

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

PETER GARDNER; AND CHRISTIAN
GARDNER, INDIVIDUALLY AND ON
BEHALF OF MINOR CHILD, LELAND
GARDNER,

vs.

R & O CONSTRUCTION INC.,

No. 77261

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Nov 02 2018 01:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department XXX
County Clark Judge The Honorable Jerry A. Wiese II
District Ct. Case No. A722259

2. Attorney filing this docketing statement:

Attorney Donald J. Campbell Telephone 702-382-5222
Firm Campbell & Williams
Address 700 South Seventh Street
Las Vegas, Nevada 89101

Client(s) Peter and Christian Gardner, individually and on behalf of minor child, L.G.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Brett Godfrey Telephone 303-228-0700
Firm Godfrey Johnson
Address 9557 South Kingston Court
Englewood, Colorado 80112

Client(s) R & O Construction, Inc.

Attorney John E. Gormley Telephone 702-384-4012
Firm Olson, Cannon, Gormley, Angulo & Stoberski
Address 9950 West Cheyenne Avenue
Las Vegas, Nevada 89129

Client(s) R & O Construction, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Gardner on Behalf of L.G. v. Eighth Judicial District Court, Supreme Court No. 70823

Gardner v. Henderson Water Park, LLC, Supreme Court No. 71652

Henderson Water Park, LLC v. Eighth Judicial District Court, Supreme Court No. 73997

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case arises from the severe non-fatal drowning of six-year old Leland Gardner on May 27, 2015 in the wave pool at the Cowabunga Bay water park in Henderson, Nevada. On July 30, 2018, the Gardners filed their Third Amended Complaint and named R & O Construction, Inc. ("R&O") as an alter ego defendant only under a reverse veil-piercing theory predicated on the Gardners' negligence claim against Defendant Orluff Opheikens. On October 23, 2018, the district court granted R&O's Motion to Dismiss on grounds that the Gardners are barred from asserting a reverse veil-piercing claim under the alter ego doctrine prior to the entry of an uncollectible judgment against Orluff Opheikens. As a result, the district court dismissed R&O as a defendant from the action. The district court granted NRCP 54(b) certification of its order and the Gardners commenced the instant appeal.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred by dismissing the Gardners' reverse veil-piercing claim under the alter ego doctrine against Defendant R & O Construction, Inc. ("R&O") on grounds that the Gardners are barred from asserting such a claim in the absence of an uncollectible judgment against Defendant Orluff Opheikens?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Supreme Court should retain this writ proceeding because it is a matter raising as a principal issue questions of first impression involving common law as well as questions of statewide importance. Specifically, the district court determined that reverse veil-piercing under the alter ego doctrine is only available in the post-judgment setting under NRS 78.747 and LFC Marketing Group, Inc. v. Loomis, 116 Nev. 896, 8 P.3d 841 (2000). The district court further held that reverse veil-piercing under the alter ego doctrine is not available prior to the entry of an uncollectible judgment because the Gardners had not alleged negligence or other wrongful conduct against R & O Construction, Inc. Accordingly, the Supreme Court must determine whether reverse veil-piercing under the alter ego doctrine is an available claim for relief prior to the entry of a judgment on the predicate cause of action.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Oct. 23, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Oct. 24, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Oct. 25, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRCP 54(b)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The order dismissing Defendant R & O Construction, Inc. is a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. In that regard, the district court granted NRCP 54(b) certification of the order of dismissal.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: Peter and Christian Gardner, individually and on behalf of minor child, Leland Gardner

Defendants: R & O Construction, Inc., Henderson Water Park, LLC, West Coast Water Parks, LLC, Double Ott Water Holdings, LLC, Orluff Opheikens, Slade Opheikens, Chet Opheikens, Tom Welch, Shane Huish, Scott Huish, Craig Huish

Third-Party Defendant: William Patrick Ray

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The defendants in the district court are not parties to this appeal because this proceeding solely relates to the district court's dismissal of R & O Construction, Inc.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The Gardners brought negligence and alter ego claims against Henderson Water Park LLC, West Coast Water Parks, LLC, Double Ott Water Holdings, LLC, Orluff Opheikens, Slade Opheikens, Chet Opheikens, Tom Welch, Shane Huish, Scott Huish, and Craig Huish. Plaintiffs brought a negligence claim against National Aquatic Water Safety Company, L.L.C. which was resolved by good faith settlement on April 26, 2017. The district court dismissed the Gardners' alter ego claim against R & O Construction, Inc, which is the subject of this appeal.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

The Gardners' negligence and alter ego claims against Henderson Water Park LLC, West Coast Water Parks, LLC, Double Ott Water Holdings, LLC, Orluff Opheikens, Slade Opheikens, Chet Opheikens, Tom Welch, Shane Huish, Scott Huish, and Craig Huish. Defendants' claims for contribution and indemnity against William Patrick Ray.

(b) Specify the parties remaining below:

The Gardners, Henderson Water Park LLC, West Coast Water Parks, LLC, Double Ott Water Holdings, LLC, Orluff Opheikens, Slade Opheikens, Chet Opheikens, Tom Welch, Shane Huish, Scott Huish, Craig Huish, and William Patrick Ray.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Peter and Christian Gardner


Name of appellant

Donald J. Campbell

Name of counsel of record

November 2, 2018

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of November, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Brett Godfrey
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John E. Gormley
OLSON, CANNON, GORMLEY
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9950 West Cheyenne Avenue
Las Vegas, Nevada 89129

Dated this 2nd day of November, 2018


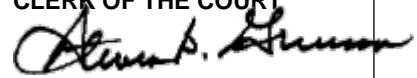

Signature

EXHIBIT 1



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN GARDNER,)
individually and on behalf of minor child, LELAND)
GARDNER,)

Plaintiffs,)

vs.)

HENDERSON WATER PARK, LLC dba)
COWABUNGA BAY WATER PARK, a Nevada)
limited liability company; WEST COAST WATER)
PARKS, LLC, a Nevada limited liability company;)
DOUBLE OTT WATER HOLDINGS, LLC, a Utah)
limited liability company; ORLUFF OPHEIKENS,)
an individual; SLADE OPHEIKENS, an individual;)
CHET OPHEIKENS, an individual; SHANE)
HUIH, an individual; SCOTT HUIH, an)
individual; CRAIG HUIH, an individual; TOM)
WELCH, an individual; R&O CONSTRUCTION)
COMPANY, a Utah corporation; DOES I through X,)
inclusive; ROE Corporations I through X, inclusive;)
and ROE Limited Liability Company I through X,)
inclusive,)

Defendants.)

