

IN THE SUPREME COURT OF NEVADA

PRINCIPAL INVESTMENTS, INC., d/b/a
RAPID CASH; GRANITE FINANCIAL
SERVICES, INC., d/b/a RAPID CASH;
FMMR INVESTMENTS, INC., d/b/a RAPID
CASH; and PRIME GROUP, INC., d/b/a
RAPID CASH; ADVANCE GROUP, INC.,
d/b/a RAPID CASH,

Appellants,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK; and
THE HONORABLE ELIZABETH GOFF
GONZALEZ, DISTRICT JUDGE,

Respondents,

and

CASANDRA HARRISON; EUGENE
VARCADOS; CONCEPCION QUINTINO;
and MARY DUNGAN, individually and on
behalf of all persons similarly situated,

Real Parties In Interest.

Case No.: 59837

District Court Electronically Filed
Feb 10 2016 01:56 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

OPPOSITION TO MOTION TO STAY REMITTITUR

Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
Sophia A. Medina, Esq. (12446)
**LEGAL AID CENTER OF SOUTHERN
NEVADA, INC.**
725 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 386-1070 x 106
Facsimile: (702) 388-1642
dwulz@lacsnc.org

J. Randall Jones, Esq. (1927)
Michael Gayan, Esq. (11135)
Madison Zornes-Vela, Esq. (13626)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
m.gayan@kempjones.com
Attorneys for Real Parties in Interest

I. INTRODUCTION

Appellants, PRINCIPAL INVESTMENTS, INC. d/b/a RAPID CASH; GRANITE FINANCIAL SERVICES, INC., d/b/a RAPID CASH; FMMR INVESTMENTS, INC., d/b/a RAPID CASH; PRIME GROUP, INC., d/b/a RAPID CASH; ADVANCE GROUP, INC., d/b/a RAPID CASH (hereinafter “Rapid Cash”) have exhausted their remedies in Nevada. The District Court entered its order denying Rapid Cash’s Motion to Compel Arbitration on July 20, 2012, *more than three years ago*. This Court, sitting en banc, affirmed that order on January 14, 2016. Rapid Cash now seeks an indefinite stay of remittitur while it pursues a writ of certiorari in the Supreme Court of the United States (hereinafter “Writ”). This is one more attempt by Rapid Cash to delay the Real Parties in Interest’s access to justice through the very court system Rapid Cash used to fraudulently obtain judgments against the Real Parties in Interest. The named Real Parties in Interest and the thousands of class members in this case, some of whom had their wages garnished and all of whom have fraudulent judgments entered against them, have been awaiting relief since 2010 and should not be asked to wait any longer. A stay of remittitur will preclude the District Court from moving forward with this case and further delay relief for these victims of the despicable practice of sewer service relied on by Rapid Cash to obtain the judgments.

///

///

II. ARGUMENT

A. **Rapid Cash's Request to Stay Remittitur is another Dilatory Tactic Intended to Prevent the District Court from Moving Forward with the Case.**

Rapid Cash requests a stay of the remittitur under NRAP 41(b) pending the resolution of the Writ, which it purportedly intends to file with the United States Supreme Court. (Mot. 1:1-3). To date, nine days after filing the Motion and nearly 30 days after this Court's order denying the appeal, Rapid Cash has not served the Real Parties in Interest with a copy of the Writ.

Rapid Cash argues good cause exists to stay the remittitur for up to 120 days because the Supreme Court of the United States *might* find merit in its position due to the federal split on the issues of who decides whether a party has waived the right to arbitrate and contradictory case law that Rapid Cash's conduct waived the right to arbitrate. Rapid Cash further argues the stay may be relatively short, unless of course, its Writ is granted and further delay will not harm the Real Parties in Interest. However, the class representatives and thousands of victims in this matter have been waiting long enough for relief from these fraudulently obtained judgments, and in some cases Rapid Cash has retained the victims' improperly garnished funds for nearly 10 years. These class members, many of whom live paycheck to paycheck, should not be forced to wait any longer while Rapid Cash pursues extraordinary writ relief from the Supreme Court of the United States.

///

1. Intervention by the Supreme Court of the United States is highly unlikely.

“Review on a writ of certiorari is not a matter of right, but of judicial discretion.” SUP. CT. R. 10. A writ petition “will be granted only for compelling reasons.” *Id.* The following generally describe the character of the reasons that the Supreme Court of the United States considers when deciding to grant review:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; or
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id.

Rapid Cash implicitly argues Rule 10(b) applies to the case at hand. However, Rapid Cash also concedes that this Court’s decision is in accordance with the holdings of a number of federal appellate courts.¹ To further support its position, Rapid Cash points to Justice Saitta’s note that the holding in *Fid. Nat’l*

¹ See *Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 14 (1st Cir. 2005) (“We hold that the Supreme Court in *Howsam* . . . did not intend to disturb the traditional rule that waiver by conduct, at least where due to litigation-related activity, is presumptively an issue for the court.”); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 221 (3d Cir. 2007) (“[W]aiver of the right to arbitrate based on litigation conduct remains presumptively an issue for the court to decide in the wake of *Howsam*.”); and *Grigsby & Assocs., Inc. v. M Sec. Inv.*, 664 F.3d 1350, 1353 (11th Cir. 2011) (“[I]t is presumptively for the courts to adjudicate disputes about whether a party, by earlier litigating in a court, has waived the right to arbitrate.”).

Corp. v. Blakely, 305 F. Supp. 2d 639, (S.D. Miss. 2003) directly contradicts the holding in this case.

Despite Rapid Cash's argument that writ intervention is plausible in this case, acceptance of the Writ by the United States Supreme Court is highly unlikely. This is true because the Supreme Court of the United States is much more likely to take a case from a U.S. court of appeals to settle any dispute among the circuits, rather than a state Supreme Court ruling which complies with the holdings of at least three federal circuit rulings. Furthermore, Justice Saitta's comment regarding *Blakely* provides no support for the instant Motion because *Blakely* is a U.S. district court decision; any differences between this Court's decision here and *Blakely* do not constitute the basis for granting review on a writ of certiorari set forth in Supreme Court Rule 10. Accordingly, intervention by the Supreme Court of the United States is highly unlikely, and this Court should reject Rapid Cash's request to further delay the Real Parties in Interest's ability to seek relief for themselves and the thousands of class members harmed by Rapid Cash's conduct.

2. Rapid Cash's Writ is unripe until remittitur issues and the District Court enters a final judgment.

Regardless of its merits, Rapid Cash's forthcoming Writ is not presently ripe, and it will not become ripe if the Court grants Rapid Cash's motion. The Supreme Court Rules do not contemplate review of a State Supreme Court's decision before a final judgment is entered. *See* SUP. CT. R. 11. In exceptionally rare cases, "upon a showing that the case is of such imperative public importance

as to justify deviation from normal appellate practice,” “a petition for writ of certiorari may be granted to review a case pending in a *United States court of appeals* before judgment is entered in that court.” *Id.* (emphasis added). By its plain language, however, this Rule does not extend to cases pending in a State court. *See id.* Even if it did, the present case is not of “such imperative public importance as to justify deviation from normal appellate practices.”

If this Court stays its issuance of the remittitur, the District Court will not regain the necessary jurisdiction to enter a final judgment in this matter. “A final judgment is generally defined as one that resolves all of the parties’ claims and rights in the action below.” *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 247 P.3d 1107, 1108 (Nev. 2011) (citation omitted). Here, the District Court must be allowed to move forward with the case so that the Real Parties in Interest can seek resolution of their claims through entry of a final judgment. Accordingly, Rapid Cash’s intended Writ is unripe until remittitur issues and the District Court enters final judgment.

B. In the Event that This Court Stays Remittitur, it Should Limit the Stay to 21 Days and Require Rapid Cash to Post A Bond Or Other Security Under NRAP 41(b)(3).

NRAP 41(b)(3) allows this Court to require a bond or other security as a condition to granting or continuing a stay of the remittitur. Here Rapid Cash has improperly obtained judgments against and garnished the wages of the victims of sewer service and, in some cases, has retained for nearly 10 years funds garnished

from thousands of vulnerable class members. These are people to whom \$100.00 can make the difference between being able to eat, pay rent, or afford needed medical care. Yet Rapid Cash has fought tooth and nail to avoid returning any improperly garnished funds, even though the practice of sewer service existed among thousands of the class members.

If a stay of remittitur is entered, due to the nature of this matter, this Court should require Rapid Cash to post a bond for no less than the total amount it seized from the class members through the improperly obtained judgments. Furthermore, stay of remittitur should not be granted for the maximum 120 days, but rather should be limited to a more reasonable 21 days, which will allow Rapid Cash adequate time to file the Writ and seek stay relief from the Supreme Court of the United States without unnecessarily delaying the Real Parties in Interest's ability to timely access justice.

III. CONCLUSION

Based upon the above, the Court should deny Rapid Cash's Motion because the Supreme Court of the United States is unlikely to accept the Writ and the Writ is not ripe as it is not based upon entry of a final judgment. Alternatively, should this Court the stay, it should require Rapid Cash to post an adequate bond and limit the stay to no more than 21 days to prevent the Real Parties in Interest from bearing the burden of further delay.

///

DATED this 10th day of February, 2016.

/s/ Dan L. Wulz, Esq.

Dan L. Wulz, Esq. (5557)

Venicia Considine, Esq. (11544)

**LEGAL AID CENTER OF SOUTHERN
NEVADA, INC.**

800 South Eighth Street

Las Vegas, Nevada 89101

Telephone: (702) 386-1070 x 106

Facsimile: (702) 388-1642

dwulz@lacsns.org

Madison Zornes-Vela

J. Randall Jones, Esq. (1927)

Michael Gayan, Esq. (11135)

Madison Zornes-Vela, Esq. (13626)

KEMP, JONES & COULTHARD, LLP

3800 Howard Hughes Pkwy, 17th Floor

Las Vegas, Nevada 89169

Telephone: (702) 385-6000

Facsimile: (702) 385-6001

m.gayan@kempjones.com

Counsel for Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2016, the foregoing
OPPOSITION TO MOTION TO STAY REMITTITUR was filed electronically
with the Nevada Supreme Court through the electronic service system.

AND

by mailing a copy to:

The Honorable Elizabeth Gonzalez
District Court – Department 11
200 Lewis Avenue
Las Vegas, NV 89155



An employee of Kemp, Jones & Coulthard, LLP