

BEFORE THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA STATE BOARD OF)	Electronically Filed
ARCHITECTURE, INTERIOR DESIGN)	Oct 25 2018 09:11 a.m.
AND RESIDENTIAL DESIGN,)	Elizabeth A. Brown
)	Clerk of Supreme Court
Petitioner,)	
)	Case No. 76792
vs.)	
)	8 th Judicial District Court
EIGHTH JUDICIAL DISTRICT COURT)	Case No. A-17-764562-J
OF THE STATE OF NEVADA,)	
DEPARTMENT 25, HONORABLE)	
KATHLEEN DELANEY,)	
)	
Respondent)	
)	
and)	
)	
DENNIS RUSK,)	
)	
Real Party in Interest.)	
-----)	

MOTION FOR LEAVE TO FILE REPLY BRIEF

Petitioner Nevada State Board of Architecture, Interior Design and Residential Design (hereinafter “Board”), by and through its attorney Louis Ling, moves this Court for leave to file a reply to Real Parties in Interest’s Brief in Opposition to Petitioner’s Petition for Writ of Prohibition filed on October 24,

2018. The motion is based on the pleading and papers on file herein and the following points and authorities.

I. POINTS AND AUTHORITIES

NRAP 27(a)(1) provides: “An application for an order or other relief is made by motion unless these Rules prescribe another form.” NRAP 27(b) allows that a motion for a procedural order such as the instant motion may be made at any time and without waiting for a response.

The Board asserts that a reply would further this Court’s consideration and deliberation in this matter for the following reasons:

(1) In its Order Directing Answer, Directing Supplementation of the Record, and Granting Emergency Motion for Stay, this Court stated as reason to consider and determine this matter that “because NRS Chapter 233B is silent on premature petitions for judicial review, this issue may arise in other petitions for judicial review of agency decisions.” See Order, at page 2. Therefore, because the determination of this matter may be precedential and because the Board bears the burden of persuasion in this matter, the Board asks that it be allowed to provide the final briefing on an issue of such import to the Court.

(2) In their Opposition, the Real Parties in Interest raised for the first time in these proceedings new case law (for example, the extensive argument based upon the

Windsor Hall case from Connecticut on pages 10-15) and arguments (for example, the lengthy statutory analysis of NRS 233B.125 on pages 15-20) that were never made to the District Court. Fairness dictates that the Board be allowed to address and refute these new cases and arguments since there was no way for the Board to anticipate them when it prepared its Petition in this matter. Especially where this Court has indicated that its decision may be precedential, the allowance of a reply by the Board seems prudent and necessary to assure the fullest and best consideration of this matter.

(3) Because this Court's ruling may be precedential, it is vital that the matter be fully briefed. The new case heavily relied upon by the Real Parties in Interest, namely the *Windsor Hall* case, actually supports the Board's Petition, and the Board needs to be able to show that. Additionally, the Real Parties in Interest do not discuss at all a case that was raised by the Board earlier before the District Court, namely *Johnson v. State*, 153 Idaho 246, 280 P.3d 749 (Idaho App. 2012) (See discussion in Second Motion to Dismiss, Supplemental Appendix, Vol. 1, APPX19, line 26 through APPX20, line 13) which held that a prematurely filed petition for judicial review did **not** confer subject matter jurisdiction on a district court. Where the Board bears the burden of persuasion, the Board seeks the opportunity to demonstrate that those courts that have reviewed the issue of prematurely filed

petitions for judicial review, such as the Idaho Court of Appeals in *Johnson v. State* and even the Connecticut Supreme Court in *Windsor Hall*, have all concluded that a prematurely filed petition for judicial review does not and cannot confer subject matter jurisdiction on a district court.

II. CONCLUSION AND REQUEST FOR RELIEF

Because this Court has indicated that it sees an important issue related to prematurely filed petitions for judicial review, and because Real Parties in Interest have raised new case law and arguments for the first time in the entirety of this matter in their Opposition, the Board seeks this Court's leave to file a reply brief to address the new cases and arguments raised by Real Parties in Interest. It seems only fair and prudent for this Court to receive full briefing regarding an issue of such import to this Court's jurisprudence, to district courts who may be faced with the same arguments in the future, and to these two parties.

Signed this 25th day of October, 2018.

Louis Ling

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this MOTION FOR LEAVE TO FILE REPLY BRIEF complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ It has been prepared in a proportionally spaced typeface using Microsoft Word for Macintosh 2008, Version 12.3.6 in Goudy Old Style 14 Point type.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 40 or 40A because it is:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 720 words.

3. Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of October, 2018.

Louis Ling

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CERTIFICATE OF SERVICE

I certify that I served on the below date a copy of the attached MOTION FOR LEAVE TO FILE REPLY BRIEF filed herewith upon the following:

By U.S. Mail:

Judge Kathleen Delaney, Department 25
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

By the Court's e-filing and e-service system:

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Dated this 25th day of October, 2018.

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