AND ALL RELATED CLAIMS)

Case No.: A-15-722259

Dept. No.: XXX

THIRD AMENDED COMPLAINT

1 Plaintiffs Peter Gardner and Christian Gardner, individually and on behalf of their minor son,
2 Leland Gardner, and through their undersigned counsel, hereby complain and allege against
3 Defendants as follows:

4 **IDENTIFICATION OF THE PARTIES**

5
6 1. Plaintiff Peter Gardner (“Mr. Gardner”) is an individual and a Nevada resident. Mr.
7 Gardner is married to Christian Gardner and is the father of Leland Gardner (“Leland”), a minor child.

8 2. Plaintiff Christian Gardner (“Mrs. Gardner”) is an individual and a Nevada resident.
9 Mrs. Gardner is married to Mr. Gardner and is Leland’s mother.

10 3. Leland Gardner is a Nevada resident, who was six (6) years old at the time of the
11 incident that is the subject of this litigation.

12 4. Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park (“HWP”) is
13 a Nevada limited liability company with its principal place of business in Clark County, Nevada.

14 5. Defendant West Coast Water Parks, LLC (“West Coast”) is a Nevada limited liability
15 company that owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and
16 regularly conducts business in Clark County, Nevada.

17 6. Defendant Double Ott Water Holdings, LLC (“Double Ott”) is a Utah limited liability
18 company that owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and
19 regularly conducts business in Clark County, Nevada.

20 7. Defendant Orluff Opheikens (“Orluff”) is a Utah resident who, at all relevant times,
21 conducted business in Clark County, Nevada and served as the Chairman of HWP’s Management
22 Committee.

23 8. Defendant Slade Opheikens (“Slade”) is a Utah resident who, at all relevant times,
24 conducted business in Clark County, Nevada and served as a member of HWP’s Management
25 Committee.
26
27
28

1 9. Defendant Chet Opheikens (“Chet”) is a Utah resident who, at all relevant times,
2 conducted business in Clark County, Nevada and served as a member of HWP’s Management
3 Committee. At times, Orluff, Slade and Chet will be referred to collectively as the “Opheikens
4 Family.”

5 10. Defendant Shane Huish (“Shane”) is a Nevada resident who, at all relevant times,
6 served as a member of HWP’s Management Committee.

7 11. Defendant Scott Huish (“Scott”) is a Washington resident who, at all relevant times,
8 conducted business in Clark County, Nevada and served as a member of HWP’s Management
9 Committee.
10

11 12. Defendant Craig Huish (“Craig”) is a Washington resident who, at all relevant times,
12 conducted business in Clark County, Nevada and served as a member of HWP’s Management
13 Committee. At times, Shane, Scott and Craig will be referred to collectively as the “Huish Family.”
14

15 13. Defendant Tom Welch (“Welch”) is a Utah resident who, at all relevant times,
16 conducted business in Clark County, Nevada and served as a member of HWP’s Management
17 Committee. At times, Orluff, Slade, Chet, Shane, Scott, Craig, and Welch will be referred to
18 collectively as the “Individual Defendants.”

19 14. Defendant R&O Construction Company (“R&O”) is a Utah corporation that regularly
20 conducts business in Clark County, Nevada. Orluff, through his family trust, owns approximately
21 eighty-five percent (85%) of the outstanding shares in R&O and the remaining shares are owned by
22 other executives and board members of R&O.
23

24 15. At all times material to this Complaint, HWP’s Management Committee, through the
25 Individual Defendants as its members, was a common or joint enterprise and the Individual Defendants
26 acted in concert with each other and subject to the common nondelegable duties detailed herein. All
27 actions taken by a member of HWP’s Management Committee, as its agent in furtherance of HWP’s
28

1 business, were done so with the actual or constructive knowledge and authorization of the other
2 members of HWP's Management Committee.

3 16. Upon information and belief and at all times material to this Complaint, the Individual
4 Defendants influenced and governed Defendants HWP, West Coast, and Double Ott and were united
5 in interest and ownership with said entities so as to be deemed inseparable from them. In this regard,
6 the Individual Defendants (1) undercapitalized these limited liability companies; (2) diverted limited
7 liability company funds; (3) treated limited liability company assets as their own; and (4) caused the
8 entities to ignore certain required formalities. The Individual Defendants and Defendants HWP, West
9 Coast, and Double Ott, therefore, are one and the same and Plaintiffs should be permitted to pierce the
10 corporate structure veil of Defendants HWP, West Coast, and Double Ott to reach assets belonging to
11 the Individual Defendants in order to prevent the sanction and/or promotion of an injustice.
12

13 17. Cowabunga Bay Water Park ("Cowabunga Bay") is a water park located at 900
14 Galleria Drive, Henderson, Nevada 89011 and is operated by HWP's Management Committee, which
15 is composed of the Individual Defendants.
16

17 18. The true names and capacities, whether individual, corporate, associate, or otherwise, of
18 Doe Defendants I through X, are unknown to Plaintiffs, who therefore sue said defendants by such
19 fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants
20 designated as a Doe Defendant is responsible in some manner for the events and happenings described
21 herein, including but not limited to the individuals and entities that provide or should have provided
22 lifeguard and safety protection for Leland including but not limited to lifeguards, managers, supervisors,
23 contractors, other water park personnel, and the individual owners and operators of Cowabunga Bay,
24 as well as any swimming pool management companies and employment staffing agencies. As such,
25 Plaintiffs will seek leave of the Court to amend this Complaint to insert the true names and capacities of
26 said defendants as they become identified and known to Plaintiffs.
27
28

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Roe Corporations I through X and Roe Limited Liability Companies I through X, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated as a Roe Corporation or Roe Limited Liability Company is responsible in some manner for the events and happenings described herein, including but not limited to the individuals and entities that provide or should have provided lifeguard and safety protection for Leland including but not limited to lifeguards, managers, supervisors, contractors, other water park personnel, and the individual owners and operators of Cowabunga Bay, as well as any swimming pool management companies and employment staffing agencies. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the true names and capacities of said defendants as they become identified and known to Plaintiffs.

20. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is meant that such Defendant's officers, agents, servants, employees, or representatives did such act or thing and at the time such act or thing was done, it was done with full authorization or ratification of such Defendant or was done in the normal and routine course and scope of business, or with the actual, apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or representatives. Specifically, Defendants are liable for the actions of their respective officers, agents, servants, employees, and representatives.

GENERAL ALLEGATIONS

21. At all times material to this Complaint, the acts and omissions giving rise to this action occurred in Clark County, Nevada.

• • • • •

• • • • •

• • • • •

• • • • •

*The Original Ownership Structure Behind the Cowabunga Bay Project and
the “Nightmare” Scenario That Ensued During R&O’s Construction of the Park*

22. In or around September 2012, Splash Management, LLC (“Splash”)—a business entity operated by three individuals named Shawn Hassett, Ben Howell and Marvin Howell—partnered with the Huish Family, through West Coast, to develop Cowabunga Bay.

23. Together, Splash and West Coast formed Cowabunga Las Vegas Land, LLC to hold the land on which Cowabunga Bay would be built. Splash and West Coast likewise formed Cowabunga Las Vegas Operations, LLC to conduct the water park’s operations after the completion of construction.

24. Because Splash and West Coast did not have the ability to independently finance the construction of Cowabunga Bay, Splash and West Coast sought loans from financial institutions and hard money lenders with little to no success. In early November 2012, however, Splash and West Coast obtained a commitment for financing that would close within 90 days and be used to pay for the construction of Cowabunga Bay, which was originally anticipated to cost approximately \$12 to \$15 million.

25. Cowabunga Las Vegas Operations, LLC hired R&O as the general contractor to oversee the construction of Cowabunga Bay. Although the financing for the project was not yet secure, R&O hired subcontractors and immediately began construction of Cowabunga Bay in December 2012 with the goal of opening the park in Spring 2013.

26. The prospective financing arranged by Splash and West Coast fell through just months after R&O started construction. As a result, Cowabunga Las Vegas Operations, LLC failed to pay R&O several millions of dollars in construction costs that had already been incurred by R&O and its various subcontractors. With its subcontractors on the verge of bankruptcy, R&O was forced to halt construction in April 2013.

27. The consequences of R&O overextending itself on the Cowabunga Bay project threatened to cause irreparable harm to the company. First, R&O would lose millions of dollars if its

1 construction costs were not paid. Second, R&O would be forced to default its subcontractors, which
2 would cause them to declare bankruptcy and ruin R&O's reputation in the Las Vegas construction market.

3 28. Due to this self-described "nightmare" scenario, Orluff became personally involved in
4 order to salvage the Cowabunga Bay project and rescue R&O from severe harm. Orluff arranged
5 meetings with Splash and West Coast where it was discussed that Orluff, acting on behalf of R&O, would
6 make a capital contribution to the Cowabunga Bay project in exchange for an ownership stake in the
7 business. By doing so, Orluff would provide the funds necessary to pay R&O's costs and those of its
8 subcontractors such that the construction of Cowabunga Bay could be completed with minimal damage
9 to R&O's finances and reputation.
10

11 29. In order to obtain the funds for his capital contribution to the Cowabunga Bay project,
12 Orluff (as he had on other occasions in the past) requested a personal loan of approximately \$4 million
13 from R&O. Those same funds would then be funneled through the Cowabunga Bay project and paid to
14 R&O so the company could compensate the subcontractors and cover its own construction costs. In
15 exchange for this injection of capital, Orluff would receive an ownership stake in the Cowabunga Bay
16 project that would eventually generate sufficient funds to make R&O whole and extricate the company
17 from the "nightmare." R&O's Board of Directors—including Orluff and each of the minority
18 shareholders in the company—unanimously voted to approve the multi-million dollar loan to Orluff.
19

20 30. Splash, West Coast and Orluff (acting on behalf of R&O) initially contemplated that
21 each group would maintain an equity interest in Cowabunga Bay based on their respective capital
22 contributions. Splash, however, refused to accept a decreased equity interest and instead informed Orluff
23 and the Huish Family that it would take the project into bankruptcy, which would irreparably harm R&O's
24 financial health and reputation in the Las Vegas market.
25

26 31. In the face of a looming fight over ownership between Splash, on one hand, and Orluff
27 and the Huish Family, on the other, Orluff turned to his close friend and advisor, Tom Welch, for advice
28 on how to remove Splash from the equation. In anticipation of litigation with Splash, Welch activated

1 his dormant law license and devised a scheme whereby West Coast—which had voting control of
2 Cowabunga Las Vegas Land, LLC and Cowabunga Las Vegas Operations, LLC—would sell the land
3 and all of the park’s assets to a new business entity formed by Orluff and the Huish Family. Through the
4 new business entity, Orluff and the Huish Family would own and operate Cowabunga Bay to the
5 exclusion of Splash. During this undertaking, Welch represented the interests of R&O, the Opheikens
6 Family and the Huish Family and each group consented to the plan to remove Splash and form a new
7 entity to own and operate Cowabunga Bay.
8

9 32. Welch formed HWP in August 2013 with the express consent of R&O, Orluff and the
10 Huish Family. Welch drafted HWP’s Operating Agreement, which was likewise reviewed and approved
11 by R&O’s corporate counsel, Cass Butler, who also served as Orluff’s personal attorney.
12

13 33. R&O, Orluff and the Huish Family successfully executed the scheme in which HWP
14 bought the land and assets from Cowabunga Las Vegas Land, LLC and Cowabunga Las Vegas
15 Operations, LLC and, in turn, removed Splash from the Cowabunga Bay project.
16

17 34. Upon the formation of HWP, Orluff and the Huish Family sought additional financing
18 to complete the construction of Cowabunga Bay and fund the park’s operating costs. To that end, Orluff
19 personally approached Bank of Utah and negotiated a \$12.2 million loan to HWP, R&O, Double Ott,
20 West Coast, Orluff, Shane Huish, Scott Huish, and other relatives of the Huish Family. In addition to the
21 other borrowers, Orluff and R&O guaranteed payment on the note to Bank of Utah.
22

23 35. With the financing from Bank of Utah, Defendants successfully completed the
24 construction of Cowabunga Bay and opened the park to the public on July 4, 2014.
25

26 36. As a result of the scheme to insert Orluff as a straw man owner of Cowabunga Bay in its
27 place, R&O paid its subcontractors and recovered the costs of construction. Nevertheless, R&O did not
28 make a profit from the construction of Cowabunga Bay and even waived its lucrative general contractor
fee.

