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Elizabeth A. Brown
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10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 CLEMENT MUNNEY; CHEF EXEC
12 SUPPLIERS, LLC,

13 Appellants,

14 vs.

15 DOMINIQUE ARNOULD,

16 Respondent.

Case Number: 81356

17 **OPPOSITION TO**
18 **RESPONDENT'S MOTION TO**
19 **DISMISS**

20 COME NOW Appellants CLEMENT MUNNEY and CHEF EXEC
21 SUPPLIERS, LLC, (hereinafter "Muney"), by and through their undersigned
22 counsel Robert Kern, Esq., of KERN LAW, Ltd., responds to and opposes the
23 motion to dismiss by Respondent DOMINIQUE ARNOULD (hereinafter,
24 "Arnould") as follows.
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POINTS AND AUTHORITIES

I.

INTRODUCTION

Respondent Arnould seeks to dismiss this appeal prior to briefing by alleging that the order appealed from was not an appealable order, however as it was part of an order that is appealable, it is appealable as well, pursuant to Nevada case law. The motion is thus without merit.

BACKGROUND

On the morning of Wednesday June 10, Respondent Arnould emailed an emergency motion for preliminary injunction, requesting that a Receiver be named, and that Muney be ordered to immediately give Arnould access to the warehouse for Muney's side of the business, and demanded a hearing at 1:30pm the same day. The motion did not directly state any threat of irreparable harm, nor did its stated facts imply such a threat. Counsel for Muney was scheduled for an oral argument before the Nevada Supreme Court the following day, for which he had been given only 2 weeks' notice, rather than the standard 6 weeks. (Exhibit 1). Muney's counsel had previously scheduled a moot argument in preparation, with a panel of eight attorneys, for 1pm that same day. Muney's counsel briefly drafted an opposition indicating that he was unable to appear that day, and pointing out that opposing counsel had not even asked him to correct the issue prior to filing the motion, and had demonstrated no threat of irreparable harm.

The Court nonetheless sent an email scheduling a hearing at 1:30pm that day. Muney's counsel responded to the email protesting that he would be unable to attend, as his duty to the client facing oral argument prohibited him

1 from skipping the preparation, especially considering the resources involved,
2 the impossibility of rescheduling, and the oral argument occurring the next
3 day. He argued that holding the hearing without representation from Muney
4 would be improper. The Court attempted to contact Muney's counsel after he
5 had left the office for the moot argument, and was thus unable to reach him.
6 The Court held the hearing, and when Muney's counsel did not appear,
7 ordered it continued two days so Muney's counsel could attend. At the Friday
8 continued hearing, the Court issued an order that appointed a receiver, issued
9 an injunction ordering Muney to give access to the warehouse, and ordered
10 sanctions imposed upon Muney's counsel for failing to attend the same-day
11 hearing. The Court held that his missing of the emergency hearing was
12 "unexcused, inappropriate, and demeaned the Court." This appeal followed.
13

14 II.

15 ARGUMENT

16 A. THE ORDER APPEALED FROM IS APPEALABLE UNDER 17 NRAP 3A(b)(3) and (4), THUS THE SANCTIONS ARE 18 APPEALABLE

19 The order appealed from is a grant of a preliminary injunction, as well
20 as an order appointing a receiver. In listing the types of orders that can be
21 appealed from, NRAP 3A(b)(3) and (4) list "An order granting or refusing to
22 grant an injunction" and "An order appointing or refusing to appoint a
23 receiver." This order explicitly did both of those things.
24

25 This Court has previously held that a sanctions order is appealable if it is
26 contained with an order that is independently appealable. *Vaile v. Vaile*, 396 P.
27 3d 791 (NV S.Ct. 2017) ("...if the contempt finding or sanction is included in
28 an order that is otherwise independently appealable, this court has jurisdiction

1 to hear the contempt challenge on appeal.); *Yu v. Yu*, 405 P. 3d 639 (NV S.Ct.
2 2017) (“...allowing consideration of a post-judgment vexatious litigant
3 determination in an appeal from an otherwise appealable order both promotes
4 judicial efficiency and simplifies the review process.”). As the sanctions were
5 issued together with the grant of preliminary injunction and appointment of
6 receiver, the order is appealable.

7
8 **III.**

9 **CONCLUSION**

10 As the order appealed from is clearly an order granting an injunction, it
11 is explicitly appealable, and the motion to dismiss should be denied.

12
13 DATED this 6th day of August, 2020.

14 By: /S/ Robert Kern

15 Robert Kern, Esq.

16 NV Bar #10104

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18 Las Vegas, NV 89101

19 (702) 518-4529

20 *Attorney for Appellants*

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTAL GLASS, AN INDIVIDUAL,
Appellant,
vs.
SELECT PORTFOLIO SERVICING,
INC., AS SERVICING AGENT FOR U.S.
BANK NATIONAL ASSOCIATION, AS
TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW
MORTGAGE LOAN TRUST 2006-1
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-1, A
NATIONAL ASSOCIATION,
Respondent.

No. 78325

FILED

MAY 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER SCHEDULING ORAL ARGUMENT

This court has determined that oral argument may be of assistance in resolving this matter. Accordingly, this matter is scheduled for oral argument on June 11, 2020, at 1:30 p.m. in Las Vegas. Argument shall be limited to 30 minutes.

It is so ORDERED.

, A.C.J.
Gibbons

cc: Kern Law, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas