

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAVIN COX and MINH-HAHN
COX, Husband and Wife,

Appellants,

v.

MGM GRAND HOTEL, LLC;
DAVID COPPERFIELD aka
DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT
AND REFERRAL, INC. DAVID
COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION
MANAGEMENT, INC.; and
BEACHERS LV, LLC,

Respondents.

) **Supreme Court 76422**

) District Court Case No. **Electronically Filed**
) Jan 22 2020 09:31 a.m.
) Elizabeth A. Brown
) Clerk of Supreme Court

RESPONDENTS MGM GRAND HOTEL, LLC, DAVID
COPPERFIELD AKA DAVID S. KOTKIN, AND DAVID
COPPERFIELD'S DISAPPEARING, INC.'S MOTION TO
SUPPLEMENT RECORD PURSUANT TO NRAP 10(B)(2) AND
NRAP 30(D)

Elaine K. Fresch
Jerry C. Popovich
Gil Glancz
Selman Breitman LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: 702.228.7717
Attorneys for Respondents

Pursuant to NRAP 10(b)(2) and NRAP 30(d) MGM GRAND HOTEL (hereinafter "MGM"), LLC; DAVID COPPERFIELD aka DAVID S. KOTKIN; and DAVID COPPERFIELD'S DISAPPEARING, INC. (hereinafter "Copperfield") hereby request this Court to direct the District Court clerk to transmit the following original exhibits:

1. Trial Exhibit 94, exemplar video of a representative performance of the Thirteen illusion in the theatre at the MGM.; and
2. Trial Exhibit 402(A) (1-11), excerpts from the surveillance video from the night of the incident.

A review of the record has revealed that the videos marked as Exhibit 94 and Exhibit 402(A) are not part of record. The videos contained in the requested exhibits are relevant and material to the issues raised on appeal as set forth in the Cox Opening Brief and discussed in Copperfield's Answering Brief. NRAP 30(d) states:

(d) *Exhibits*. Copies of relevant and necessary exhibits shall be clearly identified, and shall be included in the appendix as far as practicable. If the exhibits are too large or otherwise incapable of being reproduced in the appendix, **the parties may file a motion requesting the court to direct the district court clerk to transmit the original exhibits. The court will not permit the transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the court's review of the original exhibits is necessary to the determination of the issues.** (Emphasis added.)

In the Cox opening brief, the Coxes argue that Gavin Cox did not voluntarily participate in the illusion and then he was allegedly told to run as fast as he could with no guidance or instruction outside over construction dust where he allegedly slipped and fell while making a sharp right turn. Cox also argues that David Copperfield personally caused the accident even though he was onstage throughout the performance of the illusion.

Trial Exhibit 94, the exemplar video of a representative performance of the Thirteen illusion, shows those audience members that are hoping to participate leave their respective seats in hopes of securing an inflatable ball so that they can participate in the illusion. This exhibit also shows the audience members who willingly catch the balls are vetted or screened at roughly seven different moments by the employees of DCDI and Backstage before being allowed to participate in the illusion to ensure that they can safely handle the physical aspects of the disappearance portion of the illusion. Finally, this exhibit shows that David Copperfield remains on stage at all times during the performance of the subject illusion.

Trial Exhibit 402(A) is 11 excerpts of the surveillance video of the area of Mr. Cox's injury from the night of the incident, providing supporting evidence as to Mr. Cox's comparative negligence. The video provides evidence as it shows that Mr. Cox was incorrect in his testimony

as to location and the circumstances/cause of his accident. The video also provides evidence that the employees of DCDI and Backstage provide guidance to the audience participants throughout the entire illusion.

For the foregoing reasons, MGM and Copperfield respectfully move this Court to direct the District Court clerk to transmit original Exhibits Nos. 94 and 402(A) to in order to supplement the record on appeal.

DATED: January 22, 2020 Selman Breitman LLP

By: /s/ Gil Glancz

ELAINE K. FRESCH
Nevada Bar No. 9263
GIL GLANCZ
Nevada Bar No. 9813
3993 Howard Hughes Parkway, #200
Las Vegas, NV 89169
Telephone: 702.228.7717
Facsimile: 702.228.8824

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SELMAN BREITMAN LLP and on the 22nd day of January 2020, a true and correct copy of the above and foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system and by United States First-Class mail to all unregistered parties as listed below:

SEE ATTACHED SERVICE LIST

/s/ Bonnie Kerkhoff Juarez
BONNIE KERKHOFF JUAREZ
An Employee of Selman Breitman
LLP

SERVICE LIST

Lee Roberts
Howard J. Russell
Weinberg Wheeler Hudgins Gunn &
Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
lroberts@wwhdg.com
hrussell@wwhgd.com

Attorneys for Backstage Employment &
Referral, Inc.

Roger Strassberg
Gary W. Call
Resnick & Louis, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
rstrassberg@rlattorneys.com
gcall@rlattorneys.com

Attorneys for Team Construction
Management, Inc. and Beachers LV,
LLC

Brian K. Harris
Heather E. Harris
Christian N. Griffin
Harris & Harris
2029 Alta Drive
Las Vegas, NV 89106
bharris@harrislawyers.net
hharris@harrislawyers.net
cgriffin@harrislawyers.net

Attorneys for Gavin Cox and Minh-
Hahn Cox

-and-

Benedict P. Morelli
Adam E. Deutsch
Perry S. Fallick
Morelli Law Firm PLLC
777 Third Ave., 31st Floor
New York, NY 10017
bmorelli@morellilaw.com
adeutsch@morellilaw.com
pfallick@morellilaw.com

Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, 600
Las Vegas, NV 89169
dpolsenberg@lrrc.com

Attorneys for Team Construction
Management, Inc. and Beachers LV,
LLC