

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 * * *

3
4 MMV INVESTMENTS LLC, a Delaware
5 limited liability company,

6 Appellant,

7 vs.

8 DRIBBLE DUNK, LLC, a Nevada
9 limited-liability company; ALL NET,
10 LLC, a Nevada limited-liability company;
11 JACKIE L. ROBINSON, an individual;
12 DOES I through X inclusive; and ROES I
13 through X, inclusive,

14 Respondents.

Electronically Filed
Oct 12 2022 02:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 85337
District Court No.: A-21-844680-B

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16 **APPELLANT'S REPLY IN SUPPORT OF MOTION FOR**
17 **RECONSIDERATION**

18 Matthew M. Pruitt, Esq.
19 Nevada Bar No. 12474
20 D. Andrew Lajoie
21 Nevada Bar #14901
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27 *Attorneys for Appellant MMV INVESTMENTS LLC, a Delaware Limited Liability*
28 *Company*

1 COMES NOW Plaintiff MMV INVESTMENTS LLC ("Plaintiff"), by and
2 through its attorneys of record, KIRTON McCONKIE, and hereby files its Reply
3 in Support of its Motion for Reconsideration ("Reply").
4

5 This Reply is made and based upon the pleadings and papers already on file
6 with the Court, the memoranda of points and authorities contained herein, and any
7 exhibits or affidavits which may be attached hereto.
8

9 DATED this 12th day of October, 2022.

10 KIRTON McCONKIE
11

12 

13 MATTHEW PRUITT, ESQ.
14 Nevada Bar #12474
15 D. ANDREW LAJOIE, ESQ.
16 Nevada Bar #14901
17 301 North 200 East, Suite 3A
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1 **AFFIDAVIT OF D. ANDREW LAJOIE IN SUPPORT OF**
2 **PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR**
3 **RECONSIDERATION**

4 STATE OF UTAH)
5) ss:
6 COUNTY OF WASHINGTON)

7 D. ANDREW LAJOIE, ESQ. being first duly sworn, deposes and says:

8 1. This Affidavit is being made in connection with Plaintiff’s Reply in
9 Support of Motion for Reconsideration.

10 2. I am counsel of record for the Plaintiff in the above matter with
11 personal knowledge of the things testified to in this affidavit.

12 3. The Notice of Appeal in this case was filed on September 14, 2022.

13 4. On September 29th, 2022, the check to pay the filing fee for this appeal
14 was mailed to the Court.

15 5. On September 30, 2022, this Court dismissed the appeal by order
16 (“Dismissal”).

17 6. On October 3, 2022, I personally received a paper Notice to Pay
18 Supreme Court Filing Fee by my firm’s receptionist and thereafter learned of the
19 dismissal that same day.

20 7. On October 3, 2022, I notified co-counsel of Plaintiff, M. Pruitt, of
21 the notice of which he had told me that he had not received a notice.
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1 8. After investigation, it was discovered that M. Pruitt did not receive
2 notice because his e-filing contact information for the Nevada Supreme Court was
3 outdated given his recent change of law firms.
4

5 9. On October 3, 2022, my office updated my email with the Court to
6 ensure I would receive electronic notices opposed to paper notices given the delay
7 of the latter.
8

9 10. I also changed firms in March of 2022, and have not had occasion to
10 file into the Nevada Supreme Court since then.
11

12 11. On October 4, 2022, the Motion for Reconsideration was filed with
13 the Court given the recent notice the day before.
14

15 12. On October 12, 2022, I was told that a legal assistant from my firm,
16 called the Court on September 21, 2022 to confirm the process of paying the filing
17 fee, and no mention of any deadlines were given at that time.
18

19 13. FURTHER YOUR AFFIANT SAYETH NAUGHT.
20

21 
22 D. ANDREW LAJOIE, ESQ.

23 SUBSCRIBED and SWORN to before
24 me this 15th day of October, 2022.

25 
26 NOTARY PUBLIC



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **LEGAL ARGUMENT**

4
5 Pursuant to NRCP 60(b)(1) and (6), “the court may relieve a party or its legal
6 representative from a final judgment, order, or proceeding for . . .mistake,
7 inadvertence, surprise, or excusable neglect . . . [or] any other reason that justifies
8 relief.” NRCP 60(b)(1),(6).

9 Additionally, under NRAP 27(b), “[a] party adversely affected by the
10 court’s, or the clerk’s, action may file a motion to reconsider, vacate or modify that
11 action.” NRAP 27(b).

12 Here, contrary to what the opposition claims, but to reiterate what the
13 Motion for Reconsideration (“Motion”) provides, D. Andrew Lajoie did not
14 receive the paper notice until October 3, 2022. That same day the investigation by
15 Plaintiff’s counsel began as to what, when, and how notices were sent. As stated
16 in the Motion, the electronic notice needed updating in relation to M. Pruitt, and
17 the paper notice to D. Andrew Lajoie, was received on October 3, 2022, after the
18 appeal had already been dismissed.

19 However, as a point of good faith and diligence, counsel for Plaintiff filed a
20 Motion for Reconsideration the very next day on October 4, 2022, after the Court
21 had confirmed the filing fee check was received and being held until the Motion
22 could come before the Court.

23 Additionally, the opposition cites to NRAP 3(e) to argue the failure to
24 receive notice was a red herring, however, this is far from correct. NRAP 3(e) does
25 not specify a deadline for paying the fee as “the appellant must pay the district
26 court clerk the Supreme Court filing fee and any fees charged by the district court.
27 Except for amended notices of appeal filed under Rule 4(a)(7), the Supreme Court
28 filing fee is \$250 for each notice of appeal filed.” NRAP 3(e).

1 Plaintiff did in fact comply with this rule because counsel for Plaintiff
2 mailed the filing fee payment on September 29, 2022, a day before the appeal was
3 dismissed. As such, the payment was postmarked on September 29, 2022, and
4 Plaintiff respectfully requests that the Court adopt the mailbox rule and deem
5 payment timely, despite counsel for Plaintiff receiving notice of the dismissal and
6 notice of deadlines after the fact.

7 **II.**

8 **CONCLUSION**

9 Based on the forgoing reasons, Plaintiff respectfully requests the Court to
10 reconsider its dismissal order given that the foregoing falls within NRC
11 60(b)(1),(6) and NRAP 27(b).
12

13 DATED this 12th day of October, 2022.

14 KIRTON McCONKIE

15 
16

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