

SUPREME COURT OF NEVADA

Lund v. Eighth Judicial District Court of the State of Nevada

255 P.3d 280 (Nev. 2011) · No. No. 57800 · Decided June 2, 2011

SUMMARY

The Supreme Court of Nevada held that, under NRCP 13(h), a defendant may add new parties to a counterclaim when at least one original party is included and the proposed parties satisfy the joinder requirements of NRCP 19 or 20. The court concluded that the district court erred by treating the claims as third-party claims under NRCP 14 and directed it to vacate its dismissal order and reconsider the counterclaims. The court declined to order reinstatement because the record lacked briefing on the NRCP 19 and 20 requirements.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Gibbons, J.; Cherry, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	June 2, 2011
DOCKET	No. 57800
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of mandamus challenging the district court's dismissal of counterclaims against additional counterclaim defendants.
STANDARD OF REVIEW	Interpretation of the Nevada Rules of Civil Procedure is reviewed de novo. Mandamus is generally unavailable to control judicial discretion, but may issue to correct a manifest abuse of discretion or to compel a court to exercise discretion it unquestionably possesses.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Benjamin A. Lund v. Eighth Judicial District Court of the State of Nevada, Hon. Valorie Vega, District Judge

TOPICS

[joinder](#) [third party practice](#) [civil procedure](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether NRCP 13(h) permits a defendant to add new parties to an action through a counterclaim when at least one original party is included in the counterclaim.
2. Whether the additional counterclaim defendants could be joined under NRCP 19 or NRCP 20.
3. Whether mandamus relief was appropriate to correct the district court's refusal to apply the NRCP 13(h) analysis.

HOLDINGS

1. Under NRCP 13(h), a defendant may add new parties to an action through a counterclaim when at least one original party is included in the counterclaim and the additional parties satisfy the joinder requirements of NRCP 19 or NRCP 20.
2. NRCP 14 was not the appropriate procedural vehicle because Lund sought recovery for his own independent injuries, not indemnity for Walsh's claims against him; NRCP 13(h), rather than third-party practice, applied.
3. Mandamus relief was warranted to correct the district court's manifest abuse of discretion in concluding that it lacked authority to consider additional counterclaim defendants under NRCP 13(h), but relief was denied insofar as Lund sought reinstatement of the counterclaims without an NRCP 19 or 20 determination.

KEY QUOTATIONS

“Under that rule, if there is at least one original party included in the counterclaim, a defendant may add new parties to the action through a counterclaim as long as the nonparty meets the joinder requirements under NRCP 19 or 20.” (255 P.3d at 282)

“Under NRCP 13(h), new parties may be added to an action through a counterclaim if there is at least one original party included in the counterclaim and the nonparties meet the joinder requirements under NRCP 19 or 20.” (255 P.3d at 285)

FACTUAL BACKGROUND

Walsh alleged that Lund injured him during a fight at a charity golf event in Las Vegas. Lund asserted counterclaims against Walsh and additional parties for injuries allegedly suffered in the fight and for defamation. The district court dismissed the counterclaims against the additional parties after concluding that Lund should have proceeded under the third-party practice rule rather than NRCP 13(h).

PROCEDURAL HISTORY

Brian M. Walsh sued Lund after a fight at a charity golf event. Lund answered and asserted counterclaims against Walsh and several additional parties. The district court summarily dismissed the counterclaims against the additional parties on the ground that new parties could not be added through counterclaims. Lund sought

emergency mandamus relief. The Nevada Supreme Court granted the petition in part, directing the district court to vacate the dismissal and reconsider the NRCP 13(h) issue, but denied relief insofar as Lund sought reinstatement of the counterclaims because the NRCP 19 and 20 joinder requirements had not been briefed.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court must vacate its order dismissing the counterclaims and reconsider the NRCP 13(h) analysis, including whether the additional counterclaim defendants may be joined under NRCP 19 or NRCP 20. The Supreme Court did not direct reinstatement of the counterclaims; relief on that issue was denied without prejudice.

CASES CITED

- AllTech Communications, LLC v. Brothers, 601 F. Supp. 2d 1255, 1260 (N.D. Okla. 2008)
- Microsoft Corp. v. Ion Technologies Corp., 484 F. Supp. 2d 955, 965 (D. Minn. 2007)
- Raytheon Aircraft Credit Corp. v. Pal Air International, 923 F. Supp. 1408, 1414 (D. Kan. 1996)
- Johansen v. United States, 392 F. Supp. 2d 56, 59-60 (D. Mass. 2005)
- Foster v. Dingwall, 126 Nev. ___, ___, 228 P.3d 453, 456 (2010)
- Dutchess Business Services v. State Board of Pharmacy, 124 Nev. 701, 710, 191 P.3d 1159, 1165 (2008)
- Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)
- Moseley v. District Court, 124 Nev. 654, 662-68, 188 P.3d 1136, 1142-46 (2008)
- Reid v. Royal Insurance Co., 80 Nev. 137, 140-41, 390 P.2d 45, 46-47 (1964)
- Round Hill General Improvement District v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)
- Willmes v. Reno Municipal Court, 118 Nev. 831, 835, 59 P.3d 1197, 1200 (2002)
- Ex parte Simons, 247 U.S. 231, 239, 38 S. Ct. 497, 62 L. Ed. 1094 (1918)
- In re Connaway, Receiver of Moscow National Bank, 178 U.S. 421, 425, 20 S. Ct. 951, 44 L. Ed. 1134 (1900)
- Babb v. Superior Court of Sonoma County, 3 Cal. 3d 841, 92 Cal. Rptr. 179, 479 P.2d 379, 385 (1971)
- In re Kuntz, 124 S.W.3d 179, 181 (Tex. 2003)
- State of Nevada v. District Court (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002)
- Cummings v. Charter Hospital, 111 Nev. 639, 645, 896 P.2d 1137, 1140 (1995)
- Pan v. District Court, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004)
- Depner Architects v. Nevada National Bank, 104 Nev. 560, 563, 763 P.2d 1141, 1143 (1988)