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Electronically Filed
Mar 23 2018 02:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

15 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

16 CHARLES SCHUELER,

17 Appellant,

18 v.

19 MGM GRAND HOTEL, LLC, a
20 Domestic Limited Liability
21 Company d/b/a MGM GRAND,

22 Respondent.

Supreme Court No.: 71882

Dist. Ct. Case No.: A-15-722391-C

23 **APPELLANT'S REPLY BRIEF**

24 Appeal from the Eighth Judicial District Court of the State of Nevada
25 in and for the County of Clark
26 The Honorable Michael P. Villani, District Court Judge

27 **APPELLANT'S REPLY BRIEF**

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Richards v. Republic Services,
122 Nev. 1213 (2006) 1, 2

Summary of Argument

Respondent's arguments fail for several reasons. First, MGM is not entitled to NIIA immunity. The risks associated with Mr. Schueler's employment were electrocution, tripping, and/or falling from the ladder or staircase on the way up the interior of the pylon sign. The risks did not include having a solid floor suddenly break way. Mr. Schueler was injured from a condition that was not a normal risk of his employment. As such, the District Court erred when granting MGM's Motion to Dismiss.

Additionally, Respondent's argument addressing the District Court's review of MGM's Motion for Reconsideration fails because no error of law was committed by the Court in the initial Order. As such, it was inappropriate to entertain MGM's Motion for Reconsideration.

Points and Authorities

The District Court erred when it found MGM Grand was Mr. Schueler's statutory employer, thus depriving Mr. Schueler of the ability to sue MGM Grand for his injuries and bring these issues to a jury in this matter.

A. The District Court Erred by finding MGM Grand was Mr. Schueler's statutory employer

Although the Nevada Supreme Court has retreated from the "construction versus nonconstruction" analysis and emphasized that NIIA immunity questions must be resolved under the applicable statutory law, the courts must generally

1 look, initially, at whether the injured employee and other parties were, when the
2 injury occurred, carrying out work under some principal contractor's NRS
3 Chapter 624 license. Richards v. Republic Silver State Disposal, Inc., 122 Nev.
4 1213, 148 P.3d 684 (2006). Immunity does not extend to claims based on injuries
5 arising out of the employment in general, but rather, is limited to claims that arise
6 out of a risk associated with the licensed work for which the contractor was hired.
7
8 Id. at 1218.

9
10 Mr. Schueler's job was to release the LED lighting/screen from inside the
11 MGM pylon sign to allow his co-workers to pull the old LED lighting/screens
12 away from the sign with a crane on out outside of the pylon sign. He was not
13 building a sign. He was not constructing the pylon that held the sign. He was not
14 constructing property improvements. Mr. Schueler was helping to replace an
15 LED display. Due to the height of the sign, falling from the exterior was, of
16 course, a risk associated with the projected YESCO was hired to perform.
17 However, *falling through the inside of the structure was not.*
18
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21 Given Mr. Schueler was not working on a construction project nor was
22 falling through the floor of the pylon a risk associated with the work he was
23 contracted to perform, MGM cannot be deemed the statutory employer of Mr.
24 Schueler. The district court erred when it extended protections intended for
25 property owners of construction projects to MGM.
26
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1 Appellant requests this Court to reverse the district court's ruling, to find
2 MGM is not Mr. Schueler's statutory employer, and remand the matter for further
3 proceedings consistent with this ruling.
4

5 **B. The District Court Erred by Granting MGM Grand Hotel, LLC's**
6 **Motion for Reconsideration without additional information available at**
7 **the time of the original motion**

8 In its Motion for Reconsideration, MGM reiterated the exact same statutory
9 employer argument as it set forth in its initial motion to dismiss. (113 – 121). To
10 reiterate the exact same arguments MGM set forth in its initial motion was
11 inappropriate. This matter had been fully briefed and entertained by the Court
12 upon hearing oral argument. MGM added nothing new to its initial motion. Its
13 attempt to get a second bite at the same apple should have been denied.
14
15

16 **Conclusion**

17 As lower Court correctly noted in its initial Order, MGM cannot be deemed
18 the statutory employer of Mr. Schueler in this matter. Additionally, the lower
19 Court already considered all of the arguments set forth in MGM's Motion for
20 Reconsideration when it entertained MGM's initial motion. The Court abused its
21 discretion by Granting MGM's Motion for Reconsideration.
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1 The district court's decision should be reversed and this matter should be
2 remanded to allow the case to proceed.

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4 Respectfully submitted this 23rd day of March, 2018.

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1. I hereby certify that this 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 this brief has been prepared in a proportionally spaced typeface using *Microsoft Office Word* in 14 pt. *Times New Roman*.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this reply brief, 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.

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1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 DATED this 13th day of March, 2018.

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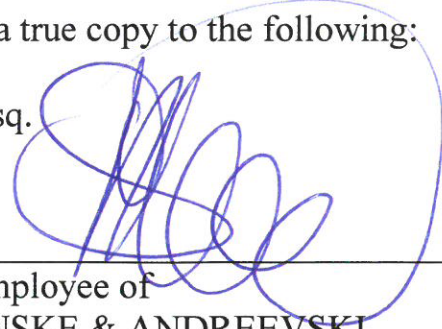
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Certificate of Service

Pursuant to NRAP 25(1)(c), I hereby certify electronic service of
APPELLANTS' REPLY BRIEF was made on the 23rd day of
March, 2018, by delivering a true copy to the following:

Riley Clayton, Esq. & Ryan Venci, Esq.



A large, stylized handwritten signature in blue ink, likely belonging to an employee of Brenske & Andreevski, is written over a horizontal line.

An employee of
BRENSKE & ANDREEVSKI