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Attorneys for Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt

Electronically Filed
Jan 31 2020 03:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

7 HOWARD SHAPIRO

8 Appellant,

9 vs.

10 GLENN WELT, RHODA WELT,
11 LYNN WELT, and MICHELLE WELT,

Respondents.

Supreme Court No.: 80395

Dist. Ct. No. A-14-706566-C

**Respondents' Motion to Dismiss
Appeal**

12 Mr. Shapiro's appeal concerns an interlocutory order awarding attorneys'
13 fees. The order is not from a final judgment, nor is it independently appealable.
14 The appeal should be dismissed.

15 DATED this 30th day of January, 2020.

16 WILSON ELSEER MOSKOWITZ
17 EDELMAN & DICKER LLP

18 /s/ Michael P. Lowry

MICHAEL P. LOWRY, ESQ.

300 South Fourth Street, 11th Floor

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19 Tel: 702.727.1400/Fax: 702.727.1401

20 Attorneys for Glenn Welt, Rhoda Welt,
Lynn Welt, and Michele Welt

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I. This appeal concerns an award of attorneys' fees.

On August 7, 2019 the district court entered an order granting in part and denying in part the Welts’ motion to dismiss per NRS 41.660.¹ On August 8, 2019 notice was given that the order had been entered.² NRS 41.670(4) states that if a district court “denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.” The Welts did not appeal.

On December 23, 2019, the district court then entered an order granting certain attorneys' fees and costs per NRS 41.670(1)(a).³ On December 26, 2019 notice was given that the order had been entered.⁴ On January 6, 2020, Howard Shapiro filed a notice of appeal concerning that order. His case appeal statement described the basis for the appeal. "This is an appeal from an order granting Defendants attorney's fees and costs under NRS 41.670 despite the fact that Plaintiff prevailed on Defendants' special motion to dismiss."⁵

⁵ Case Appeal Statement at 3:11-13.

1 **II. The attorneys’ fees order is not independently appealable.**

2 Mr. Shapiro appeals a district court’s order that awarded certain attorneys’
3 fees and costs. NRAP 3A lists what orders are independently appealable. An
4 order awarding attorneys’ fees is not among them.⁶

5 Based upon the case appeal statement, perhaps Mr. Shapiro relies upon NRS
6 41.670(4)’s statement that if a district court “denies the special motion to dismiss
7 filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.”
8 However, this statute does not apply because Mr. Shapiro is not appealing an order
9 denying a special motion to dismiss. He is instead appealing from the district
10 court’s subsequent order awarding certain attorneys’ fees and costs per NRS
11 41.670(1)(a). He cites no authority permitting an independent appeal an order
12 entered per this statute.

13 **III. The appeal should be dismissed without prejudice.**

14 The order from which Mr. Shapiro presently appeals is not a final order or
15 otherwise independently appealable. The result is that this appeal should be
16 dismissed without prejudice to an appeal if and when an appealable order is
17 entered.

18 ///

19 ///

20 _____
 ⁶ NRAP 3A(b).

1 DATED this 30th day of January, 2020.

2 WILSON ELSEER MOSKOWITZ
3 EDELMAN & DICKER LLP

4 /s/ Michael P. Lowry

5 MICHAEL P. LOWRY, ESQ.
6 300 South Fourth Street, 11th Floor
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8 Tel: 702.727.1400/Fax: 702.727.1401
9 Attorneys for Glenn Welt, Rhoda Welt,
10 Lynn Welt, and Michele Welt

11 **Certificate of Service**

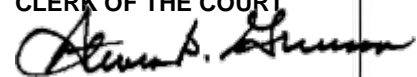
12 Per NRAP 25(c), I certify that I am an employee of Wilson Elser
13 Moskowitz Edelman & Dicker LLP, and that on January 30, 2020, **Respondents'**
14 **Motion to Dismiss Appeal** was served via electronic means by operation of the
15 Court's electronic filing system to:

16 Alex B. Ghibaud, Esq.
17 G Law
18 703 S. 8th St.
19 Las Vegas, NV 89101
20 Tel: 702.978.7090
Attorney for Howard and Jenna Shapiro

BY: /s/ Cynthia Kelley
An Employee of WILSON ELSEER
MOSKOWITZ EDELMAN & DICKER LLP

EXHIBIT 1

EXHIBIT 1



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Michelle Welt

DISTRICT COURT

CLARK COUNTY, NEVADA

Howard Shaprio and Jenna Shapiro,

Plaintiffs,

Case No.: A-14-706566-C
Dept. No.: 27

vs.

