

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.E. JOHNS & ASSOCIATES, a Nevada
business entity; and A.J. JOHNSON, an
individual,

Appellants/Cross-Respondents,

vs.

JOHN LINDBERG, an individual; MICHAL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Respondents/Cross-Appellants.

No. 78086

Electronically Filed
District Court Case No. CV15-00281
Aug 27 2019 09:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENTS' OPPOSITION TO NEVADA REALTORS' MOTION
FOR LEAVE TO FILE AN AMICUS BRIEF**

Respondents/Cross-Appellants John Lindberg, Michal Lindberg, and Judith L. Lindberg ("Respondents") hereby oppose the Nevada Realtors, a Nevada non-profit coop corporation's ("NVR"), late-filed Motion for Leave to File an Amicus Brief ("Motion"). The Court should deny the Motion merely because it was filed late by rule. Moreover, the Court should deny the Motion because the amicus brief (which this office did not receive from the Nevada Supreme Court, but which was received by mail from NVR) does not offer any additional information for the Court that the Appellants/Cross-Respondents have not already offered the Court in their Opening Brief. Accordingly, the Court should deny NVR's Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

Amicus briefs are permitted under the Nevada Rules of Appellate Procedure (“NRAP”). Such briefs may be filed by someone who is not expressly identified in NRAP 29(a) “only by leave of court granted on motion or at the court’s request or if accompanied by written consent of all parties.” NRAP 29(a). Briefs filed by way of motion must be filed, with an accompanied motion when required, “no later than 7 days after the brief of the party being supported is filed.” NRAP 29(f).

This rule makes sense. Primarily, amicus briefs are to be filed as support for the position of one of the parties to an appeal, not as a primary manner of opposing the position of the non-supported party after that position is learned on appeal. NRAP 29(c) and (f). Such briefs may be filed to assist the Court, yet such “assistance cannot be presumed. . .” especially when the party to be supported has not given consent to the filing of the brief. *Northern Securities Co. v. U.S.*, 191 U.S. 555, 24 S.Ct. 119, 48 L.Ed. 299 (1903)(denying a motion to file an amicus brief when the parties were represented by competent counsel on appeal and when the supported party did not give consent).

NVR also fails to cite any case law or support for the late filing of its amicus brief. NVR’s brief was not only filed late if NVR intended to file the brief in support of the Appellants’ position, but it was also late if it was filed as a neutral brief, not arguing for or against any position. NRAP 29(f). To file a brief to support the

Appellants, who have not consented to the filing of NVR's brief, NVR was required to file its brief and a motion to allow the filing of its brief "no later than 7 days after" the Appellants filed their opening brief. NRAP 29(f). Appellants filed their opening brief on June 25, 2019, *almost two months before NVR filed its Motion.*

Here, Respondents are concerned that NVR simply wishes to "pile on" to the Respondents, acting as a secondary source of argument against the Respondents. That is why NVR waited to file its motion until Respondents filed their brief on August 8, 2019. In its Motion, NVR states as much when NVR admits that "NVR became aware of the importance of filing an Amicus brief only after reviewing both briefs filed in this Appeal." Motion at p. 2. NVR is not afforded the luxury of sitting back, waiting to review Respondents' position to decide if it should file a brief in support of the Appellants. If so, Respondents would be charged with facing two attorneys on this appeal, both of whom had the advantage of reviewing Respondents' position prior to filing their briefs. There is no reason why NVR could not have discerned Respondents' position earlier in this case. Respondents' position was not hidden or obscure and has been stated since Respondents filed their original complaint in this matter. NVR has no excuse for the late filing of its proposed brief.

Moreover, the proposed amicus brief offers nothing that Appellants did not set forth in their Opening Brief filed on June 25, 2019. The same arguments and facts cited in the Appellants' Opening Brief underlie NVR's amicus brief. The same

misunderstanding of the trial court's decision permeates both NVR's proposed brief and Appellants' Opening Brief. Both briefs also fail to acknowledge the second theory of liability found to exist against Appellants. Because neither of these briefs address this second theory of liability, the Court should not entertain the second brief offered to be filed by NVR. There is no valid reason to accept NVR's brief. As such, the Court should deny NVR's Motion.

DATED this 27th day of August, 2019.

MOORE LAW GROUP, PC

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that I am an employee of Moore Law Group, PC, and that on August 27, 2019, I caused the foregoing document to be served on all parties to this action by:

X E-service via Nevada Supreme Court eflex filing system

to the following:

Glade Hall, Esq.

X placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada to the following:

Tiffany Banks, Esq.
Nevada Realtors
760 Margrave Drive, Suite 200
Reno, NV 89502

/s/ Genevieve DeLucchi _____
An employee of Moore Law Group, PC