

# EXHIBIT D

App. 125

7488 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

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  
SUPERSEDEAS BOND

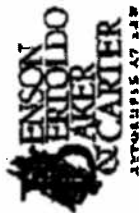
COMBS NOW, Plaintiff ENRIQUE RODRIGUEZ by and through his attorney of  
record, Steven M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chfd. and hereby replies  
to Defendant's opposition as follows:

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.

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



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

**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.<sup>1</sup>

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 obligations<sup>2</sup>, yet on the other they try to infuse language

<sup>1</sup> 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.

<sup>2</sup> See Opposition, II. A.

7818 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 728-3600 • FAX (702) 728-3338

**BENSON  
BERTOLDO  
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

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

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

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

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

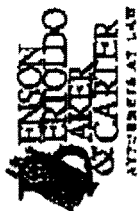
Nowhere in the Agreement does it state, intend, contemplate and/or confirm that The Palms were relieved from the supersedeas bond requirement. As clearly announced by the Nevada Supreme Court, and cited by The Palms:

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

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

<sup>3</sup> *Id.*, 3: 20-22.  
<sup>4</sup> *Id.*, 4: 1-4.

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 738-2600 • FAX (702) 738-2633



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

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

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

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

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

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

SEP. 2. 2011 10:09AM

BENSON-BERTOLDO

NO. 8386 P. 6

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2500 • FAX (702) 228-2533



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

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

10676-05 Jeffrey 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 Picata Palma, 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

# EXHIBIT E

App. 131

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

*Alan D. Quinn*  
CLERK OF THE COURT

1 OAH  
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

**ORDER AFTER HEARING**

27 THIS MATTER having come on for hearing on September 6, 2011, regarding Plaintiff  
28 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  
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

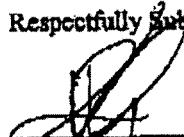
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's Motion to  
Require Posting of Supersedeas Bond is DENIED.

IT IS SO ORDERED.

Dated: 27 Sept, 2011.

  
Honorable Jessie Walsh, District Court Judge

Respectfully Submitted by:



Keith R. Gillette (NV Bar No. 11140)  
ARCHER/NORRIS  
2033 North Main Street, Suite 800  
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

EA126/1221491-1





**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 KRISTEK (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. ARGUELLA  
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)





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

CLERK OF THE COURT

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

**BENSON  
BERTOLDO  
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

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

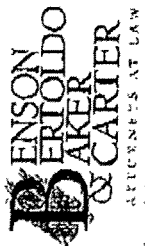
CAME ON FOR CONSIDERATION, Plaintiff's Renewed Motion to Require Posting  
of Supersedeas Bond. After considering the Motion, Opposition and pleadings and papers on  
file, the Court finds the Renewed Motion shall be granted.

///

///

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



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

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

DATED this 17 day of Nov, 2011.

*Justie Walsh*  
DISTRICT COURT JUDGE

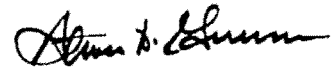
SUBMITTED BY:

*SD*

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

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





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  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**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**

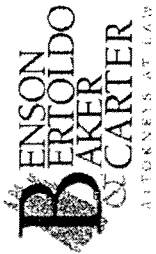
TAKE NOTICE that an Order was entered in the above-captioned matter granting Plaintiff's  
Renewed Motion to Require Posting of Supersedeas Bond. A copy of said Order is attached hereto.

Dated this 17<sup>th</sup> 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

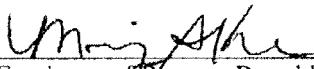


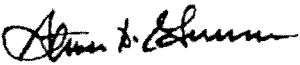
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> 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 &amp; Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 Co-counsel for Defendant</p>	<p><b><u>VIA 1<sup>st</sup> Class, U.S. Mail, postage prepaid</u></b> <b><u>Courtesy Copy by fax: 925-930-6620</u></b> 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><b><u>VIA 1<sup>st</sup> Class, U.S. Mail, postage prepaid</u></b> <b><u>Courtesy Copy by fax: 775-786-9716</u></b> Robert L. Eisenberg, Esq. Lemons, Grundy &amp; 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

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

**B**ENSON  
ERTOLDO  
AKER  
& 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

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 1 through X,  
inclusive,  
Defendants.

CASE NO: A531538  
DEPT NO: 10  
BENCH TRIAL DATE: 10/4/10

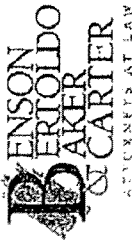
ORDER

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



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

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

DATED this 17 day of Nov, 2011.

  
DISTRICT COURT JUDGE

SUBMITTED BY:



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

**EXHIBIT A**  
App. 102



ORIGINAL

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

STP  
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

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

*Alvin P. Johnson*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

ENRIQUE RODRIGUEZ, an individual,

CASE NO: A331538

Plaintiff,

DEPT NO: 10

vs.

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

Defendants.

STIPULATION AND ORDER

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

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

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

LIONEL SAWYER  
& COLLINS  
ATTORNEYS AT LAW  
195 BANK OF AMERICA PLAZA  
300 S. BURN FOUNTAIN ST.  
LAS VEGAS,  
NEVADA 89101  
(702) 382-8888

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

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

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

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

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,

LIONEL SAWYER  
D. COLLINS  
ATTORNEYS AT LAW  
1700 BANK OF AMERICA PLAZA  
800 SOUTH FOURTH ST.  
LAS VEGAS,  
NEVADA 89101  
(702) 388-8888

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

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  
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

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

10) If an Order by this court staying, precluding, and/or preventing the Defendant from purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other security as aforesaid is issued by this court after the time such bond or other security is purchased and filed by the Defendant, such Order will relate-back to the time of the filing by Plaintiff of a Motion and or other Application with respect to the same. 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

LIONEL SAWYER  
& COLLINS  
ATTORNEYS AT LAW  
THE BANK OF AMERICA PLAZA  
200 SOUTH FOURTH ST.  
LAS VEGAS,  
NEVADA 89101  
(702) 398-8888

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

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 9<sup>th</sup> 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 4<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this 11<sup>th</sup> day of May, 2011.

Jessie Walsh  
HONORABLE JESSIE WALSH  
District Court Judge

05-09-11

08:54am

From:Lionel Sawyer & Collins

7028998845

T-578 P.006/007 F-849

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

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.

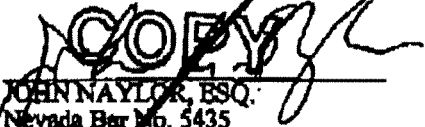
12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this \_\_\_\_ day of May, 2011.

Dated this 7<sup>th</sup> 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 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  
SUITE 200 AMERICA PLAZA  
300 SOUTH POLARIS BLVD  
LAS VEGAS  
NEVADA 89101  
702-899-8888

05-09-11 08:04am From:Lionel Sawyer & Collins 7023868845 T-870 P.007/007 F-343

- 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

LIONEL SAWYER  
 & COLLINS  
 ATTORNEYS AT LAW  
 400 EAST SP. SPRINGS PLAZA  
 10 SOUTH FOURTH ST.  
 LAS VEGAS,  
 NEVADA 89101  
 (702) 388-8888



# 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.

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

17 Defendants.

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  
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

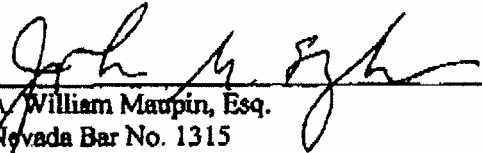
Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree to a permanent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

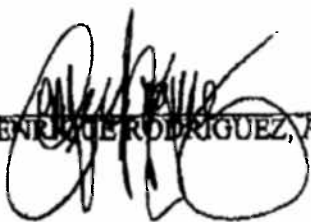
DATED this 16 day of May, 2011.

BENSON, BERTOLDO, BAKER & CARTER

LIONEL, SAWYER & COLLINS

  
\_\_\_\_\_  
Steven M. Baker, Esq.  
Nevada Bar No. 4522  
Robert S. Cardenas, Esq.  
Nevada Bar No. 7301  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff

  
\_\_\_\_\_  
A. William Maupin, Esq.  
Nevada Bar No. 1315  
John M. Naylor, Esq.  
Nevada Bar No. 5435  
1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Fiesta Palms, LLC

  
\_\_\_\_\_  
ENRIQUE RODRIGUEZ, Plaintiff

# EXHIBIT C

App. 114

ORIGINAL

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

DEPARTMENT X

NOTICE OF HEARING

DATE: 8-23 TIME: 9:00 am

APPROVED BY: [Signature]

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

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

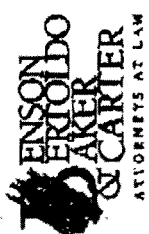
HEARING DATE: 8-23-11

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



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

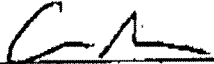
**BENSON  
BERTOLDO  
BAKER  
& CARTER**  
ATTORNEYS AT LAW

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

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

DATED this 17<sup>th</sup> day of August, 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

**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.

  
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



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

**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

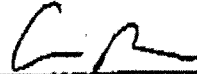
**WENSON  
ERIBOLDO  
BAKER  
& CARTER**  
ATTORNEYS AT LAW

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.

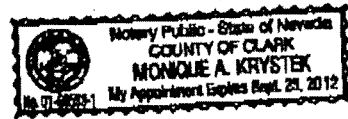
8. This motion is not brought forth to harass or otherwise delay the proceedings.


Further, affiant sayeth naught.



Steven M. Baker, Esq.

Sworn to before me this 17<sup>th</sup> 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  
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

**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.

**II. Statement of Facts**

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

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

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

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.

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

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

**WENSON  
ERDOLDO  
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

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.

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

**III. Legal Argument**

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

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

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

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

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



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

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

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

///

///

*Rodriguez v. Palms, et al.*  
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  
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

**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 17<sup>th</sup> day of August, 2011.

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

By:   
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](mailto:monique@bensonlawyers.com)  
*Attorneys for Plaintiff*

*Rodriguez v. Palms, et al.*  
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 **DISTRICT COURT**  
 7 **CLARK COUNTY, NEVADA**


8 \*\*\*

9 ENRIQUE RODRIGUEZ, an individual,	CASE NO: A531538
10 Plaintiff,	DEPT NO: 10
11 vs.	
12	
13 FIESTA PALMS, L.L.C., a Nevada Limited Liability Company, d/b/a PALMS CASINO 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 12<sup>th</sup> day of May, 2011. A copy of said Order is attached hereto.

20 Date: 5/13/11 BENSON, BERTOLDO, BAKER & CARTER

21   
 22 \_\_\_\_\_  
 23 STEVEN M. BAKER  
 Nevada Bar No. 4522  
 7408 W. Sahara Avenue  
 Las Vegas, Nevada 89117  
 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

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

**CERTIFICATE OF SERVICE**

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

John Naylor, Esq.  
Lionel, Sawyer & Collins  
300 S. 4<sup>th</sup> 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*

1 **OPPM**  
 2 Kenneth C. Ward (Bar No. 6530)  
 3 kcward@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  
 Telephone: 925.930.6600  
 Facsimile: 925.930.6620

7 Marsha L. Stephenson, (Bar No. 6150)  
 8 STEPHEN & DICKINSON, P.C.  
 9 2820 West Charleston Blvd., Suite 19  
 Las Vegas, NV 89102-1942  
 Telephone: 702.474.7229  
 Facsimile: 702.474.7237

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

13 DISTRICT COURT  
 14 CLARK COUNTY, NEVADA

15 ENRIQUE RODRIGUEZ,  
 16 Plaintiff,

17 v.

18 FIESTA PALMS, LLC, a Nevada Limited  
 19 Liability Company, d/b/a THE PALMS  
 CASINO RESORT, et al.,  
 20 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

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

26 During a mediation session on May 16, 2011, the Parties negotiated a "Mediation  
 27 Settlement" that gave plaintiff a non-refundable one million dollars, in exchange for plaintiff's  
 28 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  
 to complete freedom to contract or decline to do so, as he conceives  
 to be for his best interests, so long as his contract is not illegal or  
 against public policy.

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

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

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

26 \_\_\_\_\_  
 27 <sup>1</sup> As an aside, Plaintiff's moving papers include statements addressing factual assertions and events of private  
 28 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  
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

NRCP 62(d) provides as follows:

Stay upon appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions 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.

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

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

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

**III. CONCLUSION**

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

///  
///  
///  
///  
///

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 B. 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

2A126/1213976-1

08/30/2011 17:17 FAX

008/028

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

**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**

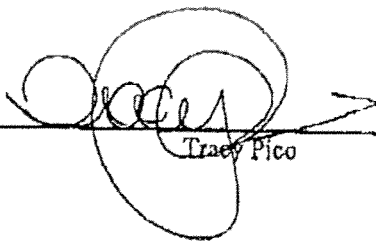
by having a true copy of the document(s) listed above transmitted by facsimile to the person(s) at the facsimile number(s) set forth below before 5:00 p.m. The transmission was reported as complete without error by a report issued by the transmitting facsimile machine.

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

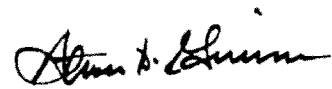
Jeffery A. Bendavid, Esq.  
Moran Law Firm  
630 S. 4th Street  
Las Vegas, NV 89101  
Phone: 702.384.8424  
Fax: 702.384.6568  
Co-Counsel for Defendant  
Fiesta Palms, LLC a Nevada Limited  
Liability Company, d/b/a The Palms  
Casino Resort

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



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

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

9 ENRIQUE RODRIGUEZ, an individual,  
10  
11 Plaintiff,

CASE NO: A531538

DEPT NO: 10

12 vs.

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

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

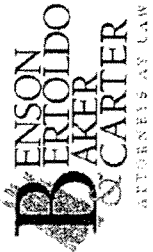
CERTIFICATE OF SERVICE

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

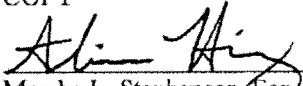
7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333




22  
23  
24  
25  
26  
27  
28



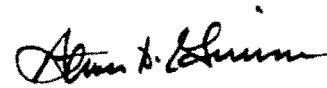
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>VIA HAND-DELIVERY/RECEIPT OF COPY</p> <p></p> <p>Marsha L. Stephenson, Esq. Stephenson &amp; Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 Co-counsel for Defendant</p>	<p><b>VIA FEDERAL EXPRESS # 8689 9336 4812</b> <b>VIA FACSIMILE: 925-930-6620</b></p> <p>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><b>VIA FEDERAL EXPRESS # 8532 1398 6468</b> <b>VIA FACSIMILE: 775-786-9716</b></p> <p>Robert L. Eisenberg, Esq. Lemons, Grundy &amp; 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  
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

**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

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  


Keith R. Gillette  
Jason A. Rose  
Attorneys for Defendant  
FIESTA PALMS, LLC, a Nevada Limited  
Liability Company, d/b/a THE PALMS  
CASINO RESORT

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **Introduction**

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

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

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

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  
26 and shall agree to a permanent stay of all collection proceedings  
27 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 <sup>1</sup> 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,

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



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

7           Zealous advocacy is the cornerstone of good lawyering and the  
 8 bedrock of a just legal system. However, zeal cannot give way to  
 9 unprofessionalism, **noncompliance with court rules, or, most**  
 10 **importantly, to violations of ethical duties of candor to the court**  
 11 **and to opposing counsel. Thus we sanction...\$1000 for egregious**  
 12 **and improper appellate conduct and remind him of his duty to**  
 13 **practice law in a professional and honest manner. (See Thomas v.**  
 14 **North Las Vegas Police Officers Ass'n Inc., 122 Nev. 82, 127 P.3d 1057,**  
 15 **1067 (2006) (emphasis added).**

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

24 <sup>2</sup> EDCR Rule 7.60. Sanctions. Provides:

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

- 28 (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. Boyce*, 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

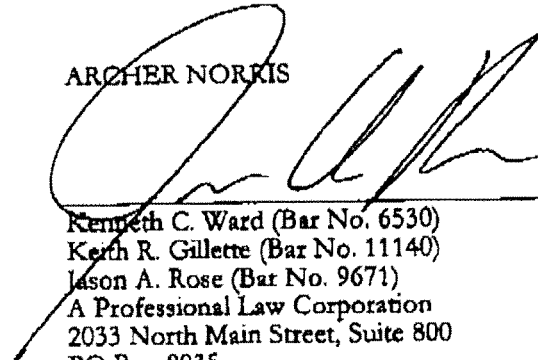
1 Finally, The Palms should be awarded its attorney's fees and costs to oppose this improperly  
 2 filed, unwarranted, and frivolous motion as a sanction to curtail the Plaintiff from engaging in this  
 3 inappropriate activity in the future.

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

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

9 Dated: November 14, 2011

ARCHER NORRIS



Kenneth C. Ward (Bar No. 6530)  
 Kerth 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

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

**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; rle@lge.net

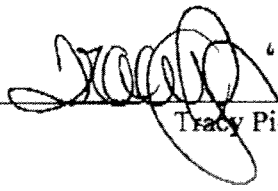
Steven M. Baker, Esq.  
Benson, Bertoldo, Baker & Carter  
7408 W. Sahara Avenue  
Las Vegas, NV 89117  
Phone: 702.228.2600  
Fax: 702.228.2333  
Email: monique@benzonlawyers.com  
*Attorneys for Plaintiff*  
Enrique Rodriguez

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

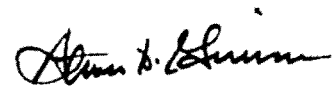
John Naylor  
Lionel Sawyer & Collins  
300 S. 4th Street, Suite 1700  
Las Vegas NV 89101  
Phone: 702.383.8888  
Fax: 702.277.9568  
Email: jnaylor@lionelsawyer.com  
*Co-Counsel for Defendant*  
Fiesta Palms, LLC dba The Palms Casino Resort

Robert L. Eisenberg  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno NV 89519  
Phone: 775.786.6868  
Fax: 775.786.9716  
Email: rle@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

1 **AFFT**  
 2 Kenneth C. Ward (Bar No. 6530)  
 3 kcward@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  
 Telephone: 925.930.6600  
 Facsimile: 925.930.6620

7 Marsha L. Stephenson, (Bar No. 6150)  
 8 STEPHENSON & DICKINSON, P.C.  
 9 2820 West Charleston Blvd., Suite 19  
 Las Vegas, NV 89102-1942  
 Telephone: 702.474.7229  
 Facsimile: 702.474.7237

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

13 DISTRICT COURT  
 14 CLARK COUNTY, NEVADA

16 ENRIQUE RODRIGUEZ,  
 17 Plaintiff,  
 18 v.  
 19 FIESTA PALMS, LLC, a Nevada Limited  
 20 Liability Company, d/b/a THE PALMS  
 CASINO RESORT, et al. ,  
 21 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

22 I, Jason A. Rose, declare as follows:

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

25 2. I am an attorney duly licensed to practice law in the State of Nevada, and am an  
 26 associate with the law firm of Archer Norris, attorneys of record herein for Defendant FIESTA  
 27 PALMS, LLC, a Nevada Limited Liability Company, d/b/a/ THE PALMS CASINO RESORT  
 28 ZA126/1251687-1

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.

27

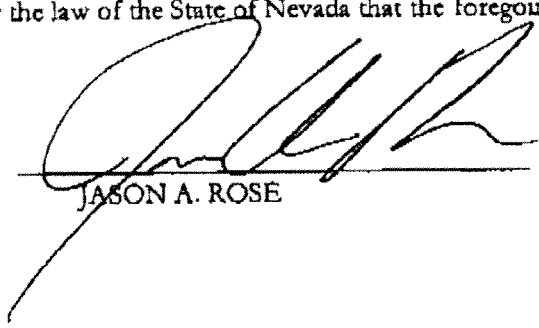
28



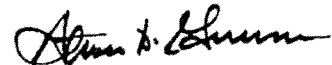
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Executed on November 14, 2011.



JASON A. ROSE



CLERK OF THE COURT

1 **OAH**  
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

20  
21  
22  
23  
24  
25  
26  
27  
28  
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

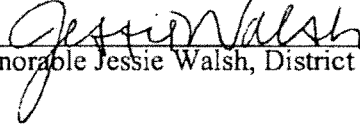
App. 61

1  
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

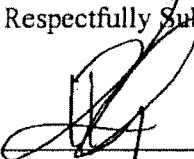
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's Motion to  
Require Posting of Supersedeas Bond is DENIED.

IT IS SO ORDERED.

Dated: 27 Sept, 2011

  
Honorable Jessie Walsh, District Court Judge

Respectfully Submitted by:

  
\_\_\_\_\_

Keith R. Gillette (NV Bar No. 11140)  
ARCHER/NORRIS  
2033 North Main Street, Suite 800  
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

ZA126/1221491-1



*Alvin D. Quinn*  
CLERK OF THE COURT

ORIGINAL

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

DATE FILED: 11/5/11  
TIME: 9:30 am  
FILED IN: 103

**B**ENSON  
**B**ERTOLDO  
**B**AKER  
& **C**ARTER  
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

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

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

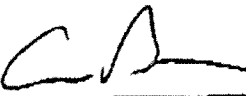
**BENSON  
BERTOLDO  
BAKER  
& CARTER**  
ATTORNEYS AT LAW

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

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

DATED this 3<sup>rd</sup> day of November 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

**ORDER SHORTENING TIME**

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

DATED this 9<sup>th</sup> day of Nov, 2011.

  
DISTRICT COURT JUDGE



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

**B** ENSON  
BERTOLDO  
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

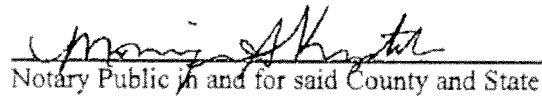
- 8. As a result, the Defendant agreed to pay Plaintiff an initial \$1,000,000 as partial satisfaction of the Judgment entered by this Court. Said amount was paid as a tender of the primary level of insurance covering the Palms, and Defendant has not made any "out-of-pocket expenditures regarding the 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.

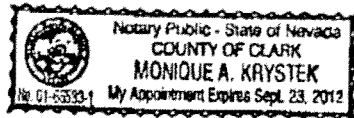
Further, affiant sayeth naught.



Steven M. Baker, Esq.

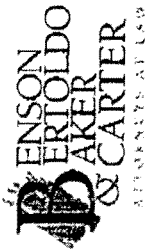
Sworn to before me this 3<sup>rd</sup> day of November, 2011.

  
Notary Public in and for said County and State





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

**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.

On November 2, 2011, the state Gaming Control Board 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.<sup>1</sup>

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

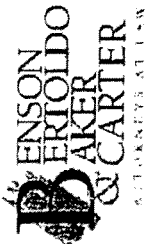
**II. Statement of Facts**

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

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

<sup>1</sup> See Exhibit "1," Review Journal Article, November 2, 2011, *Regulators recommend sale of Palms majority stake*.

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

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

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

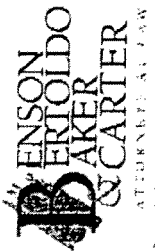
Defendants never posted a supersedeas bond and never timely moved for a stay of execution. Plaintiff served a Writ of Garnishment, freezing the Defendant's operating account in May of 2011. Thereafter, the parties proceeded to Mediation.

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.

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.

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

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

**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.

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.

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

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**

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

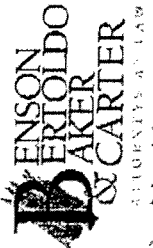
The Mediation Settlement specifically states as follows:

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

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

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**

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

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

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

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

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

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

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

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

<sup>2</sup> Exhibit 2, Defendant's Opposition, 4: 1-4.

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

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

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

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. This

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

 PRINTTHIS

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](mailto: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.



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

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

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

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

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 supercedeas 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  
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

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  
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

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

10) If an Order by this court staying, precluding, and/or preventing the Defendant from purchasing, issuing, posting, filing or otherwise a supercedeas bond and/or other security as aforesaid is issued by this court after the time such bond or other security is purchased and filed by the Defendant, such Order will relate-back to the time of the filing by Plaintiff of a Motion and or other Application with respect to the same. 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

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

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.

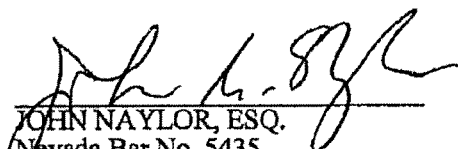
IT IS SO STIPULATED AND AGREED.

DATED this \_\_\_ day of May, 2011.

Dated this 9<sup>th</sup> 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 4<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this 11<sup>th</sup> 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

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 9<sup>th</sup> 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 4<sup>th</sup> 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

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

## 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 ////

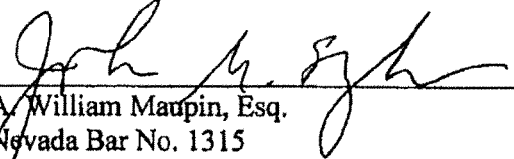
1 Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment  
2 entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future  
3 payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree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

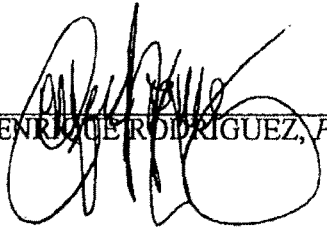
16   
17 ENRIQUE RODRIGUEZ, Plaintiff

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 Morales<sup>2</sup>  
Christine M. Fierro  
William C. Reeves<sup>1</sup>  
Merlyn A. Rogers  
Patrick M. Quigley

Via Federal Express – 2<sup>nd</sup> Day Delivery

David A. Astengo<sup>1</sup>  
Debra B. Branse  
Elizabeth B. Cainiker  
Laura Jane Coles  
Linda M. Corrie  
Curtis R. Oglivie  
Garth J. B. Poole  
Sheila A. Reid

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

Special Counsel:  
Eric D. Esser<sup>2</sup>  
Stacy M. Rocheleau<sup>3</sup>

Licenses  
<sup>1</sup> California, Nevada & Arizona  
<sup>2</sup> California & Nevada  
<sup>3</sup> Nevada

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

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

Dear Mr. Naylor:

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

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,

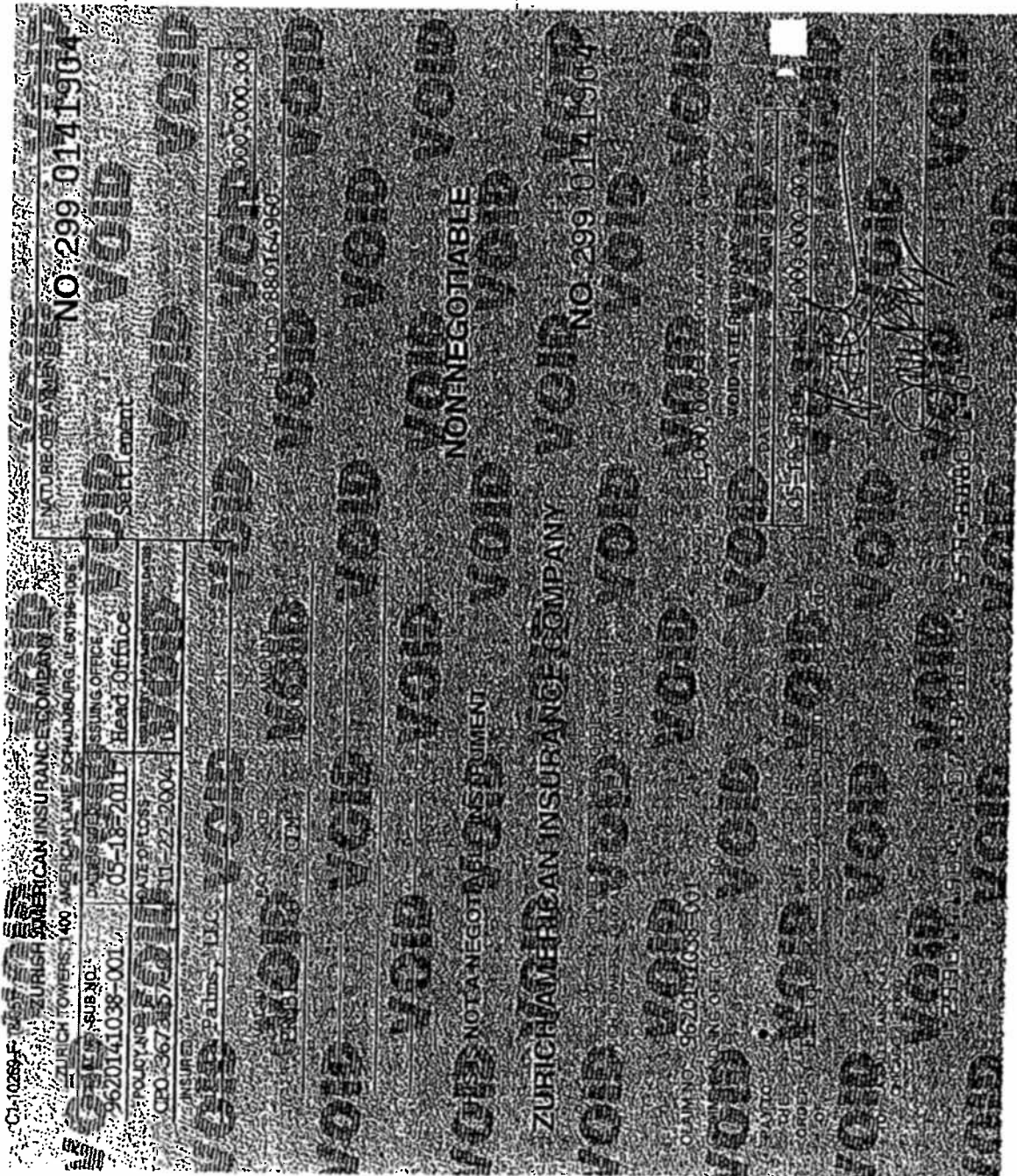
MORALES FIERRO & REEVES

  
Ramiro Morales

Enclosure

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





CI-10289-F 0257  
ZURICH AMERICAN INSURANCE COMPANY  
MUNICH, GERMANY, 400 AMERICAN LANE, SCHLAUSBURG, IL 60154-1054

INSURER: ZURICH AMERICAN INSURANCE COMPANY  
POLICY NO: 9620141038-001  
POLICY DATE: 05-18-2011  
POLICY TYPE: HEAD OFFICE  
POLICY EFFECTIVE DATE: 05-18-2011  
POLICY EXPIRES: 05-18-2011

INSURED: PAINES, DICK AND REEVE  
ADDRESS: 110 FIFTH AVENUE  
CITY: NEW YORK, NY 10003  
STATE: NY  
COUNTRY: USA

INSURING OFFICE: NEW YORK  
AGENT: JAMES J. SCHWAB  
AGENT ADDRESS: 110 FIFTH AVENUE  
AGENT CITY: NEW YORK, NY 10003  
AGENT STATE: NY  
AGENT COUNTRY: USA

CLAIM NO: 9620141038-001  
CLAIM DATE: 05-18-2011  
CLAIM TYPE: HEAD OFFICE  
CLAIM EFFECTIVE DATE: 05-18-2011  
CLAIM EXPIRES: 05-18-2011

AMOUNT: \$1,000,000.00  
CURRENCY: USD  
STATUS: PAID  
REASON FOR PAYMENT: SETTLEMENT

ISSUING OFFICE: NEW YORK  
ISSUING OFFICE ADDRESS: 110 FIFTH AVENUE  
ISSUING OFFICE CITY: NEW YORK, NY 10003  
ISSUING OFFICE STATE: NY  
ISSUING OFFICE COUNTRY: USA

CLAIMING OFFICE: NEW YORK  
CLAIMING OFFICE ADDRESS: 110 FIFTH AVENUE  
CLAIMING OFFICE CITY: NEW YORK, NY 10003  
CLAIMING OFFICE STATE: NY  
CLAIMING OFFICE COUNTRY: USA

DATE OF ISSUE: 05-18-2011  
DATE OF PAYMENT: 05-18-2011  
DATE OF EXPIRY: 05-18-2011

ENDORSEMENTS: NONE  
TERMS AND CONDITIONS: STANDARD

NO 299 0141904

NONNEGOTIABLE

NO 299 0141904

NONNEGOTIABLE

NO 299 0141904

NONNEGOTIABLE

NO 299 0141904

NONNEGOTIABLE

NO 299 0141904

NONNEGOTIABLE



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.

