

Case No. 84699

IN THE SUPREME COURT FOR THE STATE OF NEVADA

**PHILLIP J. FAGAN, JR. AN INDIVIDUAL AND AS TRUSTEE OF THE
PHILLIP J. FAGAN, JR. 2001 TRUST**

Appellants,

vs.

AAL-JAY, INC., A NEVADA CORPORATION

Respondent.

Petition from the Eighth Judicial District Court, Clark County, Nevada
District Court Case No. A-21-832379-C

The Honorable Erika Ballou

**RESPONDENT'S NOTICE REGARDING WHETHER
CHRISTIANO DE CARLO AND LAIL LEONARD ARE PROPER
PARTIES TO THIS APPEAL**

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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S NOTICE REGARDING WHETHER
CHRISTIANO DE CARLO AND LAIL LEONARD ARE PROPER
PARTIES TO THIS APPEAL**

Factual Background

On April 6, 2021, AAL-Jay filed a Complaint and asserted claims against Philip J. Fagan individually and the Philip J. Fagan Jr. 2001 Trust (the “Fagan Defendants”). On May 2, 2021, AAL-Jay filed its First Amended Complaint. The Fagan Defendants answered the First Amended Complaint on May 18, 2021. In the First Amended Answer the Fagan Defendants asserted counterclaims against two nonparty individuals, Christiano De Carlo and Lail Leonard. The Fagan Defendants never sought the issuance of the summonses to serve Mr. De Carlo and Ms. Leonard, and never made a single attempt to serve the newly added individuals since May 18, 2021. Mr. De Carlo and Ms. Leonard never appeared or otherwise waived service. The Fagan Defendants had 120 days from the date of the filing of the counterclaims, until September 15, 2021, to serve Mr. De Carlo and Ms. Leonard. To date, neither individual has been served.

On September 14, 2022 Mr. De Carlo and Ms. Leonard appeared in a limited capacity to file a motion to dismiss for insufficient service. On

October 7, 2022, Appellants filed their Notice of Voluntary Dismissal Pursuant to NRCP 41(a)(1)(A) in the matter currently pending in the Eighth Judicial District Court, Clark County, Nevada, District Court Case No. A-21-832379-C (“State Court”). On November 1, 2022, the State Court entered an Order Granting the Motion to Dismiss with prejudice for insufficient service upon Christiano De Carlo and Lail Leonard. Appellants did not file an opposition to the Motion to Dismiss, but appeared at the hearing to object to the dismissal for Mr. De Carlo and Ms. Leonard.

On November 03, 2022, Respondent filed a Notice to this Court that Christiano De Carlo and Lail Leonard have been dismissed in the underlying action. On December 13, 2022, this Court requested that each party inform this Court, in writing, whether Mr. De Carlo and Ms. Leonard are proper respondents to this Appeal.

Legal Argument

In Nevada, a person or entity is not a party within the meaning of NRAP 3A(a) unless that person or entity has been served with process, appeared in the court below *and* has been named as a party of record in the trial court. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448,

874 P.2d 729, 735 (1994). “[I]t has been the consistent policy of this court to foster simplicity, clarity and certainty in our jurisdictional rules by refraining from ad hoc dispensations and exceptions” that would allow persons or entities who were not parties of record to appeal. *Gladys Baker Olsen Family Tr. v. Olsen*, 109 Nev. 838, 841, 858 P.2d 385, 387 (1993). Further, this court construes the term “party” narrowly. *Matter of El Capitan Precious Metals, Inc.*, 492 P.3d 582 (Nev. 2021).

Here, Mr. De Carlo and Ms. Leonard were never served with process. *See Matter of Est. of Baklanoff*, 134 Nev. 957 (Nev. App. 2018) (finding that Machining Specialist was not a proper party to the appeal because it was not served with process and was not named as a party below). Further, the two individuals only appeared in a limited capacity to file a motion to dismiss for insufficient service. The Fagan Defendants electronically filed their Answer and Counterclaims on May 18, 2021, and

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failed to personally serve the nonparty individuals by the expiration of the 120-day deadline on September 15, 2021. As such, the individuals are not proper parties to the appeal.

Dated this 20th day of December, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Adrienne Brantley-Lomeli
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CERTIFICATE OF SERVICE

I certify that on December 20, 2022, I submitted the foregoing
**RESPONDENT'S NOTICE REGARDING WHETHER CHRISTIANO
DE CARLO AND LAIL LEONARD ARE PROPER PARTIES TO THIS
APPEAL** for filing *via* the Court's eFlex electronic filing system. Electronic
notification will be sent to the following:

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Dated: December 20, 2022.

/s/Lisa M. Noltie
An Employee of
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