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Re: S.B. 203

As you know, Small Claims is the "People's Court" that allows the procedure for the average person to come to court inexpensively and without an attorney to collect on monies owed. This bill addresses a weakness in the law that allows defendants to defeat the purpose of small claims by filing frivolous or unrelated counterclaims that can technically deprive the small claims court of jurisdiction thus forcing the small claim litigant to either hire an attorney and go to a higher court or dismiss the case. The net result often deprives the small claimant of his/her day in court.

This bill would allow the small claims judge to avert this problem by going forward with the small claims matter and severing the counterclaim for refiling as a formal justice court or district court action. This, in effect forces the counterclaimant to decide if they really want to pursue their claim in the more formal setting or have it addressed in the small claim arena. In addition, this allows the small claim litigant to have his/her day in court without reference to the counterclaim.

This bill also allows for litigants to stipulate to the fact that both parties wish to pursue their matter in a higher court without the judge needing to take any action.

Of course if the counterclaim is bona fide, germane and appropriate, the small claims judge does not have to sever the case, and the matter would be sent up to the appropriate level.

Attached:

1. S.B. 203
2. JCRCF 13(j) Reflecting the current procedure in place to sever justice court actions if the counterclaim is not within the court's jurisdiction and allows for transfer of the counterclaim to the district court.
3. Supreme Court Opinion 115 Nev. 327 stating in the conclusion: "It is reasonable to conclude that the legislature intended to make the small claims court a "people's court" and to discourage attorneys from appearing. It would be absurd to award \$11,932.50 in attorney's fees on a \$2,500.00 small claims case."

## SENATE BILL NO. 203—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

FEBRUARY 25, 2003

Referred to Committee on Judiciary

SUMMARY—Enacts provisions concerning separation and adjudication of certain small claims actions. (BDR 6-612)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

EXPLANATION — Matter in *bolded italics* is new; matter between brackets [omitted-matter] is material to be omitted.

AN ACT relating to civil actions; enacting provisions concerning the separation and adjudication of certain small claims actions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. NRS 73.010 is hereby amended to read as follows:  
2 73.010 1. In all cases arising in the justice's court for the  
3 recovery of money only, where the amount claimed does not exceed  
4 \$5,000 and the defendant named:  
5 ~~{1-}~~ (a) Is a resident of;  
6 ~~{2-}~~ (b) Does business in; or  
7 ~~{3-}~~ (c) Is employed in,  
8 the township in which the action is to be maintained, the justice of  
9 the peace may proceed as provided in this chapter and by rules of  
10 court.  
11 2. *Except as otherwise provided in subsection 3, if any*  
12 *counterclaim or other pleading raises any issue or claim which*  
13 *may not be adjudicated as provided in this chapter, the justice of*  
14 *the peace shall:*  
15 (a) *Separate the issues or claims;*

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*Means claims  
above 5,000*

1 (b) Adjudicate those issues or claims over which he has  
2 jurisdiction; and

3 (c) Require those issues or claims over which he does not have  
4 jurisdiction to be filed as separate actions in the justice's court or  
5 district court, as appropriate.

6 3. If any counterclaim or other pleading raises any issue or  
7 claim which may not be adjudicated as provided in this chapter,  
8 the parties to the action may stipulate that the action be treated as  
9 not having been filed pursuant to this chapter. If the parties so  
10 stipulate and any counterclaim or other pleading raises any issue  
11 or claim which may not be adjudicated in the justice's court, the  
12 justice of the peace shall proceed as provided in Rule 13 of the  
13 Justices' Courts' Rules of Civil Procedure.

14 Sec. 2. The amendatory provisions of this act apply to a small  
15 claims action that is:

- 16 1. Pending on October 1, 2003; or  
17 2. Filed on or after October 1, 2003.



court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so admitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) **Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived if not made under subdivision (b) of this rule.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

[As amended; effective June 28, 1988.]

**NEVADA CASES.**

Only issues brought in justice court are triable in district court. Defendant in an action in justice's court may object to a complaint on the ground that it states no cause of action. If he

chooses to stand on that issue and appeal on it, it will be the only issue triable in district court. If he wishes to make an issue of the fact, he must make it first in justice's court. *Martin v. District Court*, 13 Nev. 85 (1878)

**RULE 13. COUNTERCLAIM AND CROSS-CLAIM**

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and if an original action might be brought upon it by the defendant against the plaintiff in a justice's court. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(b) **Permissive Counterclaims.** A pleading may state as a counter-claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim if an original action might be brought upon it by the defendant against the plaintiff in a justice's court.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, but is limited by the provisions of subdivision (j).

