IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST,

Appellant ,

v.

SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS,

Respondents .

Supreme Court No.: 77007
District Court Case No.: A-17-765372-C

Electronically Filed
Dec 17 2018 04:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellants' Response to Court's Order to Show Cause

(Docket 77007)

RICHARD HASKIN
Nevada Bar No. 11592
GIBBS, GIDEN, LOCHER, TURNER,
SENET, & WITTBRODT, LLP
1140 N. Town Center Drive
Las Vegas, Nevada 89144
(702) 836-9800

Attorneys for Appellants

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

INTRODUCTION

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the "Appellants") most respectfully agrees with the Supreme Court that Docket 77007 should be dismissed as the Supreme Court currently lacks jurisdiction and the appeal is premature. The Nevada Supreme Court holds that, absent NRCP Rule 54(b) certification, a consolidated case is considered a single case for all appellate purposes. *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1992). Claims remain to be tried in District Court case A-16-747800-C, and only after a final judgment of the remaining claims, will the special order awarding attorneys' fees and costs be suited for appeal.

SUMMARY OF RELEVANT FACTS

Respondents SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS ("Respondents") filed a lawsuit (District Court Case No. A-17-765372-C) on November 30, 2017, seeking to quiet title to their respective properties and setting forth claims for quiet title and declaratory relief. Respondents' claims address abstracts of judgment

recorded by Appellant on Respondents' respective properties located within Rosemere Property Owners Association (the "Association"). The abstracts of judgments related to a judgment obtained by Appellants against the Association in District Court Case No. A-09-593497-C. Appellants also obtained judgments against the Association in two additional matters, Case Nos. A-10-631355-C and A-15-761420-C, for which abstracts of judgment were not recorded. Respondents complaint sought declaratory relief as to whether Appellants could enforce the judgments in these cases against Respondents.

On February 27, 2018, Respondents successfully moved the district court, Department XVIII, to consolidate Case No. A-17-765372-C with Case No. A-16-747800-C.

On May 22, 2018, the district court granted Respondents' Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment.

Thereafter, and after motions were filed, the district court awarded Respondents' attorneys' fees and costs as a prevailing party. Appellants appealed this Order as well, Docket No. 77007.

Appellant also filed a Motion to Reconsider Court's Ruling Granting Attorneys' Fees and Costs with the district court. Appellant cited a recent Supreme Court case not previously considered by the district court, and bearing directly on the issues at hand - *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty,*

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

LLC, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018). In *Frederic & Barbara Rosenberg Living Trust*, the Supreme Court held the District Court abused its discretion in awarding attorneys' fees pursuant to NRS 18.010(b)(2). The Court cited *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995), in finding that "[f]or purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Id.* "Although a district court has discretion to award attorney fees under NRS 18.010(2)(b), there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass." *Id.* (quoting *Bower*, 125 Nev. at 493, 215 P.3d at 726).

The Supreme Court reasoned that while it agreed the evidence presented on summary judgment did not support the trust's lawsuit, the trust did not lack "reasonable grounds to maintain the suit, as it presented a novel issue in state law, which, if successful, could have resulted in the expansion of Nevada's caselaw regarding restrictive covenants." *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 21 (citing *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216 P.3d 793, 801 (2009) where the district court denied attorney fees under NRS 18.010(2)(b) because the claim "presented a novel issue in Nevada law concerning the potential expansion of common law liability"). Finally, the Court held that while there is a need to deter frivolous lawsuits, this "must be balanced with the need for attorneys to pursue novel legal issues or argue for clarification or modification of existing law."

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

Id.

After hearing the Motion to Reconsider, the district court expressed reservations about its prior fee and cost order, but ruled that it would defer ruling on the Motion to Reconsider until the Supreme Court issued rulings on Docket Nos. 73039 and 76198.

ARGUMENT

On November 15, 2018, this Court entered an Order to Show Cause and Denying Motion (to consolidate). Therein, this Court cited *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1992), for the proposition that consolidated cases are considered a single case for all appellate purposes. Thus, there is no special-order awarding fees after judgment. Appellants concede the Supreme Court is quite right that claims remain in District Court case A-16-747800-C and the appeal is premature.

The Supreme Court reasoned in *Mallin* the purpose behind the aforementioned rule is that an appeal prior to the conclusion of the entire case could "frustrate the purpose for which the cases were original consolidated" and could lead to a "duplication of efforts in the appellate court." *Mallin*, 106 Nev. at 609, 797 P.2d at 980 (quoting *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984)). Ultimately, the district court is in the best position to permit a consolidated case to move forward on appeal, thus the power granted to the district court under NRCP 54(b).

///

///

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

In the present case, there is no Rule 54(b) certification, nor has any application been made. The reasons promoted by Respondents to this Court for permitting the appeal to move forward are perhaps best expressed to the district court under a Rule 54(b) application.

December 17, 2018

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

By: */s/ Richard E. Haskin*
Richard E. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Appellants

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on December 17, 2018, she served a copy of the foregoing **Appellant's Response to Court's Order to Show Cause** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for ***RESPONDENTS***

Tel: (702) 255-1718
Fax: (702) 255-0817

/s/Robin Jackson
An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP