IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVNEET SHARDA,
TRATA INC.,

Appellant,

v.

STEVEN BARKET, AN INDIVIDUAL; G65 VENTURES, LLC, A NEVADA LIMITED LIABILITY COMPANY; SHAFIK HIRJI, AN INDIVIDUAL; SHAFIK BROWN, AN INDIVIDUAL; AND FURNITURE BOUTIQUE, LLC, A NEVADA LIMITED LIABILITY COMPANY et. al.

Respondents.

_____/

Case No. 82360
Consolidated Case No. 83131

EDC Court Case No. A-17-756274-C

RESPONDENTS' SHAFIK HIRJI, SHAFIK BROWN, AND FURNITURE BOUTIQUE, LLC'S ANSWERING BRIEF

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
office@danielmarks.net
TELETHA ZUPAN, ESQ.
Nevada State Bar No. 012660
tzupan@danielmarks.net
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

I. NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Parent Corporations and/or any publically-held company that owns 10% or more of the party's stock:

NONE.

2. Law Firms/Attorneys that have represented Respondents, Shafik Hirji, Shafik Brown, and Furniture Boutique, LLC:

LAW OFFICE OF DANIEL MARKS, DANIEL MARKS, ESQ., AND TELETHA ZUPAN, ESQ.

DATED this 1st day of October, 2021.

LAW OFFICE OF DANIEL MARKS

/s/ Teletha Zupan
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
TELETHA ZUPAN, ESQ.
Nevada State Bar No. 012660
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

TABLE OF AUTHORITIES

Cases:

Rules:

Statutes:

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellants, Navneet Sharda and Trata, Inc., filed a premature appeal in Supreme Court Case No. 82360 when their NRCP 59 tolling motion was pending before the District Court. Appellants filed another appeal in Supreme Court Case No. 83131 after the District Court issued the April 6, 2021 Order denying the Appellants' tolling motion. Both actions have been consolidated. This Court's de novo review need only consider:

1. Does Navneet Sharda and/or Trata, Inc., have standing to appeal the District Court's Findings of Fact and Conclusions of Law entered on December 14, 2020?

2. Did the District Court err in closing the case after the Findings of Fact and Conclusions of Law was entered?

3. Does the Findings of Fact and Conclusions of Law constitute a final judgment and bar the counterclaims under principles of *res judicata*?

4. Were the Sharda/Trata counterclaims filed against Barket properly dismissed by the District Court?

V. STATEMENT OF THE CASE

This dispute between Appellants, Navneet Sharda (hereafter "Sharda") and Trata, Inc., (hereafter "Trata", but collectively referred to as "Sharda Appellants"); Respondents, Shafik Hirji (hereafter "Hirji"), Shafik Brown (hereafter "Brown"), Furniture Boutique, LLC (hereafter "FB" and collectively referred to as "Hirji Respondents"); and Respondents, Steven Barket (hereafter "Barket") and G65 Ventures, LLC (hereafter "GVL" and collectively referred to as "Barket Respondents") pertains to a series of five loans from Barket's partners, Michael Ahders (hereafter "Ahders") and Sharda, through Sharda's corporate entities Cancer Care Foundation, Inc. (hereafter "Cancer Care"), and Trata:

Loan No. 1 for $200,000.00 dollars on November 7, 2016;

Loan No. 2 for $100,000.00 dollars on November 21, 2016;

Loan No. 3 for $100,000.00 on December 20, 2016;

Loan No. 4 for $1 million dollars on January 20, 2017; and

Loan No. 5 for $200,000.00 dollars on March 15, 2017.

(I JA 142-145, I JA 150-223, II JA 269-284, VI JA at pp. 1159, and Appellants' Opening Brief at p. 2, paragraph 4).

On June 1, 2017, Barket commenced litigation against Sharda and the Hirji Respondents, in Case No. A-17-756274-C (hereafter "*Barket action*"). (I JA 2-16).

On July 29, 2017, Barket and Sharda entered into a confidential settlement that resolved their claims and included a heinous scheme to fabricate defaults to circumvent this litigation and execute on the Hirji Respondents. . (II JA 290-293). Sharda would assign the five notes, together with their corresponding UCC1 agreements, confessions of judgment (hereafter "COJ"), and other documentation to Barket under their settlement. (II JA 254 and II JA 291).

Barket and Sharda used various underhanded methods to accomplish their schemes while this matter was pending before the District Court, which included secret side deals, fraud, sham defaults, and the other improper actions. (III Part 2 JA 518-521 and 525-529). They filed sham claims and counterclaims against each other to prevent the Hirji Respondents from discovering their secret side deal so Sharda could garner their trust to fabricate defaults under their scheme. (I JA 24-39, II JA 292, and XI JA 2212-2219).

They attempted to enforce the COJs five times in other departments before various judges instead of litigating this case. (III Part 2 JA 518-521 and 525-529). Judge Williams declared Loan No. 1 in the amount of $200,000 and Loan No. 3 in the amount of $100,000 void in Case No. A-17-763985-C, by Order entered April 5, 2018. (III Part 2 JA 516-521). Justice Cadish declared Loan No. 4: January 20, 2017 in the amount of $1,000,000 and Loan No. 5: March 15, 2017 in the amount

of $200,000 void in Case No. A-17-763995-C, by order entered April 17, 2018. (III Part 2 JA 523-529).

Barket and/or Sharda attempted to enforce the same COJ for Loan No. 2 three separate times. The first time, Judge Earley declared it void in Case No. A-18-770121-C on May 17, 2019. (III Part 2 JA 571-575). Loan No. 2 was also declared void by Judge Cory in Case No.: A-19-806944-C, on February 21, 2020. (III Part 2 JA 601-604). Judge Earley denied it with prejudice a third time as an untimely request for reconsideration. (VI JA 1186). The Findings of Fact and Conclusions of Law entered dismissed this matter with prejudice pursuant to the *doctrine of res judicata* based on the final orders reference above because it was litigated by the same parties and/or their privies and was based on the same claims or any part of them that were or could have been brought in the prior cases. (VI JA at 1186-1187).

The District Court reviewed Counterclaimants' Motion for Clarification and related relief, but denied it because Sharda Appellants failed show any of the five circumstances necessary to reconsider a prior ruling were present. *United States v. Real Prop. Located at Incline Village*, 976 F. Supp. 1327, 1353 (D.Nev. 1997). (1976). (XI JA at 2199-2201).

Sharda lacks standing to appeal the Findings of Fact and Conclusions of Law entered on December 14, 2020 in connection with the underlying loans. He did not assert any cross claims against the Hirji Respondents for the notes because he was assigning the notes to Barket per the settlement for execution. Sharda conceded that he assigned the five COJs and promissory notes to Barket. (II JA 254, 266, and 291; and XI JA 2212-2219).

Accordingly, only Barket had standing to appeal the right to be paid under the promissory notes. (II JA 254, II JA 266, and II JA 291). Barket did not appeal the District Court's Findings of Fact because he was not aggrieved by the decision. Therefore, Sharda's appeal is frivolous because he has no appealable interest in this matter.

Sharda improperly added Trata as a counterclaimant to assert one sham counterclaim against Barket for tortious interference with contractual relations. (X JA 2212-2219). Trata does not have standing to appeal because it was never properly joined as a party to the action pursuant to NRCP 19 or NRCP 20, did not intervene in the action pursuant to NRCP 24, and failed to file a third party complaint against Barket pursuant to NRCP 14. Accordingly, Trata's improper counterclaim has no legal significance. Therefore, Sharda Appellants appeal is frivolous because Sharda and Trata lack standing to appeal.

Sharda and/or Trata improperly raise their alleged right to repayment for the first time on appeal, which contradicts their settlement that was before the District Court. (II JA -290-293). Sharda and Trata did not oppose the motion to dismiss and failed to raise this issue in their tolling motion. (VI JA 1192-1209 and Appellant's Opening Brief at p. 1 at ¶ 1; pp. 4-5; p. 12 at ¶¶ 1 and 2; p.7 at¶ 1; p. 8 ¶ 1; pp. 10-11; p. 12 at ¶ 1; p. 14 ¶ 2; pp. 15 and 16). Once the requested relief was granted, they tried to appeal even though they failed to oppose when it was before the District Court. Therefore, this Court should refuse to consider this issue, since, it was raised for the first time on appeal.

VI. STATEMENT OF FACTS

Hirji is from Tanzania in East Africa. Hirji was thirteen years old when he moved to the United States in 1971. He struggled in school because English was his second language and ultimately dropped out of High School in New York at the beginning of his junior year. In 2002, Hirji moved to Nevada. (I JA 141).

Around September 2016, Hirji met Barket at the Mercedes dealer and they quickly became close friends. (I JA 141). In October 2016, Barket approached Hirji to invest money with Furniture Fashions. Hirji's son, Brown owns Furniture Fashions. Hirji trusted Barket based on their friendship and Barket's representations. Between November 7, 2016 and January 20, 2017 Barket

coordinated with Hirji to make a series of "investments" with Furniture Fashions, and other entities owned by Brown. Barket informed Hirji that each investment would need to be structured as a loan *from one of his businesses through his partner for tax purposes*. (I JA 142-144).

The **first** loan was made from Barket's partner, Sharda through Cancer Care for two hundred thousand ($200,000.00) dollars on November 7, 2016. (I JA 142 and I JA 150-167). The **second** loan was made from Barket's partner, Ahders, for one hundred thousand ($100,000.00) dollars on November 21, 2016. (I JA 142 and I JA 169-185). The **third** loan was made from Cancer Care for one hundred thousand ($100,000.00) on December 20, 2016. (I JA 143 and I JA 187-204). The **fourth** loan was made from Trata, for one million ($1,000,000.00) dollars on January 20, 2017. (I JA 143-144 and I JA 206-223). The related documents for all these investments/loans were executed at Stan Johnson's office, who was Barket's attorney at the time. (I JA 143-144, 150, 169, and 206).

Between November 7, 2016 and March 4, 2017, Barket, demanded and received a total of approximately $445,000.00 dollars in cash and checks. Barket claimed he would return the money in a few weeks. He did not. Instead, he demanded more money. Hirji refused. (I JA 144, 229-236, and 238; and IV JA 732-741).

Barket got angry and threatened to harm Hirji physically and/or to harm Brown and Hirji's family financially, if they did not give him more money. Barket also threatened to do a website posting negative things about Hirji and his family, if Hirji refused to give Barket more money. (I JA 144).

On or about March 5, 2017, Hirji contacted Sharda to inform him that Barket demanded and received $375,000.00 dollars and proceeded to demand more money they did not have. At that time, Hirji knew for sure that Barket had demanded and received at least $375,000, but was not certain of the total amount that had been paid to Barket. Hirji informed Sharda that they did not have enough money to open the store because of the money Barket took. (I JA 144-145).

On March 5, 2017, Sharda informed Hirji that Barket did not actually loan any money to them and that it was from Cancer Care and Trata. Barket was not an agent of Cancer Care or Trata. He did not have an interest in either company and did not have the power to bind either company. Sharda informed Hirji that Barket did not apply any of the money he received toward the outstanding loans. Hirji stopped communicating with Barket. (I JA 144; II JA 256:3-9; 257:3-5; and 263:18-20).

Barket created fliers and post card mailers, which inferred Hirji was untrustworthy, dishonest, and a scam artist, who sets up fake business fronts, and commits bankruptcy fraud to escape his creditors. He sent the post card mailers to customers, Hirji and Brown's business associates, landlords, tenants and employees of their and surrounding businesses and the neighboring business owners. In addition, Barket sent the post card mailers to neighbors in their residential communities. (IV Part 1 JA 743 and 745-747).

Barket created various websites, including but not limited to, shafikhirji.com; shadyshafik.com; yasminbrown.net; klastv.vegas; and furniturefashionslasvegas.net to smear the names of Hirji, his family, his friends, and business associates. Barket created a website regarding the Hirji Respondents' counsel at danielmarksexamined.com. The various websites made statements similar to the postcard/mailers to financially harm the reputation of Hirji, his family, their business, and business associates. (IV JA Part 1 755-784 and IV JA Part 2 785-829, 831- 836, 838-845, and 853-871).

On March 18, 2017, the **fifth** loan was made from Trata for an additional two hundred thousand ($200,000). Sharda suspended the repayment obligations for all the loans until the store opened, became profitable enough to make the payments, and they reached an agreement for a new repayment schedule for the

loans. The Trata loans were made for the purpose of opening the new furniture store. (I JA 145 and II JA 269-284). From November 7, 2016 to March 18, 2017, there was a total of five loans made to the Hirji Respondents. (I JA 150-223 and II JA 269-284).

From January 5, 2017 up to December 2017, the Hirji Respondents continued to make monthly payments of $4,000.00 directly to Ahders' bank account. Ahders received approximately $44,000.00 from the Hirji Respondents. The Hirji Respondents did not receive a written notice of default from Mr. Ahders in 2017 or 2018. Mr. Ahders did not offer to amend the terms, extend the repayment terms, and/or to reduce the principal amount due based on the $445,000 Barket demanded and received. (I JA 148, 229-236, and 238; and IV JA 874). Therefore, Ahders and his partner, Barket, received a combined total of approximately $489,000.00 from the Hirji Respondents between November 2016 and December 2017 for the initial $100,000 loan from Ahders.

In April 2017, Ahders contacted Hirji to discuss the smear websites. Hirji told Ahders Barket demanded and received approximately $375,000.00. Ahders said he would get Barket to remove the smear websites, but failed to do so. (I JA 148; IV Part 1 JA 755-784; and IV Part 2 JA 785-845).

On June 1, 2017, Barket commenced the *Barket action* against Hirji, Brown, Sharda, and Furniture Boutique, LLC, in the Eighth Judicial Court, Case No. A-17-756274-C. Barket was represented by Mr. McDonald and Mr. Barnabi in this action. (I JA 2-16). Barket never filed a proof of service for Sharda in this action or a three day notice of intent to default Sharda.

On July 29, 2017, Barket and Sharda entered into a confidential settlement agreement to resolve their claims. (II JA 290-293 and 303). It was jointly prepared by Sharda's counsel, Bryan Naddafi, Esq., and Barket's counsel, Michael Mazur, Esq. (hereafter "Mazur"). (II JA 300:10-13).

The confidential settlement agreement stated that Defendant (Sharda) would assign all rights, title and interest in the **five promissory notes** (including Ahders), together with their corresponding UCC1 agreements, COJ, and other documentation with an estimated principal value of $1,500,000.00 to Plaintiff or his assigns. (II JA 253-255, 291, 300, 312, and 322). They concocted a scheme to fabricate defaults to circumvent this litigation and execute on the Hirji Respondents. Barket coordinated the collection efforts of the Promissory Notes utilizing Mazur & Brooks for an aggressive post-judgment attachment and execution and Sharda paid for it. (II JA 255:12-18, 291, 300, 312 and 322).

Mazur reviewed Trata's COJs and Cancer Care's COJs. The COJs could not be assigned or sold and were grossly deficient to obtain a Judgment in the event of a Default pursuant to NRS 17.090 through NRS 17.110. (I JA 150-151, 187-188, and 206-207; and II JA 269-272).

On August 11, 2017 at 3:10 p.m., Sharda filed a sham Answer to Complaint and Counterclaim to preclude Hirji Respondents from discovering their secret side deal and to garner Hirji Respondents' trust to pressure Hirji to execute new agreements and COJs. Sharda asserted two permissive counterclaims from a separate agreement between Barket and Sharda that predated this action. Sharda did not file any cross claims against the Hirji Respondents because he was assigning the notes to Barket. (XI JA 2212-2219).

Sharda also asserted a sham counterclaim against Barket on behalf of Trata. Trata was never properly joined as a party pursuant to NRCP 19 or NRCP 20, failed to file a motion to intervene in the action pursuant to NRCP 24, and did not file a third party complaint against Barket pursuant to NRCP 14. (XI JA 2218-2219).

Sixteen minutes later, at 3:26 p.m., Barket filed his Amended Verified Complaint (hereafter "Amended Complaint") asserting claims against the Hirji Respondents for: (1) breach of contract, (2) breach of the implied covenant of

good faith and fair dealing, (3) tortious breach of the implied covenant of good faith and fair dealing, (4) breach of fiduciary duty, (5) unjust enrichment, (6) declaratory relief, and (7) conversion. Barket asserted sham claims against Sharda for unjust enrichment and intentional interference with contractual relationship to prevent any suspicion from the Hirji Respondents. (I JA 24-39). Sharda did not file an Answer to the Amended Complaint.

In August 2017, Mazur drafted two new Change in Terms Agreements (hereafter "CIT Agreements") with new COJs to consolidate the loans for Cancer Care and Trata, make the notes assignable, add new resources to impose liability against, add interest and late fees for the periods that Sharda suspended payments, accelerate the payments and interest under the loans, and eliminated the grace periods. (II JA 250). The CIT Agreements required the Hirji Respondents to make three initial payments of $25,000.00 on September 25, 2017; October 25, 2017; and November 25, 2017. (II JA 382-415 and III JA 423-456).

From August 15, 2017 to August 28, 2017, Sharda pressured Hirji to execute the CIT Agreements for Cancer Care and Trata. He frequently told Hirji he was stressed out and under a lot of pressure from his family about these loans. He said he was having a lot of conflict with his family because of these loans, but he was acting in furtherance of their heinous scheme to fabricate defaults. (I JA

145-147 and II JA 264:10-16).

On September 1, 2017, the Hirji Respondents executed the CIT Agreements at Sharda's counsel's office. Mr. Nadaffi did not notify Hirji and Brown's counsel of the CIT Agreements or advise Hirji and Brown to consult with their counsel before executing such agreements, even though the loans were the subject of this action. (III Part 1 JA 492-497).

Hirji Respondents made the first payment to Sharda on September 25, 2017. (III Part 1 JA 496). On October 13, 2017, Sharda assigned the CIT Agreements for all four loans to Brooklyn Asset Management, LLC (hereafter "BAM"), but did not notify Hirji of the assignment. (II JA 266:9-24 and III Part 1 JA 496).

On October 25, 2017, Hirji contacted Sharda to make the second payment, but Sharda refused to accept it. He informed Hirji that the loans were assigned to a hedge fund in New York, but did not provide Hirji with the requested contact information for the company. Sharda told Hirji he was leaving town and he would receive correspondence regarding it shortly. As part of their scheme the payments would be sent to New York to be sent back to Las Vegas. (II JA 251:3-8 and III Part 1 JA 496).

On or about October 28, 2017, Hirji and Brown received letters from BAM and Trata dated October 17, 2017. Mazur drafted and sent the assignment letters.

(II JA 252:14-19; III Part 1 JA 496 and 502-504).

Hirji called BAM multiple times to get account numbers for the Cancer Care and Trata payments and to confirm the mailing address for the payments. On October 30, 2017, a representative him she had not heard of BAM, did not have any account numbers, and not to send payments to the address listed on the correspondence. She said she would get back to Mr. Hirji with the requested information, but did not. (III Part 1 JA 496-497 and 508-509; and III Part 2 510).

Shortly thereafter, Kay Sorrels called Mr. Hirji and identified herself as an agent of BAM. She said she would pickup the payments from the furniture store at 3500 S. Maryland Pkwy., Ste 171 on November 1, 2017, but did not. On November 2, 2017, Hirji mailed the payments to BAM's address on the correspondence in New York. Hirji called Ms. Sorrels to see why she did not go to the store. She told him it was assigned to legal counsel and to contact Mazur. (III JA Part 2 512-514). Mazur told Hirji the COJs had been filed. (III JA Part 1 497).

On November 1, 2017, Mazur filed the COJ on behalf of Cancer Care and BAM, *assignee*, in Case No. A-17-763985-C (hereafter "*Cancer Care action*") in Department XVI before Judge Williams. The COJs were derived from Loan No. 1 and Loan No. 3 and in issue in this action. (I JA 150-167, 187-204, "4"; and II JA 382-415). On or about April 5, 2018, Judge Williams set aside the COJs finding it

was void because Cancer Care attempted to circumvent the issues and subject matter pertaining to the loans in dispute in this action to deprive the Hirji Respondents of an adjudication of their rights and potential liabilities. (III Part 2 JA 516-521).

The same day, Mazur filed the COJ on behalf of Trata, Inc. (hereafter "*Trata action*"), and BAM, *assignee,* in Case No. A-17-763995-C in Department VI before Justice Cadish, for Loan No. 4 and Loan No. 5, which were in issue in this action. Further, Trata executed and seized approximately $200,000.00 of the Hirji Respondents' money and property. Barket was present for the execution and laughed as he told Hirji that he owns BAM. (III Part 2 JA 538 and 539-540).

On April 17, 2018, after an extensive evidentiary hearing, Justice Cadish vacated Trata's Confessions of Judgment on the grounds of fraud, misrepresentation, or other misconduct of an adverse party pursuant to NRCP 60(b)(3) because Nadaffi improperly communicated about the subject of the representation with a person he knew to be represented by another lawyer when these loans were at issue. He knew Hirji and Brown were represented by Mr. Marks, who was not present and did not consent. (I JA 206-223; II JA 269-284; III Part 1 JA 423-456; and III Part 2 JA 523-530).

Hirji Respondents learned in the *Trata action* that Mazur represented Barket, Sharda, Cancer Care, Trata, and BAM, in connection with the COJs that were filed in the *Cancer Care* and *Trata actions*. (II JA 248:24-25, 249:1-4, and 265:6-15). Trata filed an Acknowledgment of Assignment of Judgment after the first day of the evidentiary hearing concluded, but did not file one in the *Cancer Care action*. (III Part 2 JA 550-552).

Hirji learned that BAM was a domestic Nevada limited liability company and the November payments to BAM were mailed back to Las Vegas to Mazur's office for deposit. (III Part 2 JA 554-563 and 565-569). The assignment was clearly a sham to cause defaults as it required payments to be sent to New York only to be mailed back to Nevada for deposit.

On February 23, 2018, Mazur filed the COJ on behalf of Ahders in A-18-770121-C, in accordance with their settlement. Ahders' COJ did not provide a specific sum that is due or account for the principal and interest installment payments that were made from January 5, 2017 up to December 2017. (I JA 169-185; II JA 255:12-18, 291, 300:10-13, 312:19-26 and 312:23-27). On May 17, 2019, Judge Earley set aside the COJ as void under NRCP 60(b) and consolidated it with the *Barket action*. (III Part 2 JA 571-575).

On December 13, 2019, Ahders re-filed the same COJ that was already held void and set aside in a new action in Case No.: A-19-806944-C before Judge Cory in Department I, instead of filing a complaint in this action. On January 29, 2020, Judge Cory vacated the COJ and dismissed the action with prejudice. (III Part 2 JA 583-599 and 601- 604).

On January 19, 2020, Plaintiffs filed a Motion for Entry of the same COJ in the consolidated *Ahders* and *Barket action*. On July 29, 2020, Hirji Respondents filed their Motion to Dismiss the Plaintiffs' Complaint with Prejudice and for related relief. Sharda Appellants did not oppose it. The hearing for these motions, oppositions and replies were continued, consolidated, and set to be heard on November 19, 2020 at 9:00 a.m. (VI JA 1158 and 1317-1318).

In the Order entered on December 14, 2020, Judge Earley ordered that Plaintiffs' motion for entry of COJ is denied with prejudice as an untimely motion for reconsideration of the Court's Order entered on May 17, 2019 pursuant to EDCR 2.24. (VI JA1167). This matter was dismissed with prejudice, pursuant to the three-part test from *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Each and every COJ pertaining to the loans had been fully and finally adjudicated by Judge Williams, Judge Earley, Judge Cory, and Justice Cadish in the other cases. Each claim involved the same parties or their privies. Each

adjudication was a valid and final judgment. (IV JA 1167-1169).

Accordingly, the doctrine of res judicata precluded the parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40, 466 P.3d 1271, 1275 (2020). Judge Earley held that this matter is based on the same claims or any part of them that were or could have been brought in the prior cases. (IV JA 1167-1169).

On December 28, 2020, Sharda Appellants filed a motion for clarification and related relief.(VI JA 1192-1296). On January 13, 2021, Sharda Appellants filed a premature notice of appeal, while the tolling motion was still pending. (X JA 2148-2169). On or about April 6, 2021, the District Court denied the motion because Sharda Appellants failed show that any of the five circumstances necessary to reconsider a prior ruling. (X JA 2180-2186). On June 23, 2021, Appellant filed another notice of appeal. (XI JA 2207-2210).

VII. SUMMARY OF THE ARGUMENT

The District Court did not err in it's decision in this case. Contrary to Sharda's argument, there was no abuse of discretion in this case. This appeal involves a dispute between Sharda Appellants, Hirji Respondents, and Barket Respondents regarding a series of five loans from Barket's partners, Ahders,

Sharda, Cancer Care and Trata. It involved the same parties and/or their privies. There was a full and final adjudication for each COJ, which encompassed the specific loans reference above by Justice Cadish, Judge Williams, Judge Cory, and Judge Earley. Every COJ was voided and set aside. (III Part 2 JA 516-521, 525-529, 571-575, and 601-604; VI JA 1186-1187; and Appellants' Opening Brief at p. 2, paragraph 4).

Shortly after Barket commenced this action, Barket and Sharda entered into a secret settlement to resolve their claims and concocted a heinous scheme to fabricate defaults to circumvent this litigation and execute on the Hirji Respondents. As part of their settlement, Sharda assigned the five notes, together with their corresponding UCC1 agreements, COJ, and other documentation to Barket for execution. (II JA 254, 290-292, 300:10-13, and 303).

Sharda and Barket filed sham claims and counterclaims against each other to prevent the Hirji Respondents from discovering their secret side deal so Sharda could garner their trust to pressure them into executing CIT Agreements and fabricate defaults. (XI JA 2212-2219). They attempted to enforce the COJs five times in other departments before various judges instead of litigating this case, which were all declared void and set aside. (III Part 2 JA 516-521, 525-529, 571-575, and 601-604; and VI JA 1186-1187). They attempted to enforce the same

COJ three separate times in two different departments. (See III Part 2 JA 571-575, 601-604, and VI JA 1186-1187). The Findings of Fact and Conclusions of Law entered on December 14, 2020, dismissed this matter with prejudice based on the final orders pursuant to the *doctrine of res judicata* because it is based on the same claims or any part of them that were or could have been brought in the prior cases. (See Jt. App. Vol. VI at JA001167:24-28 and JA001168:1-19).

Sharda does not have standing or an interest to appeal the underlying loans because he assigned the five COJs and promissory notes to Barket pursuant to their settlement. (II JA 253-254, and 291). Barket had standing to appeal regarding the notes that were assigned to him. However, Barket did not appeal the District Court's Findings of Fact because he was not aggrieved by the decision. Accordingly, Sharda's appeal is frivolous because he has no interest to appeal.

The settlement resolved Sharda's sham counterclaims. Sharda did not assert any cross claims against the Hirji Respondents because he assigned the notes to Barket so they could executed on the Hirji Respondents. Further, Sharda improperly added Trata as a counterclaimant and asserted one sham counterclaim against Barket for tortious interference with contractual relations. (II JA 290-293, and 303; and XI JA 2212-2219). Trata does not have standing to appeal because it was never properly joined as a party to the action, failed to file a motion to

intervene in the action, and failed to file a third party complaint against Barket. Therefore, Sharda and Trata's appeal is frivolous because they lack standing.

Sharda and/or Trata improperly raise their alleged right to repayment for the first time on appeal, which contradicts their settlement. Sharda and Trata did not oppose the motion to dismiss and failed to raise this issue in their tolling motion. (VI JA 1192-1209 and Opening Brief at p. 1 at ¶ 1; pp. 4-5; p. 12 at ¶¶ 1 and 2; p.7 at¶ 1; p. 8 ¶ 1; pp. 10-11; p. 12 at ¶ 1; p. 14 ¶ 2; pp. 15 and 16). Therefore, this Court should affirm the District Court's Findings of Fact and Conclusions of Law entered on December 14, 2020 and Order entered on May 25, 2021.

VIII. STANDARD OF REVIEW

Sharda Appellants argue in err that *Buzz Stew, LLC, v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008), applies. It does not apply because the District Court did not dismiss Sharda Appellants' counterclaims with prejudice pursuant to NRCP 41(e)(6) for want of prosecution even though the Hirji Respondents urged it to do so. (See Opening Brief at p. 16 ¶ 1). The District Court clearly stated that it was dismissing this matter, which is based on the same claims or any part of them that were or could have been brought in the prior cases pursuant to the *doctrine of res judicata*. (VI JA 1167:24-28 and 1168:1-19). In addition, Sharda Appellants cite to authority from other jurisdictions that does not apply and is not binding on

this Court.

When a district court errs in failing to expressly consider a motion to dismiss as one for summary judgment, this Court reviews the dismissal order as if it were a motion for summary judgment. *Schneider v. Continental Assur. Co.*, 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994)(citing *Thompson v. City of N. Las Vegas*, 108 Nev. 435, 438, 833 P.2d 1132, 1134 (1992)). Judge Earley's review went beyond the pleadings of this case and included a review of the pleadings, affidavits, and transcripts filed in the various actions. (I JA 100-238; II JA 240-415; III Part 1 JA 417-509; III Part 2 JA 510-642; IV Part 1 JA 644-784; IV Part 2 JA 785-875; and VI JA 1158). Accordingly, this Court should construe Judge Earley's Findings of Fact and Conclusions of Law for November 19, 2020 Order Dismissing Plaintiff's Matter with Prejudice as granting summary judgment on the basis of res judicata under NRCP 56, which is subject to de novo review. *Tore, Ltd. v. Church*, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

IX. LEGAL ARGUMENT

1. SHARDA AND TRATA LACK STANDING TO APPEAL THE DISTRICT COURT'S FINDINGS OF FACT ENTERED ON DECEMBER 14, 2020.

Sharda lacks standing to appeal the Findings of Fact. He assigned the five COJs and promissory notes to Barket for execution. (II JA 254, 266, 291, and 303;

and XI JA 2212-2219). Barket had standing to appeal because the notes were assigned to him. Barket did not appeal the District Court's Findings of Fact because he was not aggrieved by the decision. Accordingly, Sharda's appeal is frivolous because he has no appealable interest in this matter.

Sharda's sham counterclaims were resolved by the settlement with Barket. Sharda did not assert any cross claims against the Hirji Respondents because he assigned the notes to Barket for execution. Further, Sharda improperly added Trata as a counterclaimant and asserted one sham counterclaim against Barket for tortious interference with contractual relations. (II JA 254, 266, 291, and 303; and XI JA 2212-2219). Trata does not have standing to appeal because it was never properly joined as a party to the action, did not intervene in the action and failed to file a third party complaint against Barket. Therefore, Sharda and Trata lack standing to appeal this matter.

In addition, a party may not raise new issues, factual or legal, which were not presented to the district court because it deprives the opposing party and the district court of the opportunity to address it. *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 697, 290 P.3d 249, 255 (2012) at footnote 3. Parties are only permitted to raise issues on appeal that have been presented to the district court to maintain the efficiency, fairness, and integrity of the judicial system for all

parties, which bars parties from reinventing their case on appeal. *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010).

Sharda Appellants raise their alleged right to repayment for the first time on appeal, which contradicts the settlement. Sharda and Trata did not oppose the motion to dismiss and failed to raise this issue in their tolling motion. (See VI JA 1192-1209 and Opening Brief at p. 1 at ¶ 1; pp. 4-5; p. 12 at ¶¶ 1 and 2; p.7 at¶ 1; p. 8 ¶ 1; pp. 10-11; p. 12 at ¶ 1; p. 14 ¶ 2; pp. 15 and 16). Therefore, this Court should refuse to consider this issue.

2. SHARDA APPELLANTS' COUNTERCLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA.

A. The District Court Properly Closed this Case after the Findings of Fact Were Entered.

In dismissing this action with prejudice, Judge Earley found very clearly that this dispute stems from the serious of five loans in this case. Each and every COJ pertaining to the loans has been adjudicated and declared void. Each determination regarding the COJs were actually decided and necessary to the final order issued in each case. Further, these disputes involved the same parties or their privies, valid and final judgments have been entered in each case, and this action

is based on the same claims or part of them, and/or could have been brought in the prior actions. (VI JA 1178 and 1180-1182).

Barket and Sharda used various heinous schemes to circumvent this matter while it was pending before the District Court, which included secret side deals, fraud, sham defaults, and the other improper actions. They attempted to enforce the COJs five times in other departments before various judges instead of litigating this case. (III Part 2 JA 516-521, 525-529, 571-575, and 601-604; and VI JA 1186-1187). Each and every COJ was declared void and set aside. Ahders' COJ was set aside three times. (VI JA 1186-1187).

Sharda Appellants did not dispute that these Orders were final judgments. Barket and/or the Sharda Appellants' could have asserted their claims regarding the underlying loans for each COJ within the various departments. Barket and/or Sharda Appellants declined to do so because their interests were aligned by their settlement. (II JA 254, 266, 291, 292, and 303; and XI JA 2212-2219).

The District Court properly held that the *doctrine of res judicata* applies and precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40, 466 P.3d 1271, 1275 (2020). The doctrine is intended to prevent multiple litigation causing vexation

and expense to the parties and wasted judicial resources by precluding parties **from relitigating issues they could have raised** in a prior action concerning the same controversy. *Id.* (VI JA 1186-1187).

Sharda Appellants are appealing the broad scope of claim preclusion, which embraces **all grounds of recovery that were asserted in a suit or that could have been asserted**. See *University of Nevada v. Tarkanian*, 110 Nev. 581, 600, 879 P.2d 1180, 1191 (1994). They seek to limit claim preclusion to the same narrow and restrictive scope that applies for issue preclusion.

Despite the fact that the COJs were created in connection with and based on each loan and/or consolidation thereof, Sharda Appellants arguing that the prior final judgments and orders only apply for the purpose of collateral estoppel or issue preclusion to the COJs, which is contrary to the District Court's Findings of Fact entered on December 14, 2020, the April 6, 2021 Order, and Nevada law.

Further, Sharda Appellants argue claim preclusion cannot apply because the underlying notes were not litigated. However, claim preclusion prevents the parties from relitigating all grounds of recovery that were asserted in a suit or that could have been asserted. Therefore, it was appropriate for the District Court to dismiss the matter with prejudice pursuant to the *doctrine of res judicata*.

In addition, the District Court reviewed Counterclaimants' Motion for Clarification and related relief. It denied their motion because Sharda Appellants failed to show that any of the five circumstances necessary to reconsider a prior ruling necessary were present. (XI JA 2198-2201).

B. The District Court's Findings of Fact and April 6, 2021 Order Constitute a Final Judgment of Trata's Counterclaim for Purposes of *Res Judicata*.

The finality of an order or judgment depends on "what the order or judgment actually does, not what it is called." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). A final order or judgment disposes of the issues presented in the case and leaves nothing for the future consideration of the court, except post-judgment fees and costs. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) and *Alper v. Posin*, 77 Nev. 328, 330, 336 P.2d 502, 503 (1961).

In this case, Judge Earley was aware from the history of this consolidated action and the various other related proceedings before Justice Cadish, Judge Williams, and Judge Cory, of Barket and Sharda's secret side deals, fraud, sham defaults, and the other improper actions taken to advance their heinous schemes.(VI JA 1176-1188). Based on the long sorted history of this case, the

related cases, and at least five separate adjudications of the COJs, Judge Earley properly held that each claim involves the same parties or their privies. Each adjudication referenced above was a valid and final judgment. Judge Earley even cited to a Nevada Supreme Court's decision holding that the *doctrine of res judicata* precludes parties or those in privity with them from relitigating a cause of action or an issue, which has been finally determined by a court of competent jurisdiction. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40, 466 P.3d at 1275. Further, Judge Earley held that this matter is based on the same claims or any part of them that were or could have been brought in the prior cases. (VI JA 1176-1188).

Barket, Sharda, and/or Trata could have litigated their claims regarding the underlying loans in the other cases, but did not because they trying to accomplish their schemes. Sharda conceded that he was participating in that action individually and on behalf of Trata and that he participated in Barket's scheme, acted at Barket's direction and in accordance with their settlement, assigned all five promissory notes to Barket, and paid for the aggressive executions on the Hirji Respondents. (II JA 248:18-25-249:1-5, 264:10-16; and III Part 2 JA 526:16-27).

Sharda should have asserted Trata's compulsory counterclaim in the *Trata action* that was pending before Justice Cadish. It is disingenuous for Trata to assert that it's counterclaim is not related to the loans or COJs that Justice Cadish declared void by final order. Trata's counterclaim is irrefutably related to the COJs that Justice Cadish held to be void. It arose from the same transactions and occurrence.

The counterclaim Trata filed in this action has no legal significance because it was never properly joined as a party to this action pursuant to NRCP 19 or NRCP 20, failed to intervene in the action pursuant to NRCP 24, and failed to file a third party complaint against Barket pursuant to NRCP 14. Accordingly, the improper counterclaim Trata asserted in this action has no legal significance because it was never properly joined as a party to this action.

The Findings of Fact dismissed this matter with prejudice. It resolved all the claims and counterclaims asserted between the parties. It disposed of all the issues presented in the case and left nothing for the future consideration. (VI JA 1176-1188).

The District Court denied Sharda Appellants' tolling motion because they failed to show that any of the five circumstances necessary to reconsider a prior ruling. (XI JA 2198-2201). Therefore, this Court should affirm the District Court's

Orders entered on December 14, 2020 and May 25, 2021, which constitute a final judgment and dismiss this matter with prejudice.

C. The District Court properly dismissed Sharda and Trata's Counterclaims against Barket.

Sharda's arguments lack merit and are contrary to the evidence that was presented to the District Court. On July 29, 2017, Barket and Sharda entered into a confidential settlement agreement that resolved their claims. (II JA 254, 266, 291, 292, and 303; and XI JA 2212-2219). Sharda did not oppose the motion to dismiss with prejudice.

On August 11, 2017 at 3:10 p.m., Barket and Sharda filed sham claims and counterclaims against each other to deceive the Hirji Respondents. They pressured them to sign the CIT agreements so they could fabricate defaults. Barket and Sharda's settlement resolved their claims. (II JA 254, 266, 291, 292, and 303; and XI JA 2212-2219). Therefore, the District Court properly dismissed this matter with prejudice, including Sharda's sham counterclaims based on the evidence for purposes of *Res Judicata*. (II JA 254, 266, 291, 292, and 303; and XI JA 2212-2219).

3. IT WAS APPROPRIATE FOR THE DISTRICT COURT TO DISMISS SHARDA APPELLANTS' COUNTERCLAIMS WITH PREJUDICE PURSUANT TO THE *DOCTRINE OF RES JUDICATA*

Sharda Appellants misapprehend the basis for the District Court's dismissal. The District Court did not dismiss Sharda Appellants' counterclaims pursuant to NRCP 41(e)(6) for want of prosecution. (Appellants' Opening Brief at p. 16 ¶ 1). The District Court clearly stated that it was dismissing this matter, which is based on the same claims or any part of them that were or could have been brought in the prior cases pursuant to the *doctrine of res judicata*. (VI JA 1167:24-28 and 1168:1-19).

It was appropriate for the District Court to do so based on the evidence and settlement, which resolved Barket and Sharda's claims for purposes of *Res Judicata*. As well as Trata's improper compulsory counterclaim that had to be filed in the *Trata action*, since, it was never a proper party to this action. (II JA 254, 266, 291, 292, and 303; and XI JA 2212-2219). Therefore, this Court should dismiss this frivolous appeal and affirm the District Court's decision.

X. CONCLUSION

There was no abuse of discretion in this case. The District Court properly dismissed this matter with prejudice pursuant to the doctrine of *res judicata*.

Barket and Sharda's secret settlement resolved their claims. They spent years litigating to enforce their schemes and the COJs, which were all set aside by final orders. The final orders were not appealed.

Sharda Appellants lack standing to appeal the underlying loans because they assigned the five COJs and promissory notes to Barket as part of their settlement. Barket did not appeal regarding the notes because he was not aggrieved by the decision. The settlement bars Sharda's permissive counterclaims for purposes of *res judicata*. Sharda Appellants failed to raise the repayment issue in their tolling motion and cannot do so for the first time on appeal.

Sharda failed to assert Trata's compulsory counterclaim in the *Trata action* and was never properly joined as a party in this matter. Therefore, this Court should affirm the District Court's dismissal with prejudice pursuant to the doctrine of *res judicata*.

Dated this 1st day of October, 2021.

LAW OFFICE OF DANIEL MARKS

/s/ Teletha Zupan

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
TELETHA ZUPAN, ESQ.
Nevada State Bar No. 012660
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect in 14 point font and Times New Roman.

2. I further certify that this brief complies with the word- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32 (a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more and contains 7,834 words.

3. Finally, I hereby certify that I have read this answering brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellant Procedure.

DATED this 1st day of October, 2021.

LAW OFFICE OF DANIEL MARKS

/s/ Teletha Zupan
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
TELETHA ZUPAN, ESQ.
Nevada State Bar No. 012660
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 1st day of October, 2021, I did serve by way of electronic filing, a true and correct copy of the above and foregoing **RESPONDENTS' ANSWERING BRIEF** on the following:

R. Christopher Reade, Esq.
1333 N. Buffalo Drive, Ste. 210
Las Vegas, Nevada 89128
Attorney for Appellants Navneet Sharda and Trata, Inc.

And

Michael R. Mushkin, Esq.
6070 S. Eastern Ave., Ste. 270
Las Vegas, Nevada 89119
Attorney for Respondents, Steven Barket and G65 Ventures, LLC

/s/ Teletha Zupan
An employee of
LAW OFFICE OF DANIEL MARKS