(d) **Counterclaim Against the State.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State or an officer or agency thereof.

(e) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counter-claim by supplemental pleading.

(f) **Omitted Counterclaim.** When a pleader fails to set up a counter-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(g) **Cross-Claim Against Co-Party.** If the cross-claim is a claim upon which an original action might be brought in a justice's court, a pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) **Separate Trials; Separate Judgment.** If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) **Transfer of Action to District Court.** When any counterclaim or other pleading raises any issue or claim which may not be adjudicated in a justice's court, the justice may separate the issues or claims and adjudicate those over which he has jurisdiction and require the other issues or claims to be filed in district court or he may order the entire matter transferred for adjudication in district court. Where justice requires that the matters be heard together, the justice shall order the entire matter transferred for adjudication in district court.

**ADVISORY COMMITTEE'S NOTE.**

Counterclaims and cross-claims have been limited to justices' courts' jurisdiction. The 1965 amendment to JCRCP 13(a) is based upon the

1963 amendment to the federal rule. It limits the requirement of compulsory counterclaims when jurisdiction is based upon attachment.

STAN SNYDER, APPELLANT, v. HARRY L. YORK AND  
SHARON K. YORK, RESPONDENTS.

No. 31580

November 29, 1999

988 P.2d 793

Appeal from an order of the district court granting summary judgment and denying attorney's fees in excess of the amount limited by NRS 73.050 for appeals to district court of small claims action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

After prevailing on appeal in small claims action brought by home purchasers, vendor filed separate independent action against purchasers requesting attorney's fees as provided in prevailing party clause of parties' purchase agreement. The district court granted summary judgment in favor of purchasers. Vendor appealed. The supreme court held that vendor could not recover attorney's fees in excess of \$15 statutory cap applicable to appeals in small claims cases.

**Affirmed.**

*Petersen & Petersen, Reno, for Appellant.*

*Avansino, Melarkey, Knobel, McMullen & Mulligan, Reno, for Respondents.*

**Costs.**

Home vendor who prevailed on appeal in small claims action brought by purchasers could not recover attorney's fees, under prevailing party clause of parties' residential purchase agreement, in excess of \$15 statutory cap applicable to appeals in small claims cases. NRS 73.050.

Before YOUNG, AGOSTI and LEAVITT, JJ.

**OPINION**

*Per Curiam:*

**FACTS**

Harry L. York and Sharon K. York (hereinafter "Buyer") purchased a home from Stan Snyder (hereinafter "Seller") for \$445,000. The purchase agreement contained a clause awarding attorney's fees to the prevailing party in any dispute between the Seller and Buyer.<sup>1</sup>

<sup>1</sup>The clause read as follows:

ATTORNEY FEES. In any action or proceeding involving a dispute between Buyer, Seller and/or Broker, arising out of the execution of this

<sup>12</sup>

Buyer claimed Seller failed to disclose known defects in the house and filed a small claims action against Seller seeking \$2,500. The justice of the peace ruled in favor of Seller, and Buyer appealed to district court. The case was remanded for clarification, and the justice of the peace entered a formal written judgment. Seller requested attorney's fees in the sum of \$11,932.50 based on the attorney's fees clause of the agreement. The motion for attorney's fees was higher than the jurisdictional limit of justice's court, and Seller requested the matter be transferred to the district court so it could be considered with Buyer's second appeal. Consequently, the justice's court transferred Seller's motion for attorney's fees pursuant to the purchase agreement to the district court. The district court judge ruled in favor of Seller against Buyer on the merits of the appeal and allowed Seller's attorney to file a supplemental motion in the action for attorney's fees pursuant to the agreement. After briefing by the parties, the court denied the request for attorney's fees. The district judge<sup>2</sup> stated:

The Parties can not [sic] create jurisdiction in this District Court to consider the Motion for Attorney's Fees in the requested amount. This District Court considered this case as an appellate court, and did not have original jurisdiction. NRS 73.050 explicitly provides the powers of this Court regarding an award of attorney's fees in appeals to the district court from the small claims court.

