

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: 82967

District Court No: A-18-785017-C
Electronically Filed
Jul 26 2021 07:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO STRIKE REAL PARTIES IN INTEREST'S APPENDIX

FACTUAL SUMMARY

Pursuant to NRAP 21(a)(4), simultaneously with filing the Petition on June 1, 2021, Petitioner filed and served an appendix which complied with NRAP 30. As required by NRAP 21(a)(4), Petitioner's appendix contained the order and "parts of the record before the respondent judge ... that may be essential to understand the matters set forth in the petition." Petitioner will refer to this as Petitioner's Appendix [PA].

On July 22, 2021 real parties in interest filed an Appendix consisting of nine volumes and 1,849 pages. Although having the case number of the writ, the appendix is designated as for an appeal and is simply labeled "APPENDIX". For clarity, Petitioner will refer to this as Respondent's Appendix [RA]. Further, RA contains many of the same documents in the PA. The indexes to the PA [Exhibit 1] and the RA [Exhibit 2] are attached.

Real parties in interest filing an appendix which is misnamed, and which contains the same documents as the PA, unnecessarily creates confusion and adds to the time and resources needed to review what is a relatively simple petition.

The RA violates the requirement of NRAP 30(a)(4), which states in relevant part,

[r]espondent's appendix to the answering brief may contain any transcripts or documents which should have been but were not included in the appellant's appendix, and shall otherwise be limited to those documents necessary to rebut appellant's position on appeal which are not already included in appellant's appendix.

Nine volumes of pleadings and other papers consisting of 1,849 pages is not limiting the RA to "those documents necessary to rebut appellant's position on appeal which are not already included in appellant's appendix." This is not an appeal but real parties in interest are asking this Court to effectively review the ENTIRE district court case as if this was an appeal. They are missing the basis of the Petition, which is solely that a judgment expressly entered based on NRCP 11 was illegal and improper because, undisputedly, mandatory requirements were not met.

As to the argument advanced in the Answer¹ that somehow granting summary judgment justifies imposition of Rule 11 sanction, there is

¹ . The Answer filed July 21, 2012¹ was designated an Opposition

extensive and consistent federal case authority contradicting that argument. The fact that summary judgment was granted is not a basis for Rule 11 sanctions. Miltier v. Downes, 935 F.2d 660 (4th Cir. 1991) Imposition of Rule 11 sanctions was overturned for abuse of discretion when Plaintiff presented facts that made a prima facie case. Warren v. City pf Carlbad, 58 F.3d 439, 1995 U.S. App. Lexis 15328 (9th Cir. 1995)

Additionally, the Court must keep in mind that all doubts should be resolved in favor of Petitioner. Rodick v. City of Schenectady, 1 F.3d 1341, 1350 (2nd Cir 1993)

DUPLICATE PRODUCTION OF DOCUMENTS

The following table sets forth the documents which were contained in the PA, reproduced by real parties in interest in the RA.

Document	PA bates #	RA bates #
Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment [without exhibits] filed December 15, 2020	7-39	471 - 611

Opposition to Defendants' Motion for Summary Judgment and Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed December 29, 2020	40 - 58	686-851
Defendants' Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Opposition to Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed January 21, 2021	59 - 74	852 -889
Supplement to Defendants' Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Opposition to Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed January 29, 2021	75 - 96	890 - 1039
Plaintiff's Reply to Opposition to Countermotions filed February 16, 2021	97 - 109	1116 - 1128
Supplement to Plaintiff's Reply to Opposition to Countermotions filed March 4, 2021	110 - 139	1180 - 1209
Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment filed March 30, 2021 [with Notice of Entry of Order]	140 -185	1210-1253
Amended Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment filed April 7, 2021 [with Notice of Entry of Order]	193 - 250	1367 - 1409
Order Granting, in Part, and Denying, in Part, Plaintiff's Motion to Reconsider and Judgment against Plaintiff and Previous Counsel filed May 25, 2021 [with Notice of Entry of Order]	254 -263	1836 - 1843

Nine of the twelve documents in the PA were duplicated in the RA.

The only documents not reproduced in the RA were the following :

Order Granting Defendants' Motion to Enlarge Discovery (First Request) on an Order Shortening Time filed November 4, 2020
[PA 1 - 6]

Email chain commencing April 2, 2021 between counsel and Ariana Reed, law clerk for Respondent Court, with Proposed Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure 11(B)
[PA 186 - 192]

Minute Order from May 17, 2021 hearing
[PA 251 - 253]

DISCUSSION

It is confusing to have two appendixes with the same documents. Indeed, the Answer filed July 21, 2021 has citations to "APP" and a page number, but does not designate which appendix it references. The

designation of real parties in interest's appendix as being for an appeal is inaccurate.

However, most concerning is that, although the Answer argues that this court should consider NRS 7.085, and implies that the district court considered this statute, nowhere in the 1,849 pages of the RA is that statute mentioned.

The Petition sets out the mandatory requirements of NRCP 11. These mandatory requirements were not met, yet a \$128,166.78 judgment was entered against Petitioner and the Plaintiff in the May 25, 2021 Order [PA 258 - 259].

The Petition is not appealing the case. Plaintiff is appealing in two separate appeals, those being case # 82835, filed May 3, 2021 and case # 83051, filed June 6, 2021. All issues on appeal, including the trial court's factual findings, will be addressed in those appeals by the parties.

CONCLUSION

First, this is not an appeal, so there can be no appendix on appeal.

Second, NRAP 30(a)(4), read in conjunction with NRAP 21(a)(4),

expressly provides that only necessary documents not contained in an existing appendix shall be filed in a responding party's appendix.

Third, the proffered RA is devoid on any evidence that (1) the mandatory requirements of NRCP 11 were met in any form and (2) that NRS 7.085 was raised in the trial court. So there is no purpose in the additional documents are not "necessary to rebut appellant's position on appeal which are not already included in appellant's appendix" as required by NRAP 30(a)(4).

/s/ Benjamin B. Childs

BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
Attorney for Petitioner

Exhibits

- 1 Index to Petitioner's Appendix filed herein June 1, 2021
- 2 Index to Real Parties in Interest's Appendix filed herein July 22, 2021

CERTIFICATE OF MAILING

I hereby certify that on this July 26, 2021, I served this MOTION TO STRIKE REAL PARTIES IN INTEREST'S APPENDIX, with Exhibits, upon

the following parties by placing a true and correct copy thereof in the United States Mail, priority mail, in Las Vegas, Nevada with first class postage fully prepaid:

Honorable Adriana Escobar
Nevada Eighth Judicial District Court
Department 14
200 Lewis Ave.
Las Vegas, NV 89155

Aaron Ford, Esq.
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, NV 89701

Steven L. Day, Esq
Day & Nance
1060 Wigwam Parkway
Henderson, NV 89074

Michael B. Lee, Esq.
Michael Mathis, Esq.
Michael B. Lee, P.C.
1820 E. Sahara Ave., Suite 110
Las Vegas, NV 89104

/s/ Benjamin B. Childs

Benjamin B. Childs
Nevada Bar No. 3946
Petitioner

EXHIBIT 1

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IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN B. CHILDS

Petitioner,

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THE EIGHTH JUDICIAL DISTRICT
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an individual, and KENNY ZHONG LIN,
aka KEN ZHONG LIN aka KENNETH
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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

APPENDIX TO

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

Benjamin B. Childs, Esq.
Nevada Bar No. 39468
318 S. Maryland Parkway
Las Vegas, NV 89101
Telephone: 702-251-0000
Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX
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Opposition to Defendants' Motion for Summary Judgment Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed December 29, 2020	40 - 58
Defendants' Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Opposition to Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed January 21, 2021	59 - 74
Supplement to Defendants' Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Opposition to Countermotion for Continuance based on NRCP 56(f) and Countermotion for Imposition of Monetary Sanctions [without exhibits] filed January 29, 2021	75 - 96
Plaintiff's Reply to Opposition to Countermotions filed February 16, 2021	97- 109
Supplement to Plaintiff's Reply to Opposition to Countermotions Filed March 4, 2021	110 - 139
Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment filed March 30, 2021 [with Notice of Entry of Order]	140 - 185

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Amended Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment filed April 7, 2021 [with Notice of Entry of Order] 193 - 250

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Order Granting, in Part, and Denying, in Part, Plaintiff's Motion to Reconsider and Judgment against Plaintiff and Previous Counsel filed May 25, 2021 [with Notice of Entry of Order]	254 - 263

CERTIFICATE OF MAILING

I hereby certify that on this May 30, 2021, I served Volumes 1 and 2 of the APPENDIX TO BENJAMIN B. CHILDS' PETITION FOR WRIT OF MANDAMUS OR PROHIBITION upon the following parties by placing a true and correct copy thereof in the United States Mail, priority mail, in Las Vegas, Nevada with first class postage fully prepaid:

Michael B. Lee, Esq.
Michael Mathis, Esq.
Michael B. Lee, P.C.
1820 E. Sahara Ave., Suite 110
Las Vegas, NV 89104
Attorneys for Defendants

Steven L. Day, Esq.
Day & Nance
1060 Wigwam Parkway
Henderson, NV 89074
Attorneys for Plaintiff

///

Honorable Adriana Escobar
Nevada Eighth Judicial District Court
Department 14
200 Lewis Ave.
Las Vegas, NV 89155
Respondent

Aaron Ford, Esq.
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, NV 89701
Counsel for Respondent

/s/ Benjamin B. Childs

Benjamin B. Childs
Nevada Bar No. 3946
Petitioner

EXHIBIT 2

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IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS;

Petitioner,

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THE EIGHTH JUDICIAL DISTRICT
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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
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corporation I-XXX;

Real Party in Interest.

CASE NO.: 82967

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

Dept. No.: XIV Electronically Filed

Jul 22 2021 12:02 p.m.

DC Judge: Hon. Adriana Escobar
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court of the State of Nevada in and for
the County of Clark

The Honorable Adriana Escobar, District Judge

APPENDIX

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