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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT G. REYNOLDS, AN
INDIVIDUAL; AND DIAMANTI FINE
JEWELERS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Appellants,

vs.

RAFFI TUFENKJIAN, AN
INDIVIDUAL; AND LUXURY
HOLDINGS LV, LLC, A NEVADA
LIMITED LIABILITY COMPANY.

Respondents.

Case No.: 78187

**REPLY IN SUPPORT OF MOTION
TO SUBSTITUTE AS REAL
PARTIES IN INTEREST FOR THIS
APPEAL AND DISMISS**

Appeal from the Eighth Judicial District
Court, The Honorable Mark Denton
Presiding.

Respondents, by and through their attorneys of record, the law firm of Marquis Aurbach Coffing, hereby file their Reply in Support of Motion to Substitute as Real Parties in Interest for this Appeal and Dismiss.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LAW AND ARGUMENT

Over and over again, the opposition contains a consistent pattern of hollow argument – citation to a bare rule of law (general v. specific statute, medical insurance payments, public policy) without providing specific legal authority how that rule might actually apply to this case; particularly in light of Nevada’s established case law concerning the execution of choses in action. In place of that missing authority, Diamanti and Reynolds offer unsupported and meaningless opinion. Despite what they may think, the definition of personal property does not conflict with the rule identifying which orders are appealable.

Even then, their unsupported talking points make little sense. The concept that they are “financially drained” has no bearing. They didn’t even care enough to show up at the auction they admit was properly noticed. Mind you, Diamanti and Reynolds are the ones that filed the underlying lawsuit.

The opposition’s arguments are meritless. The motion must be granted.

....

A. RESPONDENTS CAN, AND MUST, BE SUBSTITUTED IN AS THE REAL PARTIES IN INTEREST FOR THIS APPEAL

The thrust of Diamanti and Reynolds argument is that, if they win, the attorney fee and cost award will be overturned and any monies received must be turned over. This argument suffers from a significant flaw: Diamanti and Reynolds no longer own this appeal. Raffi and Luxury Holdings own it.

B. NO DEFENSES ARE AT ISSUE IN THIS APPEAL

Reynolds and Diamanti claim that there is a defense at issue in this case. Not so. There were no counterclaims in the district court. Thus, there were no defenses for Reynolds and Diamanti to assert. The concept that they had defenses to the motion for attorney fees and costs is legally incorrect. Those are not defenses – they are legal arguments.

Regardless, Diamanti and Reynolds barely opposed the underlying motion for attorney fees. In the district court, they flat out admitted that an award of fees and costs was proper, and their only argument was that the attorney fee and cost award should be “tempered by reason and fairness.” *See* Opposition at pg. 2, ll. 21 – 22, **Exhibit 9** (“Plaintiff acknowledge that due to this Court’s decision in favor of Defendants, Defendants are entitled to a reasonable award of attorney’s fees[,]” *id.* at pg. 3, ll. 2 – 4).

C. IT IS WELL KNOWN THAT CHOSSES IN ACTION ARE SUBJECT TO EXECUTION

Reynolds and Diamanti's argument concerning conflicting statutes does not hold water. NRAP 3A(b)(1) and NRS 10.045 do not conflict. One (NRAP 3A) sets forth the orders subject to appeals. The other (NRS 10.045) defines personal property in this jurisdiction. They have nothing to do with one another. Nor is one more specific to a right than another. They address different topics.

Despite Reynolds and Diamanti's urging otherwise, this Court has already addressed the execution of choses in action: "Based on the above statutory authority, we conclude that rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment." *Gallegos v. Malco Enterprises of Nevada, Inc.*, 127 Nev. 579, 582, 255 P.3d 1287, 1289 (2011). Moreover, one need only consider Reynolds and Diamanti's discussion of the cases set forth in the moving papers: Non-existent.

Confirming the propriety of garnishing choses in action is NRS 31.290, the statute which sets forth Nevada's form garnishment interrogatories. Under that statute, the following is a statutory garnishment interrogatory which our Legislature approved and passed into law:

....

....

Did you have in your possession, in your charge or under your control, on the date the writ of garnishment was served upon you, any money, property, effects, goods, chattels, rights, credits or choses in action of the defendants, or either of them, or in whichis interested? If so, state its value, and state fully all particulars.

...

Do you know of any debts owing to the defendants, whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to or in whichis interested, and now in the possession or under the control of others? If so, state particulars.

...

Id.

D. THE OPPOSITION IS A FIRE DRILL

One need only consider the efforts Reynolds and Diamanti took to stop execution to determine how serious they are about this appeal:

- They filed a motion to stay in district court but never sought to have a hearing;
- Reynolds and Diamanti claim, without evidence, that they cannot obtain a supersedeas bond (even though they are typically obtained from insurance companies);
- Reynolds and Diamanti admit they were aware of the writ;
- Reynolds and Diamanti admit they were aware of the auction date;

- Reynolds and Diamanti admit they did not show up to the auction.

Basically, Reynolds and Diamanti want this Court to reverse precedent concerning the execution of choses in action in order defend rights that neither Reynolds nor Diamanti ever took steps to protect.

II. CONCLUSION

For the foregoing reasons, the Court should grant the instant motion, substitute Raffi and Luxury Holdings as appellants for this appeal, only, and dismiss the appeal.

Dated this 6th day of August, 2019.

MARQUIS AURBACH COFFING

By /s/ Christian T. Balducci
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Attorneys for Respondents

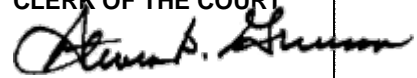
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION
TO SUBSTITUTE AS REAL PARTIES IN INTEREST AND DISMISS** was
filed electronically with the Nevada Supreme Court on the 6th day of August,
2019. Electronic Service of the foregoing document shall be made in accordance
with the Master Service List as follows:

Bradley M. Marx, Esq.
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Attorneys for Plaintiffs

/s/ Cheryl Becnel
An employee of Marquis Aurbach Coffing

Exhibit 9



1 **OPP**

2 PETER L. CHASEY, ESQ.
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9 Attorney for Plaintiffs

10 ROBERT G. REYNOLDS and
11 DIAMANTI FINE JEWELERS, LLC

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 ROBERT G. REYNOLDS, an individual, and
15 DIAMANTI FINE JEWELERS, LLC, a Nevada
16 Limited Liability Company,

17 Plaintiff,

18 vs.

19 RAFFI TUFENKJIAN, an individual, and LUXURY
20 HOLDINGS LV, LLC, a Nevada Limited Liability
21 Company, DOES 1-10, and ROE
22 CORPORATIONS 1-10 inclusive,

23 Defendants.

) CASE NO.: A-17-753532-C

) DEPT NO.: XIII

24 **PLAINTIFFS' OPPOSITION TO MOTION
25 FOR ATTORNEYS' FEES AND COSTS**

26 Date of Hearing: January 7, 2019

27 Time of Hearing: 9:00 a.m.

28 Plaintiffs Robert G. Reynolds and Diamanti Fine Jewelers, LLC hereby oppose the Motion for
Attorneys' Fees and Costs filed by Defendants Raffi Tufenkjian and Luxury Holdings LV, LLC.

This Opposition is made and based on the attached memorandum of points and authorities,
the other papers and pleadings on file in this matter, and any oral argument this Court entertains.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Introduction

Robert Reynolds – an 85 year old businessman – purchased a jewelry store from Raffi Tufenkjian. Mr. Reynolds’ decision to purchase the business was based on Mr. Tufenkjian’s misrepresentations of business revenue, in which Mr. Tufenkjian included revenue from another undisclosed location. Mr. Tufenkjian then surreptitiously added 10% to the cost of inventory after he agreed to sell the inventory at cost to Mr. Reynolds, and then he gave Mr. Reynolds a list of almost 2,000 people who visited the store presenting the list as a list of actual customers of the store, and finally Mr. Tufenkjian falsely represented that he owned certain FF&E when the lease he signed clearly indicates otherwise. Ultimately, this Court determined that the disclaimers in the transaction documents were more important than Mr. Tufenkjian’s misrepresentations or Mr. Reynolds’ reliance on them. Summary judgment was entered for Defendants.

Defendants now move for an award of \$57,586.50 in attorneys’ fees and \$7,941.92 in costs. Plaintiffs oppose as set forth below.

II.

An Award of Attorneys’ Fees is Proper but Must be Tempered by Reason and Fairness

Defendants moves for an award of attorneys’ fees and costs based on two (2) legal bases. First, the provisions in the transaction documents providing that the prevailing party may recover their reasonable attorney’s fees and costs in any dispute arising from the transaction documents. Second, the rejection of NRCP 68 Offers of Judgment for \$5000 to Defendant Diamanti Fine Jewelry, LLC and \$250 to Defendant Robert Reynolds on June 7, 2017.

