

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DAN M. WINDER  
P.C., a domestic professional  
corporation, and DAN M. WINDER,  
an individual,  
Petitioners

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Jul 13 2021 09:08 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

The Eighth Judicial District Court of  
the State of Nevada, IN AND FOR the  
COUNTY OF CLARK; and the  
Honorable Gloria J. Sturman, District  
Judge Department 26,  
Respondents;

And

Lavelle P. Atkinson and Sheila  
Atkinson, Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS  
Mandating the Eighth Judicial District Court, Clark County  
The Honorable Gloria J. Sturman District Judge  
Grant Summary Judgment to Petitioners in  
District Court Case No. A-19-804902-C

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Arnold Weinstock, Esq.  
Nevada Bar No. 810  
LAW OFFICE OF DAN M. WINDER, P.C.  
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Las Vegas, Nevada 89102  
702 878 6000

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Attorney for the Winder Petitioners

IN THE SUPREME COURT OF THE STATE OF NEVADA

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P.C., a domestic professional  
corporation, and DAN M. WINDER,  
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**NRAP 26.1 DISCLOSURE STATEMENT**

The undersigned counsel of record 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.

The Law Office of Dan M. Winder, P.C.

Dated this 12 day of July, 2021.

A handwritten signature in black ink, appearing to read "Arnold Weinstock", written over a horizontal line.

ARNOLD WEINSTOCK

Nevada Bar No. 810

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Attorney for Winder Defendants

## **1. RELIEF SOUGHT:**

Petitioners ask this Court mandate the District Court grant summary judgment, or in the alternative, partial summary judgment for the Petitioners.<sup>1</sup>

## **2. THE ISSUES PRESENTED:**

**2.1.** Where a court in a prior proceeding refused to allow a party to amend its pleadings in prior litigation on the grounds that such claims were rendered moot by its decision, may that party seek the same relief in a different proceeding?

**2.2.** Where a third-party litigant seeks attorney fees against an attorney in the litigation, must that claim be asserted in that action or may the claim be brought in subsequent litigation?

**2.3.** May a plaintiff prove attorney fees as damages who refuses to answer interrogatories and requests for information about those attorney fees and whose only proof Plaintiff owes attorney fees or that the attorney fees were

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<sup>1</sup> PET App V5 P 0957    Order Denying Winder Defendants' Motion for Summary Judgment  
PET APP V2 P 260    Defendants' Motion for Summary Judgment  
PET APP V3 P 458    Plaintiff's Opposition to Motion for Summary Judgment  
PET APP V5 P 916    Defendants Reply Re Summary Judgment

reasonable or necessary is an affidavit provided on the last day of discovery by his attorneys attesting to that fact?

- 2.4. May a party alleging the that a defendant conspired (but failed) to defraud the Plaintiff of real property, acted in concert with the intent to transfer real property without consideration), and aided and abetted in a false representation with then intent to deprive Plaintiff of real property, assert a claim for pain, suffering and emotional distress in the absence of physical injury?

**3. FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED IN THE PETITION.**

Defendant Law Office of Dan M. Winder, P.C. (WINDER PC) is a Nevada Professional Corporation. Dan M. Winder (WINDER) is, and at all times relevant, was, the sole owner of that Corporation. Mr. Winder has been licensed practicing attorney in Nevada for more than 20 years.<sup>2</sup>

On or about July 6<sup>th</sup>, 2017, the Plaintiffs signed a Purchase Agreement as Sellers for the property located at 2315 North Decatur.<sup>3</sup> Winder Defendants were

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<sup>2</sup> PET APP V2 0263 Ex. A Winder Declaration, ¶ 1-2.

<sup>3</sup> PET APP V2 0267 Ex. B Purchase Agreement, PETT APP V2 0290 L Atkinson Depo P 16 L1- P17 l6

not involved in the drafting, negotiation, or execution of the Purchase Agreement.<sup>4</sup> of Mr. Brown was named as purchaser.<sup>5</sup> The price was a fair price.<sup>6</sup> Nobody forced either Plaintiff to enter into the agreement.<sup>7</sup> Neither Plaintiff has ever met Mr. Winder, heard Mr. Winder speak, or relied on any representations made by Mr. Winder.<sup>8</sup>

On or about July 23<sup>rd</sup>, 2017, Mr. Winder undertook representing Mr. Brown with respect to Mr. Brown's purchase of the property.<sup>9</sup> Mr. Weinstock, an attorney with WINDER PC, sent a letter to Plaintiffs on December 6<sup>th</sup> 2017 demanding they go through with the sale pursuant to the Purchase Agreement.<sup>10</sup> Plaintiffs did not respond to the letter.

On May 18<sup>th</sup>, 2018 Defendants filed suit on behalf of Mr. Brown against the Plaintiffs seeking damages for the Plaintiffs' breach of the purchase agreement.<sup>11</sup> (The suit is hereafter referred to as "Brown v Atkinson. The matter went through the discovery process. On December 10<sup>th</sup>, 2018, the Plaintiffs (Defendants in Brown v Atkinson) filed two Motions, a Motion for Summary Judgment<sup>12</sup> and Motion to

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<sup>4</sup> PET APP V2 0263 Ex A Winder Declaration ¶3.

<sup>5</sup> PET APP V2 0267 Ex. B Purchase Agreement

<sup>6</sup> PET APP V2 0286 Ex. C L Atkinson Depo P 12 L4-9

<sup>7</sup> PET APP V2 0286 Ex. C L Atkinson Depo P 12 L1-3

<sup>8</sup> PET APP V2 0287 Ex C P 13 L112

<sup>9</sup> PET APP V2 0263 Ex A Winder Declaration ¶3

<sup>10</sup> PET APP V2 0373 Ex. D Weinstock\_Atkinson Letter dated 12/06/17

<sup>11</sup> PET APP V2 0376 Ex. E Brown v Atkinson Complaint

<sup>12</sup> PET APP V2 0388 Ex F Brown v Atkinson Atkinson Motion for Summary

Amend Answer, Counterclaim and Third-Party Claims.<sup>13</sup>

The Third-Party Claims in the Atkinson's Proposed Amended Pleading in Brown v Atkinson are the identical claims in the identical language as the Complaint in the instant matter.<sup>14</sup>

On February 11<sup>th</sup>, 2019, the Motion For Summary Judgment was granted; the parties agreed<sup>15</sup> and the Court ruled the Atkinson's Motion to Amend was moot.<sup>16</sup>

The Atkinsons filed no post-judgment claims for attorney fees against Mr. Brown or the Winder Defendants whether pursuant to NRS 18.010, NRCP 11, or the inherent power to the Court, or otherwise.

Despite having agreed and represented to the Court in Brown v Atkinson that the claims now brought against the Winder Defendants were moot, the Atkinsons filed the identical claims against the Winder Defendants in this matter on the November the fifth, 2019, 9 months after the same claims were disallowed by the Brown v Atkinson court.

Plaintiffs have refused to disclose any retainer agreement between themselves

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Judgment

<sup>13</sup> PET APP V2 0407 Ex G Brown v Atkinson Motion To Amend Answer, Counterclaims and Third-Party Claims

<sup>14</sup> PET APP V2 0413 Ex G Exhibit 12 P 7,

<sup>15</sup> PET APP V2 0446Ex H Brown v Atkinson MSJ Motion to Amend Hearing Transcript, P7 L2-10

<sup>16</sup> PET APP V2 454 Ex I Brown v Atkinson Order Granting MSJ Ordering claims against Winder and Winder PC Moot, P7 L4.



and their attorney, claiming at different times, attorney-client privilege and relevance. See Defendants' Motion for Discover Sanctions filed April 12<sup>th</sup> 2021. Plaintiffs have named no expert witness to testify as to the necessity and reasonableness of their fees and the remaining *Brunzell* factors. Only on the last day of discovery did they provide affidavits from the attorneys for the Plaintiffs to justify their fees. Striking this affidavit, precluding the witness from testifying and precluding the admission of the claimed attorney fees in evidence is a subject of Defendants' Motion for Discovery Sanctions.

Plaintiffs have offered no testimony claiming they relied on material representations of either Mr. Brown or the Winder defendants or suffered any damages because of their reliance.

Plaintiffs do not allege they suffered any physical injuries as a consequence of the acts and omissions complained of.

Plaintiffs have not acquired any more evidence to prove their liability allegations than they had when the Motion to Dismiss was denied.

#### **4. REASONS WHY THE WRIT SHOULD ISSUE:**

##### **4.1.RES JUDICATA, CLAIM AND ISSUE PRECLUSION**

In *Driscoll v. Humble Oil & Refining Company*, 60 F.R.D. 230, 234 (S.D.N.Y.1973) (Tenney, J.), *aff'd mem.*, 493 F.2d 1397 (2d Cir.1974), the plaintiff



sought to recover its attorney's fees and litigation expenses incurred during a prior litigation between plaintiff and defendant. In granting defendant's motion for summary judgment on claim preclusion grounds, Judge Tenney held that, [a]ttorney's fees are "a part of the cause of action upon which recovery was previously made," [citation omitted], and thus are barred by *res judicata*. Similarly, if plaintiff "desired to recover [its] expenses of litigation in the prior case ... [it was] required to assert such [claim] in that litigation. See also *Rooney v. U.S.*, 694 F.2d 582, 584 & n. 4 (9th Cir.1982). Likewise, a claim against attorney for attorney fees must be brought in the same action. *MTS, Inc. v. 200 E. 87th St. Associates*, 94 CIV. 9081 (RWS), 1995 WL 561521 (S.D.N.Y. 1995). *A.H. Fox v. Connecticut Fire Ins. Co.*, 380 F.2d 360, 361 (10th Cir.1967) & *Bankers Life and Cas. Co. v. Kirtley*, 338 F.2d 1006, 1011 (8th Cir.1964)) *Burger King Corp. v. New England Hood & Duct Cleaning Co.*, CIV. A. 00-1787, 2001 WL 283161, at \*2 (E.D. Pa. Mar. 21, 2001).

As Defendants in the prior action, Plaintiffs could and should, if they thought they were entitled, have brought a claim for attorney fees by post-judgment motion against the Winder Defendants in connection based upon NRS 18.010, Rule 11, or the inherent power of the court.

*In re El San Juan Hotel Corp.*, 841 F.2d 6 (1st Cir.1988) (holding that trustee's attorney was in privity with trustee, thus *res judicata* barred a subsequent action

against attorney accused of facilitating a wrongdoing); *Geringer v. Union Elec. Co.*, 731 S.W.2d 859 (Mo.App.1987) (holding that law firm which represented client in underlying action was in privity with client, thus law firm could assert collateral estoppel as a bar to relitigation of issue resolved in previous lawsuit); *Chaara v. Lander*, 132 N.M. 175, 45 P.3d 895 (Ct.App.2002) (holding that wife's divorce attorney was in \*182 privity with wife, thus *res judicata* barred husband's subsequent suit against attorney); *Simpson v. Chicago Pneumatic Tool Co.*, 693 N.W.2d 612 (N.D.2005) (holding that tool company's \*\*284 attorney was in privity with tool company for purposes of *res judicata* ). *Jayel Corp. v. Cochran*, 366 Ark. 175, 181–82 (2006).

It is also widely recognized that coconspirators are privies for *res judicata* purposes where, as here, the alleged conspirator's existence and actions were known to the plaintiff during the prior litigation. *See generally Discon, Inc. v. Nynex Corp.*, 86 F.Supp.2d 154 (W.D.N.Y.2000); *Waldman v. Village of Kiryas Joel*, 39 F.Supp.2d 370 (S.D.N.Y.1999); *McIver v. Jones*, 209 Ga.App. 670, 434 S.E.2d 504 (1993); *Press Publ., Ltd. v. Matol Botanical Int'l*, 37 P.3d 1121 (Utah 2001). *Winrock Grass Farm, Inc. v. Affiliated Real Estate Appraisers of Arkansas, Inc.*, 373 S.W.3d 907, 913 (2010)

Claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted. *Five Star Capital Corp. v. Ruby*, 124

Nev. 1048, 1053, 194 P.3d 709, 712 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015).

Plaintiffs certainly could have filed a post-judgment motion for attorney fees against the Winder Defendants in the prior action. The judge in that matter was uniquely situated to assess the merits of an award of attorney fees. For this purpose, the Winder Defendants and Mr. Brown were in privy.

When a district court involuntarily dismisses a complaint, that order “operates as an adjudication upon the merits,” “[u]nless the court in its order for dismissal otherwise specifies.” NRCP 41(b). *Marshal v. Rodriguez*, 132 Nev. 1003 (Nev. App. 2016)

If Plaintiffs wanted to renew their attempt to sue the Winder defendants in a separate action, they should have requested the denial of their Motion to Amend as moot to be an order without prejudice.

If the denial of the motion for leave to amend is based on and thus constitutes an adjudication on the merits of the proposed new claim, plaintiff may appeal such denial, but he may not assert such claim in a second lawsuit, and this is true even if the second claim is unrelated to the first and arose after the first lawsuit was commenced, *Integrated Techs. Ltd. v. Biochem Immunosystems, (U.S.) Inc.*, 2 F. Supp. 2d 97, 103 (D. Mass. 1998)

Whether by issue or claim preclusion, Plaintiffs are barred by the doctrine of res judicata from bringing the same claims another court had determined were rendered moot by its prior decision.

4.2. IF PLAINTIFF WANTED ATTORNEY FEES FOR THE FIRST ACTION  
IT WAS REQUIRED TO FILE FOR ATTORNEY FEES IN THAT  
ACTION.

As discussed above, the Plaintiffs asserted identical claims in the prior action to those asserted in this action. The judge in the prior case concluded his decision rendered those claims moot. Plaintiff's counsel agreed with him. The renders these claims res judicata; they are barred by issue and claim preclusion.

Leaving aside the judge's ruling of mootness, the claim for attorney fees is also barred as a claim which could have been brought in the prior action. Plaintiffs had their opportunity to bring the claims in the prior litigation under NRS 18.010 by filing a post judgment motion. They failed to do so.

[i]f the wrongful conduct of a defendant causing the plaintiff to sue him would give rise to an independent tort and a separate cause of action, there would be no end to the litigation, for immediately upon the entry of judgment the plaintiff would start another action against the defendant for his attorney's fees and expenses incurred in obtaining the preceding judgment. Robert L. Rossi, *Attorneys' Fees* § 8.1 (3rd. ed. 2020). *Agwara v. DCP Inv. Holdings, LLC*, 476 P.3d 926 (Nev. App. 2020)

In the prior action, Plaintiffs had a clear remedy against the Winder Defendants as attorneys for Mr. Brown. They could have asked the Court to award attorney fees pursuant to NRS 18.010 or the inherent power of the Court on the same grounds they asserted in their Motion to Amend in the prior case which is exactly duplicated here.

The purpose of nonmutual claim preclusion, then, is the same as that of claim preclusion in general: “to obtain finality by preventing a party from filing another suit that is based on the same set of facts that were present in the initial suit.” *Five Star*, 124 Nev. at 1054, 194 P.3d at 712. Thus, whereas in *Five Star* we adopted a three-factor test for claim preclusion based on our conclusion that our previous \*241 four-factor test was “overly rigid,” *id.*, we now adopt the doctrine of nonmutual claim preclusion for the same reason. In so doing, we modify *Five Star*'s test for claim preclusion to the following three-factor test:

“[ (1) ] the final judgment is valid, ...

[ (2) ] the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case,” *id.* at 1054, 194 P.3d at 713, and

(3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a “good reason” for not having done so. 18A Charles Alan Wright, et al., Federal Practice and Procedure § 4464.1 (2d ed.2002) *Weddell v. Sharp*, 131 Nev. 233, 240–41, 350 P.3d 80, 85 (2015)

Plaintiffs clearly could have brought the claims they now assert in a post-judgment motion for attorney’s fees pursuant to NRS 18.010 or the inherent power of the court. They could have had an evidentiary hearing. They have offered no good reason why they should not be bound by their failure to have brought the claim.

#### **4.3. PLAINTIFFS PRODUCED INSUFFICIENT ADMISSABLE EVIDENCE TO TAKE THE ISSUE OF ATTORNEY FEES TO THE JURY**

##### **4.3.1. BECAUSE THIS IS A CLAIM FOR ATTORNEY FEES AS DAMAGES THE ATTORNEY FEES MUST BE PROVED TO THE**



### **JURY IN PLAINTIFFS' CASE IN CHIEF.**

When a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages. They must be pleaded as special damages in the complaint pursuant to NRC 9(g) and proved by competent evidence just as any other element of damages. *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001). Because parties always know lawsuits are possible when disputes arise, the mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney fees as damages. *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001).

Generally, quantities of damages are determined by the jury ... [and] claimants who fail to submit the attorney fees issue to the jury, and instead simply request fees in a post-trial motion, waive their right to those fees. Additionally, attorney fees requested as an element of damages must be specially pleaded and proved "just as any other element of damages.(quotations omitted) *Albion v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006)

#### **4.3.2. PLAINTIFFS HAVE NO WAY OF PROVING THEIR ATTORNEY FEES TO THE JURY.**

Plaintiffs have disclosed no admissible evidence regarding attorney fees.

They have refused to produce retainer agreements or engagement letters making a false claim of attorney client privilege. This is currently the subject of Defendants. Motion for Sanctions pending before the discovery commissioner. Without the retainer agreements or engagement letters, there is no way to determine if Plaintiffs have any legal obligation to pay any fees, whether they actually owned any fees after the Brown v Atkinson litigation, the basis for their actual fees whether hourly and, if so, at what rate, or contingent.

They have disclosed no witness, expert or otherwise, to testify as to the Brunzell factors, factors the jury must consider in determining of fees.<sup>17</sup> Certainly, the Brunzell factors require an expert as they require information not readily available to the experts. In any event, without a witness of some sort and any documentation to prove the validity of the attorney fee obligation, Defendants are entitled to partial summary judgment striking the claim for attorney fees.

#### **4.4.DEFENDANTS HAVE PRODUCED NO ADMISSABLE DAMAGES OF EMOTIONAL DISTRESS OR PHYSICAL PAIN AND SUFFERING**

In cases where emotional distress damages are not secondary to physical injuries, but rather, precipitate physical symptoms, either a physical impact must have occurred or, in the absence of physical impact, proof of “serious emotional

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<sup>17</sup> On the last day of discovery, the provided declarations from attorneys who are attorneys of record in this case and who have appeared in this matter to the effect that the fees satisfy the *Brunzell* factors. Defendants’ pending Motion for Sanctions seeks prevent the declarants from testifying and the use of the affidavit on the basis of the late disclosure. In addition, Defendants sought to take the depositions of attorneys appearing in this case for the purpose of ascertaining the nature of the attorney fees relationship and the Brunzell factors. Plaintiffs sought and obtained a protective order precluding the depositions.



distress” causing physical injury or illness must be presented. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998). Plaintiffs claim no physical injury or illness, have no medical testimony or records to support a claim of physical injury or illness and thus cannot claim any emotional distress type damages. The Nevada Supreme Court requires physical injury in the context of a real property transaction for emotional distress damages in connection with a real property matter:

We have previously required a plaintiff to demonstrate that he or she has suffered some physical manifestation of emotional distress in order to support an award of emotional damages. *See, e.g., Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998) (“[I]n cases where emotional distress damages are not secondary to physical injuries, but rather, precipitate physical symptoms, either a physical impact must have occurred or, in the absence of physical impact, proof of ‘serious emotional distress’ \*167 causing physical injury or illness must be presented.”); *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 482–83, 851 P.2d 459, 462 (1993). While we have relaxed the physical manifestation requirement in a few limited instances, *see Olivero v. Lowe*, 116 Nev. 395, 400, 995 P.2d 1023, 1026 (2000) (explaining that the physical manifestation requirement is more relaxed for damages claims involving assault), we cannot conclude that a claim for emotional distress damages resulting from deceptive trade practices in connection with a failed real estate and lending transaction should be exempted from the physical manifestation requirement.

Unlike in *Olivero*, where we stated that “the nature of a claim of assault is such that the safeguards against illusory recoveries mentioned in *Barmettler* and *Chowdhry* are not necessary,” 116 Nev. at 400, 995 P.2d at 1026, there is no guarantee of the legitimacy of a claim for emotional distress damages resulting from a failed real estate and lending transaction without a requirement of some physical manifestation of emotional distress.

Thus, because Betsinger failed to present any evidence that he

suffered any physical manifestation of emotional distress, we reverse the jury's award of \$43,000 in emotional distress damages. *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 167, 232 P.3d 433, 436 (2010)

Thus, because this is a failed real estate transaction and because Plaintiffs do not contend they suffered any physical injury as a result, there can be no damages for emotional distress.

## **5. CONCLUSION:**

### **5.1. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BASED UPON ISSUE AND CLAIM PRECLUSION.**

Having attempted to bring these exact same claims in a prior case and having their motion to amend their pleadings being denied as moot based upon the decision in the prior case and having failed to bring the claim for attorney fees they might brought against these defendants in the prior case, they are barred by the doctrines of issue and claim preclusion from asserting those claims in a separate action.

### **5.2. PLAINTIFFS ARE ENTITLED TO PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF ATTORNEY FEES.**

Plaintiffs produced no evidence, other than some purported invoices, that they owned any attorney fees at all until the last day of discovery when they disclosed an affidavit of two of their attorneys indicating that the fees were reasonable and customary. They did not offer these attorneys as witnesses and in fact, obtained a protective order preventing the deposition of the attorneys involved in handling the

case.<sup>18</sup> They have produced no demand letters for payment and, only under compulsion, long after the close of discovery, disclosed a purported engagement letter. Under advice of the counsel whose fees they now seek, the Plaintiffs refused to answer questions about attorney fees or respond to discovery regarding attorney fees. Without an expert witness to testify and in light of the repeated discovery abuse in this area, these purported fees should not be submitted to the jury. Plaintiff therefore is entitled to summary judgment as to these damages.

6. IN THE ABSENCE OF A CLAIM AND EVIDENCE OF PHYSICAL INJURY, DEFENDANT IS ENTITLED TO PARTIAL SUMMARY JUDGMENT AS TO PAIN AND SUFFERING DAMAGES.

In cases where emotional distress damages are not secondary to physical injuries, but rather, precipitate physical symptoms, either a physical impact must have occurred or, in the absence of physical impact, proof of “serious emotional distress” causing physical injury or illness must be presented. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998). Plaintiffs claim no physical injury or illness, have no medical testimony or records to support a claim of physical injury or illness and thus cannot claim any emotional distress type damages.

7. CONCLUSION:

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<sup>18</sup> Pet App V1 0216

Petitioners ask this Court mandate the lower court Judge:

1. Grant Summary Judgment in favor of the Winder Defendants on the grounds Plaintiffs claim is barred by issue or claim preclusion.
2. Grant Partial Summary Judgment in favor of the Winder Defendants that insufficient evidence has been presented to authenticate or demonstrate the necessity and reasonableness of the attorney fees claimed.
3. Grant Partial Summary Judgment in favor of the Winder Defendants on the issue of emotional distress, pain and suffering claims on the grounds that Plaintiffs do not claim and they have not offered evidence to demonstrate they suffered any physical injuries.

Respectfully Submitted this 12 day of July, 2021.



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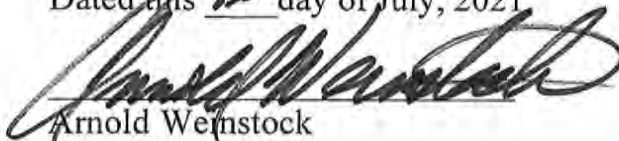
Attorney for Winder Defendants

DECLARATION OF PETITIONER'S ATTORNEY  
VERIFYING THE PETITION

The facts stated in the foregoing Petition for writ of Mandamus are within  
my knowledge and are true.

I declare the foregoing is true under penalty of perjury.

Dated this 12<sup>th</sup> day of July, 2021

  
Arnold Weinstock  
Attorney for Petitioners.

## NRAP 17 ROUTING STATEMENT

Petitioners assert this Petition must be heard by the Supreme Court because:

1. It raises as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law. NRAP 17(a)(11).

The issues raised which require this Petition be heard by the Supreme Court are:

- 2.1 Where a court in a prior proceeding refused to allow a party to amend its pleadings in prior litigation on the grounds that such claims were rendered moot by its decision, may that party seek the same relief in a different proceeding?
- 2.2 Where a third-party litigant seeks attorney fees against an attorney appearing in the litigation, must that claim be asserted in that action or may the claim be brought in subsequent litigation? (Pet P. 2)

Dated this 12<sup>th</sup> day of July, 2021

THE LAW OFFICE OF DAN M. WINDER, P.C.



By: Arnold Weinstock, Esq.

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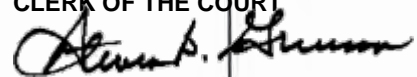
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8<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLARK COUNTY, NV

Lavelle P. Atkinson, Sheila Atkinson,  
individuals,

Plaintiffs

Case #: A-19-804902-C  
Dept #: 26

VS.

CHARLES BROWN, and individual; LAW  
OFFICE OF DAN M. WINDER P.C. a  
domestic professional corporation; DAN M.  
WINDER, an individual, et al

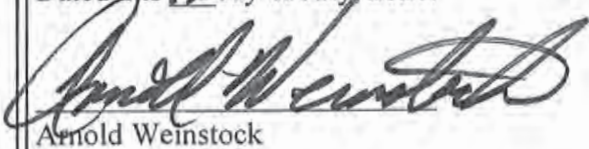
Defendants

NOTICE OF FILING  
PETITION FOR WRIT OF MANDAMUS  
IN  
THE NEVADA SUPREME COURT

Defendants Dan M. Winder and the Law Office of Dan M. Winder, PC, by and through  
their Arnold Weinstock, of the Law Office of Dan M. Winder, PC hereby give notice a Petition  
for Writ of Mandamus concerning this matter has been filed with the NEVADA SUPREME  
COURT.



1 Dated this 12<sup>th</sup> day of July, 2021.

2   
3 Arnold Weinstock

4 State Bar # 810

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6 3507 West Charleston Blvd.

7 Las Vegas, Nevada 89102

8 Telephone (702) 474-0523

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10 Attorney for Winder Petitioners/Defendants

11  
12 CERTIFICATE OF SERVICE

13 I hereby certify I served the foregoing document on the Council of Record via the Court's  
14 Electronic Filing System on the date stamped thereon by the System.

15 Dated this 12<sup>th</sup> day of July, 2021.

16 /s/Hamilton Moore

17 Hamilton Moore

18 Designated Representative of

19 the Law Offices of Dan M. Winder

### **CERTIFICATE OF COMPLIANCE**

1. I hereby 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:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2106 (Build 14131.20278 Click to Run) in 14 Point Times New Roman.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 21(d) because, excluding the parts of the Petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3976 words.

3. Finally, I hereby certify that I have read this Petition for Writ of Mandamus, 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 brief 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. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12<sup>th</sup> day of July, 2021.

A handwritten signature in black ink, appearing to read "Arnold Weinstock", written over a horizontal line.

Arnold Weinstock

State Bar # 810

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Attorney for Petitioners

## **PROOF OF SERVICE**

I HEREBY CERTIFY, that on this date I served the foregoing Petition for Writ of Mandamus and filed and served the Notice of Filing the Petition for Writ of Mandamus in the following matter:

**Honorable Judge Gloria Sturman:**

By emailing a copy of the Notice of Filing the Petition for Writ of Mandamus and the Petition for Writ of Mandamus to the email address listed for The honorable Judge Gloria Sturman on her Court's web page and by emailing a copy to her law clerk at the following addresses:

Honorable Judge Gloria Sturman  
Department 26  
RJC Courtroom 10D  
Eighth Judicial District Court  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
[Dept26ea@ClarkCountyCourts.us](mailto:Dept26ea@ClarkCountyCourts.us)  
[Dept26lc@ClarkCountyCourts.us](mailto:Dept26lc@ClarkCountyCourts.us)

### **Real Parties in Interest**

By filing and serving the Notice of Filing the Petition for Writ of Mandamus via the Eighth Judicial District Court's Electronic Filing System on the attorneys for the Real Parties in interest as listed below.

By serving the Petition for Writ of Mandamus with the Eighth Judicial District Court's Electronic Filing System on the Real Parties in Interest through their attorneys:

<p>ADRIANA PEREYRA, ESQ. Nevada Bar No. 12263 <b>INTEGRITY LAW FIRM</b> 819 South 6th Street Las Vegas, Nevada 89101 Phone: 702.202.4449 Fax: 702.947.2522 E-mail: <a href="mailto:adriana@integritylawnv.com">adriana@integritylawnv.com</a> Attorney for Respondents Lavelle P. Atkinson and Sheila A. Atkinson</p>	<p>JOSEPH A. GUTIERREZ, ESQ. Nevada Bar No. 9046 DANIELLE J. BARRAZA, ESQ. Nevada Bar No. 13822 <b>MAIER GUTIERREZ &amp; ASSOCIATES</b> 8816 Spanish Ridge Avenue Las Vegas, Nevada 89148 Telephone: 702.629.7900 Facsimile: 702.629.7925 E-mail: <a href="mailto:jag@mgalaw.com">jag@mgalaw.com</a> <a href="mailto:djb@mgalaw.com">djb@mgalaw.com</a> Attorneys for Respondents Lavelle P. Atkinson and Sheila A. Atkinson</p>
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Dated this 12<sup>th</sup> day of July, 2021.

/s/Hamilton Moore

A Designated Representative of  
the Law Office Of Dan M. Winder, P.C.