*The Management Committee of HWP Exercises Complete Control
Over the Operations of Cowabunga Bay*

37. Pursuant to HWP's Operating Agreement, HWP was operated and controlled by its Management Committee. At Orluff's direction, Welch designed the Management Committee to grant Orluff control over the Huish Family in the operations of Cowabunga Bay because Orluff and R&O had a greater amount of money invested in the business and, therefore, more risk. At all relevant times, the Management Committee was comprised of seven (7) members made up of the Opheikens Family, the Huish Family and Welch. Orluff served as Chairman of the Management Committee.

38. HWP's Operating Agreement contains the following provisions pertaining to the Management Committee's absolute control over every aspect of Cowabunga Bay's operations:

6.1 Rights and Powers of Management: Except as otherwise expressly provided in this Operating Agreement, all management rights, powers and authority over the business, affairs and operations of the Company shall be solely and exclusively vested in the Management Committee.

.....

[T]he Management Committee shall have the full right, power and authority to do all things deemed necessary or desirable by it, in its reasonable discretion, to conduct the business, affairs and operations of [Cowabunga Bay].

39. Among numerous other specific powers identified in the Operating Agreement, HWP's Management Committee has direct and absolute control over "the selection and dismissal of employees" and is responsible for "tak[ing] all actions which may be necessary or appropriate to accomplish the purpose of the [Cowabunga Bay]."

40. All actions taken by Cowabunga Bay set forth herein were authorized, directed or participated in by the Individual Defendants in their individual capacity as members of the Management Committee. Additionally, as set forth below, the Individual Defendants knew or should have known that these actions could injure Cowabunga Bay patrons like Leland, but negligently failed to take or order

appropriate action to avoid that harm despite the fact that an ordinarily prudent person, knowing what the Individual Defendants knew at the time, would not have acted similarly under the circumstances.

Defendants Intentionally Violate Nevada Law by Understaffing Lifeguards at the Wave Pool

41. Cowabunga Bay consists of a twenty-five (25) acre for-profit water park featuring dozens of water slides and attractions. One of its marquee attractions is the Surf-A-Rama Wave Pool (“the Wave Pool”), which is 35,000 square feet, holds up to 2,619 bathers and produces waves up to four (4) feet high.

42. Before opening its doors to the public, Nevada law required Cowabunga Bay to first obtain a permit to operate from the Southern Nevada Health District (“SNHD”). Nevada Revised Statute Chapter 444 governs the operation of public swimming pools and dictates the procedures a water recreation business such as Cowabunga Bay must follow to obtain such a permit.

43. In that regard, NRS 444.080 states that it is “unlawful for any person, firm, corporation, institution or municipality to construct or to operate or continue to operate any public swimming pool [] within the State of Nevada without a permit to do so from the health authority.” In order to obtain the requisite permit, the operator must submit an application or “lifeguard plan” to the health authority clarifying *inter alia* “[t]he lifesaving apparatus and measures to insure safety of bathers.” *Id.* The health authority will only approve a permit when it determines that the public swimming pool in question will not constitute a menace to public health. *Id.*

44. On February 19, 2014, Cowabunga Bay applied for its permit and submitted a lifeguard plan to SNHD. In its lifeguard plan, Cowabunga Bay proposed posting only six (6) lifeguards to monitor the Wave Pool. Due to the woefully deficient lifeguard coverage proposed for this banner attraction, SNHD denied Cowabunga Bay’s application. In doing so, SNHD specified that seventeen (17) lifeguards were required to safely operate the Wave Pool.

45. Thus, in order to obtain its permit, Cowabunga Bay submitted a revised lifeguard plan in line with SNHD’s safety requirements for the Wave Pool, *i.e.*, that seventeen (17) lifeguards would be

1 posted to monitor the Wave Pool at all times. Based on Cowabunga Bay's revised lifeguard plan, SNHD
2 granted its request for a permit.

3 46. Cowabunga Bay, however, had no intention of ever providing the lifeguard coverage
4 required by state law and instead knowingly, intentionally and willfully deviated from the prescribed
5 lifeguard plan for its Wave Pool and other attractions. Indeed, despite its public proclamations that safety
6 was its "number one priority," Cowabunga Bay habitually operated the Wave Pool with only 5-7
7 lifeguards. In sum, Cowabunga Bay made the necessary representations regarding lifeguard staffing to
8 obtain the required permit and then summarily abandoned those representations in order to operate the
9 Wave Pool with the staffing levels that were previously rejected by SNHD.
10

11 47. Cowabunga Bay and, more specifically, the Management Committee made the decision
12 to violate the SNHD-approved lifeguard plan by operating the Wave Pool with only a fraction of the
13 required amount of lifeguards in order to meet the burdens imposed by the financing obtained by
14 Defendants from Bank of Utah. Defendants knowingly slashed variable costs including lifeguards at the
15 Wave Pool in order to meet a strict annual budget that would allow Cowabunga Bay to continue operating
16 without violating Defendants' loan covenants with the Bank of Utah. Indeed, had Defendants chosen to
17 comply with the law, HWP, R&O, Double Ott, West Coast, Orluff, Shane Huish, Scott Huish, and other
18 relatives of the Huish Family would have jeopardized compliance with their loan obligations and been
19 exposed to severe financial consequences tallying in the tens of millions of dollars. R&O was doubly at
20 risk because it was not only a borrower on the Bank of Utah loan, but it had also invested millions of
21 dollars in Cowabunga Bay as a result of the loan to Orluff that now amounts to approximately nine million
22 dollars (\$9,000,000). Accordingly, rather than subject themselves to these devastating financial
23 ramifications, Defendants simply chose to violate the law and expose the public to severe bodily harm.
24

25 48. In addition to not providing an adequate number of lifeguards, Cowabunga Bay also
26 failed to properly certify and train those lifeguards that it did staff. Moreover, Cowabunga Bay did not
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28

1 provide life poles for use in the rescue of a drowning swimmer, failed to post the appropriate safety
2 signage, and did not maintain water quality in clear violation of SNHD requirements.

3 ***Leland Gardner Drowns in the Wave Pool at Cowabunga Bay***
4 ***When Only Three Lifeguards Were on Duty***

5 49. During the 2014-2015 school year, Leland was a kindergarten student. After school on
6 May 27, 2015, Leland had a playdate with a classmate that would be hosted by the classmate's father,
7 William Ray ("Mr. Ray"), at a water park.

8 50. While visiting Cowabunga Bay, Mr. Ray took his son and Leland to the Wave Pool.
9 There, Leland fell off of his inner tube and was submerged at the bottom of the Wave Pool for a lengthy
10 period of time. Leland suffered a non-fatal drowning and debilitating injuries that required weeks of
11 hospitalization in the pediatric intensive care unit at St. Rose Hospital–Siena Campus. Since the incident,
12 Leland has required twenty-four (24) hour care for his severe neurological impairments, and his
13 devastating injuries will necessitate extensive and ongoing medical treatment and rehabilitative therapy
14 for the rest of his life.

15 51. On May 27, 2015, Cowabunga Bay illegally operated its Wave Pool with just three (3)
16 lifeguards on duty, one of whom was not properly trained or certified pursuant to NRS 444.115. Indeed,
17 Cowabunga Bay knew it was breaking the law when it understaffed its Wave Pool, but did so anyway.

18 52. Further, on May 27, 2015, Cowabunga Bay failed to provide safety signage, life poles,
19 clean water with the appropriate levels of visibility, and otherwise chose not to abide by the parameters
20 of its permit.

21 53. The Individual Defendants, as the members of HWP's Management Committee, knew
22 or should have known of these hazardous conditions that threatened physical injury to their patrons like
23 Leland, yet failed to take any action to avoid this harm and, in fact, took action which exacerbated the
24 risk to patrons like Leland. Indeed, the Individual Defendants knowingly operated Cowabunga Bay and
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1 the Wave Pool with far less than the required amount of lifeguards in order to meet their strict budgetary
2 constraints.

3 54. On or around 12:10 p.m. on May 29, 2015, SNHD reported to Cowabunga Bay to
4 investigate Leland's non-fatal drowning. SNHD observed that proper safety signage and lifepoles were
5 not present. In addition, although Cowabunga Bay was not scheduled to open for another hour, SNHD
6 still noted there were only fourteen (14) lifeguards on duty inside Cowabunga Bay at the time when thirty-
7 five (35) were required by the lifeguard plan.
8

9 55. SNHD returned to Cowabunga Bay on June 9, 2015 to conduct an additional
10 investigation while the park was open for business and found only eight (8) lifeguards on duty at the
11 Wave Pool instead of the seventeen (17) required by the lifeguard plan. SNHD likewise found lifeguard
12 staffing violations at other attractions in Cowabunga Bay as well as additional problems with the water
13 quality. SNHD ultimately cited and fined Cowabunga Bay for its inadequate staffing of lifeguards and
14 other violations of the permitting requirements.
15

16 56. The tragic incident underlying this litigation is a direct result of Defendants' willful
17 disregard of their obligations under the law. As a result of his non-fatal drowning arising out of
18 Defendants' despicable conduct, Leland suffered catastrophic brain injuries that require 24-hour care.
19 Leland has essentially no motor skills and cannot talk, eat, walk, use his arms, or even sit up.
20

21 FIRST CAUSE OF ACTION

22 (Negligence – Defendant HWP)

23 (Alter Ego Liability Only – Defendants West Coast Water Parks, LLC, Double Ott Water Holding, LLC, and the Individual Defendants)

24 57. Paragraphs 1 through 56 are hereby specifically incorporated herein as though fully set
25 forth.

26 58. HWP, through its acts and omissions, owed multiple duties to Plaintiffs including but not
27 limited to:
28

- a. The duty to keep Leland safe;

- b. The duty to use reasonable care to protect Leland from known dangers such as drowning;
- c. The duty to adequately staff lifeguards throughout Cowabunga Bay;
- d. The duty to properly train and certify employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning;
- e. The duty to provide ongoing training to employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning;
- f. The duty to maintain clean and clear water within Cowabunga Bay;
- g. The duty to use reasonable care in the hiring, supervision, training and retention of its employees; and
- h. The duty to act in a matter that does not violate State of Nevada, City of Henderson and Clark County statutes, laws and ordinances.

59. HWP breached its duties to Plaintiffs when they failed to provide adequate lifeguard coverage and otherwise failed to take reasonable steps to protect Leland from drowning.

60. In addition, HWP's violations of the law were criminal in nature and constituted negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and regulations of the United States, State of Nevada—including but limited to NRS 444.080 and 444.115—Clark County, and/or the Cities of Henderson and Las Vegas were intended to prevent.

61. As a direct and proximate result of HWP's negligence and brazen violation of the law, Plaintiffs have been damaged in an amount greater than \$15,000.00.

62. The conduct of the HWP was grossly negligent, reckless, willful, intentional, oppressive, fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs thereby warranting the imposition of punitive damages.

63. Plaintiffs have been forced to retain the services of attorneys to prosecute this action and are entitled to an award of reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Negligence – Individual Defendants)

64. Paragraphs 1 through 63 are hereby specifically incorporated herein as though fully set forth.

65. The Individual Defendants, and each of them, were members of HWP's Management Committee.

66. At all relevant times, HWP's Management Committee had all management rights, powers and authority over HWP's business, affairs and operations and, as a result, the Individual Defendants personally owed multiple common duties to Plaintiffs, including but not limited to:

- a. The duty to keep Leland safe;
- b. The duty to use reasonable care to protect Leland from known dangers such as drowning;
- c. The duty to adequately staff lifeguards throughout Cowabunga Bay;
- d. The duty to properly train and certify employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning;
- e. The duty to provide ongoing training to employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning;
- f. The duty to maintain clean and clear water within Cowabunga Bay;
- g. The duty to use reasonable care in the hiring, supervision, training and retention of its employees; and
- h. The duty to act in a matter that does not violate State of Nevada, City of Henderson and Clark County statutes, laws and ordinances.

67. The Individual Defendants breached their duties to Plaintiffs when they authorized, directed or participated in HWP's unlawful scheme to understaff lifeguards at its Wave Pool and otherwise failed to take reasonable steps to protect Leland from drowning.

68. In addition, the Individual Defendants' violations of the law were criminal in nature and constituted negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and regulations of the United States, State of Nevada—including but limited to NRS 444.080 and 444.115—Clark County, and/or the Cities of Henderson and Las Vegas were intended to prevent.

69. As a direct and proximate result of the Individual Defendants' negligence and brazen violation of the law, Plaintiffs have been damaged in an amount greater than \$15,000.00.

70. The conduct of the Individual Defendants, and each of them, individually and in concert with one another as herein alleged, was grossly negligent, reckless, willful, intentional, oppressive, fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs thereby warranting the imposition of punitive damages.

71. Plaintiffs have been forced to retain the services of attorneys to prosecute this action and are entitled to an award of reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION

(Reverse Veil Piercing Under The Alter Ego Doctrine – Orluff Opheikens and R&O Construction Company)

72. Paragraphs 1 through 71 are hereby specifically incorporated herein as though fully set forth.

73. Orluff founded R&O in 1982 and, through his family trust, owns eighty-five percent (85%) of the outstanding shares in R&O. At all relevant times, Orluff served as the Chairman of the Board of Directors of R&O. During the same time period, Orluff's son, Slade, served as the Chief Executive Officer of R&O—a position previously held by Orluff for decades—and acted at the direction of Orluff. According to Slade, Orluff is R&O.

74. When R&O was faced with the prospect of heavy monetary losses and severe damage to its reputation resulting from the failed construction of Cowabunga Bay, Orluff immediately stepped in to personally represent R&O's interests and save the project from failure. To that end, Orluff

1 determined that he would personally assume an ownership stake in Cowabunga Bay to ensure that
2 R&O recouped its costs and paid its debts. In doing so, Orluff directed R&O's course of conduct and
3 acted for the benefit of the company and in furtherance of its interests.

4 75. In that regard, R&O and Orluff were represented by Welch in the plan to exclude
5 Splash from Cowabunga Bay by selling the land and all of the park's assets to HWP. In furtherance of
6 the scheme, Welch acted at Orluff's direction and represented the interests of R&O, Orluff, and the Huish
7 Family. Cass Butler, R&O's corporate counsel and Orluff's personal attorney, was equally involved in
8 the formation of HWP and Orluff's plan to assume an ownership interest in Cowabunga Bay for the
9 benefit of R&O.
10

11 76. In keeping with Orluff's practice of obtaining loans from R&O for non-corporate
12 purposes, Orluff obtained a personal loan from R&O in the approximate amount of \$4 million to fund
13 his capital contribution to the Cowabunga Bay project. At Orluff's direction, R&O's Board of
14 Directors, including Orluff himself and the other minority shareholders of the company, unanimously
15 approved the loan with knowledge that the funds would be invested in the Cowabunga Bay project
16 and used to recoup R&O's unpaid costs and pay the company's debts to subcontractors. With R&O's
17 consent, Orluff treated corporate assets as his own and otherwise commingled funds for the purpose
18 of ensuring R&O did not suffer severe monetary and reputational harm as a result of the Cowabunga
19 Bay project.
20

21 77. At Orluff's direction, R&O also signed as a borrower on the \$12.2 million loan from
22 Bank of Utah that was used to complete the construction of Cowabunga Bay and fund its operations.
23 R&O, therefore, exposed itself to extreme financial risk to salvage the prospects of the Cowabunga
24 Bay project and allow Orluff to eventually make R&O whole. R&O likewise declined to collect a
25 profit from the construction of Cowabunga Bay and waived its lucrative general contractor fee.
26

27 78. Based on the foregoing, Orluff governed and influenced R&O on a day-to-day basis
28 and, in particular, with respect to the Cowabunga Bay project. Moreover, there was such unity and

1 identity of interest and ownership between R&O and Orluff that one was inseparable from the other
2 especially as it related to the Cowabunga Bay project.

3 79. The facts of this case are such that adherence to the corporate fiction of R&O as a
4 separate entity from Orluff would, under the circumstances, promote injustice. In addition to the
5 undercapitalization of HWP and lack of adequate insurance coverage, adherence to the corporate
6 fiction would permit R&O to reap the benefits of Orluff's ownership and management of Cowabunga
7 Bay while avoiding any of the liability caused by the negligent conduct of HWP and the Individual
8 Defendants, including the Opheikens Family. In point of fact, by virtue of Orluff serving as a straw
9 man for R&O, the company recovered its unpaid costs from the construction of Cowabunga Bay,
10 saved its reputation in the Las Vegas market by not defaulting its subcontractors, and attempted to
11 shield itself from any liability related to the hazardous operations of the water park.
12

13 80. Because Orluff is the alter ego of R&O and the protections of the corporate form have
14 been abused in connection with the Cowabunga Bay project, Plaintiffs should be permitted to pierce
15 the corporate veil in reverse and recover from R&O—the true beneficiary of Orluff's ownership and
16 participation in the management of Cowabunga Bay.
17

18 81. Reverse piercing of the veil will not harm the rights of innocent shareholders or
19 creditors. While R&O has minority shareholders that own approximately fifteen percent (15%) of the
20 corporation's outstanding stock, each minority shareholder is an executive with R&O and a member
21 of the Board of Directors. As such, the minority shareholders voted for and benefitted from Orluff's
22 decision to assume an ownership interest in the Cowabunga Bay project so R&O could recover its
23 construction costs and pay its subcontractors. In that same vein, R&O's minority shareholders would
24 have suffered if Orluff had not taken action to save the Cowabunga Bay project by serving as R&O's
25 straw man. Reverse piercing is neither inequitable nor unjust under these circumstances.
26
27

28 **JURY DEMAND**

82. Plaintiffs hereby demand a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of \$15,000.00;
2. For punitive damages to be determined by the jury;
3. For attorney's fees and costs of suit incurred herein;
4. For pre-judgment and post-judgment interest, as allowed by law; and
5. For such other and further relief as is appropriate under the circumstances.

DATED this 30th day of July, 2018.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell

DONALD J. CAMPBELL, ESQ. (1216)
SAMUEL R. MIRKOVICH, ESQ. (11662)
PHILIP R. ERWIN, ESQ. (11563)
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Attorneys for Plaintiffs

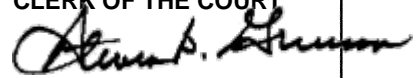
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 30th day of July, 2018 I caused the foregoing document entitled **Third Amended Complaint** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ **Lucinda Martinez**

An Employee of Campbell & Williams

EXHIBIT 2



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Attorneys for Defendants
R&O CONSTRUCTION,
TOM WELCH; ORLUFF OPHEIKENS;
SLADE OPHEIKENS; and CHET OPHEIKENS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN
GARDNER, individually, and on behalf of
minor child LELAND GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba
COWABUNGA BAY WATER PARK, a
Nevada limited liability company; WEST
COAST WATER PARKS, LLC, a Nevada
limited liability company; DOUBLE OTT
WATER HOLDINGS, LLC, a Utah limited
liability company; ORLUFF OPHEIKENS,
an individual; SLADE OPHEIKENS, an
individual; CHET OPHEIKENS, an
individual; SHANE HUIH, an individual;
SCOTT HUIH, an individual; CRAIG
HUIH, an individual; TOM WELCH, an

Case No. A-15-722259-C
Dept. No. XXX

**ORDER GRANTING DEFENDANT R & O
CONSTRUCTION, INC.'S MOTION TO
DISMISS AND MOTIONS TO ASSOCIATE**

Date of Hearing: October 10, 2018
Time of Hearing: 9:00 a.m.

1 individual; R&O CONSTRUCTION, INC.,
2 a Utah corporation, and DOES I through X,
3 inclusive; ROE CORPORATIONS I
4 through X, inclusive, and ROE LIMITED
LIABILITY COMPANY I through X,
inclusive,

5 Defendants.

6
7 HENDERSON WATER PARK, LLC dba
8 COWABUNGA BAY WATER PARK, a
Nevada limited liability company,

9 Third-Party Plaintiff,

vs.

10 WILLIAM PATRICK RAY, JR.; and
11 DOES 1 through X, inclusive,

12 Third-Party Defendants.

13
14 This matter having come on for hearing on the 10th day of October, 2018, before the
15 Honorable Judge Jerry Wiese, on Defendant R & O CONSTRUCTION, INC.'s ("R&O") MOTION
16 TO DISMISS; Plaintiffs appearing by and through their counsel J. Colby Williams, Esq., and Philip
17 R. Erwin, Esq., of Campbell & Williams; Defendant R&O appearing by and through its counsel
18 Jeffrey S. Vail, Esq. and Brett M. Godfrey, Esq., of Godfrey | Johnson, P.C., and Defendants TOM
19 WELCH, ORLUFF OPHEIKENS, CHET OPHEIKENS, AND SLADE OPHEIKENS
20 (collectively "The Individual Defendants") appearing by and through their counsel Max E. Corrick,
21 II, Esq. and John E. Gormley, Esq., of Olson, Cannon, Gormley, Angulo, and Stoberski, who also
represent R&O in this matter.

22 The Court having considered the papers, pleadings, and oral arguments, orders as follows:

- 23 1. Plaintiffs filed their Third Amended Complaint on July 30, 2018, which asserted in its
24 Third Cause of Action a single claim for relief against R&O for Reverse Piercing of the
25 Corporate Veil.
26 2. Defendant R&O has filed a Motion to Dismiss this sole claim for relief against R&O
27 pursuant to NRCP 12(b)(5), asserting, *inter alia*, that Plaintiffs had failed to properly
28

1 state an *alter ego* claim under NRS § 78.747, and that a pre-judgment claim for relief
2 for reverse piercing of the corporate veil is impermissible under the circumstances
3 presented in this case. The Individual Defendants filed a timely joinder to R&O's
4 Motion. An Opposition was timely filed by Plaintiffs, and R&O and The Individual
5 Defendants filed their respective Replies.

6
7 3. Additionally, at oral argument, R&O's counsel moved for the Court to grant their
8 pending Motion to Associate, and thereby to appear before this Court *pro hac vice*.
9 Plaintiffs did not oppose that Motion. The Court grants the pending Motion to
10 Associate.

11 4. Pursuant to *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 8 P.3d 841 (2000),
12 NRS 78.747, and because Plaintiffs' sole claim for relief against R&O does not allege
13 negligence or any other wrongful conduct by R&O and will, therefore, confuse the jury,
14 Plaintiffs are barred from asserting their claim of relief for reverse piercing of the
15 corporate veil against R&O prior to an uncollectible judgment being entered in this case
16 against Orluff Opheikens.

17 5. Accordingly, the Court finds that Plaintiffs have failed to state a claim against R&O
18 upon which relief may be granted. The Court specifically notes that it has not
19 considered any exhibit to any filing related to R&O's Motion in reaching its conclusion.
20 Therefore, the Court grants R&O's Motion to Dismiss Plaintiffs' Third Cause of Action
21 pursuant to NRCP 12(b)(5) without prejudice.

22 WHEREFORE, it is hereby ordered, adjudged and decreed that R & O Construction, Inc.'s
23 Motion to Dismiss is granted without prejudice, and its Motion to Associate is granted.
24 Furthermore, there being no just reason for delay, this Court determines, directs and certifies that
25 final judgment is entered in favor of R&O pursuant to NRCP 54(b).

26 Dated this 22 day of October, 2018.

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HONORABLE JERRY WIESE MD

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Respectfully submitted by:

Approved as to form and content by:

Dated this 19th day of October, 2018

Dated this 19th day of October, 2018

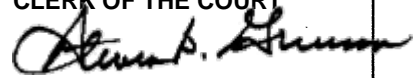
GODFREY | JOHNSON

CAMPBELL & WILLIAMS

By: /s/ Karen Porter
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By: /s/ Philip R. Erwin
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EXHIBIT 3



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Attorneys for Defendants
R&O CONSTRUCTION,
TOM WELCH; ORLUFF OPHEIKENS;
SLADE OPHEIKENS; and CHET OPHEIKENS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN
GARDNER, individually, and on behalf of
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WATER HOLDINGS, LLC, a Utah limited
liability company; ORLUFF OPHEIKENS,
an individual; SLADE OPHEIKENS, an
individual; CHET OPHEIKENS, an
individual; SHANE HUIH, an individual;
SCOTT HUIH, an individual; CRAIG
HUIH, an individual; TOM WELCH, an

Case No. A-15-722259-C
Dept. No. XXX

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT R & O
CONSTRUCTION, INC.'S MOTION TO
DISMISS AND MOTIONS TO ASSOCIATE**

**Date of Hearing: October 10, 2018
Time of Hearing: 9:00 a.m.**

1 individual; R&O CONSTRUCTION, INC.,
2 a Utah corporation, and DOES I through X,
3 inclusive; ROE CORPORATIONS I
4 through X, inclusive, and ROE LIMITED
LIABILITY COMPANY I through X,
inclusive,

5 Defendants.

6
7 HENDERSON WATER PARK, LLC dba
8 COWABUNGA BAY WATER PARK, a
Nevada limited liability company,

9 Third-Party Plaintiff,

10 vs.

11 WILLIAM PATRICK RAY, JR.; and
12 DOES 1 through X, inclusive,

13 Third-Party Defendants.

14 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT R & O CONSTRUCTION,**
15 **INC.'S MOTION TO DISMISS AND MOTIONS TO ASSOCIATE**

16
17 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL

18 ///

19 ///

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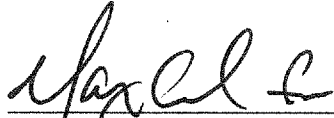
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1 PLEASE TAKE NOTICE that an Order Granting Defendant R & O Construction, Inc.'s
2 Motion to Dismiss and Motions to Associate has been entered in the above-entitled Court on the
3 23rd day of October, 2018, a copy of which is attached hereto.

4 Dated October 24, 2018.

5 OLSON, CANNON, GORMLEY,
6 ANGULO & STOBERSKI

7 

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11 Las Vegas, Nevada 89129
12 Attorney for Defendants

13 Karen Porter
14 Nevada Bar No. 13099
15 Brett Godfrey (Admitted Pro Hac Vice)
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18 9557 South Kingston Court
19 Englewood, CO 80112
20 Attorneys for Defendants
21 *R&O CONSTRUCTION,*
22 *TOM WELCH; ORLUFF OPHEIKENS;*
23 *SLADE OPHEIKENS; and CHET*
24 *OPHEIKENS*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2018, I sent via e-mail a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT R & O CONSTRUCTION, INC.'S MOTION TO DISMISS AND MOTIONS TO ASSOCIATE** on the Clark County E-File Electronic Service List (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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*PETER GARDNER and CHRISTIAN
GARDNER on behalf of minor child,
LELAND GARDNER*

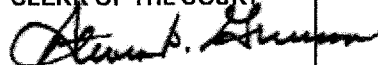
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TOM WELCH; ORLUFF OPHEIKENS;
SLADE OPHEIKENS; and CHET OPHEIKENS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN
GARDNER, individually, and on behalf of
minor child LELAND GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba
COWABUNGA BAY WATER PARK, a
Nevada limited liability company; WEST
COAST WATER PARKS, LLC, a Nevada
limited liability company; DOUBLE OTT
WATER HOLDINGS, LLC, a Utah limited
liability company; ORLUFF OPHEIKENS,
an individual; SLADE OPHEIKENS, an
individual; CHET OPHEIKENS, an
individual; SHANE HUIH, an individual;
SCOTT HUIH, an individual; CRAIG
HUIH, an individual; TOM WELCH, an

Case No. A-15-722259-C
Dept. No. XXX

**ORDER GRANTING DEFENDANT R & O
CONSTRUCTION, INC.'S MOTION TO
DISMISS AND MOTIONS TO ASSOCIATE**

Date of Hearing: October 10, 2018
Time of Hearing: 9:00 a.m.

1 individual; R&O CONSTRUCTION, INC.,
2 a Utah corporation, and DOES I through X,
3 inclusive; ROE CORPORATIONS I
4 through X, inclusive, and ROE LIMITED
LIABILITY COMPANY I through X,
inclusive,

5 Defendants.

6
7 HENDERSON WATER PARK, LLC dba
8 COWABUNGA BAY WATER PARK, a
Nevada limited liability company,

9 Third-Party Plaintiff,

10 vs.

11 WILLIAM PATRICK RAY, JR.; and
DOES 1 through X, inclusive,

12 Third-Party Defendants.

13
14 This matter having come on for hearing on the 10th day of October, 2018, before the
15 Honorable Judge Jerry Wiese, on Defendant R & O CONSTRUCTION, INC.'s ("R&O") MOTION
16 TO DISMISS; Plaintiffs appearing by and through their counsel J. Colby Williams, Esq., and Philip
17 R. Erwin, Esq., of Campbell & Williams; Defendant R&O appearing by and through its counsel
18 Jeffrey S. Vail, Esq. and Brett M. Godfrey, Esq., of Godfrey | Johnson, P.C., and Defendants TOM
19 WELCH, ORLUFF OPHEIKENS, CHET OPHEIKENS, AND SLADE OPHEIKENS
20 (collectively "The Individual Defendants") appearing by and through their counsel Max E. Corrick,
21 II, Esq. and John E. Gormley, Esq., of Olson, Cannon, Gormley, Angulo, and Stoberski, who also
represent R&O in this matter.

22 The Court having considered the papers, pleadings, and oral arguments, orders as follows:

- 23 1. Plaintiffs filed their Third Amended Complaint on July 30, 2018, which asserted in its
24 Third Cause of Action a single claim for relief against R&O for Reverse Piercing of the
25 Corporate Veil.
26 2. Defendant R&O has filed a Motion to Dismiss this sole claim for relief against R&O
27 pursuant to NRCP 12(b)(5), asserting, *inter alia*, that Plaintiffs had failed to properly
28

1 state an *alter ego* claim under NRS § 78.747, and that a pre-judgment claim for relief
2 for reverse piercing of the corporate veil is impermissible under the circumstances
3 presented in this case. The Individual Defendants filed a timely joinder to R&O's
4 Motion. An Opposition was timely filed by Plaintiffs, and R&O and The Individual
5 Defendants filed their respective Replies.

- 6
- 7 3. Additionally, at oral argument, R&O's counsel moved for the Court to grant their
8 pending Motion to Associate, and thereby to appear before this Court *pro hac vice*.
9 Plaintiffs did not oppose that Motion. The Court grants the pending Motion to
10 Associate.
- 11 4. Pursuant to *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 8 P.3d 841 (2000),
12 NRS 78.747, and because Plaintiffs' sole claim for relief against R&O does not allege
13 negligence or any other wrongful conduct by R&O and will, therefore, confuse the jury,
14 Plaintiffs are barred from asserting their claim of relief for reverse piercing of the
15 corporate veil against R&O prior to an uncollectible judgment being entered in this case
16 against Orluff Opheikens.
- 17 5. Accordingly, the Court finds that Plaintiffs have failed to state a claim against R&O
18 upon which relief may be granted. The Court specifically notes that it has not
19 considered any exhibit to any filing related to R&O's Motion in reaching its conclusion.
20 Therefore, the Court grants R&O's Motion to Dismiss Plaintiffs' Third Cause of Action
21 pursuant to NRCP 12(b)(5) without prejudice.

22 WHEREFORE, it is hereby ordered, adjudged and decreed that R & O Construction, Inc.'s
23 Motion to Dismiss is granted without prejudice, and its Motion to Associate is granted.
24 Furthermore, there being no just reason for delay, this Court determines, directs and certifies that
25 final judgment is entered in favor of R&O pursuant to NRCP 54(b).

26 Dated this 22 day of October, 2018.

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HONORABLE JERRY WIESE MD

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Respectfully submitted by:

Approved as to form and content by:

Dated this 19th day of October, 2018

Dated this 19th day of October, 2018

GODFREY | JOHNSON

CAMPBELL & WILLIAMS

By: /s/ Karen Porter

By: /s/ Philip R. Erwin

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PHILLIP R. ERWIN

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