

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.

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Elizabeth A. Brown
Clerk of Supreme Court
Case No.: 78187

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

MOTION TO STRIKE APPELLANTS' APPENDIX
AND MOTION TO STAY BRIEFING

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I. INTRODUCTION

Respondents, Raffi Tufenkjian and Luxury Holdings LV, LLC (“Defendants”), move this Court to strike Appellants, Robert G. Reynolds and Diamanti Fine Jewelers, LLC’s (“Plaintiffs”), appendix and for an order requiring Plaintiffs to submit an appendix that complies with this Court’s directives in NRAP 30 and 32. The appellants’ appendix filed by the Plaintiffs is inadequate and contrary to the rules of this Court, and, therefore, the Court should strike the entire appellants’ appendix and require Plaintiffs to submit an appendix that is properly prepared, numbered, and indexed.

Since the Defendants do not yet know whether the appellants’ appendix will be stricken, the time for the Defendants to file their answering brief and respondents’ appendix should be stayed and extended 30 days following this Court’s order resolving this motion or the filing of a corrected appellants’ appendix.

II. LEGAL ARGUMENT

On September 23, 2019, Plaintiffs filed their 4-volume appellants’ appendix without an index. *See* Docket Case No. 78187. This Court rejected the appendix and required it to be refiled with an index. *See* September 24, 2019 Notice of Deficient Appendix on file herein. Plaintiffs filed their corrected appendix on

September 30, 2019. However, the corrected appellants' appendix is still deficient for several reasons and should be stricken.

First, NRAP 30(c)(1) requires that documents be chronologically ordered and that “[e]ach page of the appendix shall be numbered consecutively in the lower right corner of the document.” While it appears that Plaintiffs have numbered their documents, they neglected to place the numbering in such a way that the numbering on all pages can be clearly seen and read. Many of the pages have multiple bates-stamp numbering schemes and some have other markings or exhibit stamps that make the numbering illegible. *See, e.g.*, Volume 1 at what would presumably be pages 162-167. While Defendants and this Court could hand count the pages from a readable bates stamp to arrive at the presumed page number on the illegibly bates-stamped pages, that would defeat the purpose of having numbered pages and makes precise record citations more difficult and mistakes more likely.

Second, NRAP 30(c)(2) requires the index to the appendix to reasonably identify each document and “indicat[e] the ***volume*** and page of the appendix where the document is located.” (emphasis added). Plaintiffs submitted a cursory index listing titles and a bates range with their corrected appendix, but the index is still inadequate since it fails to specify the volume where each document may be found. The index also combines some filings like the motion for summary judgment and

the separately-filed appendix in support of the motion for summary judgment found at Bates Nos. 33-286.

Additionally, NRAP 30(c)(3) requires the cover to prominently show the title of “Appellants’ Appendix.” While Plaintiffs’ submission does have such a title, the appendix volumes are not numbered on the cover. It is a reasonable inference that the addition of volume numbers to the title or somewhere prominent on the cover page would be indicated for a multi-volume appendix, especially since volume numbers are required as part of the index to the appendix. NRAP 30(c)(2) and NRAP 30(c)(3).

Each of these deficiencies, alone, might be overlooked, but, taken together, they cause the appellants’ appendix to be far less reliable to use than this Court’s rules intend. The importance of a complete and useable appendix with a reliable index is underscored by this Court’s rules for imposing sanctions for an incomplete or unusable appendix in NRAP 30(g). Indeed, failure to adhere to this Court’s rules is not only sanctionable, it can result in the dismissal of an entire appeal. *See e.g.*, NRAP 9; NRAP 15; NRAP 31; *see also Weddell v. Stewart*, 126 Nev. 768, 367 P.3d 833 (2010); *Huckabay Props. v. NC Auto Parts*, 130 Nev. 196, 322 P.3d 429 (2014).

For the reasons outlined above, this Court should strike the appellants' appendix filed on September 30, 2019 and require Plaintiffs to file an appellants' appendix that complies entirely with all of this Court's rules.

The Defendants' answering brief and appendix is currently due on June 10, 2020. However, the Defendants do not yet know whether the appellants' appendix will be stricken. Accordingly, the Court should stay briefing in this matter and extend Defendants' filing deadline for the respondents' answering brief and appendix until 30 days following this Court's order resolving this motion or the filing of a corrected appendix.

III. CONCLUSION

In summary, the Court should strike the appellants' appendix filed by Plaintiffs on September 30, 2019. Additionally, the Court should stay briefing and extend the filing deadline for Defendants' answering brief and appendix until 30 days following this Court's order resolving this motion or the filing of a corrected appendix.

Dated this 27th day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO STRIKE APPELLANTS' APPENDIX AND MOTION TO STAY BRIEFING** was filed electronically with the Nevada Supreme Court on the 27th day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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