

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

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RESPONDENTS' REPLY IN SUPPORT OF

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 Reply in support of their *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 Reply 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.

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MEMORANDUM OF POINTS AND AUTHORITIES

Appellant's *Opposition to Respondents' Motion to Strike and Motion to Extend Time* ("Opposition") acknowledges that *Appellant's Opening Brief* is not limited to addressing the issues regarding the refusal to grant injunctive relief. However, Kvam argues that he is entitled to seek reversal of the entire Order on an interlocutory basis because there 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." Opposition p. 3. This is simply not correct.

The scope of Kvam's Seventh Cause of Action was limited: following dissolution of the joint venture, Kvam sought to enjoin Mineau and Legion from conducting any business on behalf of the partnership, incurring any liabilities in furtherance of the renovation project, or having any further involvement with the partnership or its assets. Opposition p. 4. It is undisputed that, during the course of litigation, the house was sold and the proceeds deposited with the court. See Appellant's Opening Brief p. 18. Thus, the district court found that Kvam's Seventh Cause of Action had become "legally ineffectual based on the deposit of funds." Opposition p. 6. In *Appellant's Opening Brief*, Kvam argues that this decision should be reversed on an interlocutory basis because: (1) the district court misunderstood the scope of the relief pled in his *Second Amended Complaint* and (2)

Kvam “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. See Appellant’s Opening Brief pp. 42-43. These very narrow issues are the only issues regarding the refusal to grant injunctive relief, and they are very easily separated from the rest of the district court’s order.

Appellant’s Opening Brief greatly exceeds the limited scope of NRAP 3A(b)(3) and this Court’s *Order Regarding Motions*. For example, *Appellant’s Opening Brief* argues that the district court: (1) made a variety of erroneous findings of fact [pp. 31-36], none of which relate to Kvam’s request for injunctive relief; (2) erred in refusing to rescind or reform the parties’ agreement [pp. 37-39], which has nothing to do with Kvam’s request for injunctive relief; (3) erred in refusing to consider the parties’ agreement a “loan” [pp. 39-40], which has nothing to do with Kvam’s request for injunctive relief; (4) erred in failing to “adequately” address Kvam’s claims for breach of the joint venture agreement and tortious breach of the covenant of good faith and fair dealing [pp. 40-41], which has nothing to do with Kvam’s request for injunctive relief; (5) erred in finding that Kvam had failed to establish his claims for fraud [pp. 43-45], which has nothing to do with Kvam’s request for injunctive relief; (6) erred in entering summary judgment against Kvam on his claim for conversion without first ruling on an outstanding discovery motion [pp. 45-47], which has nothing to do with Kvam’s request for injunctive relief; (7)

erred in failing to consider the purported racketeering activity presented by Kvam [pp. 47-48], which has nothing to do with Kvam's request for injunctive relief; and (8) misinterpreted Kvam's position regarding his derivative claim [pp. 48-49], which has nothing to do with Kvam's request for injunctive relief. Kvam has an adequate remedy concerning these issues in the form of an appeal from a final judgment: interlocutory relief on anything other than Kvam's claim for injunctive relief is inappropriate and improper.

As set forth in the Motion, 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. *Appellant's Opening Brief* should be stricken and Kvam afforded a short period to refile an opening brief that is actually limited

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to addressing the only issues within the jurisdiction of this interlocutory appeal. 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' REPLY IN SUPPORT OF 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 29 day of December, 2020.

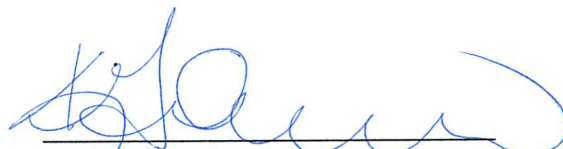
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 29 day of December, 2020, I electronically filed a true and correct copy of the **RESPONDENTS' REPLY IN SUPPORT OF 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