

IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla,
Max Global, INC.

Supreme Court No. 83763

Appellants,

vs.

MEDAPPEAL, LLC, an Illinois
limited liability company

Respondent.

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APPELLANTS' OPENING BRIEF

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APPELLANTS' NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations in order that the judges of this court may evaluate possible disqualification or recusal.

Appellants MARGARET REDDY and MOHAN THALAMARLA are individuals and have no parent corporations. MAX GLOBAL LLC is a limited liability company with no parent corporations.

The following law firms (with the listed attorneys) have appeared previously in this case:

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The following law firm is expected to appear in this court for Appellants:

//

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1 **I. JURISDICTION, ROUTING, STATEMENT OF ISSUES**

2 **A. JURISDICTION OVER THE APPEAL**

3 NRAP 3(A) sets for the areas in which the Nevada Supreme Court
4 can take jurisdiction over an appeal. The only applicable statute
5 allowing jurisdiction of this matter, as contained within NRAP 3(A)
6 is NRAP 3A(b)(1), appeal from a final judgment.

7 Prior Appellants' counsel filed the appeal of the orders for
8 granting attorney's fees and denial of Appellants' Huneycutt motion
9 on November 5, 2021. The appeal was timely filed.
10

11 Appellants appeal the following decisions:

12 a) Order for Attorney's Fees, entered in this action on the 6th
13 day of October, 2021.

14 b) Order Denying Appellants' Motion for Relief (Huneycutt
15 Motion) dated October 27, 2021.
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C. STANDARD OF REVIEW

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2 This court reviews de novo a district court's determination of
3 personal jurisdiction. *Fulbright & Jaworski LLP v. Eighth Judicial*
4 *District Court*, 342 P.3d 997 (Nev. 2015). Similarly, this Court
5 reviews questions of law under the de novo standard of review *Frantz*
6 *v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000).

7 This court reviews the district court's findings of fact for an
8 abuse of discretion, and this court will not set aside those findings
9 "unless they are clearly erroneous or not supported by substantial
10 evidence". *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948,
11 954, 35 P.3d 964, 968 (2001).

12 Appellants address the findings of fact made from documentary
13 evidence otherwise precluded from admission for legal reasons such as
14 privilege and evidentiary inadmissibility during ruling on motions
15 for summary judgment and as such, as it is involving a purely legal
16 question, these rulings are reviewed de novo. *Settelmeyer & Sons v.*
17 *Smith & Harmer*, 124 Nev. 1206, 1215 (2008).

18 This court interprets an unambiguous statute based on its plain
19 meaning by reading it as a whole and "giv[ing] effect to each. . .
20 word[]and phrase[]." *Davis v. Beling*, 278 P.3d 501, 508 (2012). We
21 do not look to other sources, such as legislative history, unless a
22 statutory ambiguity requires us to look beyond the statute's language
23 to determine the legislative intent. *State Div. of Ins. v. State Farm*
24 *Mitt. Auto. Ins. Co.*, 116 Nev. 290, 294 (2000).

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D. ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court and Appellants believe the Supreme Court shall retain this case.

E. ISSUES PRESENTED FOR REVIEW

Remand is necessary for the following questions for review:

Previously the Court ruled on June 17, 2022 denying Appellants' first appeal of the District Court's granting of Respondent's Motion for Summary Judgment.

Appellants' second appeal asserts review of those issues contained in the opposition of the Motion for Attorney's fees and Appellants' Motion for Relief. Further, to the extent that prior counsel did not raise issues before current counsel was hired, this appeal addresses those issues raised in post judgment motions after the first appeal and before the second appeal.

Does Nevada allow a foreign LLC to do business without a license?

Does commencing a lawsuit equate to maintaining a lawsuit?

Does NRS 86.5483 allow a foreign LLC to sue foreign defendants in Nevada without having to get a license or to do business in Nevada?

Is it the public policy in Nevada to allow foreign LLCs to create litigation in Nevada without being licensed?

I. STATEMENT OF CASE

A. RELEVANT DISTRICT COURT PROCEEDINGS

Illinois:

Complaint (Appellants are not Defendants)	October 1, 2018
Motion to Dismiss Illinois Complaint	December 14, 2018
Order Granting Motion to Dismiss	March 19, 2019

Nevada:

Complaint filed	April 12, 2019
Motion to Dismiss (personal jurisdiction)	August 1, 2019
Con't hearing, Motion to Dismiss, deny	August 20, 2019
First Amended Complaint	August 31, 2019
Order Denying Motion to Dismiss	October 4, 2019
Answer to First Amended Complaint	October 28, 2019
Motion for Attorney's Fees	August 31, 2021
Notice of Entry of Order for Motion for Attorney's Fees	October 6, 2021
Motion for Relief	April 29, 2021
Notice of Entry of Order for Denial of Motion for Relief	October 27, 2021
Notice of Appeal	November 5, 2021

B. NATURE OF CASE AND DISPOSITION BELOW

Respondent is a company owned by two IL attorney residents licensed to practice in the State of Illinois (*Vol 1, p196 first paragraph*). Respondent's owners contracted on behalf of another company to receive commercial business from 5 other defendants not

1 included in this appeal. (Vol 1, p9, paras 4-8). Respondent was
2 dissatisfied with the commercial business it received and sued Brown,
3 Weinstein, Vijay Reddy and two companies, Medasset and VBB, in
4 Illinois. (Vol 1, p13, paras 37-43).

5 In the complaint, Respondent mentions Appellant MARGARET REDDY
6 but does not name her as a defendant (Vol 1, p11, para27). MOHAN
7 THALAMARLA and MAX GLOBAL LLC are neither mentioned in the complaint,
8 nor sued in Illinois. (Vol 1, p8-20). The five entities objected to
9 personal jurisdiction assertions in Illinois and prevailed on a
10 Motion to Dismiss, (Vol II, p270).

12 Respondent, then filed another action in Nevada, naming the same
13 five defendants, plus Appellants as parties in this action (Vol II,
14 p313 line 24 - p314 line 18).

15 All defendants and Appellants filed another Motion to Dismiss
16 asserting lack of personal jurisdiction (Vol II, p366 lines 20-24).
17 Appellants filed affidavits stating no contacts with Nevada or with
18 this Respondent (Vol II, p376, 377, 379). Respondent asserted that
19 judicial estoppel precluded all 8 defendants, including Appellants
20 who were not named parties in Illinois, estopped them from arguing
21 lack of personal jurisdiction in Nevada (Vol II, p385 line 21 - p387
22 line 6). Appellants' motion was denied on August 20, 2019. (Vol III,
23 p538 lines 14-15). Appellants' attorneys did not attend the 08/20/19
24 hearing (Vol III, p526 lines 19-23 and p538 lines 23-24).

26 Appellants filed a Huneycutt motion based on the concept that it
27 is unlawful for a foreign LLC which has not done business in Nevada,
28

1 and is not licensed in Nevada filed and is still not licensed, to
2 commence a lawsuit in Nevada on April 12, 2019 (Vol IV Ex 30). The
3 Court denied this motion (Vol IV Ex 32).

4 Appellants appealed this Order and the Order granting attorney's
5 fees and costs on November 5, 2021.

6 Appellants previously appealed the District Court granting
7 Summary Judgment on July 16, 2021. This Court filed its Order
8 affirming decision on June 17, 2022 in related appeal 83253.
9

10 STATEMENT OF FACTS

11 For Purposes of this appeal, Appellants do not dispute the
12 following facts from the Notice of Entry of Order Denying Motions to
13 Dismiss filed on October 4, 2019. (Vol IV, p 764-768).

