

EXHIBIT D

App. 125

SEP. 2. 2011 10:08AM

BENSON-BERTOLDO

NO. 8386 P. 2

728 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIRSTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a PALMS CASINO
RESORT, BRANDY L. BEAVERS, individually,
DOES 1 through X, inclusive, and ROB
BUSINESS ENTITIES 1 through X, inclusive,
Defendants.

HEARING DATE: 9/6/11
HEARING TIME: 9:00 a.m.

**REPLY TO OPPOSITION TO MOTION TO REQUIRE DEFENDANTS TO POST
SUPERSUEDAS BOND**

COMES NOW, Plaintiff ENRIQUE RODRIGUEZ by and through his attorney of
record, Steven M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chfd. and hereby replies
to Defendant's opposition as follows:

I. Introduction

Plaintiff is seeking an order requiring Defendants to post a supersedeas bond in
accordance with NRCP 8 & 62.

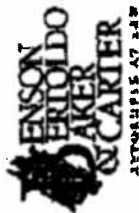
Plaintiff has concerns over the financial viability of Defendant and is merely seeking to
protect his ability to collect on the judgment if upheld on appeal.

SEP. 2. 2011 10:08AM

BENSON-BERTOLDO

NO. 8386 P. 3

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 226-2600 • FAX (702) 226-2588



BENSON
BERTOLDO
AKER
& CARTER
ATTORNEYS AT LAW

II. Defendant's Opposition

Defendant's argument is essentially two-fold:

1. Plaintiff is unhappy with the partial \$1,000,000 settlement; and
2. The Mediation Settlement "eliminated the burden and expense of The Palms to fund an appellate bond.

The first argument is factually flawed, while the second is both factually and legally flawed.

III. Argument

A. Plaintiff Has Concerns Over the Financial Viability of the Defendant

During Mediation, Plaintiff learned that Defendant was not financially capable of posting a supersedeas bond in an amount to permit satisfaction of the final judgment.¹

As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable, but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to dismiss any ongoing attempts at execution and further agreed to a permanent stay of all execution proceedings through remittitur.

Plaintiff is simply seeking an order requiring the posting of a supersedeas bond in an amount that will permit full satisfaction of the judgment.

B. The Mediation Agreement Does Not Eliminate the Requirement of an Appellate Bond

Curiously, The Palms argues on one hand that the Mediation Settlement Agreement is controlling and conclusive as to their obligations², yet on the other they try to infuse language

¹ It is important to note that neither the Mediation, nor the Mediation Settlement contained a confidentiality provision or obligation on the parties, as implied by The Palms.

² See Opposition, II. A.

SEP. 2. 2011 10:09AM

BENSON-BERTOLDO

NO. 8386 P. 4

2400 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-3600 • FAX (702) 728-3338



1 into the Settlement that does not exist, while simultaneously arguing relief from the
2 supersedeas bond requirement was an *integral* part of the agreement.³

3 This position is not only absurd, it is belied by the clear and unambiguous language of
4 the Mediation Settlement, which The Palms concedes is controlling and conclusive.

5 As set forth in The Palms' Opposition, the Mediation Settlement specifically states as
6 follows:

7
8 Defendant will pay Plaintiff the sum of \$1,000,000 in partial satisfaction of the
9 Judgment entered by Judge Walsh. Said sum shall be non-refundable, but, shall be
10 credited against any future payments. In exchange, Plaintiff shall dismiss any ongoing
11 efforts at execution and shall agree to a permanent stay of all collection proceedings
12 through remittitur.

13 Nowhere in the Agreement does it state, intend, contemplate and/or confirm that The
14 Palms were relieved from the supersedeas bond requirement. As clearly announced by the
15 Nevada Supreme Court, and cited by The Palms:

16 Our equitable powers do not extend so far as to permit us to disregard fundamental
17 principles of the law of contracts, or arbitrarily to force upon parties contractual
18 obligations, terms or conditions which they have not voluntarily assumed.
19 *McCall v. Carlson*, 63 Nev. 390, 424 (1946).

20 The Palms voluntarily assumed the contractual terms of the Mediation Settlement.
21 The Palms cannot force upon the Plaintiff any terms or conditions, i.e., relief from the
22 supersedeas bond requirement, not contained within the Mediation Settlement. As accurately,
23 argued by The Palms, this Court "cannot disregard the agreement between Enrique Rodriguez
24 and The Palms."⁴

25
26
27
28
³ *Id.*, 3: 20-22.

⁴ *Id.*, 4: 1-4.

SEP. 2. 2011 10:09AM

BENSON-BERTOLDO

NO. 8386 P. 5

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-2600 • FAX (702) 728-2633



1 C. Purpose of the Bond is to Protect Plaintiff as the Judgment Creditor

2 The purpose of security is to protect the judgment creditor's ability to collect the
3 judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor
4 arising from the stay. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as modified.

5 The purpose of a supersedeas bond is to protect prevailing party from loss resulting
6 from a stay of execution of the judgment. Rules Civ.Proc., Rule 62. *McCulloch v. Jenkins*,
7 1983, 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error
8 463

9 A supersedeas bond should usually be set in an amount that will permit full
10 satisfaction of the judgment; however, a district court, in its discretion, may provide for a
11 bond in a lesser amount, or may permit security other than a bond when unusual
12 circumstances exist and so warrant. Rules Civ.Proc., Rule 62. *McCulloch v. Jenkins*, 1983,
13 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 465(1)

14 The five factors to consider in determining when a full supersedeas bond may be
15 waived and/or alternate security substituted include: (1) the complexity of the collection
16 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
17 (3) the degree of confidence that the district court has in the availability of funds to pay the
18 judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a
19 bond would be a waste of money; and (5) whether the defendant is in such a precarious
20 financial situation that the requirement to post a bond would place other creditors of the
21 defendant in an insecure position. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as
22 modified. Appeal And Error 465(1)

23
24
25
26
27
28

SEP. 2. 2011 10:09AM

BENSON-BERTOLDO

NO. 8386 P. 6

IV. Conclusion

Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a supersedeas bond in an amount that will permit full satisfaction of the judgment.

DATED this 2 day of Sept, 2011.

BENSON, BERTOLDO, BAKER & CARTER, CHTD.

BY: [Signature]
 STEVEN M. BAKER, ESQ.
 Nevada Bar #4522
 Attorneys for Plaintiff
 7408 West Sahara Avenue
 Las Vegas, Nevada 89117

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of Sept, 2011, I served a true and correct copy of REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND was mailed in a sealed envelope by U.S. Mail, postage prepaid and via facsimile to the following interested parties:

10676-05 Jeffery A. Bendavid, Esq. Adam S. Davis, Esq. Moran Law Firm 630 South Fourth Street Las Vegas, Nevada 89101 702-384-8424 Telephone 702-384-6568 Facsimile Co-Counsel for Defendant Piscata Palms, LLC	10676-05 Keith Chilletta, Esq. Archer, Norris 2033 North Main Street, Suite 800 P.O. Box 8035 Walnut Creek, California 94596-3728 925-930-6600 Telephone 925-930-6620 Facsimile Attorneys for Defendant
Marsha L. Stephenson, Esq. Stephenson & Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 702-474-7229 Telephone 702-474-7237 Facsimile Co-counsel for Defendant	

[Signature]
 An Employee of Benson, Bertoldo, Baker & Carter

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-2500 • FAX (702) 728-2503

BENSON
BERTOLDO
BAKER
& CARTER
ATTORNEYS AT LAW

EXHIBIT E

App. 131

Electronically Filed
11/08/2011 01:37:23 PM


CLERK OF THE COURT

OAH
Marsha L. Stephenson, Esq. (NV Bar No. 6130)
STEPHENSON & DICKINSON, P.C.
2820 West Charleston Blvd., Suite 19
Las Vegas, NV 89102-1942
Telephone: (702) 474-7229
Facsimile: (702) 474-7237

Kenneth C. Ward (Bar No. 6530)
Keith R. Gillette (Bar No. 11140)
ARCHER NORRIS
A Professional Law Corporation
2033 North Main Street, Suite 800
PO Box 8035
Walnut Creek, California 94596-3728
Telephone: 925.930.6600
Facsimile: 925.930.6620

Attorneys for Defendant FIESTA PALMS, LLC, a
Nevada Limited Liability Company, d/b/a/ THE
PALMS CASINO RESORT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,
Plaintiffs,

v.

FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a/ The Palms
Casino Resort, et al.,
Defendants.

Case No. A531538

Dept: X

ORDER AFTER HEARING

THIS MATTER having come on for hearing on September 6, 2011, regarding Plaintiff
ENRIQUE RODRIGUEZ's Motion to Require Posting of Supersedeas Bond, before the
Honorable Jessie Walsh, presiding; and the Court, having considered the evidence and the
arguments of counsel and taken the matter under advisement for consideration, makes the
following order:

A531538
ORDER


1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's Motion to
2 Require Posting of Supersedeas Bond is DENIED.

3 IT IS SO ORDERED.

4
5 Dated: 27 Sept, 2011.

Jessie Walsh
Honorable Jessie Walsh, District Court Judge

6
7
8
9 Respectfully Submitted by:

10 
11
12 Keith R. Gillette (NV Bar No. 11140)
13 ARCHER/NORRIS
14 2033 North Main Street, Suite 800
15 PO Box 8035
16 Walnut Creek, CA 94596-3728
17 Attorneys for Defendant FIESTA PALMS, LLC,
18 a Nevada Limited Liability Company, d/b/a/
19 THE PALMS CASINO RESORT

20 ZA1261221491-1



ARCHERNORRIS
A PROFESSIONAL LAW CORPORATION

2033 North Main Street, Suite 800
Walnut Creek, CA 94596-3759
925.930.6600
925.930.6620 (Fax)
www.archernorris.com

KEITH R. GILLETTE
kgillette@archernorris.com
925.952.5440
Admitted to Practice in California, Nevada

November 15, 2011

VIA EMAIL C/O MONIQUE KRYSTEK (MONIQUE@BENSONLAWYERS.COM)

Steven M. Baker, Esq.
Benson, Bertoldo, Baker & Carter
7408 W. Sahara Avenue
Las Vegas, NV 89117

Re: *Rodriguez v. Fiesta Palms, LLC., et al., Action No. A531538*

Dear Mr. Baker:

We write further to your proposed Order on Plaintiff's Renewed Motion to Require Posting of Supersedeas Bond. We object to the proposed form of order.

We request that the Order include the Court's explanation as to the basis for the granting of this motion. In addition, we have due process concerns relating to the timing of the posting of the bond relative to the Order. Accordingly, we ask that the Order reference that the posting of the bond shall take place no later than 10 days from notice of entry of the Order.

Your inclusion of these comments in a proposed order is anticipated. We look forward to receiving the revised proposed order.

Very truly yours,

ARCHER NORRIS

/s/ Keith R. Gillette

Keith R. Gillette

KRG/tp

ZA126/1253486-1



ARCHER NORRIS

A PROFESSIONAL LAW CORPORATION

2033 North Main Street, Suite 800
Walnut Creek, CA 94596-3759
925.930.8600
925.930.8820 (Fax)
www.archernorris.com

KEITH R. GILLETTE
kgillette@archernorris.com
925.952.5440
Admitted to Practice in California, Nevada

November 15, 2011

VIA EMAIL C/O WINTERJ@CLARKCOUNTYCOURTS.US

Honorable Jessie Walsh
c/o Jeri Winter, Judicial Assistant
Department 10
Clark County District Court
200 Lewis Ave.
Las Vegas, NV 89101

Re: Enrique Rodriguez v. Fiesta Palms, LLC, et al.
Clark County District Court Case No. A531538
Our File No.: ZA-126

Judge Walsh:

I write further to the proposed form of order that we understand has been submitted by plaintiffs counsel on his Renewed Motion to Require Posting of Supersedeas Bond. A copy of the current form of Order is enclosed.

We respectfully request that the final form of order include an explain as to this Court's basis for the granting of the motion. We also request that the requirement for the posting of the bond be made no later than 10 days from the notice of entry of this order.

Respectfully submitted.

Very truly yours,

ARCHER NORRIS

/s/ Keith R. Gillette

Keith R. Gillette

KRG/tp
Enclosure
cc: Steve Baker, Esq. (c/o Monique@BensonLawyers.com)
ZA126/1253494-1



November 16, 2011

KYSEPH L. BENSON
JOHN L. BERTOLDO
STEVEN M. BAKER
BRETT A. CARTER

LAWRENCE J. SMITH
W. JONATHAN WEBER
JAVIER A. ARGUELLO
WILLIAM A. BRANNON
ROBERT S. CARDENAS
*Also licensed in California

Ms. Jeri Winter, Jud. Exec. Asst.
Department 10
Clark County District Court
200 Lewis Avenue
Las Vegas, NV 89155

Via Facsimile Only
671-4384

Re: Rodriguez v. Fiesta Palms, et al.
Case No. A531538

Dear Jeri:

I am in receipt of correspondence from defense counsel, Keith Gillette, Esq. regarding his request for findings of fact and conclusions of law with respect to the Order Granting Renewed Motion for Supersedeas Bond. Our research indicates that no finding of facts is necessary when a bond is ordered in the full amount of the judgment. (See annotations, NRCP 62) Accordingly, we ask that the Judge sign the subject Order at her earliest convenience, as submitted. In light of the Gaming Commission's recommendation to be entered tomorrow, we respectfully request an expedited consideration of this issue.

Your assistance is appreciated.

Sincerely,

Benson, Bertoldo, Baker & Carter, Cltd.

Steven M. Baker, Esq.

/mk

cc: Keith Gillette, Esq. (Fax: 925-930-6620)

ZA126

Electronically Filed
11/17/2011 01:55:27 PM

Alvin D. Levine

CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

BENCH TRIAL DATE: 10/4/10

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
inclusive,

Defendants.

ORDER

CAME ON FOR CONSIDERATION, Plaintiff's Renewed Motion to Require Posting
of Supersedeas Bond. After considering the Motion, Opposition and pleadings and papers on
file, the Court finds the Renewed Motion shall be granted.

///

///

Rodriguez v. Fiesta Palms, L.L.C.
Order Granting Renewed Motion
Page 1

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333


**BENSON
BERTOLDO
BAKER
& CARTER**
ATTORNEYS AT LAW

1 IT IS HEREBY ORDERED that Defendants shall post a Supersedeas Bond in the amount
2 of Five Million, Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) no later than
3 ten (10) days following the Notice of Entry of Order.
4

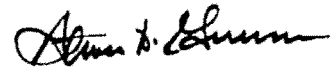
5 DATED this 17 day of Nov, 2011.

6 
7 DISTRICT COURT JUDGE

8
9 SUBMITTED BY:

10 
11 STEVEN M. BAKER
12 Nevada Bar No. 4522
13 BENSON, BERTOLDO, BAKER & CARTER
14 7408 W. Sahara Avenue
15 Las Vegas, Nevada 89117
16 Telephone : (702) 228-2600
17 Facsimile : (702) 228-2333
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

Rodriguez v. Fiesta Palms, L.L.C.
Order Granting Renewed Motion
Page 2



CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS, individually,
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES I through X, inclusive,
Defendants.

NOTICE OF ENTRY OF ORDER

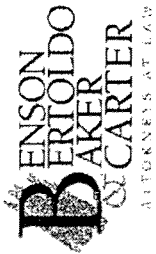
TAKE NOTICE that an Order was entered in the above-captioned matter granting Plaintiff's
Renewed Motion to Require Posting of Supersedeas Bond. A copy of said Order is attached hereto.

Dated this 17th day of November, 2011.



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

App. 139

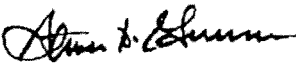


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of Nov., 2011, I served a true and correct copy of the NOTICE OF ENTRY OF ORDER was served as indicated below to the following interested parties:

<p>VIA HAND-DELIVERY/RECEIPT OF COPY</p> <p>Marsha L. Stephenson, Esq. Stephenson & Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 Co-counsel for Defendant</p>	<p><u>VIA 1st Class, U.S. Mail, postage prepaid</u> <u>Courtesy Copy by fax: 925-930-6620</u> Keith Gillette, Esq. Archer, Norris 2033 North Main Street, Suite 800 P.O. Box 8035 Walnut Creek, California 94596-3728 925-930-6600 Telephone 925-930-6620 Facsimile Attorneys for Defendants</p>
<p><u>VIA 1st Class, U.S. Mail, postage prepaid</u> <u>Courtesy Copy by fax: 775-786-9716</u> Robert L. Eisenberg, Esq. Lemons, Grundy & Eisenberg 6005 Plumas Street, Third Floor Reno, NV 89519 Co-Counsel for Fiesta Palms, L.L.C.</p>	


An Employee of Benson, Bertoldo, Baker & Carter


CLERK OF THE COURT

1 STEVEN M. BAKER
2 Nevada Bar No. 4522
3 BENSON, BERTOLDO, BAKER & CARTER
4 7408 W. Sahara Avenue
5 Las Vegas, Nevada 89117
6 Telephone : (702) 228-2600
7 Facsimile : (702) 228-2333
8 Attorneys for Plaintiff

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 ***

13 ENRIQUE RODRIGUEZ, an individual,
14 Plaintiff,

CASE NO: A531538

DEPT NO: 10

15 vs.

BENCH TRIAL DATE: 10/4/10

16 FIESTA PALMS, L.L.C., a Nevada Limited
17 Liability Company, d/b/a PALMS CASINO
18 RESORT, BRANDY L. BEAVERS,
19 individually, DOES 1 through X, inclusive,
20 and ROE BUSINESS ENTITIES 1 through X,
21 inclusive,

22 Defendants.

23 ORDER

24 CAME ON FOR CONSIDERATION, Plaintiff's Renewed Motion to Require Posting
25 of Supersedeas Bond. After considering the Motion, Opposition and pleadings and papers on
26 file, the Court finds the Renewed Motion shall be granted.
27
28

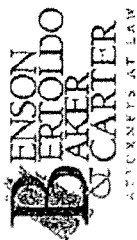
///

///

Rodriguez v. Fiesta Palms, L.L.C.
Order Granting Renewed Motion
Page 1

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

BENSON
BERTOLDO
BAKER
& CARTER
ATTORNEYS AT LAW




1 IT IS HEREBY ORDERED that Defendants shall post a Supersedeas Bond in the amount
2 of Five Million, Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) no later than
3 ten (10) days following the Notice of Entry of Order.
4

5 DATED this 17 day of Nov, 2011.

6 
7 DISTRICT COURT JUDGE

8
9 SUBMITTED BY:

10 
11 STEVEN M. BAKER
12 Nevada Bar No. 4522
13 BENSON, BERTOLDO, BAKER & CARTER
14 7408 W. Sahara Avenue
15 Las Vegas, Nevada 89117
16 Telephone : (702) 228-2600
17 Facsimile : (702) 228-2333
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

Rodriguez v. Fiesta Palms, L.L.C.
Order Granting Renewed Motion
Page 2

EXHIBIT A

App. 102

ORIGINAL

1 **STP**
 2 **STEVEN M. BAKER**
 3 Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
 4 7408 W. Sahara Avenue
 Las Vegas, Nevada 89117
 Telephone : (702) 228-2600
 5 Facsimile : (702) 228-2333
 Attorneys for Plaintiff

Electronically Filed
 05/12/2011 02:32:19 PM

Alan P. Johnson
 CLERK OF THE COURT

7 **DISTRICT COURT**
 8 **CLARK COUNTY, NEVADA**

10 **ENRIQUE RODRIGUEZ, an individual,**
 11 **Plaintiff,**

CASE NO: A531538

DEPT NO: 10

vs.

13 **FIESTA PALMS, L.L.C., a Nevada Limited**
 14 **Liability Company, d/b/a PALMS CASINO**
 15 **RESORT, BRANDY L. BRAVERS,**
 16 **Individually, DOES 1 through X, inclusive,**
 and ROE BUSINESS ENTITIES 1 through X,
 inclusive,

Defendants.

STIPULATION AND ORDER

19 **WHEREAS** Plaintiff asserts a Writ of garnishment and Writ of Execution in the amount
 20 of \$6,643,968.83 were properly entered and served in this matter in favor of the Plaintiff and
 21 against the Defendant; and

22 **WHEREAS** Plaintiff asserts said Writs create in Plaintiff a possessory interest in any
 23 and all Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels,
 24 Gaming Kiosks, Count Rooms within the Palms Casino Resort; and

25 **WHEREAS** Plaintiff asserts said Writs effectuate a "freeze" over the operating
 26 accounts and other accounts of the Defendant FIESTA PALMS, LLC; and

1 **WHEREAS** Plaintiff asserts Defendant BRANDY BEAVERS is properly in default
2
3 in this action;

4 It is hereby stipulated and agreed between Plaintiff ENRIQUE RODRIGUEZ and
5 Defendant FIESTA PALMS, LLC, dba PALMS CASINO RESORT as follows:

- 6 1) This action shall be stayed in its entirety, with the exception to immediately follow,
7 for the period of time described below, with neither party retaining the right to file any
8 pleadings, papers, bonds, securities, appeals, or otherwise. The Court will retain
9 jurisdiction, however, to order and/or otherwise compel any agency and/or individual
10 having appropriate authority to act upon and/or otherwise execute the writs and
11 judgment referred to herein.
12
13 2) Subject to all other provisions of this Stipulation, solely for the purpose of enacting the
14 terms and provisions hereof, without prejudice, and not to be stayed by this
15 Stipulation, Plaintiff agrees to retract any and all Writs of Garnishment and/or
16 Execution held in favor of Plaintiff against Defendant in this matter, and to cooperate
17 and assist Defendant in effectuating an "unfreezing" of any accounts impacted by the
18 same, and the Writs of Garnishment are deemed retracted without further action by the
19 Court or by the parties.
20
21 3) Said stay will be in effect pending a mediation/settlement conference in this matter to
22 be conducted, with a person/entity in attendance for each party with proper authority
23 to settle, at a time no more than 10 days from the filing of this stipulation. The parties
24 agree to use their best efforts to schedule and conduct said mediation/settlement
25 conference with The Hon. Gene Porter (Ret.), or such other mutually agreeable
26 mediator, within said time frame.
27
28

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
- 4) The trial Judge will retain jurisdiction to determine if either party participated in the mediation/settlement conference in bad faith, and shall be empowered to award attorney's fees, costs, and sanctions in the event of a determination of bad faith participation, with both parties waiving any objections thereto;
 - 5) In the event this matter does not resolve at mediation/settlement conference, the matter shall remain stayed until that time that the Plaintiff submits a Stipulation to Lift Stay to the Defendant in a form reasonably agreeable to Plaintiff and Defendant, which will be signed first by the Defendant, then by the Plaintiff, and then filed by the Plaintiff. The stay will remain in effect until the entry of an Order by the Court lifting the same.
 - 6) Should the Defendant fail to sign the submitted Stipulation to Lift Stay, this Court may lift stay upon application by the Plaintiff upon due notice to the Defendant. The parties stipulate and agree that upon the stay being lifted, the Court may schedule any and all Motions pending at its earliest convenience, with both parties representing a preparedness to argue the same if scheduled three days or more from the time the stay is lifted.
 - 7) During the pendency of the stay and for a period of seventy-two hours after the entry of an Order lifting the stay, the Defendant may not make application for, purchase, post, issue, file, or otherwise procure a supercedas bond and/or any other security which would operate to effectuate a Stay of Execution, nor can move and/or otherwise act to stay execution of the aforesaid Writs or Judgment. This provision is specifically intended to preserve the right of the Plaintiff to garnish and/or execute against the Defendant as if said garnishment and/or execution was effectuated on Monday, May 9,

2011, and shall be construed to preserve the rights and remedies of the Plaintiff as though execution had been carried out at said date and time.

