

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

JOE N. BROWN, an individual,

Appellant,

vs.

GNL, CORP., a Nevada corporation,  
and THYSSENKRUPP ELEVATOR  
CORPORATION, a foreign corporation,

Respondents.

Supreme Court Case No. 80581

District Court Case No. 2018-0007  
Electronically Filed  
Mar 31 2020 11:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION FOR LEAVE TO PROCEED ON APPEAL**  
**IN FORMA PAUPERIS**

Appellant Joe N. Brown (“Appellant”), by and through undersigned counsel, respectfully moves this Court for leave to proceed on appeal in forma pauperis (this “Motion”). This Motion is made and based on the following points and authorities, the exhibits attached hereto, and the record on file with the District Court.

**I. PROCEDURAL HISTORY AND FACTS**

On February 8, 2020, Appellant filed a Notice of Appeal in this matter, following the January 9, 2020 Notice of Entry of Judgment in the Eighth Judicial District Court, and the underlying Judgment on Jury Verdict issued by the Honorable Joanna S. Kishner of Department XXXI (the “District Court”). A copy of the Notice of Entry of Judgment and the Judgment on Jury Verdict are attached hereto as **Exhibit A**.

Pursuant to NRS 12.015 and NRAP 24(a), Appellant filed a motion for leave to proceed on appeal in forma pauperis (“IFP”) in the District Court (“District Court IFP Motion”) on February 24, 2020. The District Court IFP Motion and its two exhibits are attached hereto as **Exhibit B** and incorporated by reference herein; Exhibit 1 thereto was Appellant’s Declaration<sup>1</sup> in compliance with NRAP 24(a)(1) and Form 4 in the Appendix of Forms attached to the NRAP, and Exhibit 2 thereto was a proposed order granting the District Court IFP Motion.

On February 28, 2020, the District Court, *sua sponte*, issued a Memo attached hereto as **Exhibit C**. The Memo indicated that:

“[The order] is being returned to you, unsigned, for the following reason(s):

Presently, the District Court is void of jurisdiction as this matter is closed. Additionally, the request is being made to file documents that are not in the District Court.”<sup>2</sup>

On March 3, 2020, the District Court heard Respondents’ respective motions for attorneys’ fees and costs and referenced in passing the Memo and the possibility of Appellant withdrawing the District Court IFP Motion, which was calendared to be heard by the District Court on March 31, 2020 (today).

On March 9, 2020, Respondent GNL CORP. (“GNL”) filed an opposition to

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<sup>1</sup> Appellant proceeded with the declaration given NRS 53.045, which allows for the use of an unsworn declaration in lieu of an affidavit.

<sup>2</sup> See Exhibit C. Appellant retrieved the Memo from the Regional Justice Center on March 5, 2020.

the District Court IFP Motion. The opposition, a copy of which is attached hereto as **Exhibit D**, was *not* based on jurisdiction; rather, it argued that Appellant's declaration could not be e-signed. On March 23, out of an abundance of caution, Appellant executed an affidavit compliant with NRAP 24(a) and Form 4 in the Appendix of Forms; a copy of Appellant's affidavit is attached hereto as **Exhibit E** and incorporated by reference herein. Given the Memo and the remarks during the (albeit-for-a-separate-matter) March 3 hearing, Appellant and Respondents conferred last week and, on March 27, Appellant requested of the District Court that the March 31 hearing on the District Court IFP Motion be taken off-calendar. The District Court vacated the hearing the same day.

Appellant intended to seek relief/clarification from this Court and, accordingly, respectfully files this Motion for this Court's consideration.

## **II. LAW AND ARGUMENT**

NRAP 24(a) provides in relevant part:

### **(a) Leave to Proceed on Appeal in Forma Pauperis.**

**(1) Motion in the District Court.** Except as stated in Rule 24(a)(3) and (5)(b), a party to a district court action who desires to appeal in forma pauperis *shall file* a motion in the district court.

[. . .]

**(2) Action on the Motion.** If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs. If the district court denies the motion, *it must state its reasons in writing.*

[. . .]

