

1 **NOAS (CIV)**
DENNIS L. KENNEDY
2 Nevada Bar No. 1462
PAUL C. WILLIAMS
3 Nevada Bar No. 12524
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7

8 *Attorneys for Defendant Sarah Janeen Rose*
9 *in Conjunction with the Legal Aid Center of*
10 *Southern Nevada Pro Bono Project*

11 DISTRICT COURT
CLARK COUNTY, NEVADA

12 DAVID JOHN ROSE, an individual,
13 Plaintiff,

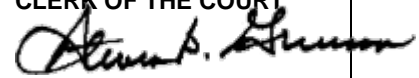
14 vs.

15 REGINA McCONNELL, ESQ., an individual;
16 McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH COOLEY,
17 ESQ., an individual; THE COOLEY LAW
FIRM, a Nevada Professional Limited Liability
18 Company; SARAH JANEEN ROSE, an
individual; DOE INDIVIDUALS I through X
19 and ROE CORPORATIONS XI through XX,
20 Defendants.

Case No. A-20-815750-C
Dept. No. 11

**DEFENDANT SARAH JANEEN ROSE'S
NOTICE OF APPEAL**

21 Notice is hereby given that Defendant Sarah Janeen Rose ("Sarah") hereby appeals, to the
22 Supreme Court of Nevada, the portions of the Order Granting in Part, and Denying in Part,
23 Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP),
24 entered in this action on August 27, 2020 (the "Order"), that found Plaintiff David John Rose's
25 ("David") breach of contract claim was not subject to a special motion to dismiss under Nevada's
26 anti-SLAPP statute (*see* Order at 5:26 – 6:2) and denied Sarah's Special Motion to Dismiss
27 Pursuant to NRS 41.660 (Anti-SLAPP) as to David's breach of contract claim against Sarah (*see id.*
28 at 7:8-9).



1 Sarah is represented by undersigned counsel on a *pro bono* basis. A copy of the Statement
2 of Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

3 DATED this 25th day of September, 2020.

4 BAILEY ♦ KENNEDY

5 By: /s/ Paul C. Williams

6 DENNIS L. KENNEDY

7 PAUL C. WILLIAMS

8 *Attorneys for Defendant Sarah Janeen Rose*
9 *in Conjunction with the Legal Aid Center of*
10 *Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 25th day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON	Email: sjohnson@cohenjohnson.com
RYAN D. JOHNSON	rjohnson@cohenjohnson.com
COHEN JOHNSON PARKER EDWARDS	
375 East Warm Springs Road, Suite 104	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89119	<i>David John Rose</i>

JOSEPH GARIN	Email: jgarin@lipsonneilson.com
LIPSON NEILSON P.C.	
9900 Covington Cross Drive, Suite 120	<i>Attorneys for Defendants McConnell Law</i>
Las Vegas, Nevada 89114	<i>Ltd. and Regina McConnell Esq.</i>

SHERI THOME	Email: sheri.thome@wilsonelser.com
WILSON ELSER MOSKOWITZ	
EDELMAN & DICKER	<i>Attorneys for Defendants Shelly Booth</i>
6689 Las Vegas Boulevard, South Suite 200	<i>Cooley, Esq. and the Cooley Law Firm</i>
Las Vegas, Nevada 89119	

/s/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY

Exhibit A

Exhibit A

SOLA

Dennis L. Kennedy, Esq.

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Attorney for the Defendant

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

Electronically Filed

7/6/2020 4:52 PM

Steven D. Grierson

CLERK OF THE COURT



DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. A-20-815750-C

DEPT. 11

**STATEMENT OF LEGAL AID
REPRESENTATION
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☐ Plaintiff/Petitioner

☒ Defendant/Respondent

STATEMENT

SARAH ROSE, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: June 16, 2020.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

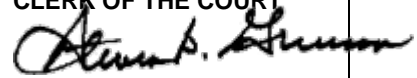
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4 PAUL C. WILLIAMS

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11 DKennedy@BaileyKennedy.com

12 PWilliams@BaileyKennedy.com

13 *Attorneys for Defendant Sarah Janeen Rose*
14 *in Conjunction with the Legal Aid Center of*
15 *Southern Nevada Pro Bono Project*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 DAVID JOHN ROSE, an individual,

19 Plaintiff,

20 vs.

21 REGINA McCONNELL, ESQ., an individual;
22 McCONNELL LAW LTD., a Nevada limited
23 liability company; SHELLY BOOTH COOLEY,
24 ESQ., an individual; THE COOLEY LAW
25 FIRM, a Nevada Professional Limited Liability
26 Company; SARAH JANEEN ROSE, an
27 individual; DOE INDIVIDUALS I through X
28 and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**DEFENDANT SARAH JANEEN ROSE'S
CASE APPEAL STATEMENT**

Defendant Sarah Janeen Rose hereby submits this Case Appeal Statement:

1. Name of appellant filing this case appeal statement:

Defendant Sarah Janeen Rose ("Sarah").

2. Identify the judge issuing the decision, judgment, or order appealed from:

Judge Elizabeth Gonzalez, Department 11, Eighth Judicial District Court.

///

///

///

3. Identify each appellant and the name and address of counsel for each appellant:

Sarah is represented by:

Dennis L. Kennedy
Paul C. Williams
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: (702) 562-8820
Facsimile: (702) 562-8821
DKennedy@BaileyKennedy.com
PWilliams@BaileyKennedy.com

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Plaintiff David John Rose ("David") is represented by:

H. Stan Johnson
Ryan D. Johnson
COHEN|JOHNSON|PARKER|EDWARDS
375 East Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
sjohnson@cohenjohnson.com
rjohnson@cohenjohnson.com
jedwards@cohenjohnson.com
aedwards@cohenjohnson.com

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Not applicable.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Sarah is represented by undersigned counsel, on a *pro bono* basis in conjunction with the Legal Aid Center of Southern Nevada Pro Bono Project, in the district court. A copy of the Statement of Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

1 **7. Indicate whether appellant is represented by appointed or retained counsel on**
2 **appeal:**

3 Sarah is represented by undersigned counsel, on a *pro bono* basis in conjunction with the
4 Legal Aid Center of Southern Nevada Pro Bono Project, on appeal. A copy of the Statement of
5 Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

6 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
7 **the date of entry of the district court order granting such leave:**

8 Not applicable. However, a copy of the Statement of Legal Aid Representation, filed on July
9 6, 2020, is attached hereto as Exhibit A.

10 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
11 **complaint, indictment, information, or petition was filed):**

12 The Complaint was filed on May 29, 2020.

13 **10. Provide a brief description of the nature of the action and result in the district**
14 **court, including the type of judgment or order being appealed and the relief granted by the**
15 **district court:**

16 This case concerns a Memorandum of Understanding (“MOU”) and a Stipulated Decree of
17 Divorce (the “Divorce Decree”) entered in a related divorce action, *David John Rose v. Sarah*
18 *Janeen Rose*, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before
19 the Family Division of the Eighth Judicial District Court (the “Family Court”). In essence, David
20 contends that Sarah and her former counsel in the Divorce Action breached the MOU by inserting
21 language in the Divorce Decree that provided Sarah with survivor benefits under David’s Public
22 Employees Retirement System (“PERS”) pension—even though the MOU does not contain any
23 terms or references to survivor benefits under David’s PERS pension. Notably, David has a pending
24 motion to set aside the Divorce Decree in the Divorce Action.

25 David initially asserted a claim for civil conspiracy and breach of contract against Sarah and
26 her former counsel. David also asserted claims for legal malpractice against his former counsel in
27 the Divorce Action based on the same issue (that Sarah was awarded survivor benefits under the
28 terms of the Divorce Decree).

1 On July 6, 2020, Sarah filed a Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-
2 SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)
3 (the “Special Motion to Dismiss”).

4 On August 27, 2020, the district court entered an Order Granting in Part, and Denying in
5 Part, Defendant Sarah Janeen Rose’s Special Motion to Dismiss Pursuant to NRS 41.660 (anti-
6 SLAPP) (the “Order”). In essence, the district court found David’s civil conspiracy claim against
7 Sarah was subject to Nevada’s anti-SLAPP statute, but that his breach of contract claim was not.
8 (*See generally* Order.) The district court dismissed David’s civil conspiracy claim because David
9 “failed to demonstrate, with ‘prima facie evidence,’ that he ha[d] a ‘probability of prevailing.’” (*Id.*
10 at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).) The district court denied Sarah’s motions to dismiss
11 under NRCP 12(b)(1) and NRCP 12(b)(5), which she had sought in the alternative, “without
12 prejudice to renewal in an NRCP 12(b) response.” (*Id.* at 7:10-12.)

13 Sarah now appeals the portions of the Order that found David’s breach of contract claim
14 was not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute (*see* Order at
15 5:26 – 6:2) and denied Sarah’s Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)
16 as to David’s breach of contract claim against Sarah (*see id.* at 7:8-9).

17 **11. Indicate whether the case has previously been the subject of an appeal to or**
18 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
19 **docket number of the prior proceeding:**

20 Not applicable.

21 **12. Indicate whether this appeal involves child custody or visitation:**

22 Not applicable.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
2 **settlement:**

3 Yes.

4 DATED this 25th day of September, 2020.

5 BAILEY ♦ KENNEDY

6 By: /s/ Paul C. Williams

7 DENNIS L. KENNEDY

8 PAUL C. WILLIAMS

9 *Attorneys for Defendant Sarah Janeen Rose*
10 *in Conjunction with the Legal Aid Center of*
11 *Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 25th day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON	Email: sjohnson@cohenjohnson.com
RYAN D. JOHNSON	rjohnson@cohenjohnson.com
COHEN JOHNSON PARKER EDWARDS	
375 East Warm Springs Road, Suite 104	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89119	<i>David John Rose</i>

JOSEPH GARIN	Email: jgarin@lipsonneilson.com
LIPSON NEILSON P.C.	
9900 Covington Cross Drive, Suite 120	<i>Attorneys for Defendants McConnell Law</i>
Las Vegas, Nevada 89114	<i>Ltd. and Regina McConnell Esq.</i>

SHERI THOME	Email: sheri.thome@wilsonelser.com
WILSON ELSER MOSKOWITZ	
EDELMAN & DICKER	<i>Attorneys for Defendants Shelly Booth</i>
6689 Las Vegas Boulevard, South Suite 200	<i>Cooley, Esq. and the Cooley Law Firm</i>
Las Vegas, Nevada 89119	

/s/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY

Exhibit A

Exhibit A

SOLA

Dennis L. Kennedy, Esq.

Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

dkennedy@baileykennedy.com

Attorney for the Defendant

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

Electronically Filed

7/6/2020 4:52 PM

Steven D. Grierson

CLERK OF THE COURT



DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. A-20-815750-C

DEPT. 11

**STATEMENT OF LEGAL AID
REPRESENTATION
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☐ Plaintiff/Petitioner

☒ Defendant/Respondent

STATEMENT

SARAH ROSE, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: June 16, 2020.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

Dennis L. Kennedy, Esq.

Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

dkennedy@baileykennedy.com

CASE SUMMARY**CASE NO. A-20-815750-C****David Rose, Plaintiff(s)****vs.****Regina McConnell, ESQ, Defendant(s)**§
§
§
§
§Location: **Department 11**
Judicial Officer: **Gonzalez, Elizabeth**
Filed on: **05/29/2020**
Cross-Reference Case Number: **A815750****CASE INFORMATION**Case Type: **Legal Malpractice**Case Status: **05/29/2020 Open****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-20-815750-C
Court Department 11
Date Assigned 05/29/2020
Judicial Officer Gonzalez, Elizabeth**PARTY INFORMATION**

Plaintiff	Rose, David John	<i>Lead Attorneys</i> Edwards, James L, ESQ <i>Retained</i> 702-384-8000(W)
Defendant	Booth Cooley, Shelly, ESQ	Thome, Sheri M. <i>Retained</i> 702-727-1400(W)
	Cooley Law Firm	Thome, Sheri M. <i>Retained</i> 702-727-1400(W)
	McConnell Law Ltd	Garin, Joseph P <i>Retained</i> 702-382-1500(W)
	McConnell, Regina, ESQ	Garin, Joseph P <i>Retained</i> 702-382-1500(W)
	Rose, Sarah Janeen	Kennedy, Dennis L. <i>Retained</i> 7025628820(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

05/29/2020



Complaint

Filed By: Plaintiff Rose, David John
Complaint

05/29/2020




Initial Appearance Fee Disclosure

Filed By: Plaintiff Rose, David John
Initial Appearance Fee Disclosure












CASE SUMMARY

CASE NO. A-20-815750-C

05/29/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Rose, David John <i>Summons - McConnell</i>
05/29/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Rose, David John <i>Summons - McConnell Law</i>
05/29/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Rose, David John <i>Summons - Cooley</i>
05/29/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Rose, David John <i>Summons - Cooley Law</i>
05/29/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Rose, David John <i>Summons - S Rose</i>
06/10/2020	 Affidavit of Service Filed By: Plaintiff Rose, David John <i>Affidavit of Service</i>
07/01/2020	 Affidavit of Service Filed By: Plaintiff Rose, David John <i>Affidavit of Service - McConnell Law Ltd</i>
07/01/2020	 Acceptance of Service Filed By: Plaintiff Rose, David John <i>Acceptance of Service - R McConnell</i>
07/01/2020	 Waiver Filed by: Plaintiff Rose, David John <i>Waiver of Service of Summons Under Rule 4.1 and Acceptance of Service</i>
07/02/2020	 Initial Appearance Fee Disclosure Filed By: Defendant McConnell, Regina, ESQ; Defendant McConnell Law Ltd <i>Initial Appearance Fee Disclosure</i>
07/02/2020	 Answer to Amended Complaint Filed By: Defendant McConnell, Regina, ESQ; Defendant McConnell Law Ltd <i>Defendants McConnell Law LTD., and Regina McConnell, Esq.'s Answer and Affirmative Defenses to Plaintiff David John Rose's Third Amended Complaint</i>
07/06/2020	 Statement of Legal Aid Representation and Fee Waiver For: Defendant Rose, Sarah Janeen <i>Statement of Legal Aid Representation (Pursuant to NRS 12.015)</i>
07/06/2020	 Motion to Dismiss Filed By: Defendant Rose, Sarah Janeen <i>Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>