14 1: (Vol IV, p765 lines 21-23)

15 15: (Vol IV, p767, lines 10-11)

16 Appellants filed a Motion to Dismiss (in Nevada) separate from
17 anything filed in Illinois in which they argued that they were not
18 subject to personal jurisdiction in Nevada (Vol II, p366-379).
19

20 Respondent filed a complaint in Cook County, Illinois, arising
21 out of an agreement to purchase a medical appeals and medical
22 credentialing business (the "Purchase Agreement") (Vol I, p8 para 1).
23

24 There is not any dispute as to the following facts:

25 a) Respondent did not make Appellants parties in the Illinois
26 litigation. (Vol I, p8-9).

27 b) Respondent never communicated to any Appellant. (Vol II, ps
28 376, 377, 379).

1 c) Appellants are not parties to the contract. (*Vol I, p41-43*)

2 d) Respondent is an LLC, not licensed in the State of Nevada to
3 do business. (*Vol I, p8 para 1*).

4 e) Respondent has never done business in Nevada, other than to
5 commence this litigation. (*Exhibit 31*).

6 f) Respondent's principal place of business is in Illinois (*Vol*
7 *I, page 9, para 3*). Ostensibly Respondent does business in its
8 principal place of business, just not in Nevada (*Ex 31*).

9 No Appellant resides in Nevada (*Vol II, p376, 377, 379*). There
10 is no dispute that the Respondent is a foreign LLC who never did
11 business in Nevada and is not licensed to do business in Nevada, but
12 rather is licensed in Illinois and does business there (*Vol 1, page*
13 *9, para 3 and Ex 31*).

14 In the instant case, the district court did not attempt a prima
15 facia showing of either general or specific personal jurisdiction as
16 to any of these Appellants (*Vol III p513-539*). The District Court
17 solely ordered the motion to be dismissed because of judicial
18 estoppel and for no other reason (*Vol III, p541; Vol IV p767 line 15*
19 *- p768 line 11*).

20 There is nothing in the record that shows Appellants contacts
21 with the forum state. There is undisputed evidence neither
22 Appellants or Respondent have any contact with the forum state (*Vol*
23 *II, p376, 377, 379*). From their sole evidence of Appellants'
24 declarations, we see that they had no such contacts. *Id.* In fact,
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1 there is no evidence that Appellants had anything to do with
2 Respondent, and vice versa. *Id.*

3 **STATEMENT OF LAW AND DISCUSSION**

4 **II.**

5
6 **A. NEVADA DOES NOT ALLOW FOREIGN LLCs TO DO BUSINESS WITHOUT A**
7 **LICENSE TO DO BUSINESS**

8 The complaint and the amended complaint do NOT aver that Plaintiff
9 is licensed to do business in the State of Nevada. Furthermore,
10 Respondent's Opposition to the Motion for Relief states that Respondent
11 was never licensed and has never done business in the State of Nevada.

12 It appears that this issue is a matter of first appearance before
13 this court. **This is solely because Respondent is a foreign LLC**
14 **commencing a lawsuit without a license or any legal authority to do any**
15 **type of business in this court.** (*Exhibits 30 and 31*). There is no
16 evidence available that would serve to allow Plaintiff to maintain this
17 action against these Appellants in any event, because of Respondent's
18 assertions that it never was licensed and never did business here. *Id.*

19 Respondent never cured this defect, to the best of the knowledge
20 of the Appellants. *Id.* Respondent never made that fact known to any
21 Appellant or in any pleading, until after Judgment. (*Ex 31 and 32*).
22 Literally years of litigation occurred while so not licensed, in
23 violation of NRS 86. Simply, MEDAPPEAL cannot maintain this action and
24 any judgment granted to it must be immediately vacated.
25
26

27 Declarations were made and signed during the beginning of this
28 case which in essence, established with certainty, there was no

1 connection with the instant lawsuit and their personal lives in
2 Michigan / India.

