MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
Attorney for defendant/appellant,
Ronald J. Robinson

IN THE COURT OF APPEALS OF THE 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-COA

APPELLANT'S PETITION FOR REHEARING

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:

APPELLANT'S PETITION FOR REHEARING

Pursuant to Nev. R. App. P. 40(a)(1), Ronald J. Robinson (hereinafter "Robinson") petitions the court of appeals for rehearing of its order of affirmance, filed on April 29, 2022, on the grounds that the court has "overlooked or misapprehended" the points of law and fact discussed in detail below.

Nev. R. App. P. 40(a)(2) provides:

> **Contents.** The petition shall state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted.

ARGUMENT

1. The Order of Affirmance relies on multiple "facts" that are directly contradicted by evidence in the record on appeal or that are not supported by substantial evidence.

The primary flaw with the court's order of affirmance is that the court treats arguments made by plaintiffs' counsel in its pleadings and Answering Brief as if they are "facts" even though plaintiffs did not support those arguments with admissible evidence. As quoted at page 40 of Appellant's Opening Brief and page 30 of Appellant's Reply Brief, "[a]rguments of counsel are not evidence and do not establish the facts of the case." Jain v. McFarland, 109 Nev. 465, 475-76, 851 P.2d

450, 457 (1993).

At page 1 of the order, the court states that "[t]o incentivize the purchase of the notes, the promissory notes came with a personal guaranty signed by Robinson."

This statement ignores Robinson's testimony that "I had intended to guarantee some of them but not all of them" (AA-4:APP000624, ll. 9-10) and "that's the reason why I asked her to allow me to put initials on anyone she was going to use, because I wanted to be in a position to determine that factor." (AA-4:APP000624, ll. 12-14)

At page 4 of the order, the court stated: "After Hotchkiss's testimony, Robinson's assistant, Alisa Davis, testified and discredited Robinson's version of events." Robinson's testimony was instead corroborated by the following testimony by Alisa Davis:

> Q: But as for VCC, it was agreed and understood that she [Julie Minuskin] would have blank pre-signed promissory note that she would go out have the investors complete, fill in the name of the investor, the amount and the date, but everything else was the same?
>
> A: It was not initially to my understanding, we – everything that she had gone back and forth with editing that promissory note, **it was never supposed to be signed**. She never – like he never wanted it – **Ron Robinson never wanted it signed**. (emphasis added)
>
> (AA-4:APP000695, ll. 1-8)

At page 4 of the order, the court also states that "she [Alisa Davis] stated she

sent the pre-signed notes out and she did not take any actions without Robinson's direction."

As stated at page 16 of Appellant's Reply Brief, neither the email, dated September 17, 2013 (AA-6:APP000900-APP000901) nor the email, dated September 18, 2013 (AA-6:APP000904-APP000907) included any language authorizing Minuskin to use the pre-signed promissory note without first obtaining Robinson's authorization.

Ms. Davis also did not testify that Robinson approved every action she took. Ms. Davis instead testified that "I worked for whoever asked me to do something." (AA-4:APP000689)

Page 1 of the order also states that "VCC also mentioned the personal guaranty in its marketing materials," but as demonstrated at page 11 of Appellant's Reply Brief, only two (2) of the promissory notes were dated within the time period covered by the agreement, dated December 7, 2012. (AA-6:APP00865)

The order also mentions "a PowerPoint presentation," but as stated at page 15 of Appellant's Reply Brief, plaintiffs did not prove that their notes were part of the $1,000,000 "Maximum Offering" mentioned in the powerpoint slide. (AA-6:APP000947)

At page 2 of its order, the court states that "Hotchkiss's experience was typical of the many other people that provided money to VCC in exchange for a promissory note." On the other hand, in footnote 2 at page 1 of its order, the court acknowledges that "Hotchkiss was the only plaintiff to testify at trial."

Because Mr. Hotchkiss was the only plaintiff that testified at trial, the record on appeal does not contain **any** evidence that proves that any other plaintiff was introduced to VCC in the same way as Mr. Hotchkiss or loaned money to VCC under the same conditions.

At page 4 of its order, the court states that "Provident's agreement with Hotchkiss **and the other noteholders** made it clear that Provident was only a passive intermediary." (emphasis added)

On the other hand, Trial Exhibit 1 proves that Provident (and not each individual plaintiff) was expressly identified as the "Holder" of each promissory note. (AA-5:APP000821, AA-5:APP000825, AA-5:APP000829, AA-5:APP000833, AA-5:APP000836, AA-5:APP000840, AA-5:APP000845, AA-5:APP000848, AA-5:APP000851, AA-5:APP000854, AA-5:APP000857)

Furthermore, as stated at page 2 of Appellant's Reply Brief, each "Individual Retirement Custodial Account Agreement" stated that "[t]he depositor named on the

application is establishing a Traditional individual retirement account under Section 408(a) . . . .” (AA-4:APP000520)

As quoted at page 18 of Appellant’s Opening Brief, 26 U.S.C. § 408(a)(2) required that the trustee be “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.” (emphasis added)

Plaintiffs did not prove that any individual plaintiff was qualified to serve as his or her own trustee under 26 U.S.C. § 408(a) or that any individual plaintiff actually served as his or her own trustee. Mr. Hotchkiss did not provide any such testimony. (AA-4:580, l. 21 to AA-4:605, l. 5)

At page 3 of the order, the court states that Provident “simply performed the transaction between VCC and the noteholders in the amounts the noteholders directed.” **No witness provided any such testimony.**

At page 6 of the order, the court also states that “[t]he IRA agreements at issue gave the noteholders, not Provident, the power to direct the investment of their assets.” Again, Provident was the “holder” of each promissory note.

Moreover, as discussed at pages 2 and 3 of Appellant’s Reply Brief, paragraph

8.05(a) of the Custodial Agreement states that "**your selection of investments must be limited** to those types of investments that **comport with our internal policies, practices, and standards and are deemed administratively feasible by us**." (AA-4:APP000523)

Paragraph 8.05(b) of the Custodial Agreement (AA-4:APP000523) states that Provident had "**the right not to effect any transaction/investment"** that we determine **"in our sole discretion does not comport with our internal policies, practices, or standards."** (emphasis added)

The court also states that "[t]here is no evidence that Provident reallocated or otherwise managed the noteholders' funds without the express direction of the noteholders themselves," but as noted above, plaintiffs were not the noteholders.

In the last full paragraph at page 6 of its order, the court states that "[f]or all intents and purposes, the noteholders acted as trustees and were the managers of their own funds, as beneficiaries of the self-directed IRA." On the other hand, not a single witness testified that any note signed by VCC in favor of Provident was managed by the individual beneficiary of the IRA and not by Provident.

As stated above, 26 U.S.C. § 408(a)(2) expressly prohibited each plaintiff from serving as its own trustee.

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

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, the Nevada Supreme 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 6 of the order, the court 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 also cites Brady v. Park, 445 P.3d 395, 423 (Utah 2019), which also

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. Provident's receipt of stock in VCC in "full and final satisfaction" of each note prevents each plaintiff from enforcing Robinson's guarantee on each note.

At page 3 of the order, the court states:

> According to VCC's Chapter 11 bankruptcy plan, its issuance of these shares represented full and final satisfaction of VCC's debt on the promissory note. **However,** the same plan listed the noteholders' interest, including Hotchkiss's, as an "impaired" interest under the bankruptcy code. (emphasis added)

The court's use of the word "however" to separate the two sentences in this paragraph suggests that the court misunderstands what it means when "a class of claims or interests" is identified as "impaired" pursuant to 11 U.S.C. § 1124.

In this regard, the Revision Notes to the 1978 Act state in part:

> Section 1124 does not include payment "in property" other than cash. Except for a rare case, claims or interests are not by their terms payable in property, but a plan may so provide and those affected thereby may accept or reject the proposed plan. They may not be forced to accept a

plan declaring the holders' claims or interests to be "unimpaired." Senate Report No. 95-989.

As a result, the Plan's inclusion of "all Claims held by the Unsecured Noteholders" in Class 3 and the statement that "Class 3 is an Impaired Class" does not mean that each Holder's receipt of "its Pro Rata share of the Common Stock Distribution" and "its Pro Rata Share of the Series A Preferred Distribution" would leave any part of the Class 3 claim unpaid or unsatisfied. AA-10:APP001471.

Section III(B)(3) of VCC's first amended Chapter 11 plan (AA-10: APP001471) instead states that each Class 3 creditor's receipt of "its Pro Rata share of the Common Stock Distribution" and "its Pro Rata Share of the Series A Preferred Distribution" would result in "**full and final satisfaction**, compromise, release, and discharge **of each Allowed Class 3 Claim**." (emphasis added)

At page 7 of the order, the court 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), in their Answering Brief.

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. (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)

Furthermore, in the Tharp case, SBA did not receive stock in exchange for debt according to an agreed formula like the present case. 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.

Similarly, in Beardslee, the SBA received a promissory note from Freeport Hardwood that the SBA "credited to the account of Beardslee Lumber." 562 F.2d at 1017. After the SBA settled its claim against Freeport Hardwood for $90,000, 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 the order, the court cites First Interstate Bank v. Shields, 102 Nev. 616, 730 P.2d 429 (1986), which also did not involve an exchange of debt for stock like the present case.

Unlike Tharp, Beardslee or Shields, no plaintiff sold its VCC stock and then sued for "the balance of the debt not satisfied." Instead, plaintiffs asked the 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 any 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 the order, the court also states that "the relevant question becomes by what amount must the plaintiffs' award be offset against their receipt of VCC stock?" This statement, however, is not consistent with Tharp, Beardslee, or Shields because no plaintiff sold its VCC stock and then sued for "the balance of the debt not satisfied."

The court's statement also 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 did not cite any authority that permits plaintiffs to simply ignore the bankruptcy court's binding determination 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." (emphasis added) *See* paragraph Z of order confirming first amended Chapter 11 plan at AA-

10:APP001451, ll. 10-13.

With respect to the court'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 the order, the court 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, because no plaintiff appealed the formula adopted by the bankruptcy court, the bankruptcy court's order conclusively resolves any issue regarding the number of VCC shares required for "full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 3 Claim," (AA-10:APP001297)

In the last sentence at page 9 of the order, the court states that "Hotchkiss testified vaguely that another source told him his 15,000 shares were worth five

dollars each." When read in context, Mr. Hotchkiss testified that VCC deposited 15,000 shares of VCC stock into Mr. Hotchkiss' account at Provident, and his account statement showed that each share of stock had a value of $5.00. (AA-4:APP000600, 11. 11-23) The district court's judgment does not give Robinson any credit for the $75,000.00 in stock Hotchkiss admits that he received.

At page 10 of the order, the court 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 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 this court 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.

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)

This evidence proves that shares of VCC stock had more value on the day that Robinson testified than they had on the date that VCC confirmed its Chapter 11 plan.

Mr. Hotchkiss, on the other hand, based his opinion of value 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 confirmed plan did not impose any such restriction on either the Common Stock Distribution (AA-10:APP001289, ll. 9-13) or the Series A Preferred Distribution (AA-10:APP001292, ll. 21-25), it was "clear error" for the district court to conclude that each share of VCC stock had no value.

4. Robinson timely raised the statute of limitations in NRS 90.670.

In footnote 4 at page 10 of the order, the court states that "[f]or the first time, Robinson argues here that the statute of limitation should have barred the claims under Nevada's securities statutes." The filed pleadings instead prove that Robinson timely

raised the statute of limitations at page 2 of his joinder, filed on May 27, 2020. (AA-10:APP001320)

Just like the appellant in Williams v. Cottonwood Cove Development Co., 96 Nev. 857, 619 P.2d 1219 (1980), Robinson was not required to amend his answer pursuant to Nev. R. Civ. P. 15 before Robinson raised the statute of limitations defense in his joinder.

In footnote 4 at page 11 of the order, the court states that "Robinson did not assert the statute of limitations defense at trial, so Hotchkiss did not have an opportunity to respond."

On the other hand, in the reply brief filed by plaintiffs on May 28, 2020 (AA-10:APP001333-APP001335), Hotchkiss had the opportunity to respond to the statute of limitations argument raised by Rodriguez at pages 10 to 13 of his opposition to plaintiff's motion for damages and attorneys' fees. (AA-10:APP001260-APP001263)

In the reply brief filed by plaintiffs on June 1, 2020 (AA-10:APP001349-APP001352), Hotchkiss had the opportunity to respond to Robinson's joinder. (AA-10:APP001320)

5. Plaintiffs did not prove that each promissory note was a "security" as defined in NRS 90.295.

At page 11 of its order, the court cites the "family resemblance" test in State v.

Friend, 118 Nev. 115, 40 P.3d 436 (2002), and at page 12 of its order, the court states that "[e]very factor supports Hotchkiss's position."

On the other hand, the court's order does not acknowledge that Provident Trust Group was identified as the holder/payee of every promissory note. (AA-5:APP000821, APP000825, APP000829, APP000833, APP000836, APP000840, APP000845, APP000848, APP000851, APP000854, and APP000857) The record on appeal does not contain any evidence that proves the "motivations" of Provident Trust Group to loan money to VCC.

At page 12 of its order, the court states that "Robinson and VCC broadly distributed the notes to several states." Robinson instead testified that "Provident Trust was actually leading the investors" to Retire Happy. (AA-4:APP000621, l. 23 to APP000622, l.2)

At page 12 of its order, the court states that "Hotchkiss indicated that he purchased a note because he found the nine-percent interest rate appealing; he expected to make money on the note" and that "[t]his also suggests the notes were securities." Provident Trust (not Hotchkiss) is the holder of the Hotchkiss note.

The court also states that "Robinson failed to register the securities, violating securities laws." As quoted at pages 43 and 44 of Appellant's Opening Brief, in

Section 8.3 of the Custodial Agreement (AA-4:APP000522), each plaintiff expressly represented to Provident 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**. . . ." (emphasis added)

Because each plaintiff received the income tax benefits of having Provident Trust Group loan monies to VCC, each plaintiff was estopped from asking the district court to award damages against Robinson as if Section 8.3 of each Custodial Agreement did not exist. *See* Cheqer, Inc. v. Painters and Decorators Joint Committee, Inc., 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982).

6. The attorney's fees awarded by the district court were not authorized by agreement or statute, and the amount awarded is not reasonable.

The judgment entered against Robinson includes attorney's fees of $253,565, which is equal to thirty percent (30%) of the $845,217 identified by plaintiffs as "Total Principal, Int + Late Fee" in the statement of damages, filed on February 3, 2020. (AA-3:APP000496-APP000498)

As stated at page 56 of Appellant's Opening Brief, the $845,217 includes interest charged at 9% per annum from February 2015 **to February 2020** even though VCC confirmed its Chapter 11 plan on September 5, 2018, and each plaintiff received

"full and final satisfaction" of its allowed Class 3 Claim more than one (1) year before February 2020.

At page 14 of its order, the court states that "[t]he district court here considered the *Brunzell* factors," but plaintiffs' did not support their request for attorneys' fees with any evidence of "(2) *the character of the work to be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation" or "(3) *the work actually performed by the lawyer*: the skill, time and attention given to the work." Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

In the present case, plaintiffs did not produce any evidence that proves what work was "actually performed" during the "well over 250 hours" that Mr. Liebrader **guessed** he spent on the case. (AA-10:APP001250, ¶ 13)

Plaintiffs also did not present any expert testimony regarding the reasonable value of the services provided by plaintiffs' counsel. *See* Schwartz v. Schwerin, 85 Ariz. 242, 246-247, 336 P.2d 144, 146-147 (1959).

/ / /

CONCLUSION

By reason of the foregoing, Robinson respectfully requests that this court withdraw its order of affirmance, filed on April 29, 2022, and reverse the findings of fact and conclusions of law entered by the district court on August 20, 2020.

DATED this 16th day of May, 2022.

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

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorney for defendant/appellant
Ronald J. Robinson

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 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 limitations on length in Nev. R. App. P. 40(b)(3) because it contains only 4,435 words.

DATED this 16th day of May, 2022.

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

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorney for defendant/appellant
Ronald J. Robinson

CERTIFICATE OF SERVICE

In accordance with Nev. R. App. P. 25, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and that on the 16th day of May, 2022, a copy of the foregoing APPELLANT'S PETITION FOR REHEARING was served electronically through the Court's electronic filing system to the following individuals:

David Liebrader, Esq.
LAW OFFICES OF DAVID LIEBRADER, APC
3960 Howard Hughes Pkwy, Ste. 500
Las Vegas, NV 89169

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