

IN THE SUPREME COURT OF THE STATE OF NEVADA

MM DEVELOPMENT COMPANY, INC.,
D/B/A PLANET 13, A NEVADA
CORPORATION,

Appellant,

vs.

TRYKE COMPANIES SO NV, LLC, A
NEVADA LIMITED LIABILITY COMPANY,

Respondent.

Supreme Court No. 81938

District Court No. AS04883
Electronically Filed
Nov 16 2020 12:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**TRYKE COMPANIES SO NV, LLC'S RESPONSE
TO APPELLANT'S DOCKETING STATEMENT**

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 14(f), Respondent TRYKE COMPANIES SO NV, LLC ("Tryke") hereby responds to the Docketing Statement filed by Appellant MM DEVELOPMENT COMPANY, INC., D/B/A PLANET 13 ("Planet 13"). Specifically, there are two defects in Planet 13's Docketing Statement which necessitate this response:

1. Planet 13's Docketing Statement fails to apprise this Court of a critical factor in the District Court's decision to grant a preliminary injunction in favor of Tryke; namely, that Planet 13 was making kickback payments to rideshare drivers for diverting passengers from Tryke's Reef Dispensary to Planet 13. In other words, Planet 13 was incentivizing and knowingly rewarding the violation of NRS 706A.280. While Planet 13 now tries to recharacterize said payments as "commissions" (after failing in its effort to convince the District Court that such payments were "tips"), it advertised its payment scheme on a smartphone application aptly named "KickBack."

The scope of the diversion and kickback program – which Planet 13 renewed in earnest after the shutdown of cannabis dispensaries due to the COVID-19 pandemic – was extensive and clearly causing irreparable harm to Tryke. Thus, the District Court's decision to grant injunctive relief was not a significant issue of public policy; rather, it was a simple decision based upon the facts of the case. Likewise, Planet 13's appeal does not present a significant public policy issue warranting particularized attention from this Court.

2. Planet 13 purports to be appealing “the District Court’s Order granting [Tryke’s] Motion for Preliminary Injunction and any other decisions and rulings made appealable thereby.” To be clear, the only appealable order in this matter is the District Court’s order granting a preliminary injunction, entered September 10, 2020.

On September 25, 2020, Planet 13 filed a motion for reconsideration, which it characterizes as a tolling motion in its Docketing Statement. Recognizing that it had not in fact filed a tolling motion, Planet 13 filed a notice of appeal on October 9, 2020. On November 7, 2020, nearly one month after Planet 13 filed its notice of appeal of the September 10, 2020 order granting preliminary injunction, the district court entered an order denying Planet 13’s motion for reconsideration.

Orders denying reconsideration are generally not appealable. *See Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980 (1983). That is particularly the case here, as Planet 13’s motion for reconsideration was not decided until well after it filed its notice of appeal. Nevertheless, in an improper attempt to expand the record in this appeal to include evidence beyond what was before the District Court when it entered the order from which Planet 13 now appeals, Planet 13 discusses and attaches the District Court order denying reconsideration.

Dated this 16th day of November 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November 2020, I submitted the foregoing TRYKE COMPANIES SO NV, LLC'S RESPONSE TO APPELLANT'S DOCKETING STATEMENT for filing and service via the Court's eFlex electronic filing system.

A handwritten signature in blue ink that reads "Karen M. Morrow". The signature is written in a cursive style with a horizontal line underneath it.

Karen M. Morrow, an employee of H1 Law Group