

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

HOME WARRANTY
ADMINISTRATOR OF NEVADA,
INC. dba CHOICE HOME
WARRANTY, a Nevada corporation,

Appellant(s),

v.

STATE OF NEVADA,
DEPARTMENT OF BUSINESS
AND INDUSTRY, DIVISION OF
INSURANCE, a Nevada
Administrative agency,

Respondent(s).

Case No. 80218

First Judicial District Court
No. 17 OC 00269 1B

**DIVISION'S MOTION TO STRIKE APPELLANT'S REPLY IN
SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e)**

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State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), through its counsel, Nevada Attorney General, AARON D. FORD; Senior Deputy Attorney General, JOANNA N. GRIGORIEV and Deputy Attorney General, RICHARD P. YIEN, hereby submits this Motion to Strike Appellant Home Warranty Administrator of Nevada Inc.’s Reply in Support of Emergency Motion Under NRAP 27(e) as a fugitive document, or, in the alternative as untimely and in violation of NRAP 27 (a)(4). This Motion to Strike is made pursuant to NRAP 1(c) and NRAP 27 (a)(4), and based on the following Memorandum of Points and Authorities and all other documents on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS AND PROCEDURAL HISTORY

On December 18, 2019, Home Warranty Administrator of Nevada Inc. (“HWAN”) filed Emergency Motion Under NRAP 27(e), requesting a stay of the First Judicial District Court’s (“FJDC”) order (“PJR Order”) on petition for judicial review, affirming (as modified) the administrative decision. In its Emergency Motion, HWAN requested expedited stay of the FJDC’s PJR Order, effectively seeking to circumvent the FJDC’s ruling on the motion for stay pending before it at that time. The Division filed its Opposition to the Emergency Motion on December 23, 2019. On December 23, 2019, the Court issued an order (“Order on Emergency Motion”), stating that “[t]he district court was in a better position to evaluate the

merits of a request for stay . . . while expressing no opinion on the propriety of a stay pending appeal, we temporarily stay enforcement of the district court's order pending a decision on the district court stay motion and further order of this court. Appellant shall have 5 days from the date that the district court rules on its stay motion to provide a status report to this court." (Order, p. 2). On December 31, 2019, the FJDC denied HWAN's Motion for Stay. ("Order Denying Stay,").

On January 13, 2020, HWAN filed a Status Report, informing this Court of the FJDC's order on the motion for stay. It also filed, however, a Reply in Support of Emergency Motion for Stay Under NRAP 27(e) ("Reply") which is the subject of the Division's Motion to Strike.

II. ARGUMENT

A. HWAN'S REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) SHOULD BE STRICKEN

This Court has the authority to liberally administer the Nevada Rules of Appellate Procedure ("NRAP") to "promote and facilitate the administration of justice by the courts." NRAP 1(c). The Court has the authority in this case to strike HWAN's Reply as it is a fugitive pleading in violation of the NRAP and it unfairly prejudices the Division.

There is no motion pending before the Court. The Court has already ruled on the Emergency Motion this Reply purports to support. HWAN filed its Emergency

Motion Under NRAP 27(e), pursuant to which, it certified that relief was required in less than 14 days. HWAN's Emergency Motion was thus adjudicated on December 23, 2019. HWAN's Reply should not be considered by this Court, as it is in effect a new motion for stay, addressing the FJDC's Order Denying Stay issued on December 31, 2019, and the Division is effectively precluded from responding thereto. The Reply is a fugitive pleading¹ and should be stricken.

NRAP 27(a)(4) mandates that "[a] reply *shall not* present matters that do not relate to the response." *Id.* (emphasis added). HWAN's Reply addresses and analyzes a document—FJDC's Denial of Stay—that the Division's response (Opposition to Emergency Motion) filed on December 23, 2019 did not address, for the simple reason that it did not exist at the time. The Denial of Stay was issued by the FJDC on December 31, 2019. Thus, if not stricken, the Division would be precluded from addressing matters and arguments that HWAN is addressing in its Reply. Prevention of such injustice is the precise reason behind the NRAP 27(a) (4) requirement.

In the alternative, HWAN's Reply should be stricken as it is untimely and in violation of NRAP 27(a)(4). HWAN filed its Emergency Motion on December 17,

¹ The concept of "fugitive" documents or pleadings has been recognized by Nevada courts. *See Blaich v. Blaich*, 114 Nev. 1446, 1447-1448, 971 P.2d 822, 823 (1998), *Goncharoff v. Foster*, 281 P.3d 1176, 2009 WL 1439359 (2009) (unpublished disposition).

2019. The Division filed its Opposition on December 23, 2019. Pursuant to NRAP 27(a)(4), “[a]ny reply to a response *shall be* filed within 7 days after service of the response . . .” HWAN filed its Reply twenty one (21) days after the Division’s response, thus, in clear violation of the rule. The Court’s Order on Emergency Motion *only* provided for filing of a “report” of the FJDC’s ruling. HWAN, however, improperly filed the Reply at issue along with its status report, in violation of the referenced provisions and contrary to the Court’s directive. HWAN should not be permitted to violate the NRAP and prejudice the Division thereby. HWAN’s Reply should not be considered by the Court.

IV. CONCLUSION

For the reasons set forth above, the Division respectfully requests that HWAN’s Reply in Support of Emergency Motion Under 27(e) be stricken and not considered by this Court.

DATED: January 15, 2020.

AARON FORD
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on January 15, 2020.

Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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/s/ Marilyn Millam
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