**(4) Notice of District Court’s Denial.** The district court clerk *shall immediately notify* the parties and the clerk of the Supreme Court when the district court does any of the following:

- (A) denies a motion to proceed on appeal in forma pauperis;
- (B) certifies that the appeal is not taken in good faith; or
- (C) finds that the party is not otherwise entitled to proceed in forma pauperis.

**(5) Motion in the Supreme Court.** A party who desires to proceed on appeal in forma pauperis may file one of the following:

(A) a motion to proceed on appeal in forma pauperis in the court within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion shall include a copy of the affidavit filed in the district court and a copy of the district court’s statement of reasons for its action. If no affidavit was filed in the district court, the party shall include the affidavit prescribed by Rule 24(a)(1); or

(B) in a civil appeal, a statement of legal aid eligibility providing that the party is a client of a program for legal aid as defined by NRS 12.015(8).

NRAP 24(a)(emphasis added). As the plain language of Rule 24(a) indicates, appellants may not seek in forma pauperis status from the Nevada Supreme Court if they have not first filed a motion in the District Court.

Appellant filed the District Court IFP Motion. Technically, the District Court did not deny that motion and, instead, returned the proposed order with the Memo. And, arguably, Appellant should have perhaps insisted that the hearing on the District Court IFP Motion take place today to obtain the District Court’s (presumed) denial on the record, so as to unambiguously trigger NRAP 24(a)(2) and (a)(5).<sup>3</sup>

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<sup>3</sup> Arguably, this Motion is late if one takes the position that NRAP 24(a)(5)(A) was triggered by the February 28 Memo. Appellant would respectfully submit that

Given the present circumstances, Appellant decided to seek and obtained withdrawal of the hearing date, in order to address the issue with this Court.

Appellant respectfully submits that the District Court failed to cite in the Memo any relevant authority to support its position that it lacked jurisdiction, and Appellant further respectfully submits that no such authority exists. As quoted above, Rule 24(a) expressly grants to the District Court the authority to rule upon such motions in the first instance.

The District Court's jurisdictional claim *sub judice* further runs counter to *Lee v. GNLV Corp.*, 996 P.2d 416 (Nev. 2000), wherein this Court "clarif[ied] that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, ***except for post-judgment issues*** such as attorney's fees and costs." *Lee*, 996 P.2d at 417 (emphasis added). The determination of whether a party is eligible to proceed on appeal in forma pauperis does not implicate the substantive issues raised below or on appeal. Rather, such a determination is merely ancillary, and Rule 24(a) requires that the District Court rule in the first instance on a motion to proceed on appeal in forma pauperis. Arguably,

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there is a good faith basis for consideration of this Motion, especially given the present circumstances; that this Motion follows in less than 30 days after Appellant was given notice of the Memo (at the March 3 hearing) and after Appellant obtained the Memo (on March 5); and that the delay was limited and did not prejudice Respondents.

the Memo constitutes the District Court's disinclination to do so here.<sup>4</sup>

By this Motion Appellant now respectfully seeks this Court's leave to proceed on appeal in forma pauperis under Rule 24(a)(5) and NRS 12.015, as he is unable to pay court costs and fees. Appellant seeks here the same relief he sought in the District Court and set forth in the District Court IFP Motion, which is attached hereto and incorporated by reference herein.

Accordingly, Appellant respectfully requests that this Court enter an order granting this Motion and allowing Appellant to proceed in forma pauperis, based on the exhibits attached hereto, including Appellant's affidavit regarding his indigent status. Alternatively, should this Court be inclined to deny this Motion, Appellant respectfully requests that this Court enter an order remanding this matter to the District Court and instructing the District Court to either rule on the District Court IFP Motion in accordance with NRAP 24(a), or to conduct an evidentiary hearing so that Appellant may testify as to his indigent status.

### **III. CONCLUSION**

For all of the reasons set forth above, Appellant's motion for leave to proceed on appeal in forma pauperis should be granted by this Honorable Court.

Alternatively, an order should be entered remanding this matter to the

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<sup>4</sup> Even assuming that the District Court lacked jurisdiction, it still could have disposed of the Motion under NRCP 62.1 and NRAP 12A, given Nevada's liberal construction of rules of court.

Honorable District Court and instructing that Court to either: (i) rule on the District Court IFP Motion in accordance with NRAP 24(a), without a hearing; or (ii) conduct an evidentiary hearing on the District Court IFP Motion so that Appellant may testify as to his indigent status.

Dated March 31, 2020.

Respectfully Submitted,

**IQBAL LAW PLLC**

A handwritten signature in black ink, appearing to read 'Mohamed A. Iqbal, Jr.', is written over a horizontal line.

---

MOHAMED A. IQBAL, JR.  
Nevada Bar No. 10623  
101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
*Attorneys for Appellant*

### **CERTIFICATE OF SERVICE**

I certify that I am an employee of IQBAL LAW PLLC and that on **March 31, 2020**, I caused a true and correct copy of the **MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS** to be served as follows:

\_\_\_ By placing the 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; and/or

\_\_\_ Pursuant to NEFCR 9, to be sent via facsimile; and/or

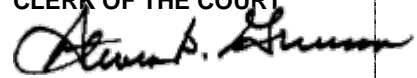
**X** Pursuant to NEFCR 9, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

/s/ Marie-Claire Alsanjakli  
An Employee of IQBAL LAW PLLC



# EXHIBIT A

# EXHIBIT A



1 **NEOJ**

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Nevada Bar No. 8879

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6 Phillip N. Smith, Jr., Esq.

Nevada Bar No. 10233

7 [psmithjr@wwhgd.com](mailto:psmithjr@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,

8 GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

9 Las Vegas, Nevada 89118

Telephone: (702) 938-3838

10 Facsimile: (702) 938-3864

11 *Attorneys for Defendant/Third-Party Plaintiff,*  
12 *GNL, CORP.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JOE N. BROWN, an individual,

16 Plaintiff,

17 v.

18 LANDRY'S, INC., a foreign corporation;  
19 GOLDEN NUGGET, INC. a Nevada  
20 corporation, d/b/a GOLDEN NUGGET  
LAUGHLIN; GNL, CORP., a Nevada  
corporation; THYSSENKRUPP ELEVATOR  
CORP., a foreign corporation,

21 Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**NOTICE OF ENTRY OF JUDGMENT**

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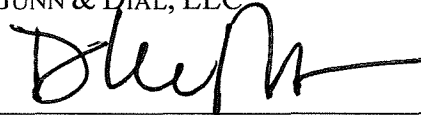




1 PLEASE TAKE NOTICE that Judgement On Jury Verdict was entered on January 8,  
2 2020, in this matter. A copy is attached hereto.

3 Dated this 9 day of January, 2020.

6 WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

7 

8 D. Lee Roberts, Jr., Esq.  
9 Howard J. Russell, Esq.  
10 Kristian T. Kaskla, Esq.  
11 Phillip N. Smith, Jr., Esq.  
12 6385 South Rainbow Blvd., Suite 400  
13 Las Vegas, Nevada 89118

14 *Attorneys for Defendant/Third-Party Plaintiff,*  
15 *GNL, CORP.*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Mohamed A. Iqbal, Jr., Esq.  
mai@ilawlv.com  
Christopher Mathews, Esq.  
cxm@ilawlv.com  
IQBAL LAW PLLC  
101 Convention Center Dr., STE. 1175  
Las Vegas, NV 89109

*Attorneys for Plaintiff*

Rebecca L. Mastrangelo, Esq.  
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Charles A. Michalek, Esq.  
ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL  
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Las Vegas, NV 89101

*Attorneys for Defendant/Third-Party Defendant  
ThyssenKrupp Elevator Corporation*

Kelly L. Ruce  
An employee of WEINBERG, WHEELER,  
HUDGINS GUNN & DIAL, LLC

ORIGINAL

Electronically Filed  
1/8/2020 5:05 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,  
Plaintiff,

Case No.: A-16-739887-C  
Dept. No.: XXXI

v.

GNL, CORP., a Nevada corporation, and  
THYSSENKRUPP ELEVATOR CORP., a  
foreign corporation,  
Defendants.

