

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 Electronically Filed

Jul 30 2021 03:34 p.m.

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

**REAL PARTIES IN INTEREST'S OPPOSITION TO BENJAMIN B.
CHILDS' MOTION TO STRIKE REAL PARTIES IN INTEREST'S
APPENDIX**

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**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 opposes Benjamin B. Childs’ (“Childs” or “Petitioner”) Motion to Strike Real Parties in Interest’s Appendix (“Motion”).

The Motion should be denied in its entirety. Petitioner’s complaint is a form-over-substance argument that does nothing more than force the Parties and this Court to expend more time and resources than necessary in this matter, which, oddly enough, is the purported basis for Petitioner’s Motion. See Motion at p. 2. The Motion does not seem to be advanced in good faith as it spends more time rebutting the arguments presented by the Interested Parties in their Opposition to Petitioner’s Writ than arguing that striking the Interested Parties’ Appendix is necessary or serves any legitimate purpose. Rather than invite the Court to look at

a more complete record of the case, Petitioner attempts to deleteriously limit the record to fit the position he advances in his Writ Petition.

LEGAL ARGUMENTS

A. Documents Illustrating Procedural History and Basis for Sanctions were Necessarily Included

The Interested Parties included the additional documents because they believed in good faith that those documents were essential to understand the full scope of the matters included in the Petition. See Nev. R. App. Pro. § 21(a)(4) (“The appendix shall include a copy of any order or opinion, parts of the record before the respondent judge, corporation, commission, board or officer, or any other original document that may be essential to understand the matters set forth in the petition.”). Notably, the majority of those documents were directly cited to in the Interested Parties’ Opposition / Answer to Petitioner’s Writ. See Opposition to Petitioner’s writ at pp. 9-13, 21.

Without regurgitating the arguments made in the Opposition / Answer to Petitioner’s Writ, the Interested Parties believe that the sanctions were appropriately awarded based on the district court’s ruling on the Motion for Summary Judgment, which included its review of the procedural history of the case and Plaintiff / Petitioner’s knowledge of the lack of legitimate factual basis for the claims presented and maintained by Plaintiff. Petitioner attempts to ignore the fact that the district court’s decision to award sanctions is related to the vexatious

and frivolous nature of Plaintiff's case. As such, the Interested Parties found it necessary and essential to include the Complaint, First Amended Complaint and Second Amended Complaint because they detail the causes of action that the court deemed to be frivolous. (**APP 0001-163, 0200-0360**). Additionally, the abusive discovery requests served by Plaintiff, by and through Petitioner, were also essential because that was part of the calculus used by the district court in determining sanctions were appropriate. (**APP 0399-0470, 0612-0685, 1040-1115, 1129-1179**).¹ The Motion to Dismiss, related briefing, Minute Order, and abusive discovery requests were included to illustrate why sanctions against Petitioner personally, and not just Plaintiff, was appropriate. See Opposition to Petitioner's writ at pp. 9-13.

Additionally, the Interested Parties' Appendix includes the transcript from the Motion for Summary Judgment hearing that includes essential information related to the district court's decision to impose sanctions. (**APP 1412-1450**). There can be no argument that the transcript from those proceedings is not relevant to the Writ, and Petitioner's failure to include the same illustrates his intent to deleteriously limit the record to better fit his position. Incredibly, Petitioner included the Order Granting, in Part, and Denying, in Part, Plaintiff's Motion to

¹ Interested Parties did not include Exhibits to the discovery motions because the Exhibits were the discovery requests and responses were already included separately in the Appendix.

Reconsider and Judgment against Plaintiff and Previous Counsel (“Order and Judgment”) but failed to include any of the briefing that generated that Order. As such, the Interested Parties’ Appendix included the briefing so the Court could have a better understanding of why the Court entered the Order and Judgment. **(APP 1451-1629, 1635-1662, 1812-1835)**. Similarly, the Petitioner included the Order Granting Defendants’ Motion to Enlarge Discovery (First Request) on an Order Shortening Time but refused to include the related briefing leading to that Order, requiring the Interested Parties to include them. **(APP 0164-0193)**.

Although Petitioner complains that the Appendix contains duplicate filings, some of those alleged duplicates were included because Petitioner failed to include the exhibits to those pleadings in his Appendix. See Petitioner’s Appendix at 7-96; see also **(APP 0471-0611, 0686-0851, 852-1039)**. The Interested Parties believe it was essential for the Court to also have the exhibits related to the alleged duplicate filings, i.e., Defendants’ Motion for Summary Judgment and related briefing. Because the exhibits are necessary components of the pleadings, they should not have been excluded and the Interested Parties were justified in including the exhibits for the Court’s review.

Ultimately, the Interested Parties had a good faith belief that the additional documents in their Appendix were essential to the Court’s determination on Petitioner’s writ. Petitioner’s Appendix was deficient as it failed to include

necessary pieces of the record that led the district court to its determination to impose sanctions on Plaintiff and Petitioner. Most, if not all, of the additional documents complained of by Petitioner in the Motion were actually cited to in the Opposition / Answer filed by the Interested Parties, further illustrating the good faith belief that those documents are essential to the Court's determination.

B. Alternative Relief is available and More Reasonable than Striking Entire Appendix

Striking the Interested Parties' Appendix in its entirety is unnecessary and would force the striking of relevant documents from the record that would allow the Court to have a better understanding of the factual and procedural history in the case leading to the district court's decision to award sanctions to the Interested Parties. The Interested Parties do not believe that striking of their Appendix is necessary for the issues raised by Petitioner. The preceding section illustrates the basis for the Interested Parties inclusion of the additional documents. If the Court does not believe they are relevant, then It does not have to give them any weight in terms of ruling on the Petition, and there would be no prejudicial effect. However, if the Court does believe they are relevant it would greatly prejudice the Interested Parties.

Moreover, there is a less severe alternative available that should alleviate Petitioner's concerns without limiting the record. Here, Petitioner argues that the Interested Parties' Appendix is not sufficiently distinguished from Petitioner's

Appendix in-as-much-as both are simply title Appendix. Additionally, Petitioner argues that there are duplicate documents contained in both Appendices. Both of these issues are rather trivial in nature and do not have any substantial effect on this matter and could not be described as prejudicial in any way. A reasonable solution—should the court believe that the aforementioned issues require corrective measures—would be to grant Interested Parties’ leave to amend the Appendix by renaming it and removing any duplicate documents.² This would effectively alleviate Petitioner’s concerns while also allowing for inclusion of the documents that were left out by Petitioner.

Ultimately, striking of the Appendix in its entirety would be overkill and would do a disservice to the Court and the Parties. It is axiomatic that it is better to have more information than less when making a decision. The additional evidence included in the Interested Parties’ Appendix can only operate to provide the Court with a fuller picture of the facts and history surrounding the issues raised by Petitioner in the Writ. The other issues raised are more appropriately described as form-over-substance and do not rise to the level that would require striking of the Appendix. However, should the Court believe intervention is necessary, there are alternative remedies that would cure the issues raised without prejudicing the

² Although, as pointed out in the preceding section, some of the duplicates were required to be included in the Interested Parties’ Appendix because Petitioner’s Appendix removed the exhibits that were attached to those pleadings and briefs.

Interested Parties, i.e., leave to rename and bates the Appendix while removing duplicates.

CONCLUSION

Based on the foregoing, the Motion should be denied.

Dated this 30th day of July, 2021.

MICHAEL B. LEE, P.C.

/ s/ Michael Matthis
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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 30th day of August, 2021.

/s/ Michael Matthis
MICHAEL MATTHIS, ESQ.

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.

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

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Dated this 30th day of July, 2021.

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