The legal standard is that "service of process[1]" is a formal method- the "**formal delivery**[2] of documents that are legally sufficient to charge defendant with **notice**...Indeed "constitutional due process requires that such **notice** be reasonably calculated to apprise the defendant of the action and afford him the opportunity to defend." *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. (Emphasis added.)[3] Without exception, neither "publication nor substituted service" is "**notice** reasonably calculated to inform" because of the inadequacies and that the chance of actual notice is reducd if not an impossibility. *Mullane*, id at 315.

In limine, the **notice** of the summons and complaint via "publication or substituted service" is not a constitutionally valid method because DEFENDANT NGUYEN never a) had an opportunity to be heard or to present objections or b) challenge the very nature of the proceedings.[4] Without exception, the court never acquired jurisdiction over DEFENDANT NGUYEN.

Further, the Nevada Supreme Court has held that a "Rule 60(b)(3) is invoked in a case (as in here) where the court entering the challenged judgment did not have jurisdiction over the parties." *Misty Management v. District Court* 83 Nev. 180, *Foster v. Lewis* 78 Nev. 330. In summary, "a void judgment can be set aside and a motion to set it aside is not restricted to the six month time frame." *Foster*, id at page 334.

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[1] Per, the **NRCP RULE 4: PROCESS (6) Service Upon Individuals.** In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process

[2] Contrary to WAW's contentions, "knowledge of a lawsuit is not formal delivery nor is it service." *Mullane,* id at page 314-5

[3] When Nevada courts are interpreting NRCP which mirror the Federal Rules of Civil Procedure, Nevada courts look to federal case law for as this court (e.g., Nevada Supreme Court or this court) has recognized that "federal decisions involving Federal Rules of Civil Procedure provides persuasive albeit mandatory authority when this court examines its rules. *Nelson v. Heer* (2005) 121 Nev. 832, 834. (Emphasis added.)

[4] *Grannis v. Ordean* (1914) 234 U.S. 385, 394 Our U.S. Supreme Court held "that the fundamental requisite of due process of law is the opportunity to be heard." (Emphasis added.)

Thus, the court based upon these authorities can grant the motions to set aside the default judgment.

A. THE SUBSTITUTED SERVICE AND/OR PUBLICATION IS NOT NOR CAN NEVER BE REASONABLY CALCULATED TO "APPRIZE AND AFFORD" DEFENDANT ANDY NGUYEN AN OPPORTUNITY TO BE HEARD

1. Indeed, substituted service upon Cindy Nguyen (No Relation) is invalid for she is not an authorized agent. Moreover, publication is not intended to apprize the interested party.

In determining valid service, the court will review whether a) the substituted service did impart notice to DEFENDANT NGUYEN and b) the **publication is notice** reasonably calculated.

Here, PLAINTIFF, WAW PROPERTIES contends that the "substituted service" upon one Cindy Nguyen constitutes service upon DEFENDANT ANDY NGUYEN. This is unacceptable. **One**, Cindy Nguyen is not an authorized agent for DEFENDANT ANDY NGUYEN, nor is she authorized to accept service of process. (Please see **Exhibit "A"** the Nevada Secretary of State's "business entity information" in which **only and only** DEFENDANT, ANDY NGUYEN is the authorized and registered agent to accept process. This is incorporated by reference.)

Two, the address that was "served" a 2238 Alanhurst Drive in Henderson, Nevada, with a zip code of 89052 is not occupied nor maintained as a residence or utilized as a business for DEFENDANT, NGUYEN. Said address is a rental property and Cindy Nguyen a tenant at the time of the serving. A tenant of a rental property is not a proper agent at any time and is an unacceptable agent for "service or process" for Andy Nguyen. Andy used that property to receive mail because at the time he was on construction projects in the State of California. KNN

Construction has operations and projects in both states, and his residence at the time was in California.

Three and factually, in 2007, DEFENDANT, NGUYEN sold the business to DEFENDANT ANN PHAM. (Please see **Exhibit "B",** which is a true and correct copy of the cashier's check from Ann to Andy for $10,000.00 and receipt for sale and transfer of lease, not assignment of lease which WAW claim, which is also incorporated by reference.) Thus, DEFENDANT, NGUYEN had no control or liability over the property or to make payments. Furthermore, as part of the sale of the business to the new owners Ann Pham and BJ Vo, there was a new Lease that was signed by the two new owners. (**Exhibit "C").** A Review of this new lease will reveal the conspicuously absent signature of one Andy Nguyen at the top. Thus Andy Nguyen was not and never a "guarantor" as WAW property claimed. This new lease agreement was signed by WAW representatives and "Notarized" at the bottom. Therefore WAW was scienter and had notice of the sale and had Andy Nguyen gone to trial he would have asserted that he be removed as a "joint and severally" liable defendant because the business was sold and his interests and liabilities were severed at that moment.

Moreover, under contract rules and according to the Statute of Frauds (SOF), and contract for the sale of land or lease that cannot be performed in one year must be in writing and "signed" by the party to be charged. Here, Andy Nguyen never signed this new lease and therefore could not be charged according to the Statute of Frauds. Here, it is not Andy Nguyen as the new owner taking over the business that is to be charged in this complaint, but rather it is Andy Nguyen the ex-owner or former owner that no longer has any interests, liabilities or debts after he sold the business. Thus this addition of Andy Nguyen to this complaint was fraudulent from the beginning.

As enunciated by our U.S. Supreme Court in repeated decisions over the past one hundred years, is that "an essential principle of due process is that a deprivation of property be preceded by **notice** and opportunity for a hearing and the right to confront the accuser and any witnesses in the complaint. *Hamdi v. Rumsfeld,* (2004) 542 U.S. 507, 533, quoting *Mullane,* supra at pages 313-316. (Emphasis Added.) (The Confrontation Clause applies to Civil Cases as well as Criminal Cases).

In the case-at-bar, DEFENDANT, NGUYEN argues that he was never served; never got the **notice** of the summons and complaint because **substituted service** cannot reasonably reach the intended recipient.

Above all, publication is not valid, either, because "publication" is not reasonably calculated to apprize interested parties of the pending lawsuit" *Mullane*, supra at page 318, 320. (Emphasis added.) See *Hamdi*, id at page 534. Likewise, see *Nelson v. Sierra Construction Corp.* 77 Nev 334, 345.

In fact, the alleged publication never reached DEFENDANT, NGUYEN.[5] It is axiomatic that the publication equals no **notice.** DEFENDANT NGUYEN had no knowledge of a publication nor was he required to.