JUDGMENT ON JURY VERDICT

This action came on regularly for trial with the calling of the first witness on December 6, 2019, in Dept. XXXI of the Eighth Judicial District Court, Honorable Joanna S. Kishner, District Judge, presiding. The issues having been duly tried, and the jury having duly rendered a General Verdict in favor of Defendants on December 18, 2019, which General Verdict was filed by the Clerk on December 18, 2019, it is hereby ORDERED, ADJUDGED and DECREED, in accordance with the jury's General Verdict, that Plaintiff shall take nothing and that Judgment is hereby entered in favor of all Defendants, with Defendants to recover their costs.

The Court reserves amendment of this Judgment based on any proper requests or motions for costs or fees which may be timely submitted by Defendants.

SO ORDERED this 2<sup>nd</sup> day of Jan 2020.

*Joanna S. Kishner*  
JOANNA S. KISHNER  
Hon. Joanna S. Kishner  
District Court Judge

///

///



Submitted by:

 #13527  
pk

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Phillip N. Smith, Jr., Esq.

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GUNN & DIAL, LLC

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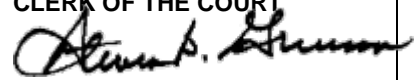
*Attorneys for Defendant GNL, CORP.*

WEINBERG WHEELER  
HUDGINS GUNN & DIAL



# **EXHIBIT B**

# **EXHIBIT B**



MPFP  
IQBAL LAW PLLC  
Mohamed A. Iqbal, Jr. (NSB #10623)  
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1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)  
[info@ilawlv.com](mailto:info@ilawlv.com); [mai@ilawlv.com](mailto:mai@ilawlv.com)  
*Attorneys for Plaintiff Joe N. Brown*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual,  Plaintiff,  vs.  GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation,  Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI  <b>MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS</b>
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Pursuant to and consistent with NRS 12.015 and NRAP 24(a), Plaintiff Joe N. Brown (“Plaintiff”) hereby respectfully moves the Court for leave to proceed on appeal in the above-captioned case *in forma pauperis* (this “Motion”), without paying court costs or other costs and fees as provided in NRS 12.015, including the cost of reporting, recording and transcription of the proceedings, because of a lack of sufficient financial ability. Plaintiff submits in support of this Motion the Declaration of Joe N. Brown attached hereto as **Exhibit 1** (the “Declaration”); and, pursuant to NRS 53.045, which allows for the use of an unsworn declaration in lieu of an affidavit, Plaintiff respectfully requests that the Court consider the Declaration a satisfactory substitution for the affidavit referenced in, *e.g.*, NRS 12.015(1)(a) and NRAP 24(a)(1). A proposed order is attached hereto as **Exhibit 2**.

Dated February 24, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

By:   
Mohamed A. Iqbal, Jr. (NSB #10623)  
*Attorneys for Plaintiff Joe N. Brown*



**CERTIFICATE OF SERVICE**

I certify that I served the foregoing **MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS** on all counsel of record in this matter using the Court's e-file/e-service system on February 24, 2020.

By: /s/ Kevin Williams  
An employee of IQBAL LAW PLLC

# **EXHIBIT 1**

# **EXHIBIT 1**

## DECLARATION OF JOE N. BROWN

I, JOE N. BROWN, hereby declare as follows:

1. I am over the age of 18 and competent to testify. I am the Plaintiff/Appellant in *case no. A-16-739887-C, Brown v. GNL Corp. (“GNL”) and Thyssenkrupp Elevator Corp. (“TKE”)*, and make this declaration subject to penalty of perjury under the laws of the United States and the State of Nevada, in support of Plaintiff’s Motion for Leave to Proceed on Appeal *In Forma Pauperis* (the “Motion”), to which this Declaration is attached as Exhibit 1 (with GNL and TKE, collectively, “Defendants/Appellees”).

2. In support of the Motion, I state that, because of my poverty, which is detailed below, I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

3. The issues which I desire to present on appeal are as follows:<sup>1</sup>

A. The Court excluding, pre-trial: (i) evidence of Defendants/Appellees’ willful and negligent spoliation and other discovery abuses; (ii) two of Plaintiff/Appellant’s three experts; (iii) certain deposition transcript excerpts from Defendant/Appellee TKE’s Christopher Dutcher and officers of Defendants/Appellees, including, e.g., Defendant/Appellee GNL’s Don Hartmann; (iv) evidence of the subject escalator (the “Escalator”)’s mechanical and operational problems; and (v) evidence of several prior accidents and at least two subsequent accidents;

B. The denial of Plaintiff/Appellant’s motion to extend discovery, and motion *in limine* exclude Defendants/Appellees’ escalator expert;

C. The grant of Defendant/Appellee GNL’s motion for partial summary judgment with respect to punitive damages;

D. The Court excluding, during trial: (i) evidence of the Escalator’s repairs, actual and proposed; (ii) evidence of the Escalator’s mechanical problems as of May 7, 2015, and

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<sup>1</sup> Plaintiff/Appellant respectfully reserves the right to supplement the issues contained herein upon review of the trial transcripts.

following Plaintiff/Appellant's May 12, 2015 accident; (iii) Defendant/Appellee TKE's account history and its long-term pattern of mechanical and operational problems and reflections of an aging, dangerous machine jeopardizing the safety of the riding public; (iv) the empty maintenance logs reflecting gross negligence and negligence *per se*; (v) evidence of Plaintiff/Appellant's medical records and substantial special damages; (v) questions outside a narrow band of time, roughly January 1, 2015 to May 24, 2015; and (vi) evidence of Defendants/Appellees' communications with each other confirming prior awareness of the Escalator's dangerous condition;

E. The allowance of evidence of the Escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Plaintiff/Appellant's accident; and

F. Certain rulings on the parties' proposed jury instructions, including, without limitation, the denial of Plaintiff/Appellant's requests for the 2018 Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Defendants/Appellees' willful and negligent spoliation and other discovery abuses; and (iii) on negligence *per se*.

4. I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true:

1. Are you presently employed? **No.**

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. **N/A**

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. **September 2, 1998. \$2880.00 per month.**

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? **Yes.**

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. **\$1,402.00 per month in social security income.**

3. Do you own any cash or checking or savings account? **Yes. A savings account.**

a. If the answer is yes, state the total value of the items owned. **\$25.00**

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? **No**

1 a. If the answer is yes, describe the property and state its  
approximate value. **N/A.**

2 5. List the persons who are dependent upon you for support and state your  
relationship to those persons. **No one is currently dependent on me.**

3 My monthly retirement income is insufficient to cover my monthly expenses which  
4 are as follows: **\$1,000.00 (rent and utilities), \$227 storage fee, and \$100 IRS**  
5 **payment.** I have at most **\$24.00** left over at the end of each month.

6 5. I am married and reside with my wife, Nettie J. Brown, who retired in December 2019.  
7 She currently has no income, but she is entitled to \$1,100.00 in monthly social security income  
8 effective March 2020. I do not own any joint assets with my wife. Her assets consist of  
9 approximately \$5.00 in her savings account and a 2014 vehicle worth approximately \$6,000.00,  
10 for which she makes monthly payments of \$462.00. My wife also contributes, on a monthly basis,  
11 \$300.00 towards groceries, \$100.00 medical costs to the Veterans Administration (combined with  
12 myself), \$189.00 for car insurance, \$165.00 for the phone bill, and \$272.11 for cable. My wife's  
13 net monthly liabilities amount to \$1323.11.

14 6. In the event this Honorable Court is inclined to deny the Motion, I respectfully request that  
the Court hold a hearing on the same so that I may testify as to my indigent status.

15 7. I understand that a false statement or answer to any question in this declaration will subject  
16 me to penalties for perjury, and I declare under penalty of perjury that the following is true and  
17 correct.

18 Dated February 24, 2020.

19 By: /s/ Joe N. Brown

20 Joe N. Brown  
21 Las Vegas, Nevada

# **EXHIBIT 2**

# **EXHIBIT 2**

**ORDR**

IQBAL LAW PLLC  
Mohamed A. Iqbal, Jr. (NSB #10623)  
101 Convention Center Dr., Suite 1175  
Las Vegas, Nevada 89109  
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)  
[info@ilawlv.com](mailto:info@ilawlv.com); [mai@ilawlv.com](mailto:mai@ilawlv.com)  
*Attorneys for Plaintiff Joe N. Brown*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual,  Plaintiff,  vs.  GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation,  Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI  <b>[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS</b>
--	--

Plaintiff Joe N. Brown's Motion for Leave to Proceed on Appeal *in forma pauperis* (the "Motion")<sup>1</sup> having come before this Honorable Court, and this Court having considered the Motion and the evidence attached thereto, and good cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

The Motion is **GRANTED**; and

Plaintiff may proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
**JOANNA S. KISHNER  
DISTRICT COURT JUDGE**

<sup>1</sup> Plaintiff submits this proposed order as Exhibit 2 to the Motion, and pursuant to NRS 12.015 and NRAP 24(a)(1)(A), which references Form 4 in the Appendix of Forms. There is no requirement for pre-submission review by defendants' counsel.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED ON APPEAL  
IN FORMA PAUPERIS**

**EXHIBIT C**

**EXHIBIT C**



# DISTRICT COURT DEPARTMENT XXXI

## MEMO

*Chambers:* 702-671-3634  
*Law Clerk:* 702-671-0899  
*Fax:* 702-366-1412

<b>To:</b>	Mohamed A. Iqbal, Jr.
<b>From:</b>	Department 31
<b>Subject:</b>	A739887 – JOE BROWN vs. GNL CORP
<b>Date:</b>	February 28, 2020

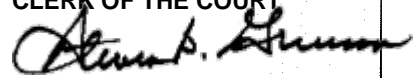
Mr. Iqbal,

The Order Granting In Forma Pauperis is being returned to you, unsigned, for the following reason(s):

Presently, the District Court is void of jurisdiction as this matter is closed. Additionally, the request is being made to file documents that are not in the District Court.

**EXHIBIT D**

**EXHIBIT D**



**OPPM**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

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Phillip N. Smith, Jr., Esq.

Nevada Bar No. 10233

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WEINBERG, WHEELER, HUDGINS,

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Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendant*

*GNL, CORP.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual,

Plaintiff,

v.

GNL, CORP., a Nevada corporation and  
THYSSENKRUPP ELEVATOR CORP., a  
foreign corporation,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**GNL'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO PROCEED  
ON APPEAL IN FORMA PAUPERIS**

**Hearing Date: March 31, 2020**

**Hearing Time: 9:00 a.m.**

Defendant GNL, CORP. (hereinafter, "GNL"), by and through its counsel of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submits this limited opposition to Plaintiff's Motion for Leave to Proceed on Appeal in Forma Pauperis.

This opposition is made and based upon the papers and pleading on file herein, the Points and Authorities attached hereto, and such oral argument as may be permitted by the Court.

**I. MEMORANDUM OF POINTS AND AUTHORITIES**

NRS 12.015(1)(a) requires a person seeking leave to proceed in Forma Pauperis to file an "affidavit with the court setting forth with particularity facts concerning the person's income, property and other resources which establish that the person is unable to prosecute or defend the action because the person is unable to pay the costs of so doing." While GNL agrees that a declaration signed in accordance with Nevada law can substitute for the affidavit, a proper





1 declaration was not attached. Rather, the declaration provided to the Court contains a typed “e-  
2 signature” of Plaintiff. There is no Nevada statute or rule which would allow a typed e-signature  
3 of a lay person to substitute for the affidavit required by NRS 12.015(1)(a).

### 4 III. CONCLUSION

5 Based on the current record before this Court, the requirements of NRS 12.015(1)(a) have  
6 not been satisfied, and the Motion for Leave to Proceed on Appeal in Forma Pauperis must be  
7 denied.

8 Dated this 9<sup>th</sup> day of March, 2020

9  
10 WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

11  
12 /s/ D. Lee Roberts, Jr.  
D. Lee Roberts, Jr., Esq.  
Phillip N. Smith, Jr., Esq.  
13 6385 South Rainbow Blvd., Suite 400  
14 Las Vegas, Nevada 89118

15 *Attorneys for Defendant*  
GNL, CORP.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March, 2020, a true and correct copy of the foregoing **GNL'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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**EXHIBIT E**

**EXHIBIT E**

**AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN  
FORMA PAUPERIS**

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK        )

I. I, JOE N. BROWN, being first duly sworn, depose and say that I am the Appellant/plaintiff in the appeal docketed in the Nevada Supreme Court at case no. 80581, *Brown v. GNL Corp.* (“GNL”) and *Thyssenkrupp Elevator Corp.* (“TKE”).