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

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

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

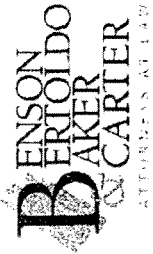
24 COMES NOW, Plaintiff ENRIQUE RODRIGUEZ by and through his attorney of  
25 record, Steven M. Baker, Esq. of Benson, Bertoldo, Baker & Carter, Chtd. and hereby replies  
26 to Defendant's opposition as follows:

27 **I. Introduction**

28 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  
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

**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.<sup>1</sup>

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.

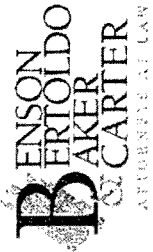
Plaintiff is simply seeking an order requiring the posting of a supersedeas bond in an amount that will permit full satisfaction of the judgment.

**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 obligations<sup>2</sup>, yet on the other they try to infuse language

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>

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.

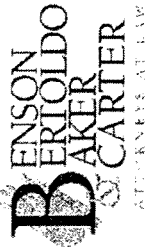
13 Nowhere in the Agreement does it state, intend, contemplate and/or confirm that The  
14 Palms were relieved from the supersedeas bond requirement. As clearly enunciated by the  
15 Nevada Supreme Court, and cited by The Palms:

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

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

<sup>3</sup> *Id.*, 3: 20-22.

<sup>4</sup> *Id.*, 4: 1-4.



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

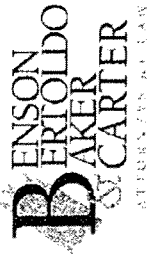
C. Purpose of the Bond is to Protect Plaintiff as the Judgment Creditor

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

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

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

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



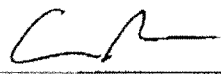
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 2<sup>nd</sup> 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 Fiesta Palms, LLC	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
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	

  
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](mailto:rle@lge.net)

ATTORNEYS FOR APPELLANT

**INDEX TO APPENDIX TO EMERGENCY MOTION**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>PAGE NOS.</u></b>
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>
1				
2	15.	Letter from Steven M. Baker, Esq. to Ms. Jeri Winter, Jud. Exec. Asst., Department 10	11/16/11	136
3				
4	16.	Order	11/17/11	137 -138
5	17.	Notice of Entry of Order	11/17/11	139 - 142
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				



ORIGINAL

22

MSTE  
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

FILED

MAR 29 2011

*John L. ...*  
CLERK OF COURT

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

08A631538  
MSTE  
Motion for Stay of Execution  
1318082



DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,  
Plaintiffs,

Case No. A531538

Dept: X

v.

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

**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**

Defendants.

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

6

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



RECEIVED  
MAR 29 2011  
CLERK OF THE COURT

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

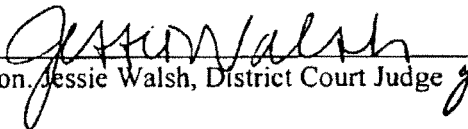
1 hear its motion for a new trial and at the same time forestall an attempt by Plaintiff to enforce the  
2 judgment and disrupt the Palms' business as a hotel and casino. This Motion is made and based  
3 upon the papers and pleading on file herein, the Points and Authorities attached hereto, the  
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**

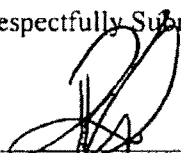
8 Upon good cause shown through the Affidavit of Counsel Keith R. Gillette, Defendant  
9 FIESTA PALMS LLC d/b/a/ The Palms Casino Resort's Motion for Order Shortening Time to  
10 hear its Motion for Stay of Execution of Judgment is hereby granted, and said Motion shall be  
11 heard on the 5 day of 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 28<sup>th</sup>, 2011.

15  
16   
17 Hon. Jessie Walsh, District Court Judge

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.

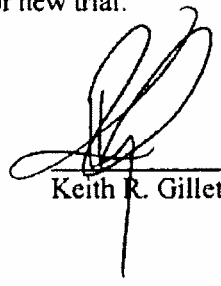
12            3. An order shortening time for the hearing of Defendant's motion to stay the  
13 execution on judgment is necessary to prevent Plaintiff from levying its judgment on Defendant's  
14 assets while Defendant is waiting to have its motion for stay heard by the Court. If the Palms'  
15 motion 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

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. Good cause exists to grant Defendant's motion to stay execution of judgment. I intend to promptly file a motion for a new trial on behalf of the Defendant in this matter. If a stay is not ordered, I believe Plaintiff will immediately levy the judgment on Defendant's assets prior to a court hearing Defendant's motion for new trial.

Affiant sayeth further naught..



Keith R. Gillette

///

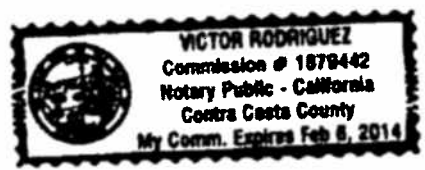
///

///

STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA ) ss.

Subscribed and sworn to (or affirmed) before me on this 22nd day of March, 2011, by Keith R. Gillette,  proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)



Notary Public: Victor 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 NRCR 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 ///

///

Z\126/1107353-1

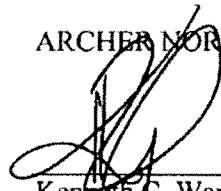
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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



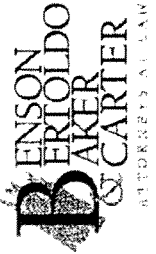
Kenneth C. Ward (Bar No. 6530)  
Keith R. Gillette (Bar No. 11140)  
A Professional Law Corporation  
2033 North Main Street, Suite 800  
PO Box 8035  
Walnut Creek, California 94596-3728

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



*Alvin D. Quinn*  
CLERK OF THE COURT

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

**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,  Plaintiff,  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,  Defendants.	CASE NO: A531538  DEPT NO: 10  <b>HEARING DATE: 4/5/11</b> <b>HEARING TIME: 9:00 a.m.</b>
--	--

**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.



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

II.

