IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Appellants, v. DIGITAL ALLY, INC., Respondent.	)	Case No.: 78480

Electronically Filed
Oct 09 2019 10:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM ORDER GRANTING MOTION TO DISMISS
THE EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE ELIZABETH GONZALEZ

JOINT APPENDIX

VOLUME II

John P. Aldrich, Esq.
Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
702-853-5490

Steven J. Purcell, Esq.
Douglas E. Julie, Esq. (admitted pro hac vice)
Robert H. Lefkowitz, Esq.
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
212-725-1000

Attorneys for Appellants

Docket 78480 Document 2019-41805

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Steven D. Grierson
CLERK OF THE COURT

OGM
Jeffrey F. Barr, Esq.
Nevada Bar No. 7269
Lee I. Iglody, Esq.
Nevada Bar No. 7757
ASHCRAFT & BARR | LLP
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555
barrj@ashcraftbarr.com
iglodyl@ashcraftbarr.com

David H. Kistenbroker*
Joni Jacobsen*
DECHERT LLP
35 West Wacker Drive
Suite 3400
Chicago, IL 60601
(312) 646-5800
david.kistenbroker@dechert.com
joni.jacobsen@dechert.com

Attorneys for Defendant
** Admitted pro hac vice*

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555 ASHCRAFTBARR.COM

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Plaintiffs, vs. DIGITAL ALLY, INC., Defendants.	CASE NO: A-18-781874-B DEPT NO. XI **ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)**

☐ Summary Judgment ☐ Stipulated Judgment ☐ Default Judgment ☐ Judgment of Arbitration
☐ Voluntary Dismissal ☐ Involuntary Dismissal ☐ Stipulated Dismissal ☒ Motion to Dismiss by Deft(s)

Defendant DIGITAL ALLY, INC.'s ("Defendant") filed a Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5) (the "Motion") on November 13, 2018. The Motion came on for hearing on January 14, 2019. John P. Aldrich and Douglas Elliot Julie appeared on behalf of Plaintiffs, CHARLES JESSEPH and CHARLES CHURCHWELL ("Plaintiffs"). Jeffrey F. Barr and David H. Kistenbroker appeared on behalf of Defendant.

02-19-19A06:13 RCVD

Case Number: A-18-781874-B

Now, having read and considered the motion papers filed by Plaintiffs and Defendants concerning the Motion and heard the arguments of counsel in support of and in opposition to the Motion, and good cause appearing:

THE COURT HEREBY ORDERS that predicate litigation is an essential element to maintaining a claim for attorney's fees under the substantial benefit doctrine found in Nevada common law, and it is undisputed that the Complaint does not allege any predicate litigation. Accordingly, for these reasons, as more fully stated on the record by the Court, the Court **GRANTS** the Motion;

The Court hereby **DISMISSES** the complaint with prejudice.

ORDER

IT IS SO ORDERED.

DATED this 25 day of February, 2019.

ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
Ashcraft & Barr | LLP

Jeffrey F. Barr, Esq., NV Bar No. 7269
Lee I. Iglody, Esq., NV Bar No. 7757
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555

David H. Kistenbroker*
Joni Jacobsen*
DECHERT LLP
*Admitted *pro hac vice*

Attorneys for Defendant

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555 ASHCRAFTBARR.COM

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Steven D. Grierson
CLERK OF THE COURT

NEOJ
Jeffrey F. Barr, Esq.
Nevada Bar No. 7269
Lee I. Iglody, Esq.
Nevada Bar No. 7757
ASHCRAFT & BARR | LLP
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555
barrj@ashcraftbarr.com
iglodyl@ashcraftbarr.com

David H. Kistenbroker, Esq.
Joni Jacobsen, Esq.
(Admitted pro hac vice)
DECHERT LLP
35 West Wacker Drive
Suite 3400
Chicago, IL 60601
(312) 646-5800
david.kistenbroker@dechert.com
joni.jacobsen@dechert.com
Attorneys for Defendant

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555 ASHCRAFTBARR.COM

DISTRICT COURT
CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Plaintiffs, vs. DIGITAL ALLY, INC., Defendants.	CASE NO: A-18-781874-C DEPT NO. XI **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)**

PLEASE TAKE NOTICE that an Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5) was hereby entered on the 27th day of February, 2019, a copy of which is attached hereto.

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Case Number: A-18-781874-B

DATED this 27th day of February, 2019.

