

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,
DOES 1-10, and ROE
CORPORATIONS 1-10, inclusive,

Respondents.

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CASE NO. 78187

**SUPPLEMENT TO RESPONSE
TO 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.

Appellants, by and through their attorneys of record, the Marx Law Firm, hereby file this Supplemental Brief (“Supplement”) to Respondent’s Motion to Substitute as Real Parties in Interest for this Appeal and Dismiss (“Motion”). This Supplement is based on the attached points and authorities, all pleadings and papers on file herein, and any argument by counsel at the time of the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its Motion to Substitute as Real Parties and Dismiss, Raffi Tufenkjian and Luxury Holdings LV, LLC (collectively “Respondents”) claim that they own Robert

G. Reynolds and Diamanti Fine Jewelers, LLC's (collectively "Appellants") right to bring this appeal after executing on Appellants' real property. In the underlying case, Appellants brought claims against Respondents for fraud/intentional misrepresentation, negligent misrepresentation, breach of contract, and exploitation arising from the sale of Diamanti Fine Jewelers ("Jewelry Store"). *See* Third Amended Complaint, **Exhibit A**.

On July 25, 2019, Respondents filed a Motion to Substitute as Real Parties in Interest for This Appeal and Dismiss, which Appellants opposed. On November 15, 2019, this Court entered an Order for Supplemental Briefing (the Order). The Order directs the parties to address whether each of appellants' claims was properly assigned as a result of the execution. There Court identified two cases of interest: *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 917 P.2d 447 (1996) and *Prosky v. Clark*, 32 Nev. 441, 109 P. 793 (1910).

Mr. Reynolds and Diamanti Fine Jewelers reiterates that the requested substitution and dismissal is contrary to appellants' rights to appeal and subverts administration of justice. In addition, the *Achrern* and *Prosky* decisions provide additional rationale to deny the Motion as the alleged assignment of claims for

fraud/intentional misrepresentation, negligent misrepresentation, and exploitation brought against Respondents are void.

II. DISCUSSION

A. Application of *Achrem v. Expressway Plaza Ltd.*

Respondents may not obtain Appellants' right to bring actions for negligent misrepresentation and exploitation. Previously, this Court ruled that "assignment of a tort action through a subrogation clause in an insurance agreement contravened public policy and was void." *Maxwell v. Allstate Ins. Co.*, 102 Nev. 502, 505, 728 P.2d 812, 814-815. This Court later ruled that, "*Maxwell* clearly applied to a subrogation clause, but the reasoning of *Maxwell* applies equally wherever an assignment agreement assigns to a third party the right of an injured plaintiff to recover against a tortfeasor." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 917 P.2d 447 (1996). Here, Appellants have brought claims against Respondents for negligent misrepresentation and exploitation, which are tort claims.

A tort is defined as a "civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages." Keeton et al., *Prosser and Keeton on the Law of Torts* § 1, at 2 (5th ed. 1984). The civil wrongs in this case arise from a series of misrepresentations made to Mr. Reynolds, an older

person, in connection with the sale of the Jewelry Store. Those claims are personal in nature.

Appellants' second cause of action is for Negligent misrepresentation. Negligent misrepresentation provides that "[o]ne who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1387 (Nev. 1998). Appellants claim that Respondents failed to exercise reasonable care in communicating taxable and nontaxable revenue, communicating the number of customers, communicating true title to the fixtures and furniture included in the sale, and the cost of the inventory. *See* Third Amended Complaint, **Exhibit A**. They further claim damages as a direct and proximate cause of those misrepresentations. *Id.*

Appellants' fourth cause of action is for Exploitation. Exploitation is defined as "any act taken by a person who has the trust and confidence of an older person ... to obtain control over money, assets, or property of the older or vulnerable person,

or to convert money, assets, or property of the older or vulnerable person.” NEV. REV. STAT. 41.1395(b). Appellants allege, among other things, that Mr. Tufenkjian deceived and exploited Mr. Reynolds to deprive him of his money. *See* Third Amended Complaint, **Exhibit A**. Reynolds further claimed double damages because he was and is an “older person” as defined by NRS 41.1395(4)(d), who suffered a loss of money as a direct and proximate cause of Respondents’ exploitation. *Id.*

Appellants claims for negligent misrepresentation and exploitation are traditional tort claims that are personal in nature. There must not be an interpretation of *Achrem* that narrows the tort requirement to only those involving personal injury, as predicted by a District Court. *See, Waterton Global Mining Co. v. Cummins Rocky Mountain, LLC* (D. Nev., 2015). That Court defined tort as only those claims that involving injury and damage confined to the body and the feelings rather than “those that arise out of an injury to the claimant's property or estate.” *Id.* at 8. To limit the definition of a tort to bodily injury would be contrary to the reasoning of the *Achrem* Court, which sought to maintain a victim’s right to pursue and control a lawsuit for tort claims. As such, the purported transfer should be voided.

B. Application of *Prosky v. Clark*

Respondents may not obtain Appellants' right to bring actions for fraud / intentional misrepresentation. Rights of action based on fraud are not assignable because they are personal to the party who was defrauded. *Prosky v. Clark*, 32 Nev. 441, 109 P. 793 (1910). In its Motion dated July 25, 2019, Respondent requested that the Court recognize them as real parties in interest, having purchased the claims. That includes Appellants' claim against Respondents for fraud / intentional misrepresentation.

Fraud is defined as "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person." NEV. REV. STAT. 42.001(2). Appellants' first cause of action is for fraud / intentional misrepresentation. *See* Third Amended Complaint, **Exhibit A**. There, they claim that Respondents intentionally misrepresented taxable revenue, intentionally misrepresented the number of customers, intentionally misrepresented the fixtures and furniture included in the sale, and intentionally misrepresented the value of the inventory. *Id.* They further claim damages as a direct and proximate cause of those misrepresentations. *Id.*

Respondents' Motion claims that they purchased Appellant's personal property as well as the chose in action at auction, including Appellants' fraud / intentional misrepresentation claim arising in this appeal. Appellants maintained and are appealing summary judgment on the claims for fraud / intentional misrepresentation. Because those claims arise from fraudulent conduct, Respondents' purported purchase of those claims should be voided.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court deny the Respondents' Motion to Substitute as Real Parties in Interest for This Appeal and Dismiss, especially as to the claims for fraud / intentional misrepresentation, negligent misrepresentation, and exploitation as those are void transfers.

DATED this 18th day of November, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Marx Law Firm, and that on the 23rd day of September, 2019, I caused to be served a true and correct copy of the foregoing APPELLANT'S SUPPLEMENTAL BRIEF to be served via the Court's electronic filing and service system to all parties on the current service list.

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