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Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

In the Matter of the Estate of: No. 81447

Dennis John Carver

Deceased

Colonial Real Estate Partnership, LTD;  
and John Houlihan,

Appellants,

vs.

Rhonda Morgan, Personal  
Representative of the Estate of Dennis  
John Carver,

Respondent

**Reply to Appellant's Response to Order to Show Cause and Motion for  
Extension of Time to File Reply**

**A. Colonial cannot manufacture a new appeal deadline by filing a motion more than 8 months after final judgment has been entered.**

A final judgment is appealable at any time until 30 days after it is entered. See NRAP 4. As noted by the Court and Colonial, an appeal must be allowed by statute for this court to have jurisdiction. Colonial argues that its Petition for an Order to Show Cause Why Estate Should not be Reopened for Creditors to Submit Proof of Claims and Accounting of All the Estate Assets (the "Petition") is appealable under NRS 155.190(1)(n). This statute allows appeals of any decision where the amount in controversy is in excess of \$10,000. But this statute must be interpreted in a way that creates certainty for litigants and final judgments. It should not be used to allow

1 unauthorized post-final judgment motions to resurrect cases. This is more critical in  
2 probate cases where estate administrators, heirs, creditors, lenders, and estate  
3 purchasers rely on finality of the estate administration when transferring estate  
4 property.

5 This Court should interpret the text of 155.190(1)(n) as allowing appeals only if  
6 the decision relates to a request for relief or dispute that is authorized by law or  
7 statute. To hold otherwise would allow litigants to manufacture timelines for new  
8 appeals and would allow vexatious or unscrupulous litigants additional avenues to  
9 harass estates and heirs with continued litigation. For example, abuse of this statute  
10 could occur in a case where a dispute over estate proceeds results in a trial and/or  
11 some other form of a final judgment. A dissatisfied heir could file a motion requesting  
12 an additional inheritance in excess of \$10,000 after 30-day appeal deadline and, under  
13 Colonial's interpretation of NRS 155.190, that heir would have a right to appeal the  
14 decision *despite the existence of a final judgment*.

15 As explained more fully below, The Court should hold that the relief requested  
16 by Colonial is not authorized by any law or statute and that Colonial's Petition was  
17 not a "dispute" that is recognizable by law under NRS 155.190(1)(n). Colonial should  
18 have no right to appeal the District Court's denial of its Petition.

19 **B. Colonial's Petition was not authorized by any law or statute.**

20 After a judgment is final, the rules of civil procedure limit the types of motions  
21 that can be filed after a final judgment. For example, Rule 50 allows a post-trial  
22 motion for judgment as a matter of law, Rule 59 allows a party to move for a new  
23 trial, Rule 60 allows a motion to alter or amend a judgment, and Rule 54(d)(2) allows a  
24 motion for attorney's fees. Statutes add to the list of approved post-trial motions.  
25 Colonial's Petition seeks to reopen the estate for purposes of Colonial filing a late  
26 creditor's claim. Respondent is not aware of any statute that would authorize  
27 Colonial's motion or the requested relief. Under the terms of NRS 147.040, the latest  
28 that Colonial could have filed a creditor's claim is the date that final account is filed.

1 In other words, the last day to file a creditor's claim is the day that Estate  
2 administration ends. NRS 147.040(3). And 30 days from that date is the last time that  
3 a creditor could appeal any issues related to the handling of creditor's claims. Thus,  
4 Colonial's Petition was not a timely creditor's claim that would give rise to an appeal.

5 Colonial refers to its Petition as a motion to reopen the estate. See Appellant's  
6 Amended Response to Order to Show Cause (the "Response") at 3:17. Critically, NRS  
7 155.190 does not list motions to reopen an estate as one of the types of orders that is  
8 appealable. Moreover, Colonial's petition did not request any relief that would be  
9 allowable in a motion to reopen an estate. Under NRS 151.240 and estate that has  
10 been finally settled be reopened only:

- 11 (1) to administer newly discovered property;
- 12 (2) to correct errors in legal descriptions; or
- 13 (3) to issue new letters for any cause that letters should again be issued.

14 Colonial's Petition does not request relief for any of these issues. It did not  
15 identify newly discovered property or errors in legal descriptions and it did not  
16 request new letters of administration. The trial court correctly noted that it was not  
17 authorized to reopen the Estate under NRS 151.240. See June 23, 2020 Order,  
18 attached hereto as Exhibit A at ¶ 25. Accordingly, Colonial's Petition was not  
19 authorized under NRS 151.240.

20 Colonial does not identify any other legal basis for its Petition and, accordingly,  
21 the Petition is not authorized by law or statute. Given this fact, the Court should hold  
22 that Colonial's Petition did not raise a dispute that was cognizable or appealable under  
23 NRS 155.190 and dismiss Colonial's appeal.

