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### Helfstein v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 91 (Dec. 3, 2015)

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*Nevada Law Journal*

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## CIVIL PROCEDURE

### **Summary**

The Nevada Supreme Court determined that the six-month deadline to set aside a voluntary dismissal or settlement agreement found within NRCP 60(b) could not be extended, despite an allegation of fraud.

### **Background**

Ira Seaver, the Ira Seaver and Edythe Seaver Family Trust, and Circle Consulting Corporation (collectively Seaver) sued Lewis and Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC (collectively, Helfstein) and Uninet Imaging, Inc., and Nestor Saporiti (collectively Uninet) in Nevada's Eighth Judicial District Court. Amongst the charges, Seaver claimed a series of contract and tort-based causes of action arising out of agreements after Uninet purchased the Helfsteins' Summit companies.

The Helfsteins settled with Seaver (before answering the complaint) and in return, Seaver voluntarily dismissed the Helfsteins. Fourteen months later, Seaver filed a notice of rescission, alleging they were fraudulently induced to settle. Additionally, Seaver alleged the Helfsteins failed in their fiduciary and discovery duties when they failed to adequately produce relevant documents or inform them of material facts.

Without the Helfsteins as a party to the litigation, Seaver and Uninet proceeded to a bench trial. One year after the trial (and twenty-six months after filing the notice of rescission), Seaver filed a NRCP 60(b) motion in an attempt to set aside the settlement agreement. After a series of motions the district court ordered an evidentiary hearing. After the evidentiary hearing, the Helfsteins filed a motion to dismiss, claiming the NRCP 60(b) motion was improper. After that motion was denied, the Helfsteins appealed to the Nevada Supreme Court.

### **Discussion**

The purpose of NRCP Rule 60(b) is “to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party.”<sup>2</sup> However, within the aforementioned rule, is a six-month time period to challenge any judgment, order or proceeding.<sup>3</sup> That period was set and “represents the extreme limit of reasonableness.”<sup>4</sup>

Here, Seaver did not file his NRCP 60(b) motion until forty months after settling with—and voluntarily dismissing—Helfstein. While the NRCP 41(a)(1) voluntary dismissal is a “final judgment, order, or proceeding”<sup>5</sup> that may be set aside under NRCP 60(b), Seaver's request is time-barred because he made the request after the six-month time limit passed.

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<sup>1</sup> By Heather Caliguire

<sup>2</sup> *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987).

<sup>3</sup> *Union Petrochemical Corp. of Nev. v. Scott*, 96 Nev. 337, 338-39, 609 P.2d 323-24 (1980).

<sup>4</sup> *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 272, 849 P.2d 305, 308 (1993).

<sup>5</sup> NEV. R. CIV. P. § 60(b).

## **Conclusion**

The six-month time limit to set-aside a voluntary dismissal cannot be extended. The district court erred in ordering the evidentiary hearing as the 60(b) motion was brought too late, and thus was time-barred.