

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KVAM,

Appellant,

v.

BRIAN MINEAU; AND LEGION
INVESTMENTS, LLC,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81422

District Case No. CV18-00764

RESPONDENTS' MOTION TO STRIKE APPELLANT'S OPENING BRIEF

Respondents BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq. and Mark H. Gunderson, Esq., file this Motion to Strike Appellant's Opening Brief ("Motion") for failing to comply with this Court's *Order Regarding Motions* and greatly exceeding the allowed scope of this limited interlocutory appeal.

This Motion is made and based upon the following memorandum of points and authorities, the pleadings on file in this case, and any oral argument this Court wishes to entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

This is an interlocutory appeal from the district court's *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 ("Order"), entered on June 5, 2020. The district court's Order granted summary judgment in favor of Mineau and Legion on most, but not all, of Appellant JAY KVAM ("Kvam")'s claims. Among the claims denied was Kvam's claim for a temporary and permanent injunction such that Mineau and Legion be precluded from conducting any further business or incurring any liabilities pursuant to the joint venture except as approved by the court. Kvam appealed the order on an interlocutory basis pursuant to NRAP 3A(b)(3).

On October 14, 2020, this Court entered an *Order Regarding Motions*, allowing this interlocutory appeal to proceed pursuant to NRAP 3A(b)(3) but expressly ordering that "The opening brief should be limited to addressing the issues regarding the refusal to grant injunctive relief." Unfortunately, *Appellant's Opening Brief* greatly exceeds this limited scope.

The scope of *Appellant's Opening Brief* is plainly set forth in the *Statement of the Issues* section, which identifies the following four issues on appeal:

1. Whether Judge Simons committed multiple errors of law and abused her discretion by granting partial summary judgment in favor of Mineau/Legion based on DA (deemed admitted) findings of fact and a sham declaration, and by failing to first rule on underlying discovery motions.
2. Whether genuine issues of fact remain for trial.
3. Whether Judge Simons abused her discretion by failing to rule on the Discovery Commissioner's January 10, 2020 *Recommendation for Order*?

4. Whether Judge Simons abused her discretion by failing to rule on Kvam's *Motion for Reconsideration*?

See Appellant's Opening Brief pp. 1-2. None of these issues is within the limited scope of this interlocutory appeal allowed by this Court's *Order Regarding Motions* and NRAP 3A(b)(3).

Appellant's Opening Brief is 51 pages long, but the discussion concerning the district court's refusal to grant injunctive relief consumes only one page. This discussion starts in the middle of page 42. Kvam argues that this interlocutory appeal is appropriate because the district court misunderstood the scope of the relief pled in his *Second Amended Complaint* and that he "needs to be able to pursue a second motion for injunctive relief" concerning \$1,864.14 which Legion has received but which has not been deposited with the clerk of the district court.¹ See Appellant's Opening Brief pp. 42-43. This is the only issue or argument Kvam raises in his entire opening brief regarding the refusal to grant injunctive relief. The rest of *Appellant's Opening Brief* improperly addresses all other aspects of the district court's Order.

For these reasons, *Appellant's Opening Brief* should be stricken and Kvam afforded a short period to refile an opening brief that is actually limited to addressing the only issues within the jurisdiction of this interlocutory appeal: the refusal to grant

¹ Should the appeal proceed on the merits of this issue, the record will establish that Mineau and Legion asked Kvam to stipulate to add these funds to the proceeds deposited with the clerk of the district court, but that Kvam refused [JA V7 1039 ¶ 39], and that Kvam never sought injunctive relief concerning these funds.

injunctive relief. Given the minimal argument on this issue contained in *Appellant's Opening Brief*, Kvam's revised brief should not exceed a few pages. All other issues raised in *Appellant's Opening Brief*, including the issues set forth in Kvam's *Statement of the Issues* section and including all discussion of Kvam's other claims for relief, must be omitted from Kvam's revised brief.

This relief is necessary to preserve and protect judicial economy and resources. *Appellant's Opening Brief* seeks a complete interlocutory reversal of the district court's entire Order, including the entry of summary judgment on Kvam's Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of Action, which grossly exceeds the limited scope of NRAP 3A(b)(3) and this Court's *Order Regarding Motions*. Requiring Mineau and Legion to respond to, and requiring this Court to review, consider and address all of the improper issues raised in *Appellant's Opening Brief* will unnecessarily waste substantial time and resources. Worse, since this is an interlocutory appeal, there is a considerable chance that all of these issues will be raised again on appeal after the entry of final judgment or rendered moot after trial. This is precisely why interlocutory appeals are expressly limited in scope.

Kvam's improper attempt to bootstrap an appeal of the entire Order into this limited interlocutory appeal should be cut off now, before Mineau, Legion, and this Court are forced to expend substantial time and resources addressing those issues on

the merits. Kvam's other objections to the Order should be raised, if at all, only after entry of final judgment by the district court.

The Motion should be granted: *Appellant's Opening Brief* should be stricken and Kvam afforded a short period of time to refile an opening brief that strictly complies with NRAP 3A(b)(3) and this Court's *Order Regarding Motions*. If Kvam fails to comply with this Court's order a second time, his interlocutory appeal should be dismissed.

AFFIRMATION

The undersigned does hereby affirm that the preceding **RESPONDENTS' MOTION TO STRIKE APPELLANT'S OPENING BRIEF**, filed in the Supreme Court of the State of Nevada, does not contain the social security number of any person.

DATED this 22 day of December, 2020.

GUNDERSON LAW FIRM

By: _____




Austin K. Sweet, Esq.
Nevada State Bar No. 11725
Mark H. Gunderson, Esq.
Nevada State Bar No. 2134
*Attorneys for Brian Mineau and
Legion Investments, LLC*

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 22 day of December, 2020, I electronically filed a true and correct copy of the **RESPONDENTS' MOTION TO STRIKE APPELLANT'S OPENING BRIEF**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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Kelly Gunderson