

CASE NO. 76636

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONETTE PATUSH, Appellant

Electronically Filed
Mar 27 2019 06:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

LAS VEGAS BISTRO, LLC, Respondent

APPEAL FROM THE
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

APPELLANT'S REPLY APPENDIX

James P. Kemp, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of KEMP & KEMP ATTORNEYS AT LAW and on the date indicated below the Appellant's Reply Appendix along with the Appellant's Reply Brief were submitted for service through the Court's electronic filing system to be served on the following:

Deanna Forbush, Esq.
Jeremy Thompson, Esq.
CLARK HILL, PLLC
3800 Howard Hughes Pkwy, #500
Las Vegas, NV 89169

DATED this 27th day of March 2019

/s/James P. Kemp
An Employee of James P. Kemp, Esq.

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 ANTONETTE PATUSH,)

9 Plaintiff,)

10 vs.)

11 LAS VEGAS BISTRO, LLC.,)

12 Defendant.)

CASE NO. A-18-771491-C

DEPT. X

13

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

14 **TUESDAY, JULY 10, 2018**
15 **RECORDER'S TRANSCRIPT RE:**
16 **DEFENDANT'S MOTION FOR ATTORNEY'S FEES**

17 APPEARANCES:

18 For Plaintiff:

VICTORIA NEAL, Esq.

19
20 For Defendant:

21 DEANNA FORBUSH, Esq.
(Appearing via Court Call.)
22
23
24

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, July 10, 2018 at 9:46 a.m.

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3
4 MS. FORBUSH: Hi, this is Deanna Forbush calling. I'm appearing for Las
5 Vegas Bistro in the Patush matter.

6 THE COURT: Okay. And counsel for?

7 MS. NEAL: For Ms. Patush, Victoria Neal appearing for James Kemp.

8 THE COURT: So this is on today for the defendant's motions for attorney's
9 fees. The defendant is asking for \$9500 in attorney's fees and \$240.19 in costs.
10 The motion was opposed. The plaintiff filed an opposition that they're not entitled to
11 it, and then the motion was replied to. I've read all those documents. Does the
12 defendant have anything to add?

13 MS. FORBUSH: No, Your Honor. I'm sure you've read our arguments. I'd be
14 happy to respond to any questions or if you'd like a summary I'd be happy to give it
15 to you.

16 THE COURT: Well, I mean I've read everything unless you have something
17 extra to add that I don't already know.

18 MS. FORBUSH: Nothing extra except that, you know, it's not as if counsel
19 postponed their payment and said here's the law, I acknowledge it. We should
20 change it for the following reason. He just completely ignored the law, you know,
21 and then at this hybrid kind of action even after we sent a Rule 11 letter explaining
22 the law to him he continued to ignore it, and the Court immediately grasped the
23 precedent set by him in the Deangelo opinions and we just believe that we're
24 entitled to fees under 18.01 {inaudible} because it was a frivolous action and we
25 were forced to defend it.

1 THE COURT: Okay. Counsel.

2 MS. NEAL: This was not a frivolous action, Your Honor. This is in fact a
3 question of first impression to take towards to the Supreme Court of Nevada. The
4 issue is very simple, although it has a complex analysis, and I won't go through all of
5 that because I know it was on the motion to dismiss. But it's absolutely indisputable
6 and defendants pointed out that the claim sounds in tort. But then defendant goes
7 on to say it's indisputable that the two year statute of limitations apply. In other
8 words A, therefore B, which is not a true statement, in fact logical fallacy. There are
9 other torts or claims that have been designated as a tort that have a different statute
10 of limitations. Fraud is an example. I think in this particular instance where you
11 have for instance an intentional interference with perspective economic advantage
12 which also has a three year statute of limitations, which is also a tort and by
13 defendant's analysis therefore it should be a two year statute of limitations.

14 However, when the Court looked at that they said because this was not an
15 action where there was an injury to the person therefore it was not subject to the two
16 year statute of limitation. I think everything else is in the papers filed by Mr. Kemp.
17 However, I would be happy to answer any questions the Court may have.

18 THE COURT: Okay. Counsel, do you have any response to that?

19 MS. FORBUSH: It's just that you know 35 years ago when Hansen v. Hansen
20 case was decided the Court established that it's the policy of the State that
21 retaliatory discharge in violation of public policy, which is exactly what plaintiff's case
22 is. And not only that Hansen was also a case that was a retaliatory discharge filed
23 because the employee filed the workman's compensation claim and the Court firmly
24 said that this cause of action left this {inaudible} and it's something to the 2 year
25 statute of limitation after that. 17 years ago Deangelo {inaudible} held that while this

1 particular tort, this retaliatory tort is {inaudible} employment related to the kind of
2 employment whether it's contract or at will has nothing to do with the fact that the
3 cause of action is based on a wrong, a wrong being a tort. The termination is a tort.
4 That {inaudible} tort has been the law of this state for 35 years. Now without any
5 support, any legal support at all, plaintiff comes in and says, well, you know what
6 this is really a hybrid that sounds in tort and contract. That's just nonsensical.
7 There is no legal authority cited to support that decision yet it's been appealed to the
8 Supreme Court. They're going to uphold your ruling, Your Honor, when you dismiss
9 - - when you granted our motion for summary judgment. This nonsense that they
10 are defending, this made up cause of action is exactly what {inaudible} 18.010 was
11 prorogated for to give parties their attorney's fees when they're forced to defend
12 baseless and frivolous litigation that is filed without any evidentiary support.

13 THE COURT: In considering - -

14 MS. FORBUSH: Beyond that we're entitled to our cost just based on 1810
15 (sic).

16 THE COURT: Considering the ruling on the motion that I made on the motion
17 for summary judgement I believe that that decision is sound and accurate so I'm
18 going to grant the motion for attorney's fees. Fees will be awarded in the amount of
19 \$9500 and cost of \$240.19.

20 MS. NEAL: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. FORBUSH: Thank you, Your Honor

23
24 (Proceedings concluded at 9:52 a.m.)
25

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio/video proceedings in the above-entitled case to the best of my ability.
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6 *Victoria W. Boyd*

7 3-6-2019

8 _____
9 Victoria W. Boyd
10 Court Recorder/Transcriber

11 _____
12 Date
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