

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON, AN INDIVIDUAL,

Appellant,

vs.

RAMPARTS, INC., LUXOR HOTEL &
CASINO, A NEVADA DOMESTIC
CORPORATION,

Respondents.

Electronically Filed
Jan 27 2020 04:29 p.m.

Elizabeth A. Brown

Case Nos. 78964/80167 Clerk of Supreme Court

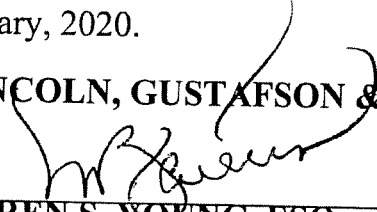
**RESPONSE TO MOTION TO
WAIVE FILING FEE AND
COMBINE CASES**

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO ("Luxor"), by and through its counsel of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits its Response to Motion to Waive Filing Fee and Combine Cases.¹

This Response is based upon the attached Points and Authorities and the papers, pleadings and records contained in the Court's file.

DATED this 14th day of January, 2020.

LINCOLN, GUSTAFSON & CERCOS, LLP


LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

MARK B. BAILUS, ESQ.

Nevada Bar No. 2284

3960 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Attorneys for Defendant, RAMPARTS, INC.

¹ A copy of Plaintiff's response to order to show cause (without exhibits) was attached as Exhibit 1 to her motion to waive filing fee and combine cases. Since Plaintiff did not incorporate by reference in her motion the arguments in her response to order to show cause, Luxor will address the same separately in its reply to the response to order to show cause.

POINTS AND AUTHORITIES

On January 17, 2019, Luxor filed a motion for attorney's fees and costs, which was granted and the order was entered on March 18, 2019 ("March 18 Order"). Even though substantively appealable, Plaintiff chose not to appeal from the said order. Instead, Plaintiff filed a motion to reconsider, asking the District Court to reconsider the Court's order granting Luxor an attorney lien offset. On May 21, 2019, the District Court entered an order denying the same ("May 21 Order"). On June 4, 2019, Plaintiff filed a notice of appeal which states that Plaintiff "hereby appeals to the Nevada Supreme Court Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset entered in this action on May 16, 2019." As evinced by the forgoing, Plaintiff did not appeal from the March 18 Order.

Notwithstanding, on December 3, 2019, the Plaintiff filed an "amended notice of appeal," approximately 260 days after the March 18 Order. The amended notice purported to amend the original notice of appeal of the May 21 Order (denying Plaintiff's motion to reconsider) to include appeals of the March 18 Order (award of attorney's fees and costs to Luxor) and the stipulation and order filed on November 26, 2019 (dismissing Defendant Desert Medical Equipment).²

² In her amended notice of appeal (which was docketed in this Court as Case No. 80167), Plaintiff is appealing from: (1) the order granting Defendant's motion for attorney's fees and costs, which was filed on March 18, 2019; (2) the order denying Plaintiff's motion to reconsider the court's order granting Luxor an attorney lien offset filed on May 21, 2019; and (3) the stipulation and order to dismiss Defendant Desert Medical Equipment only, which was filed on November 26, 2019.

Contrary to Plaintiff's assertions, the amended notice of appeal does not cure the jurisdictional defect in Case No. 78964. As such, this Court lacks jurisdiction to hear said appeal.

Initially, it must be observed that Plaintiff's amended notice of appeal does not relate back to the date of the original notice of appeal of June 4, 2019.³ *See Cruz v. Int'l. Collection Corp.*, 673 F.3d 991 (9th Cir. 2011) ("Because of the 'mandatory and jurisdictional' nature of notices of appeal, the doctrine of 'relation back' that may apply to complaints does not apply to an amended notice of appeal.") (Internal citation omitted.) *See id.* at 1000, n. 15. In the case *sub judice*, Plaintiff did not file her "amended" notice of appeal adding, *inter alia*, the March 18 Order (granting Defendant's motion for attorney's fees and costs) until December 3, 2019. This was approximately 260 days after the March 18 Order. Thus, the amended notice of appeal was not a timely notice of appeal as to the March 18 Order as it was more than 30 days after said order. *See* NRAP 4(a)(1); *see also, Winston Products Co. v. DeBoer*, 122 Nev. 517, 519, 134 P. 3d 726, 728 (2006) ("This court lacks jurisdiction to consider an appeal filed beyond the time allowed under NRAP 4(a).")

³ Unlike NRCP 15(c)(1), which creates a standard based on whether the amendment arises out of the same "conduct, transaction, or occurrence," NRAP 3 and 4 establish a hard rule based on the number of days, *i.e.*, an appellant has 30 days to file a notice of appeal. *See* NRAP 4(a)(1). Nothing in the Nevada Rules of Civil or Appellate Procedure establishes any exception for notices of appeal similar to the doctrine of relation back for amendments to complaints.

Further, the issue of whether Plaintiff's motion to reconsider tolled the time to file a notice of appeal from the March 18 Order is of no moment.⁴ A post-judgment order awarding attorney fees and costs is considered a special order entered after final judgment and is a substantively appealable under NRAP 3A(b)(8). *See Winston Products Co.*, 122 Nev. at 525, 134 P.3d at 731. ("An order awarding attorney fees and costs is substantively appealable after final judgment.") Even though substantively appealable, Plaintiff did not appeal from the March 18 Order in her notice of appeal. Specifically, Plaintiff's notice of appeal states that Plaintiff "hereby appeals to the Supreme Court of Nevada Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset entered in this action on the 16th day of May 2019." As such, Plaintiff did not file a timely notice of appeal from the March 18 Order. Absent an appeal from the March 18 Order, the denial of Plaintiff's motion to reconsider was not substantively appealable. *See, e.g., Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P. 2d 980 (1983). Since the order designated in the notice of appeal, *i.e.*, May 21 Order, is not substantively appealable, this Court lacks jurisdiction to hear the same.

⁴ It is of import to note that Plaintiff filed her notice of appeal *after* the resolution of her motion to reconsider. As such, the notice of appeal from the May 21 Order was not premature. *See* NRAP 4(a)(6). Unfortunately for Plaintiff, however, the May 21 Order (denying the motion to reconsider) was not independently appealable.

As evident from the forgoing, this Court lacks jurisdiction to review the March 18 Order (awarding attorney's fees and costs to Luxor) and the May 21 Order (denying Plaintiff's motion to reconsider) and thus, Case No. 78964 should be dismissed. Since the court lacks jurisdiction in Case No. 78964, there is no case to combine with Case No. 80167. Accordingly, Plaintiff's motion to waive filing fee and combine cases should be denied.

DATED this 14th day of January, 2020.

LINCOLN, GUSTAFSON & CERCOS, LLP


LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

MARK B. BAILUS, ESQ.

Nevada Bar No. 2284

3960 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Attorneys for Defendant, RAMPARTS, INC.

CERTIFICATE OF SERVICE

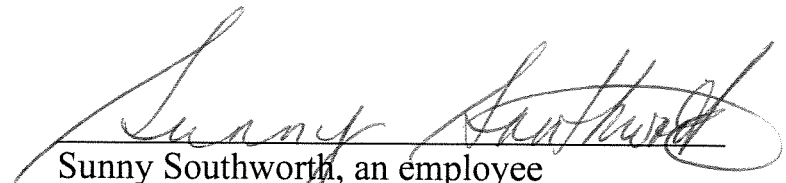
I HEREBY CERTIFY that on the 27th day of January 2020, I served a copy of this **RESPONSE TO MOTION TO WAIVE FILING FEE AND COMBINE CASES** upon all counsel of record:

X By electronic service in accordance with the Master Service List to the following:

Micah S. Echols, Esq.
Claggett & Sykes Law Firm
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
Attorneys for Plaintiff

Boyd B. Moss III, Esq.
Moss Berg Injury Lawyers
4101 Meadows Lane, Suite 110
Las Vegas, NV 89107
Attorneys for Plaintiff

Matthew G. Pfau, Esq.
Parry & Pfau
880 Seven Hills Drive, Suite 210
Henderson, NV 89052
Attorneys for Plaintiff


Sunny Southworth, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLC