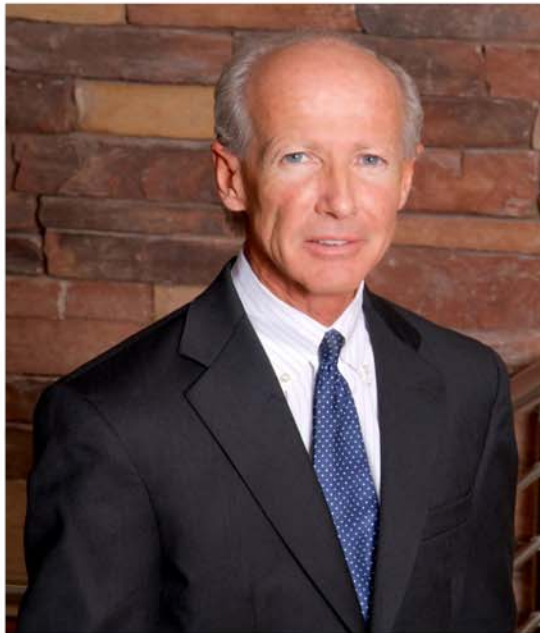


Black & LoBello Welcomes

Michael Ryan is a workers' compensation attorney and practices prosecution and defense of insurance related matters. He also handles defense and related matters for third-party administrators, insurers and employers. He earned a Bachelors in English and History from the University of Colorado in 1984 and a Juris Doctor from Arizona State University in 1987. Mr. Ryan is distinguished by his tenure as deputy counsel to the Nevada Commission of Insurance Council and served as deputy counsel for and as the State Industrial Insurance System. Mr. Ryan's practice includes assisting a wide variety of administrators, insurance companies, and employers in resolving and litigating workers' compensation issues. &



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Workers' Compensation Law 101

Michael J. Ryan

In the often complicated world of workers' compensation law, employers, insurers, and injured workers all have parts to play, and each may be significant in a workers' compensation claim. Nevada employers, defined as "every person, firm, voluntary association and private corporation,...which has in service every person under a contract of hire," may challenge either their own employee with respect to the nature and extent of the reported injury or occupational disease, including the need for particular treatment or surgery, or even with respect to claimants continuing ability to perform their pre-injury job. Employers may also challenge their own insurer/third party administrator. (See NRS 616A.230 and NRS 616C generally) However, from our experience, it

is clear that most Nevada employers are not aware of their rights and obligations under the statutes that govern workers compensation law and workers compensation litigation in Nevada. (See Chapters 616 of the NRS and Chapter 616C in particular)

Thus, Nevada employers of one or more employees need to know that, like injured workers and workers compensation insurers, they have a right to appeal insurer and medical providers decisions. They are also entitled to bring counsel on such appeals, and can even challenge their own workers' compensation insurer if they believe a particular case or situation is not correctly administrated.

Many employers ignore their rights at their peril. Workers compensation continues to be an expensive cost of doing business and if you are not carefully monitoring your open claims, you are almost certainly wasting money and effort. &



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Child Support Modification During Recessions

John D. Jones



The economic downturn over the past two to three years led to a great rise in litigation in Family Court. In many cases, the loss of a job or the closure of a family-owned business caused a legitimate reason for the payors of child support to receive a reduction in their child support obligation. Unfortunately, however, many payors of child support have filed motions to reduce their obligations alleging that the negative impact of the downturn of the economy should result in a reduction of their child support obligation. This group of recession "profiteers" use economic tales of a doom and gloom and creative accounting to deceive the Court into believing that their income has been eliminated by the downturn in the economy.

Some Judges are more easily fooled than others. In order to prevent injustice, any child support recipient must be aware of the exact status of the law and be diligent in their investigation of the claims made by the Payor seeking a reduction in child support. Usually a Court will allow a child support recipient to conduct some measure of discovery before a final order reducing child support is entered. Discovery, however, can sometimes be costly. Luckily, the nominal cost to serve a Subpoena to the personal and business bank accounts of the Payor can often times yield positive results. Unfortunately, courts seldom punish people for making material misrepresentations on their Financial Disclosure Forms making it very easy for a child support payor to misrepresent the actual stream of income received.

Whereas discovery reveals the truth, the appropriate argument can preclude a

reduction of child support. The Nevada Supreme Court in *Rivero v. Rivero*, 216 P.3d 213 (Rivero II) added a new requirement to the previous Nevada 'changed circumstances' standard. Prior to Rivero II, the party seeking a reduction in child support would only have to demonstrate a change in financial circumstances to modify

child support.

The Court in Rivero held as follows: NRS 125B.145(4) expressly states that the District Court may review a child support order "at any time on the basis of changed circumstances." The Court further required that the new child support order must be supported by factual findings that a change in support is in the child's best interest and the modification or adjustment of the award must comply with the requirements of NRS 125B.070 and NRS 125B.080.

Based upon Rivero II, even if a motion to reduce child support filed by a payor is supported by some factual evidence that there has been a change in the Payor's financial circumstances, the Court can deny the change and enter specific findings that reducing child support is not in the best interest of the child(ren). In cases where the Financial Disclosure Form says one thing and there is limited other evidentiary back-up for the changed circumstances, it is important to argue that a reduction in child support is not in the best interest of the child(ren). If the lifestyle of the payor does not seem affected by the alleged downturn in the economy resulting in the change of circumstances, the argument that a modification is not in the best interest of the child(ren) becomes even more compelling.

Knowing the law and knowing where to look for information to disprove that which might otherwise be a false Financial Disclosure Form are crucial to ensure that the child(ren) are not prejudiced by creative accounting or motions filed solely of the general perception that the economy is bad. &

Debtor, Collectors and You

Byron E. Thomas

The United States has always fostered the entrepreneurial spirit but entrepreneurialism comes with a price. Many famous entrepreneurs tasted the bitter pill of failure before finding success. For instance Sam Walton, Henry Ford, and J.C. Penny's first endeavors were utter failures. But what allowed these, and other entrepreneurs, the ability to succeed is the idea of the honest but unfortunate debtor. The concept of the honest but unfortunate debtor balances the need to promote risk-taking without encouraging the recklessness. Our creditor, debtor and bankruptcy system is based on these principles. Our system allows a creditor the opportunity to recoup, at least a part of his investment, while giving the honest but unfortunate debtor the opportunity to start over.

A creditor cannot leave the debtor destitute. The debtor is allowed to keep some of the tools of his trade, personal items, and other things necessary to continue in his endeavors, because of the recognition of the benefit of risk-taking and to maintain a sense of common human dignity. However, it seems that in these tough economic times some debt collectors have forgotten the notion of the honest and unfortunate debtor and seek repayment through coercive and unprincipled means.

An original creditor will often sell a debt to a debt collection agency. These debt collection agencies will often call the debtor incessantly and at inappropriate times. They will contact the debtor's employer and other third-parties in an attempt to collect the debt. They will threaten criminal action and send out documents that resemble official court documents.

Luckily the Fair Debt Collection Practice Act (the "FDCPA") protects the honest but unfortunate debtor from these collection agencies. The honest but unfortunate debtor should be aware that the previously mentioned actions are all prohibited under the FDCPA. FDCPA also provides the honest but unfortunate debtor with civil and monetary remedies. The honest but unfortunate debtor is urged to contact this firm if he/she is a victim of harassing activity by debt collection agencies. &

Renting in Las Vegas: What You NEED to Know

Carlos L. McDade

Kelle L. Kuebler

The time when people once waited on a lottery to buy a home is long gone for Las Vegas. While this may be construed as stating the obvious, one thing that our mortgage crisis has spurred and is not often discussed is that we are now a city of renters. Many do not want to buy homes or simply cannot due to credit and other financial issues. Accordingly, the Las Vegas lessor and lessee must educate themselves about many things prior to picking their temporary abode. The main issues are checking a property's status entering into a lease agreement, obtaining appropriate documents when leasing with an option to buy, and renting a home to a person currently in the process of buying a negative equity property.

1. Checking a Property Status Before Renting

When people held onto their "investment" properties for long periods of time and watched their property appreciate each day or week on Zillow, there was less concern that a rented house would be foreclosed upon. That is not the case anymore. As more people, investors included, default on their loans, it is important to determine if the property you are about to lease is only a few months away (or less) from foreclosure. While there are laws that protect renters, it is certainly preferable to know as much information as possible prior to signing a lease, hiring movers and getting settled in your new house. For instance, you may want to request a statement from the property owner warranting that they are not currently in default. Go to the Clark County recorder's website to determine if a notice of breach and election to sell has been recorded against the property.

In the event that the property you are renting does go to trustee sale, be aware that the Mortgage Reform and Anti-Predatory Lending Act, as enacted by congress in 2009, offers tenants protections. A renter can remain in the

house for 90 days after the trustee sale if the original lease term extends past that 90-day period. It should also be noted, a lender may hire a management company to rent the property to you, however this practice is uncommon.