[Appellant] correctly stated that "[t]here is little question that [appellant] could bring a separate action in this Court based upon the attorney fee provision of the parties [sic] agreement." However, until such time as this District Court has the proper jurisdiction to grant the attorney's fees sought, the Court is restrained by the specific language contained in NRS 73.050.

Therefore, [appellant's] Supplemental Motion for Attorney's Fees is hereby GRANTED, however, pursuant to NRS 73.050, only in the amount of \$15.00.

Seller then filed a separate independent action in district court requesting the attorney's fees as provided in the prevailing party clause of the residential purchase agreement. Buyer filed a motion to dismiss claiming the ruling in the first appeal was a res judicata bar to the complaint. Seller filed a motion for summary judgment.

agreement or the sale or to collect commissions, the prevailing party shall be entitled to receive from the other party a reasonable attorney fee to be determined by the court or arbitrator(s).

<sup>2</sup>District Court Judge Connie J. Steinheimer heard the first appeal.



ment stating Buyer was collaterally estopped from challenging the district judge's conclusion that Seller could maintain a separate action to request an attorney's fees award pursuant to the contract. A different district court judge<sup>3</sup> ruled in favor of the Buyer, granting summary judgment on the ground that Seller had received a reasonable attorney fee pursuant to NRS 73.050.<sup>4</sup> Seller filed this appeal from that decision.

### DISCUSSION

The small claims section of the justices' courts was established to allow an inexpensive method of recovery of money only where the amount claimed does not exceed the statutory limit. See NRS 73.010. No attorney's fees are allowed either party in a small claims action except in cases of shoplifting. See NRS 73.040.<sup>5</sup> Clearly, the policy is to allow persons to recover money due and owing without the expense of hiring an attorney, becoming involved in a lengthy discovery process, or being subjected to a prolonged trial. The justice's court provides simple written forms for the public to use in small claims cases. The appeal form specifically states that "if the appeal is dismissed or the judgment is affirmed, [appellant] will be subject to reimbursing the other party for court costs, and attorney's fees, not to exceed \$15, together with any reasonable expenses as determined by the district court." JCRCP 99. Thus, a person who appeals a small claims action relies on the form, which limits the amount of attorney's fees on appeal.

Originally, when the small claims court was formed, the legislature inserted a clause stating that "[n]o attorney at law or other person than the plaintiff and defendant shall take any part in the filing or prosecution or defense of such litigation in the small claims court." A.B. 79, 31st Leg. § 874g (Nev. 1923). Subsequently, the Nevada Legislature removed this section but inserted a clause which stated that "[n]o attorney's fees are allowed either party to an action mentioned or covered by this title." A.B. 140, 33rd Leg. § 874g (Nev. 1927). The cap on attorney's fees of \$15 on appeal has remained unchanged.

In *Desert Valley Water Co. v. State Engineer*, 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1988), we instructed:

<sup>3</sup>District Court Judge Janet J. Berry granted the motion for summary judgment in the separate independent action.

<sup>4</sup>NRS 73.050 provides as follows: "The prevailing party on an appeal to the district court shall be awarded an attorney fee by the district court not to exceed the sum of \$15."

<sup>5</sup>NRS 73.040 states: "Except as provided by NRS 597.860 and 597.870, no attorney's fees are allowed either party to an action mentioned or covered by this chapter."

When interpreting a statute, we resolve any doubt as to legislative intent in favor of what is reasonable, as against what is unreasonable. *Cragun v. Nevada Pub. Employees' Ret. Bd.*, 92 Nev. 202, 547 P.2d 1356 (1976). The words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results. *Welfare Div. v. Washoe Co. Welfare Dep't*, 88 Nev. 635, 503 P.2d 457 (1972).

It is clear that the legislature's intent is to keep the costs and attorney's fees low in small claims cases.

#### CONCLUSION

It is reasonable to conclude that the legislature intended to make the small claims court a "people's court" and to discourage attorneys from appearing. It would be absurd to award \$11,932.50 in attorney's fees on a \$2,500 small claims case.

The district judge's order granting summary judgment pursuant to NRS 73.050 was correct and we affirm the order.