1 Defendants incurred \$57,586.50 in attorneys' fees, \$52,909 of which was incurred after the
2 rejection of the Offers of Judgment. Plaintiffs acknowledge that due to this Court's decision in
3 favor of the Defendants, Defendants are entitled to a reasonable award of attorneys' fees.
4

5 In determining the amount of reasonable attorneys' fees to award, the district court has
6 great discretion "**tempered only by reason and fairness.**" See *Shuette v. Beazer Homes Holdings*
7 *Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005) and *Albios v. Horizon Cmty's., Inc.*, 122 Nev.
8 409, 414, 132 P.3d 1022, 1025 (2006) (emphasis added).
9

10 Plaintiffs urge this Court to make an award of attorneys' fees that reflects reason and
11 fairness. Specifically, Plaintiffs humbly request that this Court consider the following:
12

- 13 • Defendants intentionally misrepresented four (4) discrete aspects of the business
14 being sold to Plaintiffs: (1) business revenue, (2) cost of inventory, (3) customers, and
15 (4) ownership of the FF&E.
16
- 17 • Robert Reynolds is 85 years old and his business experience comes from a different
18 era in which trust and truthfulness between the buyer and seller was far more
19 important than the transaction documents.
20
- 21 • Defendants' victory in this case was the result of a contractual disclaimer that did not
22 and does not reflect the reality of the transaction in which Mr. Reynolds specifically
23 and almost universally relied on information received directly from Mr. Tufenkjian.

24 Plaintiffs lost – that cannot be denied. But this Court decided in favor of Defendants not
25 because Defendants were unable to demonstrate the four (4) intentional misrepresentations of
26 revenue, customers, inventory costs, and FF&E ownership were accurate, but because an 85 year
27 old man signed a document indicating that he did not rely on representations from the Defendants
28

1 despite the fact that very nearly every single piece of information that Mr. Reynolds relied on came
2 directly from Mr. Tufenkjian.
3

4 An award of more than \$65,000 in attorneys' fees and costs will kill Plaintiffs' business –
5 and with it, Mr. Reynolds' retirement. This Court's decision to award attorneys' fees must be
6 tempered by reason and fairness. In the case before this Court, Mr. Reynolds was tricked.
7 Mr. Tufenkjian tricked Mr. Reynolds into buying a business by presenting false information, such
8 that when the dust settled, the business was nothing like what Mr. Reynolds reasonably believed
9 he was buying. To illustrate the impact of the misrepresentations, consider that Mr. Tufenkjian
10 represented that the business generated \$800,000 revenue in 2014. In the four (4) years since
11 Mr. Reynolds purchased the business in March 2015, the business has not yet earned \$800,000.
12
13

14 Such a precipitous drop in revenue is not the result of mismanagement by Mr. Reynolds,
15 but rather the business sold had far less revenue than presented by Mr. Tufenkjian and far less
16 customers than represented by Mr. Tufenkjian. Truth and justice matter. Reason and fairness do
17 not warrant destroying Mr. Reynolds because he sought a judicial remedy for injustice visited upon
18 by when he purchased the jewelry store from Defendants.
19

20 III.

21 No Award of Future Anticipated Fees Would be Proper

22
23 The Nevada Supreme Court has held that is improper to award attorneys' fees without
24 permitting the adverse party to review the itemization of such fees. *See Golden Rd. Motor Inn, Inc.*
25 *v. Islam*, 132 Nev. Adv. Rep. 49, 376 P.3d 151, 160 (Nev. 2016) (citing *Love v. Love*, 114 Nev. 572,
26 582, 959 P.2d 523, 529 (1998)).
27

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1 In addition to the attorneys' fees already incurred, Defendants seek an award of future
2 attorneys' fees not yet incurred. The Court should refuse such a request as doing so would deny
3 Plaintiffs the opportunity to review an itemization of such fees.
4

5 IV.

6 CONCLUSION

7 Defendants prevails and are thus entitled to an award of attorneys' fees, but justice and
8 fairness would not be served by destroying Plaintiffs' already abysmal business with a full award of
9 the attorneys' fees requested by Defendants.
10

11 Dated this 12th day of December 2018.

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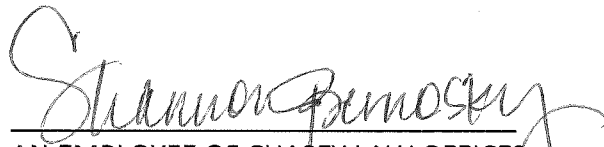
21 ROBERT G. REYNOLDS and

22 DIAMANTI FINE JEWELERS, LLC
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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the 12th day of December, 2018, I served a true and complete copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND COSTS** 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:

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