Therefore, the substituted service or publication as initiated by PLAINTIFF WAW PROPERTIES did not "apprize or afford" DEFENDANT ANDY NGUYEN of the lawsuit. Accordingly, he moves this court to set aside (vacate) those defaults.

B. A VOID JUDGMENT CAN BE SET ASIDE AT ANY TIME

[5] As outlined above, "**notice** of a lawsuit at a "debtor's hearing" as contended by WAW is not sufficient because it violates the very principle of due process, the right to notice, an opportunity to be heard in a meaningful manner." *Armstrong v. Manzo* (1965), 380 U.S. 550-545. (Emphasis added.) See, too *Priest v. Las Vegas* (1937) 232 U.S. 604. *Fuentes v. Shevin* (1972) 407 U.S. 67, 80.

1. The judgment is void because the primary amount of judgment is fraudulent and was misrepresented to the court of Elizabeth Dole Gonzales.

The judgment balance "principle" granted in the default judgment was for the amount of $80,388.50. **(Exhibit "D").**

First, the monthly lease amount was for $4650.oo per month, evidence by 1st and last month's rent by Andy Nguyen **(Exhibit "E").** Under Nevada real estate law and leasing law where a tenant or lessee is in default after 30 days, a notice of default is required to be sent out. After 60 days a notice to evict is sent out. And after 90 days actual eviction or ejection from the said premises. Therefore the maximum principle amount that could be recovered was ($4650.oo x 3) = $13,950. Yet WAW claimed $80,388.50 in principle damages. A lessor or landlord is required by law to prevent waste and mitigate damages where a tenant is in default or arrears of his rent. The landlord has an affirmative duty to serve notice of default, evict and "relet" the premises to mitigate damages.

Here there was no notice to Andy Nguyen of any default on the premises as WAW alleges he was guarantor, the guarantor should have received due notice. None was ever received by Andy Nguyen. **First**, at trial we request WAW property produce these notices under penalty of perjury that Andy Nguyen was served of these notices of default as guarantor. **Second**, we request at trial and under penalty of perjury that WAW property explain how a lease for $4650 per month ballooned to $80,388.50. **Finally**, under Nevada Case law, "acceptance of rent with knowledge of default constituted waiver of lessor to collect rent" See NRS 40.2516, Sharp v. Twin Lakes Corp (1955) 71 Nev 162, Summa Corp v. Richardson (1977) 93 Nev 228, at page 234. Where WAW at anytime accepted any rent once the new owners Ann Pham and BJ Vo were in default, whether in part or in full constituted a waiver. They were "precluded" from suing for all or in

part for the difference according to the case law sited. Additionally, where plaintiff accepted these monies as payment in part or in full, it reset the clock for eviction as stated previously for the 30-day notice of default, and 60-day notice of default, and the 90-day notice of eviction. We request a trial that WAW under penalty of perjury produce records whereby show the length of time the new owners Ann Pham and BJ Vo were in default and whether WAW accepted payment for rent or lease in part or in full and explain why they did not take action to mitigate the default. Instead we contend it was fraudulent on the part of WAW to allow the rent in arrears to accumulate to a larger substantial amount to make it worthwhile to file a complaint for redress. This amounts to fraud on the part of WAW properties and the default judgment can be voided based on these grounds.

2. The judgment is void because the court never acquired personal jurisdiction and the burden of proving jurisdiction is upon PLAINTIFF, WAW PROPERTIES. Such a burden they cannot meet.[6] WAW PROPERTIES did not exert due diligence.

In the case-at-bar, PLAINTIFF WAW PROPERTIES entered and endeavored to enforce an invalid default judgment. There was no service; hence, no jurisdiction which constitutes a void judgment. (See above.)[7] Indeed, the burden of asserting jurisdiction rests with WAW PROPERTIES. Illustratively, their only evidence of "service" is an illegal substituted service [8]and improper publication. Due diligence is a requisite per NRCP Rule 4(e)(1)(i) "the exercise of due diligence..." Here, WAW PROPERTIES never confirmed the address of DEFENDANT

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[6] See, e.g., *International Shoe Co. v. Wash.* (1945) 326 U.S. 310, 316, *Baker v. Eighth Judicial District Ct.* (Nev. 2000) 999 P. 2d 1020, 1023.

[7] See Peralta v. Heights Medical Center, Inc. (1988) 485 U.S. 80, where the U.S. Supreme Court held that "depriving a person of their property without due process, the defendant does not have to show he has a meritorious defense."

[8]

NGUYEN or that the Fashion Nails and Spa Business was sold years before. Nor did WAW PROPERTIES verify who could *de jure* actually serve as the agent. These are insidious violations that deprived DEFENDANT NGUYEN of his property–monies being paid out-wrongfully. Thc courts and appeals courts will strictly interpret who is proper agent. The courts will strictly construe that only the "agent" or and "authorized agent" can be served. **First**, the burden will be on WAW properties to prove this by "preponderance of evidence" that Cindy Nguyen met these standards. Conversely, Andy Nguyen has irrefutable evidence that only he is an authorized agent (Exhibit "A") and at no time authorized impliedly or explicitly for anyone else to accept service in his place. The test is a subjective test from the first person of Andy Nguyen not from WAW property point of view of who they deem is a valid substitute. **Second**, it is also the burden of WAW properties to prove by "preponderance of evidence", that there was an acceptable Nexus and that this Notice of Service of Process got delivered to the hands of Andy Nguyen who was in another state. When the courts and appeals courts interpret Notice for service of process it is strictly enforced. The courts and appeals courts do not accept any Inference, Implied or Assumptions that the Notice was to the proper agent but rather it must be entered into fact as evidence that the proper agent was served in order to proceed with the trial and to establish Prima Facia for the case. When it is an individual only that person, or an authorized person that is recognized by them in a subjective test can accept service of process. WAW property cannot determine who this is on a whim or their own discretion. Where WAW property had served Andy Nguyen at his office for KNN Construction or any staff there, there would be no question. Instead WAW chose what they assumed and thought was his residence but in actuality was a rental property, and then to serve a tenant is unacceptable as service of process.

As the Nevada Supreme Court held "that the very policy of setting aside default judgments [as in our case] assures a trial on the merits." *Price v. Dunn* (1990) 106 Nev. 100, 105. See, too

Hotel Last Frontier Corp v. Frontier Properties, Inc. (1963) 79 Nev 150, 153.

Therefore, WAW PROPERTIES cannot evince statutory compliance and resultantly, DEFENDANT NGUYEN was not restricted or prohibited from moving for vacating the default because of WAW PROPERTIES inherent and fatal failures.

III

PRAYER FOR RELIEF

For any of the foregoing and independent reasons, DEFENDANT, NGUYEN requests the court grant his motions to set aside the defaults and default judgments.

Dated: 8/11/11

Andy Nguyen, Defendant, *In Pro Per*

EXHIBIT A

K&N CONSTRUCTION, INC.

Business Entity Information

Status:	Active	File Date:	4/10/2002
Type:	Domestic Corporation	Entity Number:	C8877-2002
Qualifying State:	NV	List of Officers Due:	4/30/2012
Managed By:		Expiration Date:	
NV Business ID:	NV20021281887	Business License Exp:	4/30/2012

Additional Information

Central Index Key:	

Registered Agent Information

Name:	ANDY NGUYEN	Address 1:	2238 ALANHURST DR.
Address 2:		City:	HENDERSON
State:	NV	Zip Code:	89052
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 1,000.00
Par Share Count:	1,000,000.00	Par Share Value:	$ 0.001

Officers

☐ Include Inactive Officers

Treasurer - ANDY NGUYEN			
Address 1:	4300 SPRING MT. RD.	Address 2:	SUITE 115
City:	LAS VEGAS	State:	NV
Zip Code:	89102	Country:	
Status:	Active	Email:	
Director - ANDY NGUYEN			
Address 1:	4300 SPRING MT. RD.	Address 2:	SUITE 115
City:	LAS VEGAS	State:	NV
Zip Code:	89102	Country:	
Status:	Active	Email:	
Director - CINDY NGUYEN			
Address 1:	4300 SPRING MT. RD.	Address 2:	SUITE 115
City:	LAS VEGAS	State:	NV
Zip Code:	89102	Country:	
Status:	Active	Email:	
Director - TONY NGUYEN			

Address 1:	4300 SPRING MT. RD.	Address 2:	SUITE 115
City:	LAS VEGAS	State:	NV
Zip Code:	89102	Country:	
Status:	Active	Email:	
Secretary - ANNA SORIANO			
Address 1:	4300 SPRING MT. RD.	Address 2:	SUITE 115
City:	LAS VEGAS	State:	NV
Zip Code:	89102	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	C8877-2002-001	# of Pages:	2
File Date:	4/10/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C8877-2002-005	# of Pages:	1
File Date:	6/28/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C8877-2002-004	# of Pages:	1
File Date:	3/07/2003	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	C8877-2002-003	# of Pages:	1
File Date:	3/24/2003	Effective Date:	
ANDY NGUYEN STE 102			
4770 SPRING MOUNTAIN ROAD LAS VEGAS NV 89102 DMM			
Action Type:	Annual List		
Document Number:	C8877-2002-002	# of Pages:	1
File Date:	4/14/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050108267-11	# of Pages:	1
File Date:	3/25/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060137482-53	# of Pages:	1
File Date:	3/02/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070272525-52	# of Pages:	2
File Date:	4/18/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080168935-22	# of Pages:	1
File Date:	3/12/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		

Document Number:	20090250431-06	# of Pages:	1
File Date:	3/12/2009	Effective Date:	
09-10			
Action Type:	Annual List		
Document Number:	20100287349-96	# of Pages:	1
File Date:	4/12/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110117422-21	# of Pages:	2
File Date:	2/16/2011	Effective Date:	
(No notes for this action)			
Action Type:	Resignation of Officers		
Document Number:	20110420633-02	# of Pages:	1
File Date:	6/06/2011	Effective Date:	
(No notes for this action)			

EXHIBIT B

K&N CONSTRUCTION, INC
4300 SPRING MOUNTAIN RD #115
LAS VEGAS, NV 89102
PH: 702-367-3799
FX: 702-616-2662
CL: 702-354-6011
EMAIL: knnconstruction@yahoo.com

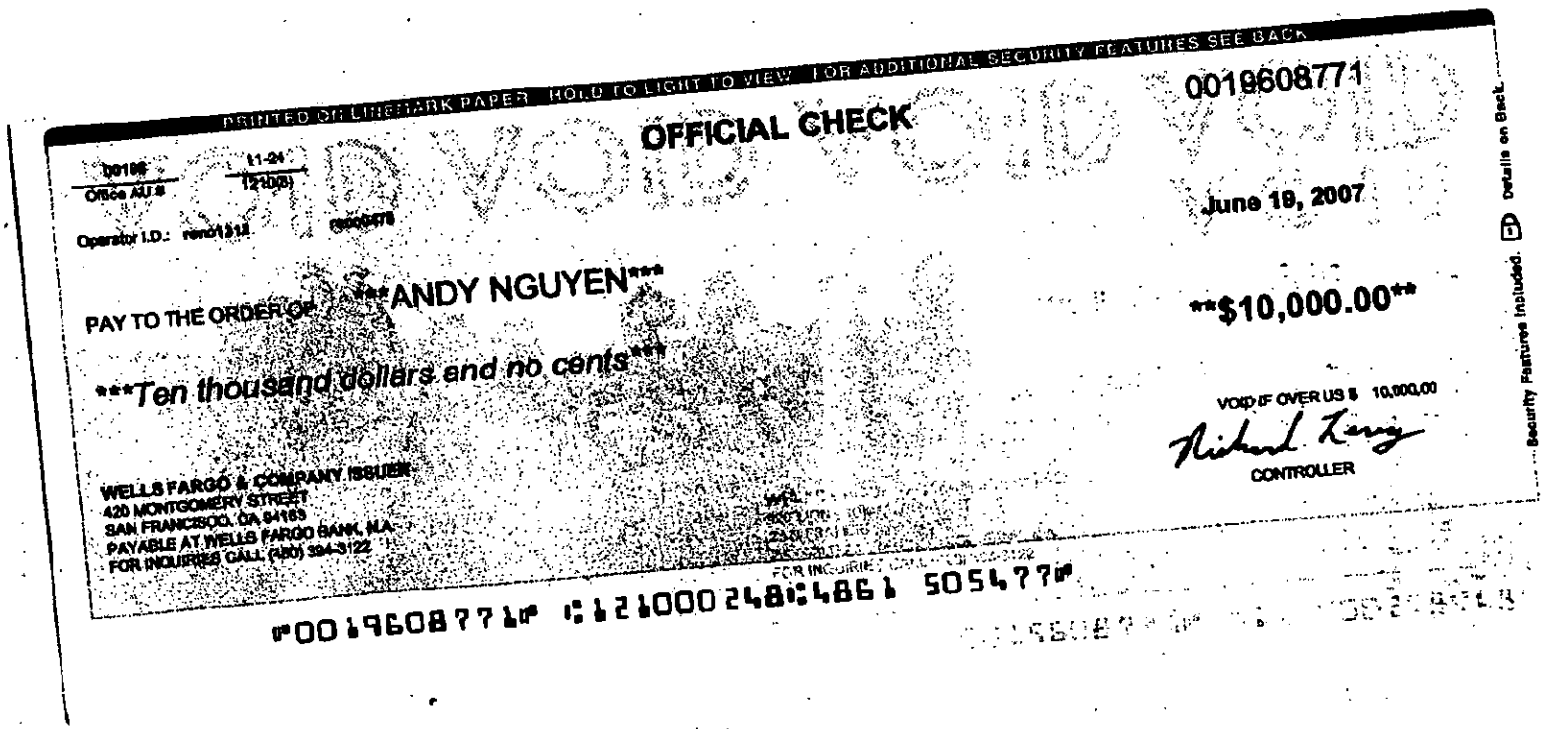
Re: Nail Forum
5840 W. Craig Rd Unit 110
Las Vegas, NV

6/21/07

Ann Hong Pham, new owner of Nail Forum located at 5840 W. Craig Rd, has paid the total amount of $10,000 (Ten thousand dollars) to transfer the lease to her name from Andy Nguyen, former owner of Nail Forum. With this check (#0019608771) the total amount of the contract has been paid in full.

Signature: Anna Soriano

Anna Soriano



PRINTED ON LINE MARK PAPER HOLD TO LIGHT TO VIEW FOR ADDITIONAL SECURITY FEATURES SEE BACK

OFFICIAL CHECK

0019608771

00195 Office AU # 11-24 / 121000

Operator I.D.: rend1311 0000478

June 19, 2007

PAY TO THE ORDER OF ***ANDY NGUYEN***

$10,000.00

Ten thousand dollars and no cents

VOID IF OVER US $ 10,000.00

CONTROLLER

WELLS FARGO & COMPANY ISSUER
420 MONTGOMERY STREET
SAN FRANCISCO, CA 94163
PAYABLE AT WELLS FARGO BANK, N.A.
FOR INQUIRIES CALL (800) 394-3122

FOR INQUIRIES

Details on Back. Security Features Included.

⑈0019608771⑈ ⑆121000248⑆4861 505477⑈

(48)

No. A-588067

Dept. No. XXX1

FILED
Aug 30 11 17 AM '11
CLERK OF COURT

IN THE 8TH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR

THE COUNTY OF CLARK COUNTY

WAW PROPERTIES,LLC a Utah, LLC qualified to do business in the State of Nevada,

Plaintiff,

v.

FASHION NAIL & SPA, INC, Nevada Corporation; ANDY NGUYEN; an individual; ANN PHAM, an individual; BJ NGOC YO, an individual; DOES Defendants 1 through X, inclusive, and ROE Corporate Defendants 1 through X, Inclusive,

Defendants

09A588067
NOAS
Notice of Appeal
1589907

NOTICE OF APPEAL

Notice is hereby given that ANDY NGUYEN, defendant above named, hereby appeals to the Supreme Court from the final judgment entered in this action on the day of August 29, 2011.

Andy Nguyen, *In Proper Person*

2259 CORAL RIDGE

HENDERSON NV 89052

Address

RECEIVED
AUG 30 2011
CLERK OF THE COURT

ASTA

FILED
SEP 01 2011
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

WAW PROPERTIES, LLC.,

Plaintiff(s),

vs.

FASHION NAIL AND SPA, INC,; ANDY NGUYEN; ANN PHAM; BI N. VO,

Defendant(s),

Case No: 09A588067
Dept No: XXXI

09A588067
ASTA
Case Appeal Statement
1693553

CASE APPEAL STATEMENT

1. Appellant(s): Andy Nguyen
2. Judge: Joanna Kishner
3. Appellant(s): Andy Nguyen

Counsel:

Andy Nguyen
2259 Coral Ridge
Henderson, NV 89052

4. Respondent (s): WAW Properties, LLC.

Counsel:

Thomas D. Harper, Esq.
600 So. 9th St.
Las Vegas, NV 89101

5. Respondent's Attorney Licensed in Nevada: Yes
6. Appellant Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: April 17, 2009

10. Brief Description of the Nature of the Action: Breach of Contract

Type of Judgment or Order Being Appealed: Judgment

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 1 day of September 2011.

Steven D. Grierson, Clerk of the Court

By: Marie Kramer

Marie Kramer, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

ORDR
THOMAS D. HARPER, LTD.
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-9744
Fax: (702) 383-9765
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

-o-

WAW PROPERTIES L.L.C., a Utah Limited Liability Company, qualified to do business in the State of Nevada,

Plaintiff,

v.

FASHION NAIL & SPA, INC., a Nevada Corporation; ANDY NGUYEN, an individual; ANN PHAM, an individual; BJ NGOC VO, an individual; DOE Defendants I through X, inclusive; and ROE Corporate Defendants I through X, inclusive,

Defendants.
_____/

CASE NO. A-588067
DEPT. NO. XXXI

ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTER-MOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297

Date of Hearing: August 15, 2011
Time of Hearing: 9:00 a.m.

THIS MATTER having come on for hearing on the 15th day of August, 2011 on Defendant/Judgment Debtor ANDY NGUYEN's Motion to Set Aside Default and Default Judgment and on Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotions for Arrearages and Punitive Damages pursuant to NRS 31.297 and Countermotion for Sanctions in the Form of an Award of Attorney's Fees pursuant to EDCR 7.60(b)(1) and (3), Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. represented its legal counsel, Thomas D. Harper, Esq. of the law office of

Thomas D. Harper, Ltd., Defendant/Judgment Debtor ANDY NGUYEN appearing in Proper Person and being assisted linguistically by Don Tran, the Court having found that Defendant/Judgment Debtor ANDY NGUYEN admitted that he was personally served with the Summons and Complaint in this matter, that substitute service pursuant to NRCP 4(b) on Defendant/Judgment Debtor ANDY NGUYEN was effectuated by service on Cindy Nguyen, that the filing of the Motion to Set Aside Default and Default Judgment was untimely and that Defendant/Judgment Debtor ANDY NGUYEN did not have a meritorious defense to the Complaint on file herein, and further finding that Defendant/Judgment Debtor ANDY NGUYEN did not file an opposition to the Countermotions, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant/Judgment Debtor ANDY NGUYEN's Motion to Set Aside Default and Default Judgment is denied.

