

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED T. SAPSE,

Appellant,

vs.

HUTCHISON & STEFFEN, LTD.,

Respondent.

No. 38043

ALFRED T. SAPSE,

Appellant,

vs.

JANET GREESON, AN INDIVIDUAL;

PAUL BURKETTE, AN INDIVIDUAL;

WELTER HOLDEN, AN INDIVIDUAL;

CYNTHIA THOMPSON, AN

INDIVIDUAL; TOM WINN, AN

INDIVIDUAL; ALBERT WOLLEN, AN

INDIVIDUAL; EUGENE BOYLE, AN

INDIVIDUAL; AND RICHARD ROSSI,

AN INDIVIDUAL,

Respondents.

No. 38873

FILED

AUG 01 2003

JANETTE M. SLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE (No. 38043) AND DISMISSAL (No. 38873)

Docket No. 38043 is a proper person appeal from a judgment awarding appellant's lawyers their fees and costs for unpaid work in a shareholder derivative action. Docket No. 38873 is an appeal from a summary judgment and order granting a permanent injunction in that action.

After reviewing the record in Docket No. 38043, we conclude that the district court did not abuse its discretion in awarding respondent Hutchison & Steffen, Ltd. \$143,667.48 for unpaid attorney fees and costs.¹ Appellant conceded in the district court that he owed at least \$118,874, and he then requested the district court to "reduce the amount demanded

¹See U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. ___, 50 P.3d 170 (2002) (stating that a district court's award of attorney fees and costs will not be disturbed on appeal absent an abuse of discretion).

by Hutchison & Steffen to an amount reasonable in light of the work, time and effort” expended. The district court complied with appellant’s request, and we perceive no abuse of discretion.

As to the appeal in Docket No. 38873, respondents have filed a motion to dismiss based on a settlement agreement. The agreement requires the parties to “dismiss with prejudice all pending claims” in eight lawsuits, including the appeal in Docket No. 38873, and was found to be valid and enforceable by the federal district court. In addition to dismissal, respondents ask this court to seal the district court file based on language purportedly in the settlement agreement.

Appellant has filed an opposition and counter-motion to dismiss the appeal in Docket No. 38873, apparently conceding the settlement agreement’s binding effect, but requesting that this court insert a clause missing from the agreement: “all orders, judgments, and/or decrees previously contained in the said lawsuits [must] be vacated nunc pro tunc.” Appellant also opposes the sealing of the district court file, and asks that respondents be sanctioned for “attempting to mislead this Court with erroneous statements of fact.”

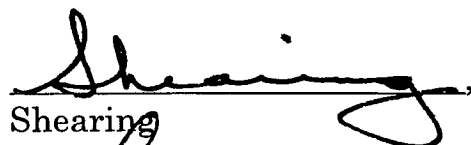
The doctrine of collateral estoppel applies to issues fully litigated and decided in federal court and presented again by the same parties in state court.² The federal court’s finding that the settlement agreement is a valid and enforceable contract is binding on the parties in this court, and is apparently not contested. Thus, the appeal in Docket No 38873 shall be dismissed. But there is no basis for this court to modify the


²LaForge v. State, University System, 116 Nev. 415, 997 P.2d 130 (2000); Webster v. Steinberg, 84 Nev. 426, 442 P.2d 894 (1968).

settlement agreement by inserting appellant's missing clause.³ Likewise, the settlement agreement mentions nothing about sealing court files. Although we decline to sanction respondents' counsel, Marquis & Aurbach, for incorrectly characterizing the settlement agreement's contents, we remind counsel of the duty not to misrepresent the record, whether through carelessness or otherwise.⁴

Accordingly, we affirm the judgment in the appeal docketed as No. 38043. Further, we grant the motion and counter-motion to dismiss the appeal in Docket No. 38873, and we dismiss the appeal, but we deny the parties' other requested relief.⁵

It is so ORDERED.


Shearing, J.


Leavitt, J.


Becker, J.

³Lowden Investment Co. v. General Electric, 103 Nev. 374, 741 P.2d 806 (1987) (observing that, while parol evidence is admissible to resolve ambiguities in a written instrument, it is not admissible to vary the agreement's terms); accord Sakas v. Jessee, 415 S.E.2d 670, 673 (Ga. Ct. App. 1992) (stating that an agreement "cannot be made ambiguous by the mere assertion that it was meant to include other matters which it did not mention").

⁴See SCR 172.

⁵Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him. We deny as moot appellant's motion for a stay in Docket No. 38873.

cc: Hon. Mark R. Denton, District Judge
Marquis & Aurbach
Hutchison & Steffen, Ltd.
Herbert Sachs
Alfred T. Sapse
Clark County Clerk