

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF:
DENNIS JOHN CARVER, DECEASED.

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

Appellants,

vs.

RHONDA MORGAN, PERSONAL
REPRESENTATIVE OF THE ESTATE
DENNIS JOHN CARVER,

Respondent.

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Case No.: 81447

Eighth Judicial District
District Court Case No.: P-18-095892-E

**APPEAL FROM JUDGMENT
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,
NEVADA HONORABLE TREVOR ATKIN, DISTRICT JUDGE**

APPELLANT'S OPENING BRIEF

LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
FLANGAS LAW FIRM, LTD.
600 South. 3rd Street
Las Vegas, Nevada 89101
VOX: (702) 384-1990
FAX: (702) 384-1009
e-mail: leo@flangaslawfirm.com

ATTORNEYS FOR APPELLANT

DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Appellants COLONIAL REAL ESTATE PARTNERSHIP, LTD., is a STATE limited liability company, and JOHN HOULIHAN, is a resident of the State of Nevada and has been represented by Leo P. Flangas, Esq., of Flangas Civil Law Firm, LTD, in District Court in the matter below. Respondent, RHONDA MORGAN, is the personal representative of the Estate of Dennis John Carver and is represented by DAVID BLAKE, ESQ., of the law firm of CLEAR COUNSEL LAW GROUP, 1671 W. Horizon Ridge Pkwy., Suite 200 Henderson, Nevada 89012 Telephone: (702) 476-5900.

Respectfully Submitted,

/s/ Leo P. Flangas

FLANGAS CIVIL LAW FIRM, LTD.

LEO P. FLANGAS, ESQ

Nevada Bar No. 5637

600 S. 3rd Street

Las Vegas, NV 89101

Phone: (702) 384-1990

E-mail: leo@flangaslawfirm.com

Attorney for Appellants

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JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction over this matter as it is an appeal from the District Court's June 23, 2020, order denying Appellants' petition to reopen the decedent's estate. Such order fully resolved all claims between all parties and in favor of Respondent.

Under NRAP 4(a) "a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." NRAP 4(a). Here, the notice of entry of order was served on the same day as the order, on June 23, 2020. The notice of appeal was timely filed on July 2, 2020, pursuant to NRAP 4(a).

Further, this matter is appealable pursuant to NRS 155.190, which allows for an appeal of any decision when the amount in controversy exceeds (exclusive of costs) \$10,000. *Id.* at § 155.190(n). Here, there is \$121,851.64 in controversy¹, and this appeal is proper.

ROUTING STATEMENT

Appellant respectfully submits that this appeal is appropriate for resolution/decision in the Supreme Court, pursuant to NRAP 17(a)(11) and (12): Cases involving matters of public interest and first impression; and pursuant to NRAP 17(b)(6): cases with over \$75,000 in controversy. Additionally, this matter

¹ ROA000342-343.

contains due process implications. Further, this matter is appealable pursuant to NRS 155.190.

ISSUES PRESENTED FOR REVIEW

1. Whether Appellants were in fact known or readily ascertainable creditors that were entitled to written notice from the estate pursuant to NRS 155.020 and *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340 (1988).
2. Whether Appellant's due process rights were abridged by Respondent's refusal of Appellants' claim as time-barred when the estate failed to provide the required notice to known creditors pursuant to Nevada Statutes.
3. Whether the estate must be reopened to allow appellants' claim as a known, and readily ascertainable creditor that was not given the statutorily required, actual notice.

STATEMENT OF THE CASE

This appeal arises from an order by the Eighth Judicial District Court denying Appellants' Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets (the "Order").²

² ROA000107- 10.

a. Construction Contract Signed

Appellants paid \$121,851.64 to Commercial Plumbing and AC (“Commercial Plumbing”), for repair work on Appellants’ real property located in Nevada.³ Commercial Plumbing was a sole proprietorship doing business in California and Nevada. However, the sole owner of Commercial Plumbing, Dennis Carver (“Decedent”), passed away in California before the work was started.⁴ The record shows that Commercial Plumbing’s foreman, Robert McKenchnie, knew of the Colonial’s debt to Appellants; moreover, Commercial Plumbing’s office manager, Jennifer Shea, who was tasked with the wind-up of the estate of Carver and his business also was fully aware of the debt.⁵ After Carver died, Ms. Shea also coordinated the delivery of financial documents to the attorney for the estate and Carver’s daughter.⁶ This would have included the financial records for Commercial Plumbing. Thus, it is clear that Colonial was always a known creditor of Commercial Plumbing to the head manager Mr. McKenchnie and Ms. Shea. In light of this, the Estate had actual knowledge of Colonial’s debt.⁷ Furthermore, Respondent was

³ ROA000187-188.

⁴ ROA000007.

⁵ ROA000143 (Petitioner’s Response to Defendant’s Objection to Petition Order to Show Cause Why Estate Should Not Be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets).

⁶ ROA000144.

⁷ ROA000171-172.

aware of Appellants' claim because such payment was on Commercial Plumbing's books.⁸ Despite this overwhelming proof of actual knowledge of Appellants as a known creditor of Commercial Plumbing, Respondent intentionally failed to provide written notice as required under NRS 155.020.

b. Probate Opened in Carver Estate

Probate was opened in California in December 2017. On June 28, 2018, ancillary probate was opened in Nevada with notice to creditors served by publication July 25, 2018.⁹ Appellants learned of Carver's death in September 2018 when they contacted Commercial Plumbing to have the prepaid work on Appellants' property completed. After learning of Decedent's passing, Appellants contacted Respondent to inform her of their claim but did not receive a response until after the deadline to respond to the notice to creditors had expired. Appellants were given no notice of the Nevada filing; Appellants discovered the California filing. Appellants then filed a creditor's claim in the California probate matter on April 12, 2019; however, that claim was rejected. The probate process for the Carver Estate in California has not closed. The estate was closed in Nevada in May 2019. After filing

⁸ *Id.*

⁹ ROA000048.

and voluntarily dismissing a lawsuit against the estate, Appellants filed the petition that is the subject of this appeal.¹⁰

c. Appellants' Petition in Probate Court

Appellants' petition requested that the Nevada estate be reopened to allow their claims—or alternatively—for an evidentiary hearing to be held as to the appropriateness of the closing the estate without an accounting due to the fraud perpetrated by the original administrator in the California estate and the lack of notice in Nevada.¹¹ The Minute Order issued after the May 14, 2020 hearing on the petition simply stated the “[Petition] is DENIED for legal basis’ (sic) outlined in the Estate’s Sur-Reply in support of Objection to Petition.”¹²

However, the record clearly proves that Respondent intentionally failed to send notice to Appellants.¹³ The original personal representative in California—Nicholas Alfano—who was removed for stealing and/or misappropriating funds from the Estate intentionally failed to give notice to Appellants. Estate administrator Rhonda Morgan—who replaced Alfano—knew there was fraud perpetrated against

¹⁰ ROA000107- 10.

¹¹ ROA000107- 10.

¹² ROA000350.

¹³ ROA000178. Alfano, had actual knowledge that Colonial was a creditor because Ms. Shea was in contact with Alfano on Estate matters until she was fired in the spring of 2018. California Probate Code § 10952 provides that upon the resignation or removal of a Personal Representative, the Personal Representative must provide an accounting within 60 days of their resignation. Ms. Morgan petitioned the California court to order Alfano to provide a full accounting within 60 days of May 29, 2018. ROA000181.

the Estate which resulted in his dismissal in the California probate case.¹⁴ Ms. Morgan alleged that Alfano “paid himself fees by and through A&N Acquisitions in excess of \$50,000 under the A&N Contract for Collection in violation of the probate code prohibition against collecting fees without a court order.”¹⁵ She knew that this fraud consisted of an intentional scheme to restrict the number of creditors and their liabilities against the Estate, thus increasing the size and value of the estate for the benefit of a certain heir and Alfano. In fact, she requested that the Court order Alfano to provide an accounting within 60 days of May 29, 2018.¹⁶ Further, Ms. Shea was aware that the Estate owed Colonial Real Estate Partnership money but did not provide any notice to Appellants.

Respondent not only should have known, but they were actually informed by the operational manager of the business:

Jennifer Shea knew that Jack Houlihan of Colonial Real Estate Partnership had paid for work to be performed and that the work had not been performed and Dennis Carver's company, Commercial Plumbing and AC, owed Houlihan and his company Colonial Real Estate Partnership money.¹⁷

¹⁴ ROA000178. See ROA000293, Declaration of Rhonda Morgan, at p. 1, ¶ 7 (“After Alfano began administering the Estate, the heirs believed and alleged that Alfano was mismanaging the Estate, although the full extent of his conversion of estate assets was not known at that time.”).

¹⁵ ROA000183 at ¶ 22.

¹⁶ ROA000181 CA Petition for Appointment of Successor, (“These bank statements show withdrawals of cash by the former personal representative in the amount of \$47,045. Petitioner alleges upon information and belief that there is no reasonable explanation for these withdrawals of cash that is related to the administration of the Estate.”).

¹⁷ ROA000171-172 (Affidavit of Robert McKenchnie), at ¶ 8.

d. Appellants were known creditors

A review of Commercial Plumbing's financial records would have shown the Appellants were creditors. To reiterate, Appellants paid Decedent's company for work that was never performed—a fact that would be readily ascertainable from the company's records with a showing of \$121,851.64 belonging to Plaintiffs. That alone is sufficient to make Respondent aware that Appellants were creditors and would require Respondent to mail them notice under NRS 155.020.

Additionally, Appellants sent a letter to All Trades Company on September 21, 2018, reminding them about the unfinished work.¹⁸ After Mr. McKechnie informed Appellants of Carver's death, Appellants contacted Respondent directly but were ignored¹⁹ because Respondent knew the deadline for *unascertained creditors* to file claims was fast approaching. After receiving no response, Appellants sent a letter regarding the claim to Respondent on October 26, 2018.²⁰ Despite Appellants' contact with relevant individuals, including McKechnie and Respondent, the Estate failed to respond and did not send written notice to Appellants.

¹⁸ ROA000186. Robert McKechnie of All Trades Company managed operations for Decedent's construction and HVAC companies in Nevada. ROA000171 at ¶ 4.

¹⁹ ROA000174-176.

²⁰ ROA000193.

Even arguing Commercial Plumbing's books did not show Appellants as creditors, and even arguing Appellants had not contacted Respondent directly—at a bare minimum, Respondent was fully aware of Appellants' creditor claim when they filed a claim in Case Number MC1700877 in Riverside County, California, on or about April 12, 2019.²¹

Ms. Morgan filed her petition which requested an order from the Court for Alfano to file an accounting on July 3, 2018.²² On September 19, 2018, a hearing was scheduled on her motion to show cause for Alfano's failure to file final accounting. That hearing was continued until November 6, 2019, when the hearing was finally held. However, in the interim, on October 27, 2018, a day after the 90-day deadline had passed, Colonial sent a second letter to the administrator regarding the agreement between the parties for the installation of the equipment.²³ Also, Plaintiff's counsel contacted Ms. Morgan by letter on November 15, 2018 to inform her of the contract between Colonial Real Estate Partnership and Commercial Plumbing.²⁴ Appellants then filed a creditor's claim in the California probate matter on April 12, 2019; however, that claim was rejected and untimely. The probate process for the Carver Estate in California has not closed, and the estate was closed

²¹ ROA000221 ("04/12/2019 Creditor's Claim from Colonial Real Estate Partnership, Ltd in the amount of \$121,851.64.").

²² ROA000183

²³ ROA000193.

²⁴ ROA000195.

in Nevada in May 2019. Clearly, Appellants’ repeated attempts at communicating with Ms. Morgan demonstrate her knowledge of their claim.

Again, Appellants’ claim was filed prior to the closing of the Nevada estate—without an accounting and was timely under the waiver provision of NRS 147.040. Nonetheless, the Estate representative simply told Appellants the claim was untimely—and did not reference the Nevada probate action. Despite such notice, and even though the Estate had over \$120,000 of Appellants’ money on its books for work Commercial Plumbing and AC failed to perform, Respondent blatantly and intentionally ignored the claim and failed to send the statutorily and constitutionally required written notice, or even disclose to Appellants the existence of the Nevada probate action.

As stated above, on April 12, 2019, Appellants attempted, in good faith, to assert their claims against Decedent’s estate.²⁵ However, that claim was deemed to be untimely. Shortly thereafter in May 2019, the Probate Court granted Respondent’s motion to close the Nevada estate without an accounting.²⁶ The Nevada probate matter was an ancillary estate that was concealed – also deliberately

²⁵ *Id.*

²⁶ ROA000228-232.

– from *this* creditor. The estate was probated in Nevada because the Decedent owned several parcels of real property in this state.²⁷

Despite the fact that Commercial Plumbing operated in Nevada, the record does not indicate that notice was sent to any creditor in Nevada. Instead, the record only shows notice by publication.²⁸ It is utterly preposterous that a business that was an ongoing concern at the time of Decedent’s passing would not have known or been able to readily ascertainable its creditors in this state and especially a creditor that had over \$120,000.00 sitting in the business’ bank.

Under Nevada law, although the time for *unascertained* creditors had passed, *ascertained* creditors that did not receive the requisite notice were still permitted to file a claim against the Estate. Here, Respondent clearly knew of Appellants’ claim and nonetheless moved to close the Estate, without an accounting in Nevada (or California), and without allowing Appellants the required statutory and constitutional notice.

After Appellants’ claims were denied in California Probate Court, Appellants petitioned the Nevada Probate Court to reopen the Decedent’s estate or for an

²⁷ ROA000199, at ¶ 16. Decedent also operated Commercial Plumbing in Nevada and carried the required contractor’s licenses and business infrastructure.

²⁸ ROA000048.

evidentiary hearing as to why the estate closed without an accounting. Appellants' petition was denied.

This is a case where the only result that satisfies constitutional due process requirements is the reopening of the ancillary Nevada estate. In the alternative, the Appellants ask the Court to order an evidentiary hearing as to why closing the Nevada probate matter was proper, given the fact that no notice was sent to any known or reasonably ascertained creditors in Nevada – including the notice required for the motion to close the estate without an accounting. Again, Decedent received \$121,851.64 from Appellants and failed to perform the work he was obligated to do. Moreover, his Estate failed to mail the required notice to a known creditor.

STATEMENT OF FACTS

A consolidated timeline is below and will be discussed in detail herein.

DATE	EVENT
October 22, 2013	Agreement signed with Commercial Plumbing and AC (“Commercial Plumbing”) to perform work on Appellants’ property. ²⁹ Appellants tender check number 3990, a \$10,000 deposit, made pursuant to the agreement. ³⁰

²⁹ ROA000187-188.

³⁰ ROA000342-343 (Check Number 3990).

March 24, 2014	Appellants paid for the work in advance by check, ³¹ and the parties agreed that work would not start for four years. ³²
October 16, 2017	Dennis Carver died in Riverside County, CA. ³³
December 1, 2017	Petition of Will & Letters of Testamentary: Probate filed in Riverside County, CA – Case Number MC1700877. ³⁴
December 5, 2017	Subsequent Petition for Letters of Special Administration with Limited Authority filed in Riverside County, CA – Case Number MC1700877. ³⁵
	Respondent files petition to remove previous administrator, Nicholas Alfano, for defrauding the estate in Riverside County, CA – Case Number MC1700877. ³⁶
June 28, 2018	Decedent's Petition for Probate of Will and Issuance of Letters was filed in Clark County Nevada – Case Number P-18-095892-E. ³⁷
July 3, 2018	Respondent files Subsequent Petition for Letter of Special Administration with General Powers Appointing Rhonda L. Morgan and Subsequent miscellaneous petition in Riverside County, CA – Case Number MC1700877. ³⁸

³¹ *Id.*

³² ROA000187-188.

³³ ROA00007.

³⁴ ROA000204.

³⁵ *Id.*

³⁶ ROA000178.

³⁷ ROA00001.

³⁸ ROA000204.

July 6, 2018	Alfano submits petition to resign as administrator in Riverside County, CA – Case Number MC1700877. ³⁹
July 17, 2018	Respondent is appointed as administrator of the estate in Riverside County, CA – Case Number MC1700877.
July 25, 2018	Notice to Creditors filed in Clark County, NV – Case Number P-18-095892-E. Respondent fails to send notice to Appellants as required by NRS 155.020(4)
Aug 10, 2018	Estate receives and files Affidavit of Publication of Notice to Creditors Clark County, NV – Case Number P-18-095892-E. Respondent fails to send notice to Appellants as required by NRS 155.020(4)
September 2018	Appellants discover the Decedent died in October 2017 after contacting Robert McKenchnie to begin work under the prepaid contract. Respondent fails to send notice as required by NRS 155.020(4)
October 2018	Appellants attempt to contact Respondent after learning of Carver’s death but do not receive a response. Respondent fails to send notice as required by NRS 155.020(4). ⁴⁰
October 26, 2018	Appellants send letter to Respondent regarding the claim. Respondent fails to send notice as required by NRS 155.020(4). ⁴¹
November 15, 2018	Appellants’ attorney sends a letter to Respondent regarding the claim. ⁴²

³⁹ ROA000217.

⁴⁰ ROA000186.

⁴¹ ROA000193.

⁴² ROA000195.

April 8, 2019	Respondent files a Petition for Waiver of Accounting, for Payment of Attorney's Fees, and Petition for Distribution in Clark County, NV Case No. P-18-095892-E. ⁴³
April 12, 2019	Appellants file a creditor's claim against Respondent and the Decedent's Estate in Riverside County, CA – Case Number MC1700877. ⁴⁴
May 10, 2019	Order Granting Petition for Waiver of Accounting, for Payment of Attorney's Fees, and Petition for Distribution entered in Nevada probate matter. ⁴⁵
June 7, 2019	Colonial Real Estate Partnership, LTD., files suit against Decedent, his Estate, Commercial Plumbing, and Respondent, ⁴⁶ but ultimately files for voluntary dismissal. Eighth Judicial District Court Case No.: A-19-796234-C.
December 27, 2019	Respondent files Petition for 14 causes of action against Alfano in Riverside County, CA – Case No. MC1700877. ⁴⁷
February 2, 2020	Appellants file Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets that is the subject of this appeal in Case No. P-18-095892-E. ⁴⁸
February 18, 2020	Respondent files Objection to Petition. ⁴⁹

⁴³ ROA000074.

⁴⁴ ROA000221.

⁴⁵ ROA000093.

⁴⁶ ROA000130.

⁴⁷ ROA000298.

⁴⁸ ROA000107.

⁴⁹ ROA0001.

March 6, 2020	Appellants file Response to Defendant's Objection to Petition. ⁵⁰
May 8, 2020	Petitioners Sur-Reply in Support of Objection to Petition. ⁵¹
May 15, 2020	Probate Court issues Minute Order. ⁵²
June 23, 2020	Order denying Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets in Case Number P-18-095892-E. ⁵³

On or about October 22, 2013, Appellants entered into an agreement with Commercial Plumbing, which was owned by Decedent, Dennis John Carver, to perform work on the premises owned by Appellants.⁵⁴ It was understood and agreed upon by the parties that Appellants would pay the amount due in advance and that the work would not be performed until at least four years later.⁵⁵ Appellants paid the amount due by check with an initial deposit of \$10,000⁵⁶ and the remaining balance

⁵⁰ ROA000142.

⁵¹ ROA000272.

⁵² ROA000352 ("Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets is DENIED for legal basis' (sic) outlined in the Estate's Sur-Reply in support of Objection to Petition.").

⁵³ ROA000353.

⁵⁴ ROA000187-188.

⁵⁵ ROA000187-188 ("The Agreement states Colonial will pay the amount of \$121,851.64 minus \$10,000.00 deposit paid by Colonial in 2013 for a total of \$111,851.64").

⁵⁶ *Id.*

of \$111,851.64 on or about March 24, 2014.⁵⁷ However, the work was never performed. In light of the overwhelming evidence, Respondent knew or should have known that Appellants were creditors.

Decedent died on or about October 16, 2017.⁵⁸ Probate was opened in California on or about December 1, 2017.⁵⁹ No notice was ever sent to Appellants by either the Estate in Nevada or California. However, Appellants, upon discovery of the Estate, filed a claim in the California Probate matter on or about April 12, 2019.⁶⁰ That claim was dismissed by Respondent in California untimely. It is significant to note that between the time that probate was opened in California, and the time Appellants filed their claim in that action, Respondent had the initial administrator removed for his theft and fraud against the estate.⁶¹ The record shows that the original administrator kept the amounts he collected without distributing them to the Estate or paying creditors.⁶²

⁵⁷ *Id.*

⁵⁸ ROA000007.

⁵⁹ ROA000204.

⁶⁰ ROA000221.

⁶¹ ROA000178.

⁶² ROA000293, Declaration of Rhonda Morgan, Esq. in Support of Sur-Reply in support of Objection to Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets at p. 1, ¶ 7 (“After Alfano began administering the Estate, the heirs believed and alleged that Alfano was mismanaging the Estate, although the full extent of his conversion of estate assets was not known at that time.”).

Ancillary probate was opened in Nevada on or about June 25, 2018 to address title to Nevada real property.⁶³ Respondent provided notice as required under NRS 155.020 “by publication on three dates of publication before the hearing, and if the newspaper is published more than once each week, there must be at least 10 days from the first to last dates of publication, including both the first and last days.” NRS 155.020(1)(b).⁶⁴

As evident from the timeline above, at no time did Respondent send the notice required under NRS 155.020(4), which states:

[A] personal representative *shall*, in addition to publishing the notice to creditors, mail a copy of the notice to those creditors whose names and addresses are readily ascertainable as of the date of first publication of the notice and who have not already filed a claim.

NRS 155.020(4), emphasis added. Under *Pope* (discussed *infra*), a claim is not barred until after notice. It does not matter whether the estate is closed – it cannot be closed as to creditors not receiving proper notice – it must be reopened.

If Appellants were not readily ascertained at the time notice by publication was made, they became known when Appellants contacted Respondent.

The estate administrator, Rhonda Morgan—who replaced the previous administrator (Alfano)—knew there was fraud perpetrated against the Estate which

⁶³ ROA00001-4, ROA000272-290.

⁶⁴ ROA000048.

resulted in the dismissal of the previous administrator in the California probate case.⁶⁵ Ms. Morgan knew that this fraud consisted of an intentional scheme to restrict the number of creditors and their liabilities against the Estate, thus increasing the size and value of the estate for the benefit of a certain heir and the first personal representative. In fact, she requested that the Court order Alfano to provide an accounting within 60 days of May 29, 2018.⁶⁶

Appellants made several phone calls to the administrator of the estate during the 90-day publication period informing them of the debt owed and sent letters to the administrator regarding the debt.⁶⁷ In addition to these telephone calls, Appellants sent letters in September 2018⁶⁸ and October 2018.⁶⁹ As such, pursuant to NRS 155.020, the personal representative of the Estate was under a duty to

⁶⁵ ROA000178 (California Petition for Appointment of Successor Personal Representative and Issuance of Letters Testamentary, Request for Order For Accounting, Request for Order to Turn over Property and Documents and Request for Surcharge of Former Personal Representative, dated August 7, 2018. hereafter, “CA Petition for Appointment of Successor”). See ROA000293, Declaration of Rhonda Morgan, Esq. in Support of Sur-Reply in support of Objection to Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets at p. 1, ¶ 7 (“After Alfano began administering the Estate, the heirs believed and alleged that Alfano was mismanaging the Estate, although the full extent of his conversion of estate assets was not known at that time.”).

⁶⁶ ROA000181 CA Petition for Appointment of Successor, (“These bank statements show withdrawals of cash by the former personal representative in the amount of \$47,045. Petitioner alleges upon information and belief that there is no reasonable explanation for these withdrawals of cash that is related to the administration of the Estate.”).

⁶⁷ ROA000174-176.

⁶⁸ ROA000186.

⁶⁹ ROA000193.

“immediately mail a copy of the notice to the creditor.” NRS 155.020(5). No such notices were ever sent.

The Nevada probate proceeding—improperly closed after the waiving of an accounting—would also have been improper due to the initial Estate administrator’s fraud had the Nevada Probate Court been aware of this fact. Moreover, the Estate administrator wrote in her Motion for an order for accounting that she could not state the exact amount of fees improperly paid to because she was not in possession of all the files related to the collection accounts.⁷⁰

SUMMARY OF ARGUMENT

NRS 147.040 states “[a] person having a claim, due or to become due, against the decedent must file the claim with the clerk within 90 days after the mailing for those required to be mailed... pursuant to NRS 155.020.” NRS 147.040(1). Moreover, the statute provides:

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

NRS 147.040(3) (emphasis added).

⁷⁰ ROA000183 at ¶ 22.

Here, the Probate Court erred when it failed to reopen the Estate to allow Appellants' claim. The Probate Court denied Appellants' petition based on law pertaining to *unascertained* creditors when Respondent clearly knew the Estate had more than \$120,000 of Appellants' money and still refused to send required notice to Appellants as a reasonably ascertained creditor. Based on Nevada law, Respondent simply could not *statutorily* close the Estate or satisfy the required due process without providing notice to known creditors. Nonetheless, Respondent completely ignored Appellants, and the Probate Court permitted Appellants' due process rights to be abridged.

Further, even if arguendo Respondent's actions were proper, closing the estate without an accounting was not. The original attorney administrator of the estate, Nicholas Alfano, was removed for stealing from the estate. The failure to notice creditors was a breach of the administrator's duty, as the Estate did not make any effort to ascertain creditors because the administrator wanted to keep the assets for himself. This fraud was also perpetrated in Nevada when Respondent failed to notify the Nevada Probate Court of the fraud in California and moved to close the Nevada estate without an accounting; moreover, she failed to personally notify any creditors of the deadline to assert creditor's claims or of the motion to close the Estate without an accounting. In light of this fraud, known creditors, such as Appellants, must be permitted to make claims against the Estate after the closing of the Estate.

Further, even if *arguendo* the fraud did not prohibit the closing of the Estate in Nevada, Appellants requested an evidentiary hearing to ascertain why the Estate should not be reopened. The May 10, 2019, Order approving the closing the estate was contingent on several factors; however, no proof was evident from the record that such contingencies had been satisfied.

ARGUMENT

Here, the facts as alleged are not in dispute. The only questions at issue are whether Respondent's failure to send notice under NRS 155.020(4) precludes Appellants' claims against Decedent's estate, and whether the Estate is closed when Respondent waived the accounting without informing the Nevada Probate Court of the irregularities and fraud committed by the original California administrator, where there is no proof on the record that the conditions to close probate have been satisfied.

A. THE ESTATE SHOULD NOT HAVE BEEN CLOSED WITHOUT PROVIDING WRITTEN NOTICE TO REASONABLY ASCERTAINED CREDITORS

Clearly, Petitioner was readily ascertainable in light of its many communications with the Estate. Under NRS 155.020, any reasonably ascertained creditor *shall* receive notice by mail of the need to file a creditor's claim. A person having a claim, due or to become due, against the decedent must file the claim with the clerk within 90 days after the mailing for those required to be mailed. NRS

147.040(1). A reasonably ascertained creditor is required to receive notice by mail. NRS 155.020(4). If arguendo, Appellants were not known, they were certainly a reasonably ascertained creditor.

The U.S. Supreme Court held that where a creditor is known to an estate, it is a violation of due process to time-bar that creditor's claims without providing actual notice to that creditor directly. *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340 (1988). In that case, the Supreme Court held that a cause of action to collect an unpaid debt is a property interest secured by the fourteenth amendment and also held that the 14th Amendment applied to probate matters. *Id.* Further, as discussed below, amendments to NRS 147.040(3) added language the probate court clearly ignored in reaching its decision. The record clearly shows that the Estate failed to provide Appellants with actual notice required by statute as a readily ascertainable creditor of the estate; as a result, Appellants' due process rights were violated.

While the Nevada statute provides publication notice for creditors whose names and addresses are not readily ascertainable, the statute does not define the term "readily ascertainable." The Nevada decisions that discuss the term do so in the context of foreclosure, trade secrets, and contracts. When an issue or question has not been considered in Nevada case law, courts will look to other jurisdictions for guidance. *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., Ltd. Liab. Co.*, 335

P.3d 211, 214 (2014). Washington Statutes define a “reasonably ascertainable” creditor of the decedent as:

[O]ne that the notice agent would discover upon exercise of reasonable diligence. The notice agent is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent’s correspondence, including correspondence received after the date of death, and *financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the notice agent.*

WASH. REV. CODE § 11.42.040(1) (emphasis added).

The North Dakota Supreme Court held that the definition of “reasonably ascertainable creditor” in N.D.C.C. § 30.1-19-01 did not exclude a creditor who submitted a bill to a decedent’s guardian, rather than to the decedent or the estate, because such an exclusion would be contrary to due process and to the principle that the term “includes” in a definition is a word of enlargement and not a term of limitation. *Larson v. Fraase (In re Estate of Elken)*, 2007 ND 107, 735 N.W.2d 842 (2007).

In addition, California statutes state that “a personal representative has knowledge of a creditor of the decedent if the personal representative is *aware that*

the creditor has demanded payment from the decedent or the estate.” CAL. PROB. CODE § 9050(a) (emphasis added).⁷¹

Similarly, courts in other jurisdictions have defined this term with the words “reasonably diligent efforts.” See *In re PG&E Corp.*, 2020 Bankr. LEXIS 487, at *6 (Bankr. N.D. Cal. Feb. 24, 2020) (“and all creditors' identities are reasonably ascertainable if they can be identified through *reasonably diligent efforts*.”) (emphasis added); *Goodall v. Chrysler, Inc. (In re Old Carco LLC)*, 2018 Bankr. LEXIS 2401, at *13-14 (Bankr. S.D.N.Y. Aug. 10, 2018) (Only those claimants who are identifiable through a *diligent search* are 'reasonably ascertainable' and hence 'known' creditors.) (emphasis added); *In re Estate of Ortolano*, 766 So. 2d 330 (Fla. 4th DCA 2000) (finding appellant was a reasonably ascertainable creditor where it was undisputed that the personal representative knew of pending litigation against the deceased).

⁷¹ In addition, other jurisdictions' definition of a “readily: or “reasonable ascertained creditor” require reasonable due diligence. For example, the Delaware bankruptcy court held that a creditor's identity is “reasonably ascertainable”:

... if that creditor can be identified through *reasonably diligent efforts* . . . Reasonable diligence does not require impracticable and extended searches . . . in the name of due process . . . A debtor does not have a duty to search out each conceivable or possible creditor and urge that person or entity to make a claim against it . . . *The requisite search instead focuses on the debtor's own book and records.* Efforts beyond a careful examination of these documents are generally not required...

In re Exide Techs., 600 B.R. 753, 763 (Bankr. D. Del. 2019) (citations omitted) (emphasis added).

To summarize, these definitions all focus upon the diligence or the reasonable effort of the administrator.⁷² In this case, because Appellants are a reasonably ascertained creditor, Respondent was required and failed to send written notice at any time to Appellants. This is a violation of NRS 155.020 and requires the probate court's order to be reversed.

B. THE WAIVER STATUTE, NRS 147.040(3), ONLY APPLIES WHEN NOTICE IS GIVEN BY MAIL

1. Without notice, a court may order a claim filed

“If a claim is not filed with the clerk within the time allowed by subsection 1 or 2, the claim is forever barred, but if it is made to appear, by the affidavit of the claimant or by other proof to the satisfaction of the court, that the claimant did not have notice as provided in NRS 155.020 or actual notice of the administration of the estate, the claim may be filed at any time *before the filing of the final account*.” NRS 147.040(3) (emphasis added). However, Nevada has held since 1889 that without notice, a court may order a claim filed. “The provision in subsection 2 that when it shall be made to appear by the affidavit of the claimant or other proof that he had no notice, the court may order his claim filed, is not unconstitutional and requires no

⁷² See, e.g., *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995) (“Actual notice must be given to those whose identity could be ascertained with reasonable effort [...] in the cases of persons missing or unknown, employment of an indirect and even probably futile means of notification, such as notice by publication, is all that the situation permits”). Further, a creditor is “reasonably ascertainable” if the creditor is discoverable through “due diligence to identify the decedent's potential creditors from all available sources at hand.” *In re Estate of Novakovich*, 101 P.3d 931, 938, ¶ 27, 2004 WY 158 (Wyo. 2004) (citation omitted).

judicial construction.” *Pacific States Sav., Loan & Bldg. Co. v. Fox*, 25 Nev. 229, 59 P. 4 (1889) (decision under former similar statute). See also *Bell Brand Ranches v. First Nat'l Bank*, 91 Nev. 88, 92 n.3, 531 P.2d 471, 473 (1975) (“Late filing is permitted if the creditor had no notice of the appointment of the administratrix.”).

In this case, the required notice is stipulated by statute. Notice *shall* be mailed to known creditors. NRS 155.020(4). Nonetheless, it is clear that the statutory notice was never mailed to Appellants. It is also clear that Appellants filed an affidavit to that effect, and the Probate Court denied Appellants’ petition.

2. The Probate Court’s reliance on the waiver statute is misplaced

Although the Probate Court relies on the Waiver Statute in denying Appellants’ petition, that reliance is misplaced. In 1988, the U.S. Supreme Court held that where a creditor is known to an estate, it is a violation of due process to time-bar that creditor’s claims without providing actual notice to that creditor directly. *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340 (1988). In *Pope*, the Supreme Court affirmed that a cause of action to collect an unpaid debt is a property interest secured by the fourteenth amendment. *Id.* The *Pope* court also found that the 14th Amendment applied to probate matters. *Id.*

It should be noted that despite Respondent’s contentions that Tulsa Professional Collection Services (“Tulsa Professional,” the appellant in *Pope*) had no notice of the death of Pope, a simple reading of the case shows this to be false. In

Pope, Tulsa Professional was the collection arm of the hospital in which Pope died after incurring substantial medical expenses. *Id.* at 482. The hospital knew of Pope's death and his incurred fees and yet, Tulsa Professional was allowed to file a claim despite Oklahoma's waiver statute because it had not received written notice from the estate.

This Supreme Court decision in *Pope* and the amended Nevada Statutes abrogate the authority that the Probate Court relied on to deny Appellants' petition.⁷³ This Court must overturn that erroneous decision. Despite arguments to the contrary in Respondent's Sur-Reply, *Pope* and the amended Nevada Statutes are clear – notice *shall* be given by mail to known creditors and claims are not time-barred without such notice.

3. The legislative history of the Waiver Statute, NRS 147.040(3) shows a change in the notice requirements

In the 1987 Statutes of Nevada, the Nevada Legislature changed the notice requirements to satisfy a creditor's due process rights.⁷⁴ The amendments added language the probate court clearly ignored in reaching its decision.

⁷³ During the pendency of *Pope*, the Nevada Legislature amended the Nevada Revised Statutes pertaining to notice in probate cases.

⁷⁴ 1987 amendments to the Nevada Revised Statutes. Retrieved at <https://www.leg.state.nv.us/Statutes/64th/Stats198704.html>, at pp. 781- 783 (Last accessed Aug. 20, 2021).

Specifically, NRS 147.010 was amended to add the mailing requirement to creditors.⁷⁵ Prior to 1987, the statute read “[i]mmediately after his appointment, every executor or administrator shall publish notice to creditors in the manner provided in paragraph (b) of subsection 1 of NRS 155.020.” *Id.* After the 1987 amendment, the statute was amended to its current language, which states “[a]n executor or administrator shall publish and mail notice to creditors in the manner provided in NRS 155.020.” *Id.* As a result, this amendment makes mailing notice to creditors mandatory.

NRS 155.020 was similarly amended to add mailing as a requirement for notice.⁷⁶ Prior to the 1987 amendment, the statute stated in subparagraph 1(a), “[n]otice of a petition for the probate of a will and the issuance of letters testamentary or for letters of administration and the notice to creditors must be given [t]o the persons respectively entitled thereto, by mail as provided in NRS 155.010.” *Id.* Subparagraph 1(b) states “[t]o the public at large by publication on three dates of publication before the hearing, and if the newspaper is published more than once a week there must be at least 10 days from the first to last dates of publication, including both the first and last days.” *Id.* Significantly, this is the outdated language

⁷⁵ *Id.*, at p. 781.

⁷⁶ *Id.*, at pp. 782-83,

the Probate Court relied upon in issuing its erroneous decision in favor of Respondents.

Significantly, subparagraph two was deleted in its entirety—the requirement that notice be given by publication. NRS 155.020(2) previously stated “[e]xcept as otherwise provided in NRS 145.050, notice to creditors of the appointment of an executor or administrator must be given by publication in the manner provided in paragraph (b) of subsection 1.” *Id.* This language was revoked in favor of *mailing* actual notice as added in the newly added paragraphs 4 and 5 in 1987.⁷⁷

After the 1987 amendment, per subparagraph 4, 155.020 mandates mailing and provides:

As soon as practicable after appointment, *every executor or administrator shall, in addition to publishing the notice to creditors, mail a copy of the notice to those creditors whose names and addresses are readily ascertainable and who have not already filed a claim.*

NRS 155.020(4) (emphasis added). The Court will note that since 1987, the statute has been amended, but it has never removed the requirement for the estate to mail notice to known creditors. Here, the Respondent *never* mailed notice to Appellants, who were reasonably ascertainable.

⁷⁷ *Id.*

4. Respondent had a duty to provide notice to Appellants

Even if Appellants arguendo were not reasonably ascertainable at the time Respondent provided the notice to creditors, Respondent had a duty to do so when notified by Appellants pursuant to the 1999 amendment to NRS 155.020⁷⁸ that added subparagraph 5. If before the last day for the filing of a creditor's claim under NRS 147.040, the personal representative discovers the existence of a creditor who was not readily ascertainable at the time of first publication of the notice to creditors, the personal representative shall immediately mail a copy of the notice to the creditor. NRS 155.020(5).

It is clear from the record that Commercial Plumbing knew it was in possession of funds for work not performed on Appellants' property. It is clear that even if it was somehow not aware, Appellants contacted Mr. McKechnie, a key Commercial Plumbing employee, within 90 days of the date the estate filed notice by publication. Appellants even directly contacted Respondent within those 90 days, but she ignored them. There is no excuse for Respondent's failure to provide notice by mail, in accordance with NRS 155.020 and it is clear error for the probate court to hold otherwise.

⁷⁸ Amendments to applicable statutes can be found at <https://www.leg.state.nv.us/Statutes/70th/Stats199914.html>, last accessed Aug. 20, 2021.

The Probate Court's decision relied on the Sur-reply filed by Respondent in the probate matter and heavily relies on whether Appellants knew about Decedent's estate and their duty of further inquiry; however, that is not the applicable standard. Despite Respondent's contentions, *actual notice by mail to readily ascertained creditors is the law*. This Court must reverse the probate court's erroneous decision and allow Appellants' claim.

C. APPELLANT'S DUE PROCESS RIGHTS WERE ABRIDGED BY RESPONDENT'S REFUSAL OF ITS CLAIM AS TIME-BARRED WHEN THE ESTATE FAILED TO PROVIDE THE REQUIRED NOTICE TO KNOWN CREDITORS PURSUANT TO NEVADA STATUTES

By its terms, NRS 147.040(3) permits a claimant to file a late claim only when "the claimant did not have notice as provided in NRS 155.020 or actual notice of the administration of the estate." Here, the record shows that the Estate administrator failed to provide Appellants with actual notice required by statute as a readily ascertainable creditor of the estate.

In *Cont'l Ins. Co. v. Moseley*, 100 Nev. 337, 337, 683 P.2d 20, 20 (1984), the Nevada Supreme Court found that the estate knew the insurance company had a claim against it. Similar to the case at bar, the estate had actual knowledge of a creditor's claim against the decedent but did not give the insurance company notice of the probate proceeding, except by way of publication. *Id.* The insurance company filed an action against the estate, and the Nevada Supreme Court ultimately reversed

the district court's denial of the insurance company's motion to publish notice and declaring the insurance company's claim forever barred after the U.S. Supreme Court vacated the Nevada Supreme Court's opinion and remanded in light of *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 792, 103 S. Ct. 2706, 2708 (1983) (the manner of notice provided to appellant mortgagee did not meet the requirements of the Due Process Clause of the 14th Amendment.). The *Adams* Court stated:

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), this Court recognized that prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ Invoking this ‘elementary and fundamental requirement of due process,’ *ibid.*, the Court held that *published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known*. The Court explained that *notice by publication was not reasonably calculated to provide actual notice of the pending proceeding and was therefore inadequate to inform those who could be notified by more effective means such as personal service or mailed notice*.

Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795, 103 S. Ct. 2706, 2709-10 (1983) (emphasis added). In light of *Adams*, this Court held that “more than service by publication was required in order to afford due process” to the creditor. *Id.*, at 338, 683 P.2d at 21. See *Grupo Famsa, S.A. de C.V. v. Eighth Judicial Dist. Court of Nev.*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) (“[Whether a particular

method of notice is reasonable depends on the particular [factual] circumstances.”) (quoting *Tulsa Profl Collection Servs., Inc. v. Pope*, supra at 484). Moreover, in *Pope*, the U.S. Supreme Court noted that it “[had] repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.” *Id.* at 490. *Prestige of Beverly Hills, Inc. v. Weber*, No. 55837, 2012 Nev. Unpub. LEXIS 422, at *9 (Mar. 21, 2012), citing *Greene v. Lindsey*, 456 U.S. 444, 455, 102 S. Ct. 1874, 72 L. Ed. 2d 249 (1982) (“[N]otice by mail may reasonably be relied upon to provide interested persons with actual notice of judicial proceedings.”). “Nevada law is in accord.” *Id.* See also *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998), citing *Pope*, 485 U.S. at 484-91 (emphasizing that the reasonableness of notice depends on the particular circumstances, and holding that a personal representative in a probate proceeding was required to make “reasonably diligent efforts” to identify creditors of the estate).