CASE SUMMARY

CASE NO. A-20-815750-C

07/06/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Rose, Sarah Janeen <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
07/08/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/13/2020	 Joinder To Motion Filed By: Defendant McConnell, Regina, ESQ; Defendant McConnell Law Ltd <i>Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Antislapp), or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(1) and NRCP 12(B)(5)</i>
07/22/2020	 Request for Exemption From Arbitration Filed by: Defendant Rose, Sarah Janeen <i>Defendant Sarah Janeen Rose's Request for Exemption from Arbitration</i>
07/29/2020	 Opposition Filed By: Plaintiff Rose, David John <i>Opposition to Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-Slapp), or in the Alternative Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and Opposition to Defendant Regina McConnell Esq and Mocconnell Law Ltd's Joinder to Defendant Sarah Janeen Rose's Special Motion tod Dismiss Pursuant o NRS 41.660 (Anti)Slapp), or in the Alternative Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>
07/29/2020	 Opposition Filed By: Plaintiff Rose, David John <i>Opposition To Defendant Sarah Janeen Rose s Special Motion To Dismiss Pursuant To Nrs 41.660 (Anti-Slapp), Or In The Alternative Motion To Dismiss Purusant To Nrcp 12(B)(1) And Nrcp 12(B)(5). And Opposition To Defendants Regina Mcconnell, Esq. And Mocconnell Law Lid s Joinder To Defendant Sarah Janeen Rose s Special Motion Tod Dismiss Pursuant To Nrs 41.660 (Anti-Slapp), Or In The Alternative Motion To Dismiss Purusant To Nrcp 12(B)(1) And Nrcp 12(B)(5).</i>
07/29/2020	 Declaration Filed By: Plaintiff Rose, David John <i>Declaration of James L. Edwards</i>
07/29/2020	 Exhibits Filed By: Plaintiff Rose, David John <i>Exhibits</i>
08/04/2020	 Reply in Support Filed By: Defendant Rose, Sarah Janeen <i>Defendant Sarah Janeen Rose's Reply in Support of her Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i>
08/07/2020	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
08/21/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Booth Cooley, Shelly, ESQ; Defendant Cooley Law Firm <i>Defendants Shelly Booth Cooley and The Cooley Law Firm's Initial Appearance Fee</i>

CASE SUMMARY

CASE NO. A-20-815750-C

Disclosure (NRS Chapter 19)

08/21/2020



Motion to Dismiss

Filed By: Defendant Booth Cooley, Shelly, ESQ; Defendant Cooley Law Firm
Defendants Shelly Booth Cooley and The Cooley Law Firm's anti-Slapp Motion and Motion to Dismiss Under NRCP 12(b)(5)

08/24/2020



Clerk's Notice of Hearing

Notice of Hearing

08/27/2020



Order

Order Granting in Part and Denying in Part Defendant Sarah Janeen Rose Special Motion to Dismiss Pursuant to NRS 41.660 - Anti-Slapp

08/27/2020



Joinder To Motion

Filed By: Defendant McConnell, Regina, ESQ; Defendant McConnell Law Ltd
Defendants Regina Mcconnell, Esq. and Mcconnell Law Ltd. s Limited Joinder To Defendants Shelly Booth Cooley And The Cooley Law Firm S Special Anti-Slapp Motion And Motion To Dismiss Under NRCP 12(B)(5)

08/27/2020



Notice of Entry of Order

Filed By: Defendant Rose, Sarah Janeen
Notice of Entry of Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)

09/09/2020



Notice of Non Opposition

Filed By: Defendant Booth Cooley, Shelly, ESQ; Defendant Cooley Law Firm
Notice of Non Opposition to Defendants Shelly Booth Cooley and The Cooley Law Firm's anti-Slapp Motion and Motion to Dismiss Under NRCP 12(b)(5)

09/10/2020



Motion to Dismiss

Filed By: Defendant Rose, Sarah Janeen
Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)

09/10/2020



Motion for Attorney Fees

Filed By: Defendant Rose, Sarah Janeen
Defendant Sarah Janeen Rose's Motion for Attorney's Fees

09/11/2020



Clerk's Notice of Hearing

Notice of Hearing

09/11/2020



Clerk's Notice of Hearing

Notice of Hearing

09/15/2020



Clerk's Notice of Hearing

Clerk's Notice of Hearing

09/16/2020



Opposition to Motion

Filed By: Plaintiff Rose, David John
Opposition to Defendants Shelly Booth Cooley and the Cooley Law Firm's Anti-Slapp Motion and Motion to Dismiss Under NRCP 12(b)(5)

09/18/2020



Reply in Support

Filed By: Defendant Booth Cooley, Shelly, ESQ; Defendant Cooley Law Firm

CASE SUMMARY

CASE NO. A-20-815750-C

Reply In Support Of Defendants Shelly Booth Cooley and The Cooley Law Firm s anti-Slapp Motion and Motion To Dismiss Under NRCP 12(b)(5)

09/25/2020



Notice of Appeal

Filed By: Defendant Rose, Sarah Janeen

Defendant Sarah Janeen Rose's Notice of Appeal

09/25/2020



Case Appeal Statement

Filed By: Defendant Rose, Sarah Janeen

Defendant Sarah Janeen Rose's Case Appeal Statement

09/28/2020



Opposition to Motion

Filed By: Plaintiff Rose, David John

OPPOSITION TO DEFENDANT SARAH JANEEN ROSE S MOTION FOR ATTORNEYS FEES

09/28/2020



Opposition to Motion to Dismiss

Filed By: Plaintiff Rose, David John

OPPOSITION TO DEFENDANT SARAH JANEEN ROSE S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5).

09/28/2020



Certificate of Service

Filed by: Plaintiff Rose, David John

Certificate of Service of OPPOSITION TO DEFENDANT SARAH JANEEN ROSE S MOTION FOR ATTORNEYS FEES

DISPOSITIONS

08/27/2020

Order of Dismissal With Prejudice (Judicial Officer: Gonzalez, Elizabeth)

Debtors: David John Rose (Plaintiff)

Creditors: Sarah Janeen Rose (Defendant)

Judgment: 08/27/2020, Docketed: 08/31/2020

Comment: Certain Claims

HEARINGS

08/11/2020

Motion to Dismiss (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)

Granted in Part;

08/11/2020

Joinder (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Antislapp), or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(1) and NRCP 12(B)(5)

Minute Order - No Hearing Held;

08/11/2020



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order - No Hearing Held;


Journal Entry Details:

DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP), OR, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)...DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL LAW LTD.'S JOINDER TO DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTISLAPP), OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5) Pursuant to Administrative Order 20-01, the Court decides this matter without the necessity of oral argument. The Court, having reviewed the Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) Motion to Dismiss Pursuant to NRS 41.660

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-815750-C

	<p>(Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and the related briefing and being fully informed, GRANTS the motion IN PART as to the civil conspiracy claim only. The conduct and statements at issue related to the ongoing domestic proceeding in D-17-547250-D. The allegations in this cause of action as to Ms. Rose are " [w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body." Counsel for Ms. Rose is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8-11-20;</p>
09/22/2020	<p>Motion to Dismiss (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Defendants Shelly Booth Cooley and The Cooley Law Firm's anti-Slapp Motion and Motion to Dismiss Under NRCP 12(b)(5)</i> Granted in Part;</p>
09/22/2020	<p>Joinder (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Defendants Regina Mcconnell, Esq. and Mcconnell Law Ltd. s Limited Joinder To Defendants Shelly Booth Cooley And The Cooley Law Firm S Special Anti-Slapp Motion And Motion To Dismiss Under NRCP 12(B)(5)</i> Matter Heard;</p>
09/22/2020	<p> All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details: <i>DEFENDANTS SHELLY BOOTH COOLEY AND THE COOLEY LAW FIRM'S ANTI-SLAPP MOTION AND MOTION TO DISMISS UNDER NRCP 12(B)(5)...DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL LAW LTD. 'S LIMITED JOINDER TO DEFENDANTS SHELLY BOOTH COOLEY AND THE COOLEY LAW FIRM'S SPECIAL ANTI-SLAPP MOTION AND MOTION TO DISMISS UNDER NRCP 12(B)(5) Following arguments by counsel, COURT ORDERED, motion GRANTED on the 12(b)(5) issue only; the MoU for the divorce is not between the attorney and Sarah Rose and David Rose; it is between Sarah Rose and David Rose; the breach of contract claim is DISMISSED against Shelly Cooley and the Cooley Law Firm on 12(b)(5). Upon Ms. Thome's inquiry, COURT NOTED they do not get the benefit of 12(b)(5) on civil conspiracy. 10-16-20 CHAMBERS DEFENDANT SARAH JANEEN ROSE'S MOTION FOR ATTORNEY'S FEES 10-29-20 9:00 AM DEFENDANT SARAH JANEEN ROSE'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5);</i></p>
10/16/2020	<p>Motion for Fees (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Defendant Sarah Janeen Rose's Motion for Attorney's Fees</i></p>
10/29/2020	<p>Motion to Dismiss (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)</i></p>

DATE	FINANCIAL INFORMATION																		
	<p>Defendant Booth Cooley, Shelly, ESQ</p> <table> <tr> <td>Total Charges</td><td>253.00</td></tr> <tr> <td>Total Payments and Credits</td><td>253.00</td></tr> <tr> <td>Balance Due as of 9/29/2020</td><td>0.00</td></tr> </table> <p>Defendant McConnell Law Ltd</p> <table> <tr> <td>Total Charges</td><td>253.00</td></tr> <tr> <td>Total Payments and Credits</td><td>253.00</td></tr> <tr> <td>Balance Due as of 9/29/2020</td><td>0.00</td></tr> </table> <p>Defendant Rose, Sarah Janeen</p> <table> <tr> <td>Total Charges</td><td>24.00</td></tr> <tr> <td>Total Payments and Credits</td><td>24.00</td></tr> <tr> <td>Balance Due as of 9/29/2020</td><td>0.00</td></tr> </table>	Total Charges	253.00	Total Payments and Credits	253.00	Balance Due as of 9/29/2020	0.00	Total Charges	253.00	Total Payments and Credits	253.00	Balance Due as of 9/29/2020	0.00	Total Charges	24.00	Total Payments and Credits	24.00	Balance Due as of 9/29/2020	0.00
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Total Payments and Credits	24.00																		
Balance Due as of 9/29/2020	0.00																		

CASE SUMMARY

CASE NO. A-20-815750-C

Plaintiff Rose, David John

Total Charges

270.00

Total Payments and Credits

270.00

Balance Due as of 9/29/2020

0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

CASE NO: A-20-815750-C
Department 11

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center;">David John Rose</div> <div style="text-align: center;">c/o Cohen Johnson Parker Edwards</div> <div style="text-align: center;">375 E Warm Springs Road, Ste 104</div> <div style="text-align: center;">Las Vegas, NV 89119 702-823-3500</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Regina McConnell, Esq., McConnell Law, Ltd.,</div> <div style="text-align: center;">Shelly Booth Cooley, Esq., The Cooley Law Firm, a Professional LLC,</div> <div style="text-align: center;">Sarah Janeen Rose</div>
Attorney (name/address/phone): <div style="text-align: center;">James L. Edwards, Esq.</div> <div style="text-align: center;">375 E Warm Springs Road, Ste 104</div> <div style="text-align: center;">Las Vegas, NV 89119 702-823-3500</div>	Attorney (name/address/phone): <div style="text-align: center;">Unknown</div>

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

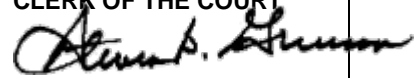
Business Court filings should be filed using the Business Court civil coversheet.

5/29/2020

Date


 Signature of initiating party or representative

See other side for family-related case filings.



ORDR (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

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PWilliams@BaileyKennedy.com

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH COOLEY,
ESQ., an individual; THE COOLEY LAW
FIRM, a Nevada Professional Limited Liability
Company; SARAH JANEEN ROSE, an
individual; DOE INDIVIDUALS I through X
and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on August 11, 2020 (in chambers) on:

- Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Special Motion to Dismiss"); and
- Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the

Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the “Joinder”).

FINDINGS OF FACT

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings of Fact with regard to the Special Motion to Dismiss and the Joinder:

1. Plaintiff David John Rose (“David”) and Defendant Sarah Janeen Rose (“Sarah”) were married on June 17, 2006.

2. On February 22, 2017, David filed a Complaint for Divorce against Sarah; the divorce matter is entitled David John Rose v. Sarah Janeen Rose, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before the Family Division of the Eighth Judicial District Court (the “Family Court”).

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg¹ in an effort to resolve the Divorce Action.

4. At the time of the mediation, David was represented by Defendants Regina McConnell, Esq. and McConnell Law Ltd. (jointly, the “McConnell Defendants”) and Sarah was represented by Defendants Shelly Booth Cooley (“Cooley”) and The Cooley Law Firm (jointly the “Cooley Defendants”).

5. David alleges, and Sarah denies, that during the course of the mediation Sarah requested that David name her as the survivor beneficiary of David’s Public Employees Retirement System (“PERS”) pension. David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah.

6. The mediation was successful and Judge Forsberg drafted a three-page Memorandum of Understanding (the “MOU”). The MOU states that its purpose was “to memorialize” the parties’ agreement. The MOU stated it included the “material terms” of their

¹ Judge Forsburg was appointed to Department G of the Family Division of the Eighth Judicial District Court after the mediation.

1 agreement and was intended to bind the parties to those material terms. The MOU provided “that
2 counsel for Sarah shall draft a final formal agreement incorporating the terms herein,” and “[t]hat
3 [final formal] agreement shall be ratified by the Court, but shall not merge and shall retain its
4 separate nature as a contract.” The MOU did not address survivor benefits.

5 7. After Sarah and David executed the MOU, Sarah (through her counsel) typed a 39-
6 page Stipulated Decree of Divorce (the “Divorce Decree”), to which the MOU was included as an
7 exhibit. David and his counsel (McConnell) were given a copy of the Divorce Decree for their
8 review. The Divorce Decree provided that David would name Sarah as the irrevocable survivor
9 beneficiary of David’s PERS pension.

10 8. Sarah and David executed the Divorce Decree and Sarah (through her counsel)
11 submitted the Divorce Decree to the judge assigned to the Divorce Action—the Divorce Decree
12 was filed on April 11, 2018.

13 9. On April 25, 2018, David filed (in the Divorce Action) a Motion to Set Aside the
14 Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake (the
15 “Motion to Set Aside”). In essence, David contends that he did not agree to designate Sarah as the
16 survivor beneficiary and the inclusion of that term in the Divorce Decree was a mistake. The
17 Family Court initially granted David’s Motion to Set Aside, removing the award of survivor
18 benefits to Sarah from the Divorce Decree.

19 10. On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the
20 Alternative, for New Trial Pursuant to NRCP 59(a)(7). On January 16, 2019, the Family Court
21 entered an order setting aside its prior order granting David’s Motion to Set Aside and set the
22 matter (including David’s Motion to Set Aside) for an evidentiary hearing.

23 11. The Court began the evidentiary hearing on the Motion to Set Aside (and other
24 motions) on January 27, 2020. The evidentiary hearing has not yet concluded.

25 12. On May 29, 2020, David initiated this action.

26 13. David asserts various causes of action against the McConnell Defendants, alleging
27 they committed legal malpractice by “a. Failing to actively participate in drafting the Decree to
28 ensure the agreed upon terms are properly reflected in the final draft; b. Failing to properly read,

1 review, and object to the Decree that contained unfavorable terms that [David] did not agree to;
2 and c. Advising [David] to sign the Decree that contained unfavorable terms that [David] did not
3 agree to.” (Compl. ¶ 25.)

4 14. David asserts two causes of action against Sarah and the Cooley Defendants.

5 (a) First, David asserts a claim for civil conspiracy against Sarah and the Cooley
6 Defendants, alleging they “acted in concert to intentionally defraud [David] into signing the
7 legally binding Decree of Divorce with terms that were not agreed to” and that they “had no
8 intention of abiding to the agreed upon terms as outlined in the MOU.” (*Id.* ¶¶ 41-42.)

9 (b) Second, David asserts that Sarah and Cooley breached an agreement that
10 Sarah would not receive survivor benefits (which he alleges is reflected in the MOU even
11 though it does not address survivor benefits) by: “a. Drafting the Decree of Divorce, which
12 contained terms that SARAH would be entitled to survivorship benefits under Plaintiff’s
13 PERS account; b. Submitting the Decree of Divorce so that its terms become legally
14 enforceable; c. Seeking to enforce the survivorship benefit from the Decree, despite being
15 contradictory to the agreed upon terms of the MOU.” (*Id.* ¶ 47.)

16 CONCLUSIONS OF LAW

17 The Court, having examined the briefs of the parties, the records and documents on file,
18 being fully advised of the premises, and good cause appearing, hereby makes the following
19 Conclusions of Law with regard to the Special Motion to Dismiss and the Joinder:

20 15. In 1993, the Nevada legislature adopted an anti-SLAPP statute based upon
21 California’s anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d
22 1276, 1281 (2009). “A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill
23 the defendant’s exercise of First Amendment rights.” *Id.* at 752, 219 P.3d at 1280 (internal
24 quotation marks omitted). “SLAPP lawsuits abuse the judicial process by chilling, intimidating,
25 and punishing individuals for their involvement in public affairs.” *Id.* at 752, 219 P.3d at 1281.

26 16. Nevada’s anti-SLAPP statute provides that a defendant may file a special motion to
27 dismiss within 60 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant
28 filing a special motion to dismiss has the initial burden of demonstrating, by a preponderance of the

evidence, that the claims at issue are “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). Then, if the moving defendant meets her initial burden, the burden shifts to the plaintiff to demonstrate, with “prima facie evidence,” that he has a “probability of prevailing on the claim.” NRS 41.660(3)(c). If the plaintiff fails to meet his burden, the matter must be dismissed and “the dismissal operates as an adjudication on the merits.” NRS 41.660(5).

17. Nevada’s anti-SLAPP statute defines a “[g]ood faith communication in furtherance of the right to free speech in direct connection with an issue of public concern” by four categories of communication. *See* NRS 41.637. One such category protects “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . **judicial body**” NRS 41.637(3) (emphasis added). To qualify for this category, “the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). Finally, the communication must be “truthful or . . . made without knowledge of its falsehood.” NRS 41.637. The Court finds David’s civil conspiracy claim against Sarah concerns conduct and statements at issue related to the ongoing Divorce Action and thus is based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body.” The Court further finds that Sarah’s conduct and statements “relate to the substantive issues in the litigation” and are “directed to persons having some interest in the litigation,”—specifically, to David and the Family Court. *See Patin*, 134 Nev. at 726, 429 P.3d at 1251. The Court further finds that Sarah’s conduct and alleged statements are not false—even assuming Sarah and David had orally agreed that Sarah would not receive survivor benefits at the mediation, neither their alleged agreement nor the inclusion of the survivor benefits in the Divorce Decree are false statements. *See* NRS 41.637. Accordingly, the Court finds that David’s civil conspiracy claim against Sarah is subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

18. The Court finds David’s breach of contract claim against Sarah is not based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . .

1 judicial body.” Accordingly, the Court finds that David’s breach of contract claim against Sarah is
2 not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

3 19. The Court finds David has failed to demonstrate, with “prima facie evidence,” that
4 he has a “probability of prevailing” on his civil conspiracy claim. *See* NRS 41.660(3)(c).

5 (a) First, David’s conspiracy claim fails as matter of law because a client cannot
6 conspire with her legal counsel who is acting within the scope of attorney-client
7 relationship. *See Crossroads Partners v. Utah Crossing, Ltd.*, Nos. 98-15673, 98-15674,
8 1999 U.S. App. LEXIS 22721, at *10 (9th Cir. Sep. 9, 1999) (finding, under Nevada law, a
9 civil conspiracy between a client and a lawyer was barred because “[t]here can be no
10 conspiracy between an agent and its principal when the agent acts only in the agent’s
11 official capacity on behalf of the principal, and not for the agent’s private benefit.”); *Fraidin*
12 *v. Weitzman*, 611 A.2d 1046, 1079 (Md. 1992) (“There can be no conspiracy when an
13 attorney acts within the scope of his employment.”); *Macke Laundry Serv. Ltd. Pshp. v. Jetz*
14 *Serv. Co.*, 931 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As an agent of the client, an attorney
15 acts as the client’s alter ego and not for the attorney,” and thus “an identity between agent
16 and principal leads to a legal impossibility in the context of conspiracy,” because “[t]wo
17 entities which are not legally distinct cannot conspire with one another.”); *accord Collins v.*
18 *Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“Agents and
19 employees of a corporation cannot conspire with their corporate principal or employer
20 where they act in their official capacities on behalf of the corporation and not as individuals
21 for their individual advantage.”).

22 (b) Second, David’s conspiracy claim fails as a matter of law because David
23 cannot assert fraud based on an alleged term (the survivor benefits) that is contradicted by
24 the unambiguous terms of a written agreement (the Divorce Decree). *See Rd. & Highway*
25 *Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012).

26 (c) Third, David’s conspiracy claim fails as a matter of law because David
27 cannot assert fraud based solely on Sarah’s alleged failure to perform. *See id.* at 389, 284
28

P.3d at 380 (“[T]here is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed.”).

ORDER

Based on the foregoing Findings and good cause appearing,

IT IS HEREBY ORDERED that the Special Motion to Dismiss is GRANTED pursuant to NRS 41.660 (anti-SLAPP) as to David’s civil conspiracy claim, which is hereby DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Special Motion to Dismiss and Joinder are DENIED as to David’s breach of contract claim against Sarah.

IT IS FURTHER ORDERED that Sarah’s motions to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), sought in the alternative, are DENIED without prejudice to renewal in an NRCP 12(b) response.