IT IS FURTHER ORDERED that Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotion for Arrearages and Punitive Damages against Garnishee K & N Construction, Inc. pursuant to NRS 31.297 is granted in part and denied in part as the request for punitive damages is denied and the request for arrearages is granted against Garnishee K & N Construction, Inc. who is ordered to pay arrearages in the amount of $4,000.00 to Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. and which figure was calculated at twenty-five percent (25%) of the $1,000.00 weekly earnings by Defendant/Judgment Debtor ANDY NGUYEN for sixteen (16) weeks commencing on the date that the writ of garnishment was served on Garnishee K & N Construction, Inc. and for one hundred twenty (120) days thereafter.

IT IS FURTHER ORDERED that Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotion for Sanctions in the Form of an Award of Attorney's Fees pursuant to EDCR 7.60(b)(1) and (3) is hereby granted and Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. is awarded $1,500.00 in attorney's fees against Defendant/Judgment Debtor ANDY

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THOMAS D. HARPER, LTD.
A PROFESSIONAL CORPORATION
606 South Ninth Street
Las Vegas, Nevada 89101

NGUYEN.

DATED this 31 day of August, 2011.

DISTRICT COURT JUDGE

Submitted by:

THOMAS D. HARPER, LTD.

By
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas NV 89101
Attorney for Plaintiff WAW PROPERTIES, L.L.C.

Approved as to form and content:

By
ANDY NGUYEN
4300 Spring Mountain Road, #115
Las Vegas NV 89102
Defendant in Proper Person

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09/12/2011 10:05:34 AM

CLERK OF THE COURT

NOTC
THOMAS D. HARPER, LTD.
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-9744
Fax: (702) 383-9765
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

-o-

WAW PROPERTIES L.L.C., a Utah Limited Liability Company, qualified to do business in the State of Nevada,

Plaintiff,

v.

FASHION NAIL & SPA, INC., a Nevada Corporation; ANDY NGUYEN, an individual; ANN PHAM, an individual; BJ NGOC VO, an individual; DOE Defendants I through X, inclusive; and ROE Corporate Defendants I through X, inclusive,

Defendants.
_____/

CASE NO. A-588067
DEPT. NO. XXXI

NOTICE OF ENTRY OF ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTERMOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297

PLEASE TAKE NOTICE that an **ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTERMOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297** was entered in this matter on the 6th day of September, 2011, a copy of which ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTERMOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297 is attached hereto and made a part

hereof as though fully set forth herein.

DATED this 12th day of September, 2011.

THOMAS D. HARPER, LTD.

By _____
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas NV 89101
Attorney for Plaintiff
WAW PROPERTIES, INC.

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of September, 2011, I placed a true and correct copy of the **NOTICE OF ENTRY OF ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTERMOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297** in the U.S. Mail, in a sealed envelope, first class postage prepaid, to the following:

Andy Nguyen
K & N Construction
4300 Spring Mountain Road, #115
Las Vegas NV 89102
Defendant/Judgment Debtor in
Proper Person

_____
An employee of THOMAS D. HARPER, LTD.

ORDR
THOMAS D. HARPER, LTD.
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-9744
Fax: (702) 383-9765
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

-o-

WAW PROPERTIES L.L.C., a Utah Limited Liability Company, qualified to do business in the State of Nevada,

Plaintiff,

v.

FASHION NAIL & SPA, INC., a Nevada Corporation; ANDY NGUYEN, an individual; ANN PHAM, an individual; BJ NGOC VO, an individual; DOE Defendants I through X, inclusive; and ROE Corporate Defendants I through X, inclusive,

Defendants.
_____/

CASE NO. A-588067
DEPT. NO. XXXI

ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT; ORDER GRANTING COUNTER-MOTION FOR SANCTIONS IN THE FORM OF AN AWARD OF ATTORNEY'S FEES; AND ORDER GRANTING ARREARAGES PURSUANT TO NRS 31.297

Date of Hearing: August 15, 2011
Time of Hearing: 9:00 a.m.

THIS MATTER having come on for hearing on the 15th day of August, 2011 on Defendant/Judgment Debtor ANDY NGUYEN's Motion to Set Aside Default and Default Judgment and on Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotions for Arrearages and Punitive Damages pursuant to NRS 31.297 and Countermotion for Sanctions in the Form of an Award of Attorney's Fees pursuant to EDCR 7.60(b)(1) and (3), Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. represented its legal counsel, Thomas D. Harper, Esq. of the law office of

Thomas D. Harper, Ltd., Defendant/Judgment Debtor ANDY NGUYEN appearing in Proper Person and being assisted linguistically by Don Tran, the Court having found that Defendant/Judgment Debtor ANDY NGUYEN admitted that he was personally served with the Summons and Complaint in this matter, that substitute service pursuant to NRCP 4(b) on Defendant/Judgment Debtor ANDY NGUYEN was effectuated by service on Cindy Nguyen, that the filing of the Motion to Set Aside Default and Default Judgment was untimely and that Defendant/Judgment Debtor ANDY NGUYEN did not have a meritorious defense to the Complaint on file herein, and further finding that Defendant/Judgment Debtor ANDY NGUYEN did not file an opposition to the Countermotions, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant/Judgment Debtor ANDY NGUYEN's Motion to Set Aside Default and Default Judgment is denied.

IT IS FURTHER ORDERED that Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotion for Arrearages and Punitive Damages against Garnishee K & N Construction, Inc. pursuant to NRS 31.297 is granted in part and denied in part as the request for punitive damages is denied and the request for arrearages is granted against Garnishee K & N Construction, Inc. who is ordered to pay arrearages in the amount of $4,000.00 to Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. and which figure was calculated at twenty-five percent (25%) of the $1,000.00 weekly earnings by Defendant/Judgment Debtor ANDY NGUYEN for sixteen (16) weeks commencing on the date that the writ of garnishment was served on Garnishee K & N Construction, Inc. and for one hundred twenty (120) days thereafter.

IT IS FURTHER ORDERED that Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C.'s Countermotion for Sanctions in the Form of an Award of Attorney's Fees pursuant to EDCR 7.60(b)(1) and (3) is hereby granted and Plaintiff/Judgment Creditor WAW PROPERTIES, L.L.C. is awarded $1,500.00 in attorney's fees against Defendant/Judgment Debtor ANDY

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THOMAS D. HARPER, LTD.
A PROFESSIONAL CORPORATION
606 South Ninth Street
Las Vegas, Nevada 89101

NGUYEN.

DATED this 31 day of August, 2011.

DISTRICT COURT JUDGE

Submitted by:

THOMAS D. HARPER, LTD.

By
THOMAS D. HARPER, ESQ.
Nevada Bar No. 001878
606 South Ninth Street
Las Vegas NV 89101
Attorney for Plaintiff WAW PROPERTIES, L.L.C.

Approved as to form and content:

By
ANDY NGUYEN
4300 Spring Mountain Road, #115
Las Vegas NV 89102
Defendant in Proper Person

Andy Nguyen
K& N Construction, Inc
4300 Spring Mountain Road #115
Las Vegas, Nevada 89102

Defendant, *In Pro Per*

SEP 23 3 23 PM '11

DISTRICT COURT

CLARK COUNTY, NEVADA

WAW PROPERTIES,LLC a Utah Limited Liability Company, qualified to do business in the State of Nevada, Plaintiff, vs. **FASHION NAIL & SPA, INC, Nevada Corporation; ANDY NGUYEN; an individual; ANN PHAM, an individual;BJ NGOC YO, an individual; DOES Defendants 1 through X, inclusive, and ROE Corporate Defendants 1 through X, Inclusive,** Defendants	Case No.: **A-588067** **DEFENDANT, ANDY NGUYEN'S DECLARATION IN SUPPORT OF DEFENDANT'S MOTION TO SET ASIDE VOID JUDGMENT**

09A588067
DECL
Declaration
1623110

RECEIVED
SEP 23 2011
CLERK OF THE COURT

DEFENDANT, ANDY NGUYEN'S DECLARATION IN SUPPORT OF DEFENDANT'S MOTION TO QUASH WRIT OF GARNISHMENT

12

I, ANDY NGUYEN, declare as follows for my motion:

1. I am the Defendant in the above-entitled action, I make this declaration in support of my motion to set aside or for relief from the default and default judgment that was entered on July 2010. I have personal knowledge of the facts of thc matters stated herein.

2. I submit my declaration in lieu of personal testimony.

NOA FILED

3. I, on August 30, 2011, did in fact file the Notice of Appeal.(NOA)

I declare under penalty of perjury that the above is true and correct.

Dated: SEPTEMBER 23, 2011

Declarant, Andy Nguyen, *In Pro Per*

Andy Nguyen
K& N Construction, Inc
4300 Spring Mountain Road #115
Las Vegas, Nevada 89102

Defendant, *In Pro Per*

DISTRICT COURT

CLARK COUNTY, NEVADA

WAW PROPERTIES,LLC a Utah Limited Liability Company, qualified to do business in the State of Nevada, Plaintiff, vs. **FASHION NAIL & SPA, INC, Nevada Corporation; ANDY NGUYEN; an individual; ANN PHAM, an individual; BJ NGOC YO, an individual; DOES Defendants 1 through X, inclusive, and ROE Corporate Defendants 1 through X, Inclusive,** Defendants	Case No.: **A-588067** **DEFENDANT, ANDY NGUYEN'S NOTICE OF DEFENDANT'S MOTION TO SET ASIDE VOID JUDGMENT; DECLARATION OF DEFENDANT, ANDY NGUYEN IN SUPPORT OF DEFENDANT'S MOTION; POINTS AND AUTHORITIES IN SUPPORT THEREOF; PROPOSED ORDER**

DEFENDANT, ANDY NGUYEN'S NOTICE OF DEFENDANT'S MOTION TO QUASH THE WRIT OF GARNISHMENT; DECLARATION OF DEFENDANT, ANDY NGUYEN IN SUPPORT OF DEFENDANT'S MOTION; POINTS AND AUTHORITIES IN SUPPORT THEREOF; PROPOSED ORDER

TO ALL PARTIES AND THE ATTORNEY OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on or as soon as thereafter at the Clark County District Court located at 200 Lewis Avenue, Las Vegas, Nevada 89155, Defendant, ANDY NGUYEN will and does move this court for an order vacating the writ of garnishment against said Defendant.

Said motion will be based upon Nevada Rules of Appellate Procedure (hereinafter referred to as NRAP) Rule 3.

Said motion will be based upon this Notice, the points and authorities set forth herein below, the attached declaration of Defendant, ANDY NGUYEN and the complete files and records in this action.

Dated: SEPTEMBER 23, 2011

By_ 

Andy Nguyen,Defendant, *In Pro Per*

Andy Nguyen
K& N Construction, Inc
4300 Spring Mountain Road #115
Las Vegas, Nevada 89102

Defendant, *In Pro Per*

DISTRICT COURT

CLARK COUNTY, NEVADA

WAW PROPERTIES,LLC a Utah Limited Liability Company, qualified to do business in the State of Nevada, Plaintiff, vs. **FASHION NAIL & SPA, INC, Nevada Corporation; ANDY NGUYEN; an individual; ANN PHAM, an individual; BJ NGOC YO, an individual; DOES Defendants 1 through X, inclusive, and ROE Corporate Defendants 1 through X, Inclusive,** Defendants	Case No.: **A-588067** **DEFENDANT ANDY NGUYEN'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION TO QUASH THE WRIT OF GARNISHMENT** **Dept: XXX1**

DEFENDANT ANDY NGUYEN'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION TO QUASH THE WRIT OF GARNISHMENT

I

ISSUE

UNDER NEVADA RULES OF APPELLATE PROCEDURE, SPECIFICALLY, RULE 3A, AND RULE 4, DID THE FILING OF THE DEFENDANT, ANDY NGUYEN'S NOTICE OF APPEAL (NOA) DIVEST THE CLARK COUNTY DISTRICT COURT OF JURISDICTION?

A. SUB ISSUE:

CAN A LOCAL CONSTABLE ENFORCE AN INVALID WRIT OF GARNISHMENT?

SHORT ANSWERS:

1. Yes as fully explained below, the filing-timely filing of a NOA BY defendant, Andy Nguyen vitiates any and all authority/jurisdiction by the Clark County Court to hear and enforce a writ of garnishment.

a. Because of the NOA being filed the local constable lacks the legal right to enforce an invalid writ.

II

PROCEDURAL HISTORY

On April 17, 2000 PLAINTIFF, WAW PROPERTIES commenced litigation against DEFENDANT, ANDY NGUYEN. After the filing of the litigation, DEFENDANT NGUYEN lacked being served by the documents. Specifically, the lawsuit was served upon an individual who did not have the *dejure* or *defacto* authority to accept service of process.

Subsequently, WAW PROPERTIES did an "Ex Parte Application for Service by Publication." Five months later, WAW PROPERTIES procured a default and default judgment against DEFENDANT NGUYEN.

After reviewing his credit report, DEFENDANT NGUYEN uncovered a "default and default judgment" on his report. He then proceeded to file a motion to set aside the default and default judgment. PLAINTIFF, WAW PROPERTIES opposed said motion.

At the motion hearing, the Clark County Court denied the motion to set aside the default and default judgment and granted the counter motions by WAW PROPERTIES. On August 29, 2011, judgment was entered in favor of WAW PROPERTIES. Then on August 30, 2011, DEFENDANT ANDY NGUYEN filed his NOA.

After the filing of the NOA, PLAINTIFF, WAW PROPERTIES sent a "writ of garnishment" to DEFENDANT NGUYEN in care of the Clark County Court.

III

FACTS

Before the present litigation, Fashion nails and Spa Inc., (FNSI) leased the property to operate a nail salon. Later, that same property was sold to new owners: Ann Pham and BJ Vo. As the new owners they signed a new lease with WAW PROPERTIES. However, that new lease was **not** signed by Andy nor FNSI as guarantors. Ann Pham and BJ Vo then defaulted on the lease.

Yet, WAW PROPERTIES sued Andy Nguyen when Andy **was not** connected nor an owner who defaulted on the lease.

WAW PROPERTIES as indicated above, procured a default and default judgment against Andy-and no one else.

Further, Andy filed motion(s) to set aside the default and default judgment; but, they were denied.

Subsequently, a judgment was entered against Andy Nguyen and Mr. Nguyen filed his NOA.

Furthermore, WAW PROPERTIES is now endeavoring to garnish Andy Nguyen's wages with a "writ of garnishment."

It is the "writ of garnishment" that Andy Nguyen moves to quash.

IV

ARGUMENT

LEGAL STANDARD TO GRANT:

The Nevada Supreme Court has held consistently that "a notice of appeal (NOA)[1] divests the district court of jurisdiction to act and vests jurisdiction in the Nevada Supreme Court. *Mack-Manley v. Manley* (2006) 122 Nev 849, 855 citing *Rust v. Clark County School District* (1997) 103 Nev 686.

Accordingly, as this is a question of jurisdiction, the court will determine whether the NOA filed by Defendant Nguyen was timely for a "perfected appeal divests the district court of jurisdiction to hear and rule on pending issues." *Mack-Manley*, supra at page 855.

Hence, the "writ of garnishment" cannot be heard or enforced by the district court because they have no jurisdiction over the "writ of garnishment."

A. A NOA FILED PURSUANT TO NRAP RULE 3 AND RULE 4 DIVESTS JURISDICTION IN THE CLARK COUNTY COURT

Defendant Andy Nguyen's NOA was timely because it was filed after the entry of the judgment that was entered against him. See *Rust*, supra at page 688. In *Rust*, the Nevada

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[1] Please see NRAP Rule 3 and 4, which provides the following:
RULE 3. APPEAL—HOW TAKEN
(a) Filing the Notice of Appeal.
(1)An appeal permitted by law from a district court to the Supreme Court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.
RULE 4. APPEAL—WHEN TAKEN
(a) Appeals in Civil Cases.

(1) Time and Location for Filing a Notice of Appeal. In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the district court clerk. Except as provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served. If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

Supreme Court ruled that " a timely filed noa is jurisdictional and that such filing will divest the district court of its jurisdiction.." See, too *Wilmurth v. District Court* (1964) 80 Nev 337.

Here, the judgment granting WAW PROPERTIES their countermotions and denying Defendant Andy Nguyen's motion was entered on August 29, 2011. On August 30, 2011, Defendant Nguyen filed his NOA. At this point, Defendant, Nguyen was an aggrieved party, i.e. a named party and the "appeal by an aggrieved party [2]may be taken from a final judgment or order as in civil cases." *Settelmeyer & Sons v Smith & Harmer, LTD* (2008) 197 P3d 1051, 1057.

In contrast, WAW PROPERTIES will contend that the judgment was not a final judgment but merely ruling so-the NOA was premature- on the merits of the case. However, such an argument is unpersuasive and any order rendered by the court constitutes a final judgment. Without exception, Defendant Nguyen filed the NOA in a timely fashion. By filing the NOA, Defendant, Nguyen "perfected the appeal." Thus, in this case, the court has no authority to **revisit issues**[3] that are pending before it-the "writ of garnishment."

Accordingly, on this issue, the Clark County Court has no authority to enforce a "writ of garnishment" against Defendant Nguyen because Defendant Nguyen timely filed the NOA.

V.

PRAYER FOR RELIEF

Based upon the authorities cited above, Defendant, Andy Nguyen timely filed the NOA-there was no delay. As the afore-mentioned authorities hold a timely filed NOA vitiates or divests the Clark County Court of any and all jurisdiction. As a result, the pending "writ of garnishment" cannot be enforced.

Hence, Defendant, Andy Nguyen respectfully requests the Clark County Court to vacate the "writ of garnishment" as well as granting the motion quashing the "writ of garnishment."

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[2] See NRAP 3(A)(a) and (b)(1), supra

[3] See *Rust*, supra, at page 688 and *Mack-Manley* at page 855.

Dated: SEPTEMBER 23, 2011

Andy Nguyen, Defendant, *In Pro Per*

Andy Nguyen
K& N Construction, Inc
4300 Spring Mountain Road #115
Las Vegas, Nevada 89102

Defendant, *In Pro Per*

DISTRICT COURT

CLARK COUNTY, NEVADA

WAW PROPERTIES,LLC a Utah Limited Liability Company, qualified to do business in the State of Nevada, Plaintiff, vs. **FASHION NAIL & SPA, INC, Nevada Corporation; ANDY NGUYEN; an individual; ANN PHAM, an individual; BJ NGOC YO, an individual; DOES Defendants 1 through X, inclusive, and ROE Corporate Defendants 1 through X, Inclusive,** Defendants	Case No.: **A-588067** **[PROPOSED] ORDER GRANTING DEFENDANT, ANDY NGUYEN'S MOTION TO QUASH WRIT OF GARNISHMENT**

[PROPOSED] ORDER GRANTING DEFENDANT, ANDY NGUYEN'S MOTION TO QUASH WRIT OF GARNISHMENT

The motion of Defendant ANDY NGUYEN for a motion to quash writ of garnishment on regularly before me today for a hearing and counsel, Thomas D. Harper, Esq. appeared for Plaintiff, and Defendant, ANDY NGUYEN appeared *in properia persona.*

The court being fully advised and GOOD CAUSE appearing:

IT IS ORDERED that Defendant's motion to quash the writ be GRANTED.

Dated: SEPTEMBER 23, 2011

Signature of Clark County District Judge

[PROPOSED] ORDER GRANTING DEFENDANT, ANDY NGUYEN'S MOTION TO QUASH WRIT OF GARNISHMENT

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract	COURT MINUTES	May 13, 2010

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

May 13, 2010 **9:00 AM** **Status Check: Status of Case**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kathy Klein

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Parties filed a status report. COURT ORDERED, matter CONTINUED, 60 days.

07/16/10 (CHAMBERS) STATUS CHECK: STATUS OF CASE

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract **COURT MINUTES** **May 25, 2010**

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

May 25, 2010 **9:30 AM** **Hearing** **Civil Prove Up**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kathy Klein

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT: Harper, Thomas D. Attorney

JOURNAL ENTRIES

- Dallas Fried, Sworn and testified. Exhibits presented. (See worksheets) COURT ORDERED, JUDGMENT OF $80,388.50, GRANTED. Court directed Counsel to file a separate motion for attorney fees and note on the judgment attorney fees to be determined.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract	COURT MINUTES	July 02, 2010

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

July 02, 2010	3:00 AM	Motion	Plaintiff's Motion for Award of Attorney's Fees

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(b) the Motion for Attorneys Fees is deemed unopposed Therefore, good cause appearing, COURT ORDERED, Motion is GRANTED. After consideration of the Brunzell factors, the Court AWARDS $3,575.00. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Thomas Harper, Esq.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract	COURT MINUTES	July 16, 2010

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

July 16, 2010 **3:00 AM** **Status Check: Status of Case**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Matter OFF CALENDAR. Case Closed.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract	COURT MINUTES	May 16, 2011

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

May 16, 2011 **9:00 AM** **Minute Order**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dameda Scott

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, case to be randomly reassigned to a department hearing civil matters.

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract **COURT MINUTES** **August 15, 2011**

09A588067 WAW Properties LLC
vs
Fashion Nail And Spa Inc, Andy Nguyen, et al

August 15, 2011 **9:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES PRESENT:

Harper, Thomas D.	Attorney
Nguyen, Andy	Defendant

JOURNAL ENTRIES

- Don Tran, present with Mr. Nguyen.

Court noted a corporate entity could not proceed without an attorney; however, the present motion is in regards to the default against Mr. Nguyen. Mr. Harper objected to Mr. Tran, a layperson, arguing on behalf of Mr. Nguyen but did not object to his acting as a translator. Further, Mr. Harper advised he did not feel Mr. Nguyen needed a translator. Colloquy. Court stated it would allow Mr. Tran to assist Mr. Nguyen due to asserted linguistic issues.

Mr. Nguyen advised he was never served with the complaint. Mr. Nguyen stated it was served on another person, at Mr. Nguyen s rental property. Further arguments regarding Mr. Nguyen s individual liability. Court inquired if an attorney represented Mr. Nguyen at the time of the Judgment Debtor deposition wherein Mr. Nguyen acknowledged receiving the complaint, which is the basis of this action. Mr. Nguyen contended that he did not have an interpreter present at the deposition and had not understood what he was being asked. Further, Mr. Nguyen advised the transcript, attached to Pltf's motion, was pages missing, and requested he be allowed to provide the missing pages to the Court.

Arguments by Mr. Harper regarding the judgment against Mr. Nguyen. Mr. Harper stated service

was made at an address recorded with the Secretary of State. Further, Deft. Nguyen filed this motion four months outside of the six-month window. Mr. Harper argued Mr. Nguyen admitted, at his deposition, that he was served, and further, the transcript clearly states Mr. Nguyen said he understood English and did not have a problem with the English language.

Court read portions of the deposition transcript in open court, and stated it confirmed that Mr. Nguyen said he understood the questions asked at the deposition and had admitted being served with the Complaint. There being an issue raised regarding language, by Mr. Nguyen, and the fact that the transcript had missing pages, matter TRAILED.

Matter RECALLED. All present as before. Court advised it had reviewed the missing pages of the deposition transcript. Court stated it did not see any basis to grant Deft's motion. Mr. Nguyen next argued he was never served with the default. Court noted that issue was not raised in the motion and was not brought up at the judgment debtor deposition by him or his counsel. Mr. Nguyen argued his wages were being improperly garnished due to him being an owner of the company; further, the company is having financial issues. Colloquy regarding personal guarantee and garnishment of wages. After reviewing the transcript of the deposition, wherein Mr. Nguyen stated he received one thousand dollars per pay period and reviewing the promissory note that bore Mr. Nguyen s signature, which he did not dispute, Court stated the process being taken is appropriate with respect to the personal guarantee and garnishment of wages.

Mr. Harper argued in support of the counter motions. Following further arguments, COURT FINDS there are independent bases to deny Pltf s motion: Pltf., under oath, acknowledged being served with complaint, Pltf s motion is untimely, and the new arguments brought forth in today s hearing, were not brought up at the judgment debtor deposition or previously. Further, due to Mr. Nguyen having been represented by counsel and none of those issues having been brought up, Court finds the arguments non-persuasive. COURT ORDERED, Motion to Set Aside Default, DENIED; Order to Show Cause, GRANTED; Countermotion for Arrearages, GRANTED in the amount of $4000.00; Countermotion for Attorney's Fees, GRANTED in the amount of $500.00 for the 8/15/11 hearing and $1000.00 for work that was completed prior to the hearing; Countermotion for Punitive Damages, DENIED; Counter-Motion for Sanctions, GRANTED as to the attorney fees.

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated September 30, 2011, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises of two volumes with pages numbered 1 through 404.

WAW PROPERTIES, LLC.

Plaintiff(s),

vs.

FASHION NAIL AND SPA, INC.; ANDY NGUYEN; ANN PHAM; BI N VO

Defendant(s),

Case No: 09A588067
Dept No: XXXI

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now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of October 2011.

Steven D. Grierson, Clerk of the Court

Marie Kramer

Marie Kramer, Deputy Clerk