

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,
Respondents.

Electronically Filed
Aug 27 2020 11:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81422
District Court Case No. CV1800764


APPELLANT'S MOTION TO DETERMINE APPEALABLE ORDER

COMES NOW Appellant, Jay Kvam, by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, and hereby moves for an order to determine whether the order appealed from in this case is appealable pursuant to NRAP 3A(b)(3).

This 27th day of August, 2020.

MATUSKA LAW OFFICES, LTD.

By:


MICHAEL L. MATUSKA, SBN 5711
Attorney for Appellant, JAY KVAM

**POINTS AND AUTHORITIES IN SUPPORT OF
APPELLANT'S MOTION TO DETERMINE APPEALABLE ORDER**

Appellant Jay Kvam is the plaintiff in the proceedings before the District Court. Respondents Brian Mineau and Legion Investments, LLC are the defendants. The operative pleading is the *Second Amended Verified Complaint* ("SAC"). The SAC was provided as Exhibit "1" to the *Docketing Statement*. Regarding injunctive relief, the SAC alleges as follows:

IX.
SEVENTH CAUSE OF ACTION
(Temporary and Permanent Injunction)

46. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

47. Following dissolution of the joint venture, MINEAU and LEGION should be temporarily and permanently enjoined from conducting any business on behalf of 7747 or incurring any liabilities in furtherance of the joint venture, except as approved by the Court and necessary to preserve the proceeds of sale.

The Order appealed from in this case is the June 5, 2020 *Order Granting, In Part, and Denying, In Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice* (hereafter "Order"). A copy the *Order* was provided as Exhibit "2" to the *Docketing Statement*. As indicated in the caption, the *Order* is not a final judgment in that it does not resolve all of the claims and causes of action alleged in Kvam's SAC. As such, Kvam did not appeal that *Order* pursuant to NRAP 3A(b)(1) ("A final

judgment entered in an action or proceeding commenced in the court in which the judgment is entered.”). Rather, Kvam appealed that *Order* pursuant to NRAP 3A(b)(3) (“An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.”).

Regarding Kvam’s Seventh Cause of Action for Temporary and Permanent Injunction, the Order states as follows:

8. Based on the Court’s foregoing findings of fact and conclusions of law, summary adjudication is DENIED on the SAC’s Seventh Cause of Action for Temporary and Permanent Injunction as the claim is legally ineffectual based on the deposit of funds.

Order at 43:15-18. Although the *Order* purports to deny Mineau/Legion’s *Motion for Summary Judgment* on Kvam’s Seventh Cause of Action, the effect of the *Order* is to deny injunctive relief to Kvam even though winding up of the joint venture is ongoing. The *Order* is therefore appealable pursuant to NRAP 3A(b)(3). However, Kvam anticipates that Mineau/Legion will file a motion to dismiss this case for lack of an appealable order, and therefore seeks confirmation from this Court prior to the entry of a briefing schedule.

AFFIRMATION

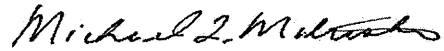
The undersigned does hereby affirm that the preceding **Appellant’s Motion to Determine Appealable Order**, filed in the Supreme Court of the State of Nevada, does not contain the social security of any person.

///

Respectfully submitted,

This 27th day of August, 2020.

MATUSKA LAW OFFICES, LTD.

A handwritten signature in cursive script, appearing to read "Michael L. Matuska".

By:

MICHAEL L. MATUSKA, SBN 5711
Attorney for Appellant, JAY KVAM

CERTIFICATE OF SERVICE

I, Suzette Turley, certify that on 27th August, 2020, I electronically filed the foregoing **APPELLANT'S MOTION TO DETERMINE APPEALABLE ORDER**, with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants. Non-eFlex participants will be served by U.S. mail, as follows.

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/s/ SUZETTE TURLEY
An Employee of MATUSKA LAW OFFICES, LTD.