**POINTS AND AUTHORITIES**

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

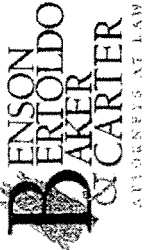
Pursuant to NRCPP 5, a party filing a Motion is required to serve the same upon an adverse party. This Motion at bar was never served upon the Plaintiff and, therefore, should be denied.

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

NRCPP 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 4<sup>th</sup> 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](mailto:monique@bensonlawyers.com)  
*Attorneys for Plaintiff*

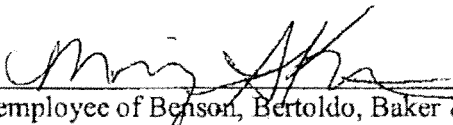
**CERTIFICATE OF SERVICE**

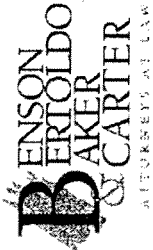
I hereby certify that on the 4<sup>th</sup> day of April, 2011, I served a copy of the  
OPPOSITION TO MOTION FOR STAY OF EXEUCION by facsimile as indicated below  
to the following interested parties:

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

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

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

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



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

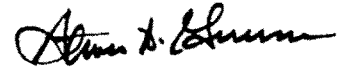




ORIGINAL

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 1 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



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  
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

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  
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

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

10) If an Order by this court staying, precluding, and/or preventing the Defendant from purchasing, issuing, posting, filing or otherwise a supercedas bond and/or other security as aforesaid is issued by this court after the time such bond or other security is purchased and filed by the Defendant, such Order will relate-back to the time of the filing by Plaintiff of a Motion and or other Application with respect to the same. 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

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

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 9<sup>th</sup> 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 4<sup>th</sup> Street  
 Las Vegas, Nevada 89101  
 Attorney for Defendant

ORDER

IT SO ORDERED.

DATED this 11<sup>th</sup> 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

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.

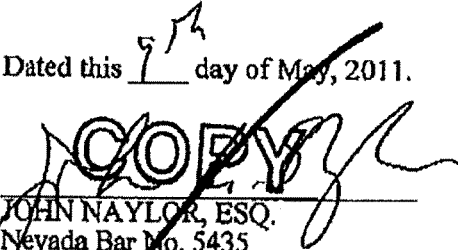
12) The affirmation of this stipulation by the Defendant, without the requirement of filing, will preclude the filing of supercedeas bond or other security pending the entry of order by the Court.

IT IS SO STIPULATED AND AGREED.

DATED this \_\_\_\_ day of May, 2011.

Dated this 7<sup>th</sup> 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 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

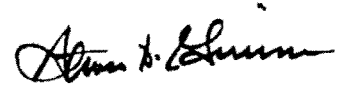
SUBMITTED BY:



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







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,

CASE NO.: A531538

10 Plaintiff,

DEPT. NO.: X

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.

MEDIATION DATE: May 16, 2011

MEDIATION TIME: 1:30 P.M.

17  
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  
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

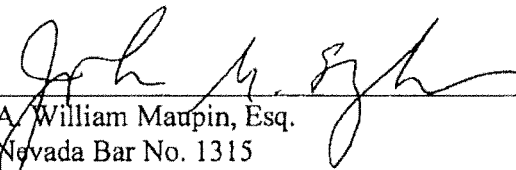
Defendant will pay Plaintiff the sum of \$1,000,000.00 in partial satisfaction of the Judgment entered by Judge Walsh. Said sum shall be non-refundable, but, shall be credited against any future payments. In exchange, Plaintiff shall dismiss any ongoing efforts at execution and shall agree to a permanent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

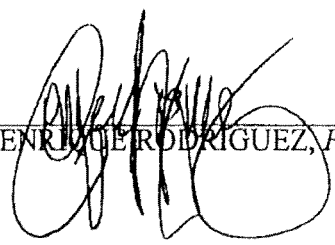
DATED this 16 day of May, 2011.

BENSON, BERTOLDO, BAKER & CARTER

LIONEL, SAWYER & COLLINS

  
\_\_\_\_\_  
Steven M. Baker, Esq.  
Nevada Bar No. 4522  
Robert S. Cardenas, Esq.  
Nevada Bar No. 7301  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorneys for Plaintiff*

  
\_\_\_\_\_  
A. William Maupin, Esq.  
Nevada Bar No. 1315  
John M. Naylor, Esq.  
Nevada Bar No. 5435  
1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101  
*Attorneys for Fiesta Palms, LLC*

  
\_\_\_\_\_  
ENRIQUE RODRIGUEZ, *Plaintiff*



ORIGINAL

*Steven M. Baker*  
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

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

9 ENRIQUE RODRIGUEZ, an individual,  
10 Plaintiff,

CASE NO: A531538  
DEPT NO: 10

11 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,  
and ROE BUSINESS ENTITIES I through X,  
inclusive,

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

16 Defendants.

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

17  
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

**B**ENSON  
**B**ERTOLDO  
**B**AKER  
**&** CARTER  
ATTORNEYS AT LAW

MOION TO HEARING  
DATE 8-23 TIME 9:00 am  
APPROVED BY JTB

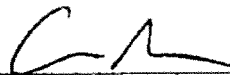


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED this 17<sup>th</sup> day of August, 2011.

BENSON, BERTOLDO, BAKER & CARTER, CHTD.

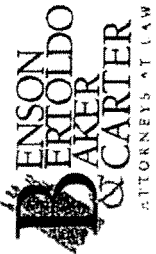
BY:   
STEVEN M. BAKER, ESQ.  
Nevada Bar #4522  
Attorneys for Plaintiff  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117

**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 18 day of AUGUST, 2011.

  
DISTRICT COURT JUDGE g



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

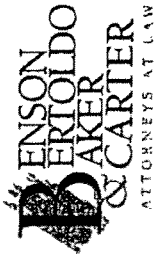
**AFFIDAVIT OF STEVEN M. BAKER, ESQ. IN SUPPORT OF MOTION AND APPLICATION FOR ORDER SHORTENING TIME**

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

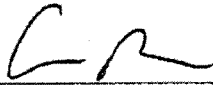


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

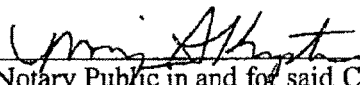
8. This motion is not brought forth to harass or otherwise delay the proceedings.

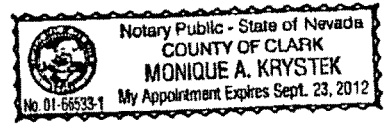
Further, affiant sayeth naught.

  
\_\_\_\_\_

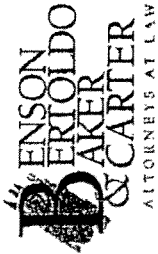
Steven M. Baker, Esq.

Sworn to before me this 17<sup>th</sup> day of August, 2011.

  
\_\_\_\_\_  
Notary Public in and for said County and State







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

**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.

**II. Statement of Facts**

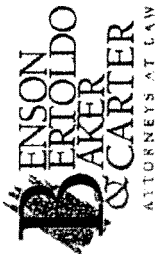
This is a premises liability matter that occurred November 22, 2004 at the Palms Sports Bar/Sports Book. Plaintiff ENRIQUE RODRIGUEZ was an invited guest to watch a football game. During half-time, agents, employees and/or assigns of the Palms (hereinafter known as the "PALMS GIRLS") were participating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

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

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

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.

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



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

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.

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

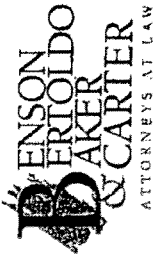
**III. Legal Argument**

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

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

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

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



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

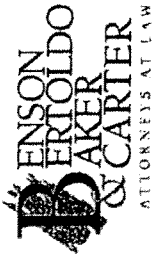
A supersedeas bond should usually be set in an amount that will permit full satisfaction of the judgment; however, a district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond when unusual circumstances exist and so warrant. Rules Civ.Proc.,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

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

///

///

*Rodriguez v. Palms, et al.*  
Motion  
Page 7




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

**IV. Conclusion**

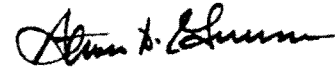
Based on the foregoing, Plaintiff is seeking an Order requiring Defendants to post a supersedeas bond in an amount that will permit full satisfaction of the judgment.

DATED this 17<sup>th</sup> day of August, 2011.

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

By:   
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*





CLERK OF THE COURT

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

7 Marsha L. Stephenson, (Bar No. 6150)  
STEPHEN & DICKINSON, P.C.  
8 2820 West Charleston Blvd., Suite 19  
Las Vegas, NV 89102-1942  
9 Telephone: 702.474.7229  
Facsimile: 702.474.7237

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

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14  
15 ENRIQUE RODRIGUEZ,  
16 Plaintiff,  
17 v.  
18 FIESTA PALMS, LLC, a Nevada Limited  
Liability Company, d/b/a THE PALMS  
19 CASINO RESORT, et al. ,  
20 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

21  
22 As this Court will recall, after a bench trial last fall, the Court entered Judgment in favor  
23 of Plaintiff in an amount in excess of \$6,000,000. After Plaintiff attempted to execute on this  
24 Judgment in early May, the Parties entered into a stipulation staying Plaintiff's collection efforts  
25 pending mediation.

26 During a mediation session on May 16, 2011, the Parties negotiated a "Mediation  
27 Settlement" that gave plaintiff a non-refundable one million dollars, in exchange for plaintiff's  
28 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.<sup>1</sup>

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 –

---

<sup>1</sup> 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 NRC62(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 ///

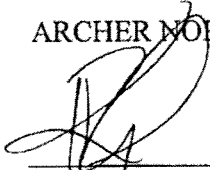
28 ///

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**

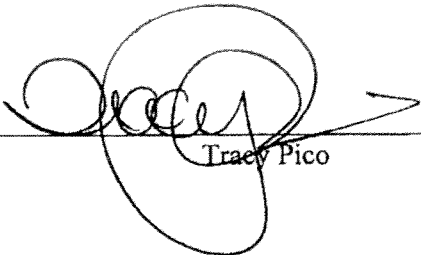
11  by having a true copy of the document(s) listed above transmitted by facsimile to the  
12 person(s) at the facsimile number(s) set forth below before 5:00 p.m. The transmission  
13 was reported as complete without error by a report issued by the transmitting facsimile  
14 machine.

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

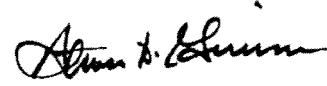
Jeffery A. Bendavid, Esq.  
Moran Law Firm  
630 S. 4th Street  
Las Vegas, NV 89101  
Phone: 702.384.8424  
Fax: 702.384.6568  
Co-Counsel for Defendant  
Fiesta Palms, LLC a Nevada Limited  
Liability Company, d/b/a The Palms  
Casino Resort

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 \_\_\_\_\_  
27 Tracy Pico  
28





CLERK OF THE COURT

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

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

9  
10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 ENRIQUE RODRIGUEZ,  
13  
14 Plaintiffs,  
15  
16 v.  
17 FIESTA PALMS, LLC, a Nevada Limited  
Liability Company, d/b/a/ The Palms  
Casino Resort, et al.,  
18  
19 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

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

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

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

28 ///  
ZAI26/1209736-1

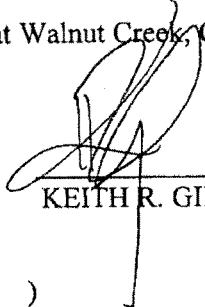
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 )  
 ) ss.  
COUNTY OF CONTRA COSTA )

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)

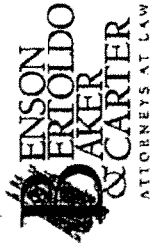
Notary Public: Victor Rodriguez  
My Commission Expires: Feb. 6th, 2014



EXHIBIT A

App. 38





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  
 5

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

9 \* \* \*

10 ENRIQUE RODRIGUEZ, an individual, Plaintiff, 11 12 vs. 13 FIESTA PALMS, L.L.C., a Nevada Limited Liability Company, d/b/a PALMS CASINO 14 RESORT, BRANDY L. BEAVERS, individually, DOES 1 through X, inclusive, 15 and ROE BUSINESS ENTITIES I through X, inclusive, 16 Defendants.	CASE NO: A531538 DEPT NO: 10
--	---------------------------------

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 12<sup>th</sup> day of May, 2011. A copy of said Order is attached hereto.  
 20

21 Date: 5/13/11

BENSON, BERTOLDO, BAKER & CARTER

22

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

CERTIFICATE OF SERVICE

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

John Naylor, Esq.  
Lionel, Sawyer & Collins  
300 S. 4<sup>th</sup> 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