24 **C. Respondent requests an extension of time to file this Reply.**

25 This Court issued an Order to Show Cause on February 12, 2021 ordering  
26 Appellant to show cause why the appeal should not be dismissed for lack of  
27 jurisdiction within 30 days of the Order. Respondent could file a Reply within 14 days  
28 of service of Appellant's response. Appellant filed an Amended response on March

1 11, 2021. The deadline for Respondent's Reply was March 25, 2021. Counsel for  
2 Respondent did not notice that the Reply was due until late in the afternoon on  
3 Thursday, March 25, 2021. Counsel did not have enough time to prepare and file the  
4 Reply. This was an error by counsel of not recognizing the deadline. Respondent filed  
5 a Reply on March 26, 2021, but did not include a motion for leave to file the Reply  
6 and the Reply filing was rejected on March 29, 2021. Respondent now requests that  
7 this Court allow the Reply to be filed and consider this Reply in determining whether  
8 it has jurisdiction over this Appeal.

9 Dated: March 29, 2021.

10 Clear Counsel Law Group

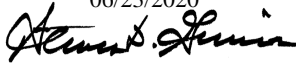
11  
12 /s/ David Blake  
David T. Blake (# 11059)

13  
14  
15  
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on March 29, 2021, pursuant to NRAP 25(c) I submitted  
18 the foregoing **Reply to Appellant's Response to Order to Show Cause and**  
19 **Motion for Extension of Time to File Reply** for filing via the Court's electronic  
20 filing system. Electronic notification will be sent to all parties to this case who are  
21 registered using the Court's electronic filing system.

22 .  
23 /s/ K.A. Gentile  
24 An employee of Clear Counsel Law  
25 Group  
26  
27  
28

## **EXHIBIT “A”**

  
CLERK OF THE COURT

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**DISTRICT COURT**

**DISTRICT OF NEVADA**

In the Matter of the Estate of:

Dennis John Carver

Deceased

CASE NO.: P-18-095892-E

DEPT NO.: 8

**Order**

The Petition for Order to Show Cause Why Estate should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets of John Houlihan and Colonial Real Estate Partnership, Ltd. (collectively "Colonial") came before the Court for hearing on May 15, 2020. David Blake, Esq., of the law firm of Clear Counsel Law Group, appeared on behalf of the Estate and Leo P. Flangas, Esq. of Flangas Law Firm, Ltd. appeared on behalf of Petitioners.

After considering the Petition, Objection, Reply, Sur-Reply, and the arguments of counsel, the Court finds and orders:

1. Dennis John Carver ("Decedent") died on October 16, 2017. Nicholas Alfano was originally appointed as special administrator for Decedent's estate in California and Letters Testamentary were thereafter issued on January 10, 2018. On May 29, 2018, Alfano resigned as executor of the California estate after the estate beneficiaries alleged that he engaged in financial misconduct. Thereafter, Rhonda Morgan, Esq. became the successor administrator of the California Estate. The Estate and beneficiaries are still engaged in litigation over Alfano's misconduct in California.

2. Alfano administered probate in Decedent's home state of California and did not commence probate proceedings in Nevada. The principal assets of the carver Estate were in Decedent's home state of California. Colonial has not introduced any evidence that Alfano's fraud affected assets that were administered in Nevada.

1           3.       Colonial did not file a creditor's claim in the California proceeding until April 12,  
2 2019. The Claim was untimely and rejected. Colonial did not file a petition or take any other  
3 action to challenge rejection of the Creditor's claim in California.

4           4.       This ancillary probate proceeding commenced on June 28, 2018, with Morgan  
5 appointed as Nevada Estate's Administrator. Notice to creditors was electronically filed on July  
6 25, 2018. The creditor's claim period ended on or around October 25, 2018. The only property  
7 subject to administration in Nevada was real estate.

8           5.       Colonial became aware of Decedent's passing in September of 2018. Under  
9 Nevada law, this knowledge of Decedent's death constitutes actual notice of estate  
10 administration and charges Colonial with a duty of further inquiry. See Monette v. Estate of  
11 Murphy, No. 61212, 2014 WL 5173723, at \*1 (Nev. 2014); Bell Brand Ranches, Inc. v. First  
12 Nat'l Bank of Nev., 91 Nev. 88, 91 n. 3. (1975).

13           6.       Colonial did not file a creditor's claim in a reasonable time after learning of  
14 Decedent's death in September of 2018.

15           7.       Colonial initially sent letters to Robert McKenchnie, who was not involved in the  
16 estate administration, requesting information regarding completion of the alleged contract and  
17 contact information for the attorney and administrator of the estate.

18           8.       Colonial then sent a letter to the Estate dated October 26, 2018 demanding  
19 payment. The letter was received after the claims filing period had expired in this probate  
20 proceeding. Colonial sent a follow-up letter on November 15, 2018.

21           9.       Colonial also admits that it knew the identity of the Estate administrator and made  
22 several efforts to contact the Estate between September and November of 2018. In spite of this,  
23 Colonial did not file a creditor's claim in the Nevada Estate proceedings.

24           10.      This Nevada estate administration ended on May 10, 2019.

25           11.      Without first filing a creditor's claim, Colonial filed a complaint against  
26 Administrator Morgan on June 7, 2019. By this time, at least 250 days had passed since Colonial  
27 learned of Decedent's death.

28           12.      On November 1, 2019, Colonial voluntarily dismissed its Complaint without

1 prejudice after demand by the Estate.

2 13. Thereafter, Colonial did not file or seek leave to file a creditor's claim until it  
3 filed its Petition seeking to reopen the Estate on February 2, 2020. By the time Colonial had filed  
4 its Petition, more than 465 days had passed since Colonial learned of Decedent's death.

5 14. The Nevada Supreme Court has repeatedly insisted that Nevada's district courts  
6 follow the plain terms of Nevada's probate statutes. See, e.g., Jacobson v. Estate of Clayton, 121  
7 Nev. 518, 521 (2005); Bell Brand Ranches, Inc. v. First Nat. Bank of Nevada, 91 Nev. 88, 92,  
8 (1975); Monette v. Estate of Murphy, 2014 WL 5173723, at \*1 (Nev. 2014).

9 15. Regarding the timeliness of creditor's claim, NRS 147.040(3) provides:

10 If a claim is not filed with the clerk within the time allowed by subsection 1 or 2,  
11 the claim is forever barred, but if it is made to appear, by the affidavit of the  
12 claimant or by other proof to the satisfaction of the court, that the claimant did not  
13 have notice as provided in NRS 155.020 or actual notice of the administration of  
14 the estate, the claim may be filed at any time before the filing of the final account.

15 16. Under this provision, a creditor can only file a late claim if (a) it seeks leave to do  
16 so "before the filing of the final account" and (b) the creditor did not have "actual notice of the  
17 administration of the estate."

18 17. As noted above, Colonial attempted to communicate with Morgan, the Estate  
19 administrator, for the express purpose of resolving its creditor's claim but did not file a creditor's  
20 claim. Accordingly, Colonial had actual notice of the estate administration. Additionally,  
21 Colonial did not seek leave to file a creditor's claim before the estate was closed and distributed.

22 18. Thus, the plain terms of NRS 147.040(3) prevent Colonial from filing a late  
23 creditor's claim.

24 19. Colonial argues that Morgan committed fraud on the court by failing to disclose  
25 Alfano's misconduct in connection with the California probate.

26 20. Fraud on the court is

27 that species of fraud which does, or attempts to, subvert the integrity of the court  
28 itself, or is a fraud perpetrated by officers of the court so that the judicial  
machinery cannot perform in the usual manner its impartial task of adjudging  
cases ... and relief should be denied in the absence of such conduct.

NC-DSH, Inc. v. Garner, 125 Nev. 647, 654 (2009).

1           21. Colonial does not identify any statement or instance of nondisclosure by Morgan  
2 that was misleading, material, or prevented this Court from performing in the usual manner.  
3 Colonial's contention that Morgan committed fraud on the court is rejected.

4           22. Colonial also argues that its due process rights were violated because the Nevada  
5 Estate did not receive a creditor's notice from the Nevada estate, relying on Cont'l Ins. Co. v.  
6 Moseley, 98 Nev. 476, 477 (1982). Moseley involved an issue where the only form of notice that  
7 the estate administrator gave to creditors was by publication. The Creditor eventually learned of  
8 the decedent's death and filed a creditor's claim two days after the claims period expired (and 3  
9 days after learning of the death).

10           23. The ruling in Moseley did not create a loophole to be exploited that would permit  
11 creditors who have actual notice of the estate to delay excessively, as Colonial did here, and then  
12 file a late creditor's claim.

13           24. The facts at bar are distinguishable from those in Moseley. The creditor there  
14 acted promptly upon learning of the decedent's passing and filed a creditor's claim before the  
15 estate closed. Here, colonial had actual knowledge of the estate administration and did not act in  
16 a timely manner to file a creditor's claim. Colonial's due process rights were not violated  
17 because Colonial had actual notice of the Estate administration.

18           25. Finally, Colonial argues that the Court is authorized to reopen an estate under  
19 NRS 151.240. However, none of the bases to reopen the estate set forth in that statute are  
20 applicable here. Colonial is not asking to administer newly discovered property, correct errors in  
21 property descriptions, and has not requested new letters be issued.

22           26. To the extent that the Court would have discretion to reopen the estate and allow  
23 Colonial to file a late creditor's claim, the Court declines to do so.

24           27. Based on the foregoing and for the addition reasons set forth in the Sur-Reply  
25 filed by Morgan on May 8, 2020, Petitioners' Petition for Order to Show Cause Why Estate  
26 should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate

27 ///

28 ///

Assets is DENIED as set forth above.

Dated this 23rd day of June, 2020

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

DBB 544 505A 24A8  
Trevor Atkin

Prepared and submitted by:  
CLEAR COUNSEL LAW GROUP

/s/David T. Blake

David T. Blake, Esq. (#11059)

*Attorneys for the Estate*