In light of the fact that the record clearly shows that the Estate failed to provide Appellants with actual notice required by statute as a readily ascertainable creditor of the estate, Appellants’ due process rights were violated.

D. AN EVIDENTIARY HEARING IS REQUIRED TO DETERMINE WHETHER THE NEVADA ESTATE MUST BE REOPENED

1. The fraud perpetrated by the original Estate administrator allows the estate proceedings in Nevada to be reopened

Appellants' request this Court to order that the estate be reopened to permit Appellants' claim. If necessary and in the alternative, Appellant request an evidentiary hearing be held in the Probate Court. This request was not addressed in the appealed Order. The reason for the requested evidentiary hearing was because the Respondent moved to close the estate without filing an accounting, which is suspect given the fraudulent action of the original administrator in the California probate matter. Respondent's motion was granted on May 10, 2019.

Fraud upon the court requires misrepresentation of a material fact intended to induce reliance that prevented judicial machinery from performing in a usual manner. *NC-DSH v. Garner*, 124 Nev. 647, 654 (2009). Despite the broad strokes used to dismiss these allegations, the factors are present in the probate matter. Respondent moved to close the estate without an accounting of the Estate's assets. The failure of an accounting is a significant reason Alfano was removed as representative from the California probate matter. In fact, as of the date of this motion, no accounting has been provided in the California matter. It is incongruous that an accounting would be ordered in California and not in Nevada when Decedent owned real property, operated his business, and had assets in both California and Nevada. Given these facts, it is obvious that the probate process in this case was extraordinarily defective, irregular, and wrongful. The Court must order the probate

reopened to endorse transparency, and so the clandestine and surreptitious maneuvering can see the light of day and be made known to the public.

Respondent claims that there were no known or reasonably ascertainable creditors when Commercial Plumbing was operating in Nevada and argues that “the Estate was only under a duty to mail notice of the creditors period only to those creditors who are readily ascertainable ‘before the last day for the filing of a creditor’s claim under NRS 147.040.’”⁷⁹ Since that period ended on October 25, 2018, the Estate had no obligation to provide Colonial with notice of the estate administration—by mail or otherwise.”⁸⁰ This assertion and the fact that Respondent was aware assets had been misappropriated by the initial administrator Alfano begs the question of this appeal: whether Appellants were a no known or reasonably ascertainable creditors and to what extent had assets been misappropriated by Alfano—perhaps including Appellants’ funds.

Respondent’s claim that there were no reasonably ascertained or known creditors and that no accounting was necessary clearly was designed to induce reliance by the Probate Court and anyone else claiming an interest in the estate of the fact that the proceedings were settled. Put simply, without notice to creditors and closing the estate without an accounting expedited the probate proceedings to

⁷⁹ ROA000122.

⁸⁰ *Id.*

foreclose any known creditors not receiving proper notice from filing a claim, such as Appellant. The Court must reopen the estate to allow Appellants' claim, or at the very least subject Respondent to an evidentiary hearing to determine whether reopening is proper.

2. The Probate Court allowed Respondent to close the estate, waiving the final accounting, contingent upon certain conditions being satisfied

Respondent moved to close the account upon waiver of the final accounting. Although no actual notice was given to any creditor, and instead was only served by publication, that motion was granted by order of the Probate Court on May 10, 2019. To the extent that order operates as the filing of the final account, that order was contingent on certain actions being completed by the estate and/or Respondent. However, there is no confirmation in the record that such contingencies were fulfilled.

Specifically, paragraph 8 of the May 10, 2019 Order states, "That on the filing of appropriate receipts, your Executor shall be discharged from further responsibilities as such Administrator and that said estate shall then be closed."⁸¹ Since that date, there have been no receipts filed in case number P-18-095892-E. In light of this, Appellants' claim is timely, or an evidentiary hearing needs to occur.

⁸¹ ROA000107-110.

CONCLUSION

It is clear that the Probate Court erred when it denied Appellants' petition. This is not the case of an unascertained creditor trying to swoop in to disrupt the fair, certain, and quick administration of estates in Nevada. Appellant is a known creditor that was entirely disregarded by the Respondent.

Further, as discussed below, amendments to NRS 147.040(3) added language the probate court clearly ignored in reaching its decision. The statutory scheme is designed to give due process, but it is clear here that due process was violated by the estate under the U.S. Supreme Court's holding *Tulsa Prof'l Collection Servs., Inc. v. Pope*, supra where the Court held that a cause of action to collect an unpaid debt is a property interest secured by the fourteenth amendment and also held that the 14th Amendment applied to probate matters. *Id.*

For the foregoing reasons, Appellants respectfully request this Court to vacate the district court's order and order the estate reopened and Appellant's claim be accepted. Alternatively, this Court should order an evidentiary hearing as to whether notice was required, and whether Appellants' fraud claims should reopen the estate to allow Appellants' claim.

DATED this 11th day of October 2021.

By:

/s/ Leo P. Flangas

FLANGAS CIVIL LAW FIRM, LTD.

LEO P. FLANGAS, ESQ

Nevada Bar No. 5637

600 S. 3rd Street

Las Vegas, NV 89101

Phone: (702) 384-1990

E-mail: leo@flangaslawfirm.com

Attorney for Appellants

NRAP 28.2 ATTORNEY CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman and is double-spaced.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7)(i)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is: Proportionately spaced, has a typeface of 12 points or more, and contains 8,510 words.

3. Finally, I hereby certify that I have read this Opening Brief on Appeal and Appendix, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

/s/ Leo P. Flangas

LEO P. FLANGAS, ESQ

Nevada Bar No. 5637

600 S. 3rd Street

Las Vegas, NV 89101

Phone: (702) 384-1990

E-mail: leo@flangaslawfirm.com

Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on October 12, 2021.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Natasha Smith

An employee of Flangas Law firm, Ltd.