

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAPRIATI CONSTRUCTION CORP.,)	Supreme Court No.: 80107
INC., a Nevada Corporation)	District Court Case No.: A718689
)	Electronically Filed
Appellant,)	Feb 26 2020 11:55 a.m.
)	Elizabeth A. Brown
)	Clerk of Supreme Court
v.)	RESPONSE TO ORDER TO
)	SHOW CAUSE
BAHRAM YAHYAVI, an individual,)	
)	
Respondent.)	
_____)	

This is an appeal from a judgment on a jury verdict and from a post-judgment order in which the district court explained its reasoning for sanctions it had imposed during trial, prior to the matter going to the jury. At issue in this appeal is whether the district court erred in imposing sanctions during trial, and whether the sanctions were too severe based on the alleged misconduct.

The district court entered a judgment on the jury's verdict on October 22, 2019. Then, in a most unusual fashion, on November 5, 2019, the district court entered an order explaining why it had imposed certain sanctions at trial prior to the case going to the jury. The post-judgment order is unusual, to say the least.

On November 18, 2019, defendant filed a motion for a new trial. This is undoubtedly a timely tolling motion. NRAP 4(a)(4). On November 14, 2019, defendant filed a motion to correct or reconsider the decision and order entered on

November 5, 2019. Whether this motion qualifies as a tolling motion is open to debate. If the November 5, 2019 order is an appealable order, and if the tolling motion rule applies to appealable post-judgment orders,¹ this motion may qualify as a tolling motion.

Because of the unusual nature of the district court's post-judgment order and counsel's uncertainty as to whether a tolling motion from the final judgment would also toll the time for filing a notice of appeal from the district court's odd post-judgment order, that may or may not qualify as an appealable special order after final judgment, in an abundance of caution and to cover all bases, defendant filed a notice of appeal on November 19, 2019.

There is no doubt that this Court is correct in its observation that defendant's notice of appeal is premature, and thus does not vest this Court with appellate jurisdiction. *See* NRAP 4(a)(6). Nevertheless, this Court is not compelled to dismiss this appeal simply because the notice of appeal is premature. Instead, NRAP 4(a)(6) recognizes this Court's authority to dismiss a premature appeal, but notes that this Court "may" do so, or may not do so. If this Court elects not to

¹The Rules identified as providing a basis for tolling motions in NRAP 4(a)(4) all appear to be directed at final orders and judgments. It is not clear that one may file a tolling motion with respect to a special order after final judgment, and in particular with respect to the odd order entered by the district court in this case to justify, after the fact, what it did at trial.

elects not to dismiss a premature appeal, and “a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the . . . written disposition of the last-remaining timely motion.” In other words, when the tolling motion is resolved, defendant’s notice of appeal will become valid.

On January 28, 2020, the district court conducted a hearing on the pending tolling and non-tolling motions and orally ruled on them. The parties are working on drafting written orders to resolve all pending motions to submit to the district court, but it is possible competing drafts will have to be submitted if the parties cannot agree on language to correctly set forth the district court’s oral rulings. We expect a ruling on the tolling motions soon.

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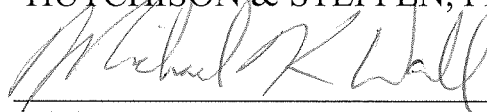
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It would make sense as matter of judicial economy and administration to continue to hold this appeal in abeyance for a short while longer until an order on the tolling motions can be entered by the district court. Otherwise, defendants will have to file a new notice of appeal and commence this same appeal anew when that order is entered.

Respectfully submitted this 26 day of February, 2020.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in cursive script, appearing to read "Michael K. Wall", is written over a horizontal line.

Michael K. Wall (2098)

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Attorney for Appellant


CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **RESPONSE TO ORDER TO SHOW CAUSE** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 26th day of February, 2020.


An employee of Hutchison & Steffen, PLLC