



In the Supreme Court of the State of Nevada

Electronically Filed
Jul 06 2021 02:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

INDICATE FULL CAPTION:

JACK GAAL, individually; JACK'S
PLACE BAR AND GRILL LLC;

Appellant

vs.

LAS VEGAS 101 INC., A NEVADA
CORPORATION DOING BUSINESS AS
FIRST CHOICE BUSINESS BROKERS,
LAS VEGAS 101

Respondent

Supreme Ct. Case No.: 83133

Dist. Case No.: A-18-776982-C

DOCKETING STATEMENT

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRCP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitute

grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Eighth Judicial District Department 27
County Clark Judge The Honorable Nancy L. Alf
District Ct. Docket No. A-18-776982-C

2. **Attorney filing this docket statement:**

Attorney David J. Winterton, Esq. Telephone: (702) 363-0317
Firm: David J. Winterton & Associates Ltd.
Address: 7881 W. Charleston Blvd., Suite 220,
Las Vegas, Nevada 89117
Client(s): JACK GAAL, individually;
JACK'S PLACE BAR AND GRILL LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney: Assly Sayyar, Esq. Telephone: (760) 542-8717
Firm: Assly Sayyar Attorney at Law, Inc.
Address: 5550 Painted Mirage Rd. #320
Las Vegas, Nevada 89149

Client: Las Vegas 101 Inc. A Nevada Corporation Doing
Business as First Choice Business Brokers, Las Vegas
101

Attorney: Rock Rocheleau, Esq. Telephone: (702) 914-0400

Firm: Rocheleau Law Group, d.b.a. Right lawyers

Address: 600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106

Client: Las Vegas 101 Inc. A Nevada Corporation Doing
Business as First Choice Business Brokers, Las Vegas
101

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) Relief | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Other disposition (Specify): _____ |
| <input type="checkbox"/> Review of agency determination | |

5. Does this appeal raise issues concerning any of the following:

No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

The Appellant/Defendant wanted to sell his business and the real property. The business is owned by a LLC. The real property is owned by a Trust. The realtor obtained a listing for the business but did not obtain a listing for the real property. The Appellant/Defendant told the Realtor that he did not have a listing under the real property because it was owned by a trust. The Realtor refused to correct the error and there never has been a listing agreement to sell the real property under NRS 645.320. Under NRS 645.320, there needs to be a written agreement and signed by the owner. In this case there NEVER has been a listing agreement for the real property nor a purchase agreement. The Realtor found a buyer and never had the owner of the real property sign the purchase agreement. The buyer also did not qualify for a loan for the purchase. There was no fraud or misrepresentation in this case. There were two causes of action, a breach of contract and breach of covenant of good faith and fair dealing. With these facts, the court awarded a commission for the real property. As a result, this appeal was filed.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

1. Whether or not the elements of NRS 645.320 were met?
2. Whether a Realtor can circumvent NRS 645.320 by stating they guarantee a commission when the owner of the real property never signed a Listing Agreement nor an Asset Purchase Agreement? (Can you contract around the statute?)
3. Whether or not you need to have a written agreement with the owner of the Property to have a valid Listing Agreement under NRS 645.320?
4. Whether or not you need to have a signed written agreement with the owner of the Property to have a valid Listing Agreement under NRS 645.320
5. Whether or not the Realtor is entitled to a commission when it never had a Purchase Agreement with the owner of the real property?
6. Whether or not the owner of an LLC can sign for a Trust when they are two separate entities.
7. Whether or not there is an agreement that the LLC had power and authority on behalf of the LLC.
8. Whether or not there was compliance with NRS 645.320 with there is not written contract that is signed by the owner of the real property?
9. Whether or not the statute supercedes NRS 645.320?
10. Whether or not the Broker could rely upon the signatures when he learned that his contract was not correct and refused to correct the contract because he was afraid he would lose the buyer, the seller, or both?

11. Whether or not the Realtor is entitled to a commission on the sale of the real property when there is no listing agreement to sell the real property nor is there a purchase agreement signed by the owner of the real property?
12. Whether or not the Seller is liable when the Realtor's form contract stated the Seller had authority but the Seller told the Realtor that the Seller did not have authority and needed to file his contract?
13. Whether not the Plaintiff could rely upon the wife's signature when she signed she had authority to sign on behalf of the LLC and did not sign for the trust?
14. Whether or not the Broker could rely upon the Listing Agreement and Asset Purchase Agreement when he had knowledge that the seller did not have authority to sign on behalf of the Trust and refused to correct the error.
15. Whether or not the intent of the parties supercedes the written contract when the Seller told the Realtor that the contract was not correct?
16. Whether or not there is any evidence of any improper vesting of a title deed when there is no argument or evidence of such a finding?
17. Whether or not the Court erred by not taking Judicial notice of the ownership of the real property when the records of the county were provided to the court.
18. Whether or not there was sufficient evidence of ownership of the real property when all parties testified that the owner of the real property was the trust and all of the parties testified that the trust never signed the Listing Agreement nor the Asset Purchase Agreement.
19. Whether or not the Seller was required to produce documents when the seller told the Realtor his error but the Broker refused to fix his error? (In essence, they are OK with the Realtor not

to have a contract and refused to fix his error but the Seller still has to perform even though there is no valid contract to sell the real property.)

20. Whether or not the Listing Agreement and the Asset Purchase Agreement was ambiguous and the interpretation by the court was incorrect?
21. Whether or not the Seller acted in good faith when the Realtor refused to correct the Listing Agreement?
22. Whether or not the definition of “client” has been met under NRS 645.320 when the owner never signed the contract.
23. Whether or not there should be any attorney fees and costs awarded under this matter.
24. Whether or not there is a ready, willing, and able buyer when the buyer could not get 100% financing as per the terms of the Asset Purchase Agreement
25. Whether or not the court erred by not allowing the Realtor Gene Northup to testify.
26. Whether or not the NRS 645.320 allows for apparent authority?
27. Whether or not the Broker can rely upon apparent authority when he knew that the owner of the real property never signed the Listing Agreement nor signed the Asset Purchase Agreement?

10. Pending proceedings in this court raising the same or similar issues.

If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

Not aware of any other proceedings.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

X N/A

☐ Yes

☐ No

If not, explain: _____

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

X An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

There is limited law on applying NRS 645.320. This decision will have a strong impact on whether a Realtor has to comply with NRS 645.320. In this case, the Realtor did not comply but had the party sign a personal guarantee. The Broker used the personal guarantee to circumvent the compliance with the statute. The Judge ruled that a personal guarantee brought it in compliance even though the owner of the real property never signed a listing agreement nor a Purchase agreement. This decision will have a big impact on the interpretation of the statute and compliance on the real estate industry. ;

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph (s) of the rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of the importance or significance:

The Appellant believes that NRS 645.320 should be heard by the Nevada Supreme Court. There is limited authority on this issue. It is a very important issue for the Real Estate Industry. It will give an understanding of listing agreements for all Realtor in the state of Nevada. It is a perfect factual case to apply the law under NRS 645.320.

14. **Trial.** If this action proceeded to trial, how many days did the trial last?
4 days

Was it a bench or jury trial? Bench Trial

15. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from June 16, 2021.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: Not applicable

17. Date written notice of entry of judgment or order served June 21, 2021.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59),**

None

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

☐ NRCp 50(b) Date of filing _____.

☐ NRCp 52(b) Date of filing _____.

☐ NRCp 59 Date of filing _____.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may be toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____ 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion_____.

(c) Date written notice of entry of order resolving motion served _____.

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal was filed: June 23, 2021

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

X NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233b.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify)._____

Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal of the Findings of Fact and Conclusions of Law under N.R.A.P 3(c)(1)(B)

22. List all parties involved in the action in the district court:

(a) Parties

1) Plaintiffs

LAS VEGAS 101 INC., A NEVADA CORPORATION
DOING BUSINESS AS FIRST CHOICE BUSINESS
BROKERS, LAS VEGAS 101

2. Defendants.

JACK GAAL, individually; JACK'S PLACE BAR AND
GRILL LLC;

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

Plaintiffs' Claims	Date of formal Disposition
1) Breach of Contract	June 21,2021
2) Breach of Covenant of Good Faith and Fair Dealing	June 21, 2021

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

☒ YES
☐ NO

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ YES

☐ NO

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b):

Not Applicable

27. Attach file-stamped copies of the following documents

- **The latest-filed complaint, counterclaims, cross-claims, and third-party claims**
- **Any tolling motion(s) and order(s) resolving tolling motions(s)**
- **Orders of NRCP 14(a) dismissals formally resolving each claim, counterclaims cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal**
- **Any other order challenged on appeal**
- **Notices of entry of each attached order**

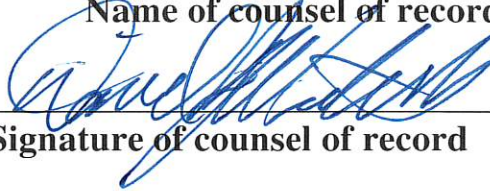
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is

true and complete to the best of my knowledge, information and belief,
and that I have attached all required documents to this docketing
statement.

JACK GAAL, individually,
JACK'S PLACE BAR AND GRILL LLC.
Name of appellant

Date: July 6, 2021

David J. Winterton, Esq.
Name of counsel of record

Signature of counsel of record

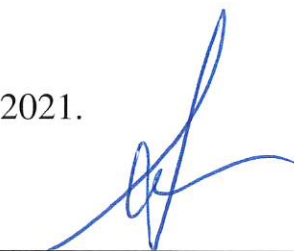
Clark County, State of Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 6th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☒ By Electronic Service (ECF)
☐ By personally serving it upon him/her; or
☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: if all names and addresses cannot file below, please list names below and attach a separate sheet with the addresses.)

Dated this 6th day of July, 2021.



Signature

Steven D. Grierson

1 COMP
2 ROCHELEAU LAW GROUP
3 dba RIGHT LAWYERS
4 Stacy M. Rocheleau, Esq.
5 Stacy@RightLawyers.com
6 Nevada Bar No. 7886
7 600 South Tonopah Drive, Suite 300
8 Las Vegas, Nevada 89106
9 702-914-0400
10 Attorneys for Plaintiff

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS 101 INC., A NEVADA
CORPORATION DOING BUSINESS AS
FIRST CHOICE BUSINESS BROKERS,
LAS VEGAS 101,

Plaintiff,

vs.

JACK GAAL, individually; JACK'S PLACE
BAR AND GRILL LLC; DOES I through X;
and ROE CORPORATIONS XI through XX,

Defendants.

CASE NO. A-18-776982-C
DEPT. NO. Department 27

COMPLAINT

COMES NOW Plaintiff LAS VEGAS 101 INC., A NEVADA CORPORATION
DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101, by and
through its attorneys of record, STACY M. ROCHELEAU, ESQ., and for its complaint
against Defendants JACK GAAL, and JACK'S PLACE BAR AND GRILL LLC, alleges and
asserts as follows:

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I.

PARTIES AND JURISDICTION

1. At all times relevant hereto, Plaintiff LAS VEGAS 101 INC., A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101 (hereinafter "Plaintiff" or "FCBB"), was a Nevada Corporation , doing business in Clark County, the State of Nevada.

2. At all times relevant hereto, Defendant JACK GAAL (hereinafter "Gaal"), was and is an individual who resided in Clark County, Nevada.

3. At all times relevant hereto, Defendant JACK'S PLACE BAR AND GRILL LLC (hereinafter "LLC"), was and is a Nevada Limited Liability Company, doing business in Clark County, the State of Nevada.

4. The true names and capacities, whether individual, corporate, associate or otherwise, or Defendants herein designated as DOES I through X and ROE CORPORATIONS XI through XX inclusive, are unknown to the Plaintiff at this time, who therefore sue said Defendants by such fictitious names. These unknown persons or entities may be related to, be partners with or otherwise entities formed by or controlled and owned by Defendant. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities as they are ascertained.

5. This Court has jurisdiction in this matter over all named Defendants as the named parties resided or did business in Nevada when the acts and omissions set forth herein

1 occurred, and all contracts relevant to this Complaint were signed, executed, and in the case
2 of Defendants, breached.

3 6. The venue is proper because this action relates to and arises out of contracts and
4 conduct which occurred in the County of Clark, State of Nevada.

5 **II.**

6 **ALLEGATIONS COMMON TO ALL DEFENDANTS**

7 7. Jack Gaal and Jacks Place Bar and Grill LLC's (collectively referred to as "Seller")
8 listed the business known as Jack's Place with FCBB for sale by executing an Exclusive
9 Right to Sell Listing Agreement on October 9, 2017 ("Agreement").

10 8. The Agreement had an asking price of \$1,200,000.00, of which FCBB would receive
11 10% upon the acceptance by Seller of any Purchase Agreement.

12 9. On February 2, 2018 as a result of the efforts of FCBB agent Philip V.
13 Neuenswander, Seller entered into an Asset Purchase Agreement with Angel Soto ("Buyer").

14 10. The sale was contingent upon the Buyer's investigation of certain documents and
15 information Seller was to provide ("Due Diligence Documents").

16 11. Despite repeated requests from the agent, Seller failed and refused to provide the
17 agreed upon Due Diligence Documents to the Buyer. As a direct result of this action, the
18 sale could not go forward, thus, the transaction failed to close under the terms of the executed
19 Asset Purchase Agreement.

20 12. Such conduct by the Defendant is in violation and a material breach of the terms of
21 the Agreement.

1 13. Pursuant to the Agreement, Defendants owe a commission to FCBB, in the amount of
2 \$120,000.00.

3 14. Demand for payment of FCBB's commission and related fees, and a request to submit
4 to binding arbitration or mediation was made to Defendants in June 2018, which Defendants
5 failed and refused to respond to.

6 15. Defendants have failed to honor, abide by, or keep their obligations under the
7 Exclusive Right to Sell Listing Agreement and have materially breached the Agreement.

8 16. Plaintiff has been forced to hire an attorney to bring this suit to compel Defendants
9 to participate in mediation, or in the alternative, if mediation is held but is unsuccessful (or
10 Defendant fails to respond to this Complaint), for recovery of its Fees and other amounts
11 under the Agreement.

12 **CLAIMS FOR RELIEF**

13 **III.**

14 **FIRST CAUSE OF ACTION**
15 **(Breach of Contract)**

16 17. The allegations of paragraphs 1 through 16 above are hereby re alleged and
17 incorporated herein by this reference.

18 18. The Agreement is a legally enforceable contract by and between Defendant and
19 Plaintiff.

20 19. Pursuant to Paragraph 8 of the Agreement, Defendants agreed "All fees...will be
21 fully earned at the time of acceptance by Seller of any type of Purchase Agreement."

22 20. On February 2, 2018 Seller entered into an Asset Purchase Agreement with "Buyer."

1 21. Thus, Seller had an obligation to pay FCBB it's fee.

2 22. Defendant has violated and materially breached the Agreement by refusing to pay
3 FCBB it's fee.

4 23. Despite demand and contractual obligation to do so, Defendants have instead refused
5 and failed to pay the amounts due and owing to Plaintiff.

6 24. As a result of Defendants' breach, Plaintiff has suffered damages in an amount in
7 excess of \$15,000.00.

8 25. As a result of Defendant's breach, Plaintiff has been required to hire an attorney and
9 incur attorney fees and costs.

10 **IV.**

11 **SECOND CAUSE OF ACTION**
12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing -In the Alternative)**

13 26. The allegations of paragraphs 1 through 25 above are hereby re alleged and
14 incorporated herein by this reference.

15 27. Defendants, in addition to the express and implied duties and obligations imposed by
16 the Agreement, owed Plaintiff a duty to conduct themselves in good faith, and owed Plaintiff
17 a duty of cooperation.

18 28. Defendants breached their duties under the implied covenant of good faith and fair
19 dealing by failing to pay FCBB its earned fee pursuant to the terms of the Agreement.

20 29. Not only was Defendants' conduct in violation of the letter of the Agreement, it was a
21 blatant violation of the spirit of the Agreement to work with Plaintiff who was performing
22 services to list and arrange for Jack's Place to be sold.

1 30. As a result of Defendants' breach, Plaintiff has suffered damages in an amount in
2 excess of \$15,000.

3 31. As a result of Defendants' breach, Plaintiff has been required to hire an attorney and
4 incur attorney fees and costs.

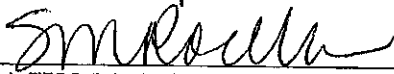
5 V.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, expressly reserving their right to amend this complaint at
8 the time of, or prior to trial as may be permitted by law or code, prays for judgment against
9 Defendants jointly and/or severally as applicable, as follows:

- 10 1. For general and/or special damages in excess of Fifteen Thousand Dollars
11 (\$15,000.00);
12 2. For any other pre- and post judgment interest to the extent allowable by law;
13 3. For reasonable attorneys' fees and costs as provided under the Listing Agreement and
14 to the extent allowable by law; and
15 4. For such other and further legal and/or equitable relief as the Court deems just and
16 proper.

17 DATED this 29 day of June 2018.

18 
19 STACY M. ROCHELEAU, ESQ.
20 Nevada Bar No. 7886
21 600 South Tonopah Drive, Suite 300
22 Las Vegas, Nevada 89106
23 702-914-0400
24 Attorney for Plaintiff



NED
ROCHELEAU LAW GROUP
dba RIGHT LAWYERS
Rock Rocheleau
Nevada Bar No. 15315
Assly Sayyar, Esq.
Nevada Bar No. 9178
600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106
702-914-0400
702-914-0256 (fax)
Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

LAS VEGAS 101 INC., A NEVADA
CORPORATION DOING BUSINESS
AS FIRST CHOICE BUSINESS
BROKERS, LAS VEGAS 101,

Plaintiff,

vs.

JACK GAAL, INDIVIDUALLY;
JACK'S PLACE BAR AND GRILL
LLC; DOES I through X; AND ROE
CORPORATIONS XI through XX,,

Defendant.

CASE NO. : A-18-776982-C
DEPT. NO. : 27

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS
OF LAW

1 Please take notice that the Findings of Fact and Conclusions of Law was
2 entered in the above entitled matter on **June 16, 2021**, a copy of which is attached
3 hereto.

4
5 Dated this 21st day of June 2021.

6 **RIGHT Lawyers**

7
8 /s/: Rock Rocheleau

9 Rock Rocheleau, Esq.

10 Nevada Bar No. 15315

Assly Sayyar, Esq.

11 Nevada Bar No. 9178

600 South Tonopah Drive, Suite 300

12 Las Vegas, Nevada 89106

702-914-0400

13 702-914-0256 (fax)

14 Attorney for Plaintiff

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Pursuant to EDCR 8.05 (a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eight Judicial District Court,” by mandatory electronic service through the Eight Judicial District Court’s electronic filing system:

/s/: Adriana Rodriguez
An employee of Right Lawyers

1 ROCHELEAU LAW GROUP
2 dba RIGHT LAWYERS
3 ROCK ROCHELEAU, ESQ. (SBN 15315)
4 600 South Tonopah Drive, Suite 300
5 Las Vegas, Nevada 89106
6 Tel: 702-914-0400
7 rock@rightlawyers.com

8 *Attorney for Plaintiff*

9 ASSLY SAYYAR, ATTORNEY AT LAW, INC.
10 ASSLY SAYYAR, ESQ. (SBN 9178)
11 5550 Painted Mirage Rd. #320
12 Las Vegas, Nevada 89149
13 Tel: 760-542-8717
14 Fax: 760-444-3560
15 assly@vistalawyer.net

16 *Associate Counsel for Plaintiff*

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

29 LAS VEGAS 101 INC., A NEVADA
30 CORPORATION DOING BUSINESS
31 AS FIRST CHOICE BUSINESS
32 BROKERS, LAS VEGAS 101,

33 Plaintiff,

34 vs.

35 JACK GAAL, INDIVIDUALLY;
36 JACK'S PLACE BAR AND GRILL
37 LLC; DOES I through X; AND ROE
38 CORPORATIONS XI through XX,

39 Defendant.

CASE NO. : A-18-776982-C
DEPT. NO. : 27

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

40 The above-captioned matter came before the Honorable Nancy Allf for trial
41 beginning on June 1, 2020 through June 10, 2020. Present at trial were Rock
42 Rocheleau, Esq. and Assly Sayyar, Esq. on behalf of Plaintiff LAS VEGAS 101 INC.,
43 A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS

1 BROKERS, LAS VEGAS 101 ("First Choice" or "Plaintiff"), and David Winterton,
2 Esq. on behalf of Defendant JACK GAAL, INDIVIDUALLY ("Gaal") and Defendant
3 JACK'S PLACE BAR AND GRILL LLC ("Jack's Place") (jointly "the Defendants").
4 The Court hereby makes the following Findings of Fact and Conclusions of Law and
5 enters the following ruling:

6 FINDINGS OF FACT

7 1. Plaintiff entered into two written agreements with Gaal and Jack's Place: the
8 "Exclusive Listing Agreement" (Ex. 10) and the "Asset Purchase Agreement" (Ex.
9 7) with their related ancillary documents incorporated therein by reference as
10 admitted into evidence.

11 2. The Exclusive Listing Agreement included as part of its listing real estate/real
12 property located at 544 Nevada Highway, Boulder City, NV 89005, the building on
13 that real estate, and the business operation of "Jack's Place Bar and Grill" also known
14 as "Jack's Place Sports Bar and Grill" from the inception of the listing (hereinafter
15 referred to as "the real estate, the building, and the business operations").

16 3. Under the terms of the Exclusive Listing Agreement and ancillary documents
17 incorporated therein by reference, Defendants again and again indicated they had the
18 power and authority to list for sale the real estate, the building, and the business
19 operations.

20 4. Under the terms of the Exclusive Listing Agreement and ancillary documents
21 incorporated therein by reference, Defendants, each of them, had an obligation to
22 provide due diligence documentation to any buyer they contracted with and the
23 Defendants failed to do so.

24 5. The Exclusive Listing Agreement is a contract in compliance with and in
25 accordance with NRS 645.320 as it meets all requirements of that statute.

26 6. Upon Defendants executing the Asset Purchase Agreement, Plaintiff earned
27 and was entitled to be paid its "Fee" or "Commission" as defined in the Exclusive
28 Listing Agreement. The execution of the Asset Purchase Agreement by Defendants
constituted a "Disposition of the Business" as defined in the Exclusive Listing

1 Agreement.

2 7. Under the terms of the Asset Purchase Agreement, Defendants again and again
3 indicated they had the power and authority to complete the sales transaction which
4 included the real estate, the building, and the business operations.

5 8. The wife of Defendant Gaal also executed documents (See Ex. 14A), that
6 further supported Plaintiff's reasonable reliance that Defendants had the power and
7 authority to list and then sell the real estate, the building, and the business operations.

8 9. Plaintiff had a right to rely on Defendants' representations that they had the
9 power and authority to enter into a business broker listing by and through the
10 Exclusive Listing Agreement that included real estate, the building, and the business
11 operations. Plaintiff's belief in and reliance on Defendants' authority and power was
12 reasonable.

13 10. Plaintiff had the right to rely on Defendants' representations that they had the
14 power and authority to enter into and complete the sales transaction with buyer,
15 Angel Soto, by and through the Asset Purchase Agreement that included the real
16 estate, the building, and the business operations. Plaintiff's belief in and reliance on
17 Defendants' authority and power was reasonable.

18 11. The deal contemplated by the parties under the Exclusive Listing Agreement
19 and the Asset Purchase Agreement always included the real property identified as 244
20 Nevada Highway, Boulder City, Nevada,

21 12. Defendant Gaal personally guaranteed performance under the terms of both the
22 Exclusive Listing Agreement and Asset Purchase Agreement.

23 13. Defendants attempting to raise arguments regarding potential improper vesting
24 of a title deed is not sufficient to avoid performance or liability under either of the
25 written contracts.

26 14. Angel Soto, was a credible witness and it is reasonable to find he had sufficient
27 assets to complete the purchase under the Asset Purchase Agreement whether
28 utilizing his own assets or through obtaining a bank loan.

15. No terms of any trust were offered into evidence and therefore there was no
credible evidence that Defendant Gaal did not have authority list and to sell the real

1 estate, the building, and the business operations.

2 16. Defendants failed to produce due diligence documents under the terms of either
3 written agreement.

4 17. Defendants failed to pay the "Fee" earned by Plaintiff.

5 18. There is no ambiguity in the terms of either of the written contracts.

6 19. Defendants had a duty to cooperate and communicate and failed in that duty.

7 20. Defendants' "seller's remorse" is not a sufficient excuse to demand a new listing
8 agreement or sales agreement.

9 21. Plaintiff has performed under the terms of the Exclusive Listing Agreement and
10 Asset Purchase Agreement and is entitled to receive its "Fee."

11 CONCLUSIONS OF LAW

12 1. Plaintiff prevails on its claim of breach of contracts against Defendants, each
13 of them, establishing all necessary elements by a preponderance of the evidence.
14 Defendants have materially breached the terms of the Asset Purchase Agreement and
15 the Exclusive Listing Agreement causing Plaintiff damage.

16 2. Plaintiff prevails on its claim for breach of the covenant of good faith and fair
17 dealing against Defendants, each of them, establishing all necessary elements by a
18 preponderance of the evidence. Defendants have acted against the spirit of the terms
19 of the Asset Purchase Agreement and the Exclusive Listing Agreement causing
20 Plaintiff damage.

21 3. The Exclusive Listing Agreement satisfies the requirements of NRS 645.320,
22 and the statutory definition of "client" under NRS 645.

23 4. Plaintiff incurred damages arising from breach of contracts and breach of the
24 implied covenant of good faith and fair dealing breaches as follows: \$100,000.00
25 "Fee" due and owing along with interest accruing at a rate of 18% per annum from
26 February 2, 2018 onward until paid in full. Plaintiff is awarded its "Fee" and all pre
27 and post judgment interest accruing thereon from February 2, 2018 against
28 Defendants, each of them, on a joint and several basis.

5. Plaintiff is also entitled to recover attorney fees and costs pursuant to the terms
of the written agreements by and through submission of a separate post judgment

1 motion. What amount of attorney fees and costs may be awarded by this subsequent
2 motion will be due and owing to Plaintiff by Defendants, each of them, on a joint and
3 several basis.

4 6. Judgment will be formally entered based on this Finding of Fact and
5 Conclusions of Law and any order granting any subsequent motion for attorney fees
6 and costs.

7 IT IS SO ORDERED.

8 Dated this _____ day of _____, 2021.

9
10 Dated this 16th day of June, 2021

11 *Nancy L Alf*
12 DISTRICT COURT JUDGE

13 Respectfully Submitted:

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15 *L. Rocheleau*
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17 **009 32F 2492 49F5**
18 **Nancy Alf**
19 **District Court Judge**

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Las Vegas 101 Inc, Plaintiff(s) CASE NO: A-18-776982-C
7 vs. DEPT. NO. Department 27
8 Jack Gaal, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/16/2021

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