

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
And OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; and JERRY HERBST, an
individual,

Respondents.

No. 77780

District Court Case **Electronically Filed**
Aug 14 2019 04:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE

Appellants hereby respond to the court's order to show cause regarding jurisdiction.

The court's order identifies the three items from which the appeal was taken. The court has questioned jurisdiction regarding the district court's order of March 6, 2018, and the district court's judgment entered on December 11, 2018. But this court did not question the appeal from the district court's order denying the NRCP 60(b) motion. The footnote in the court's order states: "Appellants' appeal from the order denying NRCP 60(b) relief was timely filed, and that appeal may proceed."

The district court's December 11, 2018 judgment created ambiguity and uncertainty regarding whether the March 6, 2018 order was appealable. That order

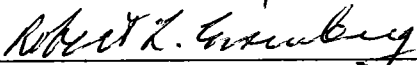
dismissed appellants' claims with prejudice. The respondents (defendants) then moved to dismiss their counterclaims. They also moved for an entry of a judgment. This district court dismissed the counterclaims, and eventually entered the judgment. By entering the judgment, the district court seems to have signaled its belief that the prior order did not constitute the final judgment in the case. Accordingly, when appellants' counsel prepared the notice of appeal, counsel identified the March 6, 2018 order and the December 11, 2018 judgment in an abundance of caution, to preserve appellate rights.

Nevertheless, in light of this court's express determination that the appeal from the order denying NRCP 60(b) relief was timely filed, and that the appeal may proceed, appellants are willing to abandon their appeal from the March 6, 2018 order and the December 11, 2018 judgment, leaving only the appeal from the NRCP 60(b) order. Appellants do not object to a partial dismissal of this appeal regarding the March 6, 2018 order and the December 11, 2018 judgment.

The court should note that the primary appellant, Larry Willard, is a 77-year-old senior citizen. He contends that his life savings were lost in the underlying events, and he contends that his lawsuit against respondents was dismissed as a result of abandonment by his former lawyer. This court issued its order to show cause just one or two days before the due date for the opening brief, and the court suspended the briefing schedule. Appellants' attorneys had already prepared the opening brief

and the multi-volume appendix, and they were planning to file the brief and the appendix the next day. In light of the fact that appellants are now agreeing to a dismissal of the appeal regarding the March 6, 2018 order and the December 11, 2018 judgment, leaving only the appeal from the NRCP 60(b) denial, appellants respectfully contend that there is no need for the court to wait for a reply from respondents regarding the order to show cause. Appellants request this court to reinstate the briefing schedule as soon as possible, so that appellants can file their opening brief and the appendix, and the appeal can then proceed.

DATED: August 14, 2019.



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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing **APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 14th day of August, 2019.

/s/ Lelia Geppert

Lelia Geppert, Assistant to
Robert L. Eisenberg