IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC, a Nevada limited liability company; FIRST 100 HOLDINGS, LLC, a Nevada limited liability company, A/K/A 1ST ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company,

Appellants,

vs.

TGC/FARKAS FUNDING, LLC,

Respondent.

Supreme Court No. 82794
District Court Case No. A-20-822273-C

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

The only order subject of the appeal is one finding Appellants in contempt—an ancillary proceeding to the final judgment in this matter. *See* the Order of Contempt[1] that is the only order subject of Appellants' Notice of Appeal. As part of the Order of Contempt, immediate compliance with the underlying final Judgment (never appealed) was ordered, as well as a sanction of remedial fees and costs incurred to address Appellants' concerted contemptuous conduct. The Order of Contempt is not independently appealable.

In opposition to the Motion, Appellants disavow their docketing statement (identifying NRAP 3A(b)(1) as the authority for jurisdiction and describing the Order of Contempt as a final judgment) in favor of a new argument that the Order

[1] Capitalized terms are as defined in the Motion to Dismiss Appeal.

for Contempt is a "special order entered after final judgment" that is appealable under NRAP 3A(b)(8). This Court, however, specifically recognizes that contempt orders are not special appealable orders. "A contempt order that is ancillary to another proceeding is not independently appealable." *Daniels v. Bork*, 485 P.3d 767, at *1 (May 11, 2021, Nev. 2021) (unpublished disposition) (citing *Pengilly v. Rancho Santa Fe Homeowners Ass'n,* 116 Nev. 646, 649, 5 P.3d 569, 671 (2000) (recognizing that a contempt order is not appealable); *Detwiler v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 18, 486 P.3d 710 (2021) (citing *Pengilly* at 649-50) ("Where no rule or statute provides for an appeal of a contempt order, the order may properly be reviewed by writ petition."); *see also Brown v. MHC Stagecoach, LLC,* 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (explaining this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

Appellants then try to circumvent their appeal's jurisdictional defect by arguing that the Order of Contempt "affect[ed] rights incorporated in the judgment" because it found that a non-party, Appellants' principal, Bloom, was also in contempt. Appellants' position is misplaced. The Order of Contempt did not order Bloom jointly and severally liable for the Judgment (that includes a prevailing party fee award for pre-Judgment fees and costs). Rather, the Order of Contempt imposed civil contempt remedies upon Appellants and Bloom based on their demonstrated

concerted attempts to resist the Judgment's order to produce Appellants' books and records in an attempt to compel performance. Nothing about the Order of Contempt affected rights incorporated in the Judgment. To the contrary, the Judgment remains in place, and Appellants (and Respondent) have the same exact rights and obligations they had upon entry of the Judgment. *Gumm v. Mainor*, 118 Nev. 912, 918–19, 59 P.3d 1220, 1224–25 (2002); *see also TRP Int'l, Inc. v. Proimtu MMI LLC*, 133 Nev. 84, 85, 391 P.3d 763, 764 (2017).

Bloom was found in contempt based on his personal actions to disobey and resist the Judgment. Specifically, the district court made a "determination that [Appellants] ***and Bloom*** disobeyed and resisted the Order in contempt of Court (civil) . . . ." Order of Contempt at p. 34 (emphasis added). It was ***Bloom's*** own contemptuous conduct that led the Court to order that Appellants and "Bloom are jointly and severally responsible for the payment of all the reasonable fees and costs incurred by Plaintiff since entry of the [Judgment] for the purpose of coercing compliance with the [Judgment] in order to make them whole…." *Id*.

In *Detwiler*, this Court sustained a third-party contempt sanction against the manager of Harry Hildibrand, LLC ("HH"). HH's manager was found in contempt after he failed to turn over HH's motorcoach in defiance of the district court's order. This Court found that when "a party has incurred attorney fees as a result of multiple contemnors' concerted conduct, each contemnor may be liable for the full amount."

Under the circumstances of *Detwiler* that are analogous to the circumstances here, this Court specifically recognized that a writ petition was the proper means to challenge that contempt order.

In sum, upon detailed and extensive findings, the district court found that Bloom was in contempt. Nothing about that finding impacted or altered the parties' rights under the final Judgment. Furthermore, consistent with *Detwiler*, the district court crafted an attorneys' fee award that was limited to those fees resulting from the contemptuous conduct and found that all contemnors were liable for the resulting fee award based on their concerted conduct. Accordingly, here, there is no cognizable basis for conferring appellate jurisdiction.

Without a basis for jurisdiction, this appeal should be dismissed.

Dated June 14, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner

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CERTIFICATE OF SERVICE

I certify that on the 14th day of June, 2021, I served a copy of the **REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL**, upon all parties of interest as follows:

☐ By personally serving it upon him/her; or

☒ By E-Service through Nevada Supreme Court; email and/or first-class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.):

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