

**ERNEST A. BECKER, IV,
INDIVIDUALLY, ERNEST A. BECKER,
IV AND KATHLEEN BECKER AS
TRUSTEES OF THE ERNEST A.
BECKER IV and KATHLEEN C.
BECKER FAMILY TRUST; EB FAMILY
HOLDINGS, LLC; KIMBERLY RIGGS;
SALLIE BECKER; BRIAN BECKER;
AND WILLIAM A. LEONARD,
TRUSTEE,**

vs.

Respondent.

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**)On Certification from United States
Bankruptcy Court for the District of
Nevada**
)Case No. BK-S-13-14932 BTB

RESPONDENT'S ANSWERING BRIEF

Mark Segal, Esq.
Mark Segal, Chartered
NV Bar No. 01963
720 S. Fourth Street, Suite 301
Las Vegas, NV 89101
Tel. No. (702) 382-5212

Monica T. Centeno, Esq.
NV Bar No. 11078
285 E. Warm Springs Road, #105
Las Vegas, NV 89119

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST A. BECKER, IV,)	
INDIVIDUALLY, ERNEST A. BECKER,)	
IV AND KATHLEEN BECKER AS)	
TRUSTEES OF THE ERNEST A.)	
BECKER IV and KATHLEEN C.)	No. 65335
BECKER FAMILY TRUST; EB FAMILY)	
HOLDINGS, LLC; KIMBERLY RIGGS;)	
SALLIE BECKER; BRIAN BECKER;)	
AND WILLIAM A. LEONARD,)	On Certification from United States
TRUSTEE,)	Bankruptcy Court for the District of
)	Nevada
Appellants,)	Case No. BK-S-13-14932 BTB
)	
vs.)	
)	
ERNEST AUGUST BECKER, V,)	
)	
Respondent.)	
_____)	

RESPONDENT'S NRAP 26.1 DISCLOSURE

The undersigned counsel of record for Debtor Ernest A. Becker, V (hereinafter referred to as "the Debtor") certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

ERNEST A. BECKER, V., individually. No publicly held companies own

any interest in the Debtor. Debtor has been represented in the matter by the following attorneys and law firms:

MARK SEGAL, ESQ.
MARK SEGAL, CHARTERED
NV Bar No. 01963
720 S. Fourth Street, Suite 301
Las Vegas, NV 89101
Tel. No. (702) 382-5212

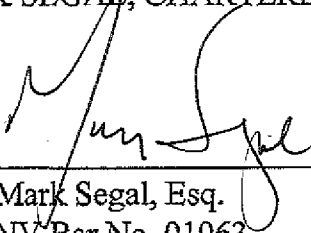
and

MONICA T. CENTENO, ESQ.
NV Bar No. 11078
285 E. Warm Springs Road, #105
Las Vegas, NV 89119

RESPECTFULLY SUBMITTED this 17 day of December, 2014.

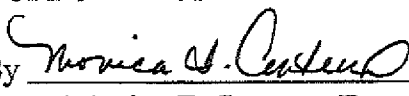
MARK SEGAL, CHARTERED

By


Mark Segal, Esq.
NV Bar No. 01963
720 S. Fourth Street, Suite 301
Las Vegas, NV 89101

THE LAW OFFICE OF MONICA T.
CENTENO, A PROFESSIONAL
CORPORATION

By


Monica T. Centeno, Esq.
NV Bar No. 11078
285 E. Warm Springs Road, #105
Las Vegas, NV 89119

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JURISDICTIONAL STATEMENT

This Court has jurisdiction of this appeal pursuant to NRAP 5(a), which states:

The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States or of the District of Columbia, a United States District Court, or a United States Bankruptcy Court when requested by the certifying court, if there are involved in any proceeding before those courts questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of this state.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Debtor Ernest A. Becker, V, hereby submits to the Court his Statement of Issues Presented for Review:

The certified question under NRAP 5 from the United States Bankruptcy Court of the District of Nevada asks “whether a debtor may properly claim an exemption in his entire stock interest pursuant to Nev. Rev. Stat. Section 21.090(1)(bb) and the incorporated provisions of Nev. Rev. Stat. Section 78.746.” (Order Accepting Certified Question, p. 1, JA 61.)1/ More particularly, as stated by Bankruptcy Court Judge Beesley, is “a debtor . . . entitled to claim an

1/ The Joint Appendix shall be referred as “JA”, followed by the page number(s).

exemption in his entire interest in stock that otherwise meets the requirements of NRS 78.746 (2)(c), or . . . [is] the debtor's exemption limited to his non-economic rights" (Order Certifying Question of Law To The Nevada Supreme Court, JA 55, lines 1-3.) As restated by the Debtor, is his corporate stock owned in corporations that have fewer than 100 shareholders and are not professional corporations, publicly traded corporations or subsidiaries thereof, either in whole or in part, fully exempt from all remedies available to judgment creditors, including charging orders?

STATEMENT OF THE CASE

This case arose in the United States Bankruptcy Court for the District of Nevada, in the Chapter 7 Bankruptcy proceeding of Ernest August Becker, V (the "Debtor"). The issues were initially raised in the bankruptcy case on October 31, 2013 when certain creditors and interested parties filed an "Objection to Claimed Exemptions" (JA, 20-28), objecting to the Debtor's claimed exemption of his interest in the stock of Ensworth Apts., Inc. ("Ensworth") and Eagle Rock Gaming, Inc. ("Eagle Rock Gaming") as listed on the Debtor's Amended Schedule C (JA, 18). On November 1, 2013, the Chapter 7 Bankruptcy Trustee also challenged the claimed exemptions when he filed the "Trustee's Joinder to Objection to Claimed Exemptions" (JA, 32-34). On December 4, 2013, the Debtor filed the "Debtor's Response to Objection to Claimed Exemptions and to Trustee's Joinder to Objection to Claimed Exemptions" (JA, 35-41) and on December 11, 2013, the "Reply in Support of Objection to Claimed Exemptions" (JA, 42-51) and the "Trustee's Joinder to Reply in Support of Objection to Claim Exemptions" were filed (JA, 52-53). A hearing was held on February 19, 2014, and on April 2, 2014, the Bankruptcy Court entered its "Order Certifying Question of Law to the Nevada Supreme Court" (JA, 54-60). On July 31, 2014, the Nevada

Supreme Court entered its “Order Accepting Certified Question of Law” (JA, 61-62).

STATEMENT OF THE FACTS

On June 5, 2013, the Debtor filed a voluntary Chapter 7 petition (JA, 55). Debtor is a stockholder in two Nevada corporations named Ensworth Apts., Inc. (hereinafter “Ensworth Stock”) and Eagle Rock Gaming, Inc., (hereinafter “Eagle Rock Gaming Stock”) (JA, 18).

In his bankruptcy proceedings, on his Amended Personal Property Schedule “B,” the Debtor listed “Ensworth Corporation Stock” with a value of \$1,362,000 (“Ensworth Stock”), and also listed a stock interest in “Eagle Rock Gaming, Inc.” with a value of \$219,000 (“Eagle Rock Gaming Stock”) (JA, 2).

On his Amended Schedule “C,” Property Claimed as Exempt, the Debtor claimed these stock holdings to be exempt property under NRS 21.090-1(bb) by claiming a \$1,362,000,00 exemption for the full value of his interest in the Ensworth Stock and a \$219,000 exemption for the full value of his interest in the

Eagle Rock Gaming Stock. 2/ By claiming exemption for the stocks, Debtor represented the Ensworth Stock and the Eagle Rock Gaming Stock represent interests in Nevada corporations, each of which had fewer than 100 stockholders of record at any time and neither of which was a professional corporation as defined in NRS 89.020 or a publicly traded corporation or a subsidiary of a publicly traded corporation, either in whole or in part. The Objecting Creditors (as listed in the next paragraph) and the Chapter 7 trustee (collectively with the Objecting Creditors hereinafter being referred to as the “Objecting Parties”) have apparently agreed. (See Appellants’ Opening Brief, p. 12, fn. 18 and JA 33, lines 4-5.)

On October 31, 2013, creditors and interested parties Ernest A. Becker, IV, individually, Ernest A. Becker, IV and Kathleen C. Becker, as Trustees of the Ernest A. Becker IV and Kathleen C. Becker Family Trust, EB Family Holdings, LLC, Kimberly Riggs, Sallie Becker and Brian Becker (collectively, the Objecting Creditors”) filed an Objection to Claimed Exemptions, thereby disputing Debtor’s

2/On Amended Schedule C, the Debtor listed the current value of the Ensworth Stock to be \$5,448,000 and the current value of the Eagle Rock Gaming Stock to be \$876,000. The Debtor listed the value of his claimed exemptions in these companies to be \$1,362,000 for the Ensworth Stock and \$219,000 for the Eagle Rock Gaming Stock. (JA, 18.)

claimed exemptions in both the Ensworth Stock and the Eagle Rock Gaming Stock (JA, 20-28).

On November 1, 2013, William A. Leonard, the Chapter Bankruptcy Trustee (the "Trustee") filed his Joinder to Objection to Claimed Exemptions (JA, 32-34).

Debtor has claimed an exemption for the entire stock interest he holds in the Ensworth Stock and the Eagle Rock Gaming Stock. In challenging these claimed exemptions, the Objecting Parties believe the Debtor is only entitled to exempt his non-economic interest (such as his voting rights, management rights, and power of appointment), and that Debtor's economic interests, including all profits and distributions related to Debtor's interests, are property of the bankruptcy estate which must be paid by the Trustee for the benefit of the estate and its creditors (JA, 18, 20-28 and 32-34).

