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Appearing in Proper Person

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CV12-02385
ALEXANDER FALCONI
District Court
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALEXANDER M. FALCONI, an individual; Plaintiff, Counter-defendant, vs. CORAZON REAL ESTATE, a domestic corporation; and DOES I-X, inclusive; Defendant, Counterclaimant.	Case #: CV12-02385 Dept #: 9

APPLICATION TO PROCEED IN FORMA PAUPERIS

COMES NOW, Plaintiff, Alexander M. Falconi, and hereby files an Application to Proceed in Forma Pauperis. This application is based upon the following memorandum of points and authorities and all pleadings on file herein.

Memorandum of Points and Authorities

I. Affidavit in Support of Motion to Proceed on Appeal in Forma Pauperis

State of Nevada }
}ss.
County of Washoe }

I, Alexander M. Falconi, being first duly sworn, depose and say that I am the Plaintiff in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, cost or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

1. The Court erred[1] in failing to deny Defendant's motion to dismiss for lack of points and authorities. DCR 13(2);

2. Plaintiff, in good faith[2], construed Defendant's argument as an attack on the propriety of punitive damages and argued in opposition accordingly. The Court, by raising other arguments sua sponte and failing to give Plaintiff an opportunity to address and respond to those arguments, subjected Plaintiff to surprise and committed manifest abuse of discretion;

3. The Court, in requiring evidence by surprise, and in requiring evidence before the discovery phase, committed manifest abuse of discretion;

4. The Court erred in its application of law on Defendant's motion to dismiss. The standard of review mandates that the Court construe all allegations in Plaintiff's complaint as true, and draw all inferences in his favor; a motion to dismiss is an analysis of the pleading to determine whether a claim exists, not a ruling on the merits of the claims;

5. The district court potentially[3] erred in allowing Defendant, a corporation, to appear in proper person; and

6. The district court erred[4] in finding Plaintiff's Ex-Parte Motion for Temporary Restraining Order to be in bad faith.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

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[1] Plaintiff was prejudiced by having to guess by what possible authority Defendant was attempting to dismiss.
[2] Defendant focused his argument on "the district court being too busy" and that "the case should be in small claims". Plaintiff construed this as an attack on subject-matter jurisdiction.
[3] While Plaintiff is not personally opposed to Defendant's appearance in pro per, this issue may be fatal to the judgment and should be brought to our superior court's attention.
[4] Plaintiff indicated a move-out day. Defendant was attempting to evict Plaintiff and his son **before that date**. Plaintiff cannot be expected to move his things out of his apartment **if he is locked out of it**. Due to the Court's denial of the motion, Plaintiff was forced to move out early in order to avoid being locked out before his move-out date. It appears that the Court is under the impression that Defendant was attempting to evict Plaintiff on or after his move-out date. Furthermore, Plaintiff's motion candidly displayed every relevant fact.

[redacted]

2. I have not received[6], within the past twelve months, any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends;

3. I own a checking and savings account with a combined value of $47.11. Exhibit 2;

4. I do not own any real estate, stocks, bonds, notes; but I do own a Toyota Corolla 2009[7] with an approximate value of $10,547.00. Exhibit 3;

5. I have student loan debt in the amount of $5,500.00. Exhibit 4;

6. My minor child of age six (6) is dependent upon me. Exhibit 5;

7. My monthly expenses include $350.00 in food, $100.00 in transportation, $456.00[8] in child care, $461.00 in rent, $176.00 in utilities, $80.00 in car insurance; and

8. My leftover income of $159.54 is needed to cover educational expenses for myself and my son, legal expenses in prosecuting a motion to modify custody before the Family Division of the Second Judicial District Court ($104 in witness fees) under FV08-03200, and miscellaneous needs like hair cuts, clothing, and shoes.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

EXECUTED this 10 day of DECEMBER, 2012.

Alexander M. Falconi

SUBSCRIBED AND SWORN TO BEFORE ME
this 10th day of December, 2012.

NOTARY PUBLIC

CHRISTIE THOMPSON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 12-7646-2 - Expires May 15, 2016

[5] My income used to be $200-$300 higher, but the industry has slowed immensely.
[6] My ex-partner is ordered to pay me child support in the amount of $73.91, however, she has not paid in months. FV08-03200, Department 11, Sec. Jud. Dist. Court.
[7] My son and I rely heavily on my vehicle for drives to the sitter and his kindergarten, to work, etc.
[8] As my child is in kindergarten for a half-day, my child care expenses are huge. These expenses should shrink in August of 2013 when my child enters the first grade.

II. Argument

Pursuant to NRAP 24(1), leave to proceed in forma pauperis on appeal must first be sought in district court. Pursuant to NRAP 24(4):

> The district court clerk **shall immediately** notify the parties and the Supreme Court when the district court does any of the following: denies a motion to proceed on appeal in forma pauperis; certifies that the appeal is not taken in good faith; or finds that the party is not otherwise entitled to proceed in forma pauperis. (emphasis added)

Plaintiff is not abusing forma pauperis status. Plaintiff paid the filing fee to initiate this action, but Plaintiff's income has dropped significantly since the filing of this action and the amount that must be paid to appeal is three times as high.

III. Conclusion

THEREFORE, Plaintiff hereby requests that the Court allow him to proceed IN FORMA PAUPERIS on appeal.

AFFIRMATION[9]: This document does not contain a social security number of any person.

DATED THIS 10th day of DECEMBER, 2012.

Alexander M. Falconi
Appearing in Proper Person

[9] This affirmation is in accordance with NRS 239B.030."

LIST OF EXHIBITS

Exhibit 1: Paystubs.
Pages 2

Exhibit 2: Bank Accounts.
Pages 1

Exhibit 3: Car Registration.
Pages 1

Exhibit 4: Student Loan Debt.
Pages 1

Exhibit 5: Child Custody Order FV08-03200
Pages 3