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Elizabeth A. Brown
Clerk of Supreme Court

7 **IN THE SUPREME COURT**
8 **OF THE STATE OF NEVADA**

9 BETTY CHAN and ASIAN
10 AMERICAN REALTY &
11 PROPERTY MANAGEMENT,

12 Plaintiffs-Appellants,

13 vs.

14 WAYNE WU; JUDITH
15 SULLIVAN; NEVADA REAL
16 ESTATE CORP.; and JERRIN
17 CHIU;

18 Defendants-Respondents.

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SUPREME COURT CASE NO. 78666

District Court Case No. A-16-744109-C

Eighth Judicial District Court

(Hon. Eric Johnson)

19
20 **PLAINTIFFS-APPELLANTS' NOTICE OF FILING IN DISTRICT COURT**
21 **PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR**
22 **RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL**
(ON AN APPLICATION FOR AN ORDER SHORTENING TIME)

23 TO: THE COURT

24 TO: ALL PARTIES

25 TO: ALL COUNSEL OF RECORD

26
27 PLEASE TAKE NOTICE: Plaintiffs-Appellants BETTY CHAN ("Chan")
28 and ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT ("Asian

1 American” or “Asian Am.”) now file this, Plaintiffs-Appellants’ Notice of Filing in
2 District Court Plaintiffs’ Motion to Formally Resolve Motion for Reconsideration
3 and to Certify Judgment as Final (on an Application for an Order Shortening
4 Time). A true and correct copy of the text of said motion is attached hereto (its
5 exhibits are not attached). Said motion was filed in relation to this Court’s Order
6 to Show Cause dated November 14, 2019. It is requested that the Court, all
7 parties, and all counsel of record take notice of said motion.
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9

10 DATED: January 7, 2020.

11 Respectfully submitted,

12
13 **FRIZELL LAW FIRM**
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17 By: /s/ R. Duane Frizell
18 **R. DUANE FRIZELL, ESQ.**
19 Nevada Bar. No 9807
20 DFrizell@FrizellLaw.com
21 Attorney for Plaintiffs-Appellants
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on January 7, 2020, I served a true and correct copy of the forgoing ***PLAINTIFFS-APPELLANTS' NOTICE OF FILING IN DISTRICT COURT PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL (ON AN APPLICATION FOR AN ORDER SHORTENING TIME)***, together with any and all exhibits and attachments, via the Supreme Court's Electronic Filing System to the following:

MICHAEL A. OLSEN, ESQ.
Nevada State Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada State Bar No. 12387
KEITH D. ROTSONG, ESQ.
Nevada State Bar No. 14944
BLACKROCK LEGAL, LLC
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Attorneys for Defendants-Respondents
Wayne Wu, Judith Sullivan, Nevada
Real Estate Corp., and Jerrin Chiu

/s/ R. Duane Frizell
R. DUANE FRIZELL, ESQ.
Nevada Bar. No 9807
DFrizell@FrizellLaw.com
Attorney for Plaintiffs-Appellants

*Attorney for Plaintiffs/
Counter-Defendants*

**DECLARATION OF R. DUANE FRIZELL, ESQ.
IN SUPPORT OF APPLICATION SHORTENING TIME**

I, R. DUANE FRIZELL, hereby make the following declaration:

1. My name is R. Duane Frizell. I have never been convicted of a felony. I am over 18 years of age, am of sound mind, and am fully competent to make this Declaration.
2. With the exception of any and all matters stated upon information and belief, all of the facts stated in this Declaration are based upon my personal knowledge and are true and correct, to the best of my recollection. Regarding any and all matters stated upon information and belief, I believe such matters to be true.
3. Since April 24, 2019, I have been the attorney of record for the Plaintiffs in this action. As such, I have personal knowledge of events in this case.
4. The present action relates to an arbitration award from the Greater Las Vegas Association of Realtors, which arose from a dispute between real estate agents.
5. On March 22, 2019, prior to my appearance in this matter, the Court entered its Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs ("MSJ Order"). (See attached **Exhibit 1**).¹ In that order, the Court ruled, among other things, that the "Arbitration Award was confirmed." (*Id.* at p.7).
6. On April 1, 2019, Plaintiffs, who were representing themselves *pro se* at the time, filed their Motion to Vacate Entry of Order or Motion for Extension of Time to File Reconsideration to the Entry of Order Granting Defendants Counter Motion for Summary Judgment and Attorney Fees and Costs ("Motion for Reconsideration"). (See attached **Exhibit 2**). It does not appear that a hearing was ever set on the Motion for Reconsideration or that the Court ever ruled upon it. (See Register of Actions (dated Jan. 7, 2020) and attached hereto as **Exhibit 3**).
7. On that same day, the Court ruled separately: "[T]he Court finds that there is nothing pending in this litigation. The Court has granted Summary Judgment in favor of Defendants and dealt with all claims pending in this litigation." (See Minute Order (dated Apr. 1, 2019) and attached hereto as **Exhibit 4**).
8. On April 22, 2019, Plaintiffs, who were still representing themselves *pro se*, filed their Notice of Appeal. (See attached **Exhibit 5**).
9. Subsequently, Defendants sought to execute upon their summary judgment. Plaintiffs filed a motion to stay, which was granted on May 1, 2019 in the Court's Order on Plaintiff's Motion to Stay Execution Pending Appeal. (See attached **Exhibit 6**).
10. On May 3, 2019, Plaintiffs posted a supersedeas bond and on May 7, 2019, filed Plaintiffs' Notice of Posting Supersedeas Bond. (See attached **Exhibit 7**).
11. On November 14, 2019, in the appeal, the Supreme Court issued an Order to Show Cause ("OSC") as to why the appeal should not be dismissed because of Plaintiff's April 1, 2019 motion, which this Court had not "formally resolved." (See attached **Exhibit 8**).

