IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS;

Petitioner,

vs.

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

Respondent,

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 KENNETHZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN, an individual, and LIWE HELEN CHEN aka HELEN CHEN, an individual and YANQIU ZHANG, an individual and INVESTPRO LLC dba INVESTPROREALTY, a Nevada Limited Liability Company, and MAN CHAU CHENG, an individual, and JOYCE A. NICKRANDT, an individual, and INVESTPROINVESTMENTS LLC, a Nevada Limited Liability Company, and INVESTPROMANAGER LLC, a Nevada Limited Liability Company and JOYCE A.NICKDRANDT, an individual and does 1through 15 and roe corporation I-XXX;

Real Party in Interest.

CASE NO.: 82967

DC Case No.: A-18-785917-C
Dept. No.: XIV

DC Judge: Hon. Adriana Escobar

REAL PARTIES IN INTEREST'S OPPOSITION TO BENJAMIN B. CHILDS' PETITION FOR WRIT OF MANDAMUS OR WRIT OF PROHIBITION

/ / / /

/ / / /

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed.

Petitioner: BENJAMIN B. CHILDS

Represented by: BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
T: (702) 251.0000

Respondent: EIGHTH JUDICIAL DISTRICT COURT, DEPARTMENT 14; and HONORABLE JUDGE ADRIANA ESCOBAR

Real Parties in Interest: TKNR, INC., a California Corporation, and CHI ON WONG aka CHI KUEN WONG, an individual, and KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETHZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN, an individual, and LIWE HELEN CHEN aka HELEN CHEN, an individual and YANQIU ZHANG, an individual and INVESTPRO LLC dba INVESTPROREALTY, a Nevada Limited Liability Company, and MAN CHAU CHENG, an individual, and JOYCE A. NICKRANDT, an individual, and INVESTPROINVESTMENTS LLC, a Nevada Limited Liability Company, and INVESTPROMANAGER LLC, a Nevada Limited Liability Company and JOYCE A. NICKDRANDT, an individual

Represented by: MICHAEL B. LEE, ESQ.
Nevada Bar No. 10122
MICHAEL MATTHIS, ESQ.
Nevada State Bar No. 14582
MICHAEL B. LEE, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, Nevada 89104

T: (702) 477.7030
F: (702) 477.0096

Real Party in Interest: WLAB INVESTMENT, LLC

Represented by: STEVEN L. DAY, ESQ.
Nevada Bar No. 10122
DAY & NANCE
1060Wigwam Parkway
Henderson, Nevada 89074
T: (702) 309.3333

There are no parent corporations and/or publicly held companies owning 10 percent or more of the party's stock to be disclosed.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 21 day of July 2021.

MICHAEL B. LEE, P.C.

__/s/ Michael Matthis_____
Michael B. Lee, Esq.
Michael N. Matthis, Esq.
Attorneys for Real Parties in Interest

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF NEVADA:

COMES NOW Real Parties in Interest TKNR, INC., CHI ON WONG aka CHI KUEN WONG, and 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, YANQIU ZHANG, INVESTPRO LLC dba INVESTPRO REALTY, MAN CHAU CHENG, and JOYCE A. NICKRANDT, INVESTPRO INVESTMENTS LLC, a Nevada Limited Liability Company, and INVESTPRO MANAGER LLC (collectively "Interested Parties"), by and through their attorneys of record, the law firm of Michael B. Lee, P.C., hereby respectfully request this Court decline to issue a Writ of Mandamus and/or Writ of Prohibition as requested by Petitioner. Reasons being, Honorable Judge Adriana Escobar was extremely thorough in her review of facts, pleadings and other issues raised in this matter when issuing the Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment ("MSJ Order"). (**APP 1367-1409**).

Following the district court's review of the Interested Parties' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment ("MSJ"), the Opposition filed by WLAB INVESTMENTS, LLC ("WLAB" or "Plaintiff"), the other related papers and pleadings on file, and hearing oral argument provided by

counsel, the district court held that, "this is one of the clearest cut cases [for summary judgment] that I've seen." (**APP 1441**). The district court also found that, "when you're looking at the residential purchase agreement and signed disclosure, it's clear in my view that this is a baseless lawsuit[.]" (**Id.**) The court's thoroughness in explaining the basis for the sanctions illustrates the lack of necessity in strictly adhering to the procedural requirements of Rule 11, especially considering the statutory basis for the sanctions pursuant to Nevada Revised Statutes 7.085 and 18.010(2)(b).

This Opposition is supported by all papers and pleadings on file in the Clark County District Court, the Memorandum of Points and Authorities attached hereto, the Verification of Michael Matthis, Esq., and any oral arguments that may be entertained by the Court.

ROUTING STATEMENT

The matter is presumptively retained by the Supreme Court under NRAP 17(a)(3) or (4) as it involves judicial discipline / attorney discipline related to sanctions awarded pursuant to Rule 11 and NRS 18.010(2)(b).

NATURE OF THE WRIT

This matter involves the ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF'S MOTION TO RECONSIDER AND JUDGMENT AGAINST PLAINTIFF AND PREVIOUS COUNSEL ("Order and

Judgment") issued by Hon. Adrianna Escobar after the in-chambers hearing on Plaintiff's Motion to Reconsider the MSJ Order. Petitioner takes issue with the monetary judgment portion of the Order and Judgment alleging that Respondent abused her discretion by issuing the monetary judgment without complying with the express requirements of Rule 11.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Interested Parties direct this Honorable Court to the Findings of Fact included in the MSJ Order, which sufficiently encompasses the facts at issue in this matter. (**APP 1368-1393**).

The district court entered the first order granting the Interested Parties summary judgment on or about March 30, 2021. (**APP 1210-1253**). That order was subsequently amended and the MSJ Order was entered on or about April 7, 2021. (**APP 1367-1409**). Despite Petitioner's baseless assertion on pages 16 and 17 of the Petition, the Interested Parties' counsel did not communicate with the court regarding the amendment of the MSJ Order. The Interested Parties are unaware of the impetus for the amendment and, upon information and belief, assume that the district court acted on its own accord amending and filing the MSJ Order.

On April 6, 2021, the Interested Parties filed an Affidavit in Support of Attorneys Fee for the MSJ Order ("Affidavit"). (**APP 1254-1366**). Neither

Petitioner, nor Plaintiff, filed an Opposition or response to that Affidavit to challenge the amount of attorneys' fee and costs included therein. (**APP 01838**).

Plaintiff filed its Motion to Reconsider the MSJ Order on April 16, 2021. (**APP 1451-1629**). The Motion to Reconsider did not oppose the attorneys' fees and costs set forth in the Affidavit but did ask for clarification as to whom the Judgment was entered against. (**Id.**) The district court expressly noted that, "Plaintiff, through its former or new counsel, does not oppose the specific amounts requested." (**APP 1838**). The district court also clarified that, "the sanctions are awarded against Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day." (**Id.**)[1]

Plaintiff filed a Notice of Appeal of the MSJ Order on April 26, 2021. (**APP 1630-1635**). Plaintiff also filed a Notice of Appeal of the Order and Judgment on June 8, 2021. (**APP 1844-1849**).

STATEMENT OF THE ISSUE PRESENTED

Whether the failure to strictly adhere to the procedural requirements of Rule 11 was harmless error pursuant to Rule 61.

Whether the District Court's award of sanctions was made pursuant to Nevada Revised Statute § 18.020(2)(b).

[1] Defendants did not believe that Mr. Day would be responsible for the attorneys' fee award. Had his office responded when Defendants' counsel provided him with a draft of the underlying order, Respondents would have made it clear that the attorney sanction applied to Mr. Childs only.

Whether Writ Relief is appropriate due to the pending appeal challenging the Order and Judgment that Petitioner challenges by way of his Petition.

LEGAL ARGUMENTS

A. Respondent Made Clear and Detailed Findings of Fact that Sufficiently Illustrated and Established Plaintiff and Petitioner's Violation of NRCP 11(b)

The district court engaged in detailed fact finding before issuing the MSJ Order, making clear determination of fact, based on the evidence presented on the record, that the causes of actions brought by Plaintiff were frivolously maintained. (**APP 1368-1393**). Notably, the district court largely relied upon the unrefuted deposition of Plaintiff's person most knowledgeable to illustrate the overall bad faith and undisputed issues of fact. (**APP 1368-1393; 1438-1441**). The court reviews "issues of sanctions under NRS 18.010(2)(b), NRS 7.085(1), and NRCP 11 for an abuse of discretion." See *Stubbs v. Strickland*, 297 P. 3d 326, 330 (Nev. 2013). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." See *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Notably, the Petition does not challenge the factual findings made by the district court, rather the Petition asserts that Respondent abused its discretion by failing to strictly comply with the procedural requirements of Rule 11. As the Petition only challenges whether the district court followed the procedural requirements of Rule 11, Petitioner has waived any

challenge to the factual finding of the district court contained in the MSJ Order. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161, 252 P.3d 668, 672 n.3 (2011) (issue not raised in opening brief are deemed waived).

However, in arguendo, the district court provided sufficient explanation of the undisputed facts that led to its decision to grant summary judgment and enter sanctions against Plaintiff and Petitioner. Rather than regurgitate all 75 of the court's specific findings of facts—which are included in the Appendix as previously cited—Interested Parties will endeavor to highlight a few of the specific findings and conclusions that illustrate why sanctions were appropriate, establishing that the sanctions were not "arbitrarily or capriciously" imposed, and that they are well with-in the bounds of law and reason.

Here, the district court found that, "the alleged deficiencies were either disclosed by Defendants, could have been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr. Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to Defendants at the time of the sale." (**APP 1397**). Also, "through the original [Residential Purchase Agreement], Ms. Zhu waived her due diligence, although she had a right to conduct inspections[.]" (**Id.**). "Despite these disclosures, Plaintiff did not inspect the Subject Property, request additional information and/or conduct any reasonable inquires." (**APP 1398**). "Ms. Zhu informed her agent to waive all inspections."

(**Id.**). "Although Ms. Zhu had actual knowledge of the Seller's Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections." (**Id.**). "Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent." (**Id.**). Moreover, "Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties." (**Id.**). The RPA and Second RPA both included express provisions advising that "[i]t is strongly recommended that Buyer retain licensed Nevada Professional to conduct inspections" and that failure to conduct inspections or provide notice of requested repairs would result in waiver of Seller's Liability for those issues. (**Id.**). "Ms. Zhu waived her inspection related to the original RPA and the 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA." (**Id.**). "Thereby, Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted." (**Id. at 1398-1399**).

The district court also found that, "Plaintiff was a sophisticated buyer aware of the necessity of property inspection." (**APP 1399**). "Prior to the purchase, Mr. Miao was aware that the Seller 'strongly recommended that buyer retain licensed Nevada professionals to conduct inspections.'" (**Id.**). "Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection." (**Id.**) "Plaintiff was also acutely

aware of the requirement of Nevada law to protect itself by getting an inspection." (**APP 1400**). "Plaintiff assumed the risk of failing to exercise reasonable care to protect itself." (**Id.**).

Moreover, "Plaintiff failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards." (**Id.**). It is undisputed "that TKNR did not need permits for the interior work it had done to the Property." (**Id.**). Also, "Plaintiff has always been trying to lease the Property despite not doing any of the repairs listed by Plaintiff's expert" illustrating "the lack of merit of Plaintiff that there are underlying conditions with the Property." (**Id.**). "Plaintiff [also] does not provide any notice to the tenants about its expert's report or this litigation[,]" further illustrating "the lack of merit of Plaintiff's claims." (**Id.**). "Mr. Miao admitted that multiple third parties could have potentially damaged the Property." (**APP 1401**). "Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants." (**Id.**). "Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture conditions […] plumbing system […] duct work." (**Id.**). Ultimately, "Plaintiff was encouraged to inspect the property, and they did not do it. It was a 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff was strongly encouraged to conduct the inspection, and they did not want to." (**Id.**).

These facts, and the other ones included in the MSJ Order, led the district court to make the express ruling that summary judgment was appropriate, and sanctions should be entered. The district court even noted during the hearing that,

> "I don't see in good faith how this can be brought by -- this can be brought by the plaintiffs in good faith when they've waived everything. And in addition, they refused to conduct an inspection knowing that they were purchasing a 63-year-old property. I mean, it's just absurd."

(**APP 1440**)

Also stating, "this is one of the clearest cut cases [for summary judgment] I've ever seen." (**APP 1441)**. The district further noted that, "[t]here's no evidence from the plaintiff that refutes material facts and introduces material facts. And that's really the key here." (**Id.**). Also noting, "when you're looking at the residential purchase agreement and signed disclosure, it's clear in my view that this is a baseless lawsuit, and I will grant defendants attorneys' fees under NRCP 11." (**Id.**). The strength of the language used by the court in delivering the oral ruling should not be ignored, especially when backed up by the very detailed findings of fact and conclusions of law presented in the MSJ Order.

B. The Procedural History Related to Dispositive Motions, Vexatious Claims by Plaintiff, and Vexatious Discovery Requests by Plaintiff Despite Actual Knowledge of the Frivolous Nature of Plaintiff's Case Illustrates why Rule 11 Violations are Appropriate

1. Motion to Dismiss and Amended Pleadings by Plaintiff

Petitioner's participation in filing an amended pleading illustrates the personal culpability of Petitioner. On January 7, 2019, Defendants' then-counsel, Burdick Law PLLC ("Burdick") filed a motion to dismiss. (**APP 0009-0052**). Burdick identified obvious issues denoted by the district court related to Plaintiff's lack of a meritorious lawsuit because of the clear language in the Residential Purchase Agreement and the waiver of the inspections, the issues related to Plaintiff's actual knowledge from the seller's disclosures, and the lack of basis for the alleged fraud claims. (**APP 00011-12**).

Moreover, the motion to dismiss also walked through the issues related to Plaintiff's actual knowledge related to the seller's disclosures, (**APP 0012**), and the failure of Plaintiff to do an inspection in light of his actual knowledge. *Id*. However, Petitioner's opposition to the motion to dismiss presented bluster arguments that completely failed to address the issue related to Plaintiff's actual knowledge related to the seller's disclosures and failure to do an inspection. (**APP 0060-0061**). Notably, Petitioner also presented a declaration from Mr. Miao that admitted Mr. Miao was aware of alleged code violations at the time he examined the property, (**APP 0064-0066**), had discussions with the current tenant (**Id.**), and elected to waive the professional inspection based on his belief he was qualified to inspect. (**Id.**). Incredibly, Mr. Miao admitted during his deposition, as noted by the district court in finding Rule 11 violations, that Plaintiff: had access to inspect the

entire property and conduct non-invasive, non-destructive inspections (**APP 1371**); was aware of the strong recommendation to hire a licensed Nevada professional to do the inspection (**APP 1372**), the clear language in Paragraph D of the Residential Purchase Agreement (**APP 1372-1373**); the terms of the Residential Purchase Agreement were conspicuous and understandable, and a standard agreement similar to the other agreements Plaintiff had used in purchasing the other properties in Clark County, Nevada (**APP 1373**); knew there was an issue with exposed electrical in Unit C (**APP 1374**); suspected that there could have been a potential asbestos issue as well (**Id.**); had actual knowledge there were cracks in the ceramic floor tiles, visible cracks in the concrete foundation, aware of slab cracks, all of which were open and obvious (**Id.**); and saw the dryer vent during Mr. Miao's inspection (**Id.**).

Further, Plaintiff also admitted that it received the seller's disclosures prior to the purchase of the Property (**APP 1375**), was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits. (*Id*.). Similarly, it was aware that the Property was 63 years old at that time, (*Id*.), and all the work was done by a handyman other than the HVAC installation. (*Id*.). Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection. (*Id*.).

In light of the preceding admissions by Mr. Miao, Petitioner's opposition illustrates the overall bad faith nature of its prosecution of the underlying action. Rather than do a competent inquiry, Petitioner argued at the hearing that there were permits and inspections required, and that Defendants had not disclosed issues to Plaintiff. (**APP 0109-0110**). Petitioner made these representations to the district court, not Plaintiff. Thereafter, after misleading the district court, Petitioner filed the first amended complaint on March 4, 2019 and included frivolous claims for: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC , TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC , Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR,

Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]. (**APP 0111-0140**).

After Defendants moved to amend its pleading to include a claim of abuse of process by Plaintiff, Petitioner vexatiously moved to amend the pleading to include (15) Abuse of Process [As To All Defendants] as a claim in Plaintiff's second amended complaint. (**APP 0361-0398**). Incredibly, Petitioner claimed damages of $16.25 Million. (**APP 0581-0583, 0587-0611**). This petty action embodies the conduct of Petitioner in frivolously presenting baseless causes of action and needlessly increasing the cost of litigation for the improper purposes identified in Rule 11.

2. *Vexatious Discovery Requests by Plaintiff / Petition*

On November 19, 2020, Defendants propounded an offer of judgment on Plaintiff specifying the following:

> As to the reasonableness of this offer, the underlying evidentiary supports shows that: (1) Plaintiff's action was not brought in good faith as: the Property was originally constructed in 1954; Marie Zhu ("Zhu") executed a residential purchase agreement ("RPA") for the Property waiving her due diligence; Zhu did not do any inspections although she had the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified

professionals; Zhu waived the Due Diligence condition under Paragraph 7(C) of the RPA; ignored the recommendation to conduct an inspection under Paragraph 7(D) of the RPA; waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection; failed to inspect the Property sufficiently as to satisfy her use as required by the RPA; had actual knowledge of TKNR's disclosure that "3 units has brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property"; was also aware that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures; Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent; Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties; Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow; Zhu waived all claims against Brokers or their agents for defects in the Property and factors related to Zhu's failure to conduct walk-throughs or inspections; Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary; Nevada Revised Statute ("NRS") § 113.140 clearly provides that the Seller Disclosures does not constitute a warranty of the Subject Property and that the Buyer still has a duty to exercise reasonable care to protect himself; NRS § 113.140 also provides that the Seller does not have to disclose any defect that he is unaware of; NRS § 113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware; a completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property; Chapters 113 and 645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself; Zhu did not exercise reasonable care in protecting herself by conducting an inspection of the

> Subject Property or the newly installed HVAC systems even though the Purchase Agreement allowed her to; Plaintiff owned the Property for more than a year since before making any inspections about the Property; Defendants was aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property before the time of the sale to Zhu; Defendants were not aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property at the time of the sale to Zhu; Defendants were not aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property after the sale to Zhu; any alleged conditions were open, obvious, and could have been discovered by a reasonable inspection; Seller disclosed there were issues with the heating and cooling systems with the Property; Seller disclosed that there were construction, modifications, alterations, and/or repairs made without required state, city, or county building permits; Seller disclosed that the Property was constructed before 1977; Seller disclosed that the kitchen cabinets were brand new; Seller disclosed the sprinklers for the landscaping did not work, all pipes were broken; Seller disclosed that the work, other than the mechanical installation, was done by a handyman; and Seller disclosed that he never resided in the property and/or visited it.

(**APP 0194-0198**).

The offer of judgment representations were consistent with the issues identified by Defendants in the motion to dismiss (**APP 0009-0052, 0194-0198**). and with the ultimate findings by Respondent related to Mr. Miao's admissions from his deposition. Consistent with Petitioner's vexatious prosecution of this

matter to harass Defendants, Petitioner propounded irrelevant discovery requests unlikely to lead to admissible / relevant evidence, clearly engaging in harassment of Defendants by requesting irrelevant documentation simply for the purpose of increasing Defendants' legal costs. (**APP 1129-1158**).

On November 26, 2020, Plaintiff submitted discovery requests to Cheng, Investments, Realty, Wong, and TKNR. (**APP 0399-0470**). On December 29, 2020, Defendants submitted their responses to Plaintiff's discovery requests (collectively, "Responses"). (**APP 0612-0685**). However, Petitioner continued with his vexatious litigation practices and initiated a baseless discovery dispute. Petitioner even admitted that several of the disputed documents should be in the possession of Plaintiff, although Plaintiff had not disclosed any of them, illustrating the overall baselessness of the discovery requests and actual bad faith conduct by Petitioner. (**APP 1150-1156**).

Petitioner actually engaged in bad faith conduct in violation of Rule 11 and NRS 18.010(2)(b), as identified by the district court. In response to the identification of the lack of merit in Plaintiff's case by the offer of judgment, Petitioner merely doubled down by doing frivolous discovery and initiating frivolous discovery disputes. (**APP 1040-1115**). Petitioner's implied self-motivation for doing these frivolous actions is obvious as Petitioner somehow charged Plaintiff $52,133, (**APP 0607-0611**), for the continuous prosecution of

baseless litigation against Defendants, which did not include Petitioner's billings after December 2, 2020. While it is unclear what "bill of goods" Petitioner sold to Plaintiff to keep prosecuting a frivolous lawsuit, Petitioner's personal enrichment is undisputed.

C. Respondent's Decision Not to Hold Separate Evidentiary Hearing was Harmless Error as Sanctions were Appropriate Pursuant to Statute

Here, the Petition argues that the court failed to comply with the procedural requirements of Rule 11 prior to awarding sanctions against Plaintiff and Petitioner. The Petition does not challenge the entry of summary judgment based on any of the court's findings of fact of conclusions of law. As discussed in the previous sections, the district court made very detailed findings of fact that illustrated the frivolous nature of the claims brought by Plaintiff. (**APP 1367-1409**). Specifically, the district court found that, "this is one of the clearest cut cases [for summary judgment] that I've seen." (**APP 1441**). Further holding that, "when you're looking at the residential purchase agreement and signed disclosure, it's clear in my view that this is a baseless lawsuit[.]" (**Id.**). As such, the Interested Parties believe that the relief requested in the Writ is not appropriate or necessary because the issues raised—i.e., procedural concerns—amount to harmless error and the outcome would not change had the procedural requirements of Rule 11 been followed.

Nevada Rule of Civil Procedure 61 provides:

> [u]nless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Under Nevada law, Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. Nev. R. Civ. Pro. § 11(b)(1)-(2). The court understands that Rule 11 sanctions should be imposed for frivolous actions. See *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52. Notably, the Court can impose sanctions under Nevada Revised Statutes § 7.085 and/or 18.010(2)(b). See Nev. Rev. Stat. §§ 7.085 and 18.010(2)(b). Both statutes relate to Rule 11 and expressly advise that it is the Legislature's intent to allow the court to award attorneys' fees as sanctions "in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses[.]" *Id.* Additionally, both statutes advise that the court should "liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations." *Id.* However, neither statute expressly requires the same rigorous procedural requirements as Rule 11, i.e., 21-day safe harbor and/or a Show Cause Hearing.

This Honorable Court has previously held that persuasive authority and Nevada's rules for statutory interpretation strongly support treating NRCP 11, NRS 7.085, and NRS 18.010(2)(b) as independent sanctioning mechanisms. *Watson Rounds v. Eighth Jud. Dist. Ct.*, 131 Nev. 783, 788, 358 P.3d 228, 232 (2015). Further holding that, "federal authority strongly indicates that NRCP 11 does not supersede NRS 7.085." *Id.* at 790, 232. In determining such, the Court has advised that the Rule and the Statute should be treated "as independent methods for district courts to award attorney fees for misconduct." *Id.* In that light, Section 7.085 does not require the same procedural requirements of safe harbor or an order to show cause, as included in Rule 11, prior to the court imposing sanctions for filing and maintaining frivolous actions. *Id.* The same can be said for Section 18.010(2)(b) as the statutory interpretation and persuasive authority analysis included in *Watson* would be the same. Therefore, the Interested Parties believe that the imposition of sanctions in this matter—despite the failure to strictly adhere to the procedural requirements of Rule 11—was not an abuse of discretion, and the failure to designate the sanctions under Nevada Revised Statutes §§ 7.085 or 18.010(2)(b), which relate to Rule 11, amounts to harmless error.

It is also important to note that the MSJ Order includes citation to Section 18.010(2)(b). (**APP 1405-1406** at ¶¶ 60, 80). Petitioner's substantial rights are not affected because the sanctions would have been imposed under Section 7.085 or

18.020(2)(b) against Petitioner, which relate to Rule 11 that was cited in the MSJ Order. Regardless of whether Petitioner was provided safe harbor, the frivolous nature of the entire action would not have changed. Similarly, a show-cause hearing would be superfluous to the summary judgment hearing wherein the district court, as illustrated in the preceding section, was able to garner the requisite facts and information to make its decision that the action was frivolously brought and maintained.

Notably, *Watson* also holds that the sanctions will be upheld if the court makes sufficient finding for the same. *Watson Rounds*, 131 Nev. at 790, 358 P.3d at 233. Here, the findings of fact and conclusions of law contained in the MSJ Order sufficiently establish the evidentiary basis for the court's determination that Plaintiff's claims were frivolously brought and maintained, illustrating that imposition of sanctions in this matter was appropriate. (**APP 1367-1409**). As such, the Interested Parties were not required to provide safe harbor to Petitioner, nor was the court required to hold a show-cause hearing prior to entering the award for sanctions. Moreover, any failure to do so would amount to harmless error as the MSJ Order provides clear and sufficient factual basis to allow for the sanctions imposed. *Watson Rounds*, 131 Nev. at 790, 358 P.3d at 233.

/ / / /

/ / / /

D. Writ of Mandamus and/or Prohibition is not Appropriate based on Plaintiff's Appeal of the Order and Judgment

Generally, neither a Writ of Prohibition nor a Writ of Mandamus is appropriate if the Petitioner has a "plain, speedy and adequate remedy in the ordinary course of law." NEV. REV. STAT. §§ 34.170, 34.330. The Court has previously held that "an appeal is generally an adequate legal remedy that precludes writ relief." See *Pan v. Dist. Ct.,* 120 Nev. 222, 77 P.3d 840 (2004) (citing *Dayside Inc. v. Dist. Ct*., 119 Nev. ___, 75 P.3d 384, 386 (2003) and *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 647 n. 1, 5 P.3d 569, 570 n. 1 (2000)). When the petition challenges a district court order that is final and appealable judgment, writ relief is inappropriate. *Id.*; see also *Lee v. GNLV Corp*., 116 Nev. 424, 996 P.2d 416 (2000).

Here, despite his representation in the Petition, Petitioner is still within the jurisdiction of the district court in terms of the fee award. (**APP 1411 -** "Mr. Childs is still within the jurisdiction of this Court until this matter is fully resolved."). Also, the Order and Judgment being challenged by Petitioner is a final and appealable order. See Nev. R. App. Pro. § 3A(b)(1); see also (**APP 1840**). Moreover, the Order and Judgment have already been appealed by Plaintiff, further illustrating that Writ relief is not appropriate as there is adequate legal remedy. (**APP 1844-1849**). Therefore, this Honorable Court should deny the Petition and allow the matter to be resolved through the already pending appeal.

CONCLUSION

Based on the foregoing, the Petition should be denied.

Dated this 21 day of July, 2021.

MICHAEL B. LEE, P.C.

/ s/ Michael Matthis

MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
1820 E. Sahara Avenue, Suite 100
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com

VERIFICATION

Under penalty of perjury, of the laws of Nevada, the undersigned declares that he is the attorney for the Interested Parties named in the foregoing Opposition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification is made by the undersigned attorney, pursuant to NRS § 15.010, on the ground that the matters stated, and relied upon, in the foregoing Opposition are all contained in the prior pleadings and other records of this Court and/or the District Court.

Dated this 21 day of July, 2021.

/s/ Michael Matthis
MICHAEL MATTHIS, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this opposition complies with the formatting requirements of NRAP 32(c)(2) and the type-style requirements of NRAP 32(a)(6) because this opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman. Additionally, this opposition complies with NRAP 21(d) as it contains less than 7,000 words.

DATED this 21 day of July, 2021.

MICHAEL B. LEE, P.C.

/s/ Michael Matthis
MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
1820 E. Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com

CERTIFICATE OF MAILING

I hereby certify, under penalty of perjury, that I am an employee of Michael B. Lee, P.C., and that I caused to be electronically filed on this date, a true and correct copy of the foregoing document with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorneys of record set forth below.

Via Runner
Hon. Adriana Escobar
Department 14, Courtroom 14C
330 S. Third Street
Las Vegas, NV 89101
Respondent Judge

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
T: (702) 251.0000
Petitioner

MICHAEL B. LEE, P.C.
Attorneys for Interested Parties

STEVEN L. DAY, ESQ.
Nevada Bar No. 10122
DAY & NANCE
1060Wigwam Parkway
Henderson, Nevada 89074
T: (702) 309.3333
Attorney for Real Party in Interest
WLAB Investments, LLC

Dated this 21 day of July, 2021.

/s/ Michael Matthis
An employee of MICHAEL B. LEE, P.C.