

STORM LEGAL GROUP

ERICH N. STORM, ESQ.

Nevada Bar No.:4480

estorm@keyinsco.com

3037 East Warm Springs Road, Suite 300

Las Vegas, Nevada 89120

Telephone: (702) 765-0976

Facsimile: (702) 765-0981

Attorneys for Appellant

Electronically Filed
Jan 27 2021 01:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MILLAN ARCE, an individual,

Appellant,

vs.

PATRICIA SANCHEZ, an Individual,

Respondent.

SUPREME COURT No.: 81862
CASE NO.: A-19-796822-C

APPELLANT'S MEMORANDUM IN RESPONSE TO ORDER TO SHOW CAUSE

Appellant, Juan Millan Arce ("Arce"), through his undersigned counsel, hereby submits the following MEMORANDUM IN RESPONSE TO ORDER TO SHOW CAUSE:

I. FACTUAL BACKGROUND

This is a bodily injury case arising from a car accident that Respondent filed against Arce in the Eighth Judicial District Court. The matter was assigned to the Court-Annexed Arbitration Program and proceeded through an arbitration hearing. The Arbitrator entered an Award in favor of Arce and against Respondent. Respondent alleges she subsequently settled the matter with Arce and did not file a Request For Trial De Novo. Arce disputes that an enforceable settlement agreement was reached. The ADR office served notice upon the parties that judgment be entered in favor of Arce, the prevailing party, pursuant to the mandates of NAR 19(A). Arce therefore filed and served the judgment on March 25, 2020.

Thereafter, Respondent filed a Motion with the District Court seeking to do two things: Set aside the judgment in favor of Arce, and to enforce the settlement agreement and Arce's

1 automobile liability carrier, Key Insurance Company. The District Court granted these motions.

2 The Order is attached hereto as Ex. 1 and states that, “[T]his contract is to be enforced and
3 that Key Insurance must pay the sum of \$10,000.00 to Plaintiff Sanchez [Respondent herein], on
4 behalf of its insured, Defendant Arce [Appellant], in exchange for the release of all claims per the
5 term s of the agreement.”

6 The Order concludes, “Defendant Arce is ordered to pay \$10,000.00 to Ms. Sanchez,
7 through his insurer Key Insurance, in exchange for Plaintiff Sanchez’s full and final release of all
8 claims against him.”

9 **THE APPEALABILITY OF THE DISTRICT COURT ORDER**

10 Respondent did not seek an order from the District Court granting her a judgment against
11 Arce in a sum certain, nor did the District Court grant judgment for a money judgment against
12 Arce. Rather, the District Court ruled that Arce is obligated to pay \$10,000.00 to Respondent.
13 Arce has found no applicable Nevada Supreme Court authority concerning the nature of the relief
14 that the District Court granted to Respondent, or whether further District Court action is required
15 before Respondent may seek to enforce the Order at issue against him.

16 Arce considers the Order at issue as one for equitable relief in the nature of an injunction.
17 Arce is concerned that the District Court could potentially enforce the Order against Arce by
18 means of its contempt or other powers. Therefore, Arce cited in in his Docketing Statement
19 NRAP 3A(b)(3) (grant of injunctive relief) as a basis for this Court’s jurisdiction.

20 Similarly, Arce is concerned that the entry of a money judgment against him is not a
21 condition to the District Court’s enforcing the Order that Arce is obligated to pay Respondent
22 \$10,000.00. Arce therefore considered the matter ripe for appeal as a final judgment in his
23 Docketing Statement per NRAP 3A(b)(1) as additional grounds for this Court’s jurisdiction.

24 In its Order To Show Cause, the Nevada Supreme Court cited *St. Louis Union Sta. v.*
25 *Discovery Ch. Store*, 272 S.W.3d 504, 505 (Mo. Ct. App. 2008). That case holds that an order
26 granting a motion to enforce a settled agreement is equitable nature, but collateral to the
27 underlying action. Since the trial court in that case had not entered judgment on a settlement
28 agreement, the Missouri Court of Appeals ruled that the order enforcing the settlement agreement
was merely interlocutory and not a final, appealable order. As stated, Arce agrees that the Order

1 at issue is one for equitable relief, but Arce is unclear whether it requires further District Court
2 action to be enforceable and ripe for appeal.

3 DATED this 27th day of January, 2021.

4 **STORM LEGAL GROUP**

5 */s/ ERICH N. STORM, ESQ.*

6 By: _____

7 ERICH N. STORM, ESQ.

8 Nevada Bar No.: 4480

9 3037 East Warm Springs Road, Suite 300

10 Las Vegas, Nevada 89120

11 Telephone: (702) 765-0976

12 *Attorney for Appellant*

1 **CERTIFICATE OF SERVICE**

2 I **HEREBY CERTIFY** that on this 27th day of January, 2021, I served a true and complete
3 copy of the foregoing **APPELLANT'S MEMORANDUM IN RESPONSE TO ORDER TO**
4 **SHOW CAUSE** addressed to the parties as follows:

5 [x] by electronic service via the Nevada Supreme Court.

6
7 NATHAN S. DEAVER, ESQ.

8 Nevada Bar No. 11947

9 BRICE J. CRAFTON, ESQ.

10 Nevada Bar No. 10558

11 **DEAVER I CRAFTON**

12 810 E. Charleston Blvd.

13 Las Vegas, NV 89104

14 brice@deavercrafton.com

15 shannon@deavercrafton.com

16 Tel. (702)385-5969

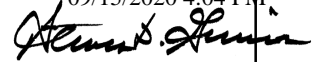
17 Fax. (702)385-6939

18 *Attorneys for Respondent*

19 /s/ Shirley Mattox

20 An employee of **STORM LEGAL GROUP**

EXHIBIT 1


CLERK OF THE COURT

ORDR
NATHAN S. DEEVER, ESQ.
Nevada Bar No. 11947
BRICE J. CRAFTON, ESQ.
Nevada Bar No. 10558
DEEVER | CRAFTON
810 E. Charleston Blvd.
Las Vegas, NV 89104
brice@deevercrafton.com
shannon@deevercrafton.com
Tel. (702)385-5969
Fax. (702)385-6939
Attorneys for Plaintiff

DISTRICT COURT

COUNTY OF CLARK, NEVADA

PATRICIA SANCHEZ, an individual;

Plaintiff,

vs.

JUAN MILLAN ARCE, an individual; DOES
I-X, inclusive; and ROE CORPORATIONS I-
X, inclusive;

Defendants.

Case No. A- 19-796822-C

Dept. No. XXVII

**ORDER GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM
JUDGMENT AND TO ENFORCE SETTLEMENT**

The Motion for Relief from Judgment and to Enforce Settlement, having come before the Court on June 11, 2020 at 3:30pm, and the Court, having reviewed the papers submitted by the parties and heard the arguments of counsel, finds, concludes, and orders the Motion **GRANTED**, as set forth below, which is based upon Plaintiff's factual summary as outlined in Plaintiff's moving papers, which the court adopts, and the moving papers, including the citations to legal authorities, which the court finds persuasive:

1 **THE COURT FINDS** that Defendant was an insured of Key Insurance Company, Inc., at all
2 relevant times, and provided a defense to Defendant with respect to this matter. Erika Cervantes
3 was an employee of Key Insurance Company, Inc. and was the claims adjuster assigned to this
4 matter.

5 **THE COURT FURTHER FINDS** that a settlement was reached in this matter on February 20,
6 2020 during a telephone conversation between Plaintiff's counsel, Mr. Nathan Deaver and Erika
7 Cervantes. During that conversation, Ms. Cervantes agreed to pay the sum of \$10,000.00 and
8 was to send Mr. Deaver a release regarding the same. This settlement was reached specifically
9 to avoid the need for Plaintiff to file a request for short trial after an arbitration award was
10 submitted on February 11, 2020.

11 **THE COURT FURTHER FINDS** that pursuant to the settlement discussions had, and
12 agreements reached, between Mr. Deaver and Ms. Cervantes on February 20, 2020, a valid,
13 binding, and enforceable contract for settlement was entered, which included: an offer to settle
14 for \$10,000.00; an acceptance of said offer; and, consideration in the form of an agreement to a
15 release of all claims, as well as the waiver of Plaintiff's right to request that this matter proceed
16 to a short trial. Moreover, Plaintiff relied upon the settlement by not seeking a short trial.

17 **THE COURT FURTHER FINDS** that on March 25, 2020, Mr. Erich Storm, an employee of
18 Key Insurance and assigned counsel for Defendant Arce, filed a Judgment on Arbitration Award
19 despite having knowledge that this case had previously settled on February 20, 2020.

20 **THE COURT FURTHER FINDS** that the negotiations and settlement agreement of February
21 20, 2020 between Mr. Deaver and Ms. Cervantes were not violative of any rule (legal, ethical, or
22 otherwise), including but not limited to Nevada Rule of Professional Conduct 4.2 as the
23 communication with Ms. Cervantes was not a communication with a person represented by
24

1 counsel as there is a distinction between in-house counsel and other counsel hired by an insurance
2 company to represent it insureds. Moreover, the communications were not against public policy
3 and therefore the contract for settlement entered on said date is not void.

