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SUPREME COURT

STATE OF NEVADA

RONALD J. ROBINSON,

Appellant,

vs.

STEVEN A. HOTCHKISS,

Respondent.

RONALD J. ROBINSON,

Appellant,

vs.

ANTHONY WHITE, ROBIN SUNTHEIMER, TROY SUNTHEIMER, STEPHENS GHESQUIERE, JACKIE STONE, GAYLE CHANY, KENDALL SMITH, GABRIELE LAVERMICOCCA, ROBERT KAISER.

Respondents.

No. 83250

APPELLANT'S PETITION FOR SUPREME COURT REVIEW

NRAP 26.1 DISCLOSURE STATEMENT

Counsel for defendant/appellant, Ronald J. Robinson, certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Defendant/appellant is an individual who resides in Clark County, Nevada, so there are no parent corporations or any publicly held company that owns 10% of more of defendant/appellant.

2. Michael F. Bohn, Esq. of the Law Offices of Michael F. Bohn, Esq., Ltd. is representing defendant/appellant in this appeal, and Harold P. Gewerter, Esq. represented defendant/appellant in the district court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Nevada cases:

Federal and other cases:

STATUTES AND RULES:

APPELLANTS' PETITION FOR SUPREME COURT REVIEW

Pursuant to Nev. R. App. P. 40B, Ronald J. Robinson (hereinafter "Robinson") petitions the Court for review of the order of affirmance, entered by the Court of Appeals on April 29, 2022, on the grounds that the order conflicts with the prior decisions by this Court in First Interstate Bank of Nevada v. Shields, 102 Nev. 616, 730 P.2d 429 (1986), Schwob v. Hemsath, 98 Nev. 293, 646 P.2d 1212 (1982), and Cheqer, Inc. v. Painters and Decorators Joint Committee, Inc., 98 Nev. 609, 655 P.2d 996 (1982), and involves the following fundamental issues of statewide public importance:

1. Whether judgment could properly be entered against Robinson as the guarantor of a promissory note after that note had already been fully and finally satisfied by the maker of the note.

2. Whether the beneficiary of an IRA can enforce a promissory note held by the trustee of a self-directed IRA without joining the trustee as a party.

3. Whether each plaintiff was estopped from asserting against Robinson a claim that the VCC notes were not registered when each plaintiff stated in writing to Provident that the claim did not exist.

BASIS FOR REVIEW

The precise basis on which plaintiff seeks review is that the district court (1) improperly entered judgment against the guarantor after each promissory note had already been fully and finally satisfied by the maker of each note; (2) allowed plaintiffs to prosecute claims held by an indispensable party, Provident Trust Group (hereinafter "Provident"), without requiring that Provident be joined as a party; and (3) allowed plaintiffs to prosecute claims that each plaintiff had expressly represented to Provident in writing did not exist.

CITATION OF AUTHORITY

1. The judgment improperly granted double recovery to each plaintiff because Provident's receipt of stock in Virtual Communications Corp. in "full and final satisfaction" of each note discharged each obligation allegedly guaranteed by Robinson.

As stated at page 27 of Appellant's Opening Brief, this court held in First Interstate Bank of Nevada v. Shields, 102 Nev. 616, 619-620, 730 P.2d 429, 431-432 (1986), that a guarantor is protected by the general rule that "the payment or **other satisfaction** or extinguishment **of the principal debt or obligation by the principal** or by anyone for him **discharges the guarantor**." (emphasis added)

In the present case, in Section III(B)(3) of its Chapter 11 Plan (AA-10:APP001297), Virtual Communications Corp. (hereinafter "VCC") expressly provides that each holder of an unsecured promissory note agreed to accept stock of

VCC "in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 3 Claim."

As stated at page 3 of Appellant's Opening Brief, on September 5, 2018, the Bankruptcy Court entered an Order confirming the First Amended Chapter 11 Plan of Reorganization filed by VCC. (AA-10: APP001272-APP001281)

As quoted at page 5 of Appellant's Opening Brief, Section XI of VCC's first amended Chapter 11 plan (AA-10:APP001311) states in all capital letters:

> **THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS** AGAINST AND EQUITY INTERESTS AND INTERCOMPANY INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING **WHETHER OR NOT SUCH HOLDER** (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR (III) FILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR **VOTED TO REJECT THE PLAN.** (emphasis added)

As quoted at page 40 of Appellant's Opening Brief, the Bankruptcy Court also made an express finding that "the settlements, compromises, discharges, releases, and injunctions set forth in the Plan are approved as an integral part of the Plan, **are fair, equitable, reasonable, and in the best interest of** the Debtor, its Estate, and **the holders of Claims** and Equity Interests." (AA-10:APP001277, 11. 7-10)(emphasis added)

In the present case, the guarantee on each note only guaranteed "the payment and performance of, the entire debt evidenced by this Note." None of the guarantees include any language stating that Robinson would remain liable after "the entire debt evidenced by" each note was fully and finally satisfied by VCC.

The Chapter 11 Plan also does not contain any language stating that Robinson would remain liable for payment of the fully satisfied notes.

As stated at page 4 of Appellant's Opening Brief, Hotchkiss testified that he received 15,000 shares of VCC stock valued at $5.00 each. (AA-4: APP000600, l. 11 to APP000601, l. 3) This distribution of stock worth $75,000.00 was equal to the principal amount of the promissory note signed by VCC in favor of Provident for the benefit of Hotchkiss. *See* promissory note at AA-5:APP000821-APP000823.

Plaintiffs did not present any testimony by any person that denied that Provident also received shares of VCC stock in "full and final satisfaction" of each promissory note signed by VCC in favor of Provident "FBO" the other plaintiffs. *See* names and amounts at pages 13-14 of Appellant's Opening Brief.

As stated at page 8 of Appellant's Opening Brief, plaintiffs did not file their motion for damages and attorney's fees until May 11, 2020. (AA-9:APP001200-APP001247)

At pages 4 and 5 of his opposition to plaintiffs' motion for damages and attorneys' fees (AA-10:APP001254-APP001255), Defendant Vernon Rodriguez (hereinafter "Rodriguez") quoted the relevant provisions of the confirmed plan regarding the Common Stock Distribution that paid "the amount of contract-rate interest accrued on the principal balance included in each Holder's respective Allowed Class 3 Claim as of the Petition Date" (AA-10:APP001289) and the Series A Preferred Stock Distribution "equal to one-fifth (1/5th) of the total dollar amount of all principal indebtedness included within all Allowed Class 3 Claims." (AA-10:APP001292) Rodriguez also attached copies of the First Amended Chapter 11 Plan of Reorganization for Virtual Communications Corporation. (AA-10:APP001283-APP001318)

At page 2 of Robinson's opposition to plaintiffs' motion for damages and attorney's fees (AA-10:APP001320), plaintiff joined "Defendant Rodriguez's legal authorities and arguments as to issues regarding securities law, bankruptcy, statute of limitations, and damages and attorney's fees."

Despite full knowledge that each plaintiff had already received stock of VCC "in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge" of each claim allegedly guaranteed by Robinson, the district court

nevertheless entered judgment against Robinson for "principal in the amount of $574,000, interest in the amount of $258,300, 'late fees' of $12,917 and attorney's fees of $253,565, as set forth in Plaintiffs' Statement of Damages filed February 3, 2020." (AA-10:APP001379)

This statement of damages (AA-3:APP000496-APP000499), however, did not give Robinson credit for any amount received by each plaintiff pursuant to the plan of reorganization that had been confirmed by the Bankruptcy Court on September 5, 2018. The district court's incorporation of plaintiffs' statement of damages into the judgment entered on August 20, 2020 (AA-10:APP001369) was clear error that should have been reversed by the court of appeals.

At page 7 of its order entered on April 29, 2022, the court of appeals states that "Hotchkiss argues that Robinson's debt as a personal guarantor exists independent of VCC's bankruptcy and any distribution of VCC's stock." **Plaintiffs did not make this argument**, and plaintiffs did not cite either United States v. Tharp, 973 F.2d 619 (8th Cir. 1992), or United States v. Beardslee, 562 F.2d 1016 (6th Cir. 1977), upon which the court of appeals based its order.

Plaintiffs instead cited 11 U.S.C. § 524(e) at pages 13 and 14 of their Answering Brief, quoted the release language added to Section X.B.3 of the Amended

Chapter 11 Plan at pages 14 and 15 of their Answering Brief, stated that their receipt of VCC stock could not be a novation because plaintiffs voted against confirmation of the debtor's plan at pages 15 and 16 of their Answering Brief, and stated that Robinson remained liable as a "compensated guarantor" at pages 17 and 18 of their Answering Brief.

Robinson demonstrated why each of plaintiffs' arguments was without merit at pages 21 to 41 of Appellant's Opening Brief and pages 22 to 26 of Appellant's Reply Brief.

Both Tharp and Beardslee are unlike the present case because each case relied on specific language in SBA Form 148 that does not appear in any of the personal guarantees in the present case. *See* guarantees at AA-5:APP000823, AA-5:APP000827, AA-5:APP000831, AA-5:APP000835, AA-5:APP000838, AA-5:APP000842, AA-5:APP000847, AA-5:APP000850, AA-5:APP000853, AA-5:APP000856, AA-5:APP000859.

In the Tharp and Beardslee cases, SBA also did not receive stock in exchange for full satisfaction of debt according to a bankruptcy court-approved formula like the present case. In Tharp, the SBA instead received personal property and real property **that the SBA sold at public auction** for specific amounts that did not pay the full

amount of the loan. 973 F.2d at 620.

In Beardslee, the SBA received a promissory note from Freeport Hardwood that the SBA settled for $90,000, and the SBA sued the guarantors for "amounts which had not been paid as a result of the principal debtor's discharge of the $120,000 and $140,000 promissory notes." Id. at 1018.

At page 9 of its order, the court of appeals cites First Interstate Bank v. Shields, 102 Nev. 616, 730 P.2d 429, 431 (1986), but as quoted at page 2 above, that case held that "the payment **or other satisfaction**" of the principal debt by the principal "**discharges the guarantor**." (emphasis added)

Unlike Tharp and Beardslee, plaintiffs did not sell their VCC stock and sue for "the balance of the debt not satisfied." Plaintiffs instead asked the district court to conclude that the VCC stock could not be sold based on plaintiffs' counsel's false description of the VCC stock as "illiquid, restricted shares without any means to gauge the value of the shares" and plaintiffs' counsel's unproved claim that "[f]or all intents and purposes the shares have no value." (AA-11:APP001586, ll. 13-14)

As noted at pages 8 and 9 of Appellant's Reply Brief, the record on appeal does not contain any letter (and no stock certificate contains any language) that restricts each plaintiff's ability to sell the VCC stock received in return for each VCC note.

Furthermore, no person except Hotchkiss testified that he or she could not sell his or her VCC stock. The district court nevertheless entered judgment against Robinson (AA-10:APP001368-APP001370) based on plaintiffs' statement of damages (AA-3:APP000496-APP000499) that treated **every plaintiff's stock** in VCC as if it had no value. **No evidence of any type supports this conclusion**.

At page 9 of its order, the court of appeals also states that "the relevant question becomes by what amount must the plaintiffs' award be offset against their receipt of VCC stock?" This statement violates established principles of res judicata and collateral estoppel because the formula to determine the amount of VCC stock necessary to pay in full each Class 3 claimant was finally determined by the Bankruptcy Court.

In Trulis v. Barton, 67 F.3d 779, 784 (9th Cir. 1995), the bankruptcy court confirmed a plan that provided that any creditors who became members of the reorganized country club "are hereby deemed to release, and are permanently and forever enjoined and barred from commencing or continuing any action against the Developer and the Developer Affiliates with regard to any claims such Series B Charter Gold Members have against such entities, except for Homeowner Claims."

After confirmation, the plaintiffs continued to sue the Developer and claimed

that "the release provisions in the confirmed Joint Plan were unenforceable." Id. The court of appeals instead held:

> Since the plaintiffs never appealed the bankruptcy court's confirmation order, the order is a final judgment and plaintiffs cannot challenge the bankruptcy court's jurisdiction over the subject matter. *See* Stoll v. Gottlieb, 305 U.S. 165, 171-72, 79 S. Ct. 134, 137, 83 L. Ed. 104 (1938); Republic Supply Co. v. Shoaf, 815 F.2d 1046, 1050 (5th Cir. 1987).
>
> 67 F.3d at 785.

The court also stated that "[s]ince the bankruptcy court order confirming the Joint Plan applied to the same claims and parties involved in this litigation, this suit is barred by res judicata and summary judgment was appropriate." Id. at 786.

Plaintiffs and the court of appeals did not cite any authority that permits plaintiffs to simply ignore the binding determinations made by the bankruptcy court in paragraph Z of the order confirming first amended Chapter 11 plan. (AA-10:APP001277, ll. 10-13.

With respect to the court of appeals's reference to the word "impaired," 11 U.S.C. § 1141(a) expressly provides that "the provisions of a confirmed plan **bind** . . . any creditor . . .**whether or not the claim** or interest of such creditor . . .**is impaired** under the plan and whether or not such creditor . . . has accepted the plan." (emphasis added)

Paragraph L at page 4 of the bankruptcy court's order (AA-10:APP001449, ll. 17-26) proves that the amount (81%) and number (84%) of claims in Class 3 required by 11 U.S.C. § 1126 (c) voted to accept the plan.

In the last paragraph at page 9 of its order, the court of appeals states that "[t]he record on appeal offers little evidence regarding the value of the VCC stock issued to satisfy the VCC debt in its bankruptcy." On the other hand, the confirmed Chapter 11 plan conclusively resolved any issue regarding the number of VCC shares required to create "full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 3 Claim," (AA-10:APP001297)

At page 9 of their reply (AA-11:APP001586, l. 14), plaintiffs stated that "[f]or all intents and purposes the shares have no value." Plaintiffs, however, did not produce any admissible evidence at trial proving that the VCC stock was not worth at least $5.00 per share. Morever, "[a]rguments of counsel are not evidence and do not establish the facts of the case." Jain v. McFarland, 109 Nev. 465, 475-75, 851 P.2d 450, 457 (1993).

Plaintiffs also stated that "at such time that Mr. Rodriguez pays the judgment," he could "ask for a hearing to determine the value of the shares." (AA-11:APP001586, ll. 15-17) Plaintiffs, however, did not cite any authority that would

require Robinson to re-litigate an issue that has already been finally determined by the Bankruptcy Court.

At page 10 of its order, the court of appeals states that "the bankruptcy plan does not address the value of the VCC stock awarded on the noteholders' impaired interest." The plan, however, does establish the legal effect of each plaintiff's receipt of VCC stock as the "full and final satisfaction" of each plaintiff's claim.

The court of appeals also states that "[t]he district court disagreed and determined that the VCC shares of stock were worthless" and that "[w]e cannot say this constituted an abuse of discretion because Robinson failed to present competent evidence of the stock's current value."

First, neither plaintiffs nor the court of appeals identified any authorities that permit the district court to disagree with the final determination of value made by the Bankruptcy Court in calculating the number of VCC shares to be issued to each Class 3 creditor in "full and final satisfaction" of its claim. Second, as quoted at page 33 of Appellant's Opening Brief, Robinson testified that VCC was "very profitable right now" (AA-4:APP000653, l. 13), that VCC's "viability" was "tremendous because the technology has been improved, proved and proved to such an extent" (AA-4:APP000675, ll. 14-17), and that "[w]e'd be publically traded right now if it wasn't

for all of this damn litigation" (AA-4:APP000675, ll. 20-21), which testimony proves that shares of VCC stock had more value on the day that Robinson testified than on the date that VCC confirmed its Chapter 11 plan.

Mr. Hotchkiss also did not present any evidence regarding the assets and liabilities of VCC or the value of VCC's stock. Mr. Hotchkiss instead based his opinion solely on his mistaken belief that there is a restriction that prevents him from selling his stock. (AA-4:APP000603, l. 20 to APP000604, l. 2) Because the record on appeal does not contain any evidence proving that such a restriction exists, it was "clear error" for the district court to conclude that each share of VCC stock had no value.

2. Plaintiffs' actions were subject to dismissal because Provident was an indispensable party and did not join either action.

At page 12 of defendants' pretrial memorandum (AA-3:APP000447), defendants quoted from Nev. R. Civ. P. 17(a), which now provides: "An action **must** be prosecuted in the name of the real party in interest." (Emphasis added)

In Pasillas v. HSBC Bank USA, 127 Nev. 462, 467, 255 P.3d 1281, 1285 (2011), this court stated that the word "'must' is a synonym of 'shall'" and that the word "'shall' is mandatory unless the statute demands a different construction to carry out the clear intent of the legislature."

NRS 163.020(4) states that the word "trustee" means "the person holding property in trust and includes trustees, a corporate as well as a natural person and a successor or substitute trustee."

Nev. R. Civ. P. 17(a)(1)(E) provides that "a trustee of an express trust" may sue in its own name "without joining the person for whose benefit the action is brought," On the other hand, Nev. R. Civ. P. 17 does not contain any language that permits the beneficiary of an express trust to sue in his or her own name without joining the trustee of the trust.

In Back Streets, Inc. v. Campbell, 95 Nev. 651, 601 P.2d 54, 55 (1979), this court rejected the appellant's argument that the individual respondents were not proper parties to file suit for breach of a written collective bargaining agreement. This court stated that in their capacity as "the trustees of trust funds designated to receive the employer contributions," the respondents "are real parties in interest, under N.R.C.P. 17(a), as trustees of an express trust which is a third party beneficiary of the agreement."

Nev. R. Civ. P. 19(a)(1) provides:

> A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction **must be joined as a party** if:

(A) **in that person's absence, the court cannot accord complete relief among existing parties**; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) **leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.** (emphasis added)

Nev. R. Civ. P. 19(a)(2) provides that "[i]f a person has not been joined as required, the court **must** order that the person be made a party." (emphasis added)

Nev. R. Civ. P. 19(b) provides in relevant part:

If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.

In Schwob v. Hemsath, 98 Nev. 293, 646 P.2d 1212 (1982), legal title to the real property in question was held by R.N.S., Inc., but R.N.S., Inc. "was never served with process in the action" and never "appeared in the action or subjected itself to the jurisdiction of the court." This court stated that "[f]ailure to join an indispensable party is fatal to a judgment and may be raised by an appellate court *sua sponte*." Id.

Because title to the property in Schwob v. Hemsath was held by a corporation that never appeared as a party, this court reversed the judgment of the district court

and remanded the case "with directions to allow the respondent the opportunity to join the party, and to grant a new trial if the party is properly joined." 98 Nev. at 195, 646 P.2d at 1213.

At page 2 of their opposition to defendant's pre trial brief (AA-4:APP000505), plaintiffs stated that "Provident has delegated any rights it has to pursue this claim to the Plaintiffs."

On the other hand, Nev. R. Civ. P. 19 does not contain any language that allows the real party in interest that holds title to property to avoid joinder by signing a "notice of delegation of rights" like Exhibit "A" to plaintiffs' opposition to defendant's pre trial brief. (AA-4:APP000516-APP000518)

Plaintiffs also stated that Provident was "an IRA Custodian, not a Trustee, and that as a Custodian, is not under any obligation to sue on behalf of its clients." (AA-4:APP000505)

On the other hand, the first paragraph of the "Individual Retirement Custodial Account Agreement" (hereinafter "Custodial Agreement") attached as Exhibit B to plaintiffs' opposition to defendant's pre trial brief (AA-4:APP000520) states:

> The depositor named on the application is establishing a Traditional individual retirement account **under section 408(a)** to provide for his or her retirement and for the support of his or her beneficiaries after death. (emphasis added)

26 U.S.C. § 408(a) states:

> For purposes of this section, the term "individual retirement account" means **a trust created or organized in the United States** for the exclusive benefit of an individual or his beneficiaries, **but only if the written governing instrument creating the trust meets the following requirements**:
>
> * * * *
>
> (2) **The trustee is a bank (as defined in subsection (n))** or **such other person who demonstrates to the satisfaction of the Secretary** that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

26 U.S.C. § 408(n) defines the term "bank."

Consequently, despite any language in the Custodial Agreement to the contrary, controlling federal law provides that the IRA Custodian is the trustee of a trust. Controlling federal law also provides that the plaintiffs could not serve as their own trustees because they did not demonstrate their suitability to the Secretary.

As the trustee of each express trust required by 26 U.S.C. § 408(a), Provident was required to be joined as a party pursuant to Nev. R. Civ. P. 17(a). As quoted at page 16 of Appellant's Opening Brief, this court has stated that "[f]ailure to join an indispensable party is fatal to a judgment and may be raised by an appellate court *sua sponte*." Schwob v. Hemsath, 98 Nev. 293, 646 P.2d 1212 (1982).

At page 3 of plaintiffs' opposition to defendants' pre trial brief (AA-4:APP000506), plaintiffs quoted from the unpublished order in Deem v. Baron, 2:15-cv-00755-DS (D. Utah Apr. 14, 2016), attached as Exhibit C to their opposition. (AA-4:APP000527-APP000531)

Plaintiffs also cited Vannest v. Sage, Rutty & Co., Inc., 960 F. Supp. 651 (W.D.N.Y. 1997), and FBO David Sweet IRA v. Taylor, 4 F. Supp. 3d 1282 (M.D. Ala. 2014).

All three of these cases are not binding precedent, and all three cases have no persuasive value because they did not address the mandatory language in 26 U.S.C. § 408(a)(2). The three cases also did not identify any authority that permits an investor and a custodian to contract around the mandatory language adopted by Congress in 26 U.S.C. § 408(a)(2).

At page 6 of its order, the court of appeals quotes from FBO David Sweet IRA v. Taylor, 4 F. Supp. 3d 1282, 1285 (M.D. Ala. 2014), that "[a] self-directed IRA 'is unique in that the owner or beneficiary of the IRS acts as the trustee for all intent [sic] and purposes.'" The court in Sweet, however, did not mention the mandatory language in 26 U.S.C. § 408(a)(2) that provides otherwise.

The Sweet case involved a contract to purchase real estate, and the court did not

discuss any language like that contained in Paragraph 8.05(b) of each Custodial Agreement (AA-4:APP000523) or the express representation contained in Paragraph 8.05(f) of each Custodial Agreement (AA-4:APP000523) that any stock held by the IRA "has been registered or is exempt from registration under federal and state securities laws."

The court of appeals also cites Brady v. Park, 445 P.3d 395, 423 (Utah 2019), which involved a contract to purchase real estate and did not mention the mandatory language in 26 U.S.C. § 408(a)(2) or language like that contained in Paragraph 8.05(b) and Paragraph 8.05(f) of each Custodial Agreement.

Neither Sweet nor Brady v. Park cited any authority that would allow Provident to delegate to plaintiffs its role or its duties as Trustee of the express trust required by 26 U.S.C. § 408(a).

3. Each plaintiff was estopped from asserting a claim that the VCC notes were not registered because each plaintiff stated in writing to Provident that the claim did not exist.

Page 2 of the judgment entered on August 20, 2020 (AA-10:APP001369) states that "Plaintiffs are entitled to compensatory damages against Mr. Robinson for breach of contract, as well as under NRS § 90.660."

On the other hand, NRS 90.660(4) only applies to "[a] person who directly or

indirectly controls another person who is liable under subsection 1 or 3. . . ."

Plaintiffs claimed that VCC violated NRS 90.660(1)(b) because VCC sold promissory notes that were not registered as required by NRS 90.460.

Section 8.3 of the Custodial Agreement (AA-4:APP000522) expressly provides:

> f. *Investment Conforms to All Applicable Securities Laws.* **You represent to us** that **if any investment by your IRA is a security under applicable federal or state securities laws,** such investment **has been registered** or **is exempt from registration under federal and state securities laws**, and you release and waive all claims against us for our role in carrying out your instructions with respect to such investment. (emphasis added)

In Cheqer, Inc. v. Painters and Decorators Joint Committee, Inc., 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982), this court stated:

> Equitable estoppel has been characterized as comprising four elements: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped. [Citations omitted]

In the present case, each plaintiff received the income tax benefits associated with using monies held in an IRA or Solo K by representing to Provident that each promissory note was either not a "security" that needed to be registered pursuant to NRS Chapter 90 or was "exempt from registration."

Because each plaintiff received the income tax benefits of representing that each

VCC note was either not a "security" or was "exempt from registration," the doctrine of equitable estoppel prevents each plaintiff from asserting against Robinson a claim that each plaintiff expressly represented to Provident (the trustee holding the promissory note upon which each plaintiff based its claim) could not exist.

CONCLUSION

By reason of the foregoing, Robinson respectfully requests that this court review the order entered by the court of appeals on April 29, 2022, reverse the judgment entered by the district court in favor of plaintiffs, and remand this case to the district court with directions to enter judgment in favor of Robinson.

DATED this 25th day of July, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect X9 14 point Times New Roman.

2. I further certify that this brief complies with the type-volume limitations of NRAP 29(e) because, excluding the parts of the brief exempted by NRAP 32(a)(7), it is proportionately spaced and has a typeface of 14 points and contains 4,654 words.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

DATED this 25th day of July, 2022

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
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Attorney for Ronald J. Robinson

CERTIFICATE OF SERVICE

In accordance with N.R.A.P. 25, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and that on the 25th day of July, 2022, a copy of the foregoing **APPELLANT'S PETITION FOR SUPREME COURT REVIEW** was placed in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mail addressed to the following:

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/s/ /*Maurice Mazza /*
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.