II. In support of my Motion for Leave to Proceed on Appeal In Forma Pauperis (the “Motion”), i.e., without being required to prepay fees, costs or give security therefor, I state that because of my poverty, which is detailed below, I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

III. The issues which I desire to present on appeal are as follows:<sup>1</sup>

A. The District Court abused its discretion in excluding, pre-trial: (i) evidence of Respondents’ willful and negligent spoliation and other discovery abuses; (ii) two of Appellant’s three experts; (iii) certain deposition transcript excerpts from Respondent TKE’s Christopher Dutcher and officers of Respondents, including, e.g. Respondent GNL’s Don

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<sup>1</sup> Appellant respectfully reserves the right to supplement the issues contained herein upon his review of original transcripts.

Hartmann; (iv) evidence of the subject escalator's (the "Escalator") mechanical and operational problems; and (v) evidence of several prior accidents and at least two subsequent accidents;

B. The District Court abused its discretion in denying Appellant's motion to extend discovery, and motion *in limine* to exclude Respondents' escalator expert;

C. The District Court abused its discretion in granting Respondent GNL's motion for partial summary judgment with respect to punitive damages;

D. The District Court abused its discretion in excluding, during trial: (i) evidence of the Escalator's repairs, actual and proposed; (ii) evidence of the Escalator's mechanical problems as of May 7, 2015, and following Appellant's May 12, 2015 accident; (iii) Respondent TKE's account history and its long-term pattern of mechanical and operational problems and reflections of an aging, dangerous machine jeopardizing the safety of the riding public; (iv) the empty maintenance logs reflecting gross negligence and negligence *per se*; (v) evidence of Appellant's medical records and substantial special damages; (vi) questions outside a narrow band of time, roughly from January 1, 2015 to May 24, 2015; and (vii) evidence of Respondents' communications with each other confirming prior awareness of the Escalator's dangerous condition;



E. The District Court abused its discretion in allowing evidence of the Escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Appellant's accident; and

F. The District Court abused its discretion on certain rulings on the parties' proposed jury instructions, including, without limitation, the denial of Appellant's requests for the 2018 Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Respondents' willful and negligent spoliation and other discovery abuses; and (iii) on negligence *per se*.

IV. I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true:

1) Are you presently employed? **No.**

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. **N/A**

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. **September 2, 1998. \$2880.00 per month.**

2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? **Yes.**

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. **\$1,402.00 per month in social security income.**

3) Do you own any cash or checking or savings account? **Yes. A savings account.**

a. If the answer is yes, state the total value of the items owned. **\$25.00**

4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? **No.**

a. If the answer is yes, describe the property and state its approximate value. **N/A.**

5) List the persons who are dependent upon you for support and state your relationship to those persons. **No one is currently dependent on me.**

My monthly retirement income is insufficient to cover my monthly expenses which are as follows: **\$1,000.00 (rent and utilities), \$227 storage fee, and \$100 IRS payment.** I have at most **\$24.00** left over at the end of each month.

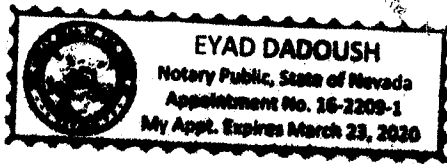
V. I am married and reside with my wife, Nettie J. Brown, who retired in December 2019. She currently has no income, but she is entitled to \$1,100.00 in monthly social security income effective March 2020. I do not own any joint assets with my wife. Her assets consist of approximately \$5.00 in her savings account and a 2014 vehicle worth approximately \$6,000.00. My wife also contributes, on a monthly basis, \$300.00 towards groceries, \$100.00 for medical costs to the Veterans Administration (combined with myself), \$189.00 for car insurance, \$165.00 for the phone bill, and \$272.11 for cable. My wife's net monthly liabilities amount to \$976.11.

VI. In the event this Honorable Court is inclined to deny the Motion, I respectfully request that this Court remand this matter to the District Court for the limited purpose of conducting an evidentiary hearing on the Motion so that I may testify as to my indigent status.

VII. I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

X *Joe B...*

SUBSCRIBED AND SWORN to before me this 23 day of March 2020.



*[Signature]*  
Notary Public