8) During the pendency of the stay and for a period of seventy-two hours after the entry of an Order to lift stay, except as may result from the Defendant conducting its operations in the ordinary course of business (which the parties agree shall not be precluded by this stipulation), the Defendant may not make application for or in any way attempt and/or seek to reduce, transfer, encumber, or otherwise impact the cash, securities, property, and/or reserves regularly and customarily retained by the Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts and/or otherwise. This provision is specifically intended to preserve the right of the Plaintiff to garnish and/or execute against the Defendant as if said garnishment and/or execution was effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and remedies of the Plaintiff as though execution had been carried out at said date and time.

9) Should this matter not settle at mediation settlement/conference and should, upon attempt to execute and/or garnish by the Plaintiff, it appear that Defendant has made application for or has in any way attempted to reduce, transfer, encumber, or otherwise effect the cash, securities, property, and/or reserves regularly and customarily retained by the Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts, and/or otherwise, except as may result from the Defendant conducting its operations in the ordinary course of business (which the parties agree shall not be precluded by this

1 stipulation) this court may, upon application by the Plaintiff, without motion but with
2 due notice to the Defendant, stay, preclude and prevent the Defendant from
3 purchasing, issuing, posting, filing or otherwise a supercedas bond and/or other
4 security preventing the execution by Plaintiff upon said Writs and Judgment. The
5 insufficiency of funds to satisfy the aforesaid Writs and Judgment in the Defendant's
6 possession at the time of an attempt to execute upon the same will be sufficient basis
7 for the Court to enter an Order as contemplated by this provision. Notwithstanding the
8 foregoing, it is recognized by the parties that the aggregate funds available to the
9 stipulating Defendant is dynamic in nature and dependant upon ongoing business
10 obligations and operations, and Defendant reserves the right to demonstrate an
11 absence of an intention to deplete resources should the issue come before the Court.
12 The filing of a Motion and/or other application by the Plaintiff pursuant to this
13 provision will stay the ability of the Defendant to file a supercedas bond and/or other
14 security until the Court has entered an Order with respect to the same.

- 15 10) If an Order by this court staying, precluding, and/or preventing the Defendant from
16 purchasing, issuing, posting, filing or otherwise a supercedas bond and/or other
17 security as aforesaid is issued by this court after the time such bond or other security is
18 purchased and filed by the Defendant, such Order will relate-back to the time of the
19 filing by Plaintiff of a Motion and or other Application with respect to the same. This
20 provision is specifically intended to preserve the right of the Plaintiff to garnish
21 and/or execute against the Defendant as if said garnishment and/or execution was
22 effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and
23
24
25
26
27
28

remedies of the Plaintiff as though execution had been carried out at said date and time.

- 11) For the purposes of conducting any future execution upon the Writs and Judgment contemplated by this Stipulation, the Writs of Garnishment and Execution previously served in this matter will continue to be in full force and effect, and shall be acted upon by any person and/or entity upon notice by Counsel for Plaintiff and without the need for any further filings and/or service of process.
- 12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this ____ day of May, 2011.

COPY

STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

Dated this 7th day of May, 2011.

JOHN NAYLOR, ESQ.
Nevada Bar No. 5435
300 South 4th Street
Las Vegas, Nevada 89101
Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this 11th day of May, 2011.

Jessie Walsh
HONORABLE JESSIE WALSH
District Court Judge

05-09-11

08:54am

From: Lionel Sawyer & Collins

7023938845

T-578 P.006/007 F-849

remedies of the Plaintiff as though execution had been carried out at said date and time.


11) For the purposes of conducting any future execution upon the Writs and Judgment contemplated by this Stipulation, the Writs of Garnishment and Execution previously served in this matter will continue to be in full force and effect, and shall be acted upon by any person and/or entity upon notice by Counsel for Plaintiff and without the need for any further filings and/or service of process.


12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this ____ day of May, 2011.

Dated this 7th day of May, 2011.


 STEVEN M. BAKER
 Nevada Bar No. 4322
 7408 W. Sahara Avenue
 Las Vegas, Nevada 89117
 Attorneys for Plaintiff


 JOHN NAYLOR, ESQ.
 Nevada Bar No. 5435
 300 South 3rd Street
 Las Vegas, Nevada 89101
 Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this ____ day of May, 2011.

HONORABLE JESSIE WALSH
 District Court Judge

LIONEL SAWYER
 & COLLINS
 ATTORNEYS AT LAW
 1000 W. ARIZONA AVENUE
 3 SOUTH SUITE 100
 LAS VEGAS
 NEVADA 89101
 TEL: 393-8888

05-09-11 08:04am From:Lionel Sawyer & Collins

7023838845

T-570 P.007/007 F-343

SUBMITTED BY:



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

LIONEL SAWYER
& COLLINS
ATTORNEYS AT LAW
4 SUITE 200 AIRPORT BLVD.
10 SOUTH FOURTH ST.
LAS VEGAS,
NEVADA 89101
(702) 383-8888

EXHIBIT B

App. 111

1 STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
2 BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
3 Las Vegas, Nevada 89117
Telephone: (702) 228-2600
4 Facsimile: (702) 228-2333
e-mail: Monique@bensonlawyers.com
5 Attorneys for Plaintiff

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 ENRIQUE RODRIGUEZ,

CASE NO.: A531538
DEPT. NO.: X

10 Plaintiff,

11 vs.

12 FIESTA PALMS, L.L.C., a Nevada Limited
13 Liability Company, d/b/a PALMS CASINO
14 RESORT, BRANDY L. BEAVERS,
15 individually, DOES I through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
16 inclusive,

17 Defendants.

MEDIATION DATE: May 16, 2011
MEDIATION TIME: 1:30 P.M.

18 **MEDIATION SETTLEMENT**

19 The parties having agreed to mediation of the above-referenced matter, have reached a
20 settlement as follows:

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////


28 ////

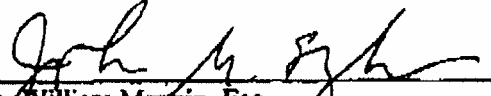
1 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment
2 entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future
3 payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree to a
4 permanent stay of all collection proceedings through remittitur.
5

6 DATED this 16 day of May, 2011.
7

8 BENSON, BERTOLDO, BAKER & CARTER

LIONEL, SAWYER & COLLINS

9
10 
11 Steven M. Baker, Esq.
12 Nevada Bar No. 4522
13 Robert S. Cardenas, Esq.
14 Nevada Bar No. 7301
15 7408 W. Sahara Avenue
16 Las Vegas, Nevada 89117
17 Attorneys for Plaintiff

10 
11 A. William Maupin, Esq.
12 Nevada Bar No. 1315
13 John M. Naylor, Esq.
14 Nevada Bar No. 5435
15 1700 Bank of America Plaza
16 300 South Fourth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Fiesta Palms, LLC

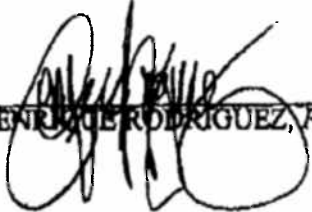
16 
17 ENRIQUE RODRIGUEZ, Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

App. 114

ORIGINAL

1 STEVEN M. BAKER
 2 Nevada Bar No. 4522
 3 BENSON, BERTOLDO, BAKER & CARTER
 4 7408 W. Sahara Avenue
 5 Las Vegas, Nevada 89117
 6 Telephone : (702) 228-2600
 7 Facsimile : (702) 228-2333
 8 Attorneys for Plaintiff

DISTRICT COURT
 CLARK COUNTY, NEVADA

9 ENRIQUE RODRIGUEZ, an individual,
 10 Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

BENCH TRIAL DATE: 10/4/10

12 FIESTA PALMS, L.L.C., a Nevada Limited
 13 Liability Company, d/b/a PALMS CASINO
 14 RESORT, BRANDY L. BEAVERS,
 15 individually, DOES 1 through X, inclusive,
 16 and ROE BUSINESS ENTITIES I through X,
 17 inclusive,

HEARING DATE: 8-23-11

HEARING TIME: 9:00 am

Defendants.

MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND:
APPLICATION FOR ORDER SHORTENING TIME; ORDER

18 Comes now, Plaintiff ENRIQUE RODRIGUEZ by and through his counsel of record, Steven
 19 M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chtd. and hereby moves this Honorable
 20 Court to issue an Order requiring Defendants to post a supersedeas bond. This motion is
 21
 22
 23
 24
 25
 26
 27
 28

Rodriguez v. Palms, et al.
 Motion
 Page 1

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

DEPARTMENT X

NOTICE OF HEARING

DATE: 8-23-11 TIME: 9:00 am

APPROVED BY: [Signature]

BENSON
 BERTOLDO
 BAKER
 & CARTER
 ATTORNEYS AT LAW

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2533

BENSON
 BERTOLDO
 BAKER
 & CARTER
 ATTORNEYS AT LAW

made on the pleadings and papers on file, points and authorities herein and oral argument of counsel at the time of hearing.

DATED this 17th day of August, 2011.

BENSON, BERTOLDO, BAKER & CARTER, CHTD.

BY: [Signature]
 STEVEN M. BAKER, ESQ.
 Nevada Bar #4522
 Attorneys for Plaintiff
 7408 West Sahara Avenue
 Las Vegas, Nevada 89117

ORDER SHORTENING TIME

After consideration of the moving papers, the Court hereby orders that the hearing regarding the within MOTION TO TO REQUIRE POSTING OF SUPERSEDEAS BOND be scheduled on shortened time. Said hearing is hereby scheduled on the 23 day of AUGUST, 2011, in Department X of this Court, at 9:00 A.m., or as soon thereafter as counsel can be heard.

DATED this 16 day of AUGUST, 2011.

[Signature]
DISTRICT COURT JUDGE

Rodriguez v. Palms, et al.
 Motion
 Page 2

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333



ENSON
ERIOALDO
BAKER
& CARTER
ATTORNEYS AT LAW

**AFFIDAVIT OF STEVEN M. BAKER, ESQ. IN SUPPORT OF MOTION AND
APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Steven M. Baker, Esq., having been duly sworn, states as follows:

1. I am an attorney, duly licensed to practice in the State of Nevada and represent Plaintiff Enrique Rodriguez in the above-captioned matter.
2. I have personal knowledge of the facts stated herein.
3. This application for Order Shortening Time is requested on the basis that a Notice of Appeal has not yet been filed. An Order of this Court directing the posting of a supersedeas bond is timely.
4. Defendants never posted a supersedeas bond and never timely moved for a stay of execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating account in May of 2011. Thereafter, the parties proceeded to Mediation.
5. During Post Judgment Mediation, Plaintiff learned that Defendant was not financially capable of posting a supersedeas bond in an amount to permit satisfaction of the final judgment.
6. As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable, but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to dismiss any ongoing attempts at execution and further agreed to a permanent stay of all execution proceedings through remittitur.

Rodriguez v. Palms, et al.
Motion
Page 3

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

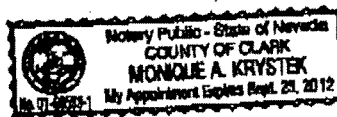
ENSON
 FRIEDLDO
 BAKER
 & CARTER
 ATTORNEYS AT LAW

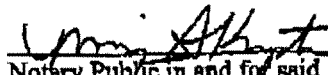
- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
7. Plaintiff is seeking an order requiring the posting of a supersedeas bond in an amount that will permit full satisfaction of the judgment.
8. This motion is not brought forth to harass or otherwise delay the proceedings.
- Further, affiant sayeth naught.



Steven M. Baker, Esq.

Sworn to before me this 17th day of
August, 2011.




Notary Public in and for said County and State

Rodriguez v. Palms, et al.
Motion
Page 4

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333



1
2 **I. Introduction**

3 Plaintiff is seeking an order requiring Defendants to post a supersedeas bond in
4 accordance with NRCP 8 & 62.
5

6 Plaintiff has concerns over the financial viability of Defendant and is merely seeking to
7 protect his ability to collect on the judgment if upheld on appeal.

8 **II. Statement of Facts**

9 This is a premises liability matter that occurred November 22, 2004 at the Palms Sports
10 Bar/Sports Book. Plaintiff ENRIQUE RODRIGUEZ was an invited guest to watch a football
11 game. During half-time, agents, employees and/or assigns of the Palms (hereinafter known as
12 the "PALMS GIRLS") were participating in a promotion wherein they were throwing souvenirs
13 to Sports Bar/Sports Book patrons while blindfolded.
14

15 In response to the Palms Girl, Brandy Beavers, throwing souvenirs in the Sports
16 Bar/Sports Book while blind-folded, a customer within the Sports Bar/Sports Book dove for a
17 thrown souvenir and hit Mr. Rodriguez's extended and stationary left knee. Mr. Rodriguez then
18 struck the person next to him, hitting the left side of his head, then falling down, thereby
19 sustaining extensive injuries and damages.
20

21 A bench trial commenced in this matter on October 25, 2010 and this Honorable Court
22 issued a verdict on March 9, 2011 for the Plaintiff and against the Defendants FIESTA
23 PALMS, L.L.C. and BRANDY BEAVERS in the amount of \$6,051,589.38.

24 Defendants never posted a supersedeas bond and never timely moved for a stay of
25 execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating
26 account in May of 2011. Thereafter, the parties proceeded to Mediation.
27

28 *Rodriguez v. Palms, et al.*
Motion
Page 5

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-2600 • FAX (702) 728-2333



1 During Mediation, Plaintiff learned that Defendant was not financially capable of
2 posting a supersedeas bond in an amount to permit satisfaction of the final judgment.

3 As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial
4 satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable,
5 but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to
6 dismiss any ongoing attempts at execution and further agreed to a permanent stay of all
7 execution proceedings through remittitur.

8 Plaintiff is seeking an order requiring the posting of a supersedeas bond in an amount
9 that will permit full satisfaction of the judgment.

10 III. Legal Argument

11 In the ordinary course of civil appeals, an appellant must comply with NRAP 8(a),
12 which provides that an application for stay of a judgment or order must typically be made to
13 the district court. Such application, as well, must concurrently comply with Rule 62(d),
14 requiring a supersedeas bond. *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court ex*
15 *rel. Carson City*, 94 Nev. 42, 574 P.2d 272 (1978).

16 The purpose of security for a stay pending appeal is to protect the judgment creditor's
17 ability to collect the judgment if it is affirmed by preserving the status quo and preventing
18 prejudice to the creditor arising from the stay. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev.
19 832, as modified.

20 Purpose of a supersedeas bond is to protect prevailing party from loss resulting from a
21 stay of execution of the judgment. Rules Civ.Proc., Rule 62. *McCulloch v. Jenkins*, 1983, 659
22 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 463

23 *Rodriguez v. Palms, et al.*
24 Motion
25 Page 6
26
27
28

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2833



ENSON
ERILDO
AKER
& CARTER
ATTORNEYS AT LAW

1 A supersedeas bond should usually be set in an amount that will permit full
2 satisfaction of the judgment; however, a district court, in its discretion, may provide for a
3 bond in a lesser amount, or may permit security other than a bond when unusual
4 circumstances exist and so warrant. Rules Civ.Proc., Rule 62. *McCulloch v. Jenkins*, 1983,
5 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 465(1)
6

7 The five factors to consider in determining when a full supersedeas bond may be
8 waived and/or alternate security substituted include: (1) the complexity of the collection
9 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
10 (3) the degree of confidence that the district court has in the availability of funds to pay the
11 judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a
12 bond would be a waste of money; and (5) whether the defendant is in such a precarious
13 financial situation that the requirement to post a bond would place other creditors of the
14 defendant in an insecure position. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as
15 modified. Appeal And Error 465(1)
16
17

18
19
20
21
22 ///23
24
25 ///

26
27 *Rodriguez v. Palms, et al.*
28 Motion
Page 7

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

**BENSON
BERTOLDO
BAKER
& CARTER**
ATTORNEYS AT LAW

1
2 **IV. Conclusion**
3

4 Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a
5 superseded bond in an amount that will permit full satisfaction of the judgment.
6

7 DATED this 17th day of August, 2011.

8 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**

9
10 By: 

11 STEVEN M. BAKER, ESQ.
12 Nevada Bar No. 4522
13 7408 W. Sahara Avenue
14 Las Vegas, Nevada 89117
15 (702) 228-2600 Telephone
16 (702) 228-2333 Facsimile
17 monique@bensonlawyers.com
18 *Attorneys for Plaintiff*

19
20
21
22
23
24
25
26
27 *Rodriguez v. Palms, et al.*
28 Motion
Page 8

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

BENSON, BERTOLDO, BAKER & CARTER
ATTORNEYS AT LAW

1 STEVEN M. BAKER
 Nevada Bar No. 4522
 2 BENSON, BERTOLDO, BAKER & CARTER
 7408 W. Sahara Avenue
 3 Las Vegas, Nevada 89117
 Telephone : (702) 228-2600
 4 Facsimile : (702) 228-2333
 Attorneys for Plaintiff

6
 7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 ***

10 ENRIQUE RODRIGUEZ, an individual,
 Plaintiff,

CASE NO: A531538
 DEPT NO: 10

11 vs.

12 FIESTA PALMS, L.L.C., a Nevada Limited
 Liability Company, d/b/a PALMS CASINO
 13 RESORT, BRANDY L. BEAVERS,
 14 individually, DOES 1 through X, inclusive,
 and ROE BUSINESS ENTITIES I through X,
 15 inclusive,


16 Defendants.

17 NOTICE OF ENTRY OF ORDER

18 PLEASE TAKE NOTICE that a Stipulation and Order was entered in the above-
 19 captioned matter on the 12th day of May, 2011. A copy of said Order is attached hereto.

20 Date: 5/13/11

BENSON, BERTOLDO, BAKER & CARTER

21 
 22 STEVEN M. BAKER
 Nevada Bar No. 4522
 23 7408 W. Sahara Avenue
 Las Vegas, Nevada 89117
 24 Telephone: (702) 228-2600
 25 Facsimile: (702) 228-2333
 Attorneys for Plaintiff

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-2600 • FAX (702) 228-2333

**BENSON
BERTOLDO
BAKER
& CARTER**
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of May, 2011, a true and correct copy of the above referenced document was served via 1st Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

John Naylor, Esq.
Lionel, Sawyer & Collins
300 S. 4th Street, Suite 1700
Las Vegas, NV 89101
Co-Counsel for Defendant Fiesta Palms

KC Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596
Co-counsel for Defendant Fiesta Palms

Jeffery A. Bendavid, Esq.
Moran & Associates
630 S. Fourth St.
Las Vegas, NV 89101
Attorneys for Defendant Fiesta Palms

Marsha L. Stephenson, Esq.
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102
Co-counsel for Fiesta Palms


An Employee of Benson, Bertoldo, Baker & Carter

NOV. 9. 2011 9:10AM

BENSON-BERTOLDO

NO. 5953 P. 17. 24

EXHIBIT 2

App. 77

09/30/2011 17:15 FAX

002/028

OPPM

Kenneth C. Ward (Bar No. 6530)

keward@archernorris.com

Keith R. Gillette (Bar No. 11140)

kgillette@archernorris.com

ARCHER NORRIS

A Professional Law Corporation

2033 North Main Street, Suite 800

Walnut Creek, California 94596-3759

Telephone: 925.930.6600

Facsimile: 925.930.6620

Marsha L. Stephenson, (Bar No. 6150)

STEPHEN & DICKINSON, P.C.

2820 West Charleston Blvd., Suite 19

Las Vegas, NV 89102-1942

Telephone: 702.474.7229

Facsimile: 702.474.7237

Attorneys for Defendant

PIESTA PALMS, LLC, a Nevada Limited Liability

Company, d/b/a THE PALMS CASINO RESORT

DISTRICT COURT**CLARK COUNTY, NEVADA****ENRIQUE RODRIGUEZ,**

Plaintiff,

v.

**PIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
CASINO RESORT, et al.,**

Defendants.

Case No. A531538

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO REQUIRE
POSTING OF SUPERSEDEAS BOND**

Hearing Date: August 23, 2011

Hearing Time: 9:00 a.m.

Dept: 10

As this Court will recall, after a bench trial last fall, the Court entered judgment in favor of Plaintiff in an amount in excess of \$6,000,000. After Plaintiff attempted to execute on this judgment in early May, the Parties entered into a stipulation staying Plaintiff's collection efforts pending mediation.

During a mediation session on May 16, 2011, the Parties negotiated a "Mediation Settlement" that gave plaintiff a non-refundable one million dollars, in exchange for plaintiff's agreement to stay all collection proceedings through appeal. This bargained-for consideration

DEFENDANT'S OPPOSITION TO MOTION RE SUPERSEDEAS BOND

08/30/2011 17:18 FAX

003/028

1 eliminated the burden and expense of The Palms to fund an appellate bond. Plaintiff received his
2 million dollars some time ago.

3 Unhappy with this agreement, Plaintiff now makes an extraordinary request, requesting
4 this Court disregard fundamental contract principles while at the same time ignoring the key
5 consideration upon which the agreement was made.

6 Plaintiff's request has no basis in authority. Defendant's opposition follows.

7 **I. FACTS**

8 This matter involves claims of personal injury brought by Plaintiff Enrique Rodriguez
9 against The Palms and defendant Brandy Beavers. After a bench trial in the fall of 2010, a
10 Judgment on the Verdict awarding plaintiff the sum of \$6,051,589.38 was filed April 12, 2011.

11 In early May, Plaintiff began executing on the Judgment. Upon learning of Plaintiff's
12 collection efforts, a stay of proceedings was negotiated between the Parties. (A true and correct
13 copy of the Stipulation and Order, filed May 12, 2011 is attached to the supporting Affidavit of
14 Keith R. Gillette ("Gillette Affidavit") as Exhibit A.) The stated purpose of the Stipulation was
15 to allow for the parties to mediate a possible settlement of the case post-trial, and to afford The
16 Palms relief from plaintiff's attempts to execute on the April 12, 2011 Judgment. (See Exh. A at
17 paragraphs 1 through 3.)

18 Consistent with the Stipulation and Order, a mediation took place on May 16, 2011,
19 before the Hon. Gene Porter (Ret.). As a consequence of this mediation, the parties reached a
20 partial settlement that provided as follows:

21 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial
22 satisfaction of the Judgment entered by Judge Walsh. Said sum
23 shall be non-refundable, but, shall be credited against any future
24 payments. In exchange, Plaintiff shall dismiss any ongoing efforts
at execution and shall agree to a permanent stay of all collection
proceedings through remittitur.

25 A true and correct copy of the Mediation Settlement is attached to Gillette Affidavit as
26 Exhibit B. Significantly, this stipulation was signed not only by Plaintiff's counsel, but also by
27 Plaintiff himself.

28
DEFENDANT'S OPPOSITION TO MOTION RE SUPERSEDEAS BOND

08/30/2011 17:17 FAX

004/028

1 Plaintiff has received the \$1,000,000.00 settlement check agreed to as part of the
2 settlement. A true and correct copy of Plaintiff's counsel's acknowledgement of receipt of the
3 check in the amount of \$1,000,000.00 on May 31, 2011, at 10:20 a.m., is attached to Gillette
4 Affidavit as Exhibit C.

5 II. LEGAL ARGUMENT

6 A. The Mediation Settlement is Controlling and Conclusive as to the Obligations of The 7 Palms as to the Posting of a Supersedeas Bond.

8 In is a long-recognized principle of Nevada jurisprudence that, as a rule, parties are free to
9 contract without interference from the courts. In articulating its support of "necessary certainty,
10 stability and integrity of contractual rights and obligations," the Nevada Supreme Court has
11 observed that

12 Our equitable powers do not extend so far as to permit us to
13 disregard fundamental principles of the law of contracts, or
14 arbitrarily to force upon parties contractual obligations, terms or
15 conditions which they have not voluntarily assumed. In this regard,
16 equity respects and upholds the fundamental right of the individual
17 to complete freedom to contract or decline to do so, as he conceives
18 to be for his best interests, so long as his contract is not illegal or
19 against public policy.

20 *McCall v. Carlson* (1946) 63 Nev. 390, 424.

21 Plaintiff received, in a non-refundable payment, one million dollars as part of the
22 agreement reached during mediation. In exchange, The Palms bought peace from possible further
23 writs of execution by Plaintiff during the period of post-trial motions and appeal. Integral to this
24 agreement was The Palms' relief from the supersedeas bond requirement typically incidental to a
25 stay of execution on the judgment.¹

26 Plaintiff now wants the Court to insert an additional term, mandating that The Palms incur
27 the burden and expense of acquiring an appellate bond, notwithstanding the fact that Plaintiff was
28 paid one million dollars to agree to not pursue collection efforts against Defendant's assets --

¹ As an aside, Plaintiff's moving papers include statements addressing factual assertions and events of private mediation which are inadmissible in this Court. See Steven M. Baker's Affidavit in Support of Plaintiff's Motion. The Palms objects to the consideration by the Court or admission of those mediation-protected statements.

1 which, incidentally, is the fundamental purpose of an appeal bond. As noted by the Nevada
2 Supreme Court in *McCall*, this Court cannot disregard the agreement made between Enrique
3 Rodriguez and The Palms, which would hoist upon The Palms "obligations [] which they have
4 not voluntarily assumed."

5 Although the stipulation was signed by the parties and filed with the court, it was not
6 entered as a court order as there was no signature line for the judge. Under Nevada law, "a written
7 stipulation is a species of contract." *Redrock Valley Ranch, LLC v. Washoe County*, (2011) 127
8 Nev. ___, 254 P.3d 641. "In addition, because public policy favors the settlement of disputes,
9 stipulations should not be easily set aside." *Id.* Stipulations "are of an inestimable value in the
10 administration of justice, and valid stipulations are controlling and conclusive," and trial courts
11 "are bound to enforce them." *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, (2008) 124
12 Nev. 1102, 1118, 197 P.3d 1032, 1042. A stipulation does not need court approval; it is valid if it
13 is signed by the party against whom the stipulation is offered. *Id.*

14 The local rules for Clark County also provide that a stipulation is effective if it is entered
15 as an order or if it is "in writing subscribed by the party against whom the same shall be alleged,
16 or by the party's attorney." EDCR 7.50.

17 The stipulation here was signed by plaintiff and his attorney. Thus, the stipulation in this
18 case is valid and enforceable even though it was not signed by the judge or entered as an order.

19 **B. Plaintiff Cited Authorities Do Not Mandate the Relief Requested.**

20 Plaintiff relies upon NRAP 8(a) and NRCP62(d) for the assertion that a bond is required
21 in these specific circumstances. Both statutes are irrelevant and inapplicable in this instance.

22 NRAP 8(a) pertinently provides that when seeking a motion for stay, that "[a] party must
23 ordinarily move first in the district court for the following relief ... a stay of the judgment or
24 order of, or proceedings in, a district court pending appeal or resolution of a petition to the
25 Supreme Court for an extraordinary writ[]."

26 ///

27 ///

28 ///

1 NRCP 62(d) provides as follows:

2 Stay upon appeal. When an appeal is taken the appellant by giving
3 a supersedeas bond may obtain a stay subject to the exceptions
4 contained in subdivision (a) of this rule. The bond may be given at
or after the time of filing the notice of appeal. The stay is
effective when the supersedeas bond is filed.

5 As can be gleaned from the plain language of this statute, once an appeal bond is posted a
6 judgment debtor may then stay collection proceedings. This statute does not mandate that a bond
7 be posted as a condition for obtaining a stay.

8 Plaintiff correctly states that -- in a typical course of events -- the combination of these two
9 statutes, read together, obligates a party seeking stay of judgment pending appeal from the district
10 court to also provide a supersedeas bond. However, neither these two statutes nor any other
11 Nevada procedural rule mandates that a bond be posted in these specific circumstances.

12 Plaintiff's reliance upon *Nelson v. Heer* and *McCullough v. Jenkins* is similarly misplaced.
13 The focus of *Nelson* concerns the use of alternate security in lieu of a supersedeas bond. The
14 court in *McCullough* focused on types of security for the granting of a stay of execution and the
15 underlying purposes of supersedeas bonds. Neither case provides authority the Plaintiff requests
16 here.

17 III. CONCLUSION

18 Apparently unhappy with the results of a mediated settlement, and after receiving the
19 benefit of that interim settlement, Plaintiff now seeks the Court's intervention to impose upon The
20 Palms an obligation it contracted away. Well-established Nevada law holds that the parties have
21 a freedom of contract, and that freedom of contract should not be disturbed here. Plaintiff's cited
22 authorities that do not create an obligation upon The Palms in these circumstances to post an
23 appeal bond.

24 ///

25 ///

26 ///

27 ///

28 ///

08/30/2011 17:17 FAX

007/028

1 For these reasons, Plaintiff's Motion should be denied.

2
3 Dated: August 29, 2011

ARCHER MORRIS

4
5
6 Keith B. Gillette
Nevada Bar No. 11140
2033 North Main St., Suite 800
7 Walnut Creek CA 94596
Telephone: 925.930.6600
8 Facsimile: 925.930.6620
Attorneys for Defendant
9 FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
10 CASINO RESORT

11 2A126/1213976-1

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DEFENDANT'S OPPOSITION TO MOTION RE SUPERSEDEAS BOND

08/30/2011 17:17 FAX

008/028

CERTIFICATE OF SERVICE

Name of Action: Enrique Rodriguez v. Fiesta Palms, LLC
 Court and Action No: District Court, Clark County, Nevada Action No. A531538

I, Tracy Pico, certify that I am over the age of eighteen years and not a party to this action or proceeding. My business address is 2033 North Main Street, Suite 800, PO Box 8035, Walnut Creek, California 94596-3728. On August 30, 2011, I caused the following document(s) to be served: **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND; AFFIDAVIT OF KEITH R. GILLETTE IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND**

☒ by having a true copy of the document(s) listed above transmitted by facsimile to the person(s) at the facsimile number(s) set forth below before 5:00 p.m. The transmission was reported as complete without error by a report issued by the transmitting facsimile machine.

Steven M. Baker, Esq.
 Benson, Bertoldo, Baker & Carter
 7408 W. Sahara Avenue
 Las Vegas, NV 89117
 Phone: 702.228.2600
 Fax: 702.228.2333
Attorneys for Plaintiff
 Enrique Rodriguez

Jeffery A. Bendavid, Esq.
 Moran Law Firm
 630 S. 4th Street
 Las Vegas, NV 89101
 Phone: 702.384.8424
 Fax: 702.384.6568
Co-Counsel for Defendant
 Fiesta Palms, LLC a Nevada Limited
 Liability Company, d/b/a The Palms
 Casino Resort

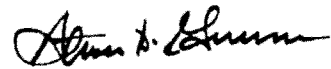
John Naylor
 Lionel Sawyer & Collins
 300 S. 4th Street, Suite 1700
 Las Vegas NV 89101
 Phone: 702.383.8888
 Fax: 702.277.9568
Co-Counsel for Defendant
 Fiesta Palms, LLC dba The Palms
 Casino Resort

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 30, 2011, at Walnut Creek, California.


 Tracy Pico

2A126/1109506-1

CERTIFICATE OF SERVICE



CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS, individually,
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES I through X, inclusive,

HEARING DATE: 11/15/11
HEARING TIME: 9:30 a.m.

Defendants.

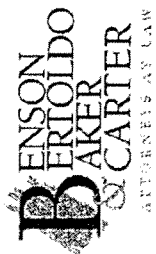
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of Nov, 2011, I served a true and correct copy of PLAINTIFF'S RENEWED MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND; EX PARTE APPLICATION FOR ORDER SHORTENING TIME; ORDER was served as indicated below to the following interested parties:

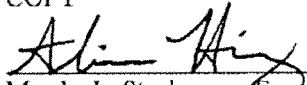
App. 85

Rodriguez v. Fiesta Palms, L.L.C.

Page 1 of 2



VIA HAND-DELIVERY/RECEIPT OF
COPY



Marsha L. Stephenson, Esq.
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102-1942
Co-counsel for Defendant

VIA FEDERAL EXPRESS # 8532 1398 6468

VIA FACSIMILE: 775-786-9716

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, NV 89519
Co-Counsel for Fiesta Palms, L.L.C.

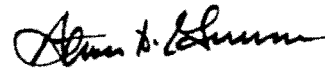
VIA FEDERAL EXPRESS # 8689 9336 4812

VIA FACSIMILE: 925-930-6620

Keith Gillette, Esq.
Archer, Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596-3728
925-930-6600 Telephone
925-930-6620 Facsimile
Attorneys for Defendants



An Employee of Benson, Bertoldo, Baker & Carter



CLERK OF THE COURT

OPPM

Kenneth C. Ward (Bar No. 6530)

kcward@archernorris.com

Keith R. Gillette (Bar No. 11140)

kgillette@archernorris.com

ARCHER NORRIS

A Professional Law Corporation

2033 North Main Street, Suite 800

Walnut Creek, California 94596-3759

Telephone: 925.930.6600

Facsimile: 925.930.6620

Marsha L. Stephenson, (Bar No. 6150)

STEPHENSON & DICKINSON, P.C.

2820 West Charleston Blvd., Suite 19

Las Vegas, NV 89102-1942

Telephone: 702.474.7229

Facsimile: 702.474.7237

Attorneys for Defendant

FIESTA PALMS, LLC, a Nevada Limited Liability

Company, d/b/a THE PALMS CASINO RESORT

DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

**FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
CASINO RESORT, et al. ,**

Defendants.

Case No. A531538

**FIESTA PALMS, LLC, d/b/a THE PALMS
CASINO RESORT'S OPPOSITION TO
PLAINTIFF'S RENEWED MOTION TO
REQUIRE SUPERSEDEAS BOND**

Hearing Date: November 15, 2011

Hearing Time: 9:30 A.M.

Dept: 10

**FIESTA PALMS, LLC, d/b/a THE PALMS CASINO RESORT'S OPPOSITION TO
PLAINTIFF'S RENEWED MOTION TO REQUIRE SUPERSEDEAS BOND**

FIESTA PALMS, LLC d/b/a THE PALMS CASINO RESORT ("The Palms"), by and through its attorney of record Kenneth C. Ward, Keith R. Gillette, Jason A. Rose and ARCHER NORRIS, oppose Plaintiff's Renewed Motion to Require Supersedeas Bond. This opposition is made by virtue of Eighth Judicial District Court Rule 2.21, 2.24, and 7.60, District Court Rule 13(7), ZAI126/1251319-1

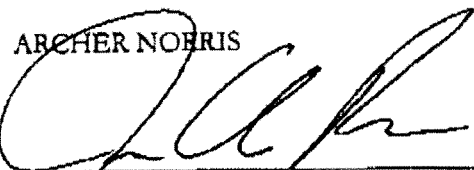
**FIESTA PALMS, LLC, D/B/A THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO REQUIRE SUPERSEDEAS BOND**

1 Nevada Rules of Professional Conduct 3.4(c), Nevada Revised Statute Section 7.085 and on the
2 grounds that Plaintiff has not set forth any basis in fact or law that demonstrates its previously denied
3 motion may be renewed or considered by this Court.

4 This opposition is further based upon the papers and pleading on file herein, the below
5 Points and Authorities, and oral argument.

6 Dated: November 14, 2011

ARCHER NOHRIS

7 
8
9 Keith R. Gillette
10 Jason A. Rose
11 Attorneys for Defendant
12 FIESTA PALMS, LLC, a Nevada Limited
13 Liability Company, d/b/a THE PALMS
14 CASINO RESORT

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I.

17 Introduction

18 At the outset it's important to note what is not before the Court. The Plaintiff has not:

- 19 • moved to set aside the settlement agreement that provided Plaintiff would forego
20 "all collection proceedings" pending appeal;
- 21 • put forth any contention that the Court's order denying the first motion to post a
22 supersedeas bond was in any way erroneous;
- 23 • offered to return the \$1,000,000 in non-refundable money he was paid in
24 consideration of a "permanent stay of all collection proceedings through
25 remittitur."

26 Instead, Plaintiff filed a renewed motion that is virtually identical to his first motion to post a
27 supersedeas bond and puts before this Court the same legal arguments. The grounds relied upon and
28 authorities set forth in the renewed motion have already been fully briefed, argued, and denied by this
Court.

ZA126/1251319-1

2

FIESTA PALMS, LLC, D/B/A THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO REQUIRE SUPERSEDEAS BOND

1 This renewed motion was also improperly filed because Plaintiff did not seek leave to file
2 such a motion. Leave, however, is required before rehearing any matters that have already been
3 decided.

4 In short, the renewed motion is procedurally improper and meritless and, as a result, should be
5 denied.

6 II.

7 Statement of Facts

8 This matter involves claims of personal injury brought by Plaintiff Enrique Rodriguez against
9 The Palms and defendant Brandy Beavers. After a bench trial in the fall of 2010, a judgment on the
10 Verdict awarding plaintiff the sum of \$6,051,589.38 was filed April 12, 2011.

11 In early May, Plaintiff began executing on the Judgment. Upon learning of Plaintiff's
12 collection efforts, a stay of proceedings was negotiated between the Parties. (A true and correct copy
13 of the Stipulation and Order, filed May 12, 2011 is attached to the supporting Declaration of Jason A.
14 Rose ("Rose Declaration") as Exhibit A.) The purpose of the Stipulation was to allow for the parties
15 to mediate a possible settlement of the entire case post-trial, and if the entire case did not settle, to
16 negotiate ways that The Palms could obtain relief from plaintiff's attempts to execute on the April 12,
17 2011 Judgment. (See Exh. A at paragraphs 1 through 3.)

18 Consistent with the Stipulation and Order, a full-day mediation took place on May 16, 2011,
19 before the Hon. Gene Porter (Ret.). As a consequence of extensive and difficult negotiations at this
20 mediation, the parties eventually reached a mutually-agreed partial settlement that provided as
21 follows:

22 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial
23 satisfaction of the Judgment entered by Judge Walsh. Said sum shall
24 be non-refundable, but, shall be credited against any future payments.
25 In exchange, Plaintiff shall dismiss any ongoing efforts at execution
and shall agree to a permanent stay of all collection proceedings
through remittitur.

26 A true and correct copy of the Mediation Settlement is attached to Rose Declaration as
27 Exhibit B.

28 ZA126/1251319-1

1 Three months after Plaintiff received the \$1,000,000 non-refundable settlement check, and
2 despite his express agreement that the money was paid to him in consideration of a "permanent stay
3 of all collection proceedings through remittitur, he made an extraordinary request for a supersedeas
4 bond. More specific, on August 17, 2011, Plaintiff filed a frivolous Motion to Require Posting
5 Supersedeas Bond on the grounds that: (1) Plaintiff "has concerns over the financial viability of
6 Defendant" and (2) that a bond is designed to protect judgment creditors. Plaintiff's motion relied
7 upon the following authorities: NRCP 62, *McCulloch v. Jenkins*, and *Nelson v. Heer*. (August 17, 2011
8 Motion is attached to the Rose Declaration as Exhibit C.)

9 The Palms opposed the motion on the grounds that (1) the mediation settlement is
10 controlling and conclusive regarding the posting of a supersedeas bond and (2) the Plaintiff's cited
11 authorities do not support the requested relief. (A true and correct copy of the Opposition is
12 attached to Plaintiff's Renewed Motion as Exhibit 2). The Palms incorporates by reference the
13 points and authorities set forth in the Opposition to Motion to Require Posting of Supersedeas
14 Bond.)

15 Plaintiff filed a Reply to the Palms Opposition, which focused on Plaintiff's argument that it
16 is concerned over the financial viability of the defendant and argued that the mediation agreement
17 did not eliminate the requirement of an appellate bond under the Nevada Supreme Court opinion
18 *McCall v. Carlson*, 63 Nev. 390, 424 (1946). (A true and correct copy of the Reply is attached to the
19 Rose Declaration as Exhibit D.)

20 A hearing was held on September 6, 2011 and the Court summarily ruled that the motion was
21 denied. The Court later entered an order that denied the motion. More specific, the Order provides
22 that "the Court, having considered the evidence and the arguments of counsel and taken the matter
23 under advisement for consideration, makes the following order...plaintiff's Motion to Require
24 Posting of Supersedeas Bond is DENIED." (A true and correct copy of the Order is attached to the
25 Rose Declaration as Exhibit E.)

26 Amazingly, although these issues were fully briefed, argued, and considered by the Court
27 within just the last few months, the Plaintiff has now filed a "Renewed" Motion to Require Posting
28 of Supersedeas Bond on November 8, 2011. It is important to note that Plaintiff filed his renewed
2A126/1251319-1 4

1 motion without seeking leave from the Court. The contentions set forth in the Renewed Motion
2 are virtually identical to the matters raised in Plaintiff's original motion and reply—although Plaintiff
3 does mention an alleged factual development that he believes is somehow relevant. Distilled to its
4 essence, the renewed motion simply recycles the following legal arguments: (1) Plaintiff has concerns
5 over the financial viability of Defendant; (2) the mediation agreement does not expressly eliminate
6 the requirement of an appellate bond; and (3) the purpose of the bond is to protect the judgment
7 creditor. In addition, Plaintiff cites the same exact authorities in its Renewed.

8 These matters have already been fully briefed, argued, and considered by the Court. The
9 previous request for a supersedeas bond was frivolous and was correctly denied. Plaintiff's renewed
10 motion is procedurally improper and fails to raise any new issues or legal authority. More important,
11 the renewed motion fails to comply with DCR 13(7), EDCR 2.24, and NRPC 3.4(c) and, as a result,
12 sanctions—including an award of attorney's fees and costs—are warranted.

13 III.

14 Legal Argument

15 A. Plaintiff's renewed motion to require posting of a supersedeas bond is 16 improper and should be denied because Plaintiff did not seek leave of court 17 before filing his renewed motion

18 The Plaintiff's renewed motion was filed in blatant disregard of the Rules of Practice for the
19 Eighth Judicial District Court of the State of Nevada and the District Court Rules, which provide
20 that motions once heard and disposed of shall not be renewed. (DCR 13(7); and EDCR 2.24(a)1.)
21 Despite the straightforward requirements set forth in EDCR 2.24, Plaintiff renewed its motion to
22 require supersedeas bond without first seeking leave of court.

23 The rehearing of any motion, however, must be done in conformity with the local and
24 District Court Rules. EDCR Rule 2.24 and DCR 13(7) state that "no motion once heard and
25 disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be
26 reheard, unless by leave of the court granted upon motion therefore, after notice of such motion to

27 ¹ EDCR 2.24(a) provides "No motion once heard and disposed of may be renewed in the same cause, nor may the same
28 matters therein embraced be reheard, unless leave of the court granted upon motion therefore, after notice of such
motion to the adverse parties."
ZA126/1251319-1

1 the adverse parties." In short, leave is required before the rehearing or renewal of any matters
2 already decided. Plaintiff ignored this express requirement. The renewed motion is therefore
3 improper and should be denied without further consideration.

4
5 **B. The issues raised and legal authority cited in Plaintiff's renewed motion are**
6 **identical to the matters that have already been briefed, argued, and considered**
7 **by this Court and, as a result, the renewed motion should be denied.**

8 Even if the leave requirement is somehow waived or ignored, Plaintiff's motion for
9 reconsideration does not raise a new issue of law or fact for this Court to consider. The issues raised
10 by the renewed motion are virtually identical to the issues that were already heard and disposed of in
11 the Court's Order.

12 The Court has already decided the issues raised in Plaintiff's renewed motion, including
13 whether the mediation settlement regarding the stay pending appeal is impacted by Plaintiff's concern
14 over The Palms' financial condition.. (See pleadings attached to Rose Declaration as Exhibits C, D,
15 E, F, and G.) The renewed motion does not offer any evidence or argument that the Court's
16 decision on this issue was erroneous. In fact, a comparison of the arguments and authorities set
17 forth in the renewed motion with the motion and reply demonstrate that they are virtually identical.
18 These matters were fully briefed and decided and the Plaintiff did not offer any basis or grounds
19 upon which the Court may reconsider those matters.

20 Rather the Plaintiff attached a copy of a newspaper article concerning the alleged sale of the
21 majority stake in The Palms. But the Plaintiff did not offer any analysis or explanation as to why this
22 media story requires this Court to change its mind and require The Palms to post a supersedeas
23 bond. Nor does the media story provide a basis for disregarding the negotiated settlement that
24 provided Plaintiff with \$1,000,000 in non-refundable money, and that provided The Palms with full
25 protection from execution on the judgment pending the remittitur after an appeal.

26 While not stated or explained in the renewed motion, it appears that the Plaintiff attached
27 this newspaper story for the purpose of supporting Plaintiff's argument that he's concerned over the
28 financial viability of The Palms. The article attached to the renewed motion as Exhibit 1, however,

ZA126/1251319-1

6

FIESTA PALMS, LLC, D/B/A THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO REQUIRE SUPERSEDEAS BOND

1 does not support such a conclusion. In fact, this article reports that the Palms has been open for 10
2 years or since 2001, employs over 2,000 people, that it will have access to a substantial credit line of
3 \$60 million, and plans on making major renovations to the Casino. Such news fails to paint a picture
4 of a financially troubled company. And this story does not contain a single sentence that supports
5 the Plaintiff's purported "concerns" about The Palms' financial condition. (See Newspaper Story
6 attached to Plaintiff's Renewed Motion as Exhibit 1.)

7 Plaintiff has not move to set aside the settlement agreement; nor has he offered to pay back
8 the \$1,000,000 he received. Like the first motion, his most recent motion fails to cite any legal
9 authority, from Nevada or any other state or federal jurisdiction, supporting the idea that he can
10 ignore part of the negotiated settlement that he agreed to a permanent stay pending appeal, and that
11 he can force The Palms to post a multi-million dollar bond notwithstanding the settlement
12 agreement. If the parties even remotely contemplated that Plaintiff could require a supersedeas bond
13 even though he was being paid \$1,000,000 in non-refundable money—money that was paid in
14 consideration of a "permanent stay of all collection proceedings through remittitur"—surely the
15 settlement agreement would have provided for this. It did not. The Court should reject Plaintiff's
16 invitation to revise the settlement agreement that was negotiated and agreed to by the parties, and
17 that was fully satisfied by the payment of \$1,000,000 to Plaintiff.

18 In short, the renewed motion is improper because leave was not granted, the Plaintiff does
19 not raise any new arguments or legal issues upon which this Court may reconsider its previous order,
20 and the motion is patently frivolous on the merits.

21 **C. Plaintiff's renewed motion is frivolous and fails to comply with the**
22 **unequivocal language of DCR 13(7), EDCR 2.24, and the Nevada Rules of**
23 **Professional Conduct and, as a result, sanctions are warranted.**

24 The Plaintiff ignored DCR13(7) and EDCR 2.24 by filing a renewed motion without first
25 seeking and filing a motion for leave with the Court. Failure to follow the rules of a tribunal violates
26 the Nevada Rules of Professional Conduct: "a lawyer shall not...knowingly disobey an obligation
27 under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation
28 exists." (NRPC 3.4(c).) In addition, EDCR 7.60 authorizes the court to impose sanctions—

ZA126/1251319-1

7

FIESTA PALMS, LLC, D/B/A THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO REQUIRE SUPERSEDEAS BOND

including fines, attorney's fees, and costs—when an attorney or party fails to comply with the Eighth Judicial District Court Rules, files a motion which is obviously frivolous, unnecessary, or unwarranted, or multiplies the proceedings in a case as to increase costs unreasonably or vexatiously.² Many of the conditions set forth in Rule 7.60(b) are satisfied. Failure to comply with the basic requirements of professional conduct and the District Court Rules is just cause for the imposition of sanctions:

Zealous advocacy is the cornerstone of good lawyering and the bedrock of a just legal system. However, zeal cannot give way to unprofessionalism, noncompliance with court rules, or, most importantly, to violations of ethical duties of candor to the court and to opposing counsel. Thus we sanction...\$1000 for egregious and improper appellate conduct and remind him of his duty to practice law in a professional and honest manner. (*See Thomas v. North Las Vegas Police Officers Ass'n Inc.*, 122 Nev. 82, 127 P.3d 1057, 1067 (2006) (emphasis added).

Under the Nevada Revised Statutes, fees and costs should be awarded to deter frivolous and vexatious claims and defenses. For instance, Nevada Revised Statute Section 7.085 provides that "If a court finds that an attorney has... Unreasonably and vexatiously extended a civil action or proceeding before any court of this state, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct." (Nev.Rev.Stat. § 7.085(1)(b).) Moreover, this section must be liberally construed by the Court "in favor of awarding costs, expenses and attorney's fees in all appropriate situations...to punish for and deter frivolous or vexatious claims." (Nev.Rev.Stat. § 7.085(2).)

² EDCR Rule 7.60. Sanctions. Provides:

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

1 A frivolous claim is one that is baseless and made without a reasonable and competent
2 inquiry. "Thus, a determination of whether a claim is frivolous involves a two-pronged analysis: (1)
3 the court must determine whether the pleading is well grounded in fact and is warranted by existing
4 law or a good faith argument for the extension, modification, or reversal of existing law; and (2)
5 whether the attorney made a reasonable and competent inquiry." (*Bergmann v. Boyer*, 109 Nev. 670,
6 676 (1993).) Plaintiff's "renewed" motion—like the first motion—is not properly supported by fact
7 or law and, as a result, the instant motion is frivolous.

8 Here, the "renewed" motion is not well grounded in fact or warranted by existing case law.
9 The issue of requiring a supersedeas bond has already been fully briefed, argued, and decided. Thus,
10 the Plaintiff is fully aware that he is not entitled to the recovery he now seeks in his renewed motion.
11 The parties entered into a settlement agreement that afforded The Palms a "permanent stay of all
12 collection proceedings through remittitur." (See Rose Declaration, paragraph 6) Based on the
13 existence of this agreement, Plaintiff's motion and "renewed" motion for a supersedeas bond are
14 frivolous. In addition, existing law does not support Plaintiff's arguments. As demonstrated above,
15 the Plaintiff cites the same legal authorities in his first motion and the renewed motion. But these
16 authorities do not support his claim that he can disregard the negotiated settlement in which he
17 agreed to a permanent stay pending appeal or that he can force The Palms to post a multi-million
18 dollar bond notwithstanding that agreement. The fact that the validity of these legal arguments has
19 already been decided by this Court illuminates that the instant motion—relying upon the same
20 authorities and legal arguments—is frivolous.

21 The second prong requires the attorney to make a reasonable and competent inquiry.
22 Considering the first motion and the renewed motion are virtually identical, it does not appear that
23 any inquiry was made concerning the merits or requirements of filing a "renewed" motion. The
24 affidavit in support of the motion simply references the media story of the alleged sale of a majority
25 stake in The Palms. Such a showing fails to demonstrate that Plaintiff made a reasonable and
26 competent inquiry before filing its renewed motion that it was supported in fact or by existing law.

27 The renewed motion is therefore frivolous, unnecessary, and unwarranted. Moreover,
28 Plaintiff's tactic of improperly filing a meritless motion increases the number of proceedings in this
ZA126/1251319-1

1 case, which drives up the costs. (See Rose Declaration, paragraph 11) Simply put, improperly
2 renewing matters that have already been decided without any new argument or authority wastes this
3 Court's and The Palms' resources and time.

4 The imposition of sanctions is warranted. Appropriate sanctions include striking or denying
5 the "renewed" motion, awarding The Palms its attorneys' costs and fees, and any other appropriate
6 sanction designed to curtail such practices in the future.

7 IV.

8 Conclusion

9 The District Court Rules and Eighth Judicial District Court Rules concerning the rehearing of
10 matters or motions already decided are clear. A party cannot renew a motion or matter before the
11 Court that has already been decided without first moving for leave. This rule imposes an important,
12 but simple burden or requirement on a party that wants to rehash arguments that have already been
13 decided by the Court. Despite this is a minimal requirement, Plaintiff now attempts to rehash matters
14 that have already been briefed, argued, considered, and decided by the Court. The renewed motion
15 was improperly filed and is made without any reference to any new claims or legal authority.
16 Therefore, the renewed motion should be denied.

17 In addition, the motion fails on its merits. The motion provides no factual or legal basis for
18 ignoring Plaintiff's agreement to forego "all collection proceedings" pending the outcome of the
19 appeal. Any requirement of posting a bond is directly contrary to the agreement of the parties that
20 Plaintiff would get \$1,000,000 and The Palms received a stay of "all collection proceedings" pending
21 appeal.

22 ///

23 ///

24 ///

25
26
27
28 ZA126/1251319-1

10

FIESTA PALMS, LLC, D/B/A THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO REQUIRE SUPERSEDEAS BOND

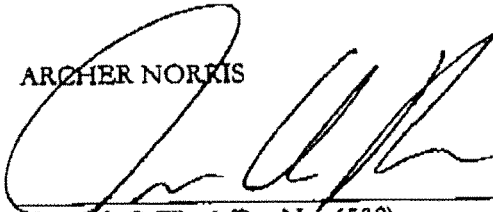
1 Finally, The Palms should be awarded its attorney's fees and costs to oppose this improperly
2 filed, unwarranted, and frivolous motion as a sanction to curtail the Plaintiff from engaging in this
3 inappropriate activity in the future.

4
5 **AFFIRMATION**
(NRS 239B.030)

6 The undersigned does hereby affirm that the above NRCP 16.1 Disclosure does not contain
7 the social security number of any person.

8
9 Dated: November 14, 2011

ARCHER NORRIS


Kenneth C. Ward (Bar No. 6530)
Keith R. Gillette (Bar No. 11140)
Jason A. Rose (Bar No. 9671)
A Professional Law Corporation
2033 North Main Street, Suite 800
PO Box 8035
Walnut Creek, California 94596-3728

Attorneys for Defendant FIESTA PALMS,
LLC, a Nevada Limited Liability Company,
d/b/a/ THE PALMS CASINO RESORT

CERTIFICATE OF SERVICE

Name of Action: Enrique Rodriguez v. Fiesta Palms, LLC
Court and Action No: District Court, Clark County, Nevada Action No. A531538

I, Tracy Pico, certify that I am over the age of eighteen years and not a party to this action or proceeding. My business address is 2033 North Main Street, Suite 800, PO Box 8035, Walnut Creek, California 94596-3728. On November 14, 2011, I caused the following document(s) to be served: **FIESTA PALMS, LLC, d/b/a THE PALMS CASINO RESORT'S OPPOSITION TO PLAINTIFF'S RENEWED MOTION TO REQUIRE SUPERSEDEAS BOND; AFFIDAVIT OF JASON A. ROSE IN SUPPORT OF OPPOSITION**

☒ by having a true copy of the document(s) listed above transmitted by facsimile to the person(s) at the facsimile number(s) set forth below before 5:00 p.m. The transmission was reported as complete without error by a report issued by the transmitting facsimile machine.

☒ By email to: monique@benzonlawyers.com; jnaylor@lionelsawyer.com; rlc@lge.net

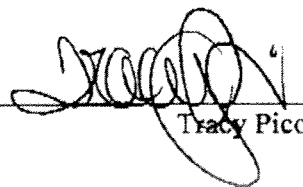
Steven M. Baker, Esq.
 Benson, Bertoldo, Baker & Carter
 7408 W. Sahara Avenue
 Las Vegas, NV 89117
 Phone: 702.228.2600
 Fax: 702.228.2333
 Email: monique@benzonlawyers.com
 Attorneys for Plaintiff
 Enrique Rodriguez

Jeffery A. Bendavid, Esq.
 Moran Law Firm
 630 S. 4th Street
 Las Vegas, NV 89101
 Phone: 702.384.8424
 Fax: 702.384.6568
 Co-Counsel for Defendant
 Fiesta Palms, LLC a Nevada Limited
 Liability Company, d/b/a The Palms
 Casino Resort

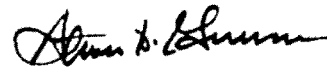
John Naylor
 Lionel Sawyer & Collins
 300 S. 4th Street, Suite 1700
 Las Vegas NV 89101
 Phone: 702.383.8888
 Fax: 702.277.9568
 Email: jnaylor@lionelsawyer.com
 Co-Counsel for Defendant
 Fiesta Palms, LLC dba The Palms
 Casino Resort

Robert L. Eisenberg
 Lemons, Grundy & Eisenberg
 6005 Plumas Street, Third Floor
 Reno NV 89519
 Phone: 775.786.6868
 Fax: 775.786.9716
 Email: rlc@lge.net
 Co-Counsel for Defendant
 Fiesta Palms, LLC dba The Palms
 Casino Resort

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14, 2011, at Walnut Creek, California.



Tracy Pico



CLERK OF THE COURT

AFFT

Kenneth C. Ward (Bar No. 6530)

kcward@archernorris.com

Keith R. Gillette (Bar No. 11140)

kgillette@archernorris.com

ARCHER NORRIS

A Professional Law Corporation

2033 North Main Street, Suite 800

Walnut Creek, California 94596-3759

Telephone: 925.930.6600

Facsimile: 925.930.6620

Marsha L. Stephenson, (Bar No. 6150)

STEPHENSON & DICKINSON, P.C.

2820 West Charleston Blvd., Suite 19

Las Vegas, NV 89102-1942

Telephone: 702.474.7229

Facsimile: 702.474.7237

Attorneys for Defendant

FIESTA PALMS, LLC, a Nevada Limited Liability

Company, d/b/a THE PALMS CASINO RESORT

DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
CASINO RESORT, et al. ,

Defendants.

Case No. A531538

**DECLARATION OF JASON A. ROSE IN
SUPPORT OF FIESTA PALMS, LLC,
d/b/a/ THE PALMS CASINO RESORT'S
OPPOSITION TO PLAINTIFF'S
RENEWED MOTION TO REQUIRE
SUPERSEDEAS BOND**

Hearing Date: November 15, 2011

Hearing Time: 9:30 a.m.

Department: 10

I, Jason A. Rose, declare as follows:

1. I am a resident of the State of California. I am an adult over the age of 18, and in all respects competent to make this declaration.

2. I am an attorney duly licensed to practice law in the State of Nevada, and am an associate with the law firm of Archer Norris, attorneys of record herein for Defendant FIESTA

PALMS, LLC, a Nevada Limited Liability Company, d/b/a/ THE PALMS CASINO RESORT
ZA126/1251687-1

A531538
AFFT ROSE

1 (hereinafter "The Palms"). As such, I am personally familiar with the files in this matter and all the
2 documents contained therein. The pleadings and documents in this matter are received and stored
3 at my office in the ordinary course of business. I have personal knowledge of the matters stated
4 herein and, if called as a witness, could and would competently testify thereto.

5 3. This declaration is made in support of The Palms' Opposition to Plaintiff's
6 Renewed Motion to Require Posting of Supersedeas Bond.

7 4. I have reviewed the Memorandum of Points and Authorities in Support of this
8 Opposition, and incorporate by reference the facts alleged therein.

9 5. Attached hereto as Exhibit A is a true and correct copy of the Stipulation and Order,
10 filed May 12, 2011.

11 6. Attached hereto as Exhibit B is a true and correct copy of the Mediation Settlement.
12 As part of this settlement agreement, Plaintiff received a non-refundable payment of \$1,000,000 in
13 consideration of a "permanent stay of all collection proceedings through remittitur."

14 7. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's Motion to
15 Require Defendants to Post Supersedeas Bond.

16 8. Attached to Plaintiff's renewed motion to post supersedeas bond as Exhibit 2 is a
17 true and correct copy of The Palms' Opposition to Plaintiff's Motion to Require Defendants to Post
18 Supersedeas Bond.

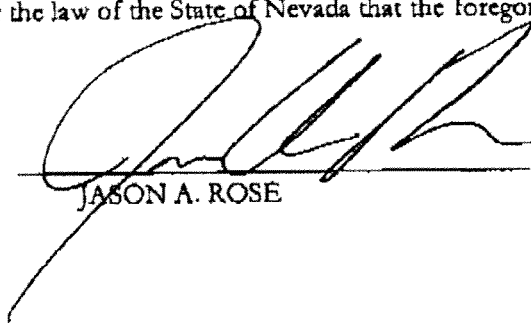
19 9. Attached hereto as Exhibit D is a true and correct copy of the Plaintiff's Reply to The
20 Palms' Opposition to Motion to Require Defendants to Post Supersedeas Bond.

21 10. Attached hereto as Exhibit E is a true and correct copy of the Order denying
22 Plaintiff's Motion to Require Defendants to Post Supersedeas Bond.

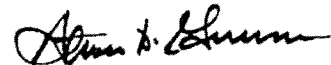
23 11. The Palms has incurred attorney's fees and costs in reviewing the renewed motion for
24 supersedeas bond, researching points and authorities, and preparing an opposition to the motion. In
25 addition, The Palms anticipates that additional fees and costs will be incurred in preparing for and
26 appearing at the hearing on the renewed motion for supersedeas bond.

1 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
2 true and correct.

3 Executed on November 14, 2011.
4



JASON A. ROSE



CLERK OF THE COURT

OAH

Marsha L. Stephenson, Esq. (NV Bar No. 6130)
STEPHENSON & DICKINSON, P.C.
2820 West Charleston Blvd., Suite 19
Las Vegas, NV 89102-1942
Telephone: (702) 474-7229
Facsimile: (702) 474-7237

Kenneth C. Ward (Bar No. 6530)
Keith R. Gillette (Bar No. 11140)
ARCHER NORRIS
A Professional Law Corporation
2033 North Main Street, Suite 800
PO Box 8035
Walnut Creek, California 94596-3728
Telephone: 925.930.6600
Facsimile: 925.930.6620

Attorneys for Defendant FIESTA PALMS, LLC, a
Nevada Limited Liability Company, d/b/a/ THE
PALMS CASINO RESORT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,
Plaintiffs,

v.

FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a/ The Palms
Casino Resort, et al.,

Defendants.

Case No. A531538

Dept: X

ORDER AFTER HEARING

THIS MATTER having come on for hearing on September 6, 2011, regarding Plaintiff
ENRIQUE RODRIGUEZ's Motion to Require Posting of Supersedeas Bond, before the
Honorable Jessie Walsh, presiding; and the Court, having considered the evidence and the
arguments of counsel and taken the matter under advisement for consideration, makes the
following order:

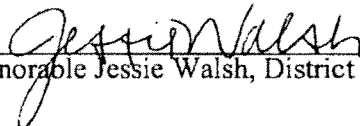
A531538
ORDER

App. 61

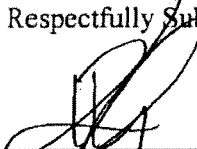
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's Motion to
2 Require Posting of Supersedeas Bond is DENIED.

3 IT IS SO ORDERED.

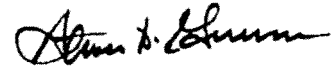
4
5 Dated: 27 Sept, 2011


Honorable Jessie Walsh, District Court Judge

6
7
8
9 Respectfully Submitted by:

10 
11 _____
12 Keith R. Gillette (NV Bar No. 11140)
13 ARCHER/NORRIS
14 2033 North Main Street, Suite 800
15 PO Box 8035
Walnut Creek, CA 94596-3728
Attorneys for Defendant FIESTA PALMS, LLC,
a Nevada Limited Liability Company, d/b/a/
THE PALMS CASINO RESORT

16 ZA126/1221491-1
17
18
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
inclusive,

HEARING DATE:
HEARING TIME:

Defendants.

RE-NEWED MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND:
APPLICATION FOR ORDER SHORTENING TIME; ORDER

Comes now, Plaintiff ENRIQUE RODRIGUEZ by and through his counsel of record,
Steven M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chtd. and hereby moves this
Honorable Court to issue an Order requiring Defendants to post a supersedeas bond. This

*FOR THE PLAINTIFF
DATE: 11/15/11 BY: [Signature]
APPROVED BY: [Signature]*

1 motion is made on the pleadings and papers on file, points and authorities herein and oral
2 argument of counsel at the time of hearing.

3 DATED this 3rd day of November 2011.

4 BENSON, BERTOLDO, BAKER & CARTER, CHTD.

5
6 BY: 

7 STEVEN M. BAKER, ESQ.

8 Nevada Bar #4522

9 Attorneys for Plaintiff

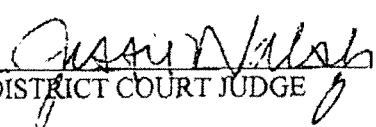
7408 West Sahara Avenue

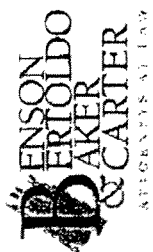
Las Vegas, Nevada 89117

10 ORDER SHORTENING TIME

11 After consideration of the moving papers, the Court hereby orders that the hearing
12 regarding the within RE-NEWED MOTION TO REQUIRE POSTING OF SUPERSEDEAS
13 BOND be scheduled on shortened time. Said hearing is hereby scheduled on the 15 day of
14 November, 2011, in Department X of this Court, at 9:30, A.m., or as soon thereafter
15 as counsel can be heard.
16

17 DATED this 8th day of Nov, 2011.

18
19 
20 DISTRICT COURT JUDGE
21
22
23
24
25
26
27
28



**AFFIDAVIT OF STEVEN M. BAKER, ESQ. IN SUPPORT OF MOTION AND
APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Steven M. Baker, Esq., having been duly sworn, states as follows:

1. I am an attorney, duly licensed to practice in the State of Nevada and represent Plaintiff Enrique Rodriguez in the above-captioned matter.
2. I have personal knowledge of the facts stated herein.
3. This application for Order Shortening Time is requested on the basis that the Nevada State Gaming Control Board on November 2, 2011, unanimously recommended the sale of a majority stake in the Palms to Leonard Green & Partners, L.P. and TPG Capital as current owner George Maloof nears completion of a restructuring that will reduce the property's debt.
4. An Order Shortening Time for hearing on this motion is necessary because the Nevada Gaming Commission will consider the board's recommendation to approve the sale of Fiesta Palms, L.L.C. on November 17, 2011.
5. A Notice of Appeal has not yet been filed. An Order of this Court directing the posting of a supersedeas bond is timely.
6. Again, Defendants never posted a supersedeas bond and never timely moved for a stay of execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating account in May of 2011. Thereafter, the parties proceeded to Mediation.
7. During Post Judgment Mediation, Plaintiff learned that Defendant was not financially capable of posting a supersedeas bond in an amount to permit satisfaction of the final judgment.

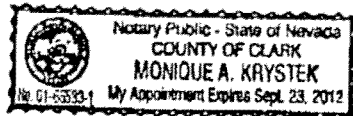
8. As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial satisfaction of the Judgment entered by this Court. Said amount was paid as a tender of the primary level of insurance covering the Palms, and Defendant has not made any "out-of-pocket expenditures regarding the same. Said amount was deemed non-refundable, but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to dismiss any ongoing attempts at execution and further agreed to a permanent stay of all execution proceedings through remittitur.
9. A Declaratory Relief Action with respect to excess insurance has been filed by the carrier to exclude coverage because of a failure to give notice on the part of the Palms. As such, there is doubt whether this is an insured risk.
10. Plaintiff is seeking an order requiring the posting of a supersedeas bond in an amount that will permit full satisfaction of the judgment. This amount would logically be the amount of the Judgment, minus the \$1,000,000.00 already tendered.
11. This motion is not brought forth to harass or otherwise delay the proceedings.

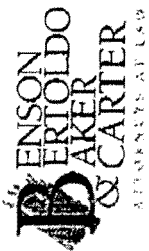
Further, affiant sayeth naught.

Steven M. Baker, Esq.

Sworn to before me this 3rd day of
November, 2011.

Notary Public in and for said County and State





1
2 **I. Introduction**

3 Plaintiff is seeking an order requiring Defendants to post a supersedeas bond in
4 accordance with NRCP 8 & 62.
5

6 Plaintiff has concerns over the financial viability of Defendant and is merely seeking to
7 protect his ability to collect on the judgment if upheld on appeal.

8 On November 2, 2011, the state Gaming Control Board unanimously recommended
9 the sale of a majority stake in the Palms to Leonard Green & Partners, L.P. and TPG
10 Capital as current owner George Maloof nears completion of a restructuring that will
11 reduce the property's debt.¹
12

13 The Nevada Gaming Commission will consider the board's recommendation to
14 approve the sale on November 17, 2011.

15 **II. Statement of Facts**

16 This is a premises liability matter that occurred November 22, 2004 at the Palms Sports
17 Bar/Sports Book. Plaintiff ENRIQUE RODRIGUEZ was an invited guest to watch a football
18 game. During half-time, agents, employees and/or assigns of the Palms (hereinafter known as
19 the "PALMS GIRLS") were participating in a promotion wherein they were throwing souvenirs
20 to Sports Bar/Sports Book patrons while blindfolded.
21

22 In response to the Palms Girl, Brandy Beavers, throwing souvenirs in the Sports
23 Bar/Sports Book while blind-folded, a customer within the Sports Bar/Sports Book dove for a
24 thrown souvenir and hit Mr. Rodriguez's extended and stationary left knee. Mr. Rodriguez then
25
26

27
28 ¹ See Exhibit "1," Review Journal Article, November 2, 2011, *Regulators recommend sale of Palms majority stake*.

1 struck the person next to him, hitting the left side of his head, then falling down, thereby
2 sustaining extensive injuries and damages.

3 A bench trial commenced in this matter on October 25, 2010 and this Honorable Court
4 issued a verdict on March 9, 2011 for the Plaintiff and against the Defendants FIESTA
5 PALMS, L.L.C. and BRANDY BEAVERS in the amount of \$6,051,589.38.
6

7 Defendants never posted a supersedeas bond and never timely moved for a stay of
8 execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating
9 account in May of 2011. Thereafter, the parties proceeded to Mediation.

10 During Mediation, Plaintiff learned that Defendant was not financially capable of
11 posting a supersedeas bond in an amount to permit satisfaction of the final judgment.
12

13 As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial
14 satisfaction of the Judgment entered by this Court. Said amount was paid as a tender of the
15 primary level of insurance covering the Palms, and Defendant has not made any "out-of-
16 pocket expenditures regarding the same. Said amount was deemed non-refundable, but shall
17 be credited against any future payments. Lastly, in exchange, Plaintiff agreed to dismiss any
18 ongoing attempts at execution and further agreed to a permanent stay of all execution
19 proceedings through remittitur.
20

21 A Declaratory Relief Action with respect to excess insurance has been filed by the
22 carrier to exclude coverage because of a failure to give notice on the part of the Palms. As
23 such, there is doubt whether this is an insured risk. On the basis of the foregoing, Plaintiff is
24 seeking an order requiring the posting of a supersedeas bond in an amount that will permit full
25 satisfaction of the judgment.
26
27
28

1 **A. Plaintiff Has Concerns Over the Financial Viability of the Defendant**

2 During Mediation, Plaintiff learned that Defendant was not financially capable of
3 posting a supersedeas bond in an amount to permit satisfaction of the final judgment.
4

5 As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial
6 satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable,
7 but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to
8 dismiss any ongoing attempts at execution and further agreed to a permanent stay of all
9 execution proceedings through remittitur.

10 The recommended sale of the Palms majority stake is further support of Plaintiff's
11 concern.
12

13 Plaintiff is simply seeking an order requiring the posting of a supersedeas bond in an
14 amount that will permit full satisfaction of the judgment.

15 **B. The Mediation Agreement Does Not Eliminate the Requirement of an**
16 **Appellate Bond**

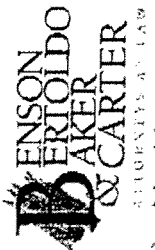
17 The clear and unambiguous language of the Mediation Settlement is controlling and
18 conclusive.

19 The Mediation Settlement specifically states as follows:

20 Defendant will pay Plaintiff the sum of \$1,000,000 in partial satisfaction of the
21 Judgment entered by Judge Walsh. Said sum shall be non-refundable, but, shall be
22 credited against any future payments. In exchange, Plaintiff shall dismiss any ongoing
23 efforts at execution and shall agree to a permanent stay of all collection proceedings
24 through remittitur.

25 Nowhere in the Agreement does it state, intend, contemplate and/or confirm that The
26 Palms were relieved from the supersedeas bond requirement. As clearly enunciated by the
27 Nevada Supreme Court:

28 Our equitable powers do not extend so far as to permit us to disregard fundamental
principles of the law of contracts, or **arbitrarily to force upon parties contractual**



1 obligations, terms or conditions which they have not voluntarily assumed.
2 *McCall v. Carlson*, 63 Nev. 390, 424 (1946).

3 The Palms voluntarily assumed the contractual terms of the Mediation Settlement.
4 The Palms cannot force upon the Plaintiff any terms or conditions, i.e., relief from the
5 supersedeas bond requirement, not contained within the Mediation Settlement. As accurately,
6 argued by The Palms, this Court "cannot disregard the agreement between Enrique Rodriguez
7 and The Palms."²
8

9 C. Purpose of the Bond is to Protect Plaintiff as the Judgment Creditor

10 The purpose of security is to protect the judgment creditor's ability to collect the
11 judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor
12 arising from the stay. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as modified.
13

14 The purpose of a supersedeas bond is to the protect prevailing party from loss
15 resulting from a stay of execution of the judgment. NRCP 62. *McCulloch v. Jeakins*, 1983,
16 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 463
17

18 A supersedeas bond should usually be set in an amount that will permit full
19 satisfaction of the judgment; however, a district court, in its discretion, may provide for a
20 bond in a lesser amount, or may permit security other than a bond when unusual
21 circumstances exist and so warrant. NRCP 62. *McCulloch v. Jeakins*, 1983, 659 P.2d 302, 99
22 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 465(1)

23 The five factors to consider in determining when a full supersedeas bond may be
24 waived and/or alternate security substituted include: (1) the complexity of the collection
25 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
26 (3) the degree of confidence that the district court has in the availability of funds to pay the
27

28 ² Exhibit 2, Defendant's Opposition, 4: 1-4.

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

**BENSON
BERTOLDO
BAKER
& CARTIER**
ATTORNEYS AT LAW

1 judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a
2 bond would be a waste of money; and (5) whether the defendant is in such a precarious
3 financial situation that the requirement to post a bond would place other creditors of the
4 defendant in an insecure position. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as
5 modified. Appeal And Error 465(1)
6

7 In the present matter, real concern has now arisen regarding Plaintiff's security during
8 the pendency of Appeal in that the majority of interest in the subject premises is likely to be
9 transferred. This situation acts as follows: 1) creates an extremely complex collection process
10 as the Leonard Green company would have to be brought into the action (perhaps sued for
11 fraudulent transfer); 2) creates real doubt as to the ability of the Palms to pay the judgment;
12 3) demonstrates that the Palms has a less than obvious ability to pay the judgment; and 4)
13 presents no impediment to other creditors as Leonard Green will essentially assume the
14 majority of all such liabilities. In contrast, a supersedeas bond would protect Plaintiff's
15 interest, would be the first out-of-pocket expense borne by the Palms, and would best insure
16 justice herein. As such, the above criteria weigh squarely in favor of requiring a bond, and a
17 supersedeas bond is respectfully requested herein.
18

19
20 **IV. Conclusion**

21 Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a
22 supersedeas bond in an amount that will permit full satisfaction of the judgment. This
23
24
25
26
27
28

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

amount would logically be the amount of the Judgment, minus the \$1,000,000.00 already
tendered.

Date: 11/3/11

BENSON, BERTOLDO, BAKER & CARTER

STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

NOV. 9. 2011 9:00AM

BENSON-BERTOLDO

NO. 5953 P. 13/24

EXHIBIT 1

App. 73

reviewjournal.com

 PRINT THIS

Powered by  Clickability

Regulators recommend sale of Palms majority stake

BY CHRIS SIEROTY
LAS VEGAS REVIEW-JOURNAL

Posted: Nov. 2, 2011 | 2:18 p.m.

The state Gaming Control Board on Wednesday unanimously recommended the sale of a majority stake in the Palms to Leonard Green & Partners L.P. and TPG Capital, as owner George Maloof nears completion of a restructuring that will reduce the property's debt.

Leonard Green and TPG have already purchased the property's \$459 million outstanding loan. The Nevada Gaming Commission will consider the board's recommendation to approve the sale on Nov. 17.

"It will be 10 years since we opened this month," Maloof told the three-member board. "We've had great success. We are very fortunate to have two great partners."

Maloof also thanked the board for the opportunity to work in Nevada for almost 25 years. He said 600 of the property's 2,000 employees have been at the Palms since it opened in 2001.

Under the deal, Leonard Green and TPG will own 98 percent of the Las Vegas celebrity hangout through a company called FP Holdings L.P. Maloof will own 2 percent of the Palms, with options to acquire an additional 7.5 percent.

Matthew Dillard, a partner with Dallas-based TPG, said Maloof has a 10-year employment agreement and will remain as the new company's chairman of the board.

Dillard also said the Palms was expected to have access to a \$60 million line of credit from Wells Fargo & Co.

"We are currently in extensive negotiations with Wells Fargo to provide \$60 million," he said. "I believe it will close by the (gaming commission) meeting in two weeks."

App. 74

Dillard said FP Holdings will use \$30 million to pay down the loan on Palms Place, while the other \$30 million will be invested in various projects.

The Palms casino was expected to be the first remodeling project, along with upgrades to the existing Palms tower. Updates of the resort's restaurants and food court are also expected to start in the first quarter of 2012.

Palms President Joe Magliarditi said the hotel would spend \$3.5 million for 214 new slot machines by year's end. In all, the Palms casinos will see \$5 million in upgrades.

"I can't say enough about how good of a job (George) did building the Palms brand," Magliarditi said. "We are reinvigorating that brand."

He stressed that the hotel-casino will continue to focus on local customers as it extends its brand to outside markets.

In other business, the board recommended Ronald Paul Johnson's appointment as receiver for Goldman Sachs Mortgage Co. to oversee operations of the Las Vegas Hilton, if approved by the Clark County District Court.

Bud Hicks, a partner in the Las Vegas firm McDonald, Carano, Wilson LLP, told the board that Goldman Sachs' petition to "assume control" of the Las Vegas Hilton is pending before District Court Judge Elizabeth Gonzalez.

He said Goldman Sachs wants to "keep the Las Vegas Hilton afloat" but wants Johnson, a former Riviera executive, to oversee day-to-day operations of the historic property.

"Goldman Sachs Mortgage Co. is willing to dump funds into the property," Hicks assured the board.

Colony Resorts LVH Acquisitions LLC, a subsidiary of billionaire Thomas Barrack's Los Angeles company Colony Capital LLC, owns the Las Vegas Hilton.

In August, Colony Resorts disclosed it had defaulted on its \$252 million term loan after skipping three payments over the summer totaling \$3.5 million to conserve cash for operating expenses.

Hicks said the next hearing in the case is set for Tuesday. Goldman Sachs has been trying to foreclose on the 2,950-room property and install Johnson as a receiver to displace current management.

Contact reporter Chris Sieroty at csieroty@reviewjournal.com or 702-477-3893.

Find this article at:

<http://www.lvrj.com/business/regulators-recommend-sale-of-palms-majority-stake-133108318.html>

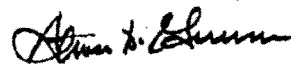
☐ Check the box to include the list of links referenced in the article.

Copyright © Stephen Media, LLC. All rights reserved. Any reproduction or distribution (except for personal, non-commercial purposes), in any form or by any means, without the express written consent of Stephens Media, LLC, is strictly prohibited.

ORIGINAL

1 STP
2 STEVEN M. BAKER
3 Nevada Bar No. 4522
4 BENSON, BERTOLDO, BAKER & CARTER
5 7408 W. Sahara Avenue
6 Las Vegas, Nevada 89117
7 Telephone : (702) 228-2600
8 Facsimile : (702) 228-2333
9 Attorneys for Plaintiff

Electronically Filed
05/12/2011 02:32:19 PM


CLERK OF THE COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 * * *

10 ENRIQUE RODRIGUEZ, an individual,
11 Plaintiff,

CASE NO: A531538
DEPT NO: 10

12 vs.

13 FIESTA PALMS, L.L.C., a Nevada Limited
14 Liability Company, d/b/a PALMS CASINO
15 RESORT, BRANDY L. BEAVERS,
16 individually, DOES 1 through X, inclusive,
17 and ROE BUSINESS ENTITIES I through X,
18 inclusive,

19 Defendants.

20 STIPULATION AND ORDER

21 WHEREAS Plaintiff asserts a Writ of garnishment and Writ of Execution in the amount
22 of \$6,643,968.83 were properly entered and served in this matter in favor of the Plaintiff and
23 against the Defendant; and

24 WHEREAS Plaintiff asserts said Writs create in Plaintiff a possessory interest in any
25 and all Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels,
26 Gaming Kiosks, Count Rooms within the Palms Casino Resort; and

27 WHEREAS Plaintiff asserts said Writs effectuate a "freeze" over the operating
28 accounts and other accounts of the Defendant FIESTA PALMS, LLC; and

LIONEL SAWYER
& COLLINS
ATTORNEYS AT LAW
1700 BANK OF AMERICA PLAZA
300 SOUTH FOURTH ST.
LAS VEGAS,
NEVADA 89101
(702) 383-8888

1 WHEREAS Plaintiff asserts Defendant BRANDY BEAVERS is properly in default
2
3 in this action;

4 It is hereby stipulated and agreed between Plaintiff ENRIQUE RODRIGUEZ and
5 Defendant FIESTA PALMS, LLC, dba PALMS CASINO RESORT as follows:

- 6 1) This action shall be stayed in its entirety, with the exception to immediately follow,
7 for the period of time described below, with neither party retaining the right to file any
8 pleadings, papers, bonds, securities, appeals, or otherwise. The Court will retain
9 jurisdiction, however, to order and/or otherwise compel any agency and/or individual
10 having appropriate authority to act upon and/or otherwise execute the writs and
11 judgment referred to herein.
12
13 2) Subject to all other provisions of this Stipulation, solely for the purpose of enacting the
14 terms and provisions hereof, without prejudice, and not to be stayed by this
15 Stipulation, Plaintiff agrees to retract any and all Writs of Garnishment and/or
16 Execution held in favor of Plaintiff against Defendant in this matter, and to cooperate
17 and assist Defendant in effectuating an "unfreezing" of any accounts impacted by the
18 same, and the Writs of Garnishment are deemed retracted without further action by the
19 Court or by the parties.
20
21 3) Said stay will be in effect pending a mediation/settlement conference in this matter to
22 be conducted, with a person/entity in attendance for each party with proper authority
23 to settle, at a time no more than 10 days from the filing of this stipulation. The parties
24 agree to use their best efforts to schedule and conduct said mediation/settlement
25 conference with The Hon. Gene Porter (Ret.), or such other mutually agreeable
26 mediator, within said time frame.
27
28

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
- 4) The trial judge will retain jurisdiction to determine if either party participated in the mediation/settlement conference in bad faith, and shall be empowered to award attorney's fees, costs, and sanctions in the event of a determination of bad faith participation, with both parties waiving any objections thereto;
 - 5) In the event this matter does not resolve at mediation/settlement conference, the matter shall remain stayed until that time that the Plaintiff submits a Stipulation to Lift Stay to the Defendant in a form reasonably agreeable to Plaintiff and Defendant, which will be signed first by the Defendant, then by the Plaintiff, and then filed by the Plaintiff. The stay will remain in effect until the entry of an Order by the Court lifting the same.
 - 6) Should the Defendant fail to sign the submitted Stipulation to Lift Stay, this Court may lift stay upon application by the Plaintiff upon due notice to the Defendant. The parties stipulate and agree that upon the stay being lifted, the Court may schedule any and all Motions pending at its earliest convenience, with both parties representing a preparedness to argue the same if scheduled three days or more from the time the stay is lifted.
 - 7) During the pendency of the stay and for a period of seventy-two hours after the entry of an Order lifting the stay, the Defendant may not make application for, purchase, post, issue, file, or otherwise procure a supercedas bond and/or any other security which would operate to effectuate a Stay of Execution, nor can move and/or otherwise act to stay execution of the aforesaid Writs or Judgment. This provision is specifically intended to preserve the right of the Plaintiff to garnish and/or execute against the Defendant as if said garnishment and/or execution was effectuated on Monday, May 9,

1 2011, and shall be construed to preserve the rights and remedies of the Plaintiff as
2
3 though execution had been carried out at said date and time.

4 8) During the pendency of the stay and for a period of seventy-two hours after the entry
5 of an Order to lift stay, except as may result from the Defendant conducting its
6 operations in the ordinary course of business (which the parties agree shall not be
7 precluded by this stipulation), the Defendant may not make application for or in any
8 way attempt and/or seek to reduce, transfer, encumber, or otherwise impact the cash,
9 securities, property, and/or reserves regularly and customarily retained by the
10 Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks,
11 Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts and/or otherwise.
12 This provision is specifically intended to preserve the right of the Plaintiff to garnish
13 and/or execute against the Defendant as if said garnishment and/or execution was
14 effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and
15 remedies of the Plaintiff as though execution had been carried out at said date and
16 time.
17

18 9) Should this matter not settle at mediation settlement/conference and should, upon
19 attempt to execute and/or garnish by the Plaintiff, it appear that Defendant has made
20 application for or has in any way attempted to reduce, transfer, encumber, or otherwise
21 effect the cash, securities, property, and/or reserves regularly and customarily retained
22 by the Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot
23 Banks, Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts, and/or
24 otherwise, except as may result from the Defendant conducting its operations in the
25 ordinary course of business (which the parties agree shall not be precluded by this
26
27
28

1 stipulation) this court may, upon application by the Plaintiff, without motion but with
2 due notice to the Defendant, stay, preclude and prevent the Defendant from
3 purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other
4 security preventing the execution by Plaintiff upon said Writs and Judgment. The
5 insufficiency of funds to satisfy the aforesaid Writs and Judgment in the Defendant's
6 possession at the time of an attempt to execute upon the same will be sufficient basis
7 for the Court to enter an Order as contemplated by this provision. Notwithstanding the
8 foregoing, it is recognized by the parties that the aggregate funds available to the
9 stipulating Defendant is dynamic in nature and dependant upon ongoing business
10 obligations and operations, and Defendant reserves the right to demonstrate an
11 absence of an intention to deplete resources should the issue come before the Court.
12 The filing of a Motion and/or other application by the Plaintiff pursuant to this
13 provision will stay the ability of the Defendant to file a supercedeas bond and/or other
14 security until the Court has entered an Order with respect to the same.

15 10) If an Order by this court staying, precluding, and/or preventing the Defendant from
16 purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other
17 security as aforesaid is issued by this court after the time such bond or other security is
18 purchased and filed by the Defendant, such Order will relate-back to the time of the
19 filing by Plaintiff of a Motion and or other Application with respect to the same. This
20 provision is specifically intended to preserve the right of the Plaintiff to garnish
21 and/or execute against the Defendant as if said garnishment and/or execution was
22 effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and
23
24
25
26
27
28

1 remedies of the Plaintiff as though execution had been carried out at said date and
2 time.
3

4 11) For the purposes of conducting any future execution upon the Writs and Judgment
5 contemplated by this Stipulation, the Writs of Garnishment and Execution previously
6 served in this matter will continue to be in full force and effect, and shall be acted
7 upon by any person and/or entity upon notice by Counsel for Plaintiff and without the
8 need for any further filings and/or service of process.

9 12) The affirmation of this stipulation by the Defendant, without the requirement of filing,
10 will preclude the filing of supercedas bond or other security pending the entry of
11 order by the Court.
12

13
14 IT IS SO STIPULATED AND AGREED.

15 DATED this ____ day of May, 2011.

Dated this 7th day of May, 2011.

16 **COPY**

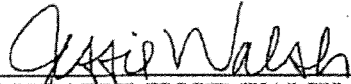
17 STEVEN M. BAKER
18 Nevada Bar No. 4522
19 7408 W. Sahara Avenue
20 Las Vegas, Nevada 89117
21 Attorneys for Plaintiff

JOHN NAYLOR, ESQ.
Nevada Bar No. 5435
300 South 4th Street
Las Vegas, Nevada 89101
Attorney for Defendant

22 **ORDER**

23 IT SO ORDERED.

24 DATED this 11th day of May, 2011.

25 
26 HONORABLE JESSIE WALSH
27 District Court Judge
28

remedies of the Plaintiff as though execution had been carried out at said date and time.


11) For the purposes of conducting any future execution upon the Writs and Judgment contemplated by this Stipulation, the Writs of Garnishment and Execution previously served in this matter will continue to be in full force and effect, and shall be acted upon by any person and/or entity upon notice by Counsel for Plaintiff and without the need for any further filings and/or service of process.


12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this ____ day of May, 2011.

Dated this 9th day of May, 2011.


STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff


JOHN NAYLOR, ESQ.
Nevada Bar No. 5435
300 South 4th Street
Las Vegas, Nevada 89101
Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this ____ day of May, 2011.

HONORABLE JESSIE WALSH
District Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUBMITTED BY:



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

EXHIBIT B

App. 49

1 STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
2 BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
3 Las Vegas, Nevada 89117
Telephone: (702) 228-2600
4 Facsimile: (702) 228-2333
e-mail: Monique @bensonlawyers.com
5 Attorneys for Plaintiff

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 ENRIQUE RODRIGUEZ,

10 Plaintiff,

11 vs.

12
13 FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a PALMS CASINO
14 RESORT, BRANDY L. BEAVERS,
individually, DOES I through X, inclusive,
15 and ROE BUSINESS ENTITIES I through X,
inclusive,

16 Defendants.
17

CASE NO.: A531538

DEPT. NO.: X

MEDIATION DATE: May 16, 2011

MEDIATION TIME: 1:30 P.M.

18 **MEDIATION SETTLEMENT**

19 The parties having agreed to mediation of the above-referenced matter, have reached a
20 settlement as follows:

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////


28 ////

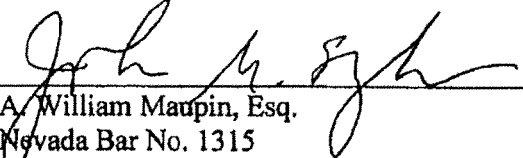
1 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment
2 entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future
3 payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree to a
4 permanent stay of all collection proceedings through remittitur.
5

6 DATED this 16 day of May, 2011.
7

8 BENSON, BERTOLDO, BAKER & CARTER

LIONEL, SAWYER & COLLINS

9
10 
11 Steven M. Baker, Esq.
12 Nevada Bar No. 4522
13 Robert S. Cardenas, Esq.
14 Nevada Bar No. 7301
15 7408 W. Sahara Avenue
16 Las Vegas, Nevada 89117
17 Attorneys for Plaintiff

10 
11 A. William Maupin, Esq.
12 Nevada Bar No. 1315
13 John M. Naylor, Esq.
14 Nevada Bar No. 5435
15 1700 Bank of America Plaza
16 300 South Fourth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Fiesta Palms, LLC

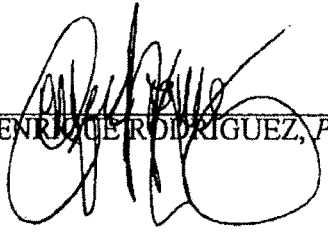
16 
17 ENRIQUE RODRIGUEZ, Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

App. 52

RECEIPT

The law firm of Benson, Bertoldo, Baker & Carter, Ltd. acknowledges receipt of Check No. 2990141904 in the amount of \$1,000,000.

Date: May 31, 2011.

BENSON BERTOLDO BAKER & CARTER, LTD.

By: Steve Baker / GAA / 10:20 A.M.

Print Name: STEVE BAKER / GAA / 10:20 A.M.

Law Offices of **MORALES FIERRO & REEVES**

725 SOUTH EIGHTH STREET, SUITE B, LAS VEGAS, NV 89101 T (702) 699-7822 F (702) 699-9455
LawOffice@mfrlegal.com

May 25, 2011

Ramiro Morales²
Christine M. Fierro
William C. Reeves¹
Merilyn A. Rogers
Patrick M. Quigley

David A. Astengo¹
Debra B. Branse
Elizabeth B. Cainlker
Laura Jane Coles
Linda M. Corrie
Curtis R. Oglivie
Garth J. B. Poole
Sheila A. Reid

Special Counsel:
Eric D. Esser²
Stacy M. Rocheleau¹

Licenses
¹ California, Nevada & Arizona
² California & Nevada
³ Nevada

California Office
2300 Contra Costa Blvd., Ste 310
Pleasant Hill, CA 94523
T (925) 288-1778
F (925) 288-1858

Arizona Office
3420 East Shea Blvd., #200
Phoenix, AZ 85028
T (602) 258-0755
F (602) 258-0757

Via Federal Express – 2nd Day Delivery

John M. Naylor
Shareholder
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 S. Fourth Street
Las Vegas, NV 89101

Re: **Enrique Rodriguez v. Fiesta Palms, LLC dba The Palms Casino
Resort (Fiesta Palms)**
Zurich Claim No.: 9620141038
Our File No.: ZU7541

Dear Mr. Naylor:

Enclosed is a check in the amount \$1 million representing exhaustion of the applicable primary policy limit under the Zurich general liability policy issued to The Palms regarding the above referenced case. This payment is made in partial satisfaction of the Rodriguez judgment and in reliance on Plaintiff's agreement to stay execution on the remainder of the judgment. Zurich understands that the payment is nonrefundable as part of the parties' agreement.

I understand that you will distribute the funds to Plaintiff's counsel.

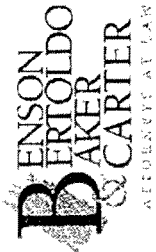
Sincerely,

MORALES FIERRO & REEVES


Ramiro Morales

Enclosure

cc: Deborah Kennedy (via email)
Keith Gillette (via email)




CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS, individually,
DOES I through X, inclusive, and ROE
BUSINESS ENTITIES I through X, inclusive,
Defendants.

HEARING DATE: 9/6/11
HEARING TIME: 9:00 a.m.

**REPLY TO OPPOSITION TO MOTION TO REQUIRE DEFENDANTS TO POST
SUPERSEDEAS BOND**

COMES NOW, Plaintiff ENRIQUE RODRIGUEZ by and through his attorney of
record, Steven M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chtd. and hereby replies
to Defendant's opposition as follows:

I. Introduction

Plaintiff is seeking an order requiring Defendants to post a supersedeas bond in
accordance with NRCP 8 & 62.

Plaintiff has concerns over the financial viability of Defendant and is merely seeking to
protect his ability to collect on the judgment if upheld on appeal.

1 **II. Defendant's Opposition**

2 Defendant's argument is essentially two-fold:

- 3 1. Plaintiff is unhappy with the partial \$1,000,000 settlement; and
- 4 2. The Mediation Settlement "eliminated the burden and expense of The Palms to
- 5 fund an appellate bond.
- 6

7 The first argument is factually flawed, while the second is both factually and legally

8 flawed.

9 **III. Argument**

10 **A. Plaintiff Has Concerns Over the Financial Viability of the Defendant**

11 During Mediation, Plaintiff learned that Defendant was not financially capable of

12 posting a supersedeas bond in an amount to permit satisfaction of the final judgment.¹

13

14 As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial

15 satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable,

16 but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to

17 dismiss any ongoing attempts at execution and further agreed to a permanent stay of all

18 execution proceedings through remittitur.

19 Plaintiff is simply seeking an order requiring the posting of a supersedeas bond in an

20 amount that will permit full satisfaction of the judgment.

21 **B. The Mediation Agreement Does Not Eliminate the Requirement of an**

22 **Appellate Bond**

23

24 Curiously, The Palms argues on one hand that the Mediation Settlement Agreement is

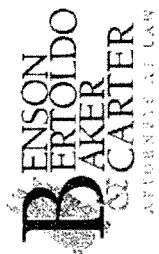
25 controlling and conclusive as to their obligations², yet on the other they try to infuse language

26

27

28 ¹ It is important to note that neither the Mediation, nor the Mediation Settlement contained a confidentiality provision or obligation on the parties, as implied by The Palms.

² See Opposition, II. A.



1 into the Settlement that does not exist, while simultaneously arguing relief from the
2 supersedeas bond requirement was an *integral* part of the agreement.³

3 This position is not only absurd, it is belied by the clear and unambiguous language of
4 the Mediation Settlement, which The Palms concedes is controlling and conclusive.

5 As set forth in The Palms' Opposition, the Mediation Settlement specifically states as
6 follows:
7

8 Defendant will pay Plaintiff the sum of \$1,000,000 in partial satisfaction of the
9 Judgment entered by Judge Walsh. Said sum shall be non-refundable, but, shall be
10 credited against any future payments. In exchange, Plaintiff shall dismiss any ongoing
11 efforts at execution and shall agree to a permanent stay of all collection proceedings
12 through remittitur.

13 Nowhere in the Agreement does it state, intend, contemplate and/or confirm that The
14 Palms were relieved from the supersedeas bond requirement. As clearly enunciated by the
15 Nevada Supreme Court, and cited by The Palms:

16 Our equitable powers do not extend so far as to permit us to disregard fundamental
17 principles of the law of contracts, **or arbitrarily to force upon parties contractual
obligations, terms or conditions which they have not voluntarily assumed.**
18 *McCall v. Carlson*, 63 Nev. 390, 424 (1946).

19 The Palms voluntarily assumed the contractual terms of the Mediation Settlement.
20 The Palms cannot force upon the Plaintiff any terms or conditions, i.e., relief from the
21 supersedeas bond requirement, not contained within the Mediation Settlement. As accurately,
22 argued by The Palms, this Court "cannot disregard the agreement between Enrique Rodriguez
23 and The Palms."⁴
24
25
26
27
28

³ *Id.*, 3: 20-22.

⁴ *Id.*, 4: 1-4.

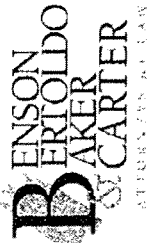
1 C. Purpose of the Bond is to Protect Plaintiff as the Judgment Creditor

2 The purpose of security is to protect the judgment creditor's ability to collect the
3 judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor
4 arising from the stay. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as modified.

5 The purpose of a supersedeas bond is to protect prevailing party from loss resulting
6 from a stay of execution of the judgment. Rules Civ.Proc., Rule 62. *McCulloch v. Jeakins*,
7 1983, 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error
8 463

9 A supersedeas bond should usually be set in an amount that will permit full
10 satisfaction of the judgment; however, a district court, in its discretion, may provide for a
11 bond in a lesser amount, or may permit security other than a bond when unusual
12 circumstances exist and so warrant. Rules Civ.Proc., Rule 62. *McCulloch v. Jeakins*, 1983,
13 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 465(1)

14 The five factors to consider in determining when a full supersedeas bond may be
15 waived and/or alternate security substituted include: (1) the complexity of the collection
16 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
17 (3) the degree of confidence that the district court has in the availability of funds to pay the
18 judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a
19 bond would be a waste of money; and (5) whether the defendant is in such a precarious
20 financial situation that the requirement to post a bond would place other creditors of the
21 defendant in an insecure position. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as
22 modified. Appeal And Error 465(1)

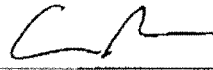


IV. Conclusion

Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a supersedeas bond in an amount that will permit full satisfaction of the judgment.

DATED this 2 day of Sept, 2011.

BENSON, BERTOLDO, BAKER & CARTER, CHTD.

BY: 
STEVEN M. BAKER, ESQ.
Nevada Bar #4522
Attorneys for Plaintiff
7408 West Sahara Avenue
Las Vegas, Nevada 89117

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of Sept, 2011, I served a true and correct copy of REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND was mailed in a sealed envelope by U.S. Mail, postage prepaid and via facsimile to the following interested parties:

<p>10676-05 Jeffery A. Bendavid, Esq. Adam S. Davis, Esq. Moran Law Firm 630 South Fourth Street Las Vegas, Nevada 89101 702-384-8424 Telephone 702-384-6568 Facsimile Co-Counsel for Defendant Fiesta Palms, LLC</p>	<p>10676-05 Keith Gillette, Esq. Archer, Norris 2033 North Main Street, Suite 800 P.O. Box 8035 Walnut Creek, California 94596-3728 925-930-6600 Telephone 925-930-6620 Facsimile Attorneys for Defendant</p>
<p>Marsha L. Stephenson, Esq. Stephenson & Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 702-474-7229 Telephone 702-474-7237 Facsimile Co-counsel for Defendant</p>	


An Employee of Benson, Bertoldo, Baker & Carter

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

FIESTA PALMS, LLC, a Nevada Limited
Liability Company d.b.a THE PALMS
CASINO RESORT,

Appellant,

vs.

ENRIQUE RODRIGUEZ, an individual

Respondent.

Electronically Filed
Nov 21 2011 02:37 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

No. 59630

APPENDIX TO EMERGENCY MOTION

ROBERT L. EISENBERG
Nevada Bar No. 00950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, NV 89519
(775) 786-6868
Email: rle@lge.net

ATTORNEYS FOR APPELLANT

INDEX TO APPENDIX TO EMERGENCY MOTION

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>PAGE NOS.</u>
1.	Defendant Fiesta Palms, LLC's Motion for Stay of Execution of Judgment and Order Shortening Time; Affidavit of Keith R. Gillette in Support Thereof; Memorandum of Points and Authorities	03/29/11	1 - 6
2.	Opposition to Motion to Stay Execution of Judgment	04/04/11	7 - 10
3.	Stipulation and Order	05/12/11	11 - 18
4.	Mediation Settlement	05/18/11	19 - 20
5.	Motion to Require Posting of Supersedeas Bond; Application for Order Shortening Time; Order	08/18/11	21 - 28
6.	Defendant's Opposition to Plaintiff's Motion to Require Posting of Supersedeas Bond	08/30/11	29 - 35
7.	Affidavit of Keith R. Gillette in Support of Opposition to Plaintiff's Motion to Require Posting of Supersedeas Bond	08/30/11	36 - 55
8.	Reply to Opposition to Motion to Require Defendants to Post Supersedeas Bond	09/02/11	56 - 60
9.	Order After Hearing	11/08/11	61 - 62
10.	Re-Newed Motion to Require Posting of Supersedeas Bond; Application for Order Shortening Time; Order	11/08/11	63 - 86
11.	Fiesta Palms, LLC, d/b/a The Palms Casino Resort's Opposition to Plaintiff's Renewed Motion to Require Supersedeas Bond	11/14/11	87 - 98
12.	Declaration of Jason A. Rose in Support of Fiesta Palms, LLC, d/b/a The Palms Casino Resort's Opposition to Plaintiff's Renewed Motion to Require Supersedeas Bond	11/14/11	99 - 133
13.	Letter from Keith R. Gillette to Steven M. Baker, Esq.	11/15/11	134
14.	Letter from Keith R. Gillette to Honorable Jessie Walsh	11/15/11	135

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>PAGE NOS.</u>
15.	Letter from Steven M. Baker, Esq. to Ms. Jeri Winter, Jud. Exec. Asst., Department 10	11/16/11	136
16.	Order	11/17/11	137 -138
17.	Notice of Entry of Order	11/17/11	139 - 142

ORIGINAL

1 **MSTE**

2 Marsha L. Stephenson, Esq. (NV Bar No. 6130)

3 STEPHENSON & DICKINSON, P.C.

4 2820 West Charleston Blvd., Suite 19

5 Las Vegas, NV 89102-1942

6 Telephone: (702) 474-7229

7 Facsimile: (702) 474-7237

8 Kenneth C. Ward (Bar No. 6530)

9 Keith R. Gillette (Bar No. 11140)

10 ARCHER NORRIS

11 A Professional Law Corporation

12 2033 North Main Street, Suite 800

13 PO Box 8035

14 Walnut Creek, California 94596-3728

15 Telephone: 925.930.6600

16 Facsimile: 925.930.6620

17 Attorneys for Defendant FIESTA PALMS, LLC, a

18 Nevada Limited Liability Company, d/b/a/ THE

19 PALMS CASINO RESORT

DISTRICT COURT

CLARK COUNTY, NEVADA

20 ENRIQUE RODRIGUEZ,

21 Plaintiffs,

22 v.

23 FIESTA PALMS, LLC, a Nevada Limited
24 Liability Company, d/b/a/ The Palms

25 Casino Resort, et al.,

26 Defendants.

Case No. A531538

Dept: X

**DEFENDANT FIESTA PALMS, LLC'S
MOTION FOR STAY OF EXECUTION OF
JUDGMENT AND ORDER SHORTENING
TIME; AFFIDAVIT OF KEITH R.
GILLETTE IN SUPPORT THEREOF;
MEMORANDUM OF POINTS AND
AUTHORITIES**

27 COMES NOW, Defendant FIESTA PALMS, LLC d/b/a THE PALMS CASINO

28 RESORT ("The Palms"), by and through its attorney of record Kenneth C. Ward K, Esq. and
ARCHER NORRIS, and moves this Honorable Court for an Order staying any execution on this
Court's Judgment for the latter of 45 days from the date of entry thereof or 15 days after the
hearing on The Palms' motion for a new trial. The Palms requests this stay to allow the Court to

ZA126/1107353-1

FIESTA PALMS, LLC'S MOTION FOR STAY OF EXECUTION AND ORDER SHORTENING TIME

App. 1

FILED

MAR 29 2011

John L. Gillette
CLERK OF COURT

08A631538
MSTE
Motion for Stay of Execution
1318082



DEPARTMENT X
NOTICE OF HEARING
DATE 3/5 TIME 9 AM
APPROVED BY



RECEIVED
MAR 29 2011
CLERK OF THE COURT

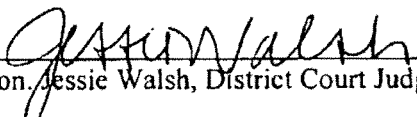
1 hear its motion for a new trial and at the same time forestall an attempt by Plaintiff to enforce the
2 judgment and disrupt the Palms' business as a hotel and casino. This Motion is made and based
3 upon the papers and pleading on file herein, the Points and Authorities attached hereto, the
4 Affidavit of Keith R. Gillette submitted herewith, and such oral argument as may be adduced at
5 the hearing of this matter.

6
7 **ORDER SHORTENING TIME**

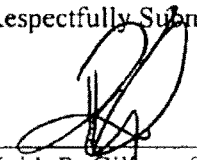
8 Upon good cause shown through the Affidavit of Counsel Keith R. Gillette, Defendant
9 FIESTA PALMS LLC d/b/a/ The Palms Casino Resort's Motion for Order Shortening Time to
10 hear its Motion for Stay of Execution of Judgment is hereby granted, and said Motion shall be
11 heard on the 5 day of April, 2011, at the hour of 9 Am. in Department X.

12 Any execution on said Judgment is STAYED by this Order until such time as the Palms'
13 Motion for Stay has been decided by this Court.

14 DATED: March 28th, 2011.

15
16 
17 Hon. Jessie Walsh, District Court Judge *g*

18
19 Respectfully Submitted by:

20 
21 _____
22 Keith R. Gillette (NV Bar No. 11140)
23 ARCHER NORRIS
24 2033 North Main Street, Suite 800
25 PO Box 8035
26 Walnut Creek, CA 94596-3728
27
28

1 **AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR STAY OF EXECUTION**
2 **OF JUDGMENT; APPLICATION FOR ORDER SHORTENING TIME**

3 State of Nevada)
4) ss:
5 County of Clark)

6 I, KEITH R. GILLETTE, being first duly sworn, do depose and say:

7 1. I am an attorney licensed to practice law in the state of Nevada, am in good
8 standing, and am counsel for defendants in this matter. I am a partner at Archer Norris, counsel
9 for Defendant FIESTA PALMS, LLC d/b/a/ The Palms Casino Resort.

10 2. I have personal knowledge of the facts stated in this affidavit and if called as a
11 witness, could and would competently testify thereto.

12 3. An order shortening time for the hearing of Defendant's motion to stay the
13 execution on judgment is necessary to prevent Plaintiff from levying its judgment on Defendant's
14 assets while Defendant is waiting to have its motion for stay heard by the Court. If the Palms'
15 motion is not heard on shortened time, the Court will enter judgment and the threatened execution
16 will commence prior to this motion being able to be heard on the Court's regular docket. The
17 Palms respectfully request this motion to stay execution of judgment be heard on shortened time.

18 ///
19
20
21
22
23
24
25
26
27
28

Affiant sayeth further naught..

///

///

///

(

;

SS.

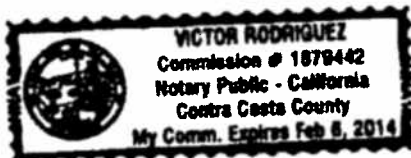
Keith R Gillette, ☒ proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public:

Vicior Rodriguez

My Commission Expires:

Feb. 6-2014



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant FIESTA PALMS, LLC d/b/a THE PALMS CASINO RESORT ("The Palms")
3 respectfully submits this Memorandum of Points and Authorities in support of its Motion to Stay
4 Execution of Judgment for the latter of 45 days after entry of judgment or 15 days after the
5 hearing of The Palms' motion for a new trial.

6 **I. THIS COURT MAY GRANT THIS MOTION TO STAY EXECUTION OF**
7 **JUDGMENT**

8 Nevada Rule of Civil Procedure section 62(b) grants this Court the discretion to "stay the
9 execution of or any proceedings to enforce a judgment pending the disposition of a motion for a
10 new trial"

11 The Court therefore has the authority to hear and grant The Palms' motion to stay
12 execution of judgment.

13 **II. GOOD CAUSE EXISTS TO GRANT THIS MOTION TO STAY EXECUTION OF**
14 **JUDGMENT**

15 This matter was tried commencing on October 27, 2010. On January 27, 2011, the Court
16 heard and granted Plaintiff's motion for judgment as a matter of law on the issue of liability,
17 pursuant to NRCP Rule 50. The Court thereafter requested a proposed verdict form with
18 Plaintiff's total damages.

19 The Palms is preparing and intends to promptly file a motion for a new trial in this matter.
20 (See Affidavit of Keith R. Gillette in Support of Motion to Stay Execution of Judgment, *supra*, ¶
21 3.) The Palms believes that Plaintiff plans to immediately levy the judgment on The Palms'
22 assets before the Court has the opportunity to hear The Palms' motion for new trial. Therefore, a
23 stay of execution of judgment is necessary in order to allow the Court to hear the motion for a
24 new trial and at the same time forestall an attempt by Plaintiff to enforce the judgment and disrupt
25 the Palms' business as a hotel and casino.

26 ///

27 ///

28 ///

///

ZA126/1107353-1

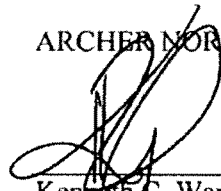
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

The Court has discretion to stay execution. The Palms respectfully requests that this Court enter a stay of execution of judgment either 45 days from the date of entry thereof or 15 days after the hearing on The Palms' motion for a new trial, whichever is later.

Dated: March 20, 2011

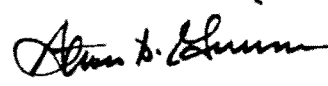
ARCHER MORRIS



Kenneth C. Ward (Bar No. 6530)
Keith R. Gillette (Bar No. 11140)
A Professional Law Corporation
2033 North Main Street, Suite 800
PO Box 8035
Walnut Creek, California 94596-3728

Attorneys for Defendant FIESTA PALMS,
LLC, a Nevada Limited Liability Company,
d/b/a/ THE PALMS CASINO RESORT




CLERK OF THE COURT

OPP
STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,	CASE NO: A531538
Plaintiff,	DEPT NO: 10
vs.	
FIESTA, PALMS, L.L.C., a Nevada Limited Liability Company, d/baa/a PALMS CASINO RESORT, BRANDY L. BEAVERS, individually, DOES 1 through X, inclusive, and ROE BUSINESS ENTITIES I through X, inclusive,	HEARING DATE: 4/5/11 HEARING TIME: 9:00 a.m.
Defendants.	

OPPOSITION TO MOTION TO STAY EXECUTION OF JUDGMENT

COMES NOW the Plaintiff, Enrique Rodriguez, by and through his attorney undersigned, and hereby opposes Defendant's Motion to Stay Execution of Judgment as follows:

I.

STATEMENT OF FACTS

As this Honorable Court is aware, this matter was tried to the bench, resulting in a Verdict of approximately \$6,051,000. No judgment has yet been entered herein. Defendant, without serving the same on Plaintiff, now moves for a Stay of Execution of Judgment.

II.**POINTS AND AUTHORITIES****A. Defendant's Motion Should Be Denied As It Was Not Served Upon the Plaintiff**

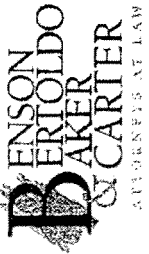
Pursuant to NRCP 5, a party filing a Motion is required to serve the same upon an adverse party. This Motion at bar was never served upon the Plaintiff and, therefore, should be denied.

B. The Motion for Stay of Execution should be denied because no Judgment has been entered herein.

NRCP 62, stay of proceedings to enforce a judgment, states in pertinent part as follows: "In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial . . ." As stated, no Judgment has yet been entered herein and no proceedings to execute upon the same has commenced. Accordingly, the Motion at bar should be denied.

C. No Stay of Execution of Judgment should be granted without the posting of a supersedeas bond.

The sufficiency and amount of a supercedeas bond under Rule 62 are secondary and a distinctly separate consideration from the issue of entitlement to stay under NRAP. *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev. 42, 574 P.2d 272 (1978). As this Honorable Court is aware, Defendant Palms is currently an ongoing business concern. However, it has become recently apparent that the longevity and solvency of any local hotel is questionable. Accordingly, it is requested that the posting of a



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

supersedeas bond in an amount approximately 2 ½ times that of the verdict (\$15,000,000.00) be ordered herein, and that such bond be purchased from a third-party AAA-rated company.


III.

CONCLUSION

For the reasons above, Plaintiff respectfully requests that the Motion for Stay of Execution be denied. Alternatively, should such relief be granted, Plaintiff requests that a supersedeas bond in the amount above be ordered herein.

DATED this 4th day of April, 2011.

BENSON BERTOLDO, BAKER & CARTER, CHTD.

By:  # 7301
STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
(702) 228-2600 Telephone
(702) 228-2333 Facsimile
monique@bensonlawyers.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2011, I served a copy of the
OPPOSITION TO MOTION FOR STAY OF EXECUTION by facsimile as indicated below
to the following interested parties:

Facsimile: 925-930-6620
Kenneth C. Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596
925-930-6600 Telephone

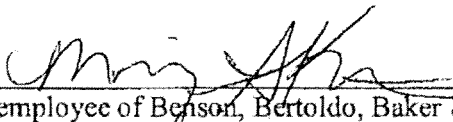
Co-Counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.
Moran & Associates
630 South Fourth Street
Las Vegas, Nevada 89101
702-384-8424 Telephone
702-284-6568 Facsimile

Attorneys for Fiesta Palms

Marsha L. Stephenson, Esq.
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102
474-7229 Telephone
474-7237 Facsimile

Co-Counsel for Fiesta Palms


An employee of Benson, Bertoldo, Baker & Carter, Chtd.

ORIGINAL

1 **STP**
2 STEVEN M. BAKER
Nevada Bar No. 4522
3 BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
4 Las Vegas, Nevada 89117
Telephone : (702) 228-2600
5 Facsimile : (702) 228-2333
Attorneys for Plaintiff

Electronically Filed
05/12/2011 02:32:19 PM


CLERK OF THE COURT

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 * * *

10 ENRIQUE RODRIGUEZ, an individual,
11 Plaintiff,

CASE NO: A531538

DEPT NO: 10

12 vs.

13 FIESTA PALMS, L.L.C., a Nevada Limited
14 Liability Company, d/b/a PALMS CASINO
15 RESORT, BRANDY L. BEAVERS,
16 individually, DOES 1 through X, inclusive,
17 and ROE BUSINESS ENTITIES I through X,
18 inclusive,

Defendants.

18 **STIPULATION AND ORDER**

19 **WHEREAS** Plaintiff asserts a Writ of garnishment and Writ of Execution in the amount
20 of \$6,643,968.83 were properly entered and served in this matter in favor of the Plaintiff and
21 against the Defendant; and

22 **WHEREAS** Plaintiff asserts said Writs create in Plaintiff a possessory interest in any
23 and all Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels,
24 Gaming Kiosks, Count Rooms within the Palms Casino Resort; and

25 **WHEREAS** Plaintiff asserts said Writs effectuate a "freeze" over the operating
26 accounts and other accounts of the Defendant FIESTA PALMS, LLC; and

1 **WHEREAS** Plaintiff asserts Defendant BRANDY BEAVERS is properly in default
2
3 in this action;

4 It is hereby stipulated and agreed between Plaintiff ENRIQUE RODRIGUEZ and
5 Defendant FIESTA PALMS, LLC, dba PALMS CASINO RESORT as follows:

- 6 1) This action shall be stayed in its entirety, with the exception to immediately follow,
7 for the period of time described below, with neither party retaining the right to file any
8 pleadings, papers, bonds, securities, appeals, or otherwise. The Court will retain
9 jurisdiction, however, to order and/or otherwise compel any agency and/or individual
10 having appropriate authority to act upon and/or otherwise execute the writs and
11 judgment referred to herein.
12
13 2) Subject to all other provisions of this Stipulation, solely for the purpose of enacting the
14 terms and provisions hereof, without prejudice, and not to be stayed by this
15 Stipulation, Plaintiff agrees to retract any and all Writs of Garnishment and/or
16 Execution held in favor of Plaintiff against Defendant in this matter, and to cooperate
17 and assist Defendant in effectuating an "unfreezing" of any accounts impacted by the
18 same, and the Writs of Garnishment are deemed retracted without further action by the
19 Court or by the parties.
20
21 3) Said stay will be in effect pending a mediation/settlement conference in this matter to
22 be conducted, with a person/entity in attendance for each party with proper authority
23 to settle, at a time no more than 10 days from the filing of this stipulation. The parties
24 agree to use their best efforts to schedule and conduct said mediation/settlement
25 conference with The Hon. Gene Porter (Ret.), or such other mutually agreeable
26 mediator, within said time frame.
27
28

- 1 4) The trial judge will retain jurisdiction to determine if either party participated in the
2 mediation/settlement conference in bad faith, and shall be empowered to award
3 attorney's fees, costs, and sanctions in the event of a determination of bad faith
4 participation, with both parties waiving any objections thereto;
5
6 5) In the event this matter does not resolve at mediation/settlement conference, the
7 matter shall remain stayed until that time that the Plaintiff submits a Stipulation to Lift
8 Stay to the Defendant in a form reasonably agreeable to Plaintiff and Defendant,
9 which will be signed first by the Defendant, then by the Plaintiff, and then filed by the
10 Plaintiff. The stay will remain in effect until the entry of an Order by the Court lifting
11 the same.
12
13 6) Should the Defendant fail to sign the submitted Stipulation to Lift Stay, this Court
14 may lift stay upon application by the Plaintiff upon due notice to the Defendant. The
15 parties stipulate and agree that upon the stay being lifted, the Court may schedule any
16 and all Motions pending at its earliest convenience, with both parties representing a
17 preparedness to argue the same if scheduled three days or more from the time the stay
18 is lifted.
19
20 7) During the pendency of the stay and for a period of seventy-two hours after the entry
21 of an Order lifting the stay, the Defendant may not make application for, purchase,
22 post, issue, file, or otherwise procure a supercedas bond and/or any other security
23 which would operate to effectuate a Stay of Execution, nor can move and/or otherwise
24 act to stay execution of the aforesaid Writs or Judgment. This provision is specifically
25 intended to preserve the right of the Plaintiff to garnish and/or execute against the
26 Defendant as if said garnishment and/or execution was effectuated on Monday, May 9,
27
28

2011, and shall be construed to preserve the rights and remedies of the Plaintiff as though execution had been carried out at said date and time.

8) During the pendency of the stay and for a period of seventy-two hours after the entry of an Order to lift stay, except as may result from the Defendant conducting its operations in the ordinary course of business (which the parties agree shall not be precluded by this stipulation), the Defendant may not make application for or in any way attempt and/or seek to reduce, transfer, encumber, or otherwise impact the cash, securities, property, and/or reserves regularly and customarily retained by the Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts and/or otherwise. This provision is specifically intended to preserve the right of the Plaintiff to garnish and/or execute against the Defendant as if said garnishment and/or execution was effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and remedies of the Plaintiff as though execution had been carried out at said date and time.

9) Should this matter not settle at mediation settlement/conference and should, upon attempt to execute and/or garnish by the Plaintiff, it appear that Defendant has made application for or has in any way attempted to reduce, transfer, encumber, or otherwise effect the cash, securities, property, and/or reserves regularly and customarily retained by the Defendant in their Cash Boxes, Cash Drawers, Cashier's Cages, Vaults, Slot Banks, Booths, Carousels, Gaming Kiosks, Count Rooms, Bank Accounts, and/or otherwise, except as may result from the Defendant conducting its operations in the ordinary course of business (which the parties agree shall not be precluded by this

1 stipulation) this court may, upon application by the Plaintiff, without motion but with
2 due notice to the Defendant, stay, preclude and prevent the Defendant from
3 purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other
4 security preventing the execution by Plaintiff upon said Writs and Judgment. The
5 insufficiency of funds to satisfy the aforesaid Writs and Judgment in the Defendant's
6 possession at the time of an attempt to execute upon the same will be sufficient basis
7 for the Court to enter an Order as contemplated by this provision. Notwithstanding the
8 foregoing, it is recognized by the parties that the aggregate funds available to the
9 stipulating Defendant is dynamic in nature and dependant upon ongoing business
10 obligations and operations, and Defendant reserves the right to demonstrate an
11 absence of an intention to deplete resources should the issue come before the Court.
12 The filing of a Motion and/or other application by the Plaintiff pursuant to this
13 provision will stay the ability of the Defendant to file a supercedeas bond and/or other
14 security until the Court has entered an Order with respect to the same.

15
16
17 10) If an Order by this court staying, precluding, and/or preventing the Defendant from
18 purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other
19 security as aforesaid is issued by this court after the time such bond or other security is
20 purchased and filed by the Defendant, such Order will relate-back to the time of the
21 filing by Plaintiff of a Motion and or other Application with respect to the same. This
22 provision is specifically intended to preserve the right of the Plaintiff to garnish
23 and/or execute against the Defendant as if said garnishment and/or execution was
24 effectuated on Monday, May 9, 2011, and shall be construed to preserve the rights and
25
26
27
28

remedies of the Plaintiff as though execution had been carried out at said date and time.

11) For the purposes of conducting any future execution upon the Writs and Judgment contemplated by this Stipulation, the Writs of Garnishment and Execution previously served in this matter will continue to be in full force and effect, and shall be acted upon by any person and/or entity upon notice by Counsel for Plaintiff and without the need for any further filings and/or service of process.

12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedeas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this ____ day of May, 2011.

Dated this 9th day of May, 2011.

COPY

STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

JOHN NAYLOR, ESQ.
Nevada Bar No. 5435
300 South 4th Street
Las Vegas, Nevada 89101
Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this 11th day of May, 2011.

Jessie Walsh
HONORABLE JESSIE WALSH
District Court Judge

1 remedies of the Plaintiff as though execution had been carried out at said date and
2 time.
3


4 11) For the purposes of conducting any future execution upon the Writs and Judgment
5 contemplated by this Stipulation, the Writs of Garnishment and Execution previously
6 served in this matter will continue to be in full force and effect, and shall be acted
7 upon by any person and/or entity upon notice by Counsel for Plaintiff and without the
8 need for any further filings and/or service of process.
9

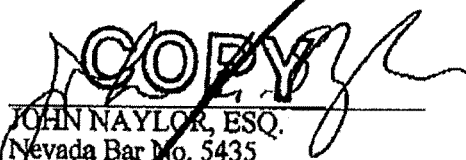
10 12) The affirmation of this stipulation by the Defendant, without the requirement of filing,
11 will preclude the filing of supercedeas bond or other security pending the entry of
12 order by the Court.
13

14 IT IS SO STIPULATED AND AGREED.

15 DATED this ____ day of May, 2011.

Dated this 7th day of May, 2011.

16
17 
18 STEVEN M. BAKER
19 Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

20
21 
22 JOHN NAYLOR, ESQ.
23 Nevada Bar No. 5435
24 300 South 4th Street
25 Las Vegas, Nevada 89101
26 Attorney for Defendant

27 ORDER

28 IT SO ORDERED.

DATED this ____ day of May, 2011.

HONORABLE JESSIE WALSH
District Court Judge

1


2

SUBMITTED BY:

3

4

5


STEVEN M. BAKER

Nevada Bar No. 4522

6

BENSON, BERTOLDO, BAKER & CARTER

7408 W. Sahara Avenue

7

Las Vegas, Nevada 89117

Attorneys for Plaintiff

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

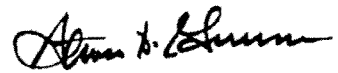
24

25

26

27

28



CLERK OF THE COURT

1 STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
2 BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
3 Las Vegas, Nevada 89117
Telephone: (702) 228-2600
4 Facsimile: (702) 228-2333
e-mail: Monique @bensonlawyers.com
5 Attorneys for Plaintiff

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 ENRIQUE RODRIGUEZ,

10 Plaintiff,

11 vs.

12 FIESTA PALMS, L.L.C., a Nevada Limited
13 Liability Company, d/b/a PALMS CASINO
14 RESORT, BRANDY L. BEAVERS,
15 individually, DOES I through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
16 inclusive,

17 Defendants.

CASE NO.: A531538

DEPT. NO.: X

MEDIATION DATE: May 16, 2011

MEDIATION TIME: 1:30 P.M.

18 **MEDIATION SETTLEMENT**

19 The parties having agreed to mediation of the above-referenced matter, have reached a
20 settlement as follows:

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////


28 ////

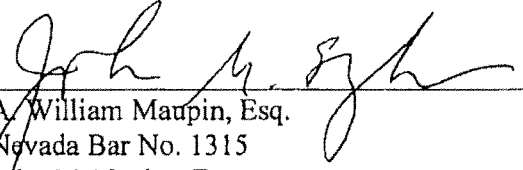
1 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment
2 entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future
3 payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree to a
4 permanent stay of all collection proceedings through remittitur.
5

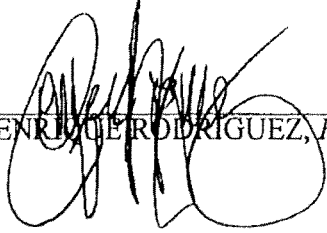
6 DATED this 16 day of May, 2011.

7
8 BENSON, BERTOLDO, BAKER & CARTER

LIONEL, SAWYER & COLLINS

9
10 
11 Steven M. Baker, Esq.
12 Nevada Bar No. 4522
13 Robert S. Cardenas, Esq.
14 Nevada Bar No. 7301
15 7408 W. Sahara Avenue
16 Las Vegas, Nevada 89117
17 Attorneys for Plaintiff

18 
19 A. William Maupin, Esq.
20 Nevada Bar No. 1315
21 John M. Naylor, Esq.
22 Nevada Bar No. 5435
23 1700 Bank of America Plaza
24 300 South Fourth Street
25 Las Vegas, Nevada 89101
26 Attorneys for Fiesta Palms, LLC

27
28 
ENRIQUE RODRIGUEZ, Plaintiff



NOTICE OF HEARING
DATE 8-23-11 TIME 9:00 am
APPROVED BY JTB

ORIGINAL

Electronically Filed
08/18/2011 03:50:53 PM

Steven M. Baker
CLERK OF THE COURT

STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
inclusive,

Defendants.

CASE NO: A531538

DEPT NO: 10

BENCH TRIAL DATE: 10/4/10

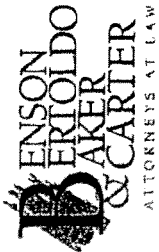
HEARING DATE: 8-23-11

HEARING TIME: 9:00 am

MOTION TO REQUIRE POSTING OF SUPERSEDEAS BOND;
APPLICATION FOR ORDER SHORTENING TIME; ORDER

Comes now, Plaintiff ENRIQUE RODRIGUEZ by and through his counsel of record, Steven
M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chtd. and hereby moves this Honorable
Court to issue an Order requiring Defendants to post a supersedeas bond. This motion is

Rodriguez v. Palms, et al.
Motion
Page 1



1 made on the pleadings and papers on file, points and authorities herein and oral argument of
2 counsel at the time of hearing.

3 DATED this 17th day of August, 2011.

4 BENSON, BERTOLDO, BAKER & CARTER, CHTD.

5
6 BY: [Signature]
7 STEVEN M. BAKER, ESQ.
8 Nevada Bar #4522
9 Attorneys for Plaintiff
10 7408 West Sahara Avenue
11 Las Vegas, Nevada 89117

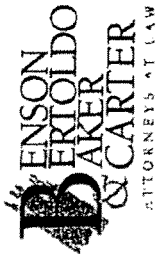
12 ORDER SHORTENING TIME

13 After consideration of the moving papers, the Court hereby orders that the hearing
14 regarding the within MOTION TO TO REQUIRE POSTING OF SUPERSEDEAS BOND be
15 scheduled on shortened time. Said hearing is hereby scheduled on the 23 day of
16 AUGUST, 2011, in Department X of this Court, at 9:00, A.m., or as soon thereafter
17 as counsel can be heard.

18 DATED this 18 day of AUGUST, 2011.

19 [Signature]
20 DISTRICT COURT JUDGE

21
22
23
24
25
26
27
28 Rodriguez v. Palms, et al.
Motion
Page 2



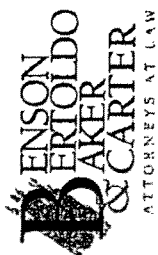
**AFFIDAVIT OF STEVEN M. BAKER, ESQ. IN SUPPORT OF MOTION AND
APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Steven M. Baker, Esq., having been duly sworn, states as follows:

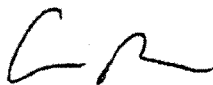
1. I am an attorney, duly licensed to practice in the State of Nevada and represent Plaintiff Enrique Rodriguez in the above-captioned matter.
2. I have personal knowledge of the facts stated herein.
3. This application for Order Shortening Time is requested on the basis that a Notice of Appeal has not yet been filed. An Order of this Court directing the posting of a supersedeas bond is timely.
4. Defendants never posted a supersedeas bond and never timely moved for a stay of execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating account in May of 2011. Thereafter, the parties proceeded to Mediation.
5. During Post Judgment Mediation, Plaintiff learned that Defendant was not financially capable of posting a supersedeas bond in an amount to permit satisfaction of the final judgment.
6. As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable, but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to dismiss any ongoing attempts at execution and further agreed to a permanent stay of all execution proceedings through remittitur.

Rodriguez v. Palms, et al.
Motion
Page 3




1 7. Plaintiff is seeking an order requiring the posting of a supersedeas bond in an amount
2 that will permit full satisfaction of the judgment.
3

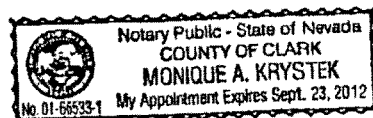
4
5 8. This motion is not brought forth to harass or otherwise delay the proceedings.
6 Further, affiant sayeth naught.

7 
8

Steven M. Baker, Esq.

9 Sworn to before me this 17th day of
10 August, 2011.

11 
12 Notary Public in and for said County and State



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rodriguez v. Palms, et al.
Motion
Page 4



1
2 **I. Introduction**

3 Plaintiff is seeking an order requiring Defendants to post a supersedeas bond in
4
5 accordance with NRCP 8 & 62.

6 Plaintiff has concerns over the financial viability of Defendant and is merely seeking to
7 protect his ability to collect on the judgment if upheld on appeal.

8 **II. Statement of Facts**

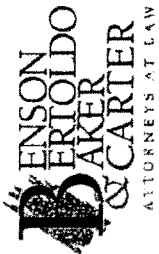
9 This is a premises liability matter that occurred November 22, 2004 at the Palms Sports
10 Bar/Sports Book. Plaintiff ENRIQUE RODRIGUEZ was an invited guest to watch a football
11 game. During half-time, agents, employees and/or assigns of the Palms (hereinafter known as
12 the "PALMS GIRLS") were participating in a promotion wherein they were throwing souvenirs
13 to Sports Bar/Sports Book patrons while blindfolded.
14

15 In response to the Palms Girl, Brandy Beavers, throwing souvenirs in the Sports
16 Bar/Sports Book while blind-folded, a customer within the Sports Bar/Sports Book dove for a
17 thrown souvenir and hit Mr. Rodriguez's extended and stationary left knee. Mr. Rodriguez then
18 struck the person next to him, hitting the left side of his head, then falling down, thereby
19 sustaining extensive injuries and damages.
20

21 A bench trial commenced in this matter on October 25, 2010 and this Honorable Court
22 issued a verdict on March 9, 2011 for the Plaintiff and against the Defendants FIESTA
23 PALMS, L.L.C. and BRANDY BEAVERS in the amount of \$6,051,589.38.

24 Defendants never posted a supersedeas bond and never timely moved for a stay of
25 execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating
26 account in May of 2011. Thereafter, the parties proceeded to Mediation.
27

28 *Rodriguez v. Palms, et al.*
Motion
Page 5



1 During Mediation, Plaintiff learned that Defendant was not financially capable of
2 posting a supersedeas bond in an amount to permit satisfaction of the final judgment.

3 As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial
4 satisfaction of the Judgment entered by this Court. Said amount was deemed non-refundable,
5 but shall be credited against any future payments. Lastly, in exchange, Plaintiff agreed to
6 dismiss any ongoing attempts at execution and further agreed to a permanent stay of all
7 execution proceedings through remittitur.
8

9 Plaintiff is seeking an order requiring the posting of a supersedeas bond in an amount
10 that will permit full satisfaction of the judgment.
11

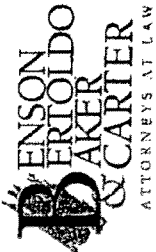
12 **III. Legal Argument**

13 In the ordinary course of civil appeals, an appellant must comply with NRAP 8(a),
14 which provides that an application for stay of a judgment or order must typically be made to
15 the district court. Such application, as well, must concurrently comply with Rule 62(d),
16 requiring a supersedeas bond. *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court ex*
17 *rel. Carson City*, 94 Nev. 42, 574 P.2d 272 (1978).

18 The purpose of security for a stay pending appeal is to protect the judgment creditor's
19 ability to collect the judgment if it is affirmed by preserving the status quo and preventing
20 prejudice to the creditor arising from the stay. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev.
21 832, as modified.
22

23 Purpose of a supersedeas bond is to protect prevailing party from loss resulting from a
24 stay of execution of the judgment. Rules Civ.Proc., Rule 62. *McCulloch v. Jeakins*, 1983, 659
25 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 463
26

27 *Rodriguez v. Palms, et al.*
28 Motion
Page 6



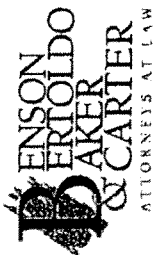
1 A supersedeas bond should usually be set in an amount that will permit full
2 satisfaction of the judgment; however, a district court, in its discretion, may provide for a
3 bond in a lesser amount, or may permit security other than a bond when unusual
4 circumstances exist and so warrant. Rules Civ.Proc., Rule 62. *McCulloch v. Jeakins*, 1983,
5 659 P.2d 302, 99 Nev. 122, dismissed 808 P.2d 18, 100 Nev. 816. Appeal And Error 465(1)
6

7 The five factors to consider in determining when a full supersedeas bond may be
8 waived and/or alternate security substituted include: (1) the complexity of the collection
9 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
10 (3) the degree of confidence that the district court has in the availability of funds to pay the
11 judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a
12 bond would be a waste of money; and (5) whether the defendant is in such a precarious
13 financial situation that the requirement to post a bond would place other creditors of the
14 defendant in an insecure position. *Nelson v. Heer*, 2005, 122 P.3d 1252, 121 Nev. 832, as
15 modified. Appeal And Error 465(1)
16
17

18
19
20
21
22 ///

23
24
25 ///

26
27
28 *Rodriguez v. Palms, et al.*
Motion
Page 7




1
2
3 **IV. Conclusion**

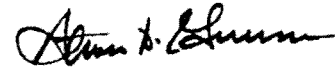
4 Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a
5 supersedeas bond in an amount that will permit full satisfaction of the judgment.

6
7 DATED this 17th day of August, 2011.

8 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**

9
10 By: 
11 STEVEN M. BAKER, ESQ.
12 Nevada Bar No. 4522
13 7408 W. Sahara Avenue
14 Las Vegas, Nevada 89117
15 (702) 228-2600 Telephone
16 (702) 228-2333 Facsimile
17 monique@bensonlawyers.com
18 *Attorneys for Plaintiff*

19
20
21
22
23
24
25
26
27 *Rodriguez v. Palms, et al.*
28 Motion
Page 8



CLERK OF THE COURT

OPPM

Kenneth C. Ward (Bar No. 6530)
kward@archernorris.com
Keith R. Gillette (Bar No. 11140)
kgillette@archernorris.com
ARCHER NORRIS
A Professional Law Corporation
2033 North Main Street, Suite 800
Walnut Creek, California 94596-3759
Telephone: 925.930.6600
Facsimile: 925.930.6620

Marsha L. Stephenson, (Bar No. 6150)
STEPHEN & DICKINSON, P.C.
2820 West Charleston Blvd., Suite 19
Las Vegas, NV 89102-1942
Telephone: 702.474.7229
Facsimile: 702.474.7237

Attorneys for Defendant
FIESTA PALMS, LLC, a Nevada Limited Liability
Company, d/b/a THE PALMS CASINO RESORT

DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
CASINO RESORT, et al. ,

Defendants.

Case No. A531538

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO REQUIRE
POSTING OF SUPERSEDEAS BOND**

Hearing Date: August 23, 2011
Hearing Time: 9:00 a.m.
Dept: 10

As this Court will recall, after a bench trial last fall, the Court entered Judgment in favor of Plaintiff in an amount in excess of \$6,000,000. After Plaintiff attempted to execute on this Judgment in early May, the Parties entered into a stipulation staying Plaintiff's collection efforts pending mediation.

During a mediation session on May 16, 2011, the Parties negotiated a "Mediation Settlement" that gave plaintiff a non-refundable one million dollars, in exchange for plaintiff's agreement to stay all collection proceedings through appeal. This bargained-for consideration

1 eliminated the burden and expense of The Palms to fund an appellate bond. Plaintiff received his
2 million dollars some time ago.

3 Unhappy with this agreement, Plaintiff now makes an extraordinary request, requesting
4 this Court disregard fundamental contract principles while at the same time ignoring the key
5 consideration upon which the agreement was made.

6 Plaintiff's request has no basis in authority. Defendant's opposition follows.

7 I. FACTS

8 This matter involves claims of personal injury brought by Plaintiff Enrique Rodriguez
9 against The Palms and defendant Brandy Beavers. After a bench trial in the fall of 2010, a
10 Judgment on the Verdict awarding plaintiff the sum of \$6,051,589.38 was filed April 12, 2011.

11 In early May, Plaintiff began executing on the Judgment. Upon learning of Plaintiff's
12 collection efforts, a stay of proceedings was negotiated between the Parties. (A true and correct
13 copy of the Stipulation and Order, filed May 12, 2011 is attached to the supporting Affidavit of
14 Keith R. Gillette ("Gillette Affidavit") as Exhibit A.) The stated purpose of the Stipulation was
15 to allow for the parties to mediate a possible settlement of the case post-trial, and to afford The
16 Palms relief from plaintiff's attempts to execute on the April 12, 2011 Judgment. (See Exh. A at
17 paragraphs 1 through 3.)

18 Consistent with the Stipulation and Order, a mediation took place on May 16, 2011,
19 before the Hon. Gene Porter (Ret.). As a consequence of this mediation, the parties reached a
20 partial settlement that provided as follows:

21 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial
22 satisfaction of the Judgment entered by Judge Walsh. Said sum
23 shall be non-refundable, but, shall be credited against any future
24 payments. In exchange, Plaintiff shall dismiss any ongoing efforts
at execution and shall agree to a permanent stay of all collection
proceedings through remittitur.

25 A true and correct copy of the Mediation Settlement is attached to Gillette Affidavit as
26 Exhibit B. Significantly, this stipulation was signed not only by Plaintiff's counsel, but also by
27 Plaintiff himself.

1 Plaintiff has received the \$1,000,000.00 settlement check agreed to as part of the
2 settlement. A true and correct copy of Plaintiff's counsel's acknowledgement of receipt of the
3 check in the amount of \$1,000,000.00 on May 31, 2011, at 10:20 a.m., is attached to Gillette
4 Affidavit as Exhibit C.

5 II. LEGAL ARGUMENT

6 A. The Mediation Settlement is Controlling and Conclusive as to the Obligations of The 7 Palms as to the Posting of a Supersedeas Bond.

8 In is a long-recognized principle of Nevada jurisprudence that, as a rule, parties are free to
9 contract without interference from the courts. In articulating its support of "necessary certainty,
10 stability and integrity of contractual rights and obligations," the Nevada Supreme Court has
11 observed that

12 Our equitable powers do not extend so far as to permit us to
13 disregard fundamental principles of the law of contracts, or
14 arbitrarily to force upon parties contractual obligations, terms or
15 conditions which they have not voluntarily assumed. In this regard,
16 equity respects and upholds the fundamental right of the individual
17 to complete freedom to contract or decline to do so, as he conceives
18 to be for his best interests, so long as his contract is not illegal or
19 against public policy.

20 *Mccall v. Carlson* (1946) 63 Nev. 390, 424.

21 Plaintiff received, in a non-refundable payment, one million dollars as part of the
22 agreement reached during mediation. In exchange, The Palms bought peace from possible further
23 writs of execution by Plaintiff during the period of post-trial motions and appeal. Integral to this
24 agreement was The Palms' relief from the supersedeas bond requirement typically incidental to a
25 stay of execution on the judgment.¹

26 Plaintiff now wants the Court to insert an additional term, mandating that The Palms incur
27 the burden and expense of acquiring an appellate bond, notwithstanding the fact that Plaintiff was
28 paid one million dollars to agree to not pursue collection efforts against Defendant's assets –

¹ As an aside, Plaintiff's moving papers include statements addressing factual assertions and events of private mediation which are inadmissible in this Court. *See* Steven M. Baker's Affidavit in Support of Plaintiff's Motion The Palms objects to the consideration by the Court or admission of those mediation-protected statements.

1 which, incidentally, is the fundamental purpose of an appeal bond. As noted by the Nevada
2 Supreme Court in *McCall*, this Court cannot disregard the agreement made between Enrique
3 Rodriguez and The Palms, which would hoist upon The Palms “obligations [] which they have
4 not voluntarily assumed.”

5 Although the stipulation was signed by the parties and filed with the court, it was not
6 entered as a court order as there was no signature line for the judge. Under Nevada law, “a written
7 stipulation is a species of contract.” *Redrock Valley Ranch, LLC v. Washoe County*, (2011) 127
8 Nev. ___, 254 P.3d 641. “In addition, because public policy favors the settlement of disputes,
9 stipulations should not be easily set aside.” *Id.* Stipulations “are of an inestimable value in the
10 administration of justice, and valid stipulations are controlling and conclusive,” and trial courts
11 “are bound to enforce them.” *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, (2008) 124
12 Nev. 1102, 1118, 197 P.3d 1032, 1042. A stipulation does not need court approval; it is valid if it
13 is signed by the party against whom the stipulation is offered. *Id.*

14 The local rules for Clark County also provide that a stipulation is effective if it is entered
15 as an order or if it is “in writing subscribed by the party against whom the same shall be alleged,
16 or by the party’s attorney.” EDCR 7.50.

17 The stipulation here was signed by plaintiff and his attorney. Thus, the stipulation in this
18 case is valid and enforceable even though it was not signed by the judge or entered as an order.

19 **B. Plaintiff Cited Authorities Do Not Mandate the Relief Requested.**

20 Plaintiff relies upon NRAP 8(a) and NRCP62(d) for the assertion that a bond is required
21 in these specific circumstances. Both statutes are irrelevant and inapplicable in this instance.

22 NRAP 8(a) pertinently provides that when seeking a motion for stay, that “[a] party must
23 ordinarily move first in the district court for the following relief ... a stay of the judgment or
24 order of, or proceedings in, a district court pending appeal or resolution of a petition to the
25 Supreme Court for an extraordinary writ [].”

26 ///

27 ///

28 ///

1 NRCP 62(d) provides as follows:

2 Stay upon appeal. When an appeal is taken the appellant by giving
3 a supersedeas bond may obtain a stay subject to the exceptions
4 contained in subdivision (a) of this rule. The bond may be given at
or after the time of filing the notice of appeal. The stay is
effective when the supersedeas bond is filed.

5 As can be gleaned from the plain language of this statute, once an appeal bond is posted a
6 judgment debtor may then stay collection proceedings. This statute does not mandate that a bond
7 be posted as a condition for obtaining a stay.

8 Plaintiff correctly states that – in a typical course of events – the combination of these two
9 statutes, read together, obligates a party seeking stay of judgment pending appeal from the district
10 court to also provide a supersedeas bond. However, neither these two statutes nor any other
11 Nevada procedural rule mandates that a bond be posted in these specific circumstances.

12 Plaintiff's reliance upon *Nelson v. Heer* and *McCullough v. Jeakins* is similarly misplaced.
13 The focus of *Nelson* concerns the use of alternate security in lieu of a supersedeas bond. The
14 court in *McCullough* focused on types of security for the granting of a stay of execution and the
15 underlying purposes of supersedeas bonds. Neither case provides authority the Plaintiff requests
16 here.

17 III. CONCLUSION

18 Apparently unhappy with the results of a mediated settlement, and after receiving the
19 benefit of that interim settlement, Plaintiff now seeks the Court's intervention to impose upon The
20 Palms an obligation it contracted away. Well-established Nevada law holds that the parties have
21 a freedom of contract, and that freedom of contract should not be disturbed here. Plaintiff's cited
22 authorities that do not create an obligation upon The Palms in these circumstances to post an
23 appeal bond.

24 ///

25 ///

26 ///

27 ///

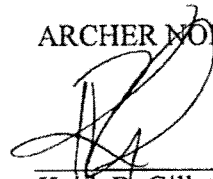
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For these reasons, Plaintiff's Motion should be denied.

Dated: August 29, 2011

ARCHER MORRIS



Keith R. Gillette
Nevada Bar No. 11140
2033 North Main St., Suite 800
Walnut Creek CA 94596
Telephone: 925.930.6600
Facsimile: 925.930.6620
Attorneys for Defendant
FIESTA PALMS, LLC, a Nevada Limited
Liability Company, d/b/a THE PALMS
CASINO RESORT

ZA126/1213976-1

1 CERTIFICATE OF SERVICE

2 **Name of Action: Enrique Rodriguez v. Fiesta Palms, LLC**
3 **Court and Action No: District Court, Clark County, Nevada Action No. A531538**

4 I, Tracy Pico, certify that I am over the age of eighteen years and not a party to this action
5 or proceeding. My business address is 2033 North Main Street, Suite 800, PO Box 8035, Walnut
6 Creek, California 94596-3728. On August 30, 2011, I caused the following document(s) to be
7 served: **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE
8 POSTING OF SUPERSEDEAS BOND; AFFIDAVIT OF KEITH R. GILLETTE IN
9 SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO REQUIRE POSTING OF
10 SUPERSEDEAS BOND**

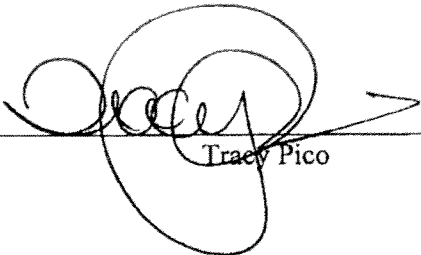
11 ☒ by having a true copy of the document(s) listed above transmitted by facsimile to the
12 person(s) at the facsimile number(s) set forth below before 5:00 p.m. The transmission
13 was reported as complete without error by a report issued by the transmitting facsimile
14 machine.

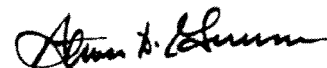
15 Steven M. Baker, Esq.
16 Benson, Bertoldo, Baker & Carter
17 7408 W. Sahara Avenue
18 Las Vegas, NV 89117
19 Phone: 702.228.2600
20 Fax: 702.228.2333
21 *Attorneys for Plaintiff*
22 Enrique Rodriguez

Jeffery A. Bendavid, Esq.
Moran Law Firm
630 S. 4th Street
Las Vegas, NV 89101
Phone: 702.384.8424
Fax: 702.384.6568
Co-Counsel for Defendant
Fiesta Palms, LLC a Nevada Limited
Liability Company, d/b/a The Palms
Casino Resort

John Naylor
Lionel Sawyer & Collins
300 S. 4th Street, Suite 1700
Las Vegas NV 89101
Phone: 702.383.8888
Fax: 702.277.9568
Co-Counsel for Defendant
Fiesta Palms, LLC dba The Palms
Casino Resort

23 I declare under penalty of perjury that the foregoing is true and correct. Executed on
24 August 30, 2011, at Walnut Creek, California.

25 
26 Tracy Pico
27
28



CLERK OF THE COURT

1 **AFFT**

2 Kenneth C. Ward (Bar No. 6530)

3 keward@archernorris.com

4 Keith R. Gillette (Bar No. 11140)

5 kgillette@archernorris.com

6 **ARCHER NORRIS**

7 A Professional Law Corporation

8 2033 North Main Street, Suite 800

9 Walnut Creek, California 94596-3759

10 Telephone: 925.930.6600

11 Facsimile: 925.930.6620

12 Attorneys for Defendant FIESTA PALMS, LLC, a

13 Nevada Limited Liability Company, d/b/a/ THE

14 PALMS CASINO RESORT

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **ENRIQUE RODRIGUEZ,**

18 **Plaintiffs,**

19 **v.**

20 **FIESTA PALMS, LLC, a Nevada Limited**
21 **Liability Company, d/b/a/ The Palms**
22 **Casino Resort, et al.,**

23 **Defendants.**

Case No. A531538

AFFIDAVIT OF KEITH R. GILLETTE IN
SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION TO REQUIRE
POSTING OF SUPERSEDEAS BOND

Hearing Date: August 23, 2011

Hearing Time: 9:00 a.m.

Dept: 10

24 **KEITH R. GILLETTE, being first duly sworn, deposes and says:**

25 1. I am a resident of the State of California. I am an adult over the age of 18, and in
26 all respects competent to make this Affidavit. This Affidavit is based upon my personal
27 knowledge, and if called upon to testify thereto, I could and would testify as set forth in this
28 Affidavit.

2. I am an attorney licensed in the state of Nevada and am a partner in the law firm of
Archer Norris. I am counsel for Defendant FIESTA PALMS, LLC, a Nevada Limited Liability
Company, d/b/a/ THE PALMS CASINO RESORT, in the above captioned case.

///

ZA126/1209736-1

A531538
AFFT KEITH R. GILLETTE

3. Attached hereto as Exhibit A is a true and correct copy of the Stipulation and Order dated May 12, 2011 entered into between the Defendant and Plaintiff.

4. Attached hereto as Exhibit B is a true and correct copy of the Mediation Settlement.

5. Attached hereto as Exhibit C is a true and correct copy of plaintiff's counsel's acknowledgement of receipt of the \$1,000,000.00 check on May 31, 2011 at 10:20 a.m.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed August 30, 2011 at Walnut Creek, Contra Costa County, State of California.

KEITH R. GILLETTE

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

)
) ss.
)

Subscribed and sworn to (or affirmed) before me on this 30 day of August 2011, by

Keith Gillette, ☐ personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)

Notary Public:

My Commission Expires:

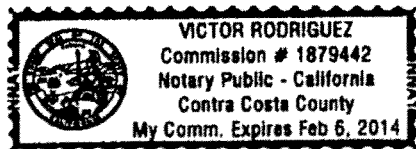
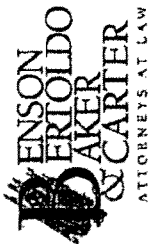


EXHIBIT A

App. 38



1 STEVEN M. BAKER
2 Nevada Bar No. 4522
3 BENSON, BERTOLDO, BAKER & CARTER
4 7408 W. Sahara Avenue
5 Las Vegas, Nevada 89117
6 Telephone : (702) 228-2600
7 Facsimile : (702) 228-2333
8 Attorneys for Plaintiff

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

12 ***

13 ENRIQUE RODRIGUEZ, an individual,
14 Plaintiff,

CASE NO: A531538

DEPT NO: 10

15 vs.

16 FIESTA PALMS, L.L.C., a Nevada Limited
17 Liability Company, d/b/a PALMS CASINO
18 RESORT, BRANDY L. BEAVERS,
19 individually, DOES 1 through X, inclusive,
20 and ROE BUSINESS ENTITIES I through X,
21 inclusive,


22 Defendants.

23 **NOTICE OF ENTRY OF ORDER**

24 PLEASE TAKE NOTICE that a Stipulation and Order was entered in the above-
25 captioned matter on the 12th day of May, 2011. A copy of said Order is attached hereto.

26 Date: 5/13/11

BENSON, BERTOLDO, BAKER & CARTER

27 
28 STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 228-2600
Facsimile: (702) 228-2333
Attorneys for Plaintiff



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of May, 2011, a true and correct copy of the above referenced document was served via 1st Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

John Naylor, Esq.
Lionel, Sawyer & Collins
300 S. 4th Street, Suite 1700
Las Vegas, NV 89101
Co-Counsel for Defendant Fiesta Palms

KC Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596
Co-counsel for Defendant Fiesta Palms

Jeffery A. Bendavid, Esq.
Moran & Associates
630 S. Fourth St.
Las Vegas, NV 89101
Attorneys for Defendant Fiesta Palms

Marsha L. Stephenson, Esq.
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102
Co-counsel for Fiesta Palms


An Employee of Benson, Bertoldo, Baker & Carter