

1 Case Number 10 CV 002

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4
5 IN THE JUSTICE COURT OF AUSTIN TOWNSHIP
6 COUNTY OF LANDER, STATE OF NEVADA
7

8
9 RUBEN GALLEGOS
10 and
11 VIRGINIA (SISSIE) GALLEGOS,
12 Plaintiffs
13

14 vs.

MOTION TO DISMISS OR TO TRANSFER

15
16 MICHAEL MARKING
17 and
18 ELIZABETH FLEMING,
19 Respondents
20

21
22 COME NOW Michael Marking and Elizabeth Fleming, in proper person, as Respondents, and
23 hereby submit their MOTION TO DISMISS OR TO TRANSFER.
24

25 WHEREAS

26 (1) Subsequent to its 28 September 2010 final Judgment, this Court held a hearing, on 26

27 October 2010, pursuant to execution of the Judgment. (see *The 26 October 2010, post-*
28 *Judgment hearing*, page 4); and

29 (2) During said hearing, a dispute arose regarding the proper titleholder to a parcel owned
30 by Eleven Eleven Ranch. (see *Land ownership dispute*, page 4); and

31 (3) Testimony was given, and this Court expressed some of its beliefs, regarding the title
32 to the Eleven Eleven Property (see *Testimony and Court pronouncements regarding*
33 *the title dispute*, page 5); and

34 (4) Questions regarding title to real property are beyond the jurisdiction of this Court
35 (NRS 4.370.2); and

36 (5) The proper procedure in this instance was to transfer the case to district court. (see
37 *Required transfer to district court*, page 6) Indeed, Joe Dory ordered that the
38 proceedings be transferred to district court. (see *The Order of 1 February 2012*, page
39 7); and

40 (6) Any subsequent proceedings on this matter in this Court are improper, including the
41 hearing scheduled for 7 February 2013. (see *Further proceedings in this Court*
42 *regarding this case are improper*, page 8); and

43 (7) Plaintiffs bear responsibility for effecting the transfer to district court (see *Plaintiffs*
44 *responsible for the transfer to district court*, page 9);

45 (8) This Court is empowered to dismiss this case (see *Dismissal of this case*, page 10);

46
47 THEREFORE Respondents hereby pray to this Court for an Order, dismissing all further
48 proceedings in this case, including the now-scheduled NRS 21.270 hearing, or, in the
49 alternative, similarly denying further proceedings until such time as the case might be
50 transferred to district court.

51
52 RESPONDENTS FURTHER REQUEST that, should this Court consider oral arguments on this

53 Motion to be appropriate, the Court set the time for such oral arguments at the beginning of
54 the time now scheduled for the 7 February 2013 hearing.

55
56 IN SUPPORT of this Motion, Appellants have attached their MEMORANDUM OF POINTS AND
57 AUTHORITIES.

58
59
60 DATED this Wednesday, 23 January 2013.

61
62
63
64 _____
65 Michael Marking, Respondent
66 e-mail: *marking@tatanka.com*
67

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MEMORANDUM OF POINTS AND AUTHORITIES

79
80
81 **1. The 26 October 2010, post-Judgment hearing.** This hearing was presumably called
82 pursuant to NRS 21.270, “Examination of judgment debtor”. Then Justice Joe Dory called it a
83 “debtor's inquisition”, oblivious to the fact that inquisitions and inquests are antithetical to our
84 legal system, except where the subject of the inquiry, such as a corpse, cannot answer back in
85 any meaningful way calculated to elicit the truth. Acting both as prosecutor and judge,
86 perhaps Joe Dory was fascinated by Tomás de Torquemada, the former Inquisitor-General,
87 whose Spanish Inquisition brought us waterboarding (*toca*, or *tortura del aqua*) and other
88 such atrocities. (The subjects of the Spanish Inquisition were given an opportunity to respond
89 to the charges against them, after the trial, and before(!) the charges were identified. Torture,
90 however, has a way of distorting the truth, both in perpetrator and in victim.)

91 **2.** Then again, the weight Joe Dory gave to Respondents' arguments was commensurate
92 with what would he would have given to a corpse's opinions. It is difficult to ascertain whence
93 his delusions arose.

94
95 **3. Land ownership dispute.** The land, hereinafter called the “Eleven Eleven Property”,
96 has been owned by Eleven Eleven Ranch since Eleven Eleven Ranch purchased it in 2004,
97 before Defendants ever met Plaintiffs. The Lander County Recorder's records will confirm
98 this.

99 **4.** Eleven Eleven Ranch, in turn, was never owned by Defendants. (see TRANSCRIPT,
100 PREPARED 20 JULY 2011, 6 July 2010 hearing, page 126, line 21 to page 132, line 8)

101 **5.** It is not disputed that, the debt from Defendants to Plaintiffs arose from a series of
102 transactions (see AMENDED COMPLAINT, 27 July 2010, pages 8 to 13), resulting in a number of
103 loans and payments. Among the first few was a loan of \$7900 evidenced by a promissory note
104 of 31 May 2006 (see AMENDED COMPLAINT, page 6) The land came into play in this matter

105 because Eleven Eleven Ranch offered the Eleven Eleven Property as collateral for the 31 May
106 2006 promissory note. (see AMENDED COMPLAINT, page 7)

107 **6.** Defendants argued (ANSWER, 24 September 2010) that novation, changing the terms
108 without the guarantor's approval, application of payments, and other occurrences, rendered the
109 guarantee no longer effective. Although the debt remained, there was no longer security for
110 that debt. Plaintiffs had no counter-arguments, and this Court basically ignored the law and
111 the details.

112 **7.** In its ruling, also, this Court ignored that question, finding in its final Judgment (28
113 September 2010) no liability on the part of Eleven Eleven Ranch. In fact, no other verdict was
114 possible, since Eleven Eleven had not been joined as a party to this action.

115 **8.** Subsequent to the final Judgment, in their BRIEF REGARDING ONE ACTION RULE, 26
116 October 2010), Defendants showed that, under Nevada's One-Action Rule, Eleven Eleven
117 Ranch, even had it been a guarantor, no longer had liability, because the judgment was
118 rendered personally against the Defendants.

119 **9.** Nevertheless, Plaintiffs continued to push for a forced sale of the Eleven Eleven
120 Property, either as collateral or as an asset of Defendants. In the process of making their
121 arguments, they maintained that title to the Property somehow was held by Defendants.
122

123 **10. Testimony and Court pronouncements regarding the title dispute.** The discussion
124 of ownership of the Eleven Eleven Property was begun by Plaintiffs. (TRANSCRIPT, page 192,
125 lines 18 to 20) Although Defendants consistently answered that Eleven Eleven Ranch, or the
126 trust created on its dissolution, owned the Property, Plaintiffs continued to push the question.
127 (TRANSCRIPT, pages 192 to 195)

128 **11.** Joe Dory opined that Defendants ought to sell off the Property to pay the debt, as if
129 they owned it. (TRANSCRIPT, page 199, lines 1 to 3) A while later, Joe Dory asked for evidence
130 that Eleven Eleven Ranch and its officers had no interest in the Property. (TRANSCRIPT, page

131 208, lines 11 to 16) (NOTE: The TRANSCRIPT is in error in many ways, including specifically
132 *that the statements on page 208, lines 17 to 19, were made by Sissie Gallegos, not by*
133 *Elizabeth Fleming*) Joe Dory asked again for evidence. (Page 208, line 20 to 23) He further
134 declared that he could decide that it was Defendants' property. (TRANSCRIPT, page 213, lines 12
135 to 20)

136 **12.** Defendants objected that this Court has no jurisdiction over titles to land. (Page 213,
137 line 21, to page 214, line 2) Joe Dory again, disagreeing with Defendants and ignoring the
138 statute, said that he could make such a determination. (Page 213, lines 3 to 9)

139 **13.** Eventually, Joe Dory characterized the proceedings as “the hearing on title to
140 property”. (TRANSCRIPT, page 216, lines 15 to 16, emphasis added)

141 **14.** The dispute remained. Near the end of the hearing, Ruben Gallegos alleged that
142 Defendants owned the property. (Page 217, line 15)

143
144 **15.** (More on the transcript, which is, in fact, abysmally bad: The low quality is, no doubt,
145 partly a result of the machine transcription. However, things are missing, and a little out of
146 sequence, perhaps due to the extended labours of Joe Dory to edit the audio before sending it
147 off for rendering. Maybe he wanted to “clean up his record”. The edited audio remains to
148 resolve questions about the written results, but the missing segments are, presumably, lost
149 forever. Richard Milhous Nixon and Rose Mary Woods would have been proud.)

150
151 **16. Required transfer to district court.** Once an issue beyond this Court's jurisdiction is
152 raised, this Court is obligated to transfer the case to district court. Such was the situation after
153 Plaintiffs began, as described in the previous section, a debate regarding proper title to the
154 Eleven Eleven Property.

155 **17.** “The parties to an action in a justice court cannot give evidence upon any question
156 which is excluded from the jurisdiction of the justice court. If it appears from the plaintiff’s

157 own showing on the trial, or from the answer of the defendant, verified by his oath, that the
158 determination of the action will necessarily involve such a question, the justice must suspend
159 all further proceedings in the action and certify the pleadings, and, if any of the pleadings are
160 oral, a transcript of them from his docket, to the clerk of the district court of the county. From
161 the time of filing the pleadings or transcript with the clerk of the district court, the district
162 court has the same jurisdiction over the action as if it had been commenced in the district
163 court. [...]” (NRS 66.070.1, *Transfer of cases to district court*)

164
165 **18. The Order of 1 February 2012.** This Court has already acknowledged that the
166 transfer to district court ought to take place. On 1 February 2012, this Court ordered: “[...] It
167 does appear to this Court that Judgment Creditors Ruben and Virginia Gallegos have an
168 inherent right to determine ownership of any property owned by the Judgment Debtors,
169 Michael Marking and Elizabeth Fleming. Austin Justice Court, a Limited Jurisdiction Court,
170 is limited in the determination of ownership of the property. If the property known as Eleven
171 Eleven Ranch is indeed owned by the judgment debtors, a determination of that fact would
172 have to be made by a higher Court. This Court would therefore suggest that any further action
173 to that end be filed in the Sixth Judicial District Court where this issue could be decided
174 without limitation.” (Emphasis added)

175 **19.** This Court got it right, but only partly so. Joe Dory did not mention the 15-day time
176 limitation for transfer, given by DCR 22. When he said that efforts “to this end” (that is,
177 toward discovering the ownership) should be filed in district court, he was being sloppy with
178 the language of NRS 66.070.1, which requires “all further proceedings” to be held in district
179 court, not merely those proceedings related to the extra-jurisdictional issue.

180 **20.** When former justice Joe Dory ordered the new “inquest”, he must have forgotten his
181 previous order to move the case to district court.

182 **21.** (Perhaps his mind was on the mother-of-Mary-his-daughter, Plaintiff Sissy Gallegos.

183 He was ignoring the requirements of his job. He was a short timer, and maybe just didn't give
184 a damn.)

185
186 **22.** (We note here that Joe Dory was not a stickler for the truth, anyway. He committed a
187 category C felony in Nevada (NRS 200.364.3; 200.368; 179D.095; 179D.097.1(c)) when he
188 impregnated Plaintiff Gallegos with their daughter, Mary Hammon, Dory wasn't concerned
189 with the law, either. Still smitten with her from that old conquest, he declared her to be “very
190 special” as he leaned far toward her from the bench. Also from the bench, he said that,
191 although he had been chastized for breaking the rules for her, he would do it again. All this is
192 based on sworn testimony. So much for judicial ethics.

193 **23.** Nevertheless, Joe Dory had legal help. He consulted Hy Forgeron, who also gave
194 legal advice to Ruben Gallegos regarding this case. Dory told a bald-faced lie, and said he
195 would never engage in ex parte communications, while at the same time claiming that he had
196 a right to consult with the Plaintiff's attorney, and would continue to do so. No one could be
197 that stupid, to think anyone would believe that.)

198 **24.** (Regarding Joe Dory's request to Defendants for evidence to prove that Defendants
199 don't own the property: High school students grasp that you cannot provide evidence that
200 something doesn't exist; after all, if it doesn't exist, there will be no evidence. Shades of the
201 Inquisition, again: Prove you're not a witch! Prove you're not in league with demons! And, To
202 Hell with the concept that the burden of proof belongs to the movant! She's so special!)

203
204 **25. Further proceedings in this Court regarding this case are improper.** The statute
205 is clear, that “[...] the justice must suspend all further proceedings [...]” (NRS 66.070.1,
206 emphasis added) in this case. Effectively, reading the statute as a whole, this has now become
207 a district court case, as if the action “had been commenced in the district court”.

208 **26.** The requirement that all subsequent proceedings, if any, be held in district court, is

209 sensible, and compatible with the principle that a court cannot limit or expand its own
210 jurisdiction. If the case were to be continued in justice court, it would only be under the cloud
211 of a “forbidden topic”.

212 **27.** One detail is worthy of note: the district court itself technically acquires jurisdiction
213 once the transfer has been made. “From the time of filing the pleadings or transcript with the
214 clerk of the district court, the district court has the same jurisdiction over the action [...]”
215 (NRS 66.070.1) Although this case is now a district court case, this Court still has
216 jurisdiction, but it appears that, without further proceedings being allowed, this Court's only
217 function is to enforce the requirement to transfer this case.

218 **28.** Accordingly, any hearing scheduled pursuant to execution of the judgment, such as
219 the one scheduled for 7 February 2013, is improper.

220
221 **29. Plaintiffs responsible for the transfer to district court.** Additional guidance is
222 given by DCR 22, regarding the application of NRSS 66.070.1:

223 Rule 22. Transfer of certain cases to district court from justice court under NRS 66.070:
224 Grounds for dismissal of action.

225 1. The plaintiff shall cause the papers in a case certified to this court under the
226 provisions of NRS 66.070 to be filed in the office of the clerk of this court within 15 days
227 from the day upon which the order of the justice of the peace is made directing the
transfer of the case.

228 2. If the papers are not so filed the case shall be dismissed:

229 (a) Upon filing a certificate from the justice of the peace to the effect that he has
230 certified the papers as required by NRS 66.070, but that the same have not been ordered
up, or the proper costs paid; or

231 (b) If it shall appear that such papers are not filed in this court by reason of the
neglect of the plaintiff to pay the fees of the clerk for filing the same.

232 (DCR 22, emphasis added)

233
234 **30.** In other words, Plaintiffs had 15 days from Joe Dory's order to pay fees and to take

235 any other action required to transfer the case. Considerably more than 15 days have elapsed –
236 almost a year, in fact – yet Plaintiffs have neglected to pay the fees or otherwise to effect the
237 transfer.

238
239 **31. Dismissal of this case.** As in the present instance, this Court is entitled to dismiss a
240 case for failure of Plaintiff to follow the rules or any order of this Court. “For failure of the
241 plaintiff to comply with these rules or any order of court, a defendant may move for dismissal
242 of an action or of any claim against the defendant. [...]” (JCRC 41(b)) Furthermore,
243 “Whenever it appears by suggestion of the parties or otherwise that the court lacks
244 jurisdiction of the subject matter, the court shall dismiss the action.” (JCRC 12(h)(3))

245 **32.** Although the Court has no jurisdiction over questions involving title to real property,
246 it does indeed have jurisdiction over the claims involved in the original complaint. Defendants
247 acknowledged the debt, and did not appeal the judgment. A dismissal would act to halt further
248 proceedings, not to erase all that has happened hither: the final judgment of 28 September
249 2010 would, necessarily by *res judicata*, still stand.

250 **33.** Defendants' only line of questioning in the 26 October 2010 hearing revolved around
251 the Eleven Eleven Property. By asking for a further hearing, they are either intending to
252 continue in the same vein (which is beyond this Court's jurisdiction), or to ask questions
253 which should have been asked over two years ago (which constitutes harassment, since they
254 are asking for two hearings when one would have sufficed). Either way, Defendants are acting
255 unfairly. Regardless, since they have been unwilling to complete their previous line of
256 questioning regarding the Property, it appears that they view these NRS 21.270 hearings as
257 fishing expeditions, to be conducted on a whim and without regard for the Court's or
258 Defendants' time.

259 **34.** Fairness requires that this case be dismissed, though the judgment must remain
260 standing, and further proceedings in this Court disallowed. (Case law nearly universally

261 opposes vacatur of a final judgment except under rare circumstances which do not here apply.)

262 **35.** Alternatively, if this Court feels that it cannot dismiss a case under these
263 circumstances, it might still disallow further proceedings, as the rules clearly demand. Perhaps
264 this Court believes that, since this case has been declared no longer within its jurisdiction, it is
265 the prerogative of the district court to decide the question of dismissal. If Plaintiffs eventually
266 decide to move this case to district court, as required by the rules, then Defendants can move
267 for dismissal at that time in the district court.

268
269 **36. Conclusion.** The transcript shows that a subject beyond the jurisdiction of this Court
270 was discussed, and the rules and statutes unequivocally call for a halt of all further
271 proceedings, and transfer of this case to the district court.

272 **37.** Plaintiffs did not meet their responsibility to effect the transfer within 15 days after
273 the order as required by rule. Almost a year has passed, and Defendants are by reason of
274 Plaintiffs' negligence entitled to have this case dismissed.

287 CERTIFICATE OF SERVICE

288
289 I hereby certify under penalty of perjury that on this date I served true and correct copies of
290 the foregoing document by depositing them for mailing, in sealed envelopes, US. postage
291 prepaid, at San Jose, California, addressed as follows:

292 Ruben Gallegos and Virginia (Sissie) Gallegos; Post Office Box 221; Austin,
293 Nevada 89310

294 Austin Justice Court; Post Office Box 100; Austin, Nevada 89310

295 Dated Wednesday, 23 January 2013.

296
297 _____
298 Michael Marking

300
301 AFFIRMATION

302 (Pursuant to NRS 239B.030)

303
304 I hereby affirm that the preceding document filed in the above-described manner does
305 not contain the social security number of any person.

306 Dated Wednesday, 23 January 2013.

307
308 _____
309 Michael Marking

310
311
312 (Appellants' electronic document name: *ggvmf_motion_dismiss_or_transfer_20130123c*)