

Electronically Filed  
Jan 11 2022 03:28 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CLEMENT MUNEY; CHEF EXEC  
SUPPLIERS, LLC,

Appellants,

VS.

DOMINIQUE ARNOULD,

Respondent.

## DOCKETING STATEMENT

Phillip A. Aurbach, Esq.

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

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

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

- |  |  |
|--|--|
| <input type="checkbox"/> Child Custody | <input type="checkbox"/> Termination of parental rights    |
| <input type="checkbox"/> Venue         | <input type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption      | <input type="checkbox"/> Juvenile matters                  |

No.

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

CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81354  
CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81355  
CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81356  
Robert Kern vs. EIGHTH JUDICIAL DISTRICT COURT, case # 83636  
CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 83869

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 pleaded and the results below:

1 The underlying action is a suit in which Plaintiff sued his business partner, a 50%  
2 owner of their company, for judicial dissolution, appointment of a receiver, an accounting,  
3 and breach of fiduciary duty. Defendant counterclaimed for claims including breach of  
4 fiduciary duty, conversion, and fraudulent concealment. Despite significant numbers of  
5 issues of fact still in dispute on nearly all claims, the District Court granted Plaintiff's  
6 motion for summary judgment, on all claims and counterclaims, and also held that Plaintiff's  
7 claim for dissolution was a derivative claim, entitling Plaintiff to fees and costs. Defendants  
8 appealed.  
9

10  
11 9. **Issues on appeal.** State concisely the principal issues in this appeal:

12 The primary issues on appeal are:

13 Whether the Court erred by granting summary judgment on Plaintiff's claim for  
14 breach of fiduciary duty, when the claim depended upon a factual determination of whether  
15 the fees paid by Muney were reasonable.

16 Whether the Court erred by granting summary judgment on Plaintiff's claim for  
17 breach of fiduciary duty, when the Court had previously held that determining the existence  
18 of a fiduciary duty in this matter required determinations of fact.

19 Whether the Court erred by granting summary judgment on Plaintiff's claim for an  
20 accounting, when the claim depended upon multiple factual determinations.

21 Whether the Court erred by granting summary judgment on Defendants' claim for  
22 breach of fiduciary duty, when the claim depended upon factual determinations of the  
23 reasonableness of Arnould's actions.

24 Whether the Court erred by granting summary judgment on Defendants' claim for  
25 conversion, when Plaintiff admitted in discovery to all elements of the cause of action.

26 Whether the Court erred by granting summary judgment on Defendants' claims for  
27 constructive fraud and fraudulent concealment, when the claims depended upon factual  
28 determinations of whether Arnould's actions constituted fraud.

Whether the Court erred by holding that a claim for dissolution was a derivative  
claim.

Whether the Court erred by holding that Defendants did not have standing to pursue their counterclaims.

Whether the Court erred by refusing to enforce Plaintiff's cooperation in discovery.

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:

N/A

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 the court and the attorney general in accordance with NRAP 44 and NRS 30. 130?

N/A

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

☐ 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:

N/A

13. **Trial.** If this action proceeded to trial how many days did the trial last? N/A

Was it a bench or jury trial?

N/A

14. **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**

15. **Date of entry of written judgment or order appealed from: 13 September, 2021. Attach a copy.**

16. **Date written notice of entry of judgment or order served: 13 September, 2021 . Attach a copy, including proof of service, for each order or judgment appealed from.**

1 (a) Service was electronic

2 17. **If the time for filing the notice of appeal was tolled by a post-judgment motion**

3 **(NRCP 50(b), or 59),**

4 N/A

5 18. **Date of notice of appeal was filed.** 8 October, 2021.

6 (a) If more than one party has appealed from the judgment or order, list the date of appeal

7 was filed and identify by name the party filing the notice of appeal:

8 N/A

9 19. **Specify the statute or rule governing the time limit for filing the notice of**

10 **appeal.**

11 NRAP 4(a)

12 20. **Specify the statute or other authority granting this court jurisdiction to review**

13 **the judgment or order appealed from:**

14 NRAP 3A(b)(8)

15 21. **List all parties involved in the action in the district court:**

16 Plaintiff: Dominique Arnould

17 Defendants: Clement Muney, Chef Exec Suppliers LLC

18 (a) If all parties in the district court are not parties to this appeal, explain in detail why those

19 parties are not involved in this appeal, e.g., formally dismissed, not served or other:

20 N/A

21 22. **Give a brief description ( 3 to 5 words) of each parties separate claims,**

22 **counter-claims, cross-claims or third-party claims, and the trial court's disposition of**

23 **each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and**

24 **the date of disposition of each claim. Attach a copy of each disposition.**

25 Dominique Arnould – Breach of Fiduciary Duty for leasing property from his company,

26 Judicial Dissolution of Chef Exec Suppliers– Granted on summary judgment. September 13,

27 2021.

28 Claim for attorneys fees – granted in full. November 16, 2021.

Clement Muney and Chef Exec Suppliers LLC: Breach of Fiduciary Duty, Conversion,

Money Had and Received, Unjust Enrichment, Constructive Fraud, Fraudulent

Concealment. All claims are based upon allegation that Arnould has been converting

company funds for his own use. All dismissed on summary judgment, September 13, 2021.

1 23. **Attach copies of the last filed versions of all complaints, counter-claims, and/or**  
2 **cross-claims filed in the district court.**

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

5 Yes.

6 25. **If you answered “No” to the immediately previous question, complete the**  
7 **following:**

8 (a) Specify the claims remaining pending below:

9 (b) Specify the parties remaining below:

10  
11 (c) Did the district court certify the judgment or order appealed from as a final judgment  
12 pursuant to NRCP 54(b)?

13 (d) Did the district court make an express determination, pursuant to NRCP 54(b), that  
14

15 26. **If you answered “No” to any part of question 25, explain the basis for seeking**  
16 **appellant review.**

17 N/A  
18  
19

20 DATED this 11<sup>th</sup> day of January, 2022.  
21

22 **KERN LAW**

23 /S/ Robert Kern

24 Robert Kern, Esq. NV Bar # 10104

25 601 S. 6<sup>th</sup> Street

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28 Attorney for Appellant