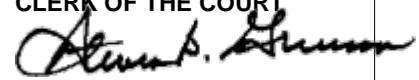


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Electronically Filed
10/16/2020 4:21 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Oct 20 2020 10:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CHRISTOPHER BEAVOR, an individual,

Plaintiff,

v.

Case No.: A-19-793405-C
Dept. No.: XXIV

JOSHUA TOMSHECK, an individual; DOES I-
X, inclusive,

Defendants.

NOTICE OF APPEAL

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,

Third-Party Defendant.

Notice is hereby given that Plaintiff Christopher Beavor, by and through his counsel,
H. Stan Johnson, Esq., of the law firm of Cohen Johnson Parker Edwards, hereby appeals to the
Supreme Court of Nevada from the following:

1. "ORDER AND FINDINGS OF FACT AND CONCLUSIONS OF LAW ON:
1. JOSHUA TOMSHECK'S MOTION FOR SUMMARY JUDGMENT;

2. THIRD-PARTY DEFENDANT MARC SAGGESE'S MOTION TO
DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY
JUDGMENT; AND

3. THIRD-PARTY DEFENDANT MARK SAGGESE'S MOTION TO
STRIKE SUPPLEMENTAL OPPOSITION OF THIRD-PARTY
PLAINTIFF JOSHUA TOMSHECK ON ORDER SHORTENING TIME

filed on July 9, 2020, with notice of entry of which was served electronically on July 10, 2020, as
well as any and all orders, decisions, judgments, findings, conclusions and, or recommendations
relating thereto. *Attached as Exhibit 1.*

2. ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND
PURSUANT TO NRCP 52(b) and 59(e) filed on September 17, 2020, with notice of entry of
which was served electronically on September 17, 2020, as well as any and all orders, decisions,
judgements, findings, conclusions and, or recommendations relating thereto. *Attached as Exhibit*
2.

3. All judgments and orders in this case; and

4. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 16th day of October, 2020.

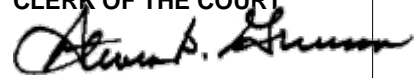
COHEN JOHNSON LLC

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
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KEVIN M. JOHNSON, ESQ.
Nevada Bar No. 14724, ESQ.
375 E Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119
Attorneys for Plaintiff Christopher Beavor

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 16th day of October 2020, I caused a true and correct copy of **NOTICE OF APPEAL** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

/s/ Sarah Gondek
AN EMPLOYEE OF COHEN JOHNSON LLC



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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CHRISTOPHER BEAVOR, an individual,

Plaintiff,

v.

JOSHUA TOMSHECK, an individual; DOES I-
X, inclusive,

Defendants.

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,

Third-Party Defendant.

Case No.: A-19-793405-C
Dept. No.: XXIV

CASE APPEAL STATEMENT

Notice is hereby given that Plaintiff Christopher Beavor, by and through their counsel,
H. Stan Johnson, Esq., of the law firm of Cohen Johnson Parker Edwards, hereby files the
following Case Appeal Statement:

1. Name of appellants filing this case appeal statement:

Christopher Beavor

2. Judge issuing the Judgment appealed from:

The Honorable Judge Jim Crockett

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

CHRISTOPHER BEAVOR
c/o H. Stan Johnson, Esq.
Cohen Johnson Parker Edwards
375 E. Warm Springs Rd., Ste 104
Las Vegas, NV 89119

4. Identify each respondent and the name and address of their counsel:

JOSHUA TOMSHECK
Defendant/Third-Party Plaintiff
c/o Max E. Corrick II, Esq.
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Ave.
Las Vegas, NV 89129

5. Indicate whether any attorney 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):

All Counsel in this Matter are licensed to practice law in the State of Nevada.

6. Are the appellants represented by appointed or retained counsel on appeal:

By retained counsel.

7. Are the respondents represented by appointed or retained counsel on appeal:

By retained counsel.

8. Was appellant granted leave to proceed in forma pauperis, and the date of the entry of the district court order granting such leave:

No party has appeared in forma pauperis.

9. The date the proceedings commenced in the district court:

April 23, 2019

10. A brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Christopher Beavor (“Beavor”) executed a settlement agreement with Yakov Hefetz (“Hefetz”) in the underlying matter of *Hefetz v. Beavor* (Case No. A645353). In that settlement agreement, Beavor assigned any recovery or proceeds to Hefetz from pursuing a claim against Beavor’s former counsel for legal malpractice. Plaintiff Christopher Beavor filed a legal malpractice lawsuit against Respondent Defendant/Third-Party Plaintiff Joshua Tomscheck.

Respondent prevailed on a Motion for Summary Judgment based upon the theory that Nevada precedent does not allow the assignment of the proceeds of a legal claim for legal malpractice. The Court therefore granted Defendant/Third-Party Plaintiff’s Motion for Summary Judgment.

Appellant Plaintiff filed Plaintiff’s Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e). Plaintiff argued that the Court did not clarify what, if any, effect the Court’s order has on the underlying parties’ settlement agreement and their right to contract. Additionally, Plaintiff argued that the Court erred in basing its decision on California case law. Furthermore, Plaintiff argued that the Court did not state whether the alleged assignment of the case was express or *De Facto*. Finally, Plaintiff argued the Court erred by granting Respondent’s Motion for Summary Judgment. The Court denied Plaintiff’s Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e).

No.

No.

This matter is a civil case and Appellants do not believe that there is a possibility of settlement.

COHEN JOHNSON LLC

Page 4 of 5

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 16th day of October 2020, I caused a true and correct copy of **CASE APPEAL STATEMENT** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

/s/ Sarah Gondek

AN EMPLOYEE OF COHEN JOHNSON LLC

EXHIBIT 1

EXHIBIT 1

Heather S. Smith

CLERK OF THE COURT

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Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

v.

JOSHUA TOMSHECK, an individual;
DOES I-X, inclusive,
Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON:**

- 1. JOSHUA TOMSHECK'S
MOTION FOR SUMMARY
JUDGMENT;**
- 2. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
DISMISS, OR
ALTERNATIVELY, MOTION
FOR SUMMARY JUDGMENT;
and**
- 3. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
STRIKE SUPPLEMENTAL
OPPOSITION OF THIRD-
PARTY PLAINTIFF JOSHUA
TOMSHECK ON ORDER
SHORTENING TIME**

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

Date of Hearing: June 25, 2020

Time of Hearing: 9:00 a.m.

v.

MARC SAGGESE, ESQ., an individual,

Third-Party Defendant.

These matters having come on for hearing on the 25th day of June, 2020, before the Honorable Judge Jim Crockett, on JOSHUA TOMSHECK's Motion for Summary Judgment, Third-Party Defendant MARC SAGGESE's Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Third-Party Defendant MARC SAGGESE's Motion to Strike Supplemental Opposition of Third-Party Plaintiff JOSHUA TOMSHECK on Order Shortening Time.

Plaintiff CHRISTOPHER BEAVOR, appearing by and through his counsel of record, H. Stan Johnson, Esq.; Defendant/Third-Party Plaintiff JOSHUA TOMSHECK, appearing by and through his counsel of record, Max E. Corrick, II, and; Third-Party Defendant MARC SAGGESE, Esq., appearing by and through his counsel of record, Joseph P. Garin, Esq. The Court having reviewed the papers and pleadings on file, having heard the representations and arguments of counsel, and good cause appearing therefore, makes the following Findings of Fact and Conclusions of Law, and issues its Order on the motions pending before the Court.

FINDINGS OF FACT

The Court makes the following Findings of Fact:

1. On April 23, 2019, Plaintiff CHRISTOPHER BEAVOR ("Plaintiff Beavor") filed a legal malpractice lawsuit against Defendant/Third-Party Plaintiff JOSHUA TOMSHECK ("Tomsheck") arising out of alleged legal malpractice committed by Tomsheck. Tomsheck filed an Answer and Third-Party Complaint against Third-Party Defendant Marc Saggese, Esq. on May 16, 2019, seeking Contribution.
2. On March 9, 2020, Tomsheck filed his Motion for Summary Judgment. Tomsheck filed an Errata to his Motion for Summary Judgment on March 11, 2020 which corrected

certain representations regarding relevant dates in the Tomscheck Motion for Summary Judgment. Plaintiff Beavor filed an Opposition to the Tomscheck Motion for Summary Judgment on March 27, 2020. Tomscheck filed his Reply on April 30, 2020.

3. On March 11, 2020, Third-Party Defendant Marc Saggese, Esq. (“Saggese”) filed his Motion to Dismiss, or alternatively, Motion for Summary Judgment. Tomscheck filed an Opposition to the Saggese Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief, on April 3, 2020. Saggese filed his Reply on April 30, 2020. That same day, April 30, 2020, Tomscheck filed a Supplement to his Opposition to Saggese’s Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief.
4. On May 5, 2020, Saggese filed his Motion to Strike Supplemental Opposition of Third-Party Plaintiff Tomscheck on Order Shortening Time. Tomscheck filed an Opposition to the Saggese Motion to Strike on June 8, 2020, along with a Countermotion to Allow Supplementation. Saggese filed his Reply and Opposition to the Countermotion on June 18, 2020. Tomscheck did not file a Reply to the Saggese Opposition.
5. The Court recognizes that the Tomscheck Motion for Summary Judgment may be dispositive of the entire case. Therefore, while the Court reviewed each of the motions pending before it, for the reasons set forth below the Court declines to rule upon the Saggese Motions or the Tomscheck Countermotion.
6. In Tomscheck’s Motion for Summary Judgment he raises the following arguments: *First*, Tomscheck argues he is entitled to summary judgment because Plaintiff Beavor impermissibly assigned his legal malpractice claim against Tomscheck to Beavor’s adversary in the underlying matter of *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz (“Hefetz”). Tomscheck argues this is evidenced by the settlement agreement reached between Hefetz and Plaintiff Beavor on February 15, 2019. The Court notes Tomscheck never represented Hefetz, nor does Plaintiff Beavor contend that he did. The relevant terms of the Hefetz/Beavor settlement agreement, which the Court has reviewed in its entirety, include the following:

Section 4 Beavor’s Malpractice Claims

Beavor agrees to prosecute any malpractice and/or any other claims he may have against his former counsel, but Beavor will not prosecute any malpractice and/or any other claims he may have against the law firm of Dickinson Wright PLLC or any attorneys at that firm who provided legal representation to him related to the Pending Case.

H. Stan Johnson will serve as counsel for Beavor in his prosecution of said claims.

In order to permit H. Stan Johnson to serve as counsel, Beavor and H. Stan Johnson will execute any required conflict waivers.

1 *Beavor represents and warrants that he will fully pursue and cooperate in the*
2 *prosecution of the above referenced claims;*

3 *that he will take any and all reasonable actions as reasonably requested by*
4 *counsel to prosecute the above actions;*

5 *and that he will do nothing intentional to limit or harm the value of any recovery*
6 *related to the above referenced cases.*

7 *Within thirty (30) days from the Effective Date of this Settlement Agreement, Beavor*
8 *shall provide Hefetz, through his attorney H. Stan Johnson, copies of any documents or*
9 *correspondence that Beavor believes relate to the above referenced malpractice actions.*

10 *Beavor shall fully cooperate with Hefetz and his counsel regarding any claims initiated*
11 *on behalf of Beavor for the above referenced actions.*

12 *Hefetz agrees to indemnify and hold harmless Beavor from any attorney fees or costs*
13 *that may be incurred in pursuing the above referenced claims and any and all invoices*
14 *for attorneys' fees or costs shall be issued directly to Hefetz with Hefetz bearing sole*
15 *responsibility for payment thereof.*

16 *Beavor further irrevocably assigns any recovery or proceeds to Hefetz from the above*
17 *referenced actions and agrees to take any actions necessary to ensure that any recovery*
18 *or damages are paid to Hefetz pursuant to the Agreement.*

- 19 7. Tomsheck argues that, based upon the explicit terms of the Hefetz/Beavor settlement
20 agreement, Plaintiff Beavor impermissibly assigned his legal malpractice claim to
21 Hefetz – whether characterized as an express assignment or as a *de facto* assignment.
- 22 8. Tomsheck argues that “in Nevada, legal malpractice claims are absolutely unassignable
23 and subject to summary judgment if assigned.” Tomsheck cites, *inter alia*, the Nevada
24 Supreme Court decisions of *Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982), and
25 *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016), for this general
26 proposition, as well as cases from several other jurisdictions, including the case of
27 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which has
28 been directly relied upon and quoted by the Nevada Supreme Court.
9. *Second*, Tomsheck argues Plaintiff Beavor filed this legal malpractice lawsuit after the
statute of limitation period elapsed for Plaintiff Beavor to file the lawsuit. Specifically,
Tomsheck notes he and Plaintiff Beavor negotiated and entered into a binding contract,
namely a tolling agreement, which affixed the time in which Plaintiff Beavor would be
required to file a legal malpractice lawsuit to within two (2) years of the Nevada
Supreme Court resolving Supreme Court Appeal No. 68838 (c/w 68843). Although it is
not entirely clear to the Court, based upon the Errata filed by Tomsheck it appears
Tomsheck is alleging the latest date Plaintiff Beavor had to file his legal malpractice

lawsuit against Tomsheck was September 26, 2018, but that the lawsuit was not filed until April 23, 2019.

10. For the reasons set forth below, the Court declines to rule upon Tomsheck's statute of limitations argument. Instead, the Court chooses to focus upon Tomsheck's impermissible assignment of a legal malpractice claim argument.
11. With respect to that impermissible assignment argument, Tomsheck's Motion for Summary Judgment argues Plaintiff Beavor is prosecuting an impermissibly assigned legal malpractice claim which violates public policy and which is subject to summary judgment. To that end, Tomsheck states that "Nevada follows the overwhelming majority rule in this regard, especially when a legal malpractice claim has been assigned to an adversary in the underlying litigation." *See Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976); *Tate v. Goins, Underkoffer, Crawford & Langdon*, 24 S.W.3d 627 (Tex. App. 2000); *Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313 (Tex. App. 1994); *Kommavongsa v. Haskell*, 149 Wash.2d 288 (2003); *Edens Technologies, LLC v. Kile Goekjian Reed & McManus, PLLC*, 675 F.Supp.2d (D.D.C. 2009); *Revolutionary Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 744 S.E.2d 130 (2013); *Trinity Mortgage Companies, Inc. v. Dreyer*, 2011 WL 61680 (N.D. Okla. 2011); *Community First State Bank v. Olsen*, 255 Neb. 617, 587 N.W.2d 364 (1998); *Freeman v. Basso*, 128 S.W.3d 138 (Mo. Ct. App. 2004); *Davis v. Scott*, 320 S.W.3d 87 (Ky. 2010); *Alcman Servs. Corp. v. Samuel H. Bullock, P.C.*, 925 F.Supp. 252 (D.N.J. 1996); *Picadilly, Inc. v. Raikos*, 582 N.E.2d 338 (Ind. 1991); *Schroeder v. Hudgins*, 142 Ariz. 395, 690 P.2d 114 (Ariz. Ct. App. 1984); *Roberts v. Holland & Hart*, 857 P.2d 492 (Colo. Ct. App. 1993); *Christison v. Jones*, 83 Ill.App.3d 334, 405 N.E.2d 8 (1980); *Delaware CWC Liquidation Corp. v. Martin*, 213 W.Va. 617, 584 S.E.2d 473 (2003); *Wagener v. McDonald*, 509 N.W.2d 188 (Minn. App. 1993); *cf. Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005) (collecting cases as of that date and concluding a legal malpractice claim which is assigned to an adversary in the underlying matter is impermissible and subject to judgment as a matter of law).
12. Tomsheck further argues that in *Tower Homes*, "the Nevada Supreme Court extensively quoted and adopted the longstanding approach taken by the California Court of Appeals in *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which detailed the policy considerations underlying the nonassignability of legal malpractice claims. The Court noted: 'As the court in *Goodley* stated, '[i]t is the unique quality of legal services, the personal nature of the attorney's duty to the client and the confidentiality of the attorney-client relationship that invoke public policy considerations in our conclusion that malpractice claims should not be subject to assignment.' 133 Cal.Rptr. at 87. Allowing such assignments would 'embarrass the attorney-client relationship and imperil the sanctity of the highly confidential and fiduciary relationship existing between attorney and client.' *Id.*' *Tower Homes*, 132 Nev. at 635, 377 P.3d at 123."
13. Summarizing Tomsheck's argument in his Motion for Summary Judgment, the depth and breadth of control over this litigation which Hefetz (Plaintiff Beavor's adversary in

the underlying matter) has been given pursuant to the settlement agreement, along with the assignment of all of the proceeds which Plaintiff Beavor might receive from this lawsuit, equates to an impermissible assignment of the legal malpractice claim itself. As Tomsheck puts it, “Plaintiff commoditized and sold his legal malpractice claim to Hefetz, giving Hefetz all authority over the case while Plaintiff stands to gain (and lose) absolutely nothing by continuing to prosecute the claim as Hefetz’s figurehead.”

14. In Opposition, Plaintiff Beavor concedes he assigned all of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to his former adversary. Plaintiff Beavor argues that Nevada law, as stated in *Edward J. Achrem, Chtd. v. Expressway Plaza Pshp.*, 112 Nev. 737, 917 P.2d 447 (1996), allows a party to assign proceeds from a tort action to a third party. In that regard, Plaintiff Beavor argues the *Tower Homes, LLC* decision does not prohibit the assignment of the recovery in a legal malpractice claim.
15. Plaintiff Beavor also argues *Tower Homes, LLC* is distinguishable upon its facts, and that while Plaintiff Beavor did assign all of the proceeds of this legal malpractice lawsuit to Hefetz, Plaintiff Beavor contends he “still maintains complete control of his case.” In this respect, Plaintiff relies upon his Declaration dated March 27, 2020 for this proposition and insists that “[t]he only thing that has been assigned in this matter is the recovery.”
16. Plaintiff Beavor further argues that even if this Court finds the assignment of proceeds to be invalid, or that the settlement agreement constitutes a *de facto* assignment of Plaintiff Beavor’s legal malpractice lawsuit to Hefetz, Plaintiff Beavor should still be permitted “to pursue the matter directly against the Defendant” and that “any of the assigned rights must revert back to Plaintiff Beavor.”
17. Tomsheck’s Reply argues that the terms of the Hefetz/Beavor settlement agreement make clear that Plaintiff Beavor “assigned all of the proceeds and potential recovery from his then-unfiled legal malpractice lawsuit against [] Tomsheck...in order to circumvent Nevada’s strong public policy barring assignment of legal malpractice claims.” In fact, Tomsheck argues Plaintiff Beavor *irrevocably* assigned them and therefore has nothing to assert against Tomsheck on his own. Moreover, Tomsheck argues Plaintiff Beavor’s March 27, 2020 Declaration is inadmissible parol evidence and constitutes Plaintiff Beavor’s attempt to violate Nevada’s prohibition upon “fabricating issues of fact for purposes of avoiding summary judgment” because the representations in the Declaration are contrary to the terms of the Hefetz/Beavor settlement agreement which Plaintiff Beavor signed under oath. *See Aldabe v. Adams*, 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit a sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998).
18. Tomsheck further argues in his Reply that, contrary to Plaintiff’s assertions, “[a]side from the multitude of jurisdictions cited in [] Tomsheck’s motion, other jurisdictions

have noted that the *de facto* assignment of a legal malpractice claim violates public policy and compels dismissal. *E.g. Kenco Enters. Nw., LLC v. Wiese*, 291 P.3d 261 (Wash. Ct. App. 2013); *Paonia Res., LLC v. Bingham Greenebaum Doll, LLP*, 2015 WL 7431041 (W.D. Ky. Nov. 20, 2015); *Trinity Mortg.. Cos v. Dreyer*, 2011 WL 61680 (N.D. Okla. Jan 7, 2011). ‘It is the mere opportunity for collusion and the transformation of legal malpractice to a commodity that is problematic.’ *Kenco*, 291 P.3d at 263. ‘This reasoning applies whether or not the collusion is real.’ *Id.* The rule prohibiting either express or *de facto* assignment of legal malpractice claims cannot ‘be obfuscated by clever lawyers and legal subtleties.’ *Id.* at 265.”

19. Tomsheck further argues in his Reply that *Tower Homes, LLC* rejected Plaintiff Beavor’s position that *Achrem* applies to assignment of proceeds from legal malpractice actions, citing *Tower Homes, LLC*’s assertion that “[w]e are not convinced that *Achrem*’s reasoning applies to legal malpractice claims...” *Tower Homes, LLC* at 635, 377 P.3d at 122. Indeed, Tomsheck argues this conclusion is consistent with rulings from other jurisdictions which have held that there is a “meaningless distinction between an assignment of a cause of action and an assignment of recovery from such an action, which distinction is made merely to circumvent the public policy barring assignments. *Town & Country Bank of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 218, 76 Ill.Dec. 724, 459 N.E.2d 639 (1984). We will not engage in such a nullity.” *Gurski*, 276 Conn. 257, 285, 885 A.2d 163, 178 (2005); and see *Botma v. Huser*, 202 Ariz. 14, 19, 39 P.3d 538, 543 (Ariz. Ct. Ap. 2002) (finding an assignment agreement was impermissible and subject to summary judgment because it “allow[ed] Plaintiff Himes to recover any and all monies which might be owing to Plaintiff Botma’ and that ‘Plaintiff Himes will be the ultimate beneficiary of Plaintiff Botma’s claims herein.’ To allow the present lawsuit, which was born out of that assignment agreement, to proceed in Botma’s name would be to wink at the rule against assignment of legal malpractice claims.”).

20. Tomsheck’s Reply further distinguishes the cases relied upon by Plaintiff Beavor in his Opposition, noting, *inter alia*, that those cases either do not support Plaintiff Beavor’s arguments, rely upon facts far different from those found in this case, or represent a “severely discredited” view of the assignability of legal malpractice claims.

21. Finally, Tomsheck’s Reply argues no Nevada court has permitted an assignor to “claw back” and assert for himself a previously assigned legal malpractice claim, particularly where 100% of the proceeds have been assigned. Tomsheck further notes that Plaintiff Beavor’s irrevocable assignment of those proceeds prevents him from pursuing the matter against Tomsheck now, and that no Nevada case law, whether published or unpublished, supports Plaintiff Beavor’s “do over” arguments.

22. In their totality, Tomsheck’s arguments regarding the impermissible assignment of this legal malpractice lawsuit by Plaintiff Beavor’s to Hefetz are persuasive, if not compelling, and they are sufficient to justify summary judgment in his favor. While Plaintiff Beavor appears to rely upon rhetoric and arguments related to whether Tomsheck committed legal malpractice in his representation of Plaintiff Beavor, that is

not the legal issue before the Court. In fact, the Court believes each of Plaintiff Beavor's arguments in Opposition, in the briefs and at oral argument, is effectively defeated by the case law and arguments advanced in Tomsheck's Reply Brief and oral argument.

23. As a result, the Court need not reach the issues raised in Tomsheck's Motion for Summary Judgment concerning the statute of limitations acting as a bar to Plaintiff Beavor's lawsuit.

24. When questioned by the court, counsel for the parties each represented to the Court that they believe the net effect of the Court's decision on Tomsheck's Motion for Summary Judgment allows the Court to decline to address the merits of both Saggese Motions or any Countermotion thereto. The Court shares this belief.

CONCLUSIONS OF LAW

Based upon the Findings of Fact itemized herein, controlling Nevada precedent, the persuasive rationale from other jurisdictions which have ruled upon the issue, as well as the arguments contained in the parties' briefing on Tomsheck's Motion for Summary Judgment, the Court makes these Conclusions of Law as follows:

1. The terms of the settlement agreement between Plaintiff Beavor and his former adversary in the underlying case *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz, are admissible evidence of Plaintiff Beavor's assignment of his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. Such assignment is impermissible under Nevada law. *See Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982); *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016).
2. Plaintiff Beavor irrevocably assigned 100% of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. He also assigned substantial, if not complete, control over the current litigation to Hefetz. Nevada law, consistent with other jurisdictions, forbids this.
3. Even assuming Plaintiff Beavor had only assigned the proceeds from the current litigation to Hefetz, Nevada law does not allow a party to simply assign the proceeds from a legal malpractice lawsuit in order to avoid the appearance of an impermissible assignment of the legal malpractice lawsuit itself. *See Tower Homes, LLC*, 132 Nev. at 635, 377 P.3d at 122. In fact, the *Tower Homes, LLC* Court rejected this very approach.
4. Indeed, other jurisdictions have specifically held that the assignment of proceeds from a legal malpractice claim, rather than the assignment of the claim itself, is a meaningless distinction which is made to circumvent the public policy barring assignment of legal malpractice claims. *E.g., Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005); *Botma v. Huser*, 202 Ariz. 14, 39 P.3d 538 (Ariz. Ct. Ap. 2002) *Town & Country Bank*

1 *of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 76 Ill.Dec. 724, 459
2 N.E.2d 639 (1984). Such conclusion is both compelling and consistent with Nevada law
3 and the rationale underpinning Nevada's prohibition of the assignment of legal
4 malpractice claims. *See, e.g., Chaffee v. Smith, supra; Tower Homes, LLC, supra;*
5 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976).

- 6
- 7 5. Whether characterized as an express or *de facto* assignment of his legal malpractice
8 lawsuit, Plaintiff Beavor's assignment bars him from prosecuting this legal malpractice
9 lawsuit now, and Plaintiff Beavor cannot claw back for himself that which he assigned
10 to Hefetz. Nor is Plaintiff Beavor entitled to a "do over". Plaintiff Beavor irrevocably
11 assigned his legal malpractice claim to Hefetz and therefore has nothing to prosecute for
12 himself. But more importantly, allowing Plaintiff Beavor to do so, under the facts of this
13 case, would be contrary to controlling, longstanding Nevada precedent and would defeat
14 the strong public policy reasons behind Nevada law's prohibition of assignment of legal
15 malpractice claims entirely.
- 16 6. As such, Tomsheck is entitled to summary judgment based upon Plaintiff Beavor's
17 impermissible assignment of his legal malpractice claim to Hefetz.
- 18 7. By granting Tomsheck's Motion for Summary Judgment on that basis, the Court need
19 not consider, and therefore declines to rule upon, Tomsheck's separate statute of
20 limitations argument as well as Saggese's pending Motions and any Countermotion
21 thereto.

22 **ORDER**

23 Based upon the above Findings of Fact and Conclusions of Law,

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 25 1. Defendant Tomsheck's Motion for Summary Judgment is granted;
- 26 2. The Court declines to rule upon Third-Party Defendant Saggese's pending Motions,
27 and any Countermotion thereto; and,
- 28 3. Counsel for Tomsheck shall prepare the Order, which should be an abridged version
of the arguments made by the parties in their respective briefs and at oral argument,
and should submit that Order to the Court in compliance with EDCR 7.21, but no
later than 14 days from the date of the hearing unless additional time is requested
and granted by this Court.

1 **IT IS SO ORDERED.**

Dated this 9th day of July, 2020

2 DATED this ____ day of July, 2020.

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JUDGE JIM CROCKETT

Approved as to Form and Content:

COHEN JOHNSON PARKER EDWARDS

OLSON CANNON GORMLEY &

STOBERSKI
9F8-023-9AFF 25ED

Jim Crockett

/s/ H. Stan Johnson, Esq. (Form Only)

/s/ Max E. Corrick, II

H. STAN JOHNSON, ESQ.

MAX E. CORRICK, II

Nevada Bar No. 000265

Nevada Bar No. 006609

375 East Warm Springs Road, Suite 104

9950 West Cheyenne Avenue

Las Vegas, NV 89119

Las Vegas, NV 89129

Attorney for Plaintiff

Attorneys for Defendant/Third-Party Plaintiff

CHRISTOPHER BEAVOR

JOSHUA TOMSHECK

LIPSON NEILSON P.C.

/s/ Joseph P. Garin, Esq.

JOSEPH P. GARIN, ESQ.

Nevada Bar No. 006653

9900 Covington Cross Drive

Suite 120

Las Vegas, NV 89144

Attorneys for Third-Party Defendant

MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Thursday, July 9, 2020 11:36 AM
To: Max Corrick; CJ Barnabi (cj@barnabilaw.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- FFCL and Order on Motions

Max I will approve the order as to form but not content; can you make that change and use my e-signature.

Thanks
Stan

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

Also, this communication is CONFIDENTIAL and protected by the Attorney-Client and/or the Attorney Work Product Privileges. It is intended solely for the addressees listed above. Anyone not listed above, or who is not an agent authorized to receive it for delivery to an addressee, is not authorized to read, disseminate, forward, copy, distribute, or discuss its contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, July 1, 2020 3:04 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; CJ Barnabi (cj@barnabilaw.com) <cj@barnabilaw.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- FFCL and Order on Motions

All: Please see the attached proposed FFCL and Order on the motions hearing on June 25. I have tried to follow Judge Crockett's request for it to be an "abridged" version of the briefs and therefore rely heavily upon what has been written in the briefs, rather than the colloquy at oral argument – except where necessary. Given the fulsome briefing on all sides I think this is as abridged as I can get and still be faithful to the positions of the parties and the comments from the Court.

If you have any proposed edits please offer them. July 9 is the due date for the Order.

Once we have mutually agreed upon language I will request a separate email from you authorizing me to include your e-signature so that this can be transmitted to Dept. 24 per its protocols.

Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

From: Joe Garin <JGarin@lipsonneilson.com>
Sent: Thursday, July 9, 2020 10:21 AM
To: Max Corrick
Cc: sjohnson@cohenjohnson.com; CJ Barnabi (cj@barnabilaw.com); Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck proposed Order

I approved and you can sign for me

Sent from my iPhone

On Jul 9, 2020, at 10:53 AM, Max Corrick <mcorrick@ocgas.com> wrote:

Gentlemen: I have not received any comments or requested edits from Beavor's camp on my draft Order which I sent on July 1. I have received approval from Mr. Garin to insert his esignature as the proposed Order now stands.

Unless I receive some communication back by 1 pm today I will indicate that Beavor has not responded as to form and content.

Please let me know how you intend to proceed. Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, 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: 7/9/2020

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16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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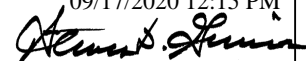
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Marie Twist

marie@barnabilaw.com

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

MAX E. CORRICK, II
Nevada Bar No. 006609
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

v.

JOSHUA TOMSHECK, an individual;
DOES I-X, inclusive,

Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
PURSUANT TO NRCP 52(b) and 59(e)**

Date of Hearing: September 17, 2020

Time of Hearing: 9:00 a.m.

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,

Third-Party Defendant.

This matter of Plaintiff CHRISTOPHER BEAVOR's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) having been scheduled for hearing on the 17th day of September, 2020, before the Honorable Judge Jim Crockett.

The court has reviewed the following pleadings:

1. Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
2. Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
3. Third-Party Defendant's Substantive Joinder to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)
4. Plaintiff's Reply to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e).

The court has determined that pursuant to the discretion provided to this court this matter may be decided on the briefs and pleadings filed by the parties without oral argument because the court deems oral argument unnecessary. *See* EDCR 2.23(c). Accordingly, the court finds and orders as follows:

FINDINGS

Plaintiff's motion to alter or amend is really just a motion for reconsideration coupled with the injection of entirely new information that was not presented during the initial briefing on the underlying motion. The attempted introduction of new information not previously considered is improper, whether the motion is to alter or amend or reconsider.

Additionally, Plaintiff reargues the same factual and legal issues that were already considered by the court prior to rendering the decision which Plaintiff seeks to alter or amend. Rearguing the same legal and factual issues that have already been argued and considered is not an appropriate basis to alter or amend the court's decision, nor is it a proper basis for reconsideration of the court's ruling.

ORDER

Based upon the above Findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) is DENIED.

IT IS SO ORDERED.

Dated this 17th day of September, 2020

DATED this ____ day of September, 2020.



JUDGE JIM CROCKETT

Approved as to Form and Content:

COHEN JOHNSON

Approved as to form only
/s/H. Stan Johnson

H. STAN JOHNSON, ESQ.
Nevada Bar No. 000265
375 East Warm Springs Road, Suite 104
Las Vegas, NV 89119
Attorney for Plaintiff
CHRISTOPHER BEAVOR

OLSON CANNON GORMLEY &
STOBERSKI
BBB-250 E598 FE61
Jim Crockett
District Court Judge
/s/Max E. Corrick, II

MAX E. CORRICK, II
Nevada Bar No. 006609
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

LIPSON NEILSON P.C.

Approved as to form and content
/s/Amanda A. Ebert

AMANDA A. EBERT, ESQ.
Nevada Bar No. 12731
9900 Covington Cross Drive
Suite 120
Las Vegas, NV 89144
Attorneys for Third-Party Defendant
MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Wednesday, September 16, 2020 5:14 PM
To: Max Corrick; Kevin Johnson; Amanda Ebert (AEbert@lipsonneilson.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, September 16, 2020 1:17 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

From: Amanda Ebert <AEbert@lipsonneilson.com>
Sent: Wednesday, September 16, 2020 5:46 PM
To: Max Corrick
Cc: H. Stan Johnson; Kevin Johnson; Joe Garin; Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck -- Proposed Order

Looks good to me as well- please go ahead and insert my E-signature. Thanks.

On Sep 16, 2020, at 5:22 PM, Max Corrick <mcorrick@ocgas.com> wrote:

Understood.

Sent from my Sprint Samsung Galaxy S10e.

----- Original message -----

From: "H. Stan Johnson" <sjohnson@cohenjohnson.com>
Date: 9/16/20 5:13 PM (GMT-08:00)
To: Max Corrick <mcorrick@ocgas.com>, Kevin Johnson <kjohnson@cohenjohnson.com>, "Amanda Ebert (AEbert@lipsonneilson.com)" <AEbert@lipsonneilson.com>, Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: RE: Beavor adv. Tomscheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>

Sent: Wednesday, September 16, 2020 1:17 PM

To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>

Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>

Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, Defendant(s)
9

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14 Service Date: 9/17/2020

15 Max Corrick	mcorrick@ocgas.com
16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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Marie Twist

marie@barnabilaw.com

CASE SUMMARY**CASE NO. A-19-793405-C**

Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

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Location: **Department 24**
 Judicial Officer: **Crockett, Jim**
 Filed on: **04/23/2019**
 Case Number History:
 Cross-Reference Case Number: **A793405**

CASE INFORMATION

Statistical Closures
 07/09/2020 Summary Judgment

Case Type: **Legal Malpractice**

Case Status: **07/09/2020 Closed**




DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-19-793405-C
 Court Department 24
 Date Assigned 10/11/2019
 Judicial Officer Crockett, Jim

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Beavor, Christopher	Johnson, Harold Stanley <i>Retained</i> 702-823-3500(W)
Defendant	Tomsheck, Joshua	Corrick, Max E <i>Retained</i> 702-384-4012(W)
Third Party Defendant	Saggese, Marc, ESQ	Garin, Joseph P <i>Retained</i> 702-382-1500(W)
Third Party Plaintiff	Tomsheck, Joshua	Corrick, Max E <i>Retained</i> 702-384-4012(W)

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

04/23/2019	 Complaint Filed By: Plaintiff Beavor, Christopher <i>Complaint</i>
04/23/2019	 Initial Appearance Fee Disclosure Filed By: Plaintiff Beavor, Christopher <i>Initial Appearance Fee Disclosure</i>
04/23/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Beavor, Christopher <i>Summons</i>
04/29/2019	Case Reassigned to Department 9 <i>Judicial Reassignment to Department 9 - Judge Cristina Silva</i>

CASE SUMMARY

CASE NO. A-19-793405-C

04/30/2019	 Acceptance of Service Filed By: Plaintiff Beavor, Christopher <i>Acceptance of Service</i>
05/16/2019	 Answer and Third Party Complaint TPP: Third Party Plaintiff Tomsheck, Joshua <i>Joshua Tomsheck s Answer and Third-Party Complaint</i>
05/16/2019	 Initial Appearance Fee Disclosure Filed By: Third Party Plaintiff Tomsheck, Joshua <i>Joshua Tomsheck s Initial Appearance Fee Disclosure</i>
05/16/2019	 Demand for Jury Trial Filed By: Third Party Plaintiff Tomsheck, Joshua <i>Joshua Tomsheck s Demand for Jury Trial</i>
05/16/2019	 Summons Electronically Issued - Service Pending Party: Third Party Plaintiff Tomsheck, Joshua <i>Third-Party Summons</i>
07/10/2019	 Notice of Early Case Conference Filed By: Plaintiff Beavor, Christopher <i>Notice of Early Case Conference</i>
08/19/2019	 Initial Appearance Fee Disclosure Filed By: Third Party Plaintiff Tomsheck, Joshua <i>Joshua Tomsheck s Amended Initial Appearance Fee Disclosure</i>
08/19/2019	 Joint Case Conference Report Filed By: Plaintiff Beavor, Christopher <i>Joint Case Conference Report</i>
08/20/2019	 Mandatory Rule 16 Conference Order <i>Order to Appear for Mandatory Scheduling Conference (Parties Have Reached Joint Case Conference Report)</i>
08/26/2019	 Affidavit of Service Filed By: Third Party Plaintiff Tomsheck, Joshua <i>Affidavit of Service</i>
08/30/2019	 Notice Filed By: Plaintiff Beavor, Christopher <i>Notice Confirming Service on Defendant of Plaintiff's NRCP 16.1 Initial Disclosure of Witnesses and Documents</i>
10/09/2019	 Peremptory Challenge Filed by: Plaintiff Beavor, Christopher <i>Peremptory Challenge</i>
10/09/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/10/2019	 Notice of Department Reassignment

CASE SUMMARY

CASE NO. A-19-793405-C

Notice of Department Reassignment

10/11/2019	 Peremptory Challenge Filed by: Third Party Plaintiff Tomscheck, Joshua <i>Peremptory Challenge</i>
10/11/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
10/22/2019	 Stipulated Protective Order Filed By: Plaintiff Beavor, Christopher <i>Stipulated Order of Protection</i>
11/25/2019	 Scheduling and Trial Order <i>Scheduling Order and Order Setting Civil Jury Trial</i>
12/18/2019	 Notice of Change of Firm Name Filed By: Third Party Plaintiff Tomscheck, Joshua <i>Notice of Change of Firm Name</i>
01/14/2020	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Beavor, Christopher <i>Stipulation and [Proposed] Order to Extend Discovery and Trial Dates</i>
01/14/2020	 Notice of Entry Filed By: Plaintiff Beavor, Christopher <i>Notice of Entry of Order</i>
01/21/2020	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
02/05/2020	 Affidavit of Service Filed By: Plaintiff Beavor, Christopher <i>Affidavit of Service for Dickinson Wright PLLC</i>
02/05/2020	 Affidavit of Service Filed By: Plaintiff Beavor, Christopher Party Served: Third Party Defendant Saggese, Marc, ESQ <i>Affidavit of Service for Saggese & Associates</i>
03/02/2020	 Notice of Appearance Party: Third Party Defendant Saggese, Marc, ESQ <i>Notice of Appearance</i>
03/09/2020	 Motion for Summary Judgment Filed By: Third Party Plaintiff Tomscheck, Joshua <i>Joshua Tomscheck's Motion for Summary Judgment</i>
03/10/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
03/10/2020	 Filed Under Seal Filed By: Third Party Plaintiff Tomscheck, Joshua

CASE SUMMARY

CASE NO. A-19-793405-C

Exhibit A to Joshua Tomscheck's Motion for Summary Judgment 10/22/19 Per Stipulated Order of Protection

03/11/2020



Errata

Filed By: Third Party Plaintiff Tomscheck, Joshua
Errata to Joshua Tomscheck s Motion for Summary Judgment

03/11/2020



Initial Appearance Fee Disclosure

Filed By: Third Party Defendant Saggese, Marc, ESQ
Initial Appearance Fee Disclosure

03/11/2020



Motion To Dismiss - Alternative Motion For Summary Judgment

Filed By: Third Party Defendant Saggese, Marc, ESQ
Third-Party Defendant Marc Saggese's Motion to Dismiss, or Alternatively, Motion for Summary Judgment

03/12/2020



Clerk's Notice of Hearing

Notice of Hearing

03/27/2020



Opposition to Motion For Summary Judgment

Filed By: Plaintiff Beavor, Christopher
Opposition to Joshua Tomscheck's Motion for Summary Judgment

04/24/2020



Stipulation and Order

STIPULATION AND ORDER TO STRIKE

04/27/2020



Opposition to Motion to Dismiss

Filed By: Third Party Plaintiff Tomscheck, Joshua
Joshua Tomscheck s Opposition to Third-Party Defendant Marc Saggese s Motion to Dismiss, or Alternatively, Motion for Summary Judgment, and Tomscheck s Request for NRCP 56(d) Relief

04/30/2020



Supplement to Opposition

Filed By: Third Party Plaintiff Tomscheck, Joshua
Defendant/Third-Party Plaintiff Joshua Tomscheck's Supplement to His Opposition to Third-Party Defendant Marc Saggese's Motion to Dismiss, or Alternatively, Motion for Summary Judgment, and Tomscheck's Request for NRCP 56(d) Relief

04/30/2020



Reply to Opposition

Filed by: Third Party Plaintiff Tomscheck, Joshua
Joshua Tomscheck's Reply to Plaintiff's Opposition to Motion for Summary Judgment

04/30/2020



Reply in Support

Filed By: Third Party Defendant Saggese, Marc, ESQ
THIRD-PARTY DEFENDANT MARC SAGGESE S REPLY IN SUPPORT OF MOTION TO DISMISS/MOTION TO QUASH, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

05/05/2020



Order Shortening Time

Third Party Defendant Marc Saggese S Motion to Strike Supplemental Opposition of Third-Party Plaintiff Joshua Tomscheck on Order Shortening Time

06/01/2020



Stipulation and Order

Filed by: Third Party Plaintiff Tomscheck, Joshua
Stipulation and Order Setting Briefing Schedule on Third- Party Defendant Marc Saggese,

CASE SUMMARY

CASE NO. A-19-793405-C

Esq.'s Motion to Strike Supplemental Opposition of Third- Party Joshua Tomscheck on Order Shortening Time

06/02/2020



Notice of Entry of Stipulation and Order

Filed By: Third Party Plaintiff Tomscheck, Joshua
Notice of Entry of Stipulation and Order

06/08/2020



Opposition to Motion

Filed By: Third Party Plaintiff Tomscheck, Joshua
Defendant/Third-Party Plaintiff Joshua Tomscheck s Opposition to Third-Party Defendant Marc Saggese s Motion to Strike Supplemental Opposition of Third-Party Plaintiff Joshua Tomscheck on Order Shortening Time and Countermotion to Allow Supplementation of the Record on Marc Saggese, Esq. s Motion to Dismiss/Motion for Summary Judgment

06/18/2020



Reply in Support

Filed By: Third Party Defendant Saggese, Marc, ESQ
THIRD-PARTY DEFENDANT MARC SAGGESE S REPLY IN SUPPORT OF MOTION TO STRIKE SUPPLEMENTAL OPPOSITION OF THIRD-PARTY PLAINTIFF JOSHUA TOMSHECK AND OPPOSITION TO COUNTERMOTION TO ALLOW SUPPLEMENTATION OF THE RECORD

07/09/2020



Order

Filed By: Third Party Plaintiff Tomscheck, Joshua
Order on Findings of Fact And Conclusions of Law on ; 1. Joshua Tomscheck's Motion For Summary Judgment; 2. Third- Party Defendant Marc Saggese's Motion to Dismiss, Or Alternatively, Motion to For Summary Judgment; and 3. Third- Party Defendant Marc Saggese's Motion to Strike Supplemental Opposition of Third- Party Plaintiff Joshua Tomscheck On Order Shortening Time

07/10/2020



Notice of Entry of Order

Filed By: Third Party Plaintiff Tomscheck, Joshua
Notice of Entry of Order

07/10/2020



Memorandum of Costs and Disbursements

Filed By: Third Party Plaintiff Tomscheck, Joshua
Verified Memorandum of Fees and Costs

07/13/2020



Motion to Retax

Filed By: Plaintiff Beavor, Christopher
Plaintiff's Motion to Retax or Deny Costs

07/13/2020



Motion to Retax

Filed By: Plaintiff Beavor, Christopher
Amended Motion to Retax

07/14/2020



Clerk's Notice of Hearing

Notice of Hearing

07/14/2020



Motion for Attorney Fees

Filed By: Third Party Plaintiff Tomscheck, Joshua
Defendant/Third-Party Plaintiff Joshua Tomscheck's Motion for Attorneys' Fees Pursuant to NRS 18.010(2)(b)

07/14/2020



Motion for Costs

Filed By: Third Party Plaintiff Tomscheck, Joshua
Defendant/Third-Party Plaintiff Joshua Tomscheck s Motion for Costs

CASE SUMMARY

CASE NO. A-19-793405-C

07/15/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/15/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/21/2020	 Opposition to Motion Filed By: Third Party Plaintiff Tomscheck, Joshua <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Opposition to Plaintiff's Motion to Retax or Deny Costs</i>
07/28/2020	 Opposition to Motion Filed By: Plaintiff Beavor, Christopher <i>Plaintiff's Opposition to Defendant/Third-Party Plaintiff Joshua Tomscheck's Motion for Attorneys' Fees Pursuant to NRS 18.010(2)(b)</i>
08/07/2020	 Opposition Filed By: Plaintiff Beavor, Christopher <i>Opposition to Defendant's Motion for Costs</i>
08/07/2020	 Motion to Amend Filed By: Plaintiff Beavor, Christopher <i>Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)</i>
08/11/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/13/2020	 Reply to Opposition Filed by: Plaintiff Beavor, Christopher <i>Reply to Defendant/Third-Party Plaintiff Joshua Tomscheck's Opposition to Plaintiff's Motion to Retax or Deny Costs</i>
08/14/2020	 Reply to Opposition Filed by: Third Party Plaintiff Tomscheck, Joshua <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Reply to Opposition to Motion for Costs</i>
08/18/2020	 Reply to Opposition Filed by: Third Party Plaintiff Tomscheck, Joshua <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Reply to Plaintiff's Opposition Motion for Attorney's Fees Pursuant to NRS 18.010(2)(b)</i>
08/21/2020	 Opposition to Motion Filed By: Third Party Plaintiff Tomscheck, Joshua <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)</i>
08/28/2020	 Joinder Filed By: Third Party Defendant Saggese, Marc, ESQ <i>Third Party Defendant Marc Saggese's Substantive Joinder to Defendant/Third-Party Plaintiff Joshua Tomscheck's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)</i>
09/11/2020	 Reply to Opposition Filed by: Plaintiff Beavor, Christopher

CASE SUMMARY

CASE NO. A-19-793405-C

REPLY TO DEFENDANT/THIRD-PARTY PLAINTIFF JOSHUA TOMSHECK S
OPPOSITION TO PLAINTIFF S MOTION TO ALTER OR AMEND AND THIRD-PARTY
DEFENDANT SUBSTANTIVE JOINDER

09/12/2020



Order

Filed By: Plaintiff Beavor, Christopher
*ORDER GRANTING PLAINTIFF'S MOTION TO RETAX OR DENY AND DENYING
DEFENDANT'S MOTION FOR COSTS AND MOTION FOR FEES*

09/14/2020



Notice of Entry of Order

Filed By: Plaintiff Beavor, Christopher
Notice of Entry of Order

09/17/2020



Order Denying Motion

Filed By: Third Party Plaintiff Tomscheck, Joshua
Order Denying Plaintiff's Motion to Alter or Amend Pursuant to NRcp 52(b) and 59(e)

09/17/2020



Notice of Entry of Order

Filed By: Third Party Plaintiff Tomscheck, Joshua
Notice of Entry of Order

10/16/2020



Notice of Appeal

Filed By: Plaintiff Beavor, Christopher
Notice of Appeal

10/16/2020



Case Appeal Statement

Filed By: Plaintiff Beavor, Christopher
Case Appeal Statement

DISPOSITIONS

07/09/2020

Summary Judgment (Judicial Officer: Crockett, Jim)
Debtors: Marc Saggese, ESQ. (Third Party Defendant)
Creditors: Joshua Tomscheck (Third Party Plaintiff)
Judgment: 07/09/2020, Docketed: 07/10/2020
Comment: Certain Claims

HEARINGS

09/12/2019



Mandatory Rule 16 Conference (9:00 AM) (Judicial Officer: Silva, Cristina D.)

Set Status Check;
Journal Entry Details:

This is the time set for the Mandatory Rule 16 Conference. Court addressed the requirements of Rule 16. Counsel anticipate the trial will take five (5) days; this is a legal malpractice case; no settlement conference has been requested. Court noted that the Complaint was filed on November 9, 2018. Colloquy regarding the scope of the discovery. Mr. Johnson advised that this a fairly straight forward legal malpractice case; he anticipates depositions of the pertinent parties as well as experts to establish the various duties associated with malpractice, the written discovery will be minimal. Mr. Corrick advised that he does not believe this is a straight forward legal malpractice case due to its long history; however, the discovery will be minimal. At the Rule 16.1 conference, counsel discussed the computation of damages and documentation supporting those damages. Part of the damages emanate from a settlement agreement in the underlying matter and Mr. Corrick believes that the Defendant is entitled to know what is in that settlement agreement; he is willing to enter into a Protective Order. Additionally, the Third-Party Defendant was recently served and his answer was due yesterday (September 11) but it has not been filed yet. Therefore, Mr. Corrick believes that the dates set out in the Joint Case Conference Report (JCCR) are appropriate. The Court believes the dates in the JCCR are realistic and, therefore, will make no changes at this time. Upon Court's inquiry, Mr. Johnson advised that he believes counsel can work together regarding the Protective Order. COURT ORDERED, matter set for a status check. If the Protective Order is

CASE SUMMARY

CASE NO. A-19-793405-C

resolved prior to the status check date, it will be VACATED. 10/22/19 8:30 AM STATUS CHECK: PROTECTIVE ORDER ;

10/10/2019



Minute Order (3:00 AM) (Judicial Officer: Israel, Ronald J.)

Minute Order Re: Dept. 28 Recusal

Minute Order - No Hearing Held; Minute Order Re: Dept. 28 Recusal

Journal Entry Details:

Judge Israel presided over the underlying case, Hefetz v. Beavor, A-11-645353-C and therefore it is appropriate in the instant Legal Malpractice case, to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random. Master Calendar to RESET any pending motions before the new Department and notify the parties of same. CLERK'S NOTE: A copy of this minute order was e-served to counsel. kt 10/10/19.;

12/03/2019

CANCELED Status Check (9:00 AM) (Judicial Officer: Silva, Cristina D.)

Vacated

Status Check: Protective Order

05/07/2020

CANCELED Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Crockett, Jim)

Vacated

06/25/2020

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Crockett, Jim)

Joshua Tomscheck's Motion for Summary Judgment

Granted;

06/25/2020

Motion to Dismiss (9:00 AM) (Judicial Officer: Crockett, Jim)

Third-Party Defendant Marc Saggese's Motion to Dismiss, or Alternatively, Motion for Summary Judgment

Moot;

06/25/2020

Motion to Strike (9:00 AM) (Judicial Officer: Crockett, Jim)

THIRD PARTY DEFENDANT MARC SAGGESE S MOTION TO STRIKE SUPPLEMENTAL OPPOSITION OF THIRD-PARTY PLAINTIFF JOSHUA TOMSHECK ON ORDER SHORTENING TIME

Moot;

06/25/2020



All Pending Motions (9:00 AM) (Judicial Officer: Crockett, Jim)

Matter Heard;

Journal Entry Details:

THIRD-PARTY DEFENDANT MARC SAGGESE'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGEMENT ... JOSHUA TOMSHECK'S MOTION FOR SUMMARY JUDGEMENT ... THIRD PARTY DEFENDANT MARC SAGGESE'S MOTION TO STRIKE SUPPLEMENTAL OPPOSITION OF THIRD PARTY PLAINTIFF JOSHUA TOMSHECK ON ORDER SHORTENING TIME Court reviewed the procedural history of the case. Following arguments by counsel COURT stated its findings and ORDERED Joshua Tomscheck's Motion for Summary Judgement GRANTED. COURT FURTHER ORDERED Third-Party Defendant Marc Saggese's Motion to Dismiss, or Alternatively, Motion for Summary Judgement and Third Party Defendant Marc Saggese's Motion to Strike Supplemental Opposition to Third Party Plaintiff Joshua Tomscheck on Order Shortening Time MOOT. Mr. Corrick to prepare and submit a single Order within fourteen days. COURT ORDERED, status check SET for the filing of the Order. 7/23/2020 STATUS CHECK: FILING OF ORDER;

07/07/2020

CANCELED Pre Trial Conference (9:30 AM) (Judicial Officer: Crockett, Jim)

Vacated

07/23/2020

CANCELED Status Check (3:00 AM) (Judicial Officer: Crockett, Jim)

Vacated

Status Check: Filing of Order (6/25)

07/23/2020

CANCELED Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Crockett, Jim)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-793405-C

	<i>Vacated</i>
07/30/2020	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i>
08/03/2020	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i>
08/27/2020	Motion to Retax (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiff's Motion to Retax or Deny Costs</i> Granted;
08/27/2020	Motion for Costs (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Motion for Costs</i> Denied;
08/27/2020	Motion for Attorney Fees (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Defendant/Third-Party Plaintiff Joshua Tomscheck's Motion for Attorneys' Fees Pursuant to NRS 18.010(2)(b)</i> Denied;
08/27/2020	 All Pending Motions (9:00 AM) (Judicial Officer: Crockett, Jim) Matter Heard; Journal Entry Details: <i>PLAINTIFF'S MOTION TO RETAX OR DENY COSTS ... DEFENDANT/THIRD PARTY PLAINTIFF JOSHUA TOMSHECK'S MOTION FOR COSTS ... DEFENDANT/THIRD-PARTY PLAINTIFF JOSHUA TOMSHECK'S MOTION FOR ATTORNEYS' FEES PURSUANT TO NRS 18.010 (2) (B) Court stated inclinations. Following arguments by counsel COURT ORDERED, Plaintiff's Motion to Retax or Deny Costs GRANTED. COURT FURTHER ORDERED, Defendant's Motions for Costs and Attorneys' fees DENIED. Mr. Johnson to prepare and submit the Order within two weeks. COURT ORDERED, status check SET for the filing of the Order. 9/24/2020 STATUS CHECK: FILING OF ORDER (CHAMBERS);</i>
09/14/2020	 Motion to Amend (3:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)</i> Motion Denied; Journal Entry Details: <i>Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by the parties without oral argument since the court deems oral argument unnecessary. This matter was reviewed 9/11/20. The pleadings reviewed were as follows: 1. 8/7/20 Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) 2. 8/21/20 Opposition to Plaintiff's Motion to Alter or Amend 3. 8/28/20 Third Party Defendant Saggese's Substantive Joinder to the Opposition The last day for a Reply to be filed by Plaintiff's was 9/10/20 and no Reply was filed. Plaintiff's motion to alter or amend is really just a motion for reconsideration coupled with the injection of entirely new information that was not presented during the initial briefing on the underlying motion. The attempted introduction of new information not previously considered is improper, whether the motion is to alter or amend or reconsider. Additionally, Plaintiff reargues the same factual and legal issues that were already considered by the court prior to rendering the decision which Plaintiff seeks to alter or amend. Rearguing the same legal and factual issues that have already been argued and considered is not an appropriate basis to alter or amend the court's decision nor is it a proper basis for reconsideration of the court's ruling. This Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) is DENIED. Counsel for Defendant Tomscheck to submit the order for signature and filing within 14 days per EDCR 7.21. COURT FURTHER ORDERED, matter SET for Status Check. 10/15/20 (CHAMBERS) STATUS CHECK: FILING OF ORDER DENYING MOTION TO ALTER OR AMEND PURSUANT TO NRCP 52(b) AND 59(e) (9/14/20) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/14/20 CLERK'S NOTE: The above minute order has been amended to reflect changes as to the title for Pleading #3 as Third Party Defendant Saggese's Substantive Joinder to the Opposition, and the Third Part Defendant Saggese's Substantive Joinder to Defendant / Third Party Plaintiff Joshua Tomscheck's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59 (e) was no longer GRANTED. The Amended Minute Order was electronically served to all parties via</i>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-793405-C

	<p><i>Odyssey File & Serve. // 9-14-20/ dy CLERK'S NOTE: The court reviewed all briefing in this case on 9/11/20, the day after any Reply brief was due. On 9/14/20, when the court was doing a last-minute check of the matters on calendar, it noted that Plaintiff's counsel had filed a Reply on 9/11/20, the day after the Reply was due and the day after the court issued directions to the Clerk to enter a minute order stating that the motion was denied and an order to that effect was to be submitted. It should be noted that the court did review the late-filed Reply but since it essentially reiterated arguments raised in the motion, it did not change the court's analysis and the court found no reason to reconsider or recall its decision to deny the motion. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File & serve. aw 9/16/2020;</i></p>
09/15/2020	<p>CANCELED Pre Trial Conference (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i></p>
09/24/2020	<p>CANCELED Status Check (3:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i> <i>Status Check : Filing of Order (3 Motions from 8/27)</i></p>
10/08/2020	<p>CANCELED Calendar Call (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i></p>
10/12/2020	<p>CANCELED Jury Trial (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i></p>
10/15/2020	<p>CANCELED Status Check (3:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i> <i>Filing of Order Denying Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) (9/14/20)</i></p>

DATE

FINANCIAL INFORMATION

Third Party Plaintiff Tomsheck, Joshua	
Total Charges	1,008.00
Total Payments and Credits	1,008.00
Balance Due as of 10/19/2020	0.00
 Plaintiff Beavor, Christopher	
Total Charges	749.00
Total Payments and Credits	749.00
Balance Due as of 10/19/2020	0.00
 Third Party Defendant Saggese, Marc, ESQ	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 10/19/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

CASE NO: A-19-793405-C
Department 8

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Christopher Beavor c/o Charles ("CJ") E. Barnabi Jr., Esq. 8981 W. Sahara Ave., Ste. 120 Las Vegas, NV 89117, (702) 475-8903</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Joshua Tomsheck 228 S 4th St., 1st floor Las Vegas, NV 89101 (702) 895-6760</div>
Attorney (name/address/phone): <div style="text-align: center;">CJ Barnabi, Esq. The Barnabi Law Firm, PLLC 8981 W. Sahara Ave., Ste. 120 Las Vegas, NV 89117, (702) 475-8903</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 <i>(select case type and estate value)</i> <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.

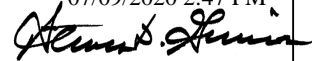
4/23/2019

Date

/s/ CJ Barnabi

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

MAX E. CORRICK, II
Nevada Bar No. 006609
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

v.

JOSHUA TOMSHECK, an individual;
DOES I-X, inclusive,
Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON:**

- 1. JOSHUA TOMSHECK'S
MOTION FOR SUMMARY
JUDGMENT;**
- 2. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
DISMISS, OR
ALTERNATIVELY, MOTION
FOR SUMMARY JUDGMENT;
and**
- 3. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
STRIKE SUPPLEMENTAL
OPPOSITION OF THIRD-
PARTY PLAINTIFF JOSHUA
TOMSHECK ON ORDER
SHORTENING TIME**

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

Date of Hearing: June 25, 2020

Time of Hearing: 9:00 a.m.

v.

MARC SAGGESE, ESQ., an individual,
Third-Party Defendant.

These matters having come on for hearing on the 25th day of June, 2020, before the Honorable Judge Jim Crockett, on JOSHUA TOMSHECK's Motion for Summary Judgment, Third-Party Defendant MARC SAGGESE's Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Third-Party Defendant MARC SAGGESE's Motion to Strike Supplemental Opposition of Third-Party Plaintiff JOSHUA TOMSHECK on Order Shortening Time.

Plaintiff CHRISTOPHER BEAVOR, appearing by and through his counsel of record, H. Stan Johnson, Esq.; Defendant/Third-Party Plaintiff JOSHUA TOMSHECK, appearing by and through his counsel of record, Max E. Corrick, II, and; Third-Party Defendant MARC SAGGESE, Esq., appearing by and through his counsel of record, Joseph P. Garin, Esq. The Court having reviewed the papers and pleadings on file, having heard the representations and arguments of counsel, and good cause appearing therefore, makes the following Findings of Fact and Conclusions of Law, and issues its Order on the motions pending before the Court.

FINDINGS OF FACT

The Court makes the following Findings of Fact:

1. On April 23, 2019, Plaintiff CHRISTOPHER BEAVOR ("Plaintiff Beavor") filed a legal malpractice lawsuit against Defendant/Third-Party Plaintiff JOSHUA TOMSHECK ("Tomsheck") arising out of alleged legal malpractice committed by Tomsheck. Tomsheck filed an Answer and Third-Party Complaint against Third-Party Defendant Marc Saggese, Esq. on May 16, 2019, seeking Contribution.
2. On March 9, 2020, Tomsheck filed his Motion for Summary Judgment. Tomsheck filed an Errata to his Motion for Summary Judgment on March 11, 2020 which corrected

certain representations regarding relevant dates in the Tomsheck Motion for Summary Judgment. Plaintiff Beavor filed an Opposition to the Tomsheck Motion for Summary Judgment on March 27, 2020. Tomsheck filed his Reply on April 30, 2020.

3. On March 11, 2020, Third-Party Defendant Marc Saggese, Esq. (“Saggese”) filed his Motion to Dismiss, or alternatively, Motion for Summary Judgment. Tomsheck filed an Opposition to the Saggese Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief, on April 3, 2020. Saggese filed his Reply on April 30, 2020. That same day, April 30, 2020, Tomsheck filed a Supplement to his Opposition to Saggese’s Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief.
4. On May 5, 2020, Saggese filed his Motion to Strike Supplemental Opposition of Third-Party Plaintiff Tomsheck on Order Shortening Time. Tomsheck filed an Opposition to the Saggese Motion to Strike on June 8, 2020, along with a Countermotion to Allow Supplementation. Saggese filed his Reply and Opposition to the Countermotion on June 18, 2020. Tomsheck did not file a Reply to the Saggese Opposition.
5. The Court recognizes that the Tomsheck Motion for Summary Judgment may be dispositive of the entire case. Therefore, while the Court reviewed each of the motions pending before it, for the reasons set forth below the Court declines to rule upon the Saggese Motions or the Tomsheck Countermotion.
6. In Tomsheck’s Motion for Summary Judgment he raises the following arguments: *First*, Tomsheck argues he is entitled to summary judgment because Plaintiff Beavor impermissibly assigned his legal malpractice claim against Tomsheck to Beavor’s adversary in the underlying matter of *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz (“Hefetz”). Tomsheck argues this is evidenced by the settlement agreement reached between Hefetz and Plaintiff Beavor on February 15, 2019. The Court notes Tomsheck never represented Hefetz, nor does Plaintiff Beavor contend that he did. The relevant terms of the Hefetz/Beavor settlement agreement, which the Court has reviewed in its entirety, include the following:

Section 4 Beavor’s Malpractice Claims

Beavor agrees to prosecute any malpractice and/or any other claims he may have against his former counsel, but Beavor will not prosecute any malpractice and/or any other claims he may have against the law firm of Dickinson Wright PLLC or any attorneys at that firm who provided legal representation to him related to the Pending Case.

H. Stan Johnson will serve as counsel for Beavor in his prosecution of said claims.

In order to permit H. Stan Johnson to serve as counsel, Beavor and H. Stan Johnson will execute any required conflict waivers.

1 *Beavor represents and warrants that he will fully pursue and cooperate in the*
2 *prosecution of the above referenced claims;*

3 *that he will take any and all reasonable actions as reasonably requested by*
4 *counsel to prosecute the above actions;*

5 *and that he will do nothing intentional to limit or harm the value of any recovery*
6 *related to the above referenced cases.*

7 *Within thirty (30) days from the Effective Date of this Settlement Agreement, Beavor*
8 *shall provide Hefetz, through his attorney H. Stan Johnson, copies of any documents or*
9 *correspondence that Beavor believes relate to the above referenced malpractice actions.*

10 *Beavor shall fully cooperate with Hefetz and his counsel regarding any claims initiated*
11 *on behalf of Beavor for the above referenced actions.*

12 *Hefetz agrees to indemnify and hold harmless Beavor from any attorney fees or costs*
13 *that may be incurred in pursuing the above referenced claims and any and all invoices*
14 *for attorneys' fees or costs shall be issued directly to Hefetz with Hefetz bearing sole*
15 *responsibility for payment thereof.*

16 *Beavor further irrevocably assigns any recovery or proceeds to Hefetz from the above*
17 *referenced actions and agrees to take any actions necessary to ensure that any recovery*
18 *or damages are paid to Hefetz pursuant to the Agreement.*

- 19 7. Tomscheck argues that, based upon the explicit terms of the Hefetz/Beavor settlement
20 agreement, Plaintiff Beavor impermissibly assigned his legal malpractice claim to
21 Hefetz – whether characterized as an express assignment or as a *de facto* assignment.
- 22 8. Tomscheck argues that “in Nevada, legal malpractice claims are absolutely unassignable
23 and subject to summary judgment if assigned.” Tomscheck cites, *inter alia*, the Nevada
24 Supreme Court decisions of *Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982), and
25 *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016), for this general
26 proposition, as well as cases from several other jurisdictions, including the case of
27 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which has
28 been directly relied upon and quoted by the Nevada Supreme Court.
9. *Second*, Tomscheck argues Plaintiff Beavor filed this legal malpractice lawsuit after the
statute of limitation period elapsed for Plaintiff Beavor to file the lawsuit. Specifically,
Tomscheck notes he and Plaintiff Beavor negotiated and entered into a binding contract,
namely a tolling agreement, which affixed the time in which Plaintiff Beavor would be
required to file a legal malpractice lawsuit to within two (2) years of the Nevada
Supreme Court resolving Supreme Court Appeal No. 68838 (c/w 68843). Although it is
not entirely clear to the Court, based upon the Errata filed by Tomscheck it appears
Tomscheck is alleging the latest date Plaintiff Beavor had to file his legal malpractice

lawsuit against Tomsheck was September 26, 2018, but that the lawsuit was not filed until April 23, 2019.

10. For the reasons set forth below, the Court declines to rule upon Tomsheck's statute of limitations argument. Instead, the Court chooses to focus upon Tomsheck's impermissible assignment of a legal malpractice claim argument.
11. With respect to that impermissible assignment argument, Tomsheck's Motion for Summary Judgment argues Plaintiff Beavor is prosecuting an impermissibly assigned legal malpractice claim which violates public policy and which is subject to summary judgment. To that end, Tomsheck states that "Nevada follows the overwhelming majority rule in this regard, especially when a legal malpractice claim has been assigned to an adversary in the underlying litigation." *See Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976); *Tate v. Goins, Underkoffer, Crawford & Langdon*, 24 S.W.3d 627 (Tex. App. 2000); *Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313 (Tex. App. 1994); *Kommavongsa v. Haskell*, 149 Wash.2d 288 (2003); *Edens Technologies, LLC v. Kile Goekjian Reed & McManus, PLLC*, 675 F.Supp.2d (D.D.C. 2009); *Revolutionary Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 744 S.E.2d 130 (2013); *Trinity Mortgage Companies, Inc. v. Dreyer*, 2011 WL 61680 (N.D. Okla. 2011); *Community First State Bank v. Olsen*, 255 Neb. 617, 587 N.W.2d 364 (1998); *Freeman v. Basso*, 128 S.W.3d 138 (Mo. Ct. App. 2004); *Davis v. Scott*, 320 S.W.3d 87 (Ky. 2010); *Alcman Servs. Corp. v. Samuel H. Bullock, P.C.*, 925 F.Supp. 252 (D.N.J. 1996); *Picadilly, Inc. v. Raikos*, 582 N.E.2d 338 (Ind. 1991); *Schroeder v. Hudgins*, 142 Ariz. 395, 690 P.2d 114 (Ariz. Ct. App. 1984); *Roberts v. Holland & Hart*, 857 P.2d 492 (Colo. Ct. App. 1993); *Christison v. Jones*, 83 Ill.App.3d 334, 405 N.E.2d 8 (1980); *Delaware CWC Liquidation Corp. v. Martin*, 213 W.Va. 617, 584 S.E.2d 473 (2003); *Wagener v. McDonald*, 509 N.W.2d 188 (Minn. App. 1993); *cf. Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005) (collecting cases as of that date and concluding a legal malpractice claim which is assigned to an adversary in the underlying matter is impermissible and subject to judgment as a matter of law).
12. Tomsheck further argues that in *Tower Homes*, "the Nevada Supreme Court extensively quoted and adopted the longstanding approach taken by the California Court of Appeals in *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which detailed the policy considerations underlying the nonassignability of legal malpractice claims. The Court noted: 'As the court in *Goodley* stated, '[i]t is the unique quality of legal services, the personal nature of the attorney's duty to the client and the confidentiality of the attorney-client relationship that invoke public policy considerations in our conclusion that malpractice claims should not be subject to assignment.' 133 Cal.Rptr. at 87. Allowing such assignments would 'embarrass the attorney-client relationship and imperil the sanctity of the highly confidential and fiduciary relationship existing between attorney and client.' *Id.*' *Tower Homes*, 132 Nev. at 635, 377 P.3d at 123."
13. Summarizing Tomsheck's argument in his Motion for Summary Judgment, the depth and breadth of control over this litigation which Hefetz (Plaintiff Beavor's adversary in

the underlying matter) has been given pursuant to the settlement agreement, along with the assignment of all of the proceeds which Plaintiff Beavor might receive from this lawsuit, equates to an impermissible assignment of the legal malpractice claim itself. As Tomsheck puts it, “Plaintiff commoditized and sold his legal malpractice claim to Hefetz, giving Hefetz all authority over the case while Plaintiff stands to gain (and lose) absolutely nothing by continuing to prosecute the claim as Hefetz’s figurehead.”

14. In Opposition, Plaintiff Beavor concedes he assigned all of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to his former adversary. Plaintiff Beavor argues that Nevada law, as stated in *Edward J. Achrem, Chtd. v. Expressway Plaza Pshp.*, 112 Nev. 737, 917 P.2d 447 (1996), allows a party to assign proceeds from a tort action to a third party. In that regard, Plaintiff Beavor argues the *Tower Homes, LLC* decision does not prohibit the assignment of the recovery in a legal malpractice claim.
15. Plaintiff Beavor also argues *Tower Homes, LLC* is distinguishable upon its facts, and that while Plaintiff Beavor did assign all of the proceeds of this legal malpractice lawsuit to Hefetz, Plaintiff Beavor contends he “still maintains complete control of his case.” In this respect, Plaintiff relies upon his Declaration dated March 27, 2020 for this proposition and insists that “[t]he only thing that has been assigned in this matter is the recovery.”
16. Plaintiff Beavor further argues that even if this Court finds the assignment of proceeds to be invalid, or that the settlement agreement constitutes a *de facto* assignment of Plaintiff Beavor’s legal malpractice lawsuit to Hefetz, Plaintiff Beavor should still be permitted “to pursue the matter directly against the Defendant” and that “any of the assigned rights must revert back to Plaintiff Beavor.”
17. Tomsheck’s Reply argues that the terms of the Hefetz/Beavor settlement agreement make clear that Plaintiff Beavor “assigned all of the proceeds and potential recovery from his then-unfiled legal malpractice lawsuit against [] Tomsheck...in order to circumvent Nevada’s strong public policy barring assignment of legal malpractice claims.” In fact, Tomsheck argues Plaintiff Beavor *irrevocably* assigned them and therefore has nothing to assert against Tomsheck on his own. Moreover, Tomsheck argues Plaintiff Beavor’s March 27, 2020 Declaration is inadmissible parol evidence and constitutes Plaintiff Beavor’s attempt to violate Nevada’s prohibition upon “fabricating issues of fact for purposes of avoiding summary judgment” because the representations in the Declaration are contrary to the terms of the Hefetz/Beavor settlement agreement which Plaintiff Beavor signed under oath. *See Aldabe v. Adams*, 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit a sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998).
18. Tomsheck further argues in his Reply that, contrary to Plaintiff’s assertions, “[a]side from the multitude of jurisdictions cited in [] Tomsheck’s motion, other jurisdictions

have noted that the *de facto* assignment of a legal malpractice claim violates public policy and compels dismissal. *E.g. Kenco Enters. Nw., LLC v. Wiese*, 291 P.3d 261 (Wash. Ct. App. 2013); *Paonia Res., LLC v. Bingham Greenebaum Doll, LLP*, 2015 WL 7431041 (W.D. Ky. Nov. 20, 2015); *Trinity Mortg.. Cos v. Dreyer*, 2011 WL 61680 (N.D. Okla. Jan 7, 2011). ‘It is the mere opportunity for collusion and the transformation of legal malpractice to a commodity that is problematic.’ *Kenco*, 291 P.3d at 263. ‘This reasoning applies whether or not the collusion is real.’ *Id.* The rule prohibiting either express or *de facto* assignment of legal malpractice claims cannot ‘be obfuscated by clever lawyers and legal subtleties.’ *Id.* at 265.”

19. Tomsheck further argues in his Reply that *Tower Homes, LLC* rejected Plaintiff Beavor’s position that *Achrem* applies to assignment of proceeds from legal malpractice actions, citing *Tower Homes, LLC*’s assertion that “[w]e are not convinced that *Achrem*’s reasoning applies to legal malpractice claims...” *Tower Homes, LLC* at 635, 377 P.3d at 122. Indeed, Tomsheck argues this conclusion is consistent with rulings from other jurisdictions which have held that there is a “meaningless distinction between an assignment of a cause of action and an assignment of recovery from such an action, which distinction is made merely to circumvent the public policy barring assignments. *Town & Country Bank of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 218, 76 Ill.Dec. 724, 459 N.E.2d 639 (1984). We will not engage in such a nullity.” *Gurski*, 276 Conn. 257, 285, 885 A.2d 163, 178 (2005); and see *Botma v. Huser*, 202 Ariz. 14, 19, 39 P.3d 538, 543 (Ariz. Ct. Ap. 2002) (finding an assignment agreement was impermissible and subject to summary judgment because it “allow[ed] Plaintiff Himes to recover any and all monies which might be owing to Plaintiff Botma’ and that ‘Plaintiff Himes will be the ultimate beneficiary of Plaintiff Botma’s claims herein.’ To allow the present lawsuit, which was born out of that assignment agreement, to proceed in Botma’s name would be to wink at the rule against assignment of legal malpractice claims.”).

20. Tomsheck’s Reply further distinguishes the cases relied upon by Plaintiff Beavor in his Opposition, noting, *inter alia*, that those cases either do not support Plaintiff Beavor’s arguments, rely upon facts far different from those found in this case, or represent a “severely discredited” view of the assignability of legal malpractice claims.

21. Finally, Tomsheck’s Reply argues no Nevada court has permitted an assignor to “claw back” and assert for himself a previously assigned legal malpractice claim, particularly where 100% of the proceeds have been assigned. Tomsheck further notes that Plaintiff Beavor’s irrevocable assignment of those proceeds prevents him from pursuing the matter against Tomsheck now, and that no Nevada case law, whether published or unpublished, supports Plaintiff Beavor’s “do over” arguments.

22. In their totality, Tomsheck’s arguments regarding the impermissible assignment of this legal malpractice lawsuit by Plaintiff Beavor’s to Hefetz are persuasive, if not compelling, and they are sufficient to justify summary judgment in his favor. While Plaintiff Beavor appears to rely upon rhetoric and arguments related to whether Tomsheck committed legal malpractice in his representation of Plaintiff Beavor, that is

not the legal issue before the Court. In fact, the Court believes each of Plaintiff Beavor's arguments in Opposition, in the briefs and at oral argument, is effectively defeated by the case law and arguments advanced in Tomsheck's Reply Brief and oral argument.

23. As a result, the Court need not reach the issues raised in Tomsheck's Motion for Summary Judgment concerning the statute of limitations acting as a bar to Plaintiff Beavor's lawsuit.

24. When questioned by the court, counsel for the parties each represented to the Court that they believe the net effect of the Court's decision on Tomsheck's Motion for Summary Judgment allows the Court to decline to address the merits of both Saggese Motions or any Countermotion thereto. The Court shares this belief.

CONCLUSIONS OF LAW

Based upon the Findings of Fact itemized herein, controlling Nevada precedent, the persuasive rationale from other jurisdictions which have ruled upon the issue, as well as the arguments contained in the parties' briefing on Tomsheck's Motion for Summary Judgment, the Court makes these Conclusions of Law as follows:

1. The terms of the settlement agreement between Plaintiff Beavor and his former adversary in the underlying case *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz, are admissible evidence of Plaintiff Beavor's assignment of his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. Such assignment is impermissible under Nevada law. *See Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982); *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016).
2. Plaintiff Beavor irrevocably assigned 100% of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. He also assigned substantial, if not complete, control over the current litigation to Hefetz. Nevada law, consistent with other jurisdictions, forbids this.
3. Even assuming Plaintiff Beavor had only assigned the proceeds from the current litigation to Hefetz, Nevada law does not allow a party to simply assign the proceeds from a legal malpractice lawsuit in order to avoid the appearance of an impermissible assignment of the legal malpractice lawsuit itself. *See Tower Homes, LLC*, 132 Nev. at 635, 377 P.3d at 122. In fact, the *Tower Homes, LLC* Court rejected this very approach.
4. Indeed, other jurisdictions have specifically held that the assignment of proceeds from a legal malpractice claim, rather than the assignment of the claim itself, is a meaningless distinction which is made to circumvent the public policy barring assignment of legal malpractice claims. *E.g., Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005); *Botma v. Huser*, 202 Ariz. 14, 39 P.3d 538 (Ariz. Ct. Ap. 2002) *Town & Country Bank*

1 *of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 76 Ill.Dec. 724, 459
2 N.E.2d 639 (1984). Such conclusion is both compelling and consistent with Nevada law
3 and the rationale underpinning Nevada's prohibition of the assignment of legal
4 malpractice claims. *See, e.g., Chaffee v. Smith, supra; Tower Homes, LLC, supra;*
5 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976).

- 6
- 7 5. Whether characterized as an express or *de facto* assignment of his legal malpractice
8 lawsuit, Plaintiff Beavor's assignment bars him from prosecuting this legal malpractice
9 lawsuit now, and Plaintiff Beavor cannot claw back for himself that which he assigned
10 to Hefetz. Nor is Plaintiff Beavor entitled to a "do over". Plaintiff Beavor irrevocably
11 assigned his legal malpractice claim to Hefetz and therefore has nothing to prosecute for
12 himself. But more importantly, allowing Plaintiff Beavor to do so, under the facts of this
13 case, would be contrary to controlling, longstanding Nevada precedent and would defeat
14 the strong public policy reasons behind Nevada law's prohibition of assignment of legal
15 malpractice claims entirely.
- 16 6. As such, Tomscheck is entitled to summary judgment based upon Plaintiff Beavor's
17 impermissible assignment of his legal malpractice claim to Hefetz.
- 18 7. By granting Tomscheck's Motion for Summary Judgment on that basis, the Court need
19 not consider, and therefore declines to rule upon, Tomscheck's separate statute of
20 limitations argument as well as Saggese's pending Motions and any Countermotion
21 thereto.

22 **ORDER**

23 Based upon the above Findings of Fact and Conclusions of Law,

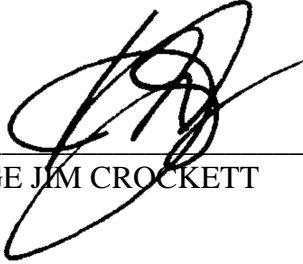
24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 25 1. Defendant Tomscheck's Motion for Summary Judgment is granted;
- 26 2. The Court declines to rule upon Third-Party Defendant Saggese's pending Motions,
27 and any Countermotion thereto; and,
- 28 3. Counsel for Tomscheck shall prepare the Order, which should be an abridged version
of the arguments made by the parties in their respective briefs and at oral argument,
and should submit that Order to the Court in compliance with EDCR 7.21, but no
later than 14 days from the date of the hearing unless additional time is requested
and granted by this Court.

1 **IT IS SO ORDERED.**

Dated this 9th day of July, 2020

2 DATED this ____ day of July, 2020.

3
4
5 
6 JUDGE JIM CROCKETT

7 Approved as to Form and Content:

8 COHEN JOHNSON PARKER EDWARDS

OLSON CANNON GORMLEY &

STOBERSKI
9 ~~9F8-023-9AFF 25ED~~
Jim Crockett

10 /s/ H. Stan Johnson, Esq. (Form Only)

/s/ Max E. Corrick, II

11 H. STAN JOHNSON, ESQ.

MAX E. CORRICK, II

12 Nevada Bar No. 000265

Nevada Bar No. 006609

13 375 East Warm Springs Road, Suite 104

9950 West Cheyenne Avenue

14 Las Vegas, NV 89119

Las Vegas, NV 89129

15 Attorney for Plaintiff

Attorneys for Defendant/Third-Party Plaintiff

16 CHRISTOPHER BEAVOR

JOSHUA TOMSHECK

17 LIPSON NEILSON P.C.

18 /s/ Joseph P. Garin, Esq.

19 JOSEPH P. GARIN, ESQ.

20 Nevada Bar No. 006653

21 9900 Covington Cross Drive

22 Suite 120

23 Las Vegas, NV 89144

24 Attorneys for Third-Party Defendant

25 MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Thursday, July 9, 2020 11:36 AM
To: Max Corrick; CJ Barnabi (cj@barnabilaw.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- FFCL and Order on Motions

Max I will approve the order as to form but not content; can you make that change and use my e-signature.

Thanks
Stan

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

Also, this communication is CONFIDENTIAL and protected by the Attorney-Client and/or the Attorney Work Product Privileges. It is intended solely for the addressees listed above. Anyone not listed above, or who is not an agent authorized to receive it for delivery to an addressee, is not authorized to read, disseminate, forward, copy, distribute, or discuss its contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, July 1, 2020 3:04 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; CJ Barnabi (cj@barnabilaw.com) <cj@barnabilaw.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- FFCL and Order on Motions

All: Please see the attached proposed FFCL and Order on the motions hearing on June 25. I have tried to follow Judge Crockett's request for it to be an "abridged" version of the briefs and therefore rely heavily upon what has been written in the briefs, rather than the colloquy at oral argument – except where necessary. Given the fulsome briefing on all sides I think this is as abridged as I can get and still be faithful to the positions of the parties and the comments from the Court.

If you have any proposed edits please offer them. July 9 is the due date for the Order.

Once we have mutually agreed upon language I will request a separate email from you authorizing me to include your e-signature so that this can be transmitted to Dept. 24 per its protocols.

Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

From: Joe Garin <JGarin@lipsonneilson.com>
Sent: Thursday, July 9, 2020 10:21 AM
To: Max Corrick
Cc: sjohnson@cohenjohnson.com; CJ Barnabi (cj@barnabilaw.com); Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck proposed Order

I approved and you can sign for me

Sent from my iPhone

On Jul 9, 2020, at 10:53 AM, Max Corrick <mcorrick@ocgas.com> wrote:

Gentlemen: I have not received any comments or requested edits from Beavor's camp on my draft Order which I sent on July 1. I have received approval from Mr. Garin to insert his esignature as the proposed Order now stands.

Unless I receive some communication back by 1 pm today I will indicate that Beavor has not responded as to form and content.

Please let me know how you intend to proceed. Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, 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: 7/9/2020

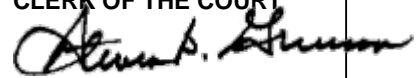
15 Max Corrick	mcorrick@ocgas.com
16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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Marie Twist

marie@barnabilaw.com



MAX E. CORRICK, II
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9950 West Cheyenne Avenue
Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

CASE NO. A-19-793405-C
DEPT. NO. XXIV

v.

JOSHUA TOMSHECK, an individual; DOES
I-X, inclusive,
Defendants.

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,
Third-Party Defendant.

NOTICE OF ENTRY OF ORDER

///

///

1 PLEASE TAKE NOTICE that an Order has been entered in the above-entitled Court on
2
3 the 9th day of July, 2020, a copy of which is attached hereto.

4 DATED 10th day of July, 2020.

5 OLSON CANNON GORMLEY & STOBERSKI

6 */s/Max E. Corrick*

7
8

MAX E. CORRICK, II
9 Nevada Bar No. 006609
10 9950 West Cheyenne Avenue
11 Las Vegas, NV 89129
12 Attorneys for Defendant/Third-Party Plaintiff
13 JOSHUA TOMSHECK
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2020, I sent via e-mail a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER** on the Clark County E-File Electronic Service List (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

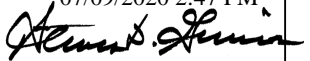
H. Stan Johnson, Esq.
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375 East Warm Springs Road, Suite 104
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702-823-3500
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and
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Attorneys for Marc Saggese

/s/Jane Hollingsworth

An Employee of OLSON CANNON GORMLEY & STOBERSKI


CLERK OF THE COURT

MAX E. CORRICK, II
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Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

v.

JOSHUA TOMSHECK, an individual;
DOES I-X, inclusive,
Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON:**

- 1. JOSHUA TOMSHECK'S
MOTION FOR SUMMARY
JUDGMENT;**
- 2. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
DISMISS, OR
ALTERNATIVELY, MOTION
FOR SUMMARY JUDGMENT;
and**
- 3. THIRD-PARTY DEFENDANT
MARC SAGGESE'S MOTION TO
STRIKE SUPPLEMENTAL
OPPOSITION OF THIRD-
PARTY PLAINTIFF JOSHUA
TOMSHECK ON ORDER
SHORTENING TIME**

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

Date of Hearing: June 25, 2020

Time of Hearing: 9:00 a.m.

v.

MARC SAGGESE, ESQ., an individual,
Third-Party Defendant.

These matters having come on for hearing on the 25th day of June, 2020, before the Honorable Judge Jim Crockett, on JOSHUA TOMSHECK's Motion for Summary Judgment, Third-Party Defendant MARC SAGGESE's Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Third-Party Defendant MARC SAGGESE's Motion to Strike Supplemental Opposition of Third-Party Plaintiff JOSHUA TOMSHECK on Order Shortening Time.

Plaintiff CHRISTOPHER BEAVOR, appearing by and through his counsel of record, H. Stan Johnson, Esq.; Defendant/Third-Party Plaintiff JOSHUA TOMSHECK, appearing by and through his counsel of record, Max E. Corrick, II, and; Third-Party Defendant MARC SAGGESE, Esq., appearing by and through his counsel of record, Joseph P. Garin, Esq. The Court having reviewed the papers and pleadings on file, having heard the representations and arguments of counsel, and good cause appearing therefore, makes the following Findings of Fact and Conclusions of Law, and issues its Order on the motions pending before the Court.

FINDINGS OF FACT

The Court makes the following Findings of Fact:

1. On April 23, 2019, Plaintiff CHRISTOPHER BEAVOR ("Plaintiff Beavor") filed a legal malpractice lawsuit against Defendant/Third-Party Plaintiff JOSHUA TOMSHECK ("Tomsheck") arising out of alleged legal malpractice committed by Tomsheck. Tomsheck filed an Answer and Third-Party Complaint against Third-Party Defendant Marc Saggese, Esq. on May 16, 2019, seeking Contribution.
2. On March 9, 2020, Tomsheck filed his Motion for Summary Judgment. Tomsheck filed an Errata to his Motion for Summary Judgment on March 11, 2020 which corrected

certain representations regarding relevant dates in the Tomsheck Motion for Summary Judgment. Plaintiff Beavor filed an Opposition to the Tomsheck Motion for Summary Judgment on March 27, 2020. Tomsheck filed his Reply on April 30, 2020.

3. On March 11, 2020, Third-Party Defendant Marc Saggese, Esq. (“Saggese”) filed his Motion to Dismiss, or alternatively, Motion for Summary Judgment. Tomsheck filed an Opposition to the Saggese Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief, on April 3, 2020. Saggese filed his Reply on April 30, 2020. That same day, April 30, 2020, Tomsheck filed a Supplement to his Opposition to Saggese’s Motion to Dismiss, or alternatively, Motion for Summary Judgment, and Request for NRCP 56(d) Relief.
4. On May 5, 2020, Saggese filed his Motion to Strike Supplemental Opposition of Third-Party Plaintiff Tomsheck on Order Shortening Time. Tomsheck filed an Opposition to the Saggese Motion to Strike on June 8, 2020, along with a Countermotion to Allow Supplementation. Saggese filed his Reply and Opposition to the Countermotion on June 18, 2020. Tomsheck did not file a Reply to the Saggese Opposition.
5. The Court recognizes that the Tomsheck Motion for Summary Judgment may be dispositive of the entire case. Therefore, while the Court reviewed each of the motions pending before it, for the reasons set forth below the Court declines to rule upon the Saggese Motions or the Tomsheck Countermotion.
6. In Tomsheck’s Motion for Summary Judgment he raises the following arguments: *First*, Tomsheck argues he is entitled to summary judgment because Plaintiff Beavor impermissibly assigned his legal malpractice claim against Tomsheck to Beavor’s adversary in the underlying matter of *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz (“Hefetz”). Tomsheck argues this is evidenced by the settlement agreement reached between Hefetz and Plaintiff Beavor on February 15, 2019. The Court notes Tomsheck never represented Hefetz, nor does Plaintiff Beavor contend that he did. The relevant terms of the Hefetz/Beavor settlement agreement, which the Court has reviewed in its entirety, include the following:

Section 4 Beavor’s Malpractice Claims

Beavor agrees to prosecute any malpractice and/or any other claims he may have against his former counsel, but Beavor will not prosecute any malpractice and/or any other claims he may have against the law firm of Dickinson Wright PLLC or any attorneys at that firm who provided legal representation to him related to the Pending Case.

H. Stan Johnson will serve as counsel for Beavor in his prosecution of said claims.

In order to permit H. Stan Johnson to serve as counsel, Beavor and H. Stan Johnson will execute any required conflict waivers.

1 *Beavor represents and warrants that he will fully pursue and cooperate in the*
2 *prosecution of the above referenced claims;*

3 *that he will take any and all reasonable actions as reasonably requested by*
4 *counsel to prosecute the above actions;*

5 *and that he will do nothing intentional to limit or harm the value of any recovery*
6 *related to the above referenced cases.*

7 *Within thirty (30) days from the Effective Date of this Settlement Agreement, Beavor*
8 *shall provide Hefetz, through his attorney H. Stan Johnson, copies of any documents or*
9 *correspondence that Beavor believes relate to the above referenced malpractice actions.*

10 *Beavor shall fully cooperate with Hefetz and his counsel regarding any claims initiated*
11 *on behalf of Beavor for the above referenced actions.*

12 *Hefetz agrees to indemnify and hold harmless Beavor from any attorney fees or costs*
13 *that may be incurred in pursuing the above referenced claims and any and all invoices*
14 *for attorneys' fees or costs shall be issued directly to Hefetz with Hefetz bearing sole*
15 *responsibility for payment thereof.*

16 *Beavor further irrevocably assigns any recovery or proceeds to Hefetz from the above*
17 *referenced actions and agrees to take any actions necessary to ensure that any recovery*
18 *or damages are paid to Hefetz pursuant to the Agreement.*

- 19 7. Tomscheck argues that, based upon the explicit terms of the Hefetz/Beavor settlement
20 agreement, Plaintiff Beavor impermissibly assigned his legal malpractice claim to
21 Hefetz – whether characterized as an express assignment or as a *de facto* assignment.
- 22 8. Tomscheck argues that “in Nevada, legal malpractice claims are absolutely unassignable
23 and subject to summary judgment if assigned.” Tomscheck cites, *inter alia*, the Nevada
24 Supreme Court decisions of *Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982), and
25 *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016), for this general
26 proposition, as well as cases from several other jurisdictions, including the case of
27 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which has
28 been directly relied upon and quoted by the Nevada Supreme Court.
9. *Second*, Tomscheck argues Plaintiff Beavor filed this legal malpractice lawsuit after the
statute of limitation period elapsed for Plaintiff Beavor to file the lawsuit. Specifically,
Tomscheck notes he and Plaintiff Beavor negotiated and entered into a binding contract,
namely a tolling agreement, which affixed the time in which Plaintiff Beavor would be
required to file a legal malpractice lawsuit to within two (2) years of the Nevada
Supreme Court resolving Supreme Court Appeal No. 68838 (c/w 68843). Although it is
not entirely clear to the Court, based upon the Errata filed by Tomscheck it appears
Tomscheck is alleging the latest date Plaintiff Beavor had to file his legal malpractice

lawsuit against Tomsheck was September 26, 2018, but that the lawsuit was not filed until April 23, 2019.

10. For the reasons set forth below, the Court declines to rule upon Tomsheck's statute of limitations argument. Instead, the Court chooses to focus upon Tomsheck's impermissible assignment of a legal malpractice claim argument.
11. With respect to that impermissible assignment argument, Tomsheck's Motion for Summary Judgment argues Plaintiff Beavor is prosecuting an impermissibly assigned legal malpractice claim which violates public policy and which is subject to summary judgment. To that end, Tomsheck states that "Nevada follows the overwhelming majority rule in this regard, especially when a legal malpractice claim has been assigned to an adversary in the underlying litigation." *See Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976); *Tate v. Goins, Underkoffer, Crawford & Langdon*, 24 S.W.3d 627 (Tex. App. 2000); *Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313 (Tex. App. 1994); *Kommavongsa v. Haskell*, 149 Wash.2d 288 (2003); *Edens Technologies, LLC v. Kile Goekjian Reed & McManus, PLLC*, 675 F.Supp.2d (D.D.C. 2009); *Revolutionary Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 744 S.E.2d 130 (2013); *Trinity Mortgage Companies, Inc. v. Dreyer*, 2011 WL 61680 (N.D. Okla. 2011); *Community First State Bank v. Olsen*, 255 Neb. 617, 587 N.W.2d 364 (1998); *Freeman v. Basso*, 128 S.W.3d 138 (Mo. Ct. App. 2004); *Davis v. Scott*, 320 S.W.3d 87 (Ky. 2010); *Alcman Servs. Corp. v. Samuel H. Bullock, P.C.*, 925 F.Supp. 252 (D.N.J. 1996); *Picadilly, Inc. v. Raikos*, 582 N.E.2d 338 (Ind. 1991); *Schroeder v. Hudgins*, 142 Ariz. 395, 690 P.2d 114 (Ariz. Ct. App. 1984); *Roberts v. Holland & Hart*, 857 P.2d 492 (Colo. Ct. App. 1993); *Christison v. Jones*, 83 Ill.App.3d 334, 405 N.E.2d 8 (1980); *Delaware CWC Liquidation Corp. v. Martin*, 213 W.Va. 617, 584 S.E.2d 473 (2003); *Wagener v. McDonald*, 509 N.W.2d 188 (Minn. App. 1993); *cf. Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005) (collecting cases as of that date and concluding a legal malpractice claim which is assigned to an adversary in the underlying matter is impermissible and subject to judgment as a matter of law).
12. Tomsheck further argues that in *Tower Homes*, "the Nevada Supreme Court extensively quoted and adopted the longstanding approach taken by the California Court of Appeals in *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976), which detailed the policy considerations underlying the nonassignability of legal malpractice claims. The Court noted: 'As the court in *Goodley* stated, '[i]t is the unique quality of legal services, the personal nature of the attorney's duty to the client and the confidentiality of the attorney-client relationship that invoke public policy considerations in our conclusion that malpractice claims should not be subject to assignment.' 133 Cal.Rptr. at 87. Allowing such assignments would 'embarrass the attorney-client relationship and imperil the sanctity of the highly confidential and fiduciary relationship existing between attorney and client.' *Id.*' *Tower Homes*, 132 Nev. at 635, 377 P.3d at 123."
13. Summarizing Tomsheck's argument in his Motion for Summary Judgment, the depth and breadth of control over this litigation which Hefetz (Plaintiff Beavor's adversary in

the underlying matter) has been given pursuant to the settlement agreement, along with the assignment of all of the proceeds which Plaintiff Beavor might receive from this lawsuit, equates to an impermissible assignment of the legal malpractice claim itself. As Tomsheck puts it, “Plaintiff commoditized and sold his legal malpractice claim to Hefetz, giving Hefetz all authority over the case while Plaintiff stands to gain (and lose) absolutely nothing by continuing to prosecute the claim as Hefetz’s figurehead.”

14. In Opposition, Plaintiff Beavor concedes he assigned all of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to his former adversary. Plaintiff Beavor argues that Nevada law, as stated in *Edward J. Achrem, Chtd. v. Expressway Plaza Pshp.*, 112 Nev. 737, 917 P.2d 447 (1996), allows a party to assign proceeds from a tort action to a third party. In that regard, Plaintiff Beavor argues the *Tower Homes, LLC* decision does not prohibit the assignment of the recovery in a legal malpractice claim.
15. Plaintiff Beavor also argues *Tower Homes, LLC* is distinguishable upon its facts, and that while Plaintiff Beavor did assign all of the proceeds of this legal malpractice lawsuit to Hefetz, Plaintiff Beavor contends he “still maintains complete control of his case.” In this respect, Plaintiff relies upon his Declaration dated March 27, 2020 for this proposition and insists that “[t]he only thing that has been assigned in this matter is the recovery.”
16. Plaintiff Beavor further argues that even if this Court finds the assignment of proceeds to be invalid, or that the settlement agreement constitutes a *de facto* assignment of Plaintiff Beavor’s legal malpractice lawsuit to Hefetz, Plaintiff Beavor should still be permitted “to pursue the matter directly against the Defendant” and that “any of the assigned rights must revert back to Plaintiff Beavor.”
17. Tomsheck’s Reply argues that the terms of the Hefetz/Beavor settlement agreement make clear that Plaintiff Beavor “assigned all of the proceeds and potential recovery from his then-unfiled legal malpractice lawsuit against [] Tomsheck...in order to circumvent Nevada’s strong public policy barring assignment of legal malpractice claims.” In fact, Tomsheck argues Plaintiff Beavor *irrevocably* assigned them and therefore has nothing to assert against Tomsheck on his own. Moreover, Tomsheck argues Plaintiff Beavor’s March 27, 2020 Declaration is inadmissible parol evidence and constitutes Plaintiff Beavor’s attempt to violate Nevada’s prohibition upon “fabricating issues of fact for purposes of avoiding summary judgment” because the representations in the Declaration are contrary to the terms of the Hefetz/Beavor settlement agreement which Plaintiff Beavor signed under oath. *See Aldabe v. Adams*, 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit a sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998).
18. Tomsheck further argues in his Reply that, contrary to Plaintiff’s assertions, “[a]side from the multitude of jurisdictions cited in [] Tomsheck’s motion, other jurisdictions

have noted that the *de facto* assignment of a legal malpractice claim violates public policy and compels dismissal. *E.g. Kenco Enters. Nw., LLC v. Wiese*, 291 P.3d 261 (Wash. Ct. App. 2013); *Paonia Res., LLC v. Bingham Greenebaum Doll, LLP*, 2015 WL 7431041 (W.D. Ky. Nov. 20, 2015); *Trinity Mortg.. Cos v. Dreyer*, 2011 WL 61680 (N.D. Okla. Jan 7, 2011). ‘It is the mere opportunity for collusion and the transformation of legal malpractice to a commodity that is problematic.’ *Kenco*, 291 P.3d at 263. ‘This reasoning applies whether or not the collusion is real.’ *Id.* The rule prohibiting either express or *de facto* assignment of legal malpractice claims cannot ‘be obfuscated by clever lawyers and legal subtleties.’ *Id.* at 265.”

19. Tomsheck further argues in his Reply that *Tower Homes, LLC* rejected Plaintiff Beavor’s position that *Achrem* applies to assignment of proceeds from legal malpractice actions, citing *Tower Homes, LLC*’s assertion that “[w]e are not convinced that *Achrem*’s reasoning applies to legal malpractice claims...” *Tower Homes, LLC* at 635, 377 P.3d at 122. Indeed, Tomsheck argues this conclusion is consistent with rulings from other jurisdictions which have held that there is a “meaningless distinction between an assignment of a cause of action and an assignment of recovery from such an action, which distinction is made merely to circumvent the public policy barring assignments. *Town & Country Bank of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 218, 76 Ill.Dec. 724, 459 N.E.2d 639 (1984). We will not engage in such a nullity.” *Gurski*, 276 Conn. 257, 285, 885 A.2d 163, 178 (2005); and see *Botma v. Huser*, 202 Ariz. 14, 19, 39 P.3d 538, 543 (Ariz. Ct. Ap. 2002) (finding an assignment agreement was impermissible and subject to summary judgment because it “allow[ed] Plaintiff Himes to recover any and all monies which might be owing to Plaintiff Botma’ and that ‘Plaintiff Himes will be the ultimate beneficiary of Plaintiff Botma’s claims herein.’ To allow the present lawsuit, which was born out of that assignment agreement, to proceed in Botma’s name would be to wink at the rule against assignment of legal malpractice claims.”).

20. Tomsheck’s Reply further distinguishes the cases relied upon by Plaintiff Beavor in his Opposition, noting, *inter alia*, that those cases either do not support Plaintiff Beavor’s arguments, rely upon facts far different from those found in this case, or represent a “severely discredited” view of the assignability of legal malpractice claims.

21. Finally, Tomsheck’s Reply argues no Nevada court has permitted an assignor to “claw back” and assert for himself a previously assigned legal malpractice claim, particularly where 100% of the proceeds have been assigned. Tomsheck further notes that Plaintiff Beavor’s irrevocable assignment of those proceeds prevents him from pursuing the matter against Tomsheck now, and that no Nevada case law, whether published or unpublished, supports Plaintiff Beavor’s “do over” arguments.

22. In their totality, Tomsheck’s arguments regarding the impermissible assignment of this legal malpractice lawsuit by Plaintiff Beavor’s to Hefetz are persuasive, if not compelling, and they are sufficient to justify summary judgment in his favor. While Plaintiff Beavor appears to rely upon rhetoric and arguments related to whether Tomsheck committed legal malpractice in his representation of Plaintiff Beavor, that is

not the legal issue before the Court. In fact, the Court believes each of Plaintiff Beavor's arguments in Opposition, in the briefs and at oral argument, is effectively defeated by the case law and arguments advanced in Tomsheck's Reply Brief and oral argument.

23. As a result, the Court need not reach the issues raised in Tomsheck's Motion for Summary Judgment concerning the statute of limitations acting as a bar to Plaintiff Beavor's lawsuit.

24. When questioned by the court, counsel for the parties each represented to the Court that they believe the net effect of the Court's decision on Tomsheck's Motion for Summary Judgment allows the Court to decline to address the merits of both Saggese Motions or any Countermotion thereto. The Court shares this belief.

CONCLUSIONS OF LAW

Based upon the Findings of Fact itemized herein, controlling Nevada precedent, the persuasive rationale from other jurisdictions which have ruled upon the issue, as well as the arguments contained in the parties' briefing on Tomsheck's Motion for Summary Judgment, the Court makes these Conclusions of Law as follows:

1. The terms of the settlement agreement between Plaintiff Beavor and his former adversary in the underlying case *Hefetz v. Beavor* (Case No. A645353), Yacov Hefetz, are admissible evidence of Plaintiff Beavor's assignment of his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. Such assignment is impermissible under Nevada law. *See Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982); *Tower Homes, LLC v. Heaton*, 132 Nev. 628, 377 P.3d 118 (2016).
2. Plaintiff Beavor irrevocably assigned 100% of the proceeds from his then-unfiled legal malpractice lawsuit against Tomsheck to Hefetz. He also assigned substantial, if not complete, control over the current litigation to Hefetz. Nevada law, consistent with other jurisdictions, forbids this.
3. Even assuming Plaintiff Beavor had only assigned the proceeds from the current litigation to Hefetz, Nevada law does not allow a party to simply assign the proceeds from a legal malpractice lawsuit in order to avoid the appearance of an impermissible assignment of the legal malpractice lawsuit itself. *See Tower Homes, LLC*, 132 Nev. at 635, 377 P.3d at 122. In fact, the *Tower Homes, LLC* Court rejected this very approach.
4. Indeed, other jurisdictions have specifically held that the assignment of proceeds from a legal malpractice claim, rather than the assignment of the claim itself, is a meaningless distinction which is made to circumvent the public policy barring assignment of legal malpractice claims. *E.g., Gurski v. Rosenblum and Filan, LLC*, 276 Conn. 257 (2005); *Botma v. Huser*, 202 Ariz. 14, 39 P.3d 538 (Ariz. Ct. Ap. 2002) *Town & Country Bank*

1 *of Springfield v. Country Mutual Ins. Co.*, 121 Ill.App.3d 216, 76 Ill.Dec. 724, 459
2 N.E.2d 639 (1984). Such conclusion is both compelling and consistent with Nevada law
3 and the rationale underpinning Nevada's prohibition of the assignment of legal
4 malpractice claims. *See, e.g., Chaffee v. Smith, supra; Tower Homes, LLC, supra;*
5 *Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976).

- 6
- 7 5. Whether characterized as an express or *de facto* assignment of his legal malpractice
8 lawsuit, Plaintiff Beavor's assignment bars him from prosecuting this legal malpractice
9 lawsuit now, and Plaintiff Beavor cannot claw back for himself that which he assigned
10 to Hefetz. Nor is Plaintiff Beavor entitled to a "do over". Plaintiff Beavor irrevocably
11 assigned his legal malpractice claim to Hefetz and therefore has nothing to prosecute for
12 himself. But more importantly, allowing Plaintiff Beavor to do so, under the facts of this
13 case, would be contrary to controlling, longstanding Nevada precedent and would defeat
14 the strong public policy reasons behind Nevada law's prohibition of assignment of legal
15 malpractice claims entirely.
- 16 6. As such, Tomscheck is entitled to summary judgment based upon Plaintiff Beavor's
17 impermissible assignment of his legal malpractice claim to Hefetz.
- 18 7. By granting Tomscheck's Motion for Summary Judgment on that basis, the Court need
19 not consider, and therefore declines to rule upon, Tomscheck's separate statute of
20 limitations argument as well as Saggese's pending Motions and any Countermotion
21 thereto.

22 **ORDER**

23 Based upon the above Findings of Fact and Conclusions of Law,

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

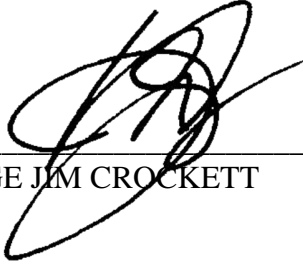
- 25 1. Defendant Tomscheck's Motion for Summary Judgment is granted;
- 26 2. The Court declines to rule upon Third-Party Defendant Saggese's pending Motions,
27 and any Countermotion thereto; and,
- 28 3. Counsel for Tomscheck shall prepare the Order, which should be an abridged version
of the arguments made by the parties in their respective briefs and at oral argument,
and should submit that Order to the Court in compliance with EDCR 7.21, but no
later than 14 days from the date of the hearing unless additional time is requested
and granted by this Court.

1 **IT IS SO ORDERED.**

Dated this 9th day of July, 2020

2 DATED this ____ day of July, 2020.

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JUDGE JIM CROCKETT

Approved as to Form and Content:

COHEN JOHNSON PARKER EDWARDS

OLSON CANNON GORMLEY &

STOBERSKI
9F8-023-9AFF 25ED
Jim Crockett

/s/ H. Stan Johnson, Esq. (Form Only)

/s/ Max E. Corrick, II

H. STAN JOHNSON, ESQ.

MAX E. CORRICK, II

Nevada Bar No. 000265

Nevada Bar No. 006609

375 East Warm Springs Road, Suite 104

9950 West Cheyenne Avenue

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Las Vegas, NV 89129

Attorney for Plaintiff

Attorneys for Defendant/Third-Party Plaintiff

CHRISTOPHER BEAVOR

JOSHUA TOMSHECK

LIPSON NEILSON P.C.

/s/ Joseph P. Garin, Esq.

JOSEPH P. GARIN, ESQ.

Nevada Bar No. 006653

9900 Covington Cross Drive

Suite 120

Las Vegas, NV 89144

Attorneys for Third-Party Defendant

MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Thursday, July 9, 2020 11:36 AM
To: Max Corrick; CJ Barnabi (cj@barnabilaw.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- FFCL and Order on Motions

Max I will approve the order as to form but not content; can you make that change and use my e-signature.

Thanks
Stan

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, July 1, 2020 3:04 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; CJ Barnabi (cj@barnabilaw.com) <cj@barnabilaw.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- FFCL and Order on Motions

All: Please see the attached proposed FFCL and Order on the motions hearing on June 25. I have tried to follow Judge Crockett's request for it to be an "abridged" version of the briefs and therefore rely heavily upon what has been written in the briefs, rather than the colloquy at oral argument – except where necessary. Given the fulsome briefing on all sides I think this is as abridged as I can get and still be faithful to the positions of the parties and the comments from the Court.

If you have any proposed edits please offer them. July 9 is the due date for the Order.

Once we have mutually agreed upon language I will request a separate email from you authorizing me to include your e-signature so that this can be transmitted to Dept. 24 per its protocols.

Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

From: Joe Garin <JGarin@lipsonneilson.com>
Sent: Thursday, July 9, 2020 10:21 AM
To: Max Corrick
Cc: sjohnson@cohenjohnson.com; CJ Barnabi (cj@barnabilaw.com); Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck proposed Order

I approved and you can sign for me

Sent from my iPhone

On Jul 9, 2020, at 10:53 AM, Max Corrick <mcorrick@ocgas.com> wrote:

Gentlemen: I have not received any comments or requested edits from Beavor's camp on my draft Order which I sent on July 1. I have received approval from Mr. Garin to insert his esignature as the proposed Order now stands.

Unless I receive some communication back by 1 pm today I will indicate that Beavor has not responded as to form and content.

Please let me know how you intend to proceed. Thanks.

Max Corrick
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

Phone No.: 702-384-4012

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, 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: 7/9/2020

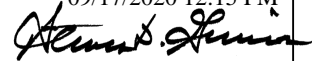
15 Max Corrick	mcorrick@ocgas.com
16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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Marie Twist

marie@barnabilaw.com


CLERK OF THE COURT

MAX E. CORRICK, II
Nevada Bar No. 006609
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

v.

JOSHUA TOMSHECK, an individual;
DOES I-X, inclusive,
Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
PURSUANT TO NRCP 52(b) and 59(e)**

Date of Hearing: September 17, 2020

Time of Hearing: 9:00 a.m.

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,
Third-Party Defendant.

This matter of Plaintiff CHRISTOPHER BEAVOR's Motion to Alter or Amend
Pursuant to NRCP 52(b) and 59(e) having been scheduled for hearing on the 17th day of
September, 2020, before the Honorable Judge Jim Crockett.

The court has reviewed the following pleadings:

1. Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
2. Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
3. Third-Party Defendant's Substantive Joinder to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)
4. Plaintiff's Reply to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e).

The court has determined that pursuant to the discretion provided to this court this matter may be decided on the briefs and pleadings filed by the parties without oral argument because the court deems oral argument unnecessary. *See* EDCR 2.23(c). Accordingly, the court finds and orders as follows:

FINDINGS

Plaintiff's motion to alter or amend is really just a motion for reconsideration coupled with the injection of entirely new information that was not presented during the initial briefing on the underlying motion. The attempted introduction of new information not previously considered is improper, whether the motion is to alter or amend or reconsider.

Additionally, Plaintiff reargues the same factual and legal issues that were already considered by the court prior to rendering the decision which Plaintiff seeks to alter or amend. Rearguing the same legal and factual issues that have already been argued and considered is not an appropriate basis to alter or amend the court's decision, nor is it a proper basis for reconsideration of the court's ruling.

ORDER

Based upon the above Findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) is DENIED.

IT IS SO ORDERED.

Dated this 17th day of September, 2020

DATED this ____ day of September, 2020.



JUDGE JIM CROCKETT

Approved as to Form and Content:

COHEN JOHNSON

Approved as to form only
/s/H. Stan Johnson

H. STAN JOHNSON, ESQ.
Nevada Bar No. 000265
375 East Warm Springs Road, Suite 104
Las Vegas, NV 89119
Attorney for Plaintiff
CHRISTOPHER BEAVOR

OLSON CANNON GORMLEY &
STOBERSKI
BBB-250 E598 FE61
Jim Crockett
District Court Judge
/s/Max E. Corrick, II

MAX E. CORRICK, II
Nevada Bar No. 006609
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

LIPSON NEILSON P.C.

Approved as to form and content
/s/Amanda A. Ebert

AMANDA A. EBERT, ESQ.
Nevada Bar No. 12731
9900 Covington Cross Drive
Suite 120
Las Vegas, NV 89144
Attorneys for Third-Party Defendant
MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Wednesday, September 16, 2020 5:14 PM
To: Max Corrick; Kevin Johnson; Amanda Ebert (AEbert@lipsonneilson.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, September 16, 2020 1:17 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

From: Amanda Ebert <AEbert@lipsonneilson.com>
Sent: Wednesday, September 16, 2020 5:46 PM
To: Max Corrick
Cc: H. Stan Johnson; Kevin Johnson; Joe Garin; Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck -- Proposed Order

Looks good to me as well- please go ahead and insert my E-signature. Thanks.

On Sep 16, 2020, at 5:22 PM, Max Corrick <mcorrick@ocgas.com> wrote:

Understood.

Sent from my Sprint Samsung Galaxy S10e.

----- Original message -----

From: "H. Stan Johnson" <sjohnson@cohenjohnson.com>
Date: 9/16/20 5:13 PM (GMT-08:00)
To: Max Corrick <mcorrick@ocgas.com>, Kevin Johnson <kjohnson@cohenjohnson.com>, "Amanda Ebert (AEbert@lipsonneilson.com)" <AEbert@lipsonneilson.com>, Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: RE: Beavor adv. Tomscheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>

Sent: Wednesday, September 16, 2020 1:17 PM

To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>

Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>

Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, 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: 9/17/2020

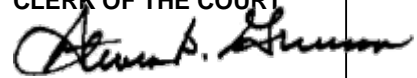
15 Max Corrick	mcorrick@ocgas.com
16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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Marie Twist

marie@barnabilaw.com



MAX E. CORRICK, II
Nevada Bar No. 006609
OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Phone: 702-384-4012
Fax: 702-383-0701
mcorrick@ocgas.com
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER BEAVOR, an individual,
Plaintiff,

CASE NO. A-19-793405-C
DEPT. NO. XXIV

v.

JOSHUA TOMSHECK, an individual; DOES
I-X, inclusive,
Defendants.

JOSHUA TOMSHECK, an individual,
Third-Party Plaintiff,

v.

MARC SAGGESE, ESQ., an individual,
Third-Party Defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion to Alter or Amend
has been entered in the above-entitled Court on the 17th day of September, 2020, a copy of

1 which is attached hereto.

2 DATED this 17th day of September, 2020.

3 OLSON CANNON GORMLEY & STOBERSKI

4
5 */s/Max E. Corrick*

6 _____
7 MAX E. CORRICK, II
8 Nevada Bar No. 006609
9 9950 West Cheyenne Avenue
10 Las Vegas, NV 89129
11 Attorneys for Defendant/Third-Party Plaintiff
12 JOSHUA TOMSHECK
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CERTIFICATE OF SERVICE

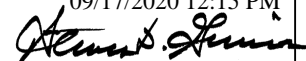
I HEREBY CERTIFY that on this 17th day of September, 2020, I sent via e-mail a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER** on the Clark County E-File Electronic Service List (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

H. Stan Johnson, Esq.
Cohen Johnson Parker Edwards
375 East Warm Springs Road, Suite 104
Las Vegas, NV 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com
Attorneys for Plaintiff

Joseph P. Garin, Esq.
Amanda A. Ebert, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
702-382-1500
702-382-1512 fax
jgarin@lipsonneilson.com
aebert@lipsonneilson.com
Attorneys for Marc Saggese

/s/Jane Hollingsworth

An Employee of OLSON CANNON GORMLEY & STOBERSKI



CLERK OF THE COURT

1 MAX E. CORRICK, II
2 Nevada Bar No. 006609
3 OLSON CANNON GORMLEY & STOBERSKI
4 9950 West Cheyenne Avenue
5 Las Vegas, NV 89129
6 Phone: 702-384-4012
7 Fax: 702-383-0701
8 mcorrick@ocgas.com
9 Attorneys for Defendant/Third-Party Plaintiff
10 JOSHUA TOMSHECK

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CHRISTOPHER BEAVOR, an individual,
12 Plaintiff,

13 v.

14 JOSHUA TOMSHECK, an individual;
15 DOES I-X, inclusive,

16 Defendants.

CASE NO. A-19-793405-C
DEPT. NO. XXIV

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
PURSUANT TO NRCP 52(b) and 59(e)**

Date of Hearing: September 17, 2020

Time of Hearing: 9:00 a.m.

17 JOSHUA TOMSHECK, an individual,
18 Third-Party Plaintiff,

19 v.

20 MARC SAGGESE, ESQ., an individual,

21 Third-Party Defendant.

22
23 This matter of Plaintiff CHRISTOPHER BEAVOR's Motion to Alter or Amend
24 Pursuant to NRCP 52(b) and 59(e) having been scheduled for hearing on the 17th day of
25 September, 2020, before the Honorable Judge Jim Crockett.
26
27
28

The court has reviewed the following pleadings:

1. Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
2. Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e);
3. Third-Party Defendant's Substantive Joinder to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)
4. Plaintiff's Reply to Defendant/Third-Party Plaintiff's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e).

The court has determined that pursuant to the discretion provided to this court this matter may be decided on the briefs and pleadings filed by the parties without oral argument because the court deems oral argument unnecessary. *See* EDCR 2.23(c). Accordingly, the court finds and orders as follows:

FINDINGS

Plaintiff's motion to alter or amend is really just a motion for reconsideration coupled with the injection of entirely new information that was not presented during the initial briefing on the underlying motion. The attempted introduction of new information not previously considered is improper, whether the motion is to alter or amend or reconsider.

Additionally, Plaintiff reargues the same factual and legal issues that were already considered by the court prior to rendering the decision which Plaintiff seeks to alter or amend. Rearguing the same legal and factual issues that have already been argued and considered is not an appropriate basis to alter or amend the court's decision, nor is it a proper basis for reconsideration of the court's ruling.

ORDER

Based upon the above Findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e) is DENIED.

IT IS SO ORDERED.

Dated this 17th day of September, 2020

DATED this ____ day of September, 2020.



JUDGE JIM CROCKETT

Approved as to Form and Content:

COHEN JOHNSON

Approved as to form only
/s/H. Stan Johnson

H. STAN JOHNSON, ESQ.
Nevada Bar No. 000265
375 East Warm Springs Road, Suite 104
Las Vegas, NV 89119
Attorney for Plaintiff
CHRISTOPHER BEAVOR

OLSON CANNON GORMLEY &
STOBERSKI
BBB 250 E 598 FE61
Jim Crockett
District Court Judge
/s/Max E. Corrick, II

MAX E. CORRICK, II
Nevada Bar No. 006609
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendant/Third-Party Plaintiff
JOSHUA TOMSHECK

LIPSON NEILSON P.C.

Approved as to form and content
/s/Amanda A. Ebert

AMANDA A. EBERT, ESQ.
Nevada Bar No. 12731
9900 Covington Cross Drive
Suite 120
Las Vegas, NV 89144
Attorneys for Third-Party Defendant
MARC SAGGESE, ESQ.

From: H. Stan Johnson <sjohnson@cohenjohnson.com>
Sent: Wednesday, September 16, 2020 5:14 PM
To: Max Corrick; Kevin Johnson; Amanda Ebert (AEbert@lipsonneilson.com); Joe Garin
Cc: Jane Hollingsworth
Subject: RE: Beavor adv. Tomsheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

Also, this communication is CONFIDENTIAL and protected by the Attorney-Client and/or the Attorney Work Product Privileges. It is intended solely for the addressees listed above. Anyone not listed above, or who is not an agent authorized to receive it for delivery to an addressee, is not authorized to read, disseminate, forward, copy, distribute, or discuss its contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>
Sent: Wednesday, September 16, 2020 1:17 PM
To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

From: Amanda Ebert <AEbert@lipsonneilson.com>
Sent: Wednesday, September 16, 2020 5:46 PM
To: Max Corrick
Cc: H. Stan Johnson; Kevin Johnson; Joe Garin; Jane Hollingsworth
Subject: Re: Beavor adv. Tomscheck -- Proposed Order

Looks good to me as well- please go ahead and insert my E-signature. Thanks.

On Sep 16, 2020, at 5:22 PM, Max Corrick <mcorrick@ocgas.com> wrote:

Understood.

Sent from my Sprint Samsung Galaxy S10e.

----- Original message -----

From: "H. Stan Johnson" <sjohnson@cohenjohnson.com>
Date: 9/16/20 5:13 PM (GMT-08:00)
To: Max Corrick <mcorrick@ocgas.com>, Kevin Johnson <kjohnson@cohenjohnson.com>, "Amanda Ebert (AEbert@lipsonneilson.com)" <AEbert@lipsonneilson.com>, Joe Garin <JGarin@lipsonneilson.com>
Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>
Subject: RE: Beavor adv. Tomscheck -- Proposed Order

Max if you would change it to approved as to form only for me that would be good and you can submit it.

H. Stan Johnson, Esq.
Cohen-Johnson, LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
702-823-3500
702-823-3400 fax
sjohnson@cohenjohnson.com

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contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Max Corrick <mcorrick@ocgas.com>

Sent: Wednesday, September 16, 2020 1:17 PM

To: H. Stan Johnson <sjohnson@cohenjohnson.com>; Kevin Johnson <kjohnson@cohenjohnson.com>; Amanda Ebert (AEbert@lipsonneilson.com) <AEbert@lipsonneilson.com>; Joe Garin <JGarin@lipsonneilson.com>

Cc: Jane Hollingsworth <jhollingsworth@ocgas.com>

Subject: Beavor adv. Tomsheck -- Proposed Order

All: Please review the attached Proposed Order on Plaintiff's Motion to Alter/Amend. It tracks the amended minute orders to reflect what the court reviewed, as well as what the minute order states.

Let me know if you have any proposed edits or comments. If it meets with your approval, please respond as to whether I have your authority to insert your electronic signature.

Thanks.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Christopher Beavor, Plaintiff(s) CASE NO: A-19-793405-C
7 vs. DEPT. NO. Department 24
8 Joshua Tomsheck, 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: 9/17/2020

15 Max Corrick	mcorrick@ocgas.com
16 Jane Hollingsworth	jhollingsworth@ocgas.com
17 Susana Nutt	snutt@lipsonneilson.com
18 H Johnson	calendar@cohenjohnson.com
19 H Johnson	sjohnson@cohenjohnson.com
20 Sarah Gondek	sgondek@cohenjohnson.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Kevin Johnson	kjohnson@cohenjohnson.com
23 Charles ("CJ") Barnabi Jr.	cj@barnabilaw.com
24 Michael Morrison	mbm@cohenjohnson.com
25 Amanda Ebert	aebert@lipsonneilson.com

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Marie Twist

marie@barnabilaw.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

September 12, 2019

A-19-793405-C Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

**September 12, 2019 9:00 AM Mandatory Rule 16
Conference**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Corrick, Max E Attorney
 Johnson, Harold Stanley Attorney

JOURNAL ENTRIES

- This is the time set for the Mandatory Rule 16 Conference. Court addressed the requirements of Rule 16. Counsel anticipate the trial will take five (5) days; this is a legal malpractice case; no settlement conference has been requested.

Court noted that the Complaint was filed on November 9, 2018. Colloquy regarding the scope of the discovery. Mr. Johnson advised that this a fairly straight forward legal malpractice case; he anticipates depositions of the pertinent parties as well as experts to establish the various duties associated with malpractice, the written discovery will be minimal.

Mr. Corrick advised that he does not believe this is a straight forward legal malpractice case due to its long history; however, the discovery will be minimal. At the Rule 16.1 conference, counsel discussed the computation of damages and documentation supporting those damages. Part of the damages emanate from a settlement agreement in the underlying matter and Mr. Corrick believes that the Defendant is entitled to know what is in that settlement agreement; he is willing to enter into a Protective Order. Additionally, the Third-Party Defendant was recently served and his answer was due yesterday (September 11) but it has not been filed yet. Therefore, Mr. Corrick believes that the

dates set out in the Joint Case Conference Report (JCCR) are appropriate.

The Court believes the dates in the JCCR are realistic and, therefore, will make no changes at this time. Upon Court's inquiry, Mr. Johnson advised that he believes counsel can work together regarding the Protective Order. COURT ORDERED, matter set for a status check. If the Protective Order is resolved prior to the status check date, it will be VACATED.

10/22/19 8:30 AM STATUS CHECK: PROTECTIVE ORDER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

October 10, 2019

A-19-793405-C Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

October 10, 2019

3:00 AM

Minute Order

**Minute Order Re:
Dept. 28 Recusal**

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Judge Israel presided over the underlying case, Hefetz v. Beavor, A-11-645353-C and therefore it is appropriate in the instant Legal Malpractice case, to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random. Master Calendar to RESET any pending motions before the new Department and notify the parties of same.

CLERK'S NOTE: A copy of this minute order was e-served to counsel. kt 10/10/19.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

June 25, 2020

A-19-793405-C Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

June 25, 2020 9:00 AM All Pending Motions

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

RECORDER: Nancy Maldonado

REPORTER:

PARTIES

PRESENT: Corrick, Max E Attorney
 Garin, Joseph P Attorney
 Johnson, Harold Stanley Attorney

JOURNAL ENTRIES

- THIRD-PARTY DEFENDANT MARC SAGGESE'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGEMENT ... JOSHUA TOMSHECK'S MOTION FOR SUMMARY JUDGEMENT ... THIRD PARTY DEFENDANT MARC SAGGESE'S MOTION TO STRIKE SUPPLEMENTAL OPPOSITION OF THIRD PARTY PLAINTIFF JOSHUA TOMSHECK ON ORDER SHORTENING TIME

Court reviewed the procedural history of the case. Following arguments by counsel COURT stated its findings and ORDERED Joshua Tomsheck's Motion for Summary Judgement GRANTED. COURT FURTHER ORDERED Third-Party Defendant Marc Saggese's Motion to Dismiss, or Alternatively, Motion for Summary Judgement and Third Party Defendant Marc Saggese's Motion to Strike Supplemental Opposition to Third Party Plaintiff Joshua Tomsheck on Order Shortening Time MOOT. Mr. Corrick to prepare and submit a single Order within fourteen days. COURT ORDERED, status check SET for the filing of the Order.

7/23/2020 STATUS CHECK: FILING OF ORDER

PRINT DATE: 10/19/2020

Page 4 of 8

Minutes Date: September 12, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

August 27, 2020

A-19-793405-C Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

August 27, 2020 9:00 AM All Pending Motions

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

RECORDER: Nancy Maldonado

REPORTER:

PARTIES

PRESENT: Corrick, Max E Attorney
 Ebert, Amanda A. Attorney
 Johnson, Harold Stanley Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO RETAX OR DENY COSTS ... DEFENDANT/THIRD PARTY
PLAINTIFF JOSHUA TOMSHECK'S MOTION FOR COSTS ... DEFENDANT/THIRD-PARTY
PLAINTIFF JOSHUA TOMSHECK'S MOTION FOR ATTORNEYS' FEES PURSUANT TO NRS 18.010
(2) (B)

Court stated inclinations. Following arguments by counsel COURT ORDERED, Plaintiff's Motion to Retax or Deny Costs GRANTED. COURT FURTHER ORDERED, Defendant's Motions for Costs and Attorneys' fees DENIED. Mr. Johnson to prepare and submit the Order within two weeks. COURT ORDERED, status check SET for the filing of the Order.

9/24/2020 STATUS CHECK: FILING OF ORDER (CHAMBERS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Legal Malpractice

COURT MINUTES

September 14, 2020

A-19-793405-C Christopher Beavor, Plaintiff(s)
vs.
Joshua Tomsheck, Defendant(s)

September 14, 2020 3:00 AM Motion to Amend

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Carolyn Jackson
Dara Yorke

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by the parties without oral argument since the court deems oral argument unnecessary.

This matter was reviewed 9/11/20. The pleadings reviewed were as follows:

1. 8/7/20 Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59(e)
2. 8/21/20 Opposition to Plaintiff's Motion to Alter or Amend
3. 8/28/20 Third Party Defendant Saggese's Substantive Joinder to the Opposition

The last day for a Reply to be filed by Plaintiff's was 9/10/20 and no Reply was filed. Plaintiff's motion to alter or amend is really just a motion for reconsideration coupled with the injection of entirely new information that was not presented during the initial briefing on the underlying motion. The attempted introduction of new information not previously considered is improper, whether the motion is to alter or amend or reconsider. Additionally, Plaintiff reargues the same factual and legal issues that were already considered by the court prior to rendering the decision which Plaintiff seeks to alter or amend. Rearguing the same legal and factual issues that have already been argued and considered is not an appropriate basis to alter or amend the court's decision nor is it a proper basis for reconsideration of the court's ruling. This Motion to Alter or Amend Pursuant to NRCP 52(b) and

59(e) is DENIED. Counsel for Defendant Tomsheck to submit the order for signature and filing within 14 days per EDCR 7.21. COURT FURTHER ORDERED, matter SET for Status Check.

10/15/20 (CHAMBERS) STATUS CHECK: FILING OF ORDER DENYING MOTION TO ALTER OR AMEND PURSUANT TO NRCP 52(b) AND 59(e) (9/14/20)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/14/20

CLERK'S NOTE: The above minute order has been amended to reflect changes as to the title for Pleading #3 as Third Party Defendant Saggese's Substantive Joinder to the Opposition, and the Third Part Defendant Saggese's Substantive Joinder to Defendant / Third Party Plaintiff Joshua Tomsheck's Opposition to Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and 59 (e) was no longer GRANTED. The Amended Minute Order was electronically served to all parties via Odyssey File & Serve. // 9-14-20/ dy

CLERK'S NOTE: The court reviewed all briefing in this case on 9/11/20, the day after any Reply brief was due. On 9/14/20, when the court was doing a last-minute check of the matters on calendar, it noted that Plaintiff's counsel had filed a Reply on 9/11/20, the day after the Reply was due and the day after the court issued directions to the Clerk to enter a minute order stating that the motion was denied and an order to that effect was to be submitted. It should be noted that the court did review the late-filed Reply but since it essentially reiterated arguments raised in the motion, it did not change the court's analysis and the court found no reason to reconsider or recall its decision to deny the motion.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File & serve. aw 9/16/2020



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

H. STAN JOHNSON
375 E. WARM SPRINGS RD., SUITE 104
LAS VEGAS, NV 89119

DATE: October 19, 2020
CASE: A-19-793405-C

RE CASE: CHRISTOPHER BEAVOR vs. JOSHUA TOMSHECK

NOTICE OF APPEAL FILED: October 16, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

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):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER AND FINDINGS OF FACT AND CONCLUSIONS OF LAW ON: 1. JOSHUA TOMSHECK'S MOTION FOR SUMMARY JUDGMENT, 2. THIRD-PARTY DEFENDANT MARC SAGGESE'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT, AND 3. THIRD-PARTY DEFENDANT MARC SAGGESE'S MOTION TO STRIKE SUPPLEMENTAL OPPOSITION OF THIRD-PARTY PLAINTIFF JOSHUA TOMSHECK ON ORDER SHORTENING TIME; NOTICE OF ENTRY OF ORDER; ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND PURSUANT TO NRCP 52(B) AND 59(E); NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

CHRISTOPHER BEAVOR,

Plaintiff(s),

vs.

JOSHUA TOMSHECK,

Defendant(s),

Case No: A-19-793405C-

Dept No: XXIV

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 19 day of October 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk