IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Max Global, Inc. Appellants, vs. MEDAPPEAL, LLC, an Illinois Limited Liability Company, Respondent.	Supreme Court Nos. 83253

RESPONDENT'S ANSWER TO PETITION FOR REHEARING

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Respondent, Medappeal, LLC, by and through its attorney of record, Zachary T. Ball of The Ball Law Group, submits its Answer to Defendants' Petition for Rehearing as follows.

1. INTRODUCTION.

Defendants Margaret Reddy, Mohan Thalmarla and Max Global, LLC continue to grasp at straws in their futile attempt to avoid liability for their participation in the fraud committed against plaintiff Medappeal, LLC. Defendants failed to submit any relevant evidence when opposing Plaintiff's Motion for Summary Judgment and effectively waived their arguments. Defendants then filed an appeal in which they asserted several arguments that they did not assert in the District Court. Now taking a third bite at the apple, Defendants seek a rehearing based on an argument they did not assert in their appeal. Defendants are not allowed to repeatedly try to fix their own mistakes, they are not entitled to a rehearing and their Petition should be denied.

2. RELEVANT FACTS FROM THE APPELLATE RECORD.

Defendants essentially assert a single argument supporting their Petition for Rehearing. They argue that they are entitled to a rehearing because "the Court overlooked or misapprehended the District Court's analysis on privity as if Appellant was a Nevada spouse rather than Michigan." (Petition at 1:26-28.) They specifically argue that "[t]he *sole basis* for personal jurisdiction then,

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according to the Panel was that privity existed *because Vijay Reddy is related to MARGARET and MOHAN and no other reason*" and that "no rule of law was cited to state that familial connection, in and of itself, is enough to establish privity." (Petition at 2:23-25 and 3:11-12 [emphasis added].) Defendants are wrong and they grossly mischaracterize the opinion issued by the Panel.

The Panel did not hold that Defendants were subject to personal jurisdiction solely because of their personal relationships to defendant Vijay Reddy. The Panel did not hold that Defendants were in privity with their non-appealing co-defendants solely because of their personal relationships to defendant Vijay Reddy. To the contrary, the Panel correctly observed that Defendants did not meet their burden on appeal because they "fail[ed] to meaningfully address the district court's finding that they were ***in privity with the Illinois defendants***, one of whom (Vijay Reddy) is appellant Margaret Reddy's husband and appellant Mohan Thalmarla's nephew." (*Order of Affirmance*, July 17, 2022, at p. 2 [emphasis added].) The Panel then stated that it "cannot conclude that the district court's finding of privity was erroneous." (*Id.*)

Notably, the Panel did not place any significant weight on the fact that Defendants are personally related to Vijay Reddy. The Panel merely noted in passing that one of the Illinois defendants was related to Margaret Reddy and

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Mohan Thalmarla and this fact was not the sole basis supporting the Panel's decision. As clearly stated by the Panel, it instead relied on the entire appellate record and on Defendants' failure to address their privity with the non-appealing defendants.

The Panel's conclusion is not surprising as Defendants did not discuss the issue of privity anywhere in their Opening Brief; the word "privity" cannot be found in their Opening Brief. When asserting their contentions on personal jurisdiction, Defendants limited their argument to their contacts with Nevada and they did not address the business dealings with their co-defendants David Weinstein, Medasset Corporation, Kevin Brown, Visionary Business Brokers or Vijay Reddy that the District Court found to exist. For example, Defendants argued that "[t]here is nothing in the record that shows Appellants (sic) contacts with the forum state." (Defs.' Opening Brief at 12:5-6.) They likewise argued that "there is no evidence that Appellants had anything to do with Respondent, much less the State." (*Id.* at 12:9-10.) As observed by the Panel and by the District Court when it granted summary judgment, these arguments simply do not address the issue of Defendants' privity with the non-appealing defendants that was found to exist by the District Court.

The District Court rendered the following Conclusions of Law supporting its finding of privity between Defendants and the non-appealing defendants:

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- Defendant M. Reddy acknowledged having worked with defendants V. Reddy, Weinstein and Brown to sell, market, promote, or participate in the sale of the fraudulent business opportunities.
- The various defendants served as a broker (Brown/Weinstein), trainer (V. Reddy), seller (V. Reddy/Weinstein), marketer (Margaret/Weinstein/V. Reddy) or assisted in hiding proceeds from the sale and money laundering (Margaret/M. Thalmarla/Max Global Inc); these parties continuously relied on one another in furtherance of the civil conspiracy.
- Defendants have failed to produce any evidence calling into question the evidence produced by Medappeal.
- M. Thalmarla and M. Reddy have also failed to produce any relevant evidence contrasting Medappeal's evidence.
- M. Thalmarla and M. Reddy claim to have not been a party to the contract fails to address the role they played in the overarching scheme.

(Appellant's Appendix, Vol. 9, pp. 2186-87, 2191.) Defendants were obviously aware of these Conclusions of Law when they filed their Opening Brief. Whether through inadvertence or deliberate choice, they did not address them.

Defendants similarly did not argue to the District Court that they were not in privity with the non-appealing defendants despite Plaintiff's repeated references to their participation in the conspiracy and Plaintiff's arguments that

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Defendants laundered money for the non-appealing defendants. As examples, Plaintiff asserted the following arguments in its Motion for Summary Judgment:

- In furtherance of this fraudulent scheme, defendants use relatives to hide, launder, and protect their ill-gotten proceeds. This includes strawman purchases and unidentifiable and unexplainable transfers of large sums of money to family members or family-owned entities. (AA, Vol. 5, p. 1138.)
- Whether serving as a broker (Brown/Weinstein), trainer (V. Reddy), seller (V. Reddy/Weinstein), marketer (Margaret/Weinstein/V. Reddy) or hiding proceeds from the sale and money laundering (Margaret/M. Thalmarla/Max Global, Inc.), these parties continuously relied on one another in furtherance of the civil conspiracy. (AA, Vol. 5, p. 1155.)
- In M. Reddy's Response to Interrogatory No. 21, Margaret admits to having received $686,950.00 from Weinstein within a 23-month period – a payment of roughly $343,475.00 per year for making brochures, websites, and other "independent contract work." (AA, Vol. 5., p. 1156.)
- As set forth in detail above, the Defendants worked together, like a well-oiled machine, to create the illusion of a viable business, induce interested parties, such as Medappeal, to purchase the business, and then abscond with the proceeds, after a series of excuses and hollow promises. (AA, Vol. 5, p. 1157.)

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In opposition to Plaintiff's Motion for Summary Judgment, Defendants offered the following evidence:

- Declaration of Mohan Thalmarla. (AA, Vol. 9, p. 2047.) This declaration is eight paragraphs long and generally did not address any of the evidence submitted by Plaintiff. The only issues that Thalmarla addressed were his loan to M. Reddy and her investment in his companies.
- Declaration of Margaret Reddy. (AA, Vol. 9, p. 2049.) This declaration is 6 paragraphs long and generally did not address any of the evidence submitted by Plaintiff. The only issues that M. Reddy addressed were her investment with Thalmarla and his loan to her.
- Declaration of Vijay Reddy. (AA, Vol. 9, p. 2051.) This declaration is 15 paragraphs long and did not rebut any of the evidence submitted by Plaintiff.

These three Declarations are the only evidence that Defendants submitted to the District Court when opposing Plaintiff's Motion for Summary Judgment. Moreover, Defendants did not argue in their Opposition that they were not subject to personal jurisdiction in Nevada or that they were not in privity with the non-appealing defendants. (*See* Defs. Opposition to Motion for Summary Judgment, AA, Vol 9, p. 2036.)

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3. DEFENDANTS DO NOT MEET THEIR BURDEN TO OBTAIN A REHEARING BECAUSE THEY DID NOT RAISE THE ISSUE OF PRIVITY IN THEIR APPEAL.

Rule 40 of the Nevada Rules of Appellate Procedure governs Defendants' Petition for Rehearing. Among other things, Rule 40 provides that "any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority *shall be supported by a reference to the page of the brief where petitioner has raised the issue*." (Emphasis added.) Further, no point may be raised for the first time on rehearing. (*Sonner v. State*, 114 Nev. 321, 323 (Nev. 1998).) With these rules in mind, Defendants' Petition for Rehearing is improper and it should be denied.

Defendants cannot meet their burden to obtain a rehearing because nowhere in their Petition for Rehearing do they refer to the page or pages in their Opening Brief where they raised the issue of privity. However, Defendants have not simply committed a procedural mistake that can be cured and the Supreme Court will not be able to find the references through its own efforts. Defendants cannot refer to their Opening Brief because they did not raise the issue in their Opening Brief. As noted above, while Defendants contested the existence of personal jurisdiction, they did so only in the context of their own contacts to Plaintiff and Nevada. Defendants did not discuss their privity with

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David Weinstein, they did not discuss the District Court's findings that they laundered money for the non-appealing defendants and they did not discuss their business (as opposed to familial) relationships with Vijay Reddy.

Defendants did not argue in their appeal that they were not in privity with the non-appealing defendants. They did not address the District Court's many factual findings that they were in privity with the non-appealing defendants. Defendants cannot raise an issue in their Petition for Rehearing that they did not raise in their Opening Brief and their Petition should be denied.

4. <u>DEFENDANTS CANNOT ASSERT A LACK OF PERSONAL JURISDICTION FOR THE FIRST TIME ON APPEAL OR IN A PETITION FOR REHEARING.</u>

Defendants seemingly recognize that their Petition for Rehearing is improper due to their assertion of an issue that they did not assert in their Opening Brief. They attempt to salvage their Petition by arguing that "constitutional issues, such as due process may be raised at any time in the process." (Petition at 3:19-20.) Again, Defendants are wrong and they mischaracterize the authority on which they rely.

Initially, there is no doubt that a lack of personal jurisdiction is waived if the defense is not raised in the in the District Court. According to the Nevada Supreme Court, "[o]bjections to personal jurisdiction, process, or service of

process are waived, however, if not made in a timely motion or not included in a responsive pleading such as an answer." (*Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 656 (Nev. 2000).) The *Fritz-Hansen* court further held that "to avoid waiver of a defense of lack of jurisdiction over the person, insufficiency of process or insufficiency of service of process, the defendant should raise its defenses either in an answer or pre-answer motion." (*Id.* at 656-57.) As such, Defendants may not raise an alleged lack of personal jurisdiction for the first time on appeal.

Further, even if an issue can be raised for the first time on appeal, that does not mean that it may be raised for the first time in a petition for rehearing after an appeal is decided. As noted above, Nevada law expressly prohibits a party from raising an issue in a petition for rehearing that was not raised in the underlying appeal. (*Sonner v. State*, *supra*, 114 Nev. at 323.) This rule, which Defendants do not address, defeats their reliance on *McCullough v. State*, 99 Nev. 72 (Nev. 1983) and *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971).

McCullough does not assist Defendants because that opinion involved a direct appeal from the District Court. The Supreme Court was not evaluating a petition for rehearing after the issuance of an appellate decision and a judicial opinion is not authority for a proposition that was not considered. (*Jackson v.*

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Harris, 64 Nev. 339, 351 (Nev. 1947).) *McCullogh* is therefore irrelevant to the current dispute.

Defendants' reliance on *Blonder-Tongue* is likewise misplaced. While *Blonder-Tongue* did discuss the application of judicial estoppel, it not discuss the issue of privity and the opinion is also irrelevant. Defendants did not assert a lack of privity in the District Court, they did not raise the issue in their appeal and they cannot raise it for the first time in their Petition for Rehearing. Defendants' Petition should be denied.

5. <u>THE AUTHORITY CITED BY DEFENDANTS CONFIRMS THE EXISTENCE OF PRIVITY.</u>

Defendants cite to *Taylor v. Sturgell*, 553 U.S. 880 (2008) to support their argument that privity does not exist between themselves and the non-appealing defendants. Notwithstanding the fact that Defendants did not raise this issue in their appeal, in citing to *Taylor* they again ignore the facts found to exist by the District Court. The record on appeal establishes that the District Court was justified in reaching its decision that Defendants were in privity with the non-appealing defendants.

By relying on *Taylor*, Defendants concede that privity exists when there is "a pre-existing legal relationship between the person to be bound and a party to the judgment." (Petition at 4:25-26.) In this case, the District Court found that

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such a pre-existing relationship existed between Defendants and the non-appealing defendants. The District Court found that Margaret Reddy had a pre-existing business relationship with Weinstein and Brown to sell, market, promote, or participate in the sale of the fraudulent business opportunities. The District Court found that Margaret Reddy served as a marketer for Weinstein. The District Court found that Defendants assisted in hiding proceeds from the sale of the fraudulent business opportunities and in money laundering. These findings, which were uncontested by Defendants, more than justifies the District Court's findings and the Panel's conclusion that Defendants did not meet their burden on appeal. Defendants were in privity with the non-appealing defendants and their Petition for Rehearing should be denied.

6. CONCLUSION.

Defendants' Petition for Rehearing is not merely a rehash of their prior unsuccessful arguments but is in fact much worse. Defendants instead attempt to obtain a rehearing of their appeal based on an argument that they did not raise in the District Court or in their Opening Brief on appeal. In so doing, Defendants violate Rule 40 and well-established Nevada law. For this reason alone, Defendants' Petition should be denied.

Defendants' Petition is also improper because they continue to ignore facts in the appellate record that defeat their argument. The District Court expressly

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determined that Defendants were in privity with the non-appealing defendants based on facts submitted by Plaintiff and not contradicted by Defendants. These facts support the District Court's exercise of personal jurisdiction over Defendants and the Panel held that Defendants "fail[ed] to meaningfully address the district court's finding." Defendants are solely responsible for the content, or lack thereof, of their Opening Brief.

Defendants were given their day in court and they lost. They then filed an unsuccessful Opening Brief and were not able to meet their burden on appeal. Defendants now want to essentially file a second appeal based on a new argument. They cannot do so and their Petition for Rehearing should be denied.

Dated August 8, 2022.

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ATTORNEY'S CERTIFICATE

I, the undersigned attorney, certify the following:

1. I have read Plaintiff's Answer to Petition for Rehearing;
2. I hereby certify that this Answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Mac, version 16.63.1, in 14-point Times New Roman.
3. I further certify that this Answer complied with the page- or type-volume limitations of NRAP 40 because it is proportionately spaced, has a typeface of 14 points or more, and contains 2821 words.

Dated August 8, 2022.

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CERTIFICATE OF SERVICE

I certify that on August 8, 2022, I served a copy of this **ANSWER TO PETITION FOR REHEARING** upon all counsel of record to this Appeal by electronically serving the document utilizing the e-service provisions of the Nevada Supreme Court E-Flex System to the following address:

Andrew Wasielewski
andrew@wazlaw.com

Dated August 8, 2022.

/s/ Zachary T. Ball, Esq.
Zachary T. Ball, Esq.