

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN B. CHILDS

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE ADRIANA ESCOBAR,

Respondents,

WLAB INVESTMENT, LLC, TKNR, INC.,
a California Corporation, and
CHI ON WONG aka CHI KUEN WONG,
an individual, and KENNY ZHONG LIN,
aka KEN ZHONG LIN aka KENNETH
ZHONG LIN aka WHONG K. LIN aka
CHONG KENNY LIN aka ZHONG LIN,
an individual, and LIWE HELEN CHEN
aka HELEN CHEN, an individual and YAN
QIU ZHANG, an individual and
INVESTPRO LLC dba INVESTPRO
REALTY, a Nevada Limited Liability
Company, and MAN CHAU CHENG, an
individual, and JOYCE A. NICKRANDT,
an individual, and INVESTPRO
INVESTMENTS LLC, a Nevada Limited
Liability Company, and INVESTPRO
MANAGER LLC, a Nevada Limited
Liability Company and JOYCE A.
NICKDRANDT, an individual and does 1
through 15 and roe corporation I-XXX,

Real Parties in Interest

Supreme Court No:

District Court No: A-18-785917-C
Jun 01 2021 12:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO

**BENJAMIN B. CHILDS' PETITION
FOR WRIT OF MANDAMUS
OR WRIT OF PROHIBITION**

VOLUME 2

Benjamin B. Childs, Esq.
Nevada Bar No. 3946
318 S. Maryland Parkway
Las Vegas, NV 89101
Telephone: 702-251-0000
Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

VOLUME 2

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Other Real Property

COURT MINUTES

May 17, 2021

A-18-785917-C W L A B Investment LLC, Plaintiff(s)
vs.
TKNR Inc, Defendant(s)

May 17, 2021 03:00 AM Minute Order

HEARD BY: Escobar, Adriana COURTROOM: Chambers

COURT CLERK: Packer, Nylasia

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Plaintiffs Motion to Reconsider (Motion), which Defendants opposed, was scheduled for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 18, 2021. Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has determined that it would be appropriate to decide this matter based on the pleadings submitted. Upon thorough review of the pleadings, this Court issues the following order:

Leave for reconsideration of motions is within this Court s discretion under EDCR 2.24.

A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

Unless otherwise ordered by the court, papers submitted in support of pretrial and post-trial briefs shall be limited to 30 pages, excluding exhibits. EDCR 2.20(a).

Plaintiff seeks reconsideration of this Court s April 7, 2021, Amended Order Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment.

It its opposition, Defendants argue that Plaintiff s Notice of Appeal in this matter divests this Court of jurisdiction to rule on Plaintiff s Motion. This Court disagrees. Because Plaintiff filed a motion for reconsideration, the April 7, 2021, order is not final appealable order. Therefore, the appeal was premature. A premature notice of appeal does NOT divest the district court of jurisdiction. NRAP 4(a)(6). Therefore, this Court has jurisdiction to rule on the Motion.

Additionally, Defendants argument that Plaintiff s Motion was untimely filed lacks merit. Defendants filed the Notice of Entry of Order on April 8, 2021. Therefore, Plaintiff had until April 22, 2021, to file the instant Motion. Plaintiff filed this Motion on April 16, 2021, and thus, the Motion is timely.

Before addressing the substantive merits of Plaintiff s Motion, this Court notes that Plaintiff s 179-page Motion includes 40 pages of argument, notwithstanding the exhibits. Although Plaintiff did not seek an order from this Court permitting a longer brief, Court addresses the

Motion in full.

Plaintiff spends a majority of its Motion rehashing the facts of the underlying dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants' underlying motion for summary judgment namely, the Residential Purchase Agreement and the Second Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated documents, or hearsay, in ruling on Defendants' motion for summary judgment.

In opposing summary judgment, Plaintiff was required to point to specific facts creating a genuine issue of material fact. *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002). Plaintiff did not so.

Moreover, Defendants were not required to authenticate the first and second Residential Purchase Agreement before this Court could rely on those documents in granting summary judgment. First, Plaintiff did not contest the authenticity of the disputed documents in opposing summary judgment. Second, Plaintiff could have objected that these documents, which were Defendants repeatedly cite to in their motion for summary judgment, cannot be presented in a form that would be admissible in evidence. NRCP 56(b)(2) it did not. Finally, summary judgment is not trial. Authentication is for purposes of introducing evidence at trial. Therefore, this argument lacks merits.

Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

Plaintiff additionally argues that Rule 11 sanctions were not warranted and also asks this Court to clarify whether Mr. Day and his firm are to be included in the sanctions. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions was clearly erroneous. However, this Court does clarify that the sanctions are awarded against Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day. See NRCP 11(c)(1): (If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.).

The Court additionally notes the following: Although they do not caption their opposition as a countermotion, Defendants' opposition raise an argument that Rule 11 sanctions are warranted as to Plaintiff's instant Motion. This Court does not find that Rule 11 sanctions are warranted for Plaintiff's filing of this Motion.

Defendants also ask that this Court issue an award of attorney fees and costs in the amount of \$128,166.78. In its April 7, 2021, order, this Court granted Defendants attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new counsel, does not oppose the specific amounts requested. This Court grants the amount Defendants seek.

Based on the foregoing, this Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion. This Court does not find that its ruling was clearly erroneous. However, the Court clarifies that the attorney fees and costs is awarded against Plaintiff's former counsel.

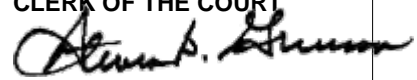
Counsel for Defendants is directed to prepare a proposed order that incorporates the substance of this minute order and the pleadings. Plaintiff must approve as to form and content.

Counsel must submit the proposed order within 14 days of the entry of this minute order. EDCR 1.90(a)(4).

All parties must submit their orders electronically, in both PDF version and Word version, until

further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (5-17-21 np).



MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL B. LEE P.C.
1820 E. Sahara Ave., Ste. 110
Las Vegas, NV 89104
Office: (702) 731-0244
Fax: (702) 477-0096
Email: mike@mblnv.com
Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,
Plaintiff,
vs.

CASE NO.: A-18-785917-C
DEPT. NO.: XIV

**NOTICE OF ENTRY OF ORDER
GRANTING, IN PART, AND DENYING,
IN PART, PLAINTIFF'S MOTION TO
RECONSIDER AND JUDGMENT
AGAINST PLAINTIFF AND PREVIOUS
COUNSEL**

TKNR INC., a California Corporation, and CHI
ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN, aka KEN
ZHONG LIN aka KENNETH ZHONG LIN aka
WHONG K. LIN aka CHONG KENNY LIN aka
ZHONG LIN, an individual, and LIWE HELEN
CHEN aka HELEN CHEN, an individual and
YAN QIU ZHANG, an individual, and
INVESTPRO LLC dba INVESTPRO REALTY,
a Nevada Limited Liability Company, and MAN
CHAU CHENG, an individual, and JOYCE A.
NICKRANDT, an individual, and INVESTPRO
INVESTMENTS LLC, a Nevada Limited
Liability Company, and INVESTPRO
MANAGER LLC, a Nevada Limited Liability
Company and JOYCE A. NICKRANDT, an
individual and Does 1 through 15 and Roe
Corporation I - XXX,

Defendants.
And Related Actions.

TO: ALL PARTIES

YOU, AND EACH OF YOU, will please take notice that an order and judgment in this
matter was entered in this matter on May, 2021. A copy of said ORDER and JUDGMENT is
attached hereto and incorporated herewith by reference.

Dated this 25th day of May, 2021.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
Attorneys for Defendants

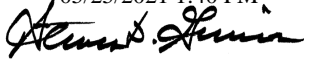
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of May, 2021, I placed a copy of **NOTICE OF ENTRY OF ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF’S MOTION TO RECONSIDER AND JUDGMENT AGAINST PLAINTIFF AND PREVIOUS COUNSEL** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court’s electronic filing system to the e-mail address listed below.

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com

STEVEN L. DAY, ESQ.
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel – 702.309.3333
Fax – 702.309.1085
sday@daynance.com
Attorneys for Plaintiff

/s/ Mindy Pallares
An employee of MICHAEL B. LEE, P.C.


CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
MICHAEL B. LEE, P.C.
1820 East Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com
Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,
Plaintiff,
vs.

CASE NO.: A-18-785917-C
DEPT. NO.: XIV

**ORDER GRANTING, IN PART, AND
DENYING, IN PART, PLAINTIFF'S
MOTION TO RECONSIDER
AND
JUDGMENT AGAINST PLAINTIFF AND
PREVIOUS COUNSEL**

Date of Hearing: May 17, 2021
Time of Hearing: chambers

TKNR INC., a California Corporation, and
CHI ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN, aka
KEN ZHONG LIN aka KENNETH ZHONG
LIN aka WHONG K. LIN aka CHONG
KENNY LIN aka ZHONG LIN, an
individual, and LIWE HELEN CHEN aka
HELEN CHEN, an individual and YAN QIU
ZHANG, an individual, and INVESTPRO
LLC dba INVESTPRO REALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and JOYCE
A. NICKRANDT, an individual, and
INVESTPRO INVESTMENTS LLC, a
Nevada Limited Liability Company, and
INVESTPRO MANAGER LLC, a Nevada
Limited Liability Company and JOYCE A.
NICKRANDT, an individual and Does 1
through 15 and Roe Corporation I - XXX,
Defendants.

This matter being set for hearing before the Honorable Court on May 18, 2021 at 10:00
a.m., on W L A B INVESTMENT, LLC ("WLAB" or "Plaintiff"), Motion to Reconsider
("Motion"), by and through its attorney of record, DAY & NANCE. Defendants' TKNR INC.,
CHI ON WONG aka CHI KUEN WONG, KENNY ZHONG LIN, aka KEN ZHONG LIN aka
KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN,
LIWE HELEN CHEN aka HELEN CHEN, YAN QIU ZHANG, INVESTPRO LLC dba
INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A. NICKRANDT, INVESTPRO

1 INVESTMENTS LLC, and INVESTPRO MANAGER LLC, (collectively, the “Defendants”)
2 filed an Opposition to the Motion and appeared by and through its counsel of record, MICHAEL
3 B. LEE, P.C.

4 Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter
5 may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply
6 with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has
7 determined that it was appropriate to decide this matter based on the pleadings submitted. Upon
8 thorough review of the pleadings, the Court issues the following order:

9 1. Leave for reconsideration of motions is within this Court’s discretion under
10 EDCR 2.24.

11 2. A district court may reconsider a previously decided issue if substantially
12 different evidence is subsequently introduced or the decision is clearly erroneous. See *Masonry*
13 *& Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

14 3. Plaintiff seeks reconsideration of this Court’s April 7, 2021, Amended Order
15 Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary
16 Judgment (“Amended Order”).

17 4. Although Defendants argue that Plaintiff’s Notice of Appeal divests this Court of
18 jurisdiction to rule on the Motion, this Court disagrees because the Amended Order was not final
19 and appealable by virtue of Plaintiff filing the Motion. Therefore, the appeal was premature, and
20 the court is not divested of jurisdiction on the filing of a premature notice of appeal, allowing the
21 court to rule on the Motion. See NRAP 4(a)(6).

22 5. The Motion was timely filed within fourteen (14) days of the Notice of Entry of
23 the Amended Order.

24 6. Plaintiff spends a majority of its Motion rehashing the facts of the underlying
25 dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants underlying
26 motion for summary judgment namely, the Residential Purchase Agreement and the Second
27 Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues
28 that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the

1 email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated
2 documents, or hearsay, in ruling on Defendants' motion for summary judgment.

3 7. In opposing summary judgment, Plaintiff was required to point to specific facts
4 creating a genuine issue of material fact. See *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002).
5 Plaintiff did not do so.

6 8. Defendants were not required to authenticate the first and second Residential
7 Purchase Agreement before this Court could rely on those documents in granting summary
8 judgment.

9 9. Plaintiff did not contest the authenticity of the disputed documents in opposing
10 summary judgment.

11 10. Plaintiff could have objected that these documents, which were Defendants
12 repeatedly cite to in their motion for summary judgment, cannot be presented in a form that
13 would be admissible in evidence. See NRCP 56(b)(2). However, Plaintiff did not so object.

14 11. The summary judgment hearing was not a trial. Authentication is for purposes of
15 introducing evidence at trial; therefore, Plaintiff's authentication argument lacks merit.

16 12. Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

17 13. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions
18 was clearly erroneous. However, this Court does clarify that the sanctions are awarded against
19 Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day.

20 14. Defendants also ask that this Court issue an award of attorney fees and costs in
21 the amount of **\$128,166.78** related to the Courts' April 7, 2021 Order this Court granting
22 Defendants' attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new
23 counsel, does not oppose the specific amounts requested.

24 15. As such, this Court grants the amount Defendants seek and enters judgment
25 against Plaintiff and their former counsel, Ben Childs, Esq. in the amount of One Hundred
26 Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents **(\$128,166.78)**.

27 16. Defendants' counter-motion for additional Rule 11 sanctions against Plaintiff for
28 filing the Motion is denied.

1 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED** that the Motion is
2 GRANTED, in part, and DENIED, in part, as the Court’s ruling was not clearly erroneous but
3 clarifies the attorney fees and costs is awarded against Plaintiff and its former counsel Ben
4 Childs, Esq.

5 **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that Judgment is
6 entered in favor of Defendants against Plaintiff, and its former counsel, Benjamin Childs,
7 individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally, in the amount of
8 One Hundred Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents
9 **(\$128,166.78)** and that they pay Defendants the following amounts:

- 10 1. The principal sum of \$118,955.014 in attorneys’ fees;
- 11 2. The principal sum of \$9,211.64 for costs incurred to date; and
- 12 3. Post-judgment interest from the date of the entry of the underlying Order for the
13 attorneys’ fees and costs be granted at the statutory rate of 5.25% per annum.

14 A total Judgment in favor of Defendants, and against Plaintiff, and its former counsel,
15 Benjamin Childs, individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally,
16 in the amount of **\$128,166.78**, all to bear interest at the statutory rate of 5.25% per annum until
17 paid in full.

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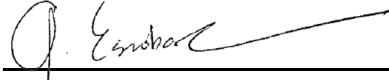
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IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this Order and Judgment shall be considered a final for all purposes.

Dated this 25th day of May, 2021



C78 3DB 37F8 7A17
Adriana Escobar
District Court Judge.

Date: May 18, 2021.

Respectfully Submitted By:
MICHAEL B. LEE, P.C.

Approved of as to Form and Content By:
DAY & NANCE

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
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Attorneys for Defendants

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sday@daynance.com
Attorney for Plaintiff

RE: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

From: Steve Day (sday@dayattorneys.com)

To: matthis@mblnv.com

Date: Wednesday, May 19, 2021, 02:20 PM PDT

Looks okay. Okay to use my e-sig. Correct name: Steven L. Day

Steve

Steven L. Day, Esq.

DAY&ASSOCIATES

1060 Wigwam Parkway

Henderson, NV 89074

Tel. (702) 309-3333

Fax (702) 309-1085

Mobile (702) 596-5350

sday@dayattorneys.com

From: Michael Matthis <matthis@mblnv.com>

Sent: Wednesday, May 19, 2021 2:06 PM

To: Steve Day <sday@dayattorneys.com>

Cc: Mike Lee <mike@mblnv.com>

Subject: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

Dear Mr. Day,

Please see the attached proposed order denying Plaintiff's Motion to Reconsider and advise if I can affix your e-signature. If not, I have left the proposed order in word and would ask that you track any proposed edits in redline. If we do not receive a response by 3:00 p.m. on Monday, May 24, we will submit absent your signature.

Sincerely,

Mike Matthis, Esq.

matthis@mblnv.com



1820 E. Sahara Avenue, Suite 110, Las Vegas, NV 89104

Main Line: 702.477.7030 Fax: 702.477.0096

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at matthis@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8
9 TKNR Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/25/2021

15 Brinley Richeson bricheson@daynance.com

16 Steven Day sday@daynance.com

17 Michael Matthis matthis@mblnv.com

18 Nikita Burdick nburdick@burdicklawnv.com

19 Michael Lee mike@mblnv.com

20 Bradley Marx brad@marxfirm.com

21 Frank Miao frankmiao@yahoo.com