

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KVAM,
Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,
Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81422
District Court Case No. CV18-00764

**OPPOSITION TO RESPONDENTS'
*MOTION TO STRIKE AND MOTION TO EXTEND TIME***

COMES NOW Appellant, Jay Kvam, by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this Opposition to *Respondents' Motion to Strike Appellant's Opening Brief and Motion to Extend Time*.

INTRODUCTION

This is the third motion filed by Respondents Brian Mineau and Legion Investments, LLC in this appeal. Mineau/Legion provided no legal authority for their *Motion to Strike* and they should not be allowed to argue in a motion what they should address in their answering brief, nor should they be granted an extension of time to file their answering brief.

Although Mineau/Legion are correct that this is an appeal from an order

denying injunctive relief pursuant to NRAP 3A(b)(3), Mineau/Legion failed to address the order at issue in this appeal. The order at issue herein is Judge Simons' 45-page *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* that was entered on June 5, 2020 [14 JA 1948]. Mineau/Legion failed to identify any portions of the order at issue that pertain solely to Kvam's Seventh Cause of Action for injunctive relief or identify any portions of Kvam's *Opening Brief* that are extraneous to the issues on appeal. In fact, the Order does not contain findings of fact or conclusion or law that are specific to Kvam's Seventh Cause of Action for injunctive relief; rather the Order merely incorporates the extensive Findings of Fact and Conclusions of Law on all of Kvam's other causes of action.

Mineau/Legion make a passing reference to the length of Kvam's *Opening Brief* and remark that it is 51 pages long. This inchoate argument is irrelevant. Kvam's counsel provided the required Certificate of Compliance which certified that *Appellant's Opening Brief* contains 12,148 words. This count is within the 14,000 word maximum imposed by NRAP 32(a)(7).

It does not help Mineau/Legion to focus on the Statement of Issues in *Appellant's Opening Brief* and they are not correct that the discussion regarding injunctive relief begins on p. 42 (See Motion at p.3). From start to finish, *Appellant's*

Opening Brief adequately explains how the issues regarding injunctive relief are intertwined with the rest of Judge Simons' 45-page Order. Kvam addressed the case for injunctive relief in every section of *Appellant's Opening Brief*, including the Statement of the Case, Factual Background, Summary of the Argument, Argument and Conclusion. There simply is no way to separate Judge Simons' Findings of Fact and Conclusion of Law on Kvam's Seventh Cause of Action (Injunctive Relief) from her Findings of Fact and Conclusions of Law regarding Kvam's other causes of action.

To the extent Mineau/Legion are dissatisfied with the Statement of Issues in *Appellant's Opening Brief*, their recourse was to follow the directive in NRAP 28(b) which states that the Respondent's Answering Brief need not contain a statement of the issues "unless the respondent is dissatisfied with the appellant's statement" There simply is no legal authority for Mineau/Legion to complain about Kvam's Statement of the Issues in a motion.

OVERVIEW AND ARGUMENT

The operative pleading is Kvam's Second Amended Complaint ("SAC") which contains causes of action including Declaration of Joint Venture; Rescission or Reformation of Agreement; Breach of Contract – Loan; Breach of Contract and Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing – Joint Venture Agreement; Accounting; Court Supervision of Dissolution and Winding

Up, and Appointment of Receiver; Temporary and Permanent Injunction; Fraud, Fraudulent Inducement and Concealment; Conversion; Rico; and Derivative Claim (on behalf of the unincorporated joint venture referred to as 7747 S. May Street).

Regarding injunctive relief, Kvam's 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 renovation project, except as approved by the Court and necessary to preserve the House.

* * * *

WHEREFORE, Plaintiff prays for relief as follows:

* * * *

3. For a temporary and permanent injunction enjoining MINEAU and LEGION from any further involvement with 7747 and its assets;

(5 JA 756).

On January 6, 2020, Mineau/Legion filed a *Motion for Summary Judgment* in which they requested summary judgment on all of the causes of action alleged in Kvam's SAC. [7 JA 1003]. Their motion was supported by a sham declaration from Brian Mineau [7 JA 1033]. Par. 25 of Mineau's declaration added new facts after the close of discovery, contradicted and disavowed his previous sworn declaration

and discovery responses, was not credible on its face, and was not supported by the extensive record. In contrast, Kvam provided a detailed opposition that was supported by 27 exhibits including a lengthy declaration. [10 JA 1251].

On June 5, 2020, Judge Simons entered the *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*. [14 JA 1948]. Essentially, Judge Simons granted summary judgment on most of Kvam's causes of action, including all of his claims for monetary damages, leaving only the causes of action for declaration of joint venture, dissolution and winding up and accounting. In addition, Judge Simons *sua sponte* granted summary judgment in favor of Mineau/Legion on a counterclaim that they asserted in response to Kvam's original *Verified Complaint*, despite the fact that most of the counterclaims had already been dismissed and Mineau/Legion did not assert any counterclaims in their answer to Kvam's SAC. [*See Answer to Second Amended Verified Complaint*, 5 JA 769].

Regarding Kvam's Seventh Cause of Action for Temporary and Permanent Injunction, Judge Simons ordered as follows:

IV. CONCLUSIONS OF LAW

* * * *

62. Temporary and Permanent Injunction.

63. The *SAC's* Seventh Cause of action is for Temporary and Permanent Injunction.

64. Based on the findings and conclusions on the SAC's Second, Third, Fourth, Fifth and Sixth Causes of Action, and on the FACC's Third Claim for Relief for Declaratory Relief, and the deposit of the funds with the Court, the SAC's Seventh Cause of Action for Temporary and Permanent Injunction is legally ineffectual and summary judgment should be denied.

IT IS HEREBY ORDERED SUMMARY ADJUDICATION IS GRANTED, DENIED AND HELD IN ABEYANCE 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.

[14 JA 1971, 1982, 1988, 1990].

Based on the foregoing, Judge Simons' order regarding injunctive relief is not "limited to addressing the only issues within the jurisdiction of this interlocutory appeal" as Mineau/Legion assert (See Motion at p.3). Rather, the discussion regarding injunctive relief in Judge Simons' Order is based entirely on the various other Findings of Fact and Conclusions of Law stated throughout her 45-page order, including her findings, conclusions and order granting summary judgment in favor of Mineau/Legion on a counterclaim that had been superseded by their subsequent pleadings and was no longer pending.

To make matters worse, some of Judge Simons' Findings of Fact are not supported by any citation to the record, she largely ignored Mr. Kvam's declaration,

and many of her findings of fact are supported by a reference to “DA”, which she explains means that the bare, conclusory allegations in Mineau/Legion’s counterclaims are deemed admitted, even though most of the counterclaims had been dismissed, the pleadings had long since been superseded and no counterclaims were pending.

As such, this Court’s review of the sufficiency of the order on Kvam’s Seventh Cause of Action for Temporary and Permanent Injunction is inextricably linked to a review of the rest of the order and Judge Simons’ novel theory of summary judgment based on deemed admitted counterclaims that were not even pending. This is explained in detail in *Appellant’s Opening Brief*. Rather than filing their *Motion to Strike Appellant’s Opening Brief*, Mineau/Legion should file their Answering Brief within the time allotted by NRAP 31. In their Answering Brief, Mineau/Legion are free to provide their own Statement of the Issues and identify any parts of *Appellant’s Opening Brief* that they think are extraneous to this appeal. This Court will undoubtedly limit its decision if possible. Kvam contends that it is not possible to do so for the reasons set forth above and further detailed in *Appellant’s Opening Brief*. However, there simply is no legal authority for Mineau/Legion to ask this Court to prejudge the merits of this case or *Appellant’s Opening Brief* and preclude Kvam from arguing in his *Opening Brief* that the case regarding injunctive relief is inseparable from the rest of the issues presented.

CONCLUSION

WHEREFORE, Kvam respectfully submits that Mineau/Legion's *Motion to Strike Appellant's Opening Brief* and *Motion to Extend Time* should be denied.

This 23rd day of December, 2020.

MATUSKA LAW OFFICES, LTD.



By:

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

CERTIFICATE OF SERVICE

I, Suzette Turley, certify that on 23rd of December, 2020, I electronically filed the foregoing **OPPOSITION TO RESPONDENTS' MOTION TO STRIKE AND MOTION TO EXTEND TIME**, 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.

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