

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN EVENDEN, AN INDIVIDUAL; AND
ROGER AYALA, AN INDIVIDUAL,
Appellants,
vs.
NANCY HAACK, AN INDIVIDUAL; AND
NRS REALTY GROUP, LLC, D/B/A LIFE
REALTY,
Respondents.

No. 81473

FILED

SEP 02 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

SETTLEMENT PROGRAM STATUS REPORT

A mediation session was held in this matter on August 28, 2020.

I make the following report to the court:

(check one box)

- ☐ The parties have agreed to a settlement of this matter.
- ☒ The parties were unable to agree to a settlement of this matter.
- ☐ The settlement process is continued as follows:

Date: _____ Time: _____

Location: _____

- ☒ Other: There are some jurisdictional issues for
the Supreme Court of Nevada to review and decide?
See my attached memorandum.

Additional Comments: _____

All parties at counsel participated in the
settlement conference in good faith.

[Signature] 8/28/2020
Settlement Judge



20-32442



THE JIMMERSON LAW FIRM
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

James J. Jimmerson, Esq.*
James M. Jimmerson, Esq.†
Joshua T. Aronson, Esq.

*ALSO ADMITTED IN CALIFORNIA
†ALSO ADMITTED IN NEW YORK

September 2, 2020

Sean Evenden, an Individual; and
Roger Ayala, an Individual,
Appellants,
Vs
Nancy Haack, an Individual; and
NRS Realty Group, LLC,
D/B/A Life Realty,
Respondents.

Appeal #81473

Re: Incomplete Decision and Order

Memorandum

A review of appellants docketed statement for this case, file-stamped August 10, 2020, reveals an incomplete Decision and Order entered by the District Court. The District Courts' Decision and Order filed June 17, 2020, discusses the facts and procedural history of the case, the testimony from witnesses, the discussion of the Plaintiff's claims against the Defendants, and Defendants' claims against the Plaintiffs.

It is in the Court's Order, found on page twenty-six (26) of the Court's Decision and Order, that raises questions as to the incompleteness of the Trial Court's Decision and Order. The Order finds in favor of the Plaintiff Nancy Haack and against the Defendants Sean Evenden and Roger Ayala for breach of the implied covenant of good faith and fair duty and breach of fiduciary duty. The Court orders that, pursuant to the Operating Agreement, the Defendants shall reimburse Plaintiff NRS Realty Group, LLC any monies provided NRS Realty Group, Inc. used towards Defendant's legal representation in this matter, without specifying a sum of money.

The Courts' Order further orders that Plaintiff shall submit a list of three (3) purposed independent accountants to Defendants' who will choose one of the

purposed accountants to provide an independent accounting of NRS Realty Group, LLC including, but not limited to, the profitability of the company from about 2016 until its closing of NRS (believed to have occurred sometime between October 31, 2019, and January 31, 2020). The Order further states that the accountant shall also determine the profitability of the company and the value of NRS Realty Group, LLC "at the time of its closing." The expense of the chosen accountant shall be paid for by the Defendant/Respondent Evenden and Ayala. Further, the court ordered that "Defendant Evenden and Ayala shall pay Plaintiff, Nancy Haack, one-third of the profits and value, minus any distribution, that Haack has already received, based on the independent accounting."

The Order ends at this point.

As the reader of this memorandum can quickly grasp, while the District Court determined that the Plaintiff was entitled to prevail on her claims of breach of the implied covenant of good faith and fair dealing duty and breach of fiduciary duty against the Defendants Evenden and Ayala, the court does not specify any sum certain of damages that were allegedly caused by the Defendants' breaches. Further, the Court empowers the Accountant to determine the profitability and value of the Plaintiff NRS Realty Group LLC but does not specify what amount of money, if any, should be awarded in Mrs. Haack's favor and against the Defendants Evenden and Ayala. Most importantly, as it relates to this point, the trial court does not retain subject matter jurisdiction over the subject matter or personal jurisdiction over the parties, so as to allow the district court to enter a subsequent order approving the calculations/damages determined by the independent accountant. Nor is there a mechanism upon which the trial court would be able to incorporate this damage figure as part of the Decision and Order since it did not retain jurisdiction.

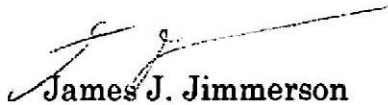
Because the Order appears to be a final order, within the meaning of NRAP 3(A), Defendants Evenden and Ayala filed a timely Notice of Appeal. However, it appears as if the work of the District Court is not yet complete inasmuch as there has not been a causation evaluation or damage calculation, two critical elements to the claims of breach of the implied covenant of good faith and fair dealing and breach of fiduciary duty.

Another way to look at this: The Plaintiff has a judgment in an undefined amount and as such, there is no ability to collect the judgment and there is no sum certain that has been ascertained. Conversely, Defendants have no ability to post a bond in a sum certain.

The Settlement Judge has advised both parties of these issues, and now advises the Nevada Supreme Court of these facts and suggests to the High Court that

there may be an absence of subject matter jurisdiction for this court to review this matter, or alternatively, if there is, in fact, subject matter jurisdiction to consider the order of the Court, the Decision and Order, appears, to the Settlement Judge, to be incomplete.

Dated this 2 day of September, 2020.


James J. Jimmerson

Settlement Judge

JJJ/mg

cc: Maurice B. VerStandig, Esq

Karl A. Shelton, Esq.

Michael Van, Esq

Enclosures: None