

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

v

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

Supreme Court Case No: 74804

Electronically Filed
Jun 12 2018 10:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No:
A-16-737120-C

**APPELLANT'S AMENDED MOTION
TO TAKE JUDICIAL NOTICE**

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD
PLEASE TAKE NOTICE:

Appellant inadvertently attached a draft version of his motion with the Court. ***Below is the final version.***

Appellant DERRICK POOLE will move the Court to take judicial notice of the attached Legislative History of NRS 41.600 and the *Nevada Deceptive Trade Practices Act* (“NDTPA”). This motion is made pursuant NRAP 27 and NRS 47.130 on the grounds that the Legislative History is relevant and pertinent to the subject appeal and the attached portions of the Legislative History are capable of accurate and ready determination by resort to sources (the Nevada Legislature) whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable dispute.

Dated this 11th day of June, 2018

By /s/ George O. West III
George O. West III
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10161 Park Run Drive, Suite 150
Attorney for Appellant
DERRICK POOLE

A PARTY MAY MOVE TO HAVE THIS COURT TAKE
JUDICIAL NOTICE OF CERTAIN MATTERS

NRS 47.1302(2)(b) states:

1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
2. A judicially noticed fact must be:
(b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.¹

Attached to this Motion as Exhibits 1 through 4 are true and correct copies of the Legislative History of NRS 41.600 and the Nevada Deceptive Trade Practices Act (“NDTPA”) were first passed into law in addition to subsequent amendments to the NDTPA which are also directly at issue in this appeal. They were obtained by Appellant’s counsel from the Nevada Legislature’s Website at the following URL www.leg.state.nv.us/dbtwwpd/SimpleSearch.htm.

¹ See *Fierle v. Perez*, 125 Nev. 728, 738, 219 P. 3d 906, 912 (2009), rev’d on other grounds [holding “[this court] may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not. NRS 47.150(1). Further, [this court] may take judicial notice of facts that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.” See NRS 47.130(2)(b). Moreover, courts generally may take judicial notice of legislative histories, which are public records. See *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 872 P.2d 668, 673 n. 5 (1994); *Nekoosa–Edwards Paper Co. v. Public Service Com’n*, 8 Wis.2d 582, 99 N.W.2d 821, 826 (1959).”

The attached Legislative History is also referred to throughout Appellant's brief ("RFJN-LH") and any particular pages identified in Appellant's brief are in reference to **bates numbers** that were added to the pages by Appellant's counsel for ease of reference. The relevant portions are highlighted for the Court's convenience.

It is Appellant's position in his Opening Brief that the Legislative History is relevant and entirely germane to this Court's analysis to some core issues on appeal, particularly as to the following issues:

- (1) The underlying Legislative **public policy objectives** behind the passage and the continuous and robust expansion of NRS 41.600 the NDTPA (Chapter 598 of the NRS)
- (2) The rule of **liberal construction** with respect to remedial statutes.
- (3) Whether NRS 598.0923(2), which is part of the NDPTA fundamentally modified the common law by **statutorily abrogating** some of the common law requirements of a claim predicated upon misrepresentation by omission and/or non-disclosure ?

Dated this 11th day of June, 2018.

By /s/ George O. West III
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DERRICK POOLE

PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On June 11, 2018 I served the forgoing document(s) described as 1) APPELLANT'S (AMENDED) MOTION TO TAKE JUDICIAL NOTICE interested party(ies) in this action by either fax and/or email, or by placing a true and correct copy and/or original thereof addressed as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

☒ **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and the EDCR on electronic service, I hereby certify that service of the aforementioned document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and NRCP, as set forth herein.

Executed on this 11th day of June, 2018

/s/ George O. West III
GEORGE O. WEST III