2. Obtaining Appropriate Documents – Leasing With an Option to Buy

In taking efforts to repair credit or watch the market before a purchase, some lessees are looking to rent a property with the option to buy. While this might secure a rate in the event that the prices increase, or while it may afford the lessor some form of assurance that the property will be held by a party with an interest in staying there for a long time, this type of transaction is not as simple as

one might think. In fact, it is important for all parties to consult with counsel to review documents and possibly draft new documents.

3. Leasing to the "Buyer" During a Short Sale

The short sale process is lengthy and considerably more tedious than most sellers and buyers anticipate. As a result of this protracted timeframe, it has become common for a buyer to request that they be allowed to rent the property

before the short sale closes. This practice comes with a significant amount of risk. If you are in the process of a short sale and seek to "advance lease" the property to your buyer, you should be aware of those risks before signing up for what could amount to a tremendous headache. For example, if you lease the property to the buyer and then the lender approves the sale but provides no deficiency release on your loan, you may decide you would rather let the property go to foreclosure. Although you can allow this, now you have a renter living in the property, who may be angry that you are not allowing the sale to go through. In the alternative, you have a renter living in the home and

the short sale cannot go through because the lender has countered and now the tenant/buyer is not willing to increase their purchase price. In this situation you have limited your ability to procure another buyer with a higher offer due to your renter/ex-buyer residing in the property. As such, you may end up losing the house to foreclosure.

The above issues are only stated in general facts and with hypothetical situations that may not apply to your particular situation. These are just some of the common problems seen in and around Las Vegas. Therefore, seeking the advice of a learned professional to assist you in these circumstances will only increase your chances of safeguarding your rights. While renting seems like a minor commitment to many who used to own properties, it still generally accounts for almost a third of your monthly income so protection of yourself and your family in these transactions remains vitally important. &



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Black & LoBello Helps Nevada Legislature Restore Integrity to the Foreclosure Process

Randy M. Creighton

On March 15, 2011, Assemblyman Conklin introduced Assembly Bill 284 into the 2011 session of the Nevada Legislature. The Bill proposes significant changes to NRS 106, 107 and 205 as these statutes relate to foreclosure. Tisha Black Chernine, Managing Partner of Black & LoBello, drafted the proposed bill in collaboration with Assemblyman Conklin and the Office of the Nevada Attorney General.

Assembly Bill 284 aims to restore a transparency and integrity to the foreclosure process. If passed, the foreclosing party would be required to supplement the Notice of Default with a notarized Affidavit of Authority which states the identity of the trustee, describes the amount in default, lists the full name and address of the current beneficiary (and every prior beneficiary under the Deed of Trust) and includes penalties and costs related to the foreclosure. This element of Assembly Bill 284 will bring some clarification

with regard to the chain of beneficial interest and whether the foreclosing party has the right to do so.

In the same Bill, a standard of care is created for the trustee in a Deed of Trust. NRS 106 is amended to define who a trustee may be, what their obligation is to the foreclosure parties and also sets forth a private cause of action if trustees act improperly.

Assembly Bill 284 was referred to the Judiciary Committee and a hearing was held on March 31, 2011. Assemblyman Conklin, Ms. Black Chernine, members of the Nevada Attorney General's office, and members of the Trustees Association of Nevada appeared in support of the Bill. MERS and Bank of America appeared in opposition through their representatives.

For a copy of the Bill, go to <http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB284.pdf>. We will keep you updated on its progress. &



Attorney Spotlight

Tiffany N. Ballenger

Abe Geller, Editor for the YHBS! Newsletter, sits down with Ms. Ballenger for an exclusive interview.

AG: Have you had any other job that was as interesting as law?

TNB: I was a commercial actress for eight years of my childhood. It was certainly interesting, to say the least!

AG: What advice would you give to new lawyers starting out?

TNB: Try to find an area of law that you're truly passionate about early in your career, even if it means making less money or moving to a new area. It's very difficult to transition to other areas as you become more established, and you won't be happy if you hate what you do!

AG: What the most rewarding part of the job?

TNB: I get to help people during stressful times in their lives and hopefully offer them some relief and peace of mind. I am fortunate enough to work closely with my amazing clients, who always challenge me!

AG: What are some ways you unwind after work?

TNB: I love trying new restaurants, quick weekend trips to California and working out.

AG: What's the one product you can't live without?

TNB: Burt's Bees Chapstick

AG: Where is your ideal vacation spot?

TNB: My next big trip will be Western Europe, but I'm always up for the beach, a great book, great friends and a pina colada. &

To learn more about Mr. Ballenger and other Black & LoBello attorneys, visit our website and click on the ATTORNEYS tab.



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