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IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP. D/B/A BLUE DOG'S

PUB; STUART VINCENT, AN

INDIVIDUAL; JEFFREY B. VINCENT, Case No.: 80849

AN INDIVIDUAL; AND JEFF WHITE,

AN INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

TROPICANA INVESTMENTS, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Respondent/Cross-Appellant.

Appeal from the Eighth Judicial District
Court, the Honorable Elizabeth
Gonzalez Presiding.

**RESPONDENT/CROSS-APPELLANT, TROPICANA INVESTMENTS,
LLC'S OPPOSITION TO APPELLANTS/CROSS-RESPONDENTS'
MOTION FOR EXTENSION / LEAVE TO FILE COMPLETED REPLY
BRIEF AND ANSWERING BRIEF ON CROSS-APPEAL**

MAC:08732-032 4243464_1

I. INTRODUCTION

Respondent/Cross-Appellant, Tropicana Investments, LLC (“Tropicana”), opposes Appellants/Cross-Respondents JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White (“JSJBD”)’s Motion for Extension / Leave to File Completed Reply Brief and Answering Brief on Cross-Appeal based upon the following reasons: (A) JSJBD’s Motion was filed after the due date for the brief in contravention of NRAP 26(b)(1)(B) and NRAP 31(b)(3)(A)(iv); and (B) despite already having previously been admonished by the Court for engaging in the exact same dilatory conduct, JSJBD’s Motion fails to demonstrate compelling and extraordinary circumstances justifying a second extension.

II. LEGAL ARGUMENT

The Nevada Rules of Appellate Procedure provide very specific guidelines as to when and how a litigant may seek an extension (or multiple extensions) of a due date set by the Court. Rule 26 provides that a litigant may request a single 14-day extension of a due date by making a telephonic request to the clerk on or before the due date to be extended, and by showing good cause for the extension. NRAP 26(b)(1)(B). This rule further specifies that a telephonic extension “will bar any further extension of time to perform the same act unless the party files a written motion for an extension of time **demonstrating extraordinary and compelling circumstances why a further extension of time is necessary.**” *Id.*

(emphasis added). Rule 31(b)(3), likewise, requires that “[a] motion for extension of time for filing a brief **may be made no later than the due date for the brief** and must comply with the provisions of [NRAP 31] and Rule 27.” NRAP 31(b)(3) (emphasis added). Finally, NRAP 31(b)(3)(A)(iv) provides that a motion for extension of time for filing a brief “shall” include “[t]he reasons or grounds why an extension is necessary (**including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required**);” (emphasis added).

JSJBD’s current Motion represents JSJBD’s second failure to comply with these unambiguous rules, based on little justification. After initiating this appeal, JSJBD’s opening brief was ultimately due on Monday, August 10, 2020. On that due date, JSJBD received a 14-day telephonic extension, rendering a new due date of August 24, 2020 for its opening brief. JSJBD failed to file its opening brief on August 24, and instead filed its opening brief and appendix on September 4, 2020,¹ concurrently with a late motion for extension of time to file the opening brief. This Court granted that motion, “[n]otwithstanding its untimeliness,” and specifically admonished JSJBD’s counsel that such a motion must comply with the provisions

¹ JSJBD attempted to file the opening brief and appendix, along with a motion for extension of time to file the same, on September 3, 2020, but that filing was rejected by the clerk.

of NRAP 26(b)(1)(B) and NRAP 31(b)(3)(A)(iv) which require a demonstration of extraordinary and compelling circumstances:

¹Counsel for appellants/cross-respondents is reminded that once he receives a telephonic extension of time to file a brief, any further extension requests must demonstrate extraordinary and compelling circumstances in support. NRAP 26(b)(1)(B); NRAP 31(b)(3)(A)(iv).

Order Granting Motion, dated September 9, 2020, at n.1.

With the opening brief finally filed, Tropicana's answering brief and opening brief on cross-appeal became due on October 5, 2020. *See* NRAP 28.1(f)(1)(B). Tropicana complied with the Rules by seeking an extension of time on this due date on October 2, 2020, without first seeking a telephonic extension. The clerk issued a notice that Tropicana's motion was granted, rendering Tropicana's brief due on November 4, 2020. *See* Notice Motion/Stipulation Approved, filed October 2, 2020. Tropicana then timely filed its answering brief and opening brief on cross-appeal on November 4, 2020.

JSJBD's reply brief and answering brief on cross-appeal was due 30 days later, on December 4, 2020. *See* NRAP 28.1(f)(1)(C). Once again, JSJBD sought and obtained a 14-day telephonic extension of this due date, rendering a new due date of December 18, 2020. December 18 came and went, with JSJBD failing to file anything. Instead, late in the evening on New Year's Eve, JSJBD filed the

instant Motion along with an untimely brief. As with its previous motion, because JSJBD had already received a telephonic extension, the rules required JSJBD to file the instant Motion by the due date it sought to extend, and also required JSJBD to demonstrate extraordinary and compelling circumstances justifying a second extension of the due date.

In defiance of this Court's previous admonishment, JSJBD failed to file its motion by the due date sought to be extended, and moreover, failed to demonstrate "extraordinary and compelling circumstances" supporting the request. Instead, the Motion was filed two weeks after the actual due date (on what should have been the due date for Tropicana's final brief). Further, the unremarkable justifications provided by JSJBD amount to a "no harm, no foul" mentality as (1) both sides sought extensions on their respective first briefs; (2) JSJBD's brief took a lot of time to write; (3) the brief was finalized near holidays and "conflicting obligations," with no additional detail; and (4) Tropicana would not be prejudiced by an extension. *See* Motion at 2–3. None of these excuses amount to extraordinary and compelling circumstances, so JSJBD has not demonstrated that the requested extension is appropriate.

The Court should not condone JSJBD's repeated refusal to follow this Court's procedural rules, especially in the face of the specific admonishment the Court directed to JSJBD's counsel—for this exact same conduct—mere months

ago. Our rules of appellate procedure exist for a reason, and JSJBD should not be permitted to continually ignore or cavalierly disregard some of the most specific provisions in the Nevada Rules of Appellate Procedure, with little attempt at justifying the failure.

This Court has long held that “we expect that all appeals brought in this court will be pursued in a manner meeting high standards of diligence, professionalism, and competence.” *Burke v. State*, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994) *citing Cuzdey v. State*, 103 Nev. 575, 747 P.2d 233 (1987); SCR 151. This Court has dismissed cases, and expressly confirmed that dismissal is appropriate, where a party has failed to comply with the rules of Nevada Rules of Appellate Procedure. *See Huckabay Props. v. NC Auto Parts*, 130 Nev. 196, 203, 322 P.3d 429, 434 (2014) (“a party cannot rely on the preference for deciding cases on the merits to the exclusion of all other policy considerations, and when an appellant fails to adhere to Nevada's appellate procedure rules, which embody judicial administration and fairness concerns, or fails to comply with court directives or orders, that appellant does so at the risk of forfeiting appellate relief.”)

Here, appellants have now twice failed to follow the rules governing briefing and motions practice, and they did not adhere to the briefing deadlines set forth by this Court’s order, nor did they provide any adequate basis for their failure to do so. Thus, they cannot expect this Court to continue to keep these matters on its

docket and then consider the merits of the appeals when appellants eventually decide to submit their brief for consideration.

Accordingly, the Court should deny the Motion, and strike JSJBD's untimely filing.

III. CONCLUSION

While Nevada's jurisprudence expresses a policy preference for merits-based resolution of appeals, and the appellate procedure rules embody this policy, among others, neither those rules nor this Court's decisions endorse repeated noncompliance with the Court's rules and directives. In this appeal, JSJBD failed to timely file the opening brief and appendix and failed to timely file a motion for extension as required by NRAP 31(b)(3). In its Order Granting Motion, dated September 9, 2020, this Court specifically admonished JSJBD's counsel about this failure and reminded them of their obligation to comply with NRAP 26(b)(1)(B) and NRAP 31(b)(3)(A)(iv) going forward.

Notwithstanding that admonition, JSJBD did the exact same thing 3 months later when it came to filing its Reply Brief and Answering Brief, when it ignored the Court's filing deadline and the timelines set forth in NRAP 26 and 31, and eventually filed the brief two weeks late with another untimely motion for extension of time.

An appeal may be dismissed for failure to comply with this Court's rules and orders and still be consistent with the Court's preference for deciding cases on their merits, as that policy must be balanced against other policies, including the public's interest in an expeditious appellate process, the parties' interests in bringing litigation to a final and stable judgment, prejudice to the opposing side, and judicial administration considerations, such as case and docket management.

The Court should deny Appellants/Cross-Respondents' Motion for Extension / Leave to File Completed Reply Brief and Answering Brief on Cross-Appeal since it was filed two weeks later than permitted under NRAP 26(b)(1), and because JSJBD has failed to demonstrate any "extraordinary and compelling circumstances" supporting the request. Further, the Court should strike the untimely filing.

Dated this 5th day of January, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT, TROPICANA INVESTMENTS, LLC'S OPPOSITION TO APPELLANTS/CROSS-RESPONDENTS' MOTION FOR EXTENSION / LEAVE TO FILE COMPLETED REPLY BRIEF AND ANSWERING BRIEF ON CROSS-APPEAL** was filed electronically with the Nevada Supreme Court on the 5th day of January, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Mario Lovato, Esq.

/s/ Leah Dell

An employee of Marquis Aurbach Coffing