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¹ Unless otherwise indicated, all of the exhibits, sub-exhibits, and other attachments to this Declaration and Motion are fully incorporated herein by reference.

12. Per the OSC, all that is required is “a written, file-stamped order resolving the April 1, 2019, motion.” (*See id.*).
13. The Supreme Court originally gave the Plaintiffs until December 14, 2019 to have the motion resolved. (*See Ex.8*). However, in Plaintiffs-Appellants’ Response to Order to Show Cause, filed in the Supreme Court on December 16, 2019, Plaintiffs have requested an extension. (*See attached Exhibit 9*). That request is pending.
14. Given that the Supreme Court may, at any time, dismiss the appeal as being premature, Plaintiffs request the Court to hear this matter on an order shortening time.
15. Declarant states the foregoing under penalty of perjury under the laws of the United States and the State of Nevada.

FURTHER DECLARANT SAYETH NAUGHT.

/s/ R. Duane Frizell
R. DUANE FRIZELL, Declarant
Nevada Bar No. 9807

January 7, 2020
DATE

Henderson, NV
CITY, STATE where signed

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT.

While representing themselves *pro se*, Plaintiffs appealed this Court's order granting Defendants' motion for summary judgment. Nevertheless, on appeal, the Supreme Court has determined that there may be a potential defect as to appellate jurisdiction: a pending motion for reconsideration.

Plaintiffs now bring the present motion for two main reasons: First, to cure any appellate jurisdictional issues, all that is required is a written, file-stamped order resolving the motion for reconsideration. Second, in order to address all issues on appeal, it would be proper for this Court to certify the summary judgment order as final. Plaintiffs are requesting the Court to take this action now.

II. BACKGROUND.

For background, see the foregoing Declaration of R. Duane Frizell, Esq. in Support of Application Shortening Time, which is fully incorporated herein by this reference.

III. ARGUMENT AND AUTHORITIES.

A. To Cure Any Appellate Jurisdictional Issues, All That Is Required Is a Written, File-Stamped Order Resolving the Motion for Reconsideration.

In its MSJ Order, this Court ruled that the "Arbitration Award was confirmed." (*Id.* at p.7). The appeal was taken as a an "order[] confirming or denying confirmation of an [arbitration] award," NRS 38.247(1)(c), and as a "final judgment entered pursuant to [the Uniform Arbitration Act of 2000]," NRS 38.247(1)(f). Thus, the MSJ Order was generally appealable.

Nevertheless, as explained in the Supreme Court's OSC, the appeal may have been prematurely taken because of the Motion for Reconsideration, which Plaintiffs filed when they

1 were representing themselves *pro se*. This Court may resolve issues relating to any such
2 prematurity.

3 A premature notice of appeal does not divest the district court of jurisdiction....
4 If ... a written order or judgment, or a written disposition of the last-remaining
5 timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature
6 appeal, the notice of appeal shall be considered filed on the date of and after entry
7 of the order, judgment or written disposition of the last-remaining timely motion.

8 NRAP 4(a)(6). Thus, this Court may resolve the issue of appealability.

9 The Supreme Court's OSC explained that all that is required to cure appellate jurisdiction
10 is "a written, file-stamped order resolving the April 1, 2019, [Motion for Reconsideration]." (*See*
11 Ex.8). For this reason, Plaintiffs hereby request the Court to formally resolve that motion.

12 **B. In Order to Address All Issues on Appeal, It Would Be Proper for this
13 Court to Certify the MSJ Order as Final.**

14 "When an action presents more than one claim for relief — whether as a claim,
15 counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court
16 may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only
17 if the court expressly determines that there is no just reason for delay." NRCP 54(b). Here the
18 Court has already held as follows: "The Court has granted Summary Judgment in favor of
19 Defendants and dealt with all claims pending in this litigation." (*See* Ex.4).