4 **THE COURT THEREFORE CONCLUDES** that a lawful, binding and enforceable contract
5 was entered into on February 20, 2020, the terms of which include that Plaintiff Patricia Sanchez
6 accepts the amount of \$10,000.00 in exchange for her full and final release of claims against
7 Defendant Arce, thereby waiving her right to a short trial, and concludes that this contract is to
8 be enforced and that Key Insurance must pay the sum of \$10,000.00 to Plaintiff Sanchez, on
9 behalf of its insured, Defendant Arce, in exchange for the release of all claims per the terms of
10 the agreement.

11 **THE COURT FURTHER CONCLUDES** that the Judgment filed by Mr. Erich Storm on March
12 25, 2020 should be vacated considering the settlement of this matter on February 20, 2020.

13 **THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Motion for Relief from Judgment
14 and to Enforce Settlement is **GRANTED**, and that the Judgment filed on March 25, 2020 is
15 vacated.

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24

Defendant Arce is ordered to pay \$10,000.00 to Ms. Sanchez, through his insurer Key Insurance, in exchange for Plaintiff Sanchez's full and final release of all claims against him.

DATED this 15th day of September, 2020.

DATED this 15th day of September, 2020.

DEAVER | CRAFTON

STORM LEGAL GROUP

Approved as to Form and Content

/s/ BRICE J. CRAFTON, ESQ.

/s/ ERICH N. STORM, ESQ.

BRICE J. CRAFTON, ESQ.
NEVADA Bar No. 10558
810 E. Charleston Blvd.
Las Vegas, NV 89104
Attorneys for Plaintiff

ERICH N. STORM, ESQ.
Nevada Bar No. 4480
3057 E. Warm Springs Road, Suite 400
Las Vegas, NV 89120
Attorney for Defendant

ORDER

IT IS SO ORDERED, that Plaintiff's Motion for Relief From Judgment and to Enforce Settlement is **GRANTED**.

DATED this ____ day of ____, 2020.

Dated this 15th day of September, 2020

Nancy L Alf
DISTRICT COURT JUDGE

Respectfully Submitted by:

8AB 16D 75BF 1DDC
Nancy Alf
District Court Judge

DEAVER | CRAFTON

/s/ BRICE J. CRAFTON, ESQ.

BRICE J. CRAFTON, ESQ.
NEVADA Bar No. 10558
810 E. Charleston Blvd.
Las Vegas, NV 89104
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of DEAVER | CRAFTON, and that on the 15th day of September, 2020, pursuant to NRCP 5(b), I am serving the attached copy of **ORDER GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND TO ENFORCE SETTLEMENT** on the party(s) set forth below by:

☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices.

☐ Via Facsimile (Fax)

☒ Electronically served through the Eighth Judicial District Court's Electronic filing system:

Erich N. Storm, Esq.
STORM LEGAL GROUP
3057 E. Warm Springs Road
Suite 400
Las Vegas, NV 89120
Attorney for Defendant

/s/ Shannon Shaffer

An employee of DEAVER | CRAFTON



Search mail

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Snoozed

Sent

Drafts 65

 Cynthia Missed

More

Meet

Start a meeting

Join a meeting

Hangouts



Shannon



Begin forwarded message:

From: Erich Storm <EStorm@keyinsco.com>
Date: September 15, 2020 at 2:34:39 PM PDT
To: Brice Crafton <brice@deavercrafton.com>
Subject: RE: Sanchez

All right, go ahead and put my e-signature on it

Thanks,

Erich N. Storm
STORM LEGAL GROUP
3057 East Warm Springs Road
#400
Las Vegas NV 89120
702-765-0976

From: Brice Crafton <brice@deavercrafton.com>
Sent: Tuesday, September 15, 2020 11:39 AM
To: Erich Storm <EStorm@keyinsco.com>
Subject: Re: Sanchez

Erich, please find the revised order. Review and let me know if you have any further modifications. If not, I

No recent chats
Start a new one

Best Regards,

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Patricia Sanchez, Plaintiff(s)

CASE NO: A-19-796822-C

7 vs.

DEPT. NO. Department 27

8 Juan Arce, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/15/2020

15 Brice Crafton

brice@deavercrafton.com

16 Lisa McMillan

lmcmillan@cooperlevenson.com

17 Cynthia Villanueva

cynthia@deavercrafton.com

18 Shannon Shafffer

shannon@deavercrafton.com

19 Valeria Guerra

valeria@deavercrafton.com

20 Kristin Orque

korque@purdyandanderson.com

21 Erich Storm

estorm@keyinsco.com

22 Star Farrow

Sfarrow@keyinsco.com

24

25

26

27

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