

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

MICHAEL KOSOR JR., A NEVADA
RESIDENT,

Appellant,

vs.

OLYMPIA COMPANIES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND GARRY V. GOETT,
A NEVADA RESIDENT,

Respondents.

Electronically Filed
Supreme Court No. 75669 2019 09:21 a.m.
Elizabeth A. Brown
District Court Case No. 17-00257-6 Clerk of Supreme Court

**JOINT APPENDIX
VOLUME III**

On Appeal from Judgment of the Eighth Judicial District Court, Clark County,
Nevada

The Honorable Michelle Leavitt

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Attorneys for Respondents

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Declaration of Robert B. Smith, Esq. in Support of Defendant Michael Kosor, Jr.'s, Motion to Dismiss Pursuant to NRS 41.660	01/29/2018	I	94-138
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1 RTRAN

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3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 OLYMPIA COMPANIES, LLC,

7 Plaintiff,

8 vs.

9 MICHAEL KOSOR,

10 Defendant.

)
) CASE NO. A-17-765257-C

)
) DEPT. XII

11
12 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

13 MONDAY, JUNE 11, 2018

14 **RECORDER'S TRANSCRIPT RE:**
15 **DEFENDANT'S MOTION FOR RECONSIDERATION OF**
16 **COURT'S MARCH 20, 2018, ORDER**

17 APPEARANCES:

18 For the Plaintiff:

JON RANDALL JONES, ESQ.
NATHANAEL R. RULIS, ESQ.

19 For the Defendant:

WILLIAM H. PRUITT, ESQ.

20
21
22
23
24 RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, JUNE 11, 2018

2 * * * * *

3 [Case called at 10:32 a.m.]

4 THE COURT: Olympia Companies versus Michael Kosor, Case
5 A765257.

6 Good morning.

7 MR. PRUITT: Good morning, Your Honor. William Pruitt and Mr.
8 Kosor.

9 THE COURT: Good morning.

10 Good morning.

11 MR. JONES: Good morning, Your Honor. Randall Jones and Nate
12 Rulis on behalf of the Plaintiff.

13 MR. PRUITT: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. PRUITT: Fortunately, this is just one level of motion of
16 reconsideration, not two, but this is our motion for reconsideration and it's – it comes
17 to you in a rather unique fashion. It is on appeal to be sure.

18 THE COURT: And I agree. I do believe that if I was – I could treat it as
19 a *Huneycutt* if I was going to reconsider my decision.

20 MR. PRUITT: Exactly.

21 THE COURT: I could let them know and they would issue a remittitur
22 and give me jurisdiction, so if you want to skip past that part.

23 MR. PRUITT: We will skip ahead, Your Honor.

24 Your Honor, I believe, in essence –

25 MR. JONES: Your Honor, I'm sorry. I hate to interrupt. Let me just ask

1 for some clarification. I don't mean to interrupt the argument because –

2 THE COURT: I believe that I have jurisdiction under *Huneycutt*. If I
3 was inclined to reconsider there's a process pursuant to *Huneycutt* where you would
4 inform the Supreme Court. I do not believe I'd have jurisdiction to issue an order.
5 They would have to remand it back. I would sign an order that reconsidered and
6 then you could go from there, so.

7 MR. JONES: Right. No, and I get that. I guess my question was, as I
8 understand *Huneycutt*, the Court has to make a decision that it's inclined to
9 reconsider.

10 THE COURT: Absolutely.

11 MR. JONES: So my question to you is – I just want to make sure I
12 understand the process you want to follow today – does that mean that you are
13 inclined to reconsider?

14 THE COURT: I didn't say that.

15 MR. JONES: Okay. That's what I – that was my clarification.

16 THE COURT: Right.

17 MR. JONES: So what I understand you're doing is you're listening to
18 argument and then you'll decide whether you're inclined to reconsider.

19 THE COURT: Right.

20 MR. JONES: Thank you.

21 THE COURT: I just didn't want you to spend a lot of time on the
22 jurisdiction issue.

23 MR. JONES: That –

24 MR. PRUITT: I appreciate that, Your Honor.

25 THE COURT: Okay.

1 MR. JONES: That's fine. Thank you.

2 MR. PRUITT: And it's understood.

3 MR. JONES: That helps.

4 THE COURT: Thank you.

5 MR. JONES: I appreciate that.

6 MR. PRUITT: Your Honor, we think that, in essence, is the case that
7 fits squarely within the anti-SLAPP statutory framework, where you have powerful
8 interests that is [indiscernible] to silence the voice of a single or an individual on
9 matters of public interest or public affairs. The guiding principle under the anti-
10 SLAPP statute as to whether you can invoke its protection goes to whether we're
11 talking about a good-faith comment that's made in furtherance of the right of free
12 speech on an issue that's a matter of public interest.

13 THE COURT: Other than you don't agree with me what is new? What
14 could've been raised, wasn't raised? What new decision has come down, what new
15 facts? I mean because I understand a losing party –

16 MR. PRUITT: I believe –

17 THE COURT: – usually doesn't agree and that's okay.

18 MR. PRUITT: The losing party usually is – I agree, Your Honor. The
19 losing party usually has the view that something wasn't understood.

20 THE COURT: Right.

21 MR. PRUITT: I think what's at issue though and what – and, again, we
22 weren't counsel at that time, but from what we've seen from the prior submissions
23 and the Court's order, it appears that we have essentially a protection under the
24 statute. If we have comments that are made within the context of an election or
25 seeking an election outcome and we have – and of the comments that are deemed

1 actionable by the Plaintiff – we have two sets that are clearly within the context of an
2 election. You have an election campaign – an election campaign website on which
3 the statements occur and you also have a mailer or flyer or pamphlet, if you will, that
4 was also part of the election campaign. Under the statute, those are – that’s the
5 type of speech that is protected under the statute and under the authorities that we
6 cited in our moving papers.

7 So with respect to those statements, we have met our burden. We
8 have shown that this is entitled to protection under the statute. The focus then shifts
9 to whether they can – they are likely to prevail in their action to avoid a dismissal,
10 and that step never was reached by the Court. And we believe that based on the
11 fact that Nevada case law indicates that statements made within the context of an
12 election are strongly to be – are strongly indicative of opinions, that they are
13 couched in opinion language, that they are not able to demonstrate that they are
14 likely to prevail against those particular statements made within the context of an
15 election.

16 Now with respect to the other two sets of statements, one is in 2015 in
17 connection with a homeowner’s association meeting, what the statute also indicates
18 is that statements made of a public interest in a public forum are also subject to
19 protection. And within our brief we’ve cited additional authorities that I don’t believe
20 were before Your Honor, particularly from California, where there’s a lot more case
21 law relating to the anti-SLAPP statutes, to reflect that statements made in a
22 homeowner association meeting are matters of public interest, that they’re entitled to
23 protection, particularly when they relate to the governance of the –

24 THE COURT: Well, prior counsel argued very strongly that same point,
25 so he might not have cited every case that you’ve cited, but he argued very

1 strenuously this exact point.

2 MR. PRUITT: Okay. Well, Your Honor –

3 THE COURT: And he relied on those California cases.

4 MR. PRUITT: Okay. Then where there's also issues of public interest
5 is certainly with respect to the Sports Park. Even most recently that's been on the
6 news, on the television news. It's been in print again, the issues relating to the
7 delay of the Sports Park, delay of construction because of the delay of the Sports
8 Park, action taken by the County Commissioner against the Plaintiff for that delay.
9 This is a matter of public interest and concern and, because of that, it's likewise
10 entitled to that protection under the statute, which would then shift the burden to the
11 Plaintiffs to show that they're likely to prevail. And, once again, we believe that
12 because these are opinion statements, because these are statements many of
13 which involved or directed at the board itself, which is not a party, directed at the
14 commission itself, which is not a party, they cannot sustain their burden of proof.

15 And it's for those reasons, Your Honor, that we're before you to try to
16 point out that there are additional authorities. There are also the issue as it relates
17 to the election statements that would be subject to protection. And now this even
18 further interest in the community and the public at large as it relates to the Sports
19 Park, which is – you know, you can't deny – it can't be denied that it's in the public
20 discourse. It's in the news. It's in the media. These are issues of public concern,
21 Your Honor.

22 THE COURT: Thank you.

23 MR. JONES: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. JONES: Your Honor, I want to start off by quoting one of

1 America's great law advocates, Yoga Bear, where he said that it feels like déjà vu all
2 over again. There is absolutely nothing. Not that I expected anything differently, but
3 I was waiting to hear something that would be different. And as you may recall, and
4 I'm sure you do because you made reference to it, the argument before. That
5 argument went on for 45 minutes. I'd say 45 minutes but between both sides. The
6 Defendant had, I think, a very good lawyer, who I've known for many, many years. I
7 think he did an excellent job of making his points. I disagreed strongly with his
8 points, but he had certainly the right to make those points. But, most importantly,
9 this Court disagreed with those points.

10 Those points were made to this Court. Those points were considered
11 by this Court and those points were rejected by this Court. And I've heard nothing
12 this morning that changes that, nothing at all. And, in fact, I think – well, I know –
13 and I haven't had the opportunity to appear in front of you in a number of years. I
14 used to see you a lot before I got stuck in business court. Now I don't
15 [indiscernible], but I know from my past dealings with you that you are the type of
16 judge that doesn't like to consider sanctions unless they're really, really warranted
17 and I don't like to ask for sanctions unless they're really, really warranted.

18 And I bring that up not because I want to ask for sanctions, but we are
19 entitled to sanctions under Nevada law for the attorneys' fees for bringing a motion
20 for reconsideration that doesn't bring up anything new, either legal or factually. I'm
21 not asking you to grant them. I'm asking you to consider the fact that we are entitled
22 to them. I don't want them. I don't want to pile on Mr. Kosor. We believe what Mr.
23 Kosor did was wrong. That's why we filed the suit, but it just illustrates the point.
24 Mr. Kosor is on a personal mission and he can't let it go.

25 His counsel tried to bring up, what I suspect they – why they brought it

1 up is a new issue, this recent matter of it's in the news, about this park. Well, Your
2 Honor, we went and got the transcript about that issue. It's in the news because Mr.
3 Kosor – actually, I don't know how much it's in the news, but I can tell you that Mr.
4 Kosor was the only person from the community that showed up and argued against
5 it because he has a clear agenda against my client. He hates my client. He is going
6 to stop apparently at nothing to try to get my client for some way, reason or other.
7 And guess what? The County Commission rejected his argument about the park,
8 rejected it.

9 So who is it a matter of public concern to? This is the very issue you
10 heard before and the facts demonstrate this is an issue for Mr. Kosor and a couple
11 of other people in that community. There's no groundswell here or the community
12 getting up in arms and bringing pitchforks down to the County Commission building.
13 This is Mr. Kosor on a crusade that he just won't give up and can't give up. And you
14 have heard nothing new this morning that changes that, nothing in the law. There's
15 no new case law that's been cited. There is nothing in the facts that have changed.
16 This is not a matter of public concern. This is not a matter of these HOA cases that
17 they continue to cite from California the Court has rejected. It is not applicable to
18 this circumstance. And I don't see how in a motion for reconsideration – what he's
19 essentially asking you to do is change your mind based on the existing facts and
20 law, and that is inappropriate.

21 And with that, Your Honor, I would ask you to reject their motion and let
22 us proceed in the Supreme Court. If the Supreme Court agrees with Mr. Kosor,
23 which I'm extremely doubtful of, I think you made a very sound decision. You've
24 considered and you considered all of the issues and aspects and analyzed them all,
25 but he has a right to appeal that and we understand that. I certainly wouldn't want to

1 deprive him of that right, but I certainly think I should deprive him of this right
2 because it's not a right. It's a request that has no basis in the law or fact. Thank
3 you.

4 THE COURT: Okay.

5 MR. PRUITT: Your Honor, first of all, with it relates to whether there's
6 any issues that are new, there is multiple cases that we cited that were not part of
7 the original briefing.

8 THE COURT: They could've been.

9 MR. PRUITT: Well, it's possible they – well, there –

10 THE COURT: There's no new case law that's come out.

11 MR. PRUITT: There's –

12 THE COURT: I mean with all due respect, I mean you're a new lawyer
13 arguing – I mean the only thing I see new is a new lawyer.

14 MR. PRUITT: Well, again, some of the case law –

15 THE COURT: There's new cases, but the standard is if they could
16 have been brought to the attention of the Court –

17 MR. PRUITT: Well –

18 THE COURT: – not that you get a second bite at the apple and cite
19 more cases.

20 MR. PRUITT: Well, again, Your Honor, some of the cases were
21 available. I believe there is reference to a Westlaw decision from 2018 that wasn't
22 part of the grouping of cases that potentially were available to counsel, but it still
23 stands, Your Honor, as to whether or not the right decision was made. And I –
24 again, I hate the term an abuse of discretion. It sounds –

25 THE COURT: I'm okay.

1 MR. PRUITT: It sounds terrible, but where you do have statements that
2 are made within the context of an election, they seem to clearly apply to the statute.
3 And if they apply to the statute because they were made during the context of an
4 election, then the Court is incumbent to go to the next step to determine whether or
5 not there's a likelihood of prevailing on the merits. And, again, that wasn't done as
6 part of the lower decision.

7 Furthermore, the more recent actions as it relates to the commission,
8 the news coverage, Mr. Kosor was not the only individual there. That's – that is not
9 correct. There were others that were there in support. The County certainly did
10 take action against the Plaintiffs in terms of delaying their construction because of
11 the delay with the Sports Park. Those things have been happening and they are
12 part of the public discussion, the public interest. Because of that, Your Honor, there
13 was plenty of reason to bring this motion, to bring it back before the Court and to
14 have the Court to the extent there was an error or an abuse of discretion to address
15 that. And that's why we brought it here today, Your Honor.

16 As far as a personal vendetta, you know there's statements from 2015
17 that are claimed actionable and then nothing for two years until Mr. Kosor decides to
18 run for a board seat and now a lawsuit comes. If Mr. Kosor was acting out of – you
19 know crazily and vindictively – where's all of the stuff that would've happened during
20 that two-year period that would've been considered to be actionable? There's
21 nothing. It's after this lawsuit is filed – or, excuse me – after Mr. Kosor runs for the
22 board and the potential impact of the Plaintiffs losing control of the board. That's
23 when you get a lawsuit. That's when you get an action to shut him down. And that's
24 why, Your Honor, we're here today to have those issues addressed through a
25 reconsideration.

1 I appreciate the Court's and I appreciate counsel's willingness to
2 continue this hearing until today to accommodate myself, as opposed to last week.

3 THE COURT: Sure.

4 MR. PRUITT: I greatly appreciate that, but, Your Honor, we'll leave that
5 with you.

6 THE COURT: Thank you.

7 At this time the Court is going to deny the motion to reconsider. Mr.
8 Jones, you can prepare the order.

9 MR. JONES: We will, Your Honor.

10 THE COURT: Thank you.

11 MR. JONES: We'll provide it to counsel before we submit it to the
12 Court.

13 THE COURT: Thank you very much.

14 MR. JONES: Thank you, Your Honor.

15 MR. PRUITT: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. PRUITT: It's good to see you again too.

18 THE COURT: Thank you.

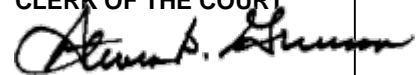
19 [Proceedings concluded at 10:47 a.m.]

20 * * * * *

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 proceedings in the above-entitled case to the best of my ability.

23 

24 KRISTINE SANTI
25 Court Recorder



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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada
limited liability company; GARRY V.
GOETT, a Nevada resident

Plaintiffs,

vs.

MICHAEL KOSOR, JR., a Nevada resident;
and DOES I through X, inclusive

Defendants.

Case No.: A-17-765257-C

Dept. No.: XII

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION OF
COURT'S MARCH 20, 2018 ORDER**

Hearing Date: June 11, 2018

Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on June 11, 2018, with J. Randall Jones, Esq. and Nathanael R. Rulis, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and William H. Pruitt, Esq. of Barron & Pruitt, LLP appearing on behalf of Defendant on Defendant's Motion for Reconsideration of Court's March 20, 2018 Order. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for
2 Reconsideration of Court's March 20, 2018 Order is DENIED.

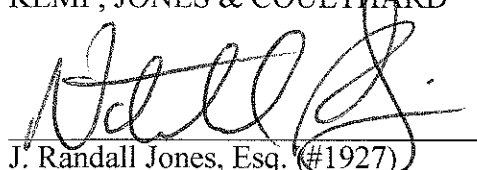
3 DATED: June 22, 2018.


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JUDGE MICHELLE LEAVITT

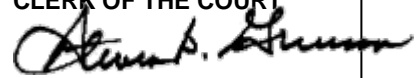
7
8 Submitted by:

9 KEMP, JONES & COULTHARD

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada
limited liability company; GARRY V.
GOETT, a Nevada resident

Plaintiffs,

vs.

MICHAEL KOSOR, JR., a Nevada resident;
and DOES I through X, inclusive

Defendants.

Case No.: A-17-765257-C

Dept. No.: XII

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION OF
COURT'S MARCH 20, 2018 ORDER**

TO: Defendants; and,

TO: Their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on June 22, 2018, an Order Denying Defendant's Motion for Reconsideration of Court's March 20, 2018 Order was entered in the above case. A copy of said Order is attached hereto.

Dated this 25th day of June 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis

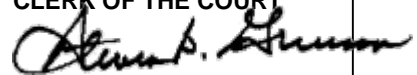
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NATHANAEL R. RULIS, ESQ. (#11259)
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3800 Howard Hughes Parkway, 17th Floor
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT’S MOTION FOR RECONSIDERATION OF COURT’S MARCH 20, 2018 ORDER** via the Court’s electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Alison Augustine

An Employee of KEMP, JONES & COULTHARD, LLP



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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada
limited liability company; GARRY V.
GOETT, a Nevada resident

Plaintiffs,

vs.

MICHAEL KOSOR, JR., a Nevada resident;
and DOES I through X, inclusive

Defendants.

Case No.: A-17-765257-C

Dept. No.: XII

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION OF
COURT'S MARCH 20, 2018 ORDER**

Hearing Date: June 11, 2018

Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on June 11, 2018, with J. Randall Jones, Esq. and Nathanael R. Rulis, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and William H. Pruitt, Esq. of Barron & Pruitt, LLP appearing on behalf of Defendant on Defendant's Motion for Reconsideration of Court's March 20, 2018 Order. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for
2 Reconsideration of Court's March 20, 2018 Order is DENIED.

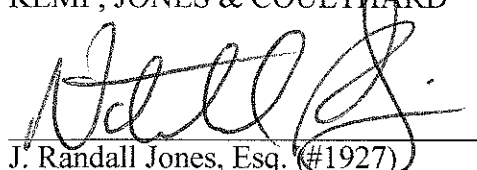
3 DATED: June 22, 2018.


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6 
JUDGE MICHELLE LEAVITT

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8 Submitted by:

9 KEMP, JONES & COULTHARD

10 BARRON & PRUITT, LLP

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