Case No. 59837

In the Supreme Court of Nevada

Electronically Filed
Feb 25 2016 03:49 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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; and ADVANCE GROUP, INC. d/b/a RAPID CASH,

Appellants,

vs.

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

Respondent.

REPLY BRIEF ON MOTION TO STAY REMITTITUR

1. A Stay of Remittitur should Not be Denied Just Because the Nevada Appeal Took Years

Respondents' opposition to a stay of remittitur seems to be more of a complaint about how long the Nevada appeal took, rather than any principled analysis of a motion under NRAP Rule 41(a)(3). That the Nevada appeal took years should not be the basis of a denial of a stay of remittitur, especially where the timetables for the United States Supreme Court's consideration of a petition for certiorari—and for resolution of a case on the merits—are well recognized.

Docket 59837 Document 2016-06099

True, the decision from this Court came two years after oral argument, but respondents' argument shortchanges this Court by suggesting that the appellate process has been and will be nothing but needless delay. Rather than demonstrating waste, the time taken by this Court reflects the care the Court took in addressing the important issues in this case. In any regard, the complexity of the appeal in this Court is no reason to deny appellants their right to petition for certiorari on these important questions of federal law.

That the U.S. Supreme Court grants certiorari only in a limited number of cases should not be a basis for wholesale denial of NRAP 41(a)(3) stays of remittitur. In addition, respondents do not suggest any legal authority that that is a proper consideration for a stay under NRAP 41(a)(3).

2. Petitioning the U.S. Supreme Court will Fulfill the Legislative Intent behind Allowing an Interlocutory Appeal from the Denial of Arbitration

This is a statutorily authorized interlocutory appeal, following the legislative intent behind both the FAA and NRS Chapter 38 to have the issue of arbitrability reviewed on appeal immediately after a denial of arbitration and before the parties' and the courts' resources are expend-

ed in district court litigation. *See* NRS 38.247(1)(a); 9 U.S.C. § 16(a)(1). The purposes behind those schemes are fulfilled only if this Court stays remittitur to allow appellant to seek review in the U.S. Supreme Court before engaging in litigation. As this Court has recognized, the object of appellate review of an order denying arbitration is diminished if the order is not stayed and litigation proceeds in the meantime. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39–40 (2004).

And now is the proper time for appellants to file their petition for certiorari. Respondents argue that the U.S. Supreme Court cannot review this Court's decision until the district court enters a final judgment on the merits (Opp. 5–6), but that's wrong. The U.S. Supreme Court routinely grants certiorari from a state court's denial of a motion to compel arbitration[1] because a state court's "failure to [compel arbitration] is subject to immediate review." *KPMG LLP v. Cocchi*, 132 S. Ct.

---

[1] *E.g.*, *DirecTV, Inc. v. Imburgia*, 136 S. Ct. 463, 465 (2015); *KPMG LLP v. Cocchi*, 132 S. Ct. 23, 24, 26 (2011); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006); *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 54–55 (2003); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 683–84 (1996); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 269 (1995); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 471, 473 & n.4 (1989); *Perry v. Thomas*, 482 U.S. 483, 486, 489 & n.7 (1987).

23, 26 (2011); *see Southland Corp. v. Keating*, 465 U.S. 1, 7–8 (1984).

3. This Case Presents Important, Disputed Questions of Federal Law

This is an important case. Respondents argue that the decision to let courts adjudicate the question of litigation-conduct waiver "is in accordance with the holdings of a number of federal appellant courts" (Opp. 4), but the decision also conflicts with the holdings of a state court (*Woodland Ltd. P'ship v. Wulff*, 868 A.2d 860, 865 (D.C. 2005)) and a federal appellate court (*Nat'l Am. Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 328 F.3d 462, 466 (8th Cir. 2003)), which creates a split under U.S. Supreme Court Rule 10(b). This Court recognized as much. (Op. at 10.) This Court's ruling, moreover, is independently reviewable under U.S. Supreme Court Rule 10(c) as it decides important questions of federal law on waiver by litigation conduct "that ha[ve] not been, but should be, settled by the [U.S. Supreme Court]."

4. The Discussion of a Bond is Out of Place

Because appellants are not seeking to stay the execution of a final judgment, respondents' discussion of a bond is out of place. Accordingly, the district court required no bond for its stay pending appeal, and none is required now.

CONCLUSION

This Court should stay the issuance of the remittitur.

Dated this 25th day of February, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Daniel F. Polsenberg*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2016, I submitted the foregoing "Reply Brief on Motion to Stay Remittitur" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Dan L. Wulz
Venicia Considine
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Boulevard
Las Vegas, Nevada 89104

J. Randall Jones
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Honorable Elizabeth G. Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP