

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

HILLSBORO ENTERPRISES INC., a Nevada Corporation; and, MOBILE BILLBOARDS, LLC, a Nevada Limited Liability Company; EBVB HOLDINGS, LLC, a Nevada Limited Liability Company; VINCE BARTELLO, an individual; ERICA BARTELLO, an individual,

Defendants-Appellants,

vs.

SEAN FITZGERALD,

Plaintiff-Respondent.

Supreme Court Case: 79698
Electronically Filed
Apr 09 2020 07:38 p.m.
District Court Case No.: A-15-716570
Elizabeth A. Brown
Clerk of Supreme Court

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS'-APPELLANTS' MOTION
TO EXTEND TIME TO FILE OPENING
BRIEF**

COMES NOW PLAINTIFF-RESPONDENT, SEAN FITZGERALD, (herein "Plaintiff-Respondent") by and through his Attorney of Record, KEMP & KEMP, ATTORNEYS AT LAW, and hereby files his Opposition to Defendants'-Appellants' Motion to Extend Time To File Opening Brief. This Opposition is based upon and supported by the following Memorandum of Points and Authorities, the pleadings and papers on file, any affidavits and exhibits attached hereto, and any argument the Honorable Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts

Defendants'-Appellants' appeal is taken from a Judgment following the July 2019 jury trial in the Eighth Judicial Court in the underlying action, *Fitzgerald v. Hillsboro Enterprises, Inc., et al*, A-15-716570-C. Defendants-Appellants' Notice of Appeal was filed on **September 27, 2019**.

On **December 12, 2019**, this Court ordered that briefing be reinstated because the parties were unable to agree to a settlement of this appeal. Pursuant to that order, Defendants-Appellants were to provide their transcript request within 14 days, or **December 26, 2019**, with the opening brief and appendix due to be filed by **March 11, 2020**.

1 After Defendants-Appellants failed for two months to meet the deadline to request the
2 transcript, this Court issued a Notice to Request Transcript in 10 days on **February 26, 2020**.
3 Defendants-Appellants filed their transcript request on **March 7, 2019**.

4
5 Defendants'-Appellants' deadline of **March 11, 2020** to file their opening brief and appendix
6 came and went *without* Defendants-Appellants requesting an extension of time. On **March 31,**
7 **2020**, this Court ordered Defendants-Appellants to file their opening brief and appendix within 14
8 days – **April 15, 2020**. Defendants-Appellants have now requested an extension of 60 days to file
9 their opening brief and appendix which this Court should deny.

10 **II. Argument**

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12 Defendants-Appellants cite Governor Sisolak's **March 12, 2020** Declaration of Emergency
13 and subsequent Executive Orders in response to the Covid-19 pandemic as reasons for their request.
14 This ignores the glaring fact that Defendants'-Appellants' opening brief and appendix was due on
15 **March 11, 2020**, the day before the Governor's Declaration of Emergency, and ignores the fact that
16 Defendants-Appellants *did not* request an extension of time as to that deadline.

17
18 Defendants-Appellants believe that because "social distancing guidelines are in effect until
19 April 30, 2020 with a high degree of probability that they be extended well into May 2020," they
20 should be granted to a 60-day extension of time to file their opening brief. While the pandemic has
21 forced the legal profession and the courts to make adjustments, the legal system continues to fully
22 operate because of the importance of moving cases forward in the interest of justice. Interviews and
23 discussions with clients can and are being conducted telephonically and can be done so in this
24 instance with no exposure to Covid-19. Indeed, if all cases pending before all courts in this country
25 were essentially stayed for the next 60-90-120 days or more, the already overburdened legal system
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1 will grind to a halt and take years to recover. The unfortunate reality is no one knows when the
2 pandemic may resolve, but the legal system cannot come to a complete standstill until it does.

3 Defendants-Appellants have a historical recorded pattern of failing to meet deadlines in this
4 matter - a pattern that suggests their actions are dilatory including the most recent claim that they
5 cannot meet their deadline because of the pandemic. Defendants'-Appellants' actions are prejudicial
6 and harmful to Plaintiff-Respondent who, for five years, and after a jury found in his favor, must
7 continue to wait for any measure of justice when no reason or legal justification exists for further
8 delay.¹

9
10 **III. Conclusion**

11 For the reasons stated herein, Plaintiff-Respondent respectfully requests this Court deny
12 Defendants'-Appellants' Motion to Extend Time To File Opening Brief.

13 Dated this 9th day of April 2020.

14
15 /s/ Victoria L. Neal

16 JAMES P. KEMP, ESQ.

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25 _____
26 1 This case was originally set for trial in early 2017 when Defendant Vincent Bartello petitioned for bankruptcy
27 protection triggering an automatic stay. After the bankruptcy trustee dismissed that case, this case resumed only to
28 have Defendant Vincent Bartello again petitioned for bankruptcy protection in 2018. After the bankruptcy trustee
dismissed that case, this case resumed only to be repeatedly delayed by Defendants-Appellants for various reasons
until former Justice Cherry, temporarily filling the vacant judicial position left by Judge Smith, set a firm trial date.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of KEMP & KEMP ATTORNEYS AT LAW and on the date indicated below the above and foregoing document was submitted for service through the Court's electronic filing system to be served on the following:

Carrie Hurtik, Esq.
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Attorneys for All Defendant-Appellants

Dated this 9th day of April 2020.

/s/ Victoria L. Neal
An employee of KEMP & KEMP