

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FILED

JUL 21 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

NONA TOBIN, AN INDIVIDUAL,
APPELLANT,

Court of Appeal Case No. 82294-COA

VS.

District Court Case A-19-799890-C

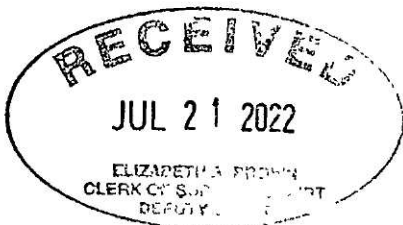
BRIAN CHIESI, AN INDIVIDUAL,
DEBORA CHIESI, AN
INDIVIDUAL; QUICKEN LOANS,
INC.; JOEL A. STOKES,
AN INDIVIDUAL; JOEL A.
STOKES AND SANDRA F.
STOKES, AS TRUSTEES OF
JIMI JACK IRREVOCABLE
TRUST; JIMI JACK
IRREVOCABLE TRUST;
NATIONSTAR MORTGAGE LLC;
AND RED ROCK FINANCIAL
SERVICES,

RESPONDENTS

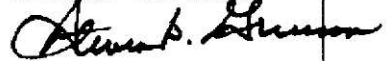
Appellant's Declaration in Support of Motion to rehear Order of Affirmance pursuant to NRAP 40; and motion for an order to show cause why sanctions should not be imposed pursuant to NRCP 11(b); (NRS 18.010(2), and EDCR 7.60(b)(1)& (3) NRS 42.005; NRCP 60(b)(3)&(d)(3); NRPC 3.1, 3.3, 3.4, 3.5A, 4.1, 4.4, 5.1, 5.2, 8.3, &/or 8.4 and to support a motion for referral to the Nevada Attorney General for criminal investigation pursuant to NRS 205.330; NRS 205.360; NRS 205.377; NRS 205.395; NRS 205.405; NRS 205.450; NRS 205.455; NRS 207.360 (9) (28) (30)(35); and/or NRS 207.470 (1) & (4)

DECLARATION EXHIBIT 14 432 – 443

10/29/20 and 11/3/20 Hearing Transcripts related to the orders entered on 10/8/20 and 11/17/20 when sanctions were imposed on Appellant for filing the 2nd action on the erroneous grounds that Appellant's claims had been fully and fairly litigated in the 1st action



22-22988



1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6
7 NONA TOBIN,

8 Plaintiff,

9 vs.

10 JOEL STOKES,

11 Defendant.

CASE NO. A-19-799890-C

DEPT. XXII

12 BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

13 OCTOBER 29, 2020

14
15 **RECORDER'S TRANSCRIPT OF HEARING RE**

16 **MOTION FOR ATTORNEY'S FEES AND COSTS**

17 APPEARANCES:

18
19 For the Plaintiff:

JOHN THOMSON, ESQ.
Via Video Conference

20
21 For the Defendant:

JOSEPH HONG, ESQ.
Via Video Conference

22
23 For Brian & Debora Cheisi; Quicken Loans:

BRITTANY WOOD, ESQ.
Via Video Conference

24
25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, OCTOBER 29, 2020 AT 9:50 A.M.

2
3 THE COURT: Okay. I'm calling the case of Tobin versus Stokes, case
4 number A19-799890-C. Would counsel who is present please identify yourselves
5 for the record and let's part with Plaintiff's counsel?

6 MR. THOMSON: Good morning, Your Honor. John Thomson for the Plaintiff.

7 THE COURT: Okay. And Mr. Hong.

8 MR. HONG: Yes. Good morning, Your Honor. Joseph Hong for the Stokes
9 Defendants.

10 THE COURT: Okay. And Miss Wood.

11 MS. WOOD: Good morning, Your Honor. Brittany Wood on behalf of the
12 Chiesi Defendants, Brian and Debora Chiesi and Quicken Loans.

13 THE COURT: Okay. Are there any other parties here? Okay. This is
14 Defendant's Motion for Attorney's Fees and Costs. Oh, I'm sorry, is there
15 somebody else here? No. We got everybody?

16 MR. THOMSON: Your Honor, my client, Ms. Tobin, was also on the call.

17 THE COURT: Okay. Thank you.

18 MR. THOMSON: This is John Thomson.

19 THE COURT: Okay. This is Defendant's Motion for Attorney's Fees and
20 Costs. I'm listening.

21 MS. WOOD: Good morning, Your Honor. Brittany Wood. The Motion for
22 Attorney's Fees was supported by a Brunzell declaration and redacted billing
23 statements along with a memorandum of costs and the billing statements confirm
24 that I spent 31.6 billable hours most of which was dedicated to analyzing a
25 substantial docket from the 2015 quiet title action as well as the public record and

1 the appeal documents and then of course my client's purchase documents. Ms.
2 Tobin's opposition asserts really two main arguments. The first is that the 31.6
3 billable hours were excessive and the argument there is that anything more than a
4 simple one paragraph joinder to Red Rock's motion was unnecessary. And the
5 second argument is that this Court's prior finding that Tobin's claims were brought
6 without reasonable grounds can apply to the Chiesi Defendants.

7 Respectfully, Your Honor, Tobin's opposition that the fees requested
8 were reasonable, it's apparent that Ms. Tobin is likely to appeal this Court's finding
9 that the claims are barred by claim preclusion and issue preclusion and the problem
10 for my clients is that unlike the other parties they weren't a party to the 2015
11 litigation. So, it was necessary for us to establish privity of title both for Ms. Tobin
12 and as well for the Chiesi Defendants and so a substantial portion of the time was
13 dedicated to that. And the opposition also shows the problem that Ms. Tobin still
14 doesn't understand that the privity issue, particularly as it relates to the Chiesi
15 Defendants, is what establishes that there's issue preclusion and claim preclusion
16 as to these parties as well and for that reason we couldn't simply just join into Red
17 Rock's motion because those things weren't established in it. And for that reason
18 that the 31.6 hours were reasonable and necessary and should be awarded for
19 attorney's fees in the amount of \$9,480.00 and costs in the amount of \$308.99.

20 THE COURT: Okay. Mr. Hong, do you have a dog in this race?

21 MR. HONG: No, I don't. I don't.

22 THE COURT: Okay. Mr. Thomson.

23 MR. THOMSON: Good morning, Your Honor. So, I believe it's been well
24 briefed, however, to get attorney's fees under NRS 18.010 you have to show that
25 there's no evidence that the claim was brought with reasonable grounds and we've

1 outlined the basis why it was reasonable both now and also based on the prior
2 record. So, I mean, first you hit that threshold. There has to be no evidence that the
3 amended complaint was reasonable, it was reasonable. In light of everything that
4 has happened to Ms. Tobin in the prior case she's had -- she -- the parties and the
5 Judge treated her as an individual party for three and a half years and at the very
6 end of the case the Judge said, no, you're not a party as an individual. Now, I know
7 Your Honor in hindsight has said, well, that order says that there's privity between
8 her as a trustee and her as an individual but that was certainly not the case. She
9 did not want to waive her rights to lose those claims as an individual. The deed in
10 2017 to this property was transferred from the trust to her as an individual so all the
11 parties in the prior litigation knew since 2017 that she claimed and actually had a
12 recorded individual property interest in the property since 2017. So, it's problematic
13 to say that she doesn't have a right to ask this Court after the Court of Appeals said,
14 no, you don't have any rights in the property as an individual based on what
15 happened in that prior District Court case. She has a right to bring before this Court
16 an action for declaratory relief. The only damages that she sought were regarding
17 the excess proceeds, Your Honor, and she has a right to ask for a declaration as to
18 her standing as an individual vis-à-vis this deed. Now, that's evidence that she has
19 a claim that's valid. She didn't bring this claim to harass anyone, she didn't bring the
20 second amended complaint to foam at litigation, she brought it to clarify her rights as
21 an individual in the property which she had a right to do. So, that's the first bar that
22 she has to jump through. If that's not met than no attorney's fees are proper at all.

23 Then we get to whether or not 31.6 hours to file a joinder. The
24 argument doesn't make sense because they say, well, we had to spend 31.6 hours
25 of attorney time because we weren't in the prior case and yet they're joining to a

1 motion by attorneys that were in the prior case. And then the argument was made
2 this morning and in the briefs by the Chiesi Defendants that they needed to spend
3 most of that time to go through the chain of title and to ensure that. Well, that's why
4 we have title and escrow officers. Those folks can do it much cheaper than an
5 attorney. Back in the old days before we had those maybe sixty years ago we
6 would have go down to the courthouse. I'm old enough to remember doing title
7 searches and having to go down to -- sorry, to the County Recorder's Office and
8 actually search out a chain of title. Things are changed since that time and it's no
9 longer necessary for an attorney to do that.

10 So, if Your Honor finds that there's no evidence that Ms. Tobin had a
11 right to bring a declaratory relief action to clarify her right as an individual vis-à-vis
12 the deed then we argue that the hours spent and hours claimed are extremely
13 excessive.

14 THE COURT: Okay. Ms. Wood.

15 MS. WOOD: Yes. Again, Your Honor, it goes back to the issue of the not
16 understanding privity and specifically the importance of privity as it relates to Tobin
17 as an individual and as it relates to the Chiesi Defendants. An argument has been
18 made that Tobin doesn't have -- is not in privity to the trust and that's simply wrong.
19 The restatement [indecipherable] of judgments Section 41(1)(a) states: "That a
20 beneficiary of a trust or estate is bound by a judgment in which the trustee
21 participated in the action." There's no question that Ms. Tobin participated in the
22 prior action as the trustee so she's bound by that judgment. And in addition, in
23 Bower versus Harrah's it states: "That a person is in privity with another if the
24 person acquired an interest in the subject matter affected by the judgment through
25 one of the parties such as by inheritance, succession, or purchase." Here the

1 property was transferred from the trust to Ms. Tobin via a wild deed because the
2 trust interest had already been extinguished by the HOA sale but nonetheless it was
3 a transfer of whatever interest they had which is what a quit claim deed says,
4 whatever interest they had if any, and in this case it was none and so she's clearly in
5 privity. And again, that is why the time was spent setting out all of that factual
6 information, preparing a request for judicial notice so that when this does go on
7 appeal, and it seems clear that it will, all of that record will be before the Nevada
8 Supreme Court or the Court of Appeals so that they can review that and say, yes,
9 they were in privity. And this Court has already found that the claims were brought
10 without reasonable grounds because it's barred by issue preclusion and claim
11 preclusion. So, that's already been established.

12 And again, as for the number of hours, you'll see that the majority of the
13 time was spent before anyone had filed a motion in this matter so there wasn't
14 anything to join in at that time. The motion was drafted before I even realized
15 someone had filed a motion in this matter and when I saw that there was a hearing
16 date we changed what was a motion to dismiss that would have been filed on its
17 own into a joinder so that we could have the same hearing date rather than having
18 multiple hearing dates which would have just further increased the costs. So, again,
19 respectfully I would say that the hours spent were reasonable, that the result
20 achieved justified the amount that we've requested in attorney's fees.

21 THE COURT: Okay. Counsel, I would have to agree, I've gone down this
22 road previously, I've already made my decision, now I need to look at -- I mean, I've
23 already made a decision that on behalf of the Stokes Defendants that these were
24 brought without reasonable grounds. I'm gonna need to review the attorney's fees
25 which I have not had a chance to do and I apologize to you for that. This week I've

1 been in a full week bench trial so I have not had a chance to actually go through the
2 itemization but I'm gonna go through it and consider them in light of the Brunzell
3 factors. So, give me just a little time to do that and I will do that. I'm gonna take it
4 under advisement.


5 MS. WOOD: Thank you, Your Honor.

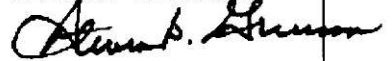
6 THE COURT: All right. Thank you.

7 [Proceedings concluded at 10:01 a.m.]

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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio/video recording in the above-entitled case to the best of my ability.

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18 NORMA RAMIREZ
19 Court Recorder
20 District Court Dept. XXII
21 702 671-0572
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1 TRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6
7 NONA TOBIN,

8 Plaintiff,

9 vs.

10
11 JOEL STOKES,

12 Defendant.

CASE NO. A-19-799890-C

DEPT. XXII

13 BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

14 NOVEMBER 3, 2020

15 RECORDER'S TRANSCRIPT OF HEARING RE

16 **DEFENDANTS, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF**
17 **THE JIMI JACK IRREVOCABLE TRUST AND JIMI JACK IRREVOCABLE**
18 **TRUST'S MOTION TO ENFORCE ORDER FOR ATTORNEYS' FEES AND**
19 **COSTS AND FOR CONTEMPT AND FOR ATTORNEYS' FEES AND COSTS**
20 **PURSUANT TO EDCR RULE 7.60(b)(3) AND/OR (5) AND ORDER SHORTENING**
21 **TIME**

22 APPEARANCES:

23 For the Plaintiff:

JOHN W. THOMSON, ESQ.
Via Video Conference

24 For the Defendant:

NO APPEARANCE

25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 TUESDAY, NOVEMBER 3, 2020 AT 9:15 A.M.

2
3 THE COURT: Okay. I'm calling the case of Tobin versus Stokes, case
4 number A19-799890-C. Would counsel who is present please identify themselves
5 for the record and let's start with Plaintiff's counsel?

6 MR. THOMSON: Good morning, Your Honor. John Thomson for the Plaintiff,
7 Nona Tobin.

8 THE COURT: Mr. Hong. Is Mr. Hong on?

9 MR. THOMSON: Your Honor, he was never on. I've been on since 8:25 and
10 only me and my client have been on.

11 THE COURT: Okay. Ms. Wood.

12 THE COURT RECORDER: Nobody else is there.

13 MR. THOMSON: She informed the court, Your Honor, through your law clerk
14 that she would not be attending this morning.

15 THE COURT: Okay. Well, it seems to me this is Defendant's -- and that's
16 Stokes and Jimijack's Motion to Enforce Order for Attorneys' Fees and Costs and for
17 Contempt. It seems to me the best remedy to Mr. Hong would be for him to submit
18 a proposed judgment and then he can execute your client. I don't know that we
19 need to do this overkill for motion to enforce the order and all of that kind of stuff; he
20 could just submit a proposed judgment. So, that's gonna -- I'm going to deny the
21 Motion to Enforce Order without prejudice but it seems to me that's the best remedy,
22 okay?

23 MR. THOMSON: I agree, Your Honor, although as my brief points out there's
24 -- there was several issues with this filing of this motion. And I think, you know, if it's
25 -- if it's good for them to get attorney's fees on a motion that was improper or in our

1 case we filed a complaint that we felt was in good faith then certainly we should be
2 awarded attorney's fees when he filed at best a premature motion. And now he
3 didn't show up here, he didn't stay on the call last week and my clients just in
4 hearings alone two hours let alone our eight paged motion because he didn't file a
5 notice of entry of order under NRCP 58 within 14 days that would trigger a stay to
6 enforce the order, Rule 62, and of course he hasn't met any of the requirements for
7 contempt.

8 So, anyway I know -- we learn after 25 years of practicing -- this is my
9 25th anniversary that when you win to be quiet but at the same time my client is on
10 the phone with this and I need to be able to just make a record of -- of the
11 arguments that we have with regards to this. We want to make sure that the
12 process is fair for all the parties.

13 THE COURT: Okay. Well, counsel, I will say -- you say you've been on the
14 phone for two hours --

15 MR. THOMSON: No, two hours that last time. He didn't show up at the last
16 hearing. I think that was maybe a court mistake, but he still didn't stay on when you
17 recalled the case, Your Honor. We stayed on the whole time waiting for the second
18 motion that was noticed by the Court. That was last Thursday. And then we've
19 been on the call this morning. So, that's what I meant by that.

20 THE COURT: Okay. Well, there -- you have no motion pending before the
21 Court. I'm here to decide the other one and that was -- again, it was a Court
22 mistake in terms of calendaring. But, my ruling is that if Mr. Hong wants to pursue
23 the judgment against your client he should submit a proposed judgment, if he's
24 saying that your client is not comply with an order, well, submit the judgment and
25 then he can go ahead and execute upon her assets. So -- and if you find it

1 appropriate to file a motion you most certainly can, okay?

2 MR. THOMSON: Thank you, Your Honor.

3 THE COURT: All right. Thank you.

4 [Proceedings concluded at 9:19 a.m.]

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12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video recording in the above-entitled case to the best of my ability.

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NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572