DATED this 27th day of August, 2020.



THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

Attorneys for Defendant Sarah Janeen Rose

~~Approved as to Form and Content By:~~

~~COHEN | JOHNSON | PARKER | EDWARDS~~

By: _____

~~JAMES L. EDWARDS~~

~~ADAM C. EDWARDS~~

~~375 East Warm Springs Road, Suite 104~~

~~Las Vegas, Nevada 89119~~

~~Attorneys for Plaintiff David John Rose~~

Approved as to Form and Content By:

WILSON ELSER MOSKOWITZ EDELMAN & DICKER

By: /s/ Sheri Thome

SHERI THOME

6689 Las Vegas Boulevard, South, Suite 200

Las Vegas, Nevada 89119

Attorneys for Defendants Shelly Booth Cooley, Esq. and the Cooley Law Firm

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.

Paul Williams

From: Paul Williams
Sent: Friday, August 21, 2020 2:11 PM
To: 'jedwards@cohenjohnson.com'; 'aedwards@cohenjohnson.com'
Cc: Sharon Murnane; 'Kim Glad'; 'Thome, Sheri'; 'Maile, Lani U.'; 'Joe Garin'; 'Susana Nutt'; 'sjohnson@cohenjohnson.com'; 'sgondek@cohenjohnson.com'
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Having not heard from you, we will submit the draft order to the Court (it is due today), using a strike-through on your signature block to indicate you have not approved as to form or content.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

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From: Paul Williams
Sent: Wednesday, August 19, 2020 4:40 PM
To: jedwards@cohenjohnson.com; aedwards@cohenjohnson.com
Cc: Sharon Murnane <SMurnane@baileykennedy.com>; 'Kim Glad' <KGLad@lipsonneilson.com>; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>; sjohnson@cohenjohnson.com; sgondek@cohenjohnson.com
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Following up on the draft order. If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

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From: Kim Glad <KGlad@lipsonneilson.com>
Sent: Monday, August 17, 2020 10:01 AM
To: Thome, Sheri <Sheri.Thome@wilsonelser.com>; Paul Williams <PWilliams@baileykennedy.com>;
jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com;
sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>;
Susana Nutt <SNutt@lipsonneilson.com>
Cc: Sharon Murnane <SMurnane@baileykennedy.com>
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Dear Mr. Williams,

On behalf of Joe Garin, please be advised that you may affix his electronic signature to the Proposed Order.

Should you have any questions, please feel free to contact Mr. Garin directly.

Sincerely,
Kim



Kim Glad, Legal Assistant
Las Vegas Office
9900 Covington Cross, Suite 120
Las Vegas, NV 89144
(702) 382-1500 ext. 124
(702) 382-1512 (fax)
Email: kglad@lipsonneilson.com
Website: www.lipsonneilson.com

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From: Thome, Sheri <Sheri.Thome@wilsonelser.com>

Sent: Friday, August 14, 2020 2:25 PM

To: Paul Williams <PWilliams@baileykennedy.com>; jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Kim Glad <KGlad@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Paul,

You may affix my electronic signature. Thank you.

Sheri Thome
Attorney at Law
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sheri.thome@wilsonelser.com

From: Paul Williams [<mailto:PWilliams@baileykennedy.com>]

Sent: Friday, August 14, 2020 9:44 AM

To: jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; jgarin@lipsonneilson.com; kglad@lipsonneilson.com; snutt@lipsonneilson.com

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: Rose v. McConnell - Draft Order on Special MTD

[EXTERNAL EMAIL]

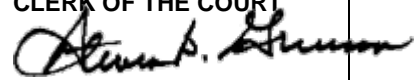
Hi all,

Attached is a draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP). Please let me know if you have any proposed revisions.

If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams



NEOJ (CIV)
DENNIS L. KENNEDY
Nevada Bar No. 1462
PAUL C. WILLIAMS
Nevada Bar No. 12524
BAILEY ♦ KENNEDY
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*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,
Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH
COOLEY, ESQ., an individual; THE
COOLEY LAW FIRM, a Nevada Professional
Limited Liability Company; SARAH JANEEN
ROSE, an individual; DOE INDIVIDUALS I
through X and ROE CORPORATIONS XI
through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**NOTICE OF ENTRY OF
ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

PLEASE TAKE NOTICE that an Order Granting in Part, and Denying in Part, Defendant
Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) was

///

///

///

///

///

entered in the above-entitled action on August 27, 2020, a true and correct copy of which is attached hereto.

DATED this 27th day of August, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27th day of August, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES L. EDWARDS

Email: jedwards@cohenjohnson.com

ADAM C. EDWARDS

COHEN|JOHNSON|PARKER|EDWARDS

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Ltd. and Regina McConnell Esq.

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WILSON ELSEER MOSKOWITZ

EDELMAN & DICKER

Attorneys for Defendants Shelly Booth

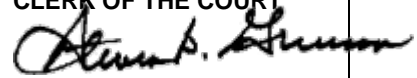
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Cooley, Esq. and the Cooley Law Firm

Las Vegas, Nevada 89119

/s/ Sharon Murnane

Employee of BAILEY ♦ KENNEDY



ORDR (CIV)

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Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

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*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH COOLEY,
ESQ., an individual; THE COOLEY LAW
FIRM, a Nevada Professional Limited Liability
Company; SARAH JANEEN ROSE, an
individual; DOE INDIVIDUALS I through X
and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on August 11, 2020 (in chambers) on:

- Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Special Motion to Dismiss"); and
- Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the

Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the “Joinder”).

FINDINGS OF FACT

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings of Fact with regard to the Special Motion to Dismiss and the Joinder:

1. Plaintiff David John Rose (“David”) and Defendant Sarah Janeen Rose (“Sarah”) were married on June 17, 2006.

2. On February 22, 2017, David filed a Complaint for Divorce against Sarah; the divorce matter is entitled David John Rose v. Sarah Janeen Rose, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before the Family Division of the Eighth Judicial District Court (the “Family Court”).

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg¹ in an effort to resolve the Divorce Action.

4. At the time of the mediation, David was represented by Defendants Regina McConnell, Esq. and McConnell Law Ltd. (jointly, the “McConnell Defendants”) and Sarah was represented by Defendants Shelly Booth Cooley (“Cooley”) and The Cooley Law Firm (jointly the “Cooley Defendants”).

5. David alleges, and Sarah denies, that during the course of the mediation Sarah requested that David name her as the survivor beneficiary of David’s Public Employees Retirement System (“PERS”) pension. David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah.

6. The mediation was successful and Judge Forsberg drafted a three-page Memorandum of Understanding (the “MOU”). The MOU states that its purpose was “to memorialize” the parties’ agreement. The MOU stated it included the “material terms” of their

¹ Judge Forsburg was appointed to Department G of the Family Division of the Eighth Judicial District Court after the mediation.

1 agreement and was intended to bind the parties to those material terms. The MOU provided “that
2 counsel for Sarah shall draft a final formal agreement incorporating the terms herein,” and “[t]hat
3 [final formal] agreement shall be ratified by the Court, but shall not merge and shall retain its
4 separate nature as a contract.” The MOU did not address survivor benefits.

5 7. After Sarah and David executed the MOU, Sarah (through her counsel) typed a 39-
6 page Stipulated Decree of Divorce (the “Divorce Decree”), to which the MOU was included as an
7 exhibit. David and his counsel (McConnell) were given a copy of the Divorce Decree for their
8 review. The Divorce Decree provided that David would name Sarah as the irrevocable survivor
9 beneficiary of David’s PERS pension.

10 8. Sarah and David executed the Divorce Decree and Sarah (through her counsel)
11 submitted the Divorce Decree to the judge assigned to the Divorce Action—the Divorce Decree
12 was filed on April 11, 2018.

13 9. On April 25, 2018, David filed (in the Divorce Action) a Motion to Set Aside the
14 Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake (the
15 “Motion to Set Aside”). In essence, David contends that he did not agree to designate Sarah as the
16 survivor beneficiary and the inclusion of that term in the Divorce Decree was a mistake. The
17 Family Court initially granted David’s Motion to Set Aside, removing the award of survivor
18 benefits to Sarah from the Divorce Decree.

19 10. On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the
20 Alternative, for New Trial Pursuant to NRCP 59(a)(7). On January 16, 2019, the Family Court
21 entered an order setting aside its prior order granting David’s Motion to Set Aside and set the
22 matter (including David’s Motion to Set Aside) for an evidentiary hearing.

23 11. The Court began the evidentiary hearing on the Motion to Set Aside (and other
24 motions) on January 27, 2020. The evidentiary hearing has not yet concluded.

25 12. On May 29, 2020, David initiated this action.

26 13. David asserts various causes of action against the McConnell Defendants, alleging
27 they committed legal malpractice by “a. Failing to actively participate in drafting the Decree to
28 ensure the agreed upon terms are properly reflected in the final draft; b. Failing to properly read,

1 review, and object to the Decree that contained unfavorable terms that [David] did not agree to;
2 and c. Advising [David] to sign the Decree that contained unfavorable terms that [David] did not
3 agree to.” (Compl. ¶ 25.)

4 14. David asserts two causes of action against Sarah and the Cooley Defendants.

5 (a) First, David asserts a claim for civil conspiracy against Sarah and the Cooley
6 Defendants, alleging they “acted in concert to intentionally defraud [David] into signing the
7 legally binding Decree of Divorce with terms that were not agreed to” and that they “had no
8 intention of abiding to the agreed upon terms as outlined in the MOU.” (*Id.* ¶¶ 41-42.)

9 (b) Second, David asserts that Sarah and Cooley breached an agreement that
10 Sarah would not receive survivor benefits (which he alleges is reflected in the MOU even
11 though it does not address survivor benefits) by: “a. Drafting the Decree of Divorce, which
12 contained terms that SARAH would be entitled to survivorship benefits under Plaintiff’s
13 PERS account; b. Submitting the Decree of Divorce so that its terms become legally
14 enforceable; c. Seeking to enforce the survivorship benefit from the Decree, despite being
15 contradictory to the agreed upon terms of the MOU.” (*Id.* ¶ 47.)

16 CONCLUSIONS OF LAW

17 The Court, having examined the briefs of the parties, the records and documents on file,
18 being fully advised of the premises, and good cause appearing, hereby makes the following
19 Conclusions of Law with regard to the Special Motion to Dismiss and the Joinder:

20 15. In 1993, the Nevada legislature adopted an anti-SLAPP statute based upon
21 California’s anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d
22 1276, 1281 (2009). “A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill
23 the defendant’s exercise of First Amendment rights.” *Id.* at 752, 219 P.3d at 1280 (internal
24 quotation marks omitted). “SLAPP lawsuits abuse the judicial process by chilling, intimidating,
25 and punishing individuals for their involvement in public affairs.” *Id.* at 752, 219 P.3d at 1281.

26 16. Nevada’s anti-SLAPP statute provides that a defendant may file a special motion to
27 dismiss within 60 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant
28 filing a special motion to dismiss has the initial burden of demonstrating, by a preponderance of the

evidence, that the claims at issue are “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). Then, if the moving defendant meets her initial burden, the burden shifts to the plaintiff to demonstrate, with “prima facie evidence,” that he has a “probability of prevailing on the claim.” NRS 41.660(3)(c). If the plaintiff fails to meet his burden, the matter must be dismissed and “the dismissal operates as an adjudication on the merits.” NRS 41.660(5).

17. Nevada’s anti-SLAPP statute defines a “[g]ood faith communication in furtherance of the right to free speech in direct connection with an issue of public concern” by four categories of communication. *See* NRS 41.637. One such category protects “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . **judicial body**” NRS 41.637(3) (emphasis added). To qualify for this category, “the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). Finally, the communication must be “truthful or . . . made without knowledge of its falsehood.” NRS 41.637. The Court finds David’s civil conspiracy claim against Sarah concerns conduct and statements at issue related to the ongoing Divorce Action and thus is based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body.” The Court further finds that Sarah’s conduct and statements “relate to the substantive issues in the litigation” and are “directed to persons having some interest in the litigation,”—specifically, to David and the Family Court. *See Patin*, 134 Nev. at 726, 429 P.3d at 1251. The Court further finds that Sarah’s conduct and alleged statements are not false—even assuming Sarah and David had orally agreed that Sarah would not receive survivor benefits at the mediation, neither their alleged agreement nor the inclusion of the survivor benefits in the Divorce Decree are false statements. *See* NRS 41.637. Accordingly, the Court finds that David’s civil conspiracy claim against Sarah is subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

18. The Court finds David’s breach of contract claim against Sarah is not based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . .

1 judicial body.” Accordingly, the Court finds that David’s breach of contract claim against Sarah is
2 not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

3 19. The Court finds David has failed to demonstrate, with “prima facie evidence,” that
4 he has a “probability of prevailing” on his civil conspiracy claim. *See* NRS 41.660(3)(c).

5 (a) First, David’s conspiracy claim fails as matter of law because a client cannot
6 conspire with her legal counsel who is acting within the scope of attorney-client
7 relationship. *See Crossroads Partners v. Utah Crossing, Ltd.*, Nos. 98-15673, 98-15674,
8 1999 U.S. App. LEXIS 22721, at *10 (9th Cir. Sep. 9, 1999) (finding, under Nevada law, a
9 civil conspiracy between a client and a lawyer was barred because “[t]here can be no
10 conspiracy between an agent and its principal when the agent acts only in the agent’s
11 official capacity on behalf of the principal, and not for the agent’s private benefit.”); *Fraidin*
12 *v. Weitzman*, 611 A.2d 1046, 1079 (Md. 1992) (“There can be no conspiracy when an
13 attorney acts within the scope of his employment.”); *Macke Laundry Serv. Ltd. Pshp. v. Jetz*
14 *Serv. Co.*, 931 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As an agent of the client, an attorney
15 acts as the client’s alter ego and not for the attorney,” and thus “an identity between agent
16 and principal leads to a legal impossibility in the context of conspiracy,” because “[t]wo
17 entities which are not legally distinct cannot conspire with one another.”); *accord Collins v.*
18 *Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“Agents and
19 employees of a corporation cannot conspire with their corporate principal or employer
20 where they act in their official capacities on behalf of the corporation and not as individuals
21 for their individual advantage.”).

22 (b) Second, David’s conspiracy claim fails as a matter of law because David
23 cannot assert fraud based on an alleged term (the survivor benefits) that is contradicted by
24 the unambiguous terms of a written agreement (the Divorce Decree). *See Rd. & Highway*
25 *Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012).