ASHCRAFT & BARR | LLP

/s/Jeffrey F. Barr, Esq.
Jeffrey F. Barr, Esq., NV Bar No. 7269
Lee I. Iglody, Esq. NV Bar No. 7757
2300 West Sahara Ave., Ste. 900
Las Vegas, NV 89102
(702) 631-7555

DECHERT LLP
David H. Kistenbroker, Esq.
Joni S. Jacobsen, Esq.
(Admitted pro hac vice)
35 West Wacker Dr., Ste. 3400
Chicago, IL 60601
(312) 646-5800
Attorneys for Defendant

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555
ASHCRAFTBARR.COM

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 27th day of February, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)** to be served 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.

/s/ Michelle T. Harrell
An Employee of Ashcraft & Barr | LLP

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Steven D. Grierson
CLERK OF THE COURT

OGM
Jeffrey F. Barr, Esq.
Nevada Bar No. 7269
Lee I. Iglody, Esq.
Nevada Bar No. 7757
ASHCRAFT & BARR | LLP
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555
barrj@ashcraftbarr.com
iglodyl@ashcraftbarr.com

David H. Kistenbroker*
Joni Jacobsen*
DECHERT LLP
35 West Wacker Drive
Suite 3400
Chicago, IL 60601
(312) 646-5800
david.kistenbroker@dechert.com
joni.jacobsen@dechert.com

Attorneys for Defendant
** Admitted pro hac vice*

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555 ASHCRAFTBARR.COM

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Plaintiffs, vs. DIGITAL ALLY, INC., Defendants.	CASE NO: A-18-781874-B DEPT NO. XI **ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)**

☐ Summary Judgment ☐ Stipulated Judgment ☐ Default Judgment ☐ Judgment of Arbitration
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Case Number: A-18-781874-B

Now, having read and considered the motion papers filed by Plaintiffs and Defendants concerning the Motion and heard the arguments of counsel in support of and in opposition to the Motion, and good cause appearing:

THE COURT HEREBY ORDERS that predicate litigation is an essential element to maintaining a claim for attorney's fees under the substantial benefit doctrine found in Nevada common law, and it is undisputed that the Complaint does not allege any predicate litigation. Accordingly, for these reasons, as more fully stated on the record by the Court, the Court **GRANTS** the Motion;

The Court hereby **DISMISSES** the complaint with prejudice.

ORDER

IT IS SO ORDERED.

DATED this 25 day of February, 2019.

ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
Ashcraft & Barr | LLP

Jeffrey F. Barr, Esq., NV Bar No. 7269
Lee I. Iglody, Esq., NV Bar No. 7757
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555

David H. Kistenbroker*
Joni Jacobsen*
DECHERT LLP
*Admitted *pro hac vice*

Attorneys for Defendant

ASHCRAFT & BARR | LLP
2300 WEST SAHARA AVENUE • STE 900 • LAS VEGAS, NV 89102
702.631.7555 ASHCRAFTBARR.COM

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Steven D. Grierson
CLERK OF THE COURT

NOAS
John P. Aldrich, Esq.
Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975

Steven J. Purcell, Esq.
Douglas E. Julie, Esq.
Robert H. Lefkowitz, Esq.
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
(212) 725-1000

Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Plaintiffs, v. DIGITAL ALLY, INC., Defendants.	Case No.: A-18-781874-B Dept. No.: XI **NOTICE OF APPEAL**

TO: Defendant DIGITAL ALLY, INC.:

NOTICE is hereby given that Plaintiffs Charles Jesseph and Charles Churchwell appeal to the Supreme Court of Nevada from the Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5) entered in the above-referenced action (the "Action") on February 27, 2019.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

DATED this 27th day of March, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No.: 6877
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: (702) 853-5490

PURCELL JULIE & LEFKOWITZ LLP
Steven J. Purcell, Esq.
Douglas E. Julie, Esq.
Robert H. Lefkowitz, Esq.
708 Third Avenue, 6th Floor
New York, New York 10017
(212) 725-1000

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of March, 2019, I served a copy of **NOTICE OF APPEAL**, pursuant to NRCP 12(b)(5) as follows:

X : By electronic case filing and service through the Court's e-filing service (Odyssey)

___: By U.S. mail, first class postage prepaid to the address below

___: By electronic mail to the email addresss(es) listed below

Jeffrey F. Barr, Esq.
Lee I. Iglody, Esq.
ASHCRAFT & BARR | LLP
2300 West Sahara Ave
Las Vegas, Nevada 89102
barrj@ashcraftbarr.com
iglodyi@ashcraftbarr.com

David H. Kistenbroker, Esq.
Joni S. Jacobsen, Esq.
DECHERT LLP
35 West Wacker Drive Suite 3400
Chicago, Illinois 60601
david.kistenbroker@dechert.com
joni.jacobsen@dechert.com

/s/ T. Bixenmann
An employee of Aldrich Law Firm, Ltd.