

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOUR ENTERPRISES, LLC., A
NEVADA LIMITED LIABILITY
COMPANY; MULUGETA BOUR, AN
INDIVIDUAL; HILENA
MENGESHA, AN INDIVIDUAL,

Appellants,

v.

4520 ARVILLE, A CALIFORNIA
GENERAL PARTNERSHIP;
MCKINLEY MANOR, AN IDAHO
GENERAL PARTNERSHIP,

Respondents.

Supreme Court Case No.: 82699
District Court Case No.: Case No.: A-
19-794864-C

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Supreme Court Case No.: 83099

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APPELLANTS' MOTION TO CONSOLIDATE APPEALS

Appellants Bour Enterprises, LLC., Mulugeta Bour and Hilena Mengesha (hereinafter, the “Appellants”), by and through their attorney of record, Rusty Graf, Esq., of the law firm Black & Wadhams, hereby move the Court for an Order consolidating two (2) related appeals currently pending before this Court as Docket No. 82699 and Docket No. 83099 (hereinafter, the “Appeals”). This Motion is made pursuant to Nevada Rules of Appellate Procedure 3(b) and 27(a), and further is made and based upon the papers and pleadings on file with this Court and the accompanying Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and procedural background.

These Appeals arise out of the Appellants' lease of 4560 S. Arville St., C-10, 23, 24, and 29, Las Vegas, NV 89103 (hereinafter the “Premises”) from Respondents. The Appellants alleged that they were unable to continue operations at the Premises due to the presence of hazardous conditions and ultimately were forced to terminate their lease. The Respondents then filed a Complaint against Appellants on May 15, 2019, wherein they asserted claims of: (1) Breach of Leases against Lessee; (2) Breach of Guaranties against the Guarantors; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Unjust Enrichment; and (5) Declaratory Relief.

Appellants filed their Answer and Counterclaims on July 16, 2019, wherein they asserted Counterclaims for: (1) Constructive Eviction; (2) Breach of Contract; (3) Breach of the Covenant of Good Faith and Fair Dealing; and (4) Declaratory Relief. Appellants' also asserted affirmative defenses to Respondents' claims which included: (1) that the Respondents' actions were the proximate cause of their own damages; (2) that Respondents had failed to mitigate their damages; that any damages Respondents incurred were caused, in whole or in part, by their own negligence; and (4) that the doctrines of novation, accord and satisfaction, and recoupment either bar the Respondents from recovery or, in the alternative, require the amount of damages to be reduced accordingly.

Respondents filed a Motion for Summary Judgment regarding Counterclaim damages on November 10, 2019, and a Motion for Summary Judgment regarding the Respondents' Breach of Contract Claims on December 1, 2020. A hearing was held on Respondents' Motion for Summary Judgment regarding Counterclaim damages on December 15, 2020, with the Appellants' Counterclaims ultimately being dismissed. A hearing was held on Respondents' Motion for Summary Judgment regarding Breach of Contract Claims on January 12, 2021, and the District Court entered an Order granting Respondents' Motion for Summary Judgment on January 28, 2021.

The Appellants Notice of Appeal for these Orders by the District Court was

filed on March 31, 2021. That Appeal is Docket No.: 82699. Subsequently, the Court entered an Order Granting in Part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs on May 27, 2021, with Notice of Entry of this Order also filed on May 27, 2021. Though this Order was not filed until May 27, 2021, a First Supplemental Judgment was preemptively entered by the Court on May 24, 2021, with Notice of Entry of the same filed on May 27, 2021. The First Supplemental Judgment awarded the Respondents Sixty Thousand Dollars (\$60,000.00) in attorneys' fees and Six Thousand Three Hundred and Seven Dollars and 71/100 Cents (\$6,307.71) in incurred costs, for a total of Sixty-Six Thousand Three Hundred and Seven Dollars and 71/100 Cents (\$66,307.71) and was entered against the Defendants jointly and severally.

As the Order regarding attorney's fees and costs, and the subsequent First Supplemental Judgment, were not entered until after the Appellants' First Appeal had already been filed, the Appellants filed a second appeal regarding those actions by the District Court on June 23, 2021. That second Appeal is Docket No.: 83099

II. ARGUMENT

A. Legal Standard for Consolidation

NRAP 3(b)(2) governs when related appeals may be consolidated in this Court and provides, in relevant part, that "[w]hen the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its

own motion or upon motion of a party.” *See NRAP 3(b)(2)*.

B. In the Interest of Judicial Economy these Matters should be Consolidated

As noted above, Appellants timely appealed from the District Court’s initial Orders on March 31, 2021, in Docket No.: 82699. Thereafter, the District Court filed its Order granting in part and denying in part, Respondents’ Motion for Attorney’s Fees and Costs, and Appellants’ Motion to Retax. As is also stated above, that Order, and the resulting First Amended Judgment, were also timely appealed on June 23, 2021, in Docket No.: 83099.

These separate but related Appeals involve the same facts and circumstances and raise the same legal issues on appeal. As such, consolidation of these two (2) separate but related appeals are proper and warranted under these circumstances. Similarly, consolidation would promote judicial economy by permitting the parties to save the costs associated with filing briefs and other papers in only one (1) appeal and would require this Court to focus on only one (1) appeal, as opposed to two (2) separate but related appeals.

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III. CONCLUSION

Based on the foregoing, Appellants respectfully requests the Court consolidate the separate but related appeals Docket No.: 82699 and Docket No.: 83099.

Dated this 6th day of August 2021.

BLACK & WADHAMS



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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion has been prepared in 14-point Times New Roman font, a proportionally spaced typeface, and complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type of style requirements of NRAP 32(a)(6). I further certify that this motion is less than 10 pages and complies with the type-volume limitations of NRAP 27. I further certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. 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 APPELLATE PROCEDURE.

DATED this 6th day of August 2021.

BLACK & WADHAMS

RUSTY GRAF, ESQ.

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10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

Attorney for Appellants

CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 12 day of August 2021, the above and foregoing document entitled **APPELLANTS' MOTION TO CONSOLIDATE** was served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
Jessica M. Lujan, Esq.
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of Black & Wadhams