

IN THE SUPREME COURT OF THE STATE OF NEVADA

**In Re Manhattan West Mechanic's Lien
Litigation**

APCO CONSTRUCTION, INC., a Nevada
corporation, *et al.*,

Petitioners,

vs.

The Honorable Susan W. Scann, Judge,
Eighth Judicial District Court, Clark County,
Nevada,

Respondent,

and

SCOTT FINANCIAL CORPORATION, a
North Dakota Corporation, *et al.*,

Real Parties in Interest.

No. 61131

Electronically Filed
Jun 25 2012 04:14 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

District Court No. 08A571228

Consolidated with:

08A574391	A-09-589195-C
08A574792	A-09-589677-C
08A577623	A-09-590319-C
09A579963	A-09-592826-C
09A580889	A-09-596924-C
09A583289	A-09-597089-C
09A584730	A-09-606730-C
09A587168	A-10-608717-C
	A-10-608718-C

[Emergency Motion Under NRAP 27(e)]

JOINT MOTION FOR STAY AND JOINT EX PARTE MOTION FOR
IMMEDIATE TEMPORARY STAY OF TRIAL COURT PROCEEDINGS

Relief requested: On or before June 29, 2012 at 5:00 pm

Petitioners, appearing jointly through their respective counsel, hereby move for a stay of the district court proceedings pending resolution of this original petition, and for an *ex parte*, immediate temporary stay of the district court proceedings while this Court considers whether a stay for a longer period of time should be granted. NRAP 8(a); NRAP 27(e).

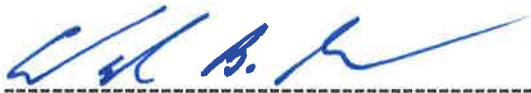
The petition seeks a determination of whether the mechanic's liens of petitioners (and other lien claimants) have priority over construction deed of trust recorded after commencement of construction on the work of improvement, held by real party in interest Scott Financial Corporation ("SFC").

Although the district court has already ordered the proceedings stayed while this petition is pending, a stay from this Court is required because real parties in interest SFC and Bradley J. Scott ("Scott") have moved the district court to have the stay lifted—and for permission to sell the property that is the subject of the disputed liens. 5 App. 1158-60. SFC and Scott have further requested that the sale be allowed to proceed without bonding around the lien claimants' mechanic's liens (in fact, SFC and Scott are asking that the district court require petitioners and the other lien claimants to post a bond in order to *prevent* the sale).¹ 5 App. 1160, 1169.

¹ *Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time*, filed May 29, 2012.

Emergency relief is requested, in order to preserve the status quo, because the district court has set the matter for an evidentiary hearing on July 2, 2012 at 9:30 a.m. 7 App. 1626. If SFC and Scott's motion is granted by the district court, there may not be time to seek further intervention from this Court before the subject property is sold and the relief requested herein is potentially rendered moot.

DATED this 25th day of June, 2012



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[Additional Signatures on Next Page]

DATED this 25th day of June, 2012

/s/ Beau Sterling

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Attorneys for Petitioners Accuracy Glass & Mirror Company Inc; Buchele Inc.;

Bruin Painting Corporation; Cactus Rose Construction; Fast Glass Inc.; HD

Supply Waterworks LP; Heinaman Contract Glazing; Helix Electric of Nevada

LLC; Interstate Plumbing & Air Conditioning; SWPPP Compliance Solutions

LLC; WRG Design Inc.

NRAP 27(e) Certificate

I, Beau Sterling, counsel for petitioners, hereby certify:

A. The office addresses and telephone numbers of the parties are:

For Petitioners:

Party: APCO CONSTRUCTION, INC., a Nevada corporation

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Party: ACCURACY GLASS & MIRROR COMPANY INC; BUCHELE INC.;
BRUIN PAINTING CORPORATION; CACTUS ROSE
CONSTRUCTION; FAST GLASS INC.; HD SUPPLY WATERWORKS
LP; HEINAMAN CONTRACT GLAZING; HELIX ELECTRIC OF
NEVADA LLC; INTERSTATE PLUMBING & AIR CONDITIONING;
SWPPP COMPLIANCE SOLUTIONS LLC; WRG DESIGN INC.

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For Respondent Court:

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Fax: (702) 366-1408

B. The district court has already ordered the proceedings stayed while this petition is pending. Nevertheless, emergency relief is required to avoid irreparable harm because real parties in interest Scott Financial Corporation

(“SFC”) and Bradley J. Scott (“Scott”) have moved the district court to have the stay lifted—and for permission to sell the property that is the subject of the disputed liens. 5 App. 1158-60. SFC and Scott have further requested that the sale be allowed to proceed without bonding around the lien claimants’ mechanic’s liens (in fact, SFC and Scott are asking that the district court require petitioners and the other lien claimants to post a bond in order to *prevent* the sale).² 5 App. 1160, 1169.

The district court has set an evidentiary hearing on the request for sale and the motion to lift stay (and for related relief) on July 2, 2012 at 9:30 a.m. 7 App. 1626. Since the district court has already set the evidentiary hearing, it would be futile to first seek a further stay from the district court. Moreover, if SFC and Scott’s motion is granted by the district court, there may not be time to seek further intervention from this Court before the subject property is sold, petitioners’ liens extinguished, and the relief requested herein potentially rendered moot.

C. Both the respondent court and counsel for real parties in interest have been advised of petitioners’ intent to bring this matter to the Supreme Court. I personally spoke to Randall Jones, counsel for SFC and Scott this morning about this emergency motion. Also, the petition, a copy of which was served on all

² *Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time*, filed May 29, 2012.

parties appearing in the district court by electronic service on June 22, 2012, and on real parties in interest SFC and Scott and the respondent court by U.S. Mail, advises of petitioners' intention to file this motion in conjunction with the petition. (*See* petition at pages 2-3.) This motion is also being served, concurrently with filing in this Court, on all parties to the district court proceedings via the district court's electronic filing system and also upon counsel for SFC and Scott, and on the respondent court, by facsimile transmission.

Dated: June 25, 2012.

/s/ Beau Sterling

BEAU STERLING

CERTIFICATE OF SERVICE

I hereby certify that on this date, June 25, 2012, I submitted the foregoing motion for filing via the Court's eFlex electronic filing system.

I further certify that, on this date, I submitted the foregoing motion for service on all parties in the underlying district court action (a mandatory electronic filing case) through the Eighth Judicial District Court's electronic filing system.

I further certify that, on this date, I delivered a copy of the foregoing by email, facsimile transmission, and First Class United States Mail, postage prepaid, to the following:

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