
Steve Morris, NV Bar No. 1543
Ryan M. Lower, NV Bar No. 9108
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Attorneys for Defendants
Dickinson Wright, PLLC,
Jodi Donetta Lowry, Jonathan M.A.
Salls, Eric Dobberstein, and
Michael G. Vartanian



ORDR

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Attorneys for Defendant Gibson Lowry Burris LLP, a non-existent entity

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

TAE-SI KIM, an individual; and JIN-SUNG
HONG, an individual,

Plaintiffs,

v.

GIBSON LOWRY BURRIS, LLP, (now known
as GIBSON LOWRY, LLP), a Nevada limited
liability partnership; DICKINSON WRIGHT,
PLLC, a Nevada Professional limited liability
company; STEVE A. GIBSON, ESQ., an
Individual; JODI DONETTA LOWRY, ESQ.,
an Individual; JONATHAN M.A. SALLS,
ESQ., an Individual; ERIC DOBBERSTEIN,
ESQ., an Individual; and MICHAEL G.
VARTANIAN, ESQ., an Individual; and DOES
I through X, inclusive, and ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.¹

Case No.: A-17-756785-C

Dept. No.: XXIV

**~~PROPOSED~~ ORDER GRANTING
DEFENDANT GIBSON LOWRY
BURRIS LLP'S MOTION TO DISMISS**

This matter having come before this Court for hearing on December 5, 2017, with J.D.
Lowry, Esq. appearing on behalf of the Defendant nonexistent entity Gibson Lowry Burris LLP

¹ All punctuation and capitalization *sic*.

Order Granting Defendant Gibson Lowry Burris LLP'S Motion to Dismiss
Eighth Judicial District Court Case # A-17-756785-C
Kim *et al.* v Gibson Lowry Burris LLP

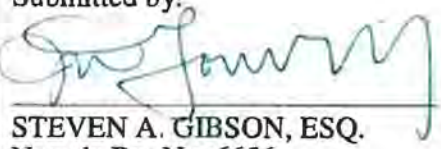
("Defendant"), and Brandon L. Phillips, Esq. appearing on behalf of Plaintiffs, and the Court having reviewed Defendant's Motion to Dismiss (the "Motion"), with Plaintiffs not having opposed same and good cause appearing therefor, the Court ORDERS, ADJUDGES, AND DECREES that the Motion is GRANTED. Defendant is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated this 20 day of December, 2017.


DISTRICT JUDGE

Submitted by:


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