

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW MORONEY an Individual,

Appellant,

vs.

BRUCE ARTHUR YOUNG, individually;
POINT MINING & MILLING
CONSOLIDATED, INC.;
Respondents

CASE NO.: 82948

Electronically Filed
District Court Case No. 2022-0234
JUL 05 2022 02:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Appeal from the Fifth Judicial District
Court, Esmeralda County, Nevada

APPELLANT'S APPENDIX TO REPLY BRIEF VOLUME 1

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

BIGHORN LAW

3675 W. Cheyenne Ave., Suite 100

North Las Vegas, Nevada 89032

Telephone: (702) 333-1111

Email: kimball@bighornlaw.com

Attorney for Appellant

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COPY

NEO

MICHAEL M. DELEE, ESQ.
Nevada Bar No. 011948
DELEE LAW OFFICES, LLC
P.O. Box 96, 18 South Powerline Road
Amargosa Valley, Nevada 89020
Telephone: (775) 372-1999
Facsimile: (775) 372-1234
E-Mail: michael@deleelaw.com
Attorney for Bruce Arthur Young

FILED

APR 15 2021

S. Rupp
ESMERALDA COUNTY CLERK

The undersigned does hereby affirm that this document does not contain the social security number of any person.

**FIFTH JUDICIAL DISTRICT COURT
ESMERALDA COUNTY, STATE OF NEVADA**

MATTHEW MORONEY,

Plaintiff,

v.

BRUCE ARTHUR YOUNG,

Defendant.

Case No. : CV-19-5103

Dept. No.: I

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an ORDER GRANTING MOTION TO DISMISS was entered on the 15 day of April, 2021, in the above entitled matter, a copy of which is attached hereto.

DATED this 15 day of April, 2021.

DELEE LAW OFFICES, LLC

By 

MICHAEL M. DELEE

Attorney for Bruce Arthur Young

1 OGM

2 MICHAEL M. DELEE, ESQ.

3 Nevada Bar No. 011948

4 DELEE LAW OFFICES, LLC

5 P.O. Box 96, 18 South Powerline Road

6 Amargosa Valley, Nevada 89020

7 Telephone: (775) 372-1999

8 Facsimile: (775) 372-1234

9 E-Mail: michael@deleelaw.com

10 Attorney for Bruce Arthur Young

11 The undersigned does hereby affirm that this
12 document does not contain the social security
13 number of any person.

14 FIFTH JUDICIAL DISTRICT COURT
15 ESMERALDA COUNTY, STATE OF NEVADA

16 MATTHEW MORONEY,

17 Plaintiff,

18 v.

19 BRUCE ARTHUR YOUNG,

20 Defendant.

Case No. : CV-19-5103

Dept. No.: I

21 ORDER GRANTING MOTION TO DISMISS

22 Defendant Bruce Arthur Young's Motion to Dismiss having been filed on September 1,
23 2020, having been properly noticed, having come before the Court on October 6, 2020 and upon
24 supplemental hearing on November 10, 2020, the Court, having reviewed the pertinent pleadings
25 and relevant papers, having heard the argument of counsel, and good cause appearing orders as
26 follows:
27
28

FILED IN ERROR

Brittani Smith

FILED

FILED IN ERROR

FILED IN ERROR

FILED

APR 15 2021

ESMERALDA COUNTY CLERK

BACKGROUND

Plaintiff Matthew Moroney ("Moroney") filed his Complaint on March 19, 2019, against Defendants Bruce Arthur Young, individually, and Point Mining & Milling, Consolidated, Inc; Does I through X, inclusive (the "Complaint"). The Complaint was never served, but the Amended Complaint was, with Defendant Bruce Arthur Young filing an answer, in proper person, on July 7, 2020. On July 17, exactly 120 days after the filing of the Complaint, Moroney timely filed an Ex-Parte Motion to Enlarge Time For Service of Defendants (the "Ex Parte Motion"). On August 21, 2019, this Court set the Ex-Parte Motion for a hearing on September 3, 2019.

At the hearing on the Ex Parte Motion on September 3, 2019, the Court found that Moroney did not use reasonable efforts to affect service of process by unreasonably delaying and failing to utilize the local Esmeralda County Sherriff to affect service. This Court denied Plaintiff's Ex Parte Motion because of a lack of diligent effort to serve the Defendants and entered a minute order to this effect, which this Court found was sufficient to terminate this case. This Court further finds that a formal, written order was not necessary as to the Ex Parte Motion and that the Court was justified in not entering such an order because the minute order was an administrative, docket management order and there was, at the time of the hearing on the Ex Parte Motion, no other party before the Court.

As mentioned above, Defendant Bruce Arthur Young filed his answer, in proper person, to Moroney's amended complaint on July 7, 2020. Afterwards, on September 1, 2020, exactly 56 days after filing his amended complaint, he filed a motion to dismiss Moroney's amended complaint by and through his attorney of record, Michael M. DeLee, Esq. This Court conducted two hearings, on Defendant Bruce Arthur Young's motion to dismiss on October 6, 2020, and November 10, 2020.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 THE COURT HEREBY CONCLUDES that under NRCP 4(e)(2) the rules are
3 jurisdictional, explicit and mandatory that an action must be dismissed unless there is an
4 extension of the time to serve:

5 If service of the summons and complaint is not made upon a defendant before the
6 120-day service period — or any extension thereof — expires, the court must
7 dismiss the action, without prejudice, as to that defendant upon motion or upon
8 the court's own order to show cause.

9 NRCP (4)(e)(2) (emphasis added). Defendant Bruce Arthur Young brought his motion to
10 dismiss on September 1, 2020. The Court, acting upon its own previously entered minute order
11 and not relying upon the motion, confirms the dismissal of the action;

12 THE COURT FURTHER CONCLUDES that Nevada law allowed the minute order as an
13 administrative, docket management tool, denying Plaintiff's Ex Parte Motion without the need
14 for a formal, written order.

15 THE COURT FINDS that Moroney did not obtain an extension of time to effectuate
16 service of the original complaint filed on March 19, 2019;

17 THE COURT FURTHER FINDS that its minute order denying Plaintiff's Ex Parte
18 Motion was procedurally adequate to bar Moroney from filing and serving his amended
19 complaint;
20

21 THE COURT FURTHER FINDS that it is required to dismiss the action; THE COURT
22 FURTHER FINDS that Defendant Bruce Arthur Young was not procedurally barred from filing
23 his motion to dismiss Moroney's amended complaint;
24

25 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the
26 Plaintiff's claims set forth in his amended complaint are hereby **DISMISSED**.
27

28 DATED this 09th day of January, 2021.

1 **IT IS SO ORDERED.**

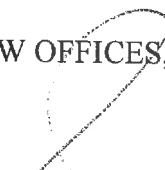
2 
3 _____
 Honorable Judge Kimberly Wanker


4 SUBMITTED BY

 Approved as to form and content:

5 DELEE LAW OFFICES, LLC

 BIG HORN LAW

6 
7 _____
8 Michael M. DeLee, Esq.
9 Nevada State Bar No. 011948
 P.O. Box 96, 18 South Powerline Road
 Amargosa Valley, Nevada 89020
 Attorney for Bruce Arthur Young



 Matthew B. Beckstead, Esq.
 Nevada State Bar No. 14168
 2225 E. Flamingo Rd. Bld. 2, Ste. 300
 Las Vegas, Nevada 89119
 Attorney for Matthew Moroney