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8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 * * *

11 LYNITA S. NELSON, Individually and as)
Trustee of the LSN Nevada Trust dated May)
12 30, 2001,)

13 Plaintiffs,)

14 vs.)

15 JEFFREY BURR, ESQ., JEFFREY BURR,)
16 LTD., DOES I through X, inclusive, and)
17 ROE CORPORATIONS I through X,)
18 inclusive,)

19 Defendant.)

Case No: A-19-794939-C
Dept. No.: 13

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT WITH PREJUDICE**

20
21 Defendants JEFFREY BURR, ESQ. and JEFFREY BURR, LTD's Motion to Dismiss
22 Plaintiff's Complaint came before the Court on October 10, 2019. Joseph Garin appeared
23 on behalf of Defendants, and Curtis R. Rawlings appeared on behalf of Plaintiff Lynita S.
24 Nelson. The Court having considered the face of Plaintiff's Complaint and the other papers
25 and pleadings on file, the oral arguments of counsel, and having taken the matter under
26 advisement, and for good cause, hereby Grants Defendants' Motion to Dismiss as follows:

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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DISTRICT COURT DEPT# 13

CONCLUSIONS OF LAW

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2 1. Nevada Rule of Civil Procedure 12(b)(5) provides that a party may move to
3 dismiss a complaint where the complaint fails to state a claim upon which relief can be
4 granted. Nev. R. Civ. Pr. 12(b)(5). "Dismissal is proper where the allegations are
5 insufficient to establish the elements of a claim for relief." Stockmeier v. Nev. Dep't of Corr.
6 Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2009).

7 2. Under NRCP 12(b)(5), the allegations in the Complaint must be accepted as
8 true. Hynds Plumbing & Heating Co. v. Clark County Sch. Dist., 94 Nev. 776, 587 P2d
9 1331 (1978). However, bare assertions amounting to nothing more than a formulaic
10 recitation of the elements of a claim are not entitled to an assumption of truth. Brown v. Mt.
11 Grant General Hospital, 2013 WL 4523488 (D Nev), citing Moss v. United States Secret.
12 "A court [may] dismiss a complaint for failure to state a claim upon which relief can be
13 granted [when an] action is barred by the statute of limitations." Bemis v. Estate of Bemis,
14 114 Nev. 1021, 1024, 967 P2d 437, 439 (1998). When the facts are uncontroverted, as
15 they are here, the application of the statute of limitations is a question of law for decision
16 by this Court. Day v. Zubeļ, 112 Nev. 972, 977, 922 P2d 536, 539 (1996).

17 3. In evaluating a motion to dismiss, courts primarily focus on the allegations in
18 the complaint. See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d
19 670, 672 (2008). However, "the court is not limited to the four corners of the complaint." 5B
20 Charles Alan Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d
21 ed.2004).

22 4. A district court's consideration of documents that are not attached to a
23 complaint does not necessarily convert a motion to dismiss into a motion for summary
24 judgment. See Baxter v. Dignity Health, 131 Nev. —, —, 357 P.3d 927, 930 (2015).
25 Under Baxter, a court may consider documents beyond the pleadings to decide
26 a motion to dismiss if (1) the complaint refers to the document, (2) the document is central
27 to the plaintiff's claim, and (3) no party questions the authenticity of the document. See Id.

28 5. NRS 11.207(1) states as follows:

1 An action against an attorney or veterinarian to recover
2 damages for malpractice, whether based on a breach of duty or
3 sustains damage or within 2 years after the plaintiff discovers or
4 through the use of reasonable diligence should have discovered
5 the material facts which constitute the cause of action,
6 **whichever occurs earlier.**

6 NRS 11.207(1) (bold emphasis added).

7 6. It is firmly established that in the context of transactional malpractice, that is
8 malpractice committed in the form of a drafting defect or a drafting error, the statute of
9 limitations commences to run *prior* to the completion of litigation arising out of the defendant
10 attorney's allegedly negligent drafting. Gonzales v. Stewart Title, 111 Nev. 1350,
11 1353, 905 P.2d 176, 178 (1995) (overruled in part, to the extent it "rejects a distinction
12 between transactional and litigation malpractice").

13 7. Here, the Complaint alleges that in 2010, Defendants testified at the
14 Plaintiff's Divorce Case, that even though Plaintiff and Eric had the 1993 Agreement and
15 the ELN and LSN Trusts in place, community property issues would still exist in the event
16 of a divorce. See Complaint at ¶ 39, 41-43. Thus, the two-year statute of limitations prong
17 in NRS 11.207(1) began to run in 2010, and Plaintiff had until 2012 to bring her legal
18 malpractice claim against Defendants arising from Defendants' alleged negligent drafting
19 of the 1993 Agreement and the 2001 ELN and LSN Trusts.

20 8. Finally, the Court recognizes that there are important public policy
21 considerations that are involved in applying statute of limitations. See Gonzales, 111 Nev.
22 at 1352, 905 P.2d at 177 (stating "[p]ublic policy encourages litigants to bring their actions
23 to an end as quickly as possible, hence the existence of statutes of limitation.")

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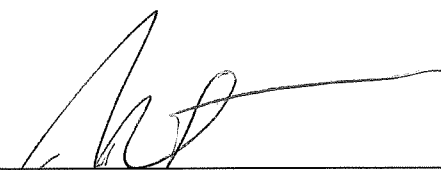
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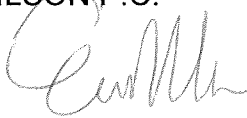
THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Plaintiff's Complaint is **GRANTED** with prejudice as time barred pursuant to NRS 11.207(1).

Dated this 31st of January, 2020



DISTRICT COURT JUDGE


Submitted by:
LIPSON NEILSON P.C.

By: 

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*Attorneys for Defendants JEFFREY BURR, ESQ.
and JEFFREY BURR, LTD's*

Approved as to form and content:

The Parties could not agree to the language of the Order.

By: _____
Curtis R. Rawlings, Esq.
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