IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEMENT MUNEY; CHEF EXEC SUPPLIERS, LLC., Appellants, vs. DOMINIQUE ARNOULD, Respondent.	Supreme Court Case No. 81354, 81355, 81356

APPELLANT'S REPLY BRIEF

APPEAL FROM THE EIGHTH JUDICIAL COURT

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CLEMENT MUNEY; CHEF EXEC SUPPLIERS, LLC., Appellants, vs. DOMINIQUE ARNOULD, Respondent.	Supreme Court Case No: 81354, 81355, 81356 **NRAP Rule 26.1 Disclosure**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal. Appellant Clement Muney, Chef Exec Suppliers has no parent corporations, no stock, no corporate affiliation, and is present under his true name. He is represented by Robert Kern, Esq., and has been, and expects to be, represented by no other counsel in this matter.

DATED this 2nd day of July, 2021.

/s/ Robert Kern
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I.
DISPUTED FACTS

Appellant Muney must briefly address some of the issues listed as "facts" in the Answering Brief. The first is that Muney clearly opposed the the appointment of the Receiver, as he filed an opposition to the motion to appoint the receiver, specifically arguing against it. *See* Appellant's Appendix ("AA") p.129.

Second, Arnould's suggestion that this appeal was filed a year after the orders in question is incorrect; the appeals were filed on June 22, 2020, a month after the first hearing, and less than 30 days after the orders were entered. *See* AA pp.444, 487, 517. Filing an appeal a year after the challenged order would be essentially impossible.

Third, Arnould's repeated allegation that he was "locked out" of the Chef Exec warehouse is a significant misstatement of fact. The Las Vegas and Los Angeles divisions of the business operated largely independently; Muney does not have a key to the LA warehouse, and Arnould has refused to give him one; Arnould did not have access to the Las Vegas warehouse until it was provided as part of the settlement agreement. Once Arnould repudiated the settlement agreement, he had no right to demand unfettered access to the other division's inventory:

> *MR. KERN*: My client changed the locks as soon as Arnould filed a Motion for Summary Judgment declaring that they considered the settlement agreement gone. At settlement, it was discussed about keys. It was discussed that Mr. Arnould had not given keys to the LA warehouse to Mr. Muney, but demanded keys to the Las Vegas warehouse. We gave him a key to the Las Vegas warehouse as part of that settlement, despite his refusing to share keys to LA with us.

See AA pp.570, 571. Thus Arnould's attempt to drive to Las Vegas and take inventory from the Las Vegas warehouse, without notice, was not a lockout, but a continuation of the status quo from the entire seven years of the Company's operation. *See* AA p.571.

Lastly, Arnould's allegation that the motion to enforce the settlement agreement was scheduled to be heard on May 22, is provably false. *See* Answering Brief p.20. The minute orders cited by Arnould clearly establish that the hearing was set for June 24, 2020. ("[T]he matters set for hearing on May 20, 2020 is hereby CONTINUED to June 24, 2020 at 10:30 a.m.") AA p.383.

II.
ARGUMENT

I.
DID THE DISTRICT COURT ERR IN DENYING THE MOTION TO ENFORCE THE SETTLEMENT AGREEMENT, WITHOUT NOTICE OF WHEN THE MATTER WOULD BE HEARD, WITHOUT HOLDING AN EVIDENTIARY HEARING, AND BASED UPON AN AFFIRMATIVE DEFENSE UNSUPPORTED BY ANY EVIDENCE?

Appellant Arnould's Answering Brief addressed multiple issues that are not in dispute in this appeal, but failed to address many that are. Arnould argues that the District Court's order was supported by substantial evidence, but fails to be able to identify any of the evidence allegedly supporting it. Arnould also argues at length that the settlement had a condition precedent, which is entirely irrelevant, as the decision rested on COVID causing conditions that excused performance. Arnould failed to point to any evidence to satisfy Arnould's burden to establish the affirmative defense that they claim excused their performance. Arnould's entire argument that he proved his affirmative defense of impossibility of financing rests upon 1) judicial notice of disputed issues of fact, and 2) a few emails showing Arnould seeking financing, most of which did not refuse him, and none of which referenced COVID in any way. Arnould's sole argument regarding the hearing and notice of the matter is that notice that the matter would be heard on June 24 was somehow sufficient notice of a hearing that was held a month early, on May 22.

a. Standard of Review

Appellant Arnould's argument that a clearly erroneous standard applies to this issue on appeal is without merit. Arnould's position depends upon the argument that the relevant question is whether a contract existed[1]. Neither the language of the District Court's Order, nor the arguments raised in Arnould's Answering Brief give any support to the idea that the relevant question is whether there was a contract at all. The Court's Order of May 22 specifically recognized that there were enforceable duties under the settlement agreement, and at no point disputed that it was a binding contract[2]. Likewise, at no point in the Answering Brief did Arnould argue that no contract was formed; the sole argument relating to enforceability of the settlement agreement was the argument that failure of a condition precedent excused performance of the settlement agreement. The sole issues in dispute in this issue on appeal are: 1) were notice and a hearing required in order to make a determination of fact on the motion, 2) did a grant of an affirmative defense excusing performance require supporting evidence, 3) was the

[1]*See* Answering Brief, p.13.

[2]Though the Court held that performance was excused by impossibility, impossibility is an affirmative defense to an enforceable contract, not a defense to the existence or formation of a contract. *See* Order, Appellant's Appendix ("AA") p.415; *see also Cashman Equip. Co. v. WEST EDNA ASSOCIATES*, 380 P. 3d 844 (Nev: Supreme Court 2016).

order of the Court supported by substantial evidence? The first two issues are unquestionably issues of law, and thus reviewed *de novo*. The last issue is clearly subject to the *substantial evidence* standard. *Dalaimo v. Dalaimo*, 390 P.3d 166 (Nev. 2017) (A district court's interpretation of a settlement agreement is subject to de novo review); *24/7 Ltd v. Schoen*, 399 P.3d 916 (Nev. 2017) (A district court's application of law to facts is reviewed de novo).

b. A motion to enforce a settlement agreement, involving disputes of fact and law, requires an evidentiary hearing, notice of the hearing, and evidence to support the issues of fact to be determined.

1. Arnould's Failure to Respond Regarding the Necessity of Notice and a Hearing Constituted an Admission of Error.

In his Answering Brief, Arnould failed to dispute that notice and a proper hearing were required before the District Court could appropriately make a factual determination as to whether COVID created an impossibility of performance, or of whether Arnould satisfied his evidentiary burden to claim that affirmative defense. Likewise Arnould cited no authority disputing that notice and a proper hearing were required in this case, or if they were required, that such error was harmless. Arnould instead elected to argue other issues[3]. The Nevada Supreme Court has

[3]Specifically, Arnould's arguments were: 1) that the question is moot; 2)that a condition precedent is an excuse to performance, 3) that Muney did not sufficiently request a hearing, and 4) that Muney's notice that a hearing would occur in the future was sufficient notice, even if Muney did not have notice that the hearing

held that the failure to oppose a significant legal issue in the answering brief is an admission of error, unless the ignored issue is legally insignificant. Polk v. State, 233 P. 3d 357, 360 (NV S.Ct. 2010); (“ We have also determined that a party confessed error when that party's answering brief effectively failed to address a significant issue raised in the appeal”); *Moore v. State,* 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (concluding that even though the State acknowledged the issue on appeal, it failed to supply any analysis, legal or otherwise, to support its position and "effect[ively] filed no brief at all," which constituted confession of error), *overruled on other grounds by Miller v. State,* 121 Nev. 92, 95-96, 110 P.3d 53, 56 (2005). As the issues of whether notice and hearing were required before a determination could be made, and whether that failure constituted a violation of due process, are significant issues in this appeal, Arnould's failure to respond or dispute should be treated as an admission of error on those issues. *Id.*

2. Whether the Settlement Agreement Contained a Condition Precedent is Irrelevant Because the Court Ruled that Performance of the Condition Precedent was Excused by COVID.

Despite the fact that there has been no dispute that the settlement agreement was contingent upon Arnould making 'best efforts' to obtain financing to complete the purchase, Arnould spent a surprising amount of space arguing that issue. The issue actually in dispute, is whether the District Court erred by making a

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would be held a month earlier than scheduled.

determination that satisfying the condition was rendered impossible by COVID, without taking any evidence on any actual impact COVID had on the ability to obtain financing. The only evidence alleged, even by Arnould in the Answering Brief, is that the Court took judicial notice of the impact of COVID, and Arnould provided emails with some bankers, none of which mentioned or referenced COVID in any way. The District Court likewise failed to make any determination as to whether Arnould's efforts met the "best efforts" standard in the agreement, as the Court had already determined that such performance was excused by COVID.

The matters which may be recognized by judicial notice are delineated by NRS 47.130, which allows for judicial notice to be taken of factual issues that are:

> (a) Generally known within the territorial jurisdiction of the trial court; or
>
> (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.

The question of whether COVID-19 affected the parties' ability to perform under the agreement was an issue in direct dispute, and thus was an issue for determination in an evidentiary hearing, and not capable of being judicially noticed. *Chapman v. Chapman*, 607 P. 2d 1141 (NV S.Ct.1980) (NRS 47.130 does not permit taking of judicial notice to allow consideration of evidence not in the

record). The fact that Arnould's motion for summary judgment, in which he repudiated the settlement agreement, was filed prior to the COVID state of emergency, would be a fact capable of judicial notice; whether the impact of COVID rendered acquiring a business loan (prior to the COVID state of emergency) impossible, was not a fact capable of determination by judicial notice, as it was a fact very much capable of dispute.

3. Muney Specifically Requested a Hearing on the Motion to Enforce.

Arnould's next argument is entirely premised upon the idea that Muney did not request a hearing, and that failure to do so waived any right to be heard. The record shows quite clearly that Muney requested a hearing on the motion to enforce. (*See* Motion, AA p.129: "Hearing Requested"). The hearing was clearly requested, and the hearing was scheduled to be heard on June 24, 2020 (after being rescheduled). As there was a hearing both requested and scheduled, Arnould's argument that Muney failed to request a hearing is meritless.

To support this argument that a failure to request a hearing waived the right to one, Arnould cited *Diversified Capital Corp. v. City of N. Las Vegas*, despite the case having no such holding. 95 Nev. 15, 21, 590 P.2d 146, 149 (1979). *Diversified* held that the failure of a hearing master to hold an evidentiary hearing,

on an issue for which the Court later held an evidentiary hearing, was not reversible error, and there was a dicta mention that the failure to even request a hearing didn't help the already failed claim. *Id.* Arnould failed to provide any authority whatsoever to suggest that Muney's request for a hearing was insufficient, or that such a failure, if it had occurred, would constitute a waiver of the right to a hearing.

4. Notice of a Hearing on a Different Date Does not Count as Notice.

Arnould's argument that the notice provided was sufficient is confusing, as it relies upon multiple clear false assumptions. Arnould begins by falsely alleging the the hearing on May 22 was scheduled to consider the merits of the motion to enforce the settlement agreement, and that the merits of that issue were heard at that hearing (Answering Brief p.20), as well as that Muney was provided notice of the hearing on the motion to enforce, and that Muney argued the motion at the hearing. (*See* Answering Brief p.18). In support, Arnould cites minute orders from the District Court, showing that the motion to enforce was first scheduled to be heard on April 15, and then was rescheduled to May 20, and later June 24. (*See* RA pp.8-11). Review of those documents alone makes clear that the motion was scheduled to be heard on June 24, not May 22. Likewise, review of the transcript

of that hearing makes clear that Muney's counsel did not have an opportunity to argue the motion, and had not been aware the matter would be determined that day:

> "THE COURT: Thank you both. So today we have on the Motion for Temporary Restraining Order, Opposition, and Countermotion." AA p.383.

> "I'll be honest, I did not think that we were arguing the Motion to Enforce Settlement Agreement or Motion for a Receiver today. I thought that was going to be argued in June." – Counsel for Muney. AA p.407

> "I understand your concerns that I jumped the gun on this one. But given the circumstances of the world and the business world, I feel like I need to give both sides more stability with regard to the future." – The Court. (the two quotes are not consecutive). AA p.408

A review of the entire transcript will show that the motion was not argued at all. As the entirety of what was argued is shown in the transcript, the fact that Muney had no notice, and had no opportunity to argue the motion, are undisputable. Arnould's explicitly false statements about these issues are improper.

Arnould's argument in this section almost suggests that Arnould believes that the issue with not having notice of the hearing was an issue of not having enough time to prepare. However the issue is not about the amount of time between the filing of the motion and the hearing; it is about knowing to have

arguments and evidence prepared at that hearing, as well as about simply having the opportunity to address the motion at all.

5. The Determination of the District Court was not Supported by Substantial Evidence.

To support its order denying the motion to enforce the settlement agreement, the District Court determined that Arnould was not required to show whether he had made best efforts to secure financing, because the affirmative defense of impossibility excused his performance. (*See* May 22 Order, AA p.415: "Prior to Arnould satisfying his duty to make reasonable efforts to obtain financing, the Pandemic decimated the economy and any hope of the condition being satisfied, rendering the Memo unenforceable."). As impossibility is an affirmative defense, the burden of proof rests upon Arnould to establish it. *Cashman Equip. Co. v. WEST EDNA ASSOCIATES*, 380 P. 3d 844 (NV S.Ct. 2016). The defense of impossibility required Arnould to establish that getting a business loan had been made effectively impossible due to COVID, and that his failure to do so was a result of this impossibility. In support of this burden, Arnould presented only one piece of evidence; a set of emails with banks discussing getting a loan. (AA p.194). All the communications predated the COVID state of emergency, and none of them mentioned or referenced COVID in any way. Most indicated that Arnould's refusal to offer collateral was the largest obstacle to a loan. *Id.* There was no other

evidence presented whatsoever, nor any testimony offered, as there was no hearing held on the matter. Nothing that was offered is capable of the slightest probative value as to COVID's effect upon Arnould's ability to secure a business loan. Without any other evidence whatsoever, the order of the District Court could not have been supported by substantial evidence, much less enough evidence to satisfy Arnould's burden to prove an affirmative defense.

6. Enforcement of the Settlement Agreement is not a Moot Issue.

Mootness is a justiciability issue, which, while not a constitutional issue at the state level, is treated essentially the same. "The question of mootness is one of justiciability. This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment." *Personhood Nevada v. Bristol*, 245 P. 3d 572 (NV S.Ct. 2010); *NCAA v. University of Nevada,* 97 Nev. 56, 57, 624 P.2d 10, 10 (NV S.Ct.1981). Thus the essential issue of mootness is that the case must continue to meet the case or controversy requirement. Muney's claim continues to meet this requirement.

This Court defined the test for a justiciable controversy in *Doe v. Bryan:*

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between

> persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

728 P. 2d 443 (NV S.Ct.1986). Muney's claim unquestionably continues to meet all these factors.

(1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it;

It is clear that Muney's claim for enforcement of the settlement agreement is being asserted as a claim of right, on Muney's behalf, that it is asserted against Arnould, and that Arnould has an interest in contesting it.

(2) the controversy must be between persons whose interests are adverse;

The rancor between Muney and Arnould should make clear that their positions are explicitly adverse. More specifically, Muney's demand to be paid the $700,000 promised in settlement of the matter is adverse to Arnould's refusal to pay that amount.

(3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and

Although the matter is not seeking declaratory relief, Muney clearly has a legally protectible interest in enforcing the settlement agreement that he is a party to.

(4) the issue involved in the controversy must be ripe for judicial determination.

As the matter is clear and definite, and the claim to enforcement of the settlement agreement became due upon Arnould's repudiation of it, the matter is clearly ripe.

This claim clearly meets the test from Doe v. Bryan, however the most relevant test is simply whether the matter is capable of judicial determination. *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 136 Nev. 155, 158, 460 P.3d 976, 981 (2020). Muney has requested that this Court reverse the District Court's refusal to hear the motion to enforce the settlement agreement. Although the company has been split, it already consisted of two separate divisions, and the two divisions are now owned by the parties to the suit. There is no reason that a reversal and remand to the District Court could not transfer Muney's half of the company to Arnould, and require Arnould to pay the amount he agreed to.

As Arnould has failed to dispute that the District Court was required to provide notice and a hearing on the motion to enforce the settlement agreement, and it is clear that the determination of impossibility was made without substantial evidence, Muney respectfully requests this Court to reverse the order of the District

Court, and remand the matter of the enforcement of the settlement agreement to be properly heard.

II.

DID THE DISTRICT COURT ERR IN APPOINTING A RECEIVER, WITHOUT NOTICE OF WHEN THE MATTER WOULD BE HEARD, WITHOUT HOLDING AN EVIDENTIARY HEARING, AND BASED UPON DISPUTED ISSUES OF FACT FOR WHICH NO EVIDENCE WAS OFFERED?

a. Muney Did Not Consent to Appointment of a Receiver

The first issue Muney wishes to make clear is that Muney did not consent to the appointment of a receiver. The quotes provided by Arnould alleging otherwise were taking grossly out of context. In the first quote, from the May 22 hearing, Mr. Kern believed he was in a hearing on a motion for preliminary injunction, where his opponent had taken control of all company funds and blocked access to said funds for the Las Vegas branch of the Company. *See* AA p.232. His comment was to point out the hypocrisy that Arnould was arguing that he was forced to seize the funds of the company to keep it from going broke, and at the same time was asking for appointment of a receiver which would cost tens of thousands of dollars. Thus Mr Kern stated that he'd accept a Receiver if the company could afford it, but made clear that the company definitely could not afford it. The statement was:

> As far as affording a receiver, you know, in principle, I'm not against a receiver doing this, because, you know, we feel that it would agree with us once they reviewed the records.
>
> But my concern is that if we're saying we don't have enough money to pay for rent for the Las Vegas warehouse and for our -- keeping our sales staff with food on their table, it's problematic to wonder how we're going to pay for a receiver, if we're looking at that kind of financial situation.

AA p.401. As a conditional statement, in which he stated that the condition was not met, the statement can not be deemed a consent, especially considering that Mr. Kern filed a motion opposing the appointment of a receiver[4], and believed at the time that the motion for appointment of a receiver would be heard over a month later.

The second quote referenced by Arnould was taken from the June 12 hearing, when the order to appoint a receiver had already been issued (at the May 22 hearing; AA p.304), and the question before Mr. Kern was whether to appoint the receiver early, or wait until May 9 and give Arnould an injunction to be able to control the inventory of Muney's side of the business. Mr. Kern's statement was not

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[4] It is clear from the law that in order to demand receivership and dissolution, Plaintiff

> must plead and prove that the business is no longer able to effectively operate. Plaintiff has not pled facts to support such an allegation, nor can he. AA p.135.

that he approved of a receiver, but rather than he approved of it being immediate rather than postponed, if the alternative was granting Arnould's injunction[5].

As the appointment of the Receiver was a matter that Muney specifically filed a formal opposition to, there was no question that Muney did not consent, and that the matter was thus preserved on appeal.

b. Arnould's Failure to Respond Regarding the Necessity of Notice and a Hearing Constituted an Admission of Error.

Just as in his response to the first issue on appeal, Arnould did not address the primary question of whether notice and a hearing were required before a receiver could be appointed. He likewise provided no authority on the matter, and did not argue that any error that may have occurred was harmless. Arnould also failed to respond to the procedural due process argument in any way whatsoever, and made no dispute against Muney's argument that the failure to hold a noticed hearing before appointing a receiver constituted a violation of procedural due process. Arnould did not address the arguments raised on appeal of this issue at all, and instead only argued that 1) the appointment of the receiver was not an abuse of discretion (an irrelevant argument if the appointment was done without the

[5] First, I'll point out that we do not oppose immediate appointment of a receiver. We believe that that would be a far more reasonable response to this dispute than an injunction. AA p.568.

necessary process), and 2) that an out-of-context statement by Muney's counsel qualified as legal consent to the appointment.

The Nevada Supreme Court has held that the failure to oppose a significant legal issue in the answering brief is an admission of error, unless the ignored issue is legally insignificant. Polk v. State, 233 P. 3d 357, 360 (NV S.Ct. 2010); (“ We have also determined that a party confessed error when that party's answering brief effectively failed to address a significant issue raised in the appeal”); *Moore v. State,* 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (concluding that even though the State acknowledged the issue on appeal, it failed to supply any analysis, legal or otherwise, to support its position and "effect[ively] filed no brief at all," which constituted confession of error), *overruled on other grounds by Miller v. State,* 121 Nev. 92, 95-96, 110 P.3d 53, 56 (2005). As the issues of whether notice and hearing were required before a determination could be made, and whether that failure constituted a violation of due process, are significant issues in this appeal, Arnould's failure to respond or dispute should be treated as an admission of error on those issues. *Id.*

c. The Improper Appointment of the Receiver is Not a Moot Issue.

"The question of mootness is one of justiciability. This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment." *Personhood Nevada v. Bristol*, 245 P. 3d 572 (NV S.Ct. 2010); *NCAA v. University of Nevada,* 97 Nev. 56, 57, 624 P.2d 10, 10 (NV S.Ct.1981). Thus, just as in the first issue on appeal, the essential issue of mootness is that the case must continue to meet the case or controversy requirement. Muney's claim continues to meet this requirement.

This Court defined the test for a justiciable controversy in *Doe v. Bryan:*

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

728 P. 2d 443 (NV S.Ct.1986). Muney's claim unquestionably continues to meet all these factors. As the justification for each of these factors is identical for this issue on appeal as it was for the first issue on appeal, Muney will not repeat that explanation. As to the question of whether this Court is capable of rendering an enforceable judgment on the issue, Muney has already requested that the settlement agreement be enforced; such enforcement would require all the company property returned to Arnould in exchange for the funds owed from that

agreement. As all such property is still owned by parties to this litigation, the reversal sought to enforce the settlement agreement would likewise reverse the division of the company performed by the Receiver. As there is an actual case and controversy, and a claim that the Court is capable of resolving with an enforceable judgment, the issue can not be deemed moot.

As essentially the entirety of Muney's claim of error on the appointment of the Receiver has been effectively admitted by Arnould's failure to dispute, the order appointing the Receiver should be reversed, and the company assets returned, and the Receiver's Report rescinded.

III.
DID THE DISTRICT COURT ERR BY IMPOSING SANCTIONS ON MUNEY'S COUNSEL FOR CONDUCT THAT DOES NOT CONSTITUTE MISCONDUCT, AND WITHOUT NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE MATTER?

a. Arnould's Failure to Meaningfully Support the Sanctions Order Should be Deemed an Admission of Error.

In Muney's opening Brief, Muney alleged that there was no identifiable misconduct supporting the sanctions order, much less indicating it was one of the "extreme cases" required for supporting the issuance of personal sanctions against an attorney. *McGuire v. State*, 677 P. 2d 1060 (NV S.Ct. 1984). In response,

Arnould argued that "the Court provided a well-reasoned analysis", without referencing what reasoning might support the sanction, noted that Kern was asked to defend himself at the June 12 hearing, and blankly stated that there was no indication that Court exceeded its discretion. Like many of the other issues in this appeal, Arnould's failure to provide any meaningful authority or argument on the issue should be treated as an admission of error. *Moore v. State,* 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (concluding that even though the State acknowledged the issue on appeal, it failed to supply any analysis, legal or otherwise, to support its position and "effect[ively] filed no brief at all," which constituted confession of error), *overruled on other grounds by Miller v. State,* 121 Nev. 92, 95-96, 110 P.3d 53, 56 (2005). Likewise this Court has previously addresses such a circumstance by refusing to consider the insufficient argument. *Consolidated Generator v. Cummins Engine Co.*, 971 P. 2d 1251 (NV S.Ct. 1998) ("This court need not consider conclusory arguments which fail to address the issues in the case."). As neither the District Court's order, nor Respondent have been able to justify the order for sanctions, it should be reversed.

III.

CONCLUSION

Respondent Arnould, after completing his briefing, has failed to even oppose most of the legal issues in dispute on appeal. The arguments that Arnould did make

were largely irrelevant to the resolution of the issues on appeal. Because the denial of the motion for sanctions, the appointment of the Receiver, and the issuance of personal sanctions against Muney's counsel were all contrary to law, they should be overturned.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 97 in Times New Roman 14pt type.
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,934 words.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2nd day of July, 2021.

KERN LAW

By: /s/ Robert Kern

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of July, 2021, a true and correct copy of the foregoing Appellant's Reply Brief, was electronically filed with the Nevada Supreme Court by using the Nevada Supreme Court E-Filing system.

I further certify that the following participants in this case are registered with the Nevada Supreme Court of Nevada's E-Filing System, and that the service of the Reply Brief has been accomplished to the following individuals via electronic service.

Alexander Calaway
Phil Aurbach
Attorneys for Respondent

/S/ Melissa Milroy
An employee of Kern Law, Ltd.