

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

No. 81447

COLONIAL REAL ESTATE  
PARTNERSHIP, LTD.; AND JOHN  
HOULIHAN,

VS.

Respondent.

COMES NOW, Petitioner COLONIAL REAL ESTATE PARTNERSHIP, LTD., a Nevada

## LEGAL STANDARD

NRS § 155.190(1)(n) provides:

1 Except as otherwise provided in subsection 2, in addition to any order from which  
2 an appeal is expressly permitted by this title, an appeal may be taken to the appellate  
3 court of competent jurisdiction pursuant to the rules fixed by the Supreme Court  
4 pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after  
the notice of entry of an order [...] [m]aking any decision wherein the amount in  
controversy equals or exceeds, exclusive of costs, \$10,000.

5 *Id.*

## 6 **INTRODUCTION**

7  
8 This is an appeal from a district court order denying a petition for an order to show cause  
9 why the estate should not be reopened for creditors to submit proof of claims and an accounting of  
10 the estate assets. In its Order to Show Cause, the Supreme Court stated that it's initial review of the  
11 docketing statement and documents revealed a potential jurisdictional defect. The Court further  
12 stated that it was not clear that the challenged order is substantively appealable.

13 The order to show cause should not be dismissed for lack of jurisdiction herein because  
14 the challenged order is appealable pursuant to the express language of NRS § 155.190 which  
15 confers jurisdiction.  
16

17 The docketing statement has been amended to reflect the correct basis for jurisdiction.

## 18 **LEGAL ARGUMENT**

### 19 **A. THE CHALLENGED ORDER IS APPEALABLE PURSUANT TO NRS § 155.190**

20 “[A] final judgment is one that disposes of all the issues presented in the case, and leaves  
21 nothing for the future consideration of the court, except for post-judgment issues such as attorney's  
22 fees and costs.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (Nev. 2000).  
23

24 In this case, a final judgment was entered on May 10, 2019, when administration of the  
25 estate ended.

26 This Court has stated that "this court determines the finality of an order or judgment by  
27 looking to what the order or judgment actually *does*, not what it is called.” *Lee v. GNLV Corp.*, 116  
28

1 Nev. 424, 427, 996 P.2d 416, 418 (Nev. 2000) (emphasis by the Court), quoting *Valley Bank of*  
2 *Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (Nev. 1994). “[T]his court has  
3 consistently determined the finality of an order or judgment by what it *substantively*  
4 *accomplished*.” *Id.* at 444-45 (emphasis added), citing *State Taxicab Authority v. Greenspun*, 109  
5 Nev. 1022, 1025, 862 P.2d 423, 425 (Nev. 1993). See also *Bally's Grand Hotel v. Reeves*, 112  
6 Nev. 1487, 1488, 929 P.2d 936, 937 (Nev. 1996) (“This court has consistently looked past labels in  
7 interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to  
8 further the rule's main objective: promoting judicial economy by avoiding the specter of piecemeal  
9 appellate review.”) (quoting *Valley Bank of Nevada v. Ginsburg*, at 444.

11 “More precisely, a final, appealable judgment is “one that disposes of the issues presented  
12 in the case . . . and leaves nothing for the future consideration of the court.” *Alper v. Posin*, 77  
13 Nev. 328, 330, 363 P.2d 502, 503 (Nev. 1961). “[W]hether the district court's decision is entitled a  
14 ‘judgment’ or an ‘order’ is not dispositive in determining whether it may be appealed; what is  
15 dispositive is whether the decision is final.” *Lee v. GNLV Corp.*, at 427.

17 Under NRS 155.190 denial of a Motion to Reopen an estate is statutorily appealable.

18 In this case, the Estate’s Personal Representative, Rhonda Morgan, filed a Petition for Final  
19 Distribution on April 8, 2019 in the Eighth Judicial District Court of Clark County, Nevada. On  
20 May 15, 2020, the Court denied Appellants’ Order to Show Cause Why Estate Should not be Re-  
21 opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets, citing the  
22 legal basis outlined in the Estate's Sur-Reply in support of Objection to Petition. In that document,  
23 the Estate states that “reopening the Estate would be futile *because the estate was closed* and all  
24 assets were distributed to beneficiaries.” [Estate’s Sur-Reply in Support of Objection to Petition for  
25 an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of  
26 Claims and Accounting of the Estate Assets, at p. 8 (emphasis added) (“[R]eopening the estate  
27  
28

1 would be futile because estate assets have been distributed and there are no funds to satisfy the  
2 creditor's claim."").

3 The Appellant's claim is approximately \$120,000 which is in excess of the \$10,000.00  
4 requirement under NRS 155.190(n)

5  
6 "The right to appeal is statutory; where no statute or court rule provides for an appeal, no  
7 right to appeal exists." *State Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1024-25, 862 P.2d 423,  
8 424 (Nev. 1993). See *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851  
9 (2013) (this court "may only consider appeals authorized by statute or court rule).

10 NRS § 155.190(1)(n) provides that an appeal may be taken to the appellate court within  
11 30 days after the notice of entry of an order making any decision wherein the amount in  
12 controversy equals or exceeds, exclusive of costs, \$10,000. *Id.* Such is the case here, where  
13 Appellants seek the return of \$121,851.64 paid to Decedent for plumbing and related services for  
14 real property located at 3775 E. Sahara Ave., Las Vegas, NV 89104. No work was ever  
15 performed, and no funds were returned to Appellants.  
16

## 17 CONCLUSION

18  
19 Based on the above, Appellants asks this Court to reopen the probate and order an  
20 evidentiary hearing on this matter.

21 DATED this 11<sup>th</sup> day of March 2021.

22 /s/ Leo Flangas

23 Leo P. Flangas, Esq.  
24 FLANGAS LAW FIRM, LTD.  
25 Nevada Bar No. 5637  
26 600 S. 3rd Street  
27 Las Vegas, Nevada 89101  
28 Telephone: (702) 384-1990  
Fax: (702) 384-1009  
Email: [Leo@flangaslawfirm.com](mailto:Leo@flangaslawfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> of March 2021, service of the foregoing APPELLANTS' AMENDED RESPONSE TO ORDER TO SHOW CAUSE was made by the Supreme Court's electronic filing system to the email address registered to:

David T. Blake  
Clear Counsel Law Group  
1671 W Horizon Ridge Pkwy  
Suite 200  
Henderson, NV 89012  
(702) 522-0696

/s/ Natasha Smith  
An employee of the law office of  
FLANGAS LAW FIRM, LTD.