NOTICE OF ENTRY OF ORDER

Glenn Welt, Rhoda Welt, Lynn Welt, Michelle Welt,
individuals; Checksnet.com, a corporation; Does I
through X, and Roe Corporations I through X,
inclusive,

Defendants.

PLEASE TAKE NOTICE that an Order re Glenn Welt, Rhoda Welt, Lynn Welt & Michelle Welt's 1) Motion to Dismiss re NRS 41.660, & 2) Motion to Dismiss Certain Causes of Action was entered by the Court on August 7, 2019. A true and correct copy is attached hereto as Exhibit A.

DATED this 8th day of August, 2019.



BY: /s/ Michael P. Lowry

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Michelle Welt

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Certificate of Service

Pursuant to NRCp 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on August 8, 2019, I served **Notice of Entry of Order** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

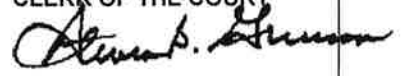
Alex B. Ghibaudo G Law 7720 Cimarron Rd., Suite 110B Las Vegas, NV 89113 Tel: 702.778.1238/Fax: 702.924.6553 E-mail: alex@alexglaw.com Attorneys for Howard Shapiro and Jenna Shapiro	
--	--

BY: /s/ Cynthia Kelley
An Employee of



EXHIBIT A

EXHIBIT A



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Attorneys for Glenn Welt; Rhoda Welt; Lynn Welt;
Michelle Welt

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Howard Shapiro and Jenna Shapiro,
Plaintiffs,

vs.

Glenn Welt, Rhoda Welt, Lynn Welt, Michelle Welt,
individuals; Checksnet.com, a corporation; Does I
through X, and Roe Corporations I through X,
inclusive,

Defendants.

Case No.: A-14-706566-C
Dept. No.: 27

**Order re Glenn Welt, Rhoda Welt,
Lynn Welt & Michelle Welt's 1)
Motion to Dismiss re NRS 41.660, & 2)
Motion to Dismiss Certain Causes of
Action**

On May 2, 2019 Glenn Welt, Rhoda Welt, Lynn Welt & Michelle Welt (collectively "the Welts") filed two motions. The first sought global dismissal per NRS 41.660. The second sought dismissal of certain causes of action and all claims filed by Jenna Shapiro. Howard Shapiro and Jenna Shapiro ("the Shapiros") opposed on July 9, 2019. The Welts replied on July 12, 2019. The Shapiros filed an additional exhibit on July 16, 2019. The motions were heard on July 17, 2019. Alex Ghibaudo appeared at the hearing for the Shapiros, Michael Lowry appeared for the Welts.

At the hearing, the Welts first orally moved to strike the additional exhibit the Shapiros filed on July 16 at 4:38 p.m. The Welts argued this motion had been pending for two months and this supplemental exhibit at the close of business the day before the hearing was improper. The Shapiros responded the exhibit merely discussed the facts Howard Shapiro believed were stated about him and are false. The court agrees with the Welts and orders the exhibit struck. The exhibit was not considered in ruling upon the motions.

1 Second, the Shapiros' opposition conceded Jenna Shapiro cannot meet her burden of proof
2 as to NRS 41.660.¹ Howard Shapiro conceded he could not meet the burden as to four of the six
3 causes of action alleged in the complaint. Those that he did argue are the defamation per se and
4 civil conspiracy causes of action.² This was confirmed in open court on July 17. The Welts'
5 motion to dismiss as to Jenna Shapiro is granted. It is also granted as to all causes of action except
6 defamation per se and civil conspiracy.

7 **I. Motion to Dismiss per NRS 41.660**

8 The Welts argue NRS 41.637(3) and (4) protect the speech on their website. They move to
9 dismiss per NRS 41.660(1)(a). This action was filed in 2014. At that time, when resolving this
10 motion the district court shall "[c]onsider such evidence, written or oral, by witnesses or
11 affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b)."³ The
12 district court must first "[d]etermine whether the moving party has established, by a
13 preponderance of the evidence, that the claim is based upon a good faith communication in
14 furtherance of the right to petition or the right to free speech in direct connection with an issue of
15 public concern."⁴ If the moving party meets its burden, the district court then determines
16 "whether the plaintiff has established by clear and convincing evidence a probability of prevailing
17 on the claim."⁵

18 **a. NRS 41.637(3) does not apply.**

19 NRS 41.637(3) protects a "[w]ritten or oral statement made in direct connection with an
20 issue under consideration by a ... judicial body."⁶ To qualify for NRS 41.637(3)'s protection, the
21 communication at issue must "(1) relate to the substantive issues in the litigation and (2) be
22 directed to persons having some interest in the litigation."⁷ The statute's purpose is "protecting
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25 ¹ Opposition at 10:2-3.

26 ² *Id.* at 10:3-4.

27 ³ NRS 41.660(3)(d).

28 ⁴ NRS 41.660(3)(a).

⁵ NRS 41.660(3)(b).

⁶ NRS 41.637(3).

⁷ *Patin v. Ton Vinh Lee*, 134 Nev. Adv. Op. 87, 429 P.3d 1248, 1249 (2018).

1 the right of litigants to the utmost freedom of access to the courts without the fear of being
2 harassed subsequently by derivative tort actions.”⁸

3 The court twice previously concluded this statute applied. But the Supreme Court reversed
4 in *Shapiro II* for further factual development. “Although [the Welts] directed their speech on the
5 website to unidentified victims and potential witnesses, it is unclear how these persons have an
6 interest in the conservatorship proceeding.”⁹ The Welts’ motion provides further factual
7 information. The Shapiros states the website “is targeting, at best, a handful of people – people
8 who witnessed alleged elder abuse committed by Howard upon Walter and others with personal
9 knowledge of any other ‘ill deeds.’”¹⁰

10 The parties do not dispute that the Welts’ website constitutes a written statement. The
11 parties agree that when the website was published, there was a conservatorship proceeding
12 pending before a New Jersey court where Howard Shapiro sought appointment as Walter
13 Shapiro’s conservator. The question remaining is whether the website’s speech was “made in
14 direct connection with an issue under consideration” in that proceeding.

15 The Shapiros argue the website’s speech did not relate to the substantive issues in the
16 litigation, nor was it be directed to persons having some interest in the litigation.”¹¹ The court
17 agrees. The issue before the New Jersey court was whether Howard Shapiro was qualified and
18 suitable to be Walter’s conservator. It did not concern whether Howard may have previously
19 abused Walter, or whether he may do so in the future. Further, as the Shapiros argue, the people
20 targeted by the website’s speech did not have a legal interest in the conservatorship’s outcome.
21 Stated another way, NRS 41.637(3) protects statements only to those with a legal interest in the
22 litigation’s outcome. The Shapiros’ analogy to the litigation privilege is appropriate in that NRS
23 41.637(3)’s protection does not extend to statements made to someone who is not 1) a party to the
24 lawsuit, or 2) inextricably intertwined with the lawsuit.

27 ⁸ *Id.* at 1252.

28 ⁹ *Shapiro II* at 7.

¹⁰ Opposition at 6:18-22.

¹¹ *Patin*, 429 P.3d at 1249.

1 As the website did not relate to the substantive issues in the New Jersey conservatorship,
2 nor was it directed to persons with a legal interest in the conservatorship's outcome, NRS
3 41.637(3)'s protection does not apply to the Welts' website.

4 **b. NRS 41.637(4) does not apply.**

5 NRS 41.637(4) protects any "[c]ommunication made in direct connection with an issue of
6 public interest in a place open to the public or in a public forum,"¹² but only if that communication
7 "is truthful or is made without knowledge of its falsehood."¹³ Prior orders in this case determined
8 the Welts' website constituted 1) a communication; 2) made in a place open to the public or in a
9 public forum; and 3) the communication was in direct connection with a given issue. The
10 question now is whether that issue is one of public interest.

11 Nevada uses five guiding principles for distinguishing a public interest from a private one.

- 12 (1) "public interest" does not equate with mere curiosity;
13 (2) a matter of public interest should be something of concern to a substantial number
14 of people; a matter of concern to a speaker and a relatively small specific audience is
15 not a matter of public interest;
16 (3) there should be some degree of closeness between the challenged statements and
17 the asserted public interest—the assertion of a broad and amorphous public interest is
18 not sufficient;
19 (4) the focus of the speaker's conduct should be the public interest rather than a mere
20 effort to gather ammunition for another round of private controversy; and
21 (5) a person cannot turn otherwise private information into a matter of public interest
22 simply by communicating it to a large number of people.¹⁴

23 The Welts argue whether Howard had previously committed elder abuse against Walter was
24 a matter of public interest in the context of the conservatorship proceeding. They note that
25 blended speech, addressing both a public interest but also a private concern, should be protected.
26 But the Shapiros correctly note the website's stated purpose was to locate witnesses willing to
27 testify that Howard Shapiro is unfit to be a conservator, not to alert the public to elder abuse. Mr.
28 Welt's affidavit makes abundantly clear the website's purpose was to recruit witnesses to be
utilized in the ongoing conservatorship litigation in New Jersey, which was a private controversy.

Further, the Shapiros also correctly note there must be some degree of closeness between
the challenged statements and the asserted public interest; an assertion of a broad and amorphous

¹² NRS 41.637(4).

¹³ NRS 41.637.

¹⁴ *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017) (quotation omitted).

1 public interest is not sufficient. The Welts' concern about potential elder abuse is broad,
2 amorphous, and does not qualify for NRS 41.637(4)'s protection.

3 **c. Even if NRS 41.637(3) or (4) applied, Howard presented clear and convincing**
4 **evidence of a probability of prevailing on his two remaining claims.**

5 The Welts did not meet their burden to demonstrate "by a preponderance of the evidence,
6 that the claim is based upon a good faith communication in furtherance of the right to petition or
7 the right to free speech in direct connection with an issue of public concern."¹⁵ If they had, the
8 district court would then need to determine "whether the plaintiff has established by clear and
9 convincing evidence a probability of prevailing on the claim."¹⁶ "[A] plaintiff opposing an anti-
10 SLAPP motion cannot rely on allegations in the complaint, but must set forth evidence that would
11 be admissible at trial."¹⁷

12 The Welts first argue the website's speech was protected by the litigation privilege.
13 However, that privilege does not apply because the protection extends to only statements made to
14 someone who is not 1) a party to the lawsuit, or 2) inextricably intertwined with the lawsuit. As
15 previously discussed, that is not whom the Welts' website targeted.

16 The Welts then argue the website's speech was protected because by applying for court
17 appointment as a conservator, Howard made himself a limited purpose public figure. "A limited-
18 purpose public figure is a person who voluntarily injects himself or is thrust into a particular
19 public controversy or public concern, and thereby becomes a public figure for a limited range of
20 issues. The test for determining whether someone is a limited public figure includes examining
21 whether a person's role in a matter of public concern is voluntary and prominent."¹⁸ But the
22 controversy or concern at issue here was whether Howard was qualified or suitable to be Walter's
23 conservator. That was a private controversy or concern, not a public one. Consequently, Howard
24 was not a limited purpose public figure.

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27 ¹⁵ NRS 41.660(3)(a).

28 ¹⁶ NRS 41.660(3)(b).

¹⁷ *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4th 688, 699 (2007).

¹⁸ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002).

1 **i. There is clear and convincing evidence of defamation.**

2 Howard's two remaining causes of action are for 1) defamation; and 2) civil conspiracy.
3 "A defamation claim requires demonstrating (1) a false and defamatory statement of fact by the
4 defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault,
5 amounting to at least negligence; and (4) actual or presumed damages."¹⁹ As to the first element,
6 although "a plaintiff opposing an anti-SLAPP motion cannot rely on allegations in the complaint,
7 but must set forth evidence that would be admissible at trial,"²⁰ here Howard has provided his own
8 denial of the facts stated about him on the Welts' website. This is sufficiently clear and
9 convincing evidence for the first element of defamation. The second element is met because it is
10 undisputed the statements were published on a website and this court has already concluded they
11 were not privileged.

12 The third element is also met. In *Coker v. Sassone* a district court denied a motion to
13 dismiss per NRS 41.660(3). The defendant appealed, but the denial was affirmed because "Coker
14 failed to demonstrate that his conduct was 'truthful or made without knowledge of its falsehood.'
15 We agree, and further conclude that Coker failed to sufficiently prove that his communication was
16 made in direct connection with an issue of public interest."²¹ Similarly here, the Welts did not
17 meet their preponderance of the evidence burden. Even had they, there is clear and convincing
18 evidence of fault, amounting to at least negligence.

19 Finally, Howard is not required to present clear and convincing evidence of actual or
20 presumed damages because he relies upon the damages exception provided for statements that are
21 defamatory per se. Nevada has recognized "[c]ertain classes of defamatory statements are,
22 however, considered defamatory per se and actionable without proof of damages."²² Howard
23 relies upon two specific exceptions: (1) the imputation of a crime; and (2) imputing the person's
24 lack of fitness for trade, business, or profession.²³ The statements on the website could certainly
25

26 ¹⁹ *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005).

27 ²⁰ *Overstock.com*, 151 Cal.App.4th at 699.

28 ²¹ 135 Nev. Adv. Op. 2, 432 P.3d 746, 750 (2019).

²² *Pope*, 121 Nev. at 315, 114 P.3d at 282.

²³ *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993).

1 be construed as being within these two exceptions, which is sufficient to demonstrate a probability
2 of prevailing on the claim.


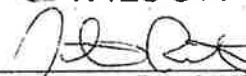
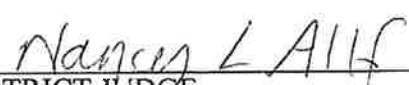
3 **ii. There is clear and convincing evidence of civil conspiracy.**

4 An actionable civil conspiracy “consists of a combination of two or more persons who, by
5 some concerted action, intend to accomplish an unlawful objective for the purpose of harming
6 another, and damages results from the act or acts.”²⁴ To prevail in a civil conspiracy action, a
7 plaintiff must prove an explicit or tacit agreement between the tortfeasors.²⁵ The Shapiros
8 correctly define “unlawful objective” to mean criminal conduct. The conduct alleged in this
9 matter is sufficient to infer the Welts intended to accomplish criminal conduct.

10 Howard also requested an opportunity to conduct discovery to allow him to present further
11 evidence on this point. However, this request is denied as moot given the ruling on this topic.

12 **II. Motion to Dismiss Certain Causes of Action**

13 This motion is granted in part as to Jenna Shapiro and all causes of action except
14 defamation and civil conspiracy, as previously described. The Welts are to file an answer no later
15 than August 9, 2019.

<p>17 ALEX B. GHIBAUDO, P.C.</p> <p>18 BY: <i>Approval requested but not received.</i></p> <p>19 ALEX GHIBAUDO</p> <p>20 Nevada Bar No. 10592</p> <p>21 703 S. 8th St.</p> <p>22 Las Vegas, NV 89101</p> <p>23 Attorneys for Howard Shapiro; Jenna</p> <p>24 Shapiro</p>	<p>17  WILSON ELSER</p> <p>18 BY:  #13929</p> <p>19 MICHAEL P. LOWRY</p> <p>20 Nevada Bar No. 10666</p> <p>21 300 South 4th Street, 11th Floor</p> <p>22 Las Vegas, NV 89101-6014</p> <p>23 Attorneys for Glenn Welt; Rhoda Welt;</p> <p>24 Lynn Welt; Michelle Welt</p>
	<p>22 It is so ordered.</p> <p>23</p> <p>24 </p> <p>25 DISTRICT JUDGE</p>

26

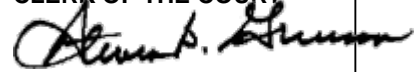
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28 ²⁴ *Hilton Hotels Corp. v. Butch Lewis Prods.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993).

²⁵ *GES, Inc. v. Corbitt*, 117 Nev. 265, 271-72, 21 P.3d 11, 15 (2001).

Exhibit 2

Exhibit 2



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Attorneys for Glenn Welt; Rhoda Welt; Lynn Welt;
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Howard Shapiro and Jenna Shapiro,
Plaintiffs,

vs.

Glenn Welt, Rhoda Welt, Lynn Welt, Michelle Welt,
individuals; Checksnet.com, a corporation; Does I
through X, and Roe Corporations I through X,
inclusive,

Defendants.

Case No.: A-14-706566-C
Dept. No.: 27

**Notice of Entry of Order re Motion for
Fees, Costs and Discretionary Relief**

PLEASE TAKE NOTICE that an Order granting Defendants Glenn Welt, Rhoda Welt, Lynn Welt & Michelle Welt's Motion for Fees, Costs, and Discretionary Relief was entered by the Court on December 23, 2019. A true and correct copy is attached hereto as Exhibit A.

DATED this 26th day of December, 2019.



BY: /s/ Michael P. Lowry

MICHAEL P. LOWRY
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Attorneys for Glenn Welt; Rhoda Welt; Lynn Welt;
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Certificate of Service

Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on December 26, 2019, I served **Notice of Entry of Order re Motion for Fees, Costs and Discretionary Relief** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

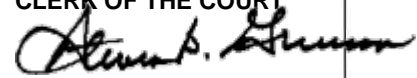
Alex B. Ghibaudo G Law 7720 Cimarron Rd., Suite 110B Las Vegas, NV 89113 Tel: 702.778.1238/Fax: 702.924.6553 E-mail: alex@alexglaw.com Attorneys for Howard Shapiro and Jenna Shapiro	
--	--

BY: /s/ Cynthia Kelley
An Employee of



Exhibit A

Exhibit A



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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individuals; Checksnet.com, a corporation; Does I
through X, and Roe Corporations I through X,
inclusive,

Defendants.

Case No.: A-14-706566-C
Dept. No.: 27

**Order re Glenn Welt, Rhoda Welt,
Lynn Welt & Michelle Welt's Motion
for Fees, Costs, and Discretionary
Relief**

On August 7, 2019 the court entered an order granting, in part, relief per NRS 41.660. Specifically, it was granted as to Jenna Shapiro because she conceded she cannot meet her burden of proof as to NRS 41.660. The motion was granted in part as to Howard Shapiro because he conceded he could not meet the burden as to four of the six causes of action alleged in the complaint. This was confirmed in open court on July 17.

As a result of this ruling, on August 16, 2019 the Welts filed a motion seeking fees, costs, and discretionary relief. The motion was originally scheduled for hearing on September 19. The parties then stipulated to continue the hearing to October 3. Plaintiffs did not file an opposition to the motion until October 3. As a result the court continued the hearing to October 10, 2019. Michancy Cramer appeared at the hearing for the Shapiros, Michael Lowry appeared for the Welts.

"If the court grants a special motion to dismiss filed pursuant to NRS 41.660: (a) The court shall award reasonable costs and attorney's fees to the person against whom the action was

1 brought....”¹ Here, the Welts filed a special motion to dismiss. That motion was granted in full as
2 to Jenna Shapiro. It was granted as to four of Howard’s six causes of action. As a result, an
3 award of reasonable costs and fees is mandated on those parts that were granted.

4 **A. The *Brunzell* factors are satisfied.**

5 NRS 41.670(1)(a) permits an award of only “reasonable” attorney’s fees. *Brunzell v.*
6 *Golden Gate Nat. Bank* provides the analysis by which to evaluate if the attorneys’ fees were
7 reasonable. *Brunzell* requires district courts to consider at least four factors.

- 8 (1) the qualities of the advocate: his ability, his training, education, experience,
9 professional standing and skill;
10 (2) the character of the work to be done: its difficulty, its intricacy, its importance,
11 time and skill required, the responsibility imposed and the prominence and character
12 of the parties where they affect the importance of the litigation;
13 (3) the work actually performed by the lawyer: the skill, time and attention given to
14 the work;
15 (4) the result: whether the attorney was successful and what benefits were derived.²

16 These factors help evaluate whether the attorney’s fees requested are appropriate for the facts and
17 circumstances of the individual case. They are designed to protect opposing parties from
18 exorbitant rates from less qualified lawyers, dubious billing activities, or poor quality work. The
19 court previously addressed these factors in two prior orders granting attorneys’ fees concerning
20 two prior motions to dismiss. The analysis remains largely the same.

21 The Welts’ lead counsel, Michael Lowry, is a licensed attorney practicing in Nevada since
22 2007 and has represented the Welts since this case was filed. He charged \$250 per hour until
23 January 1, 2018 when the rate increased to \$265. Associate Amanda Ebert has practiced in
24 Nevada since 2012 and was billed at \$225 an hour until January 1, 2018 when her rate also
25 increased to \$240. These differing rates reflected the attorneys’ differing experience levels.

26 As the February 20, 2015 order noted, “[t]he character of the work done was intricate, and
27 required research into a developing area of law.”³ This analysis still applies. This case has been
28 appealed to the Supreme Court twice already. This area of law has produced several published
decisions recently and this was reflected in the Welts’ work product. This analysis also satisfies

¹ NRS 41.670(1)(a).

² *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

³ February 20, 2015 Order at 2:1-2.

1 the third *Brunzell* factor as the work actually performed reflects a level of skill, time, and attention
2 that matches the intricate nature the analysis that was required.

3 Finally, the fourth factor is also satisfied. Part of the Welts' position was successfully
4 advocated, resulting in a favorable decision. The decision benefitted the Welts in that it
5 terminated Jenna's claims against them and limited the remaining claims that Howard asserts.

6 **B. Apportioning the fees and costs requested.**

7 The Welts provided supporting documentation indicating they incurred total fees of
8 \$62,906, and total costs of \$1,407.22. The court is satisfied those amounts were actually and
9 reasonably incurred. The more difficult question is how to apportion these amounts where the
10 motion to dismiss was granted in part. NRS 41.670 provides no guidance in this scenario, nor did
11 the parties locate Nevada case law on point.

12 During the October 10, 2019, hearing, the court stated that, as a condition of the motion
13 being granted, the Welts were to review the billing statements submitted and attempt to determine
14 which ones related to work concerning Jenna as opposed to Howard. The Welts did so, but filed a
15 declaration of counsel on November 6, 2019, explaining why that attempt was unsuccessful and
16 neither the fees nor costs requested could be apportioned in this manner.

17 As a result, the court is persuaded the method of apportionment proposed in the Welts'
18 opening brief is equitable under the circumstances.

19 **C. Discretionary relief per NRS 41.670(1)(b).**

20 The Welts also requested discretionary relief per this statute. "The court may award, in
21 addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of
22 up to \$10,000 to the person against whom the action was brought."⁴ The court agrees with the
23 Welts' reasoning as to why an award is merited, but disagrees with them as to the amount. The
24 court instead awards \$100 to each defendant from Jenna Shapiro and a separate \$100 to each
25 defendant from Howard Shapiro.

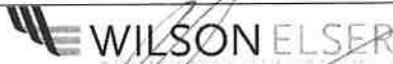

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⁴ NRS 41.660(1)(b).

D. Judgment

Judgment for fees and costs is entered as follows:

- Jenna Shapiro, individually: \$32,261.61 (Fees & Costs)
- Jenna Shapiro, individually: \$100.00 to Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt, each, per NRS 41.660(1)(b).
- Howard Shapiro, individually: \$21,440.60 (Fees & Costs)
- Howard Shapiro, individually: \$100.00 to Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt, each, per NRS 41.660(1)(b).

<p>ALEX B. GHIBAUDO, P.C.</p> <p><i>Approval declined.</i></p> <p>BY: _____</p> <p>ALEX GHIBAUDO Nevada Bar No. 10592 703 S. 8th St. Las Vegas, NV 89101 Attorneys for Howard Shapiro; Jenna Shapiro</p>	<p> WILSON ELSER</p> <p>BY: _____</p> <p>MICHAEL P. LOWRY Nevada Bar No. 10666 300 South 4th Street, 11th Floor Las Vegas, NV 89101-6014 Attorneys for Glenn Welt; Rhoda Welt; Lynn Welt; Michelle Welt</p>
	<p>It is so ordered.</p> <p></p> <p>DISTRICT JUDGE</p>

12/21/19 JD