

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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CHRISTOPHER BEAVOR, An)	Case No.: 81964
Individual,)	
)	
Appellant,)	
vs.)	
)	
JOSHUA TOMSHECK, An)	
Individual,)	
)	
Respondent.)	
_____)	

ERRATA TO APPELLANT’S REPLY BRIEF

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Plaintiff/Appellant, CHRISTOPHER BEAVOR, An Individual (“**Beavor**”), hereby submits the following **ERRATA** to **APPELLANT’S REPLY BRIEF**, which Reply Brief was filed on January 12, 2022, relating to incorrect full references to the underlying pages to the record in Beavor’s **REPLY BRIEF**.

The corrected pages only, i.e. **Pages 4, 7, 21-22**, are attached hereto under **Exhibit “A”** and corrected full citations to the underlying pages to the record are referenced in **bold**.

Respectfully submitted.

DATED this 13th day of January 2022

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January 2022, the above-referenced **ERRATA TO APPELLANT’S REPLY BRIEF**, was filed electronically with the Clerk of the *Nevada Supreme Court* and served electronically through the Court’s electronic service to the following persons:

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EXHIBIT "A"

A. Response to Tomsheck's Factual Representations³

Contrary to Tomsheck's arguments, Beavor argued before the District Court both the nature and effect of Beavor's previously asserted legal malpractice claim. [See Answering Brief, Page 10; AA 4; 36; 39; 218; 220-21; 498; 590; **602-06; 622**; 646-59; 668-69; 694-98]. There is no waiver.⁴

Beavor asserted a claim against Tomsheck for legal malpractice prior to the filing of the instant Action, i.e. the instant Action alleges:

26. In the meantime, on or about September 16, 2015, Tomsheck was expressly placed on notice that Beavor intended to pursue his claims of malpractice. In March 2016 the parties further agreed to toll the statute of limitations for the claims of malpractice until the expiration of 180 days following an appeal or final resolution. [AA 4].

³ In preparing the Appendix to this Appeal, Beavor included all relevant and necessary documents required for a full review by this Court. *See NRAP* 30(b)(3). The documents objected to by Tomsheck include factual matters regarding the Underlying Action, as well as matters relevant to the instant Action and Appeal. [AA 2-4; 185-88; 191-94; 238-47; 278; 300; 304-13; 322-23; 328; 360; 471-72; 545-580; 660-67].

⁴ *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), wherein it held, "A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec* further stated, "the appellant could have moved the district court for an amended judgment" *Id.* Beavor properly raised all of these matters before the District Court and they are properly before this Court. [AA 4; 36; 39; **146**; 218; 220-21; 498; 590; **602-06; 622**; 646-59; 668-69; **674**; 694-98].

In Beavor's Motion to Alter and/or Amend ("**Alter/Amend Motion**")

[AA 600-15], he argued:

While the case was on appeal to the Supreme Court the parties participated in the Supreme Court settlement program during 2017. The Supreme Court settlement judge contacted Mr. Tomscheck's insurance carrier and involved them in the settlement discussion since the malpractice was quite evident and they had already been put on notice of the claim of Mr. Beavor. [AA 602-03].

Beavor's Reply to the Alter/Amend Motion further argued Beavor's previously asserted legal malpractice claim *vis-a-vis Chaffee and Tower Homes*. [AA 646-59]. The District Court considered Beavor's Reply to the Alter/Amend Motion, whereupon it found that it essentially reiterated arguments already raised, and therefore, it did not change the District Court's decision in granting the MSJ. [AA 669; **674**].

1. Beavor's Asserted Legal Malpractice Claim

Beavor's arguments before the District Court were further premised upon the assertion that the attorney-client relationship had broken down prior to initiating the instant Action. [AA 106; 109-12; 143-48; 185; 188].

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In the instant Action, the Settlement Agreement contained a Severability Clause. [AA 146; 605-06; 622; 674]. The Settlement Agreement provided:

16. Severability. If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and the remaining provisions thereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom. [AA 146].

Unlike in *Tower Homes*, due to the nature of the bankruptcy order therein, in the instant Action, the Settlement Agreement's Severability Clause would allow for the proceeds to revert back to Beavor.²⁰

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²⁰ See *Tower Homes*, 132 Nev. at 636 n. 2, 377 P.3d at 123:

The purchasers also contend that even if their claim was impermissibly assigned, the portion of the bankruptcy court order allowing the purchasers to retain any recovery **should be ignored** and the proceeds should revert back to the estate. However, **the purchasers have cited no authority to support a remedy that would result in rewriting the bankruptcy court's order severing the purchasers' rights to proceeds,** and we decline to do so. (emphasis).

“A basic rule of contract interpretation is that every word must be given effect if at all possible.” *Musser v. Bank of Am.*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998). [See AA 605-06; 622; 646-59].

Tomsheck's arguments regarding the irrevocable nature of the Settlement Agreement wholly ignores the Severability Clause. [AA 146; 605-06; 622; 674].

Tomsheck argues that Beavor's legal malpractice claim should be forfeited. This is clearly against public policy in Nevada. The law abhors a forfeiture. *See Organ v. Winnemucca State Bank & Trust Co.*, 55 Nev. 72, 26 P.2d 237 (1933).²¹

Tomsheck should not be entitled to an undeserved windfall for not having to answer for his legal malpractice if the Judgment stands. Nevada has a policy of holding lawyers accountable for their legal malpractice, as the *Nevada Rules of Professional Conduct*, Rule 1.1 requires competence:

Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

²¹ *See e.g., Reynolds*, 461 P.3d at 148:

Nevada law, in turn, restricts the right to convey certain claims by making them unassignable. Accordingly, we hold that a judgment debtor's claims that are unassignable similarly cannot be purchased at an execution sale. As such, respondents did not purchase the rights to appellants' unassignable claims.