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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEIDIANNE L BAUTISTA, an individual
and CONSTANTINE S. NACAR, an
individual,

APPELLANTS

v.

ROC TITLE, LLC, a Nevada Limited
Liability Company, NEVADA
ASSOCIATION SERVICES, INC., a
Nevada Corporation, SATICOY BAY
LLC SERIES 10449 FORKED RUN, a
Nevada Limited Liability Company and
DOES 1 through 10 and ROE
CORPORATIONS I
through X, inclusive.

RESPONDENTS

SC Case No. 85204

Dist Ct. Case No.: A-22-852903-C

**APPELLANT’S MOTION TO
RECONSIDER DISMISSAL OF
ACTION AND MOTION TO
EXTEND TIME TO COMPLY
WITH THE COURT’S
SEPTEMBER 9, 2022 ORDER OR
ALTERNATIVELY PETITION TO
REINSTATE APPEAL AND STAY
REMITTUR**

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MEMORANDUM OF POINTS AND AUTHORITIES

Comes now APPELLANTS, LEIDIANNE L. BAUTISTA and CONSTANTINE S. NACAR, and hereby petition this court pursuant to NRAP 27 to reconsider its dismissal of the action for failure to pay the filing fee, or alternatively reinstate the appeal and stay the remitter, pursuant to NRAP 40. If granted, Appellant requests 7 days to pay the filing fee and file a Case Appeal Statement.

FACTS

On August 16, 2022, Appellants timely filed a Notice of Appeal with the Eighth Judicial District Court in case A-22-852903-C. At the time, Undersigned believed the \$250 filing fee would be automatically charged to his card pursuant to the procedures in Odyssey File and Serve. On August 23, 2022, this court issued a Notice of Potential Dismissal For Failure to Pay Supreme Court Filing Fee. Unfortunately, the notice went into a spam folder and was not received by undersigned. As undersigned was not aware of the deficiency, or that he was not

receiving his emails from the court, the filing fee was not paid within the 7 days and on September 9, 2022, this court dismissed the case. There is no proof of service of the Order Dismissing Appeal. Undersigned only discovered this Order in his spam folder on September 21, 2022 and has immediately acted to prepare and file this request to reconsider the dismissal as the appeal was timely filed and the error was on undersigned, not appellant. Undersigned has the funds available to pay the filing fee as soon as the court reinstates the appeal but requests seven days to do so to allow for any delay in receipt of the notice. The email issue appears to have been resolved.

LEGAL ARGUMENT

This Court expects all appeals to be "pursued in a manner meeting high standards of diligence, professionalism, and competence." *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233, 235 (1987); accord *Polk v. State*, 126 Nev. 180, 184, 233 P.3d 357, 359 (2010); *Barry v. Lindner*, 119 Nev. 661, 671, 81 P.3d 537, 543 (2003); *State, Nev. Emp't Sec. Dep't v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1319 (1984). The Nevada Rules of Appellate Procedure have been implemented to promote cost-effective, timely access to the courts – and this Court has held that it is "imperative" that all appellees and their counsel follow these rules and timely comply with the Court's directives. *Weddell v. Stewart*, 127 Nev. Adv. Op. No. 58, 261 P.3d 1080, 1084 (2011). Counsel, in particular, is "not at liberty to disobey notices, orders, or any other directives issued by this court." *Id.* at 261 P.3d at 1085. When procedural rules are not followed, the rules clearly provide for dismissal of an

appeal. See NRAP 3(a)(2); NRAP 9(a)(7); NRAP 14(c); NRAP 16(g); NRAP 31(d)(1).

When an appeal is dismissed for procedural error, a litigant and his counsel must demonstrate “extreme or unforeseeable circumstances” to justify reconsideration of an appeal, *Hansen v. Universal Health Servs*, 112 Nev. 1245, 1247 (Nev. 1996), “in light of this court's preference for deciding cases on the merits.” see, e.g., *Price v. Dunn*, 106 Nev. 100, 105, 787 P.2d 785, 787 (1990); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

It is well settled that this Court’s policy preference is merits-based dispositions. *Price v. Dunn*, 106 Nev. 100, 105, 787 P.2d 785, 787 (1990); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

Undersigned apologizes to the court for not complying with the rules, however undersigned did not do so intentionally, rather believing the district court would charge him for the fees when he filed the notice of appeal. It is not uncommon for the filing fees to take several weeks to appear on the charge statement from the court. Extreme and unforeseeable circumstances as undersigned did not receive the notices timely and believed the fees had been paid. Appellant is not at fault and Respondents will not be prejudiced by the short delay in pursuit of the appeal.

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Most importantly, there has been no prejudice to the respondents for the slight delay in paying the filing fee and proceeding with the case. It has only been 43 days since the notice of appeal was filed. On that basis, Appellant requests the dismissal be reconsidered or alternatively a rehearing be granted so the matter may be heard on the merits.

DATED this 29th of September 2022.

/s/ Joseph A. Scalia, Esq.
Nevada Bar 5123
3355 S Highland Ave, Ste 111
Las Vegas, NV 89109
Phone (702) 267-7811
Attorney for Plaintiffs

Attorney's Certificate of Compliance

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of 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 2016 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 or 40A because it:

a. Does not exceed 10 pages as required under NRAP 40(b)(3) and has a word count of 950 words

3. Finally, I certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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4. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of September, 2022

/s/ Joseph A. Scalia, Esq.
Nevada Bar 5123
3355 S Highland Ave, Ste 111
Las Vegas, NV 89109
Attorney for Appellants

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated this 29th day of September, 2022

/s/ Joseph A. Scalia, Esq.
Nevada Bar 5123
3355 S Highland Ave, Ste 111
Las Vegas, NV 89109
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of KAREN A. CONNOLLY, LTD., and on the 23rd day of August, 2021, I served a true and correct copy of the above and foregoing Respondent's Answer to Appellant's Petition to Reinstate Appeal and Stay Remittur pursuant to NRAP 25 by the method or methods indicated below:

Susan Moses – Susan@nas-inc.com

Brandon Wood - brandon@nas-inc.om

Counsel for Nevada Association Services

Christopher Benner – Chris@croteaulaw.com

Roger P. Croteau – croteaulaw@corteaulaw.com

Counsel for Saticoy Bay LLC Series 10449 Forked Run

Dated: September ___, 2022

Employee of Senior Counsel, LLC

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 2022,
true and correct copies of the foregoing *Notice of Appeal* were served on Defendants
by:

_____ U.S. Mail, First Class, postage prepaid to the person(s) identified below;

_____ Via Facsimile at the number(s) identified below

_____ Via Electronic mail to the person(s) identified below

 X Via Electronic mail utilizing the Odyssey E-File and Serve system to the
person(s) identified below as follows:

Susan Moses – Susan@nas-inc.com
Brandon Wood - brandon@nas-inc.com
Counsel for Nevada Association Services

Christopher Benner – Chris@croteaulaw.com
Roger P. Croteau – croteaulaw@croteaulaw.com
Counsel for Saticoy Bay LLC Series 10449 Forked Run

JOSEPH SCALIA