26 (c) Third, David’s conspiracy claim fails as a matter of law because David
27 cannot assert fraud based solely on Sarah’s alleged failure to perform. *See id.* at 389, 284
28

P.3d at 380 (“[T]here is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed.”).

ORDER

Based on the foregoing Findings and good cause appearing,

IT IS HEREBY ORDERED that the Special Motion to Dismiss is GRANTED pursuant to NRS 41.660 (anti-SLAPP) as to David’s civil conspiracy claim, which is hereby DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Special Motion to Dismiss and Joinder are DENIED as to David’s breach of contract claim against Sarah.

IT IS FURTHER ORDERED that Sarah’s motions to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), sought in the alternative, are DENIED without prejudice to renewal in an NRCP 12(b) response.

DATED this 27th day of August, 2020.



THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

Attorneys for Defendant Sarah Janeen Rose

~~Approved as to Form and Content By:~~

~~COHEN | JOHNSON | PARKER | EDWARDS~~

By: _____

~~JAMES L. EDWARDS~~

~~ADAM C. EDWARDS~~

~~375 East Warm Springs Road, Suite 104~~

~~Las Vegas, Nevada 89119~~

~~Attorneys for Plaintiff David John Rose~~

Approved as to Form and Content By:

WILSON ELSER MOSKOWITZ EDELMAN & DICKER

By: /s/ Sheri Thome

SHERI THOME

6689 Las Vegas Boulevard, South, Suite 200

Las Vegas, Nevada 89119

Attorneys for Defendants Shelly Booth Cooley, Esq. and the Cooley Law Firm

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.

Paul Williams

From: Paul Williams
Sent: Friday, August 21, 2020 2:11 PM
To: 'jedwards@cohenjohnson.com'; 'aedwards@cohenjohnson.com'
Cc: Sharon Murnane; 'Kim Glad'; 'Thome, Sheri'; 'Maile, Lani U.'; 'Joe Garin'; 'Susana Nutt'; 'sjohnson@cohenjohnson.com'; 'sgondek@cohenjohnson.com'
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Having not heard from you, we will submit the draft order to the Court (it is due today), using a strike-through on your signature block to indicate you have not approved as to form or content.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
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(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
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PWilliams@BaileyKennedy.com

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From: Paul Williams
Sent: Wednesday, August 19, 2020 4:40 PM
To: jedwards@cohenjohnson.com; aedwards@cohenjohnson.com
Cc: Sharon Murnane <SMurnane@baileykennedy.com>; 'Kim Glad' <KGLad@lipsonneilson.com>; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>; sjohnson@cohenjohnson.com; sgondek@cohenjohnson.com
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Following up on the draft order. If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
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From: Kim Glad <KGlad@lipsonneilson.com>
Sent: Monday, August 17, 2020 10:01 AM
To: Thome, Sheri <Sheri.Thome@wilsonelser.com>; Paul Williams <PWilliams@baileykennedy.com>;
jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com;
sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>;
Susana Nutt <SNutt@lipsonneilson.com>
Cc: Sharon Murnane <SMurnane@baileykennedy.com>
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Dear Mr. Williams,

On behalf of Joe Garin, please be advised that you may affix his electronic signature to the Proposed Order.

Should you have any questions, please feel free to contact Mr. Garin directly.

Sincerely,
Kim



Kim Glad, Legal Assistant
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OFFICES IN NEVADA, MICHIGAN, ARIZONA, & COLORADO

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From: Thome, Sheri <Sheri.Thome@wilsonelser.com>

Sent: Friday, August 14, 2020 2:25 PM

To: Paul Williams <PWilliams@baileykennedy.com>; jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Kim Glad <KGlad@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Paul,

You may affix my electronic signature. Thank you.

Sheri Thome
Attorney at Law
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sheri.thome@wilsonelser.com

From: Paul Williams [<mailto:PWilliams@baileykennedy.com>]

Sent: Friday, August 14, 2020 9:44 AM

To: jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; jgarin@lipsonneilson.com; kglad@lipsonneilson.com; snutt@lipsonneilson.com

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: Rose v. McConnell - Draft Order on Special MTD

[EXTERNAL EMAIL]

Hi all,

Attached is a draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP). Please let me know if you have any proposed revisions.

If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

August 11, 2020

A-20-815750-C David Rose, Plaintiff(s)
vs.
Regina McConnell, ESQ, Defendant(s)

August 11, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP), OR, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)...DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL LAW LTD.'S JOINDER TO DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTISLAPP), OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)

Pursuant to Administrative Order 20-01, the Court decides this matter without the necessity of oral argument. The Court, having reviewed the Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and the related briefing and being fully informed, GRANTS the motion IN PART as to the civil conspiracy claim only. The conduct and statements at issue related to the ongoing domestic proceeding in D-17-547250-D. The allegations in this cause of action as to Ms. Rose are " [w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body." Counsel for Ms. Rose is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's

intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8-11-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

September 22, 2020

A-20-815750-C David Rose, Plaintiff(s)
vs.
Regina McConnell, ESQ, Defendant(s)

September 22, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Garin, Joseph P Attorney
 Johnson, Kevin M. Attorney
 Thome, Sheri M. Attorney
 Williams, Paul Attorney

JOURNAL ENTRIES

- DEFENDANTS SHELLY BOOTH COOLEY AND THE COOLEY LAW FIRM'S ANTI-SLAPP MOTION AND MOTION TO DISMISS UNDER NRCP 12(B)(5)...DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL LAW LTD.'S LIMITED JOINDER TO DEFENDANTS SHELLY BOOTH COOLEY AND THE COOLEY LAW FIRM'S SPECIAL ANTI-SLAPP MOTION AND MOTION TO DISMISS UNDER NRCP 12(B)(5)

Following arguments by counsel, COURT ORDERED, motion GRANTED on the 12(b)(5) issue only; the MoU for the divorce is not between the attorney and Sarah Rose and David Rose; it is between Sarah Rose and David Rose; the breach of contract claim is DISMISSED against Shelly Cooley and the Cooley Law Firm on 12(b)(5). Upon Ms. Thome's inquiry, COURT NOTED they do not get the benefit of 12(b)(5) on civil conspiracy.

10-16-20 CHAMBERS DEFENDANT SARAH JANEEN ROSE'S MOTION FOR ATTORNEY'S FEES

10-29-20 9:00 AM DEFENDANT SARAH JANEEN ROSE'S MOTION TO DISMISS
PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

DEFENDANT SARAH JANEEN ROSE'S NOTICE OF APPEAL;
DEFENDANT SARAH JANEEN ROSE'S CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING IN PART, AND DENYING IN
PART, DEFENDANTS SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS PURSUANT TO
NRS 41.660 (ANTI-SLAPP); NOTICE OF ENTRY OF ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO DISMISS
PURSUANT TO NRS 41.660 (ANTI-SLAPP); DISTRICT COURT MINUTES

DAVID JOHN ROSE,

Plaintiff(s),

vs.

REGINA MCCONNELL, ESQ.; MCCONNELL
LAW LTD; SHELLY BOOTH COOLEY, ESQ.;
THE COOLEY LAW FIRM; SARAH JANEEN
ROSE,

Defendant(s),

Case No: A-20-815750-C

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of September 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk