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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

HOWARD SHAPIRO,

Appellants,

vs.

GLENN WELT, RHODA WELT,
LYNN WELT, and MICHELLE
WELT,

Respondents.

Case No.: 80395

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

APPELLANT'S AMENDED APPENDIX VOL II

/s/ Alex Ghibaud

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that on this 13th day of October, 2020, I did cause a true copy of the foregoing APPENDIX to be served via the Court's electronic service system to the following:

Michael Lowry, Esq.
WILSON ELSER et al.

Michael.lowry@wilsonelser.com

/s/ Alex Ghibauda

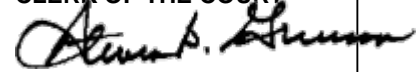
EMPLOYEE of Alex B. Ghibauda, PC

Shapiro v. Welt

Docket No. 80395

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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

**Declaration of Michael Lowry re
Glenn Welt, Rhoda Welt, Lynn Welt &
Michelle Welt's Motion for Fees,
Costs, and Discretionary Relief**

1. The Welts' motion was heard on October 10, 2019. The Welts proposed two different methods of apportioning the fees and costs award that they requested. The court ordered that, as a condition of the motion being granted, I was to review the billing statements submitted and attempt to determine which ones related to work concerning Jenna as opposed to Howard.
2. As a result of this ruling, I have personally reviewed all of the billing records submitted in support of the Welts' motion. The time entries prepared for my clients were not drafted to strictly delineate between those claims that Jenna asserted and those that Howard asserted. The billing records instead evidence that Jenna and Howard's claims were treated in effect as one. This is consistent with how the Shapiros pled their complaint. The result is that the time entries cannot be realistically or reliably delineated between the work that was performed specific to Jenna's claims or Howard's. It was for this reason the Welts suggested percentages in their briefing and oral argument.

1 3. In Nevada, courts are not necessarily required to apportion attorneys' fees if the claims for
2 which fees are proper are "inextricably intertwined" with the claims for which fees are
3 disallowed.¹

4 [I]t is within the district court's discretion to determine whether apportionment is
5 rendered impracticable by the interrelationship of the claims against the multiple
6 defendants. The district court must, however, attempt to apportion the costs before
7 determining that apportionment is impracticable. When attempting to apportion costs,
the district court must make specific findings, either on the record during oral
proceedings or in its order, with regard to the circumstances of the case before it that
render apportionment impracticable.²

8 4. Applied here, the complaint pled separate facts as to Howard and Jenna, but then alleged
9 identical causes of action against all defendants. Howard and Jenna's claims are so
10 intertwined that apportioning the fees as to those specifically incurred for Jenna's claims as
11 opposed to Howard's is impractical.

12 5. While apportionment is possible using other methods, I am not able to apportion the fees
13 requested in the manner the court requested.

14 6. I declare under penalty of perjury that the foregoing is true and correct, per NRS 53.045(1).

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18 /s/ Michael P. Lowry
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28 ¹ *Mayfield v. Koroghli*, 124 Nev. 343, 353, 184 P.3d 362, 369 (2008).

² *Id.* at 353-54, 184 P.3d at 369.

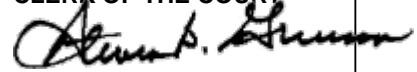
1 **Certificate of Service**

2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman
3 & Dicker LLP, and that on November 5, 2019, I served **Declaration of Michael Lowry re Glenn**
4 **Welt, Rhoda Welt, Lynn Welt & Michelle Welt's Motion for Fees, Costs, and Discretionary**
5 **Relief** as follows:

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

10 Alex B. Ghibaud, Esq.
11 G Law
12 7720 Cimarron Rd., Suite 110B
13 Las Vegas, NV 89113
14 Tel: 702.778.1238
15 Attorneys for Howard and Jenna Shapiro

16 BY: /s/ Cynthia Kelley
17 An Employee of
18 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
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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

**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;
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 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;

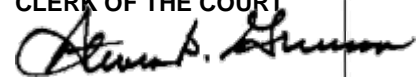
| | |
|--|--|
| Alex B. Ghibaudo G Law 7720 Cimarron Rd., Suite 110B Las Vegas, NV 89113 Tel: 702.778.1238/Fax: 702.924.6553 E-mail: alex@alexglaw.com Attorneys for Howard Shapiro and Jenna Shapiro | |
|--|--|

BY: /s/ Cynthia Kelley
An Employee of



Exhibit A

Exhibit A



MICHAEL P. LOWRY, ESQ.
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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 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