3 MARGARET and MOHAN are non-resident defendants that reside over
4 1500 miles away. They had never met Medappeal employees or its
5 officers. They never had any dealings with the Plaintiff on any level.
6 They never spoke about Plaintiff to any other defendant in this case.

7 In the seminal case of *AA Primo Builders, LLC v. Wash.*, 245 P.3d
8 1190 (Nev. 2010), the Nevada Supreme Court rules in pertinent part, to
9 identify the difference between operating an LLC in a revoked status
10 and operating an LLC without a charter:
11

12 "Doing business as an LLC without filing the initial
13 organizational documents carries significant fines of up to
14 \$10,000. NRS 86.213(1). A revoked charter, by contrast,
15 carries no fines, only a \$75 penalty reinstatement fee. NRS
16 86.272(3). As for incentivizing judgment-proof LLCs to
17 litigate with wanton abandon, NRS 86.361 provides that
18 members of an unchartered entity risk individual liability
19 unless the default is cured. See *Nichiryo Am., Inc. v. Oxford*
20 *Worldwide, LLC*, No. 03:07-CV-00335-LRH-VPC, 2008 WL 2457935
21 (D.Nev. June 16, 2008); see also *Resort at Summerlin v. Dist.*
22 *Ct.*, 118 Nev. 110, 40 P.3d 432 (2002) (interpreting NRS
23 80.210 (now NRS 80.055) to condition commencement and
24 maintenance of a lawsuit for foreign corporations on initial
25 qualification rather than continuous upkeep of its
26 qualification). The Legislature has addressed the penalties
27 for an administrative default leading to charter revocation
28 and loss of capacity to sue is not among them." *Id.* (emphasis
added)

Currently, NRS 86.213 requires in pertinent part:

"1. Every person, other than a foreign limited-liability
company, who is purporting to do business in this State as a
limited-liability company and who willfully fails or neglects
to file with the Secretary of State articles of organization
is subject to a fine of not less than \$1,000 but not more
than \$10,000, to be recovered in a court of competent
jurisdiction."

1 The analogous statute for foreign limited liability companies is
2 NRS 86.548 which has the same penalty and additionally states in
3 pertinent part:

4 "2. Every foreign limited-liability company transacting
5 business in this State which fails or neglects to register
6 with the Secretary of State in accordance with the provisions
7 of NRS 86.544 may not commence or maintain any action, suit
or proceeding in any court of this State until it has
registered with the Secretary of State."

8 The Nevada Supreme Court has clearly stated that the penalty for
9 LLCs that DO BUSINESS in Nevada, but never register is not the same as
10 the LLC who has registered but let its registration lapse in revocation
11 status. It is clear, the curing of the willful failure to comply with
12 the requirement to register NEVER gives a company the right to bring or
13 maintain an action in this state.

14 Furthermore, in AA Primo Builders, commencement of a lawsuit is
15 doing business in Nevada. There is no ambiguity of this term as it was
16 used in that disposition (see also *Resort at Summerlin v. Dist. Ct.*,
17 118 Nev. 110, 40 P.3d 432 (2002)).

18 In the instant case, Respondent is a foreign LLC (licensed to do
19 business in Illinois) (Vol I, p8). It has its primary place of
20 business located in Illinois. *Id.* It conducts business in Illinois and
21 it intended to conduct business through the contract that it purchased,
22 through another entity that ostensibly owns it, but which connection to
23 this contract has never been properly established (Vol 1, page 52,
24 footnote 1). While it states it has not done business in Nevada by
25 creating a lawsuit in Nevada, it stated in Illinois that it has a right
26 to do business there, because it created a lawsuit there to sue
27 Appellants (see Vol 1, page 8). Clearly, Respondent has no right to do
28 business in Nevada. The fact that it has, subjects it to a fine of

1 \$10,000.00 and any liability for sanctions are passed through the LLC
2 to its managers, pursuant to *AA Primo Builders LLC*.

3 Further, Medappeal LLC cannot cure the problem by registering now.
4 It needs to dismiss this action, register and then bring it again.
5 There is simply no way for Medappeal to avail itself of this state's
6 jurisdiction until it follows the simple rules.

7 **B. COMMENCING A LAWSUIT IS DIFFERENT THAN MAINTAINING A LAWSUIT**

8 As this Court has stated in *Resort at Summerlin v. Dist. Ct.*, 118
9 Nev. 110, 40 P.3d 432 (2002), commencement of a lawsuit is totally
10 different than maintaining a lawsuit. It states this in 2 separate
11 places, first it states:

12
13 "In this original proceeding, we are asked to decide a
14 corporate law question of first impression: Whether Nevada's
15 "door closing" statute, NRS 80.210, bars foreign corporations
16 from **commencing or maintaining** suits in the courts of this
17 state when those corporations have initially qualified to
18 conduct business in Nevada pursuant to the laws of this
19 state, yet fail to comply with the statutorily prescribed
20 annual reporting requirements. We conclude that the express
21 terms of NRS 80.210 do not preclude such corporations from
22 commencing or maintaining suits in Nevada courts." *Id.* at 110
23 - 111. (emphasis added)

24 Next, it states again that the two words are different by
25 explaining a page later:

26 "This statute provides that a foreign corporation "which
27 fails or neglects to comply with the provisions of NRS
28 80.010 to 80.040, inclusive . . . may **not commence or**
maintain any action or proceeding in any court of this
state until it has fully complied with the provisions of
NRS 80.010 to 80.040, inclusive." *Id.* at 112. (emphasis
added)

29 Later on the same page, this Court ostensibly defines
30 "commencement" as:

1 "Accordingly, in this original proceeding, we decide
2 whether NRS 80.210 **bars a foreign corporation such as A B**
3 **from bringing suit** in courts of this state when the foreign
4 corporation initially qualifies to conduct business in
5 Nevada, yet fails to comply with Nevada's annual reporting
6 requirements." (emphasis added).

7 since it was no longer discussing "maintaining" in this context
8 any longer.

9 On the next page, this Court again stated that commencing
10 an action is "[i]n this case, however, it is uncontested that A
11 B was "doing business" in Nevada" in footnote 9. *Id.* at fn 9,
12 page 113. Further, it comes up again in footnote 10 on the same
13 page. Again, on pages 114 and 115 this Court concludes there is
14 a difference between commencement and maintaining.

15 Just to make sure there is no confusion that commencing and
16 maintaining DO NOT mean the same thing, Appellants define them
17 both. "Commencement of an action" is defined as "the time of
18 filing the petition" (see [https://www.lawinsider.com/dictionary/](https://www.lawinsider.com/dictionary/commencement-of-the-action)
19 commencement-of-the-action and see also NRS 41.010. Maintaining
20 is keeping a lawsuit going, apart from "bringing a lawsuit" as
21 can be seen in the language of NRS 41.085(3) which states in
22 pertinent part:

23 "An action brought by the heirs of a decedent pursuant to
24 subsection 2 and the cause of action of that decedent
25 **brought or maintained** by the decedent's personal
26 representatives which arose out of the same wrongful act or
27 neglect may be joined." (emphasis added)

28 In the instant case, it is clear that as in everyday english,
the law regards commencing a lawsuit as totally different than
maintaining a lawsuit. Since the legislature in 19 years has not

1 added in the ability of a foreign LLC to commence a lawsuit without
2 being licensed anywhere in NRS 86, it must be that it is
3 intentionally not allowing Respondent to do so in this matter.

4
5 **C. NRS 86.5483 WAS NEVER INTENDED TO ALLOW A FOREIGN LLC TO SUE**
6 **FOREIGN DEFENDANTS WITHOUT FIRST REQUIRING A LICENSE**

7 In *AA Primo Builders*, the court addresses companies like
8 Respondent which is a foreign LLC that is solely formed to sue
9 Appellants and the previous defendants not appealing. This Court
10 stated:

11 "Some corporations are primarily in the business of
12 collecting debts and/or filing lawsuits. But most
13 corporations are primarily engaged in some other business ...
14 The term "transact business" probably could be construed to
15 include pursuing litigation... Nevertheless, ... we cannot
16 conclude that it must be necessarily so construed." *AA*
17 *Primo Builders, LLC v. Wash.*, 245 P.3d 1190 (Nev. 2010),
18 quoting *Merriam-Webster's Collegiate Dictionary* 167, 1327
19 (11th Ed. 2005).

20 While in Nevada, the idea of what constitutes "doing business"
21 is not defined (see *AA Primo Builders*), the California Franchise
22 Board defines doing business as "actively engaging in any transaction
23 for the purpose of financial or pecuniary gain or profit."
24 [https://www.ftb.ca.gov/file/business/doing-business-in-](https://www.ftb.ca.gov/file/business/doing-business-in-california.html)
25 [california.html](https://www.ftb.ca.gov/file/business/doing-business-in-california.html)

26 In Illinois, doing business is defined as "include[ing] every
27 trade, occupation, profession, and other lawful purpose, whether or
28 not carried on for profit." (see 805 ILCS 180 1-5).

29 In Delaware, the following statute applies to foreign LLCs doing
30 business in that state:

1 "§ 18-907. Doing business without registration.

2 (a) A foreign limited liability company doing business in
3 the State of Delaware may not maintain any action, suit or
4 proceeding in the State of Delaware until it has registered
5 in the State of Delaware, and has paid to the State of
6 Delaware all fees and penalties for the years or parts
7 thereof, during which it did business in the State of
8 Delaware without having registered.

9 (b) The failure of a foreign limited liability company to
10 register in the State of Delaware does not impair:

11 (1) The validity of any contract or act of the foreign
12 limited liability company;

13 (2) The right of any other party to the contract to
14 maintain any action, suit or proceeding on the contract; or

15 (3) **Prevent the foreign limited liability company from**
16 **defending any action, suit or proceeding in any court of**
17 **the State of Delaware.**

18 (c) A member or a manager of a foreign limited liability
19 company is not liable for the obligations of the foreign
20 limited liability company solely by reason of the limited
21 liability company's having done business in the State of
22 Delaware without registration.

23 (d) Any foreign limited liability company doing business in
24 the State of Delaware without first having registered shall
25 be fined and shall pay to the Secretary of State \$200 for
26 each year or part thereof during which the foreign limited
27 liability company failed to register in the State of
28 Delaware." (emphasis added)

 The Nevada Legislature, presumably taking the Delaware lead
(as Delaware is the leader in many business litigation rules)
adopted NRS 86.5483 to allow companies in Nevada to defend
themselves in Nevada regardless if they were doing business or
not, solely as a benefit to Nevada citizens so they would not
have to chase Foreign LLCs around the country to be sued. The
Legislative remarks from 2003, discussing SB 436 state in
pertinent part:

 "The third proposal involves statutes setting forth
activities that do not require qualification for doing
business in Nevada. The referenced sections are Sections
141, 142, 175, and 176. These sections allow foreign
limited-liability companies under NRS Chapter 86, and

1 limited partnerships under NRS Chapter 88, the same list of
2 activities that foreign corporations currently can engage
3 in that do not trigger the necessity of qualifying to do
4 business in Nevada. Those sections are under NRS Chapter 80
5 currently. There are two options that were suggested:

6 • Delete this extension of the law in NRS Chapters 86
7 and 88, so it would delete the new sections of the bill.

8 • Repealing some of the activities that may cause
9 concern as far as those activities that would not
10 constitute doing business in the state. Those activities
11 are listed on the bottom of page 3 of the Work Session
12 Document (Exhibit P), which include: making sales through
13 independent contractors; soliciting or receiving orders
14 outside the state through or in response to letters or
15 catalogs or other forms of advertising; accepting the
16 orders outside the state and filling them by shipping goods
17 into the state; and creating or acquiring indebtedness,
18 mortgages and security interests in real or personal
19 property.

20 Two additional activities were also suggested, if the
21 Committee were to choose to go with the deletion from
22 existing law of these provisions: securing or collecting
23 debts or enforcing mortgages and security interests, and
24 owning real or personal property.

25 Finally, in Section 266, page 149, the penalty for a
26 violation of NRS Chapter 602, "Doing Business Under Assumed
27 or Fictitious Name," or falsely filing a certificate of
28 termination is changed. Currently in the law, it is a
misdemeanor but the amendment would make that a fine
instead. The suggestion raised would be to maintain the
existing misdemeanor penalty.

Chairman Anderson:

Ms. Buckley, do you have a feeling as to how you want
to proceed with S.B. 436?

Assemblywoman Buckley:

Just a comment on paragraph c, the third proposal, the
general concept is that you subject yourself to
jurisdiction or you can be sued here if you have minimum
contacts with the state. That means that if a company does
something to you, you are not forced to go to Florida, if
they come into the state. It's this minimum contact
concept, which Mr. Brown can explain in full, but generally
that's the law now. It just gives me a little concern to
begin to do this laundry list so that if something a
company does may not fall squarely within it, but they have
done something in our state and harmed someone, that we
have lost jurisdiction. Perhaps Mr. Fowler can provide more
information, but he is gone. I suggest eliminating this
(paragraph c) and if he can bring back more explanations to
the Committee, maybe the Assembly would reverse. I don't

1 feel comfortable taking away Nevada jurisdiction without a
2 better reason, so that suggestion under paragraph c is to
3 leave the wall the way it is now unless there's a better
4 reason presented.

5 The rest of the amendments I agree with. The clerks
6 brought up changing the fictitious names, as did Mr.
7 Carpenter, related to telling people when the certificate
8 is expiring; I think those are good suggestions so that you
9 can track down when people change their names. Likewise the
10 first part of paragraph 3, it makes the law more clear. If
11 you are amenable, I would do an Amend and Do Pass motion,
12 including all of the amendments on our Work Session
13 Document (Exhibit P) to include 1, 2, and 3.

14 Risa Lang, Committee Counsel:

15 I want to clarify on amendment 3, whether we are going
16 with c(i) or c(ii)? I think Ms. Buckley was suggesting
17 c(i).

18 Assemblywoman Buckley:

19 Yes, amendment 3c(i), just delete it and keep the law
20 the way it is now.

21 Chairman Anderson:

22 We are not doing 3c(ii)?

23 Assemblywoman Buckley:

24 No, we are doing 3c(i) instead of 3c(ii).

25 Chairman Anderson:

26 Are we doing the additional activities that might also
27 be considered for deletion?

28 [Assemblywoman Buckley indicated no.] OK, we are not
doing that part at all—just deleting the new sections of
the bill.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS

S.B. 436 WITH AMENDMENTS 1, 2, AND 3a, 3b, 3c(i), and
3d AS

OUTLINED IN THE WORK SESSION DOCUMENT.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

The bill has passed. Mr. Brown, it is your turn to
defend this bill on the Assembly Floor." Legislative
remarks, S.B. 436, pages 89-92 (2003).

<https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2003/SB436,2003.pdf>

In the legislative history, it is clear that the true
intent of the NRS 86.5483 is to limit the effectiveness of the
statute to allowing Foreign LLCs to be sued and to not limit the
question of personal jurisdiction over them to how or what kind

1 of business they do. This has nothing to do with the business
2 of Respondent, which was solely formed for the sole purpose of
3 bring this action against Appellants and others. As it is doing
4 the business for which it was designed, therefore, it is doing
5 business in Nevada.

6 As it is doing business in Nevada, it cannot be allowed to
7 commence an action in Nevada. Therefore, the action it did
8 bring must be dismissed immediately and this case go back to the
9 District Court pursuant to the law in the State of Nevada, as it
10 is in the states of Illinois, California and Delaware.
11

12
13 **D. NEVADA PUBLIC POLICY DID NOT CHANGE SINCE 2003 TO ALLOW FOREIGN**
14 **LLCS TO SUE WITHOUT A LICENSE**

15 NRS 86.5483(4) states in pertinent part:

16 "4. The fact that a person is not transacting business in
17 this State within the meaning of this section:

18 (a) **Does not affect the determination of whether any court,**
19 **administrative agency or regulatory body in this State may**
20 **exercise personal jurisdiction over the person in any civil**
21 **action, criminal action, administrative proceeding or**
22 **regulatory proceeding; and**

23 (b) Except as otherwise provided in subsection 3, does not
24 affect the applicability of any other provision of law with
25 respect to the person and **may not be offered as a defense**
26 **or introduced in evidence in any civil action, criminal**
27 **action, administrative proceeding or regulatory proceeding**
28 **to prove that the person is not transacting business in**
this State, including, without limitation, any civil
action, criminal action, administrative proceeding or
regulatory proceeding involving an alleged violation of
chapter 597, 598 or 598A of NRS." (emphasis added)

29 This provision of the law has not changed since 2003, in the 19
30 years that NRS 86.5483 as been established law after modification by
31 bill number S.B. 436. Nothing about NRS 86.5483 can be used to
32 establish or disestablish any type of personal jurisdiction that

1 Respondent has to bring a lawsuit in the State of Nevada. Further,
2 nothing about this statute can be used to justify ANY FACT in any
3 civil action, INCLUDING THIS CIVIL ACTION.

4 Notwithstanding that Respondent was NOT the contracting party
5 with Appellants and that there is no contractual relationship with
6 Appellants and Respondent on any level, it is clear that Respondent
7 was formed solely to do business in Nevada for the purpose of suing
8 the non-appealing Defendants in Illinois and for no other reason.

9 Despite the fact that this law was amended in both 2015 and
10 2017, the legislature insists that the list in NRS 86.5483(1) CANNOT
11 be used to justify that a foreign LLC is NOT transacting business
12 because it is NOT doing something NOT listed in subsection (1) a-m.

13 In this instant matter, Respondent was solely formed to bring
14 this lawsuit, first in Illinois and then in Nevada. By bringing the
15 lawsuit in Illinois, it organized itself, paid its dues, did the
16 required statutorily mandated actions and then after it lost the
17 ability to sue in Illinois, came to Nevada. However, while its sole
18 business is bringing this lawsuit, it never cooperated with the
19 Nevada Revised Statutes and never intends to (Ex 31).

20 There is no statute in Nevada that allows it to commence a
21 lawsuit as a foreign LLC without registering in Nevada. There is one
22 statute that says it cannot. There are two cases that say it cannot.
23 The statute that allows it to maintain a case, is ambiguous and
24 furthermore, does not affect its inability to COMMENCE a case. The
25 preclusion from COMMENCING a case without being licensed could have
26 been changed in 2015 and 2017 but was not.

This provision clearly supports Appellants who all insist that the Nevada Legislature NEVER intended any LLC, while not being licensed here, to be able to commence a lawsuit here.

III. CONCLUSION

For all of the reasons set forth, Appellants request remand of all causes of action regarding these appealing Appellants.

Dated this 21st day of June, 2022.

THE WASIELEWSKI LAW FIRM, LTD.

/s/ Andrew Wasielewski

By:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document and the Appendix was filed electronically with the Nevada Supreme Court on February 14, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

MICHAEL A SINGER, Esq.
STEPHEN HABERFIELD, Esq.
Supreme Court Settlement Judge

ZACHARY T Ball, Esq.

Attorneys for Respondents