20 Despite this holding, Defendants have recently taken the position that their counterclaims
21 have not been adjudicated. (*See* emails between counsel (Nov. 20, 2019 to Dec. 16, 2019))
22 attached hereto as **Exhibit 10**). To resolve any uncertainty, and to allow the parties to address all
23 issues on appeal, Plaintiffs are hereby seeking to have the Court certify the MSJ Order as final
24 and, in that connection, to make an express determination that "there is no just reason for delay."

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1 **IV. REQUEST FOR RELIEF.**

2 WHEREFORE, Plaintiffs/Counter-Defendants BETTY CHAN and ASIAN AMERICAN
3 REALTY & PROPERTY MANAGEMENT (“Plaintiffs” or “Counter-Defendants”) hereby
4 request the Court as follows:

- 5 1. to grant Plaintiffs’ Motion to Formally Resolve Motion for Reconsideration and
6 to Certify Judgment as Final;
7
8 2. to grant Plaintiffs’ Application for an Order Shortening Time and to hear
9 Plaintiffs’ Motion on an expedited basis;
10
11 3. to issue a written, file-stamped order resolving Plaintiff’s pending Motion to
12 Vacate Entry of Order or Motion for Extension of Time to File Reconsideration to
13 the Entry of Order Granting Defendants Counter Motion for Summary Judgment
14 and Attorney Fees and Costs (“Motion for Reconsideration”) (filed Apr. 1, 2019);
15 4. to certify as final the Court’s Order Granting Defendants Countermotion for
16 Summary Judgment and Attorney Fees and Costs (“MSJ Order”) (filed Mar. 22,
17 2019), and in that connection to make an express determination that there is no
18 just reason for delay; and
19 5. to grant Plaintiffs all such other and further relief to which they are entitled at law
20 or in equity.

21 DATED: January 7, 2020.

22
23 **FRIZELL LAW FIRM**
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27 Facsimile (702) 657-0065

28 By: /s/ R. Duane Frizell
 R. DUANE FRIZELL, ESQ.
 Nevada Bar. No 9807
 dfrizell@frizelllaw.com
 Attorney for Plaintiffs/
 Counter-Defendants

CERTIFICATE OF SERVICE

I certify that on January 7, 2020, I caused the foregoing ***PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL (ON AN APPLICATION FOR AN ORDER SHORTENING TIME)***, to be served upon the following parties:

MICHAEL A. OLSEN, ESQ.

Nevada State Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada State Bar No. 12387

KEITH D. ROTSONG, ESQ.

Nevada State Bar No. 14944

BLACKROCK LEGAL, LLC

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

Attorneys for Defendants/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada Real

Estate Corp., and Jerrin Chiu

JANICE M. MICHAELS, ESQ.

Nevada State Bar No. 6062

WOOD SMITH HENNING & BERMAN, LLP

2881 Business Park Court, Suite 200

Las Vegas, Nevada 89128

Attorney for Defendant

KB Home Sales-Nevada Inc.

By causing a full, true and correct copy thereof to be sent, together with any and all exhibits and other attachments, by the following indicated method(s):

by mailing in a sealed, first-class postage-prepaid envelope, addressed to the above listed individuals, and deposited with the United State Postal Service;

X by electronic service through the Eighth Judicial District e-file/e-serve service;

by hand delivery;

by faxing to the attorney at his/her last known fax number;

by electronic mail to the last known e-mail address of the attorney/the party.

/s/ R. Duane Frizell

R. DUANE FRIZELL, ESQ.

EXHIBITS

- 1
- 2 Exhibit 1 Order Granting Defendants Countermotion for Summary Judgment and Attorney
3 Fees and Costs (filed Mar. 22, 2019)
4 ["MSJ Order"]
- 5 Exhibit 2 Motion to Vacate Entry of Order or Motion for Extension of Time to File
6 Reconsideration to the Entry of Order Granting Defendants Counter Motion for
7 Summary Judgment and Attorney Fees and Costs (filed Apr. 1, 2019)
8 ["Motion for Reconsideration"]
- 9 Exhibit 3 Register of Actions (dated Jan. 7, 2020)
- 10 Exhibit 4 Minute Order (dated Apr. 1, 2019)
- 11 Exhibit 5 Notice of Appeal (dated Apr. 22, 2019)
- 12 Exhibit 6 Order on Plaintiff's Motion to Stay Execution Pending Appeal (filed May 1,
13 2019)
- 14 Exhibit 7 Plaintiffs' Notice of Posting Supersedeas Bond (filed May 7, 2019)
- 15 Exhibit 8 Supreme Court's Order to Show Cause (filed Nov. 14, 2019)
16 ["OSC"]
- 17 Exhibit 9 Plaintiffs-Appellants' Response to Order to Show Cause (filed in Supreme Court
18 Dec. 16, 2019) (text only without exhibits)
- 19 Exhibit 10 Emails between counsel (Nov. 20, 2019 to Dec. 16, 2019)
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