A hearing on the Objection to Claim Exemptions was held in the Bankruptcy Court on February 19, 2014 (JA, 54) and on April 2, 2014, the Bankruptcy Court entered in its "Order Certifying Question of Law to the Nevada Supreme Court", thereby asking the Nevada Supreme Court to give guidance on the exemption issue (JA, 54-60).

STANDARD OF REVIEW

Not appearing pursuant to NRAP 28(b)(5).

SUMMARY OF ARGUMENT

Exemptions provided by Nevada law are to be liberally construed. This has consistently been the interpretation given Nevada's statutes by the bankruptcy courts. See, e.g., *In re Norris*, 203 B.R. 463 (Bankr. D. Nev. 1996).

NRS 21.090-1(bb) exempts Debtor's stock from all creditor claims and judgments. NRS 78.746-2(c) provides the criteria to be used to determine which stock is exempt and which is not. Once stock is determined to be exempt the entire interests of a stockholder in that stock, both economic and non-economic, are exempt. 3/

3/ The stock owned by the Debtor is in corporations with fewer than 100 stockholders and which are not publicly traded corporations or subsidiaries thereof, in whole or in part, and are not professional corporations as defined in NRS 89.020. Debtor submits the Objecting Parties agree. (See Appellants' Opening Brief, p. 12, fn. 18 and JA33, lines 4-5.) And, in any event, Debtor's bankruptcy schedules, by claiming exemption for such stock, in effect make such representations. Thus, Debtor submits his stock ownership interests under review in the case at bar meet the definitional criteria for exemption described in NRS 78.746-2(c), as incorporated by NRS 21.090-1(bb). All future references in Debtor's Answering Brief to stock that qualifies for exemption and/or is owned by Debtor is to stock having these characteristics.

NRS 21.090-1(bb) provides exemption for stock as follows:

Stock in a corporation described in subsection 2 of NRS 78.746 except as set forth in that section. (Emphasis supplied.)

The cross-reference from exemption provision NRS 21.090-1(bb) to NRS 78.746-2 is to incorporate the criteria provided by NRS 78.746-2(c) to be used to describe stock qualifying for exemption. The most logical interpretation of that cross-reference is that it specifically limits that incorporation to be for exemption description purposes only.

The Objecting Parties contend that in all events, whether stock is exempt or not, the economic rights in that stock can be reached by a debtor's judgment creditor through the use of a charging order. Debtor disagrees and submits that once it has been determined that stock satisfies the exemption criteria of NRS 78.746-2(c), all rights in that stock, economic or otherwise, are free from creditor taking and the stock is 100 per cent exempt. Debtor submits as his stock is fully exempt from execution under NRS 21.090-1(bb), his creditors cannot reach any rights, economic or otherwise, in that stock through the use of a charging order.

ARGUMENT

I. EXEMPTIONS ARE TO BE LIBERALLY CONSTRUED

Sections 522(b)(1) and (3) of the United States Bankruptcy Code permit a debtor to claim exemption for property included in his bankruptcy estate that is otherwise exempt from execution by creditors under the law of the state where the debtor resides. 4/ As this Court well knows, exemptions are to be liberally and beneficially construed in favor of those who claim them. See, e.g., *In re Norris*, supra, at 465 and cases cited. Exemptions exist to preserve a debtor's property for the benefit of the debtor and his family. *In re Norris, ibid.* Thus, Debtor submits if there is any doubt as to whether his interpretation of NRS 21.090-1(bb) or that of the Objecting Parties should control, the Debtor should prevail.

II. NEVADA STATUTES EXEMPT FROM EXECUTION ALL OF THE DEBTOR'S INTERESTS IN THE STOCK OF ENSWORTH APTS., INC. AND EAGLE ROCK GAMING, INC.

What stock is exempt? NRS 21.090-1(bb) provides exemption for "Stock in a corporation **described** in subsection 2 of N.R.S. 78.746 except as set forth in that section." (Emphasis supplied.)

4/ See Addendum To Appellants' Opening Brief, 000001- 000002.

Objecting Parties have argued the words “except as set forth in that section” mean except as set forth in all of Section 78.746 so that the charging order remedy remains available against Debtor’s stocks. (See , e.g., Appellants’ Opening Brief, pp. 4 and 12). Debtor submits the reference in NRS 21.090-1(bb) to NRS 78.746-2 is for descriptive, defining purposes only, incorporating in NRS 21.090-1(bb) only the corporate criteria provided in NRS 78.746-2(c) so as to describe the particular corporate stock that is exempt from creditor claims. The reference is not a remedy reference, is not meant to bring the charging order remedy of NRS 78.746-1 into play to limit the exemption otherwise provided by NRS 21.090-1(bb). As Debtor submits the language of NRS 21.090-1(bb) refers to NRS 78.746 for descriptive purposes only, the more reasonable interpretation of the “except as set forth in that section” clause is to limit it to being a defining reference only, to determine which stock is exempt and which is not, and not an interpretation that includes all of the terms of the balance of NRS 78.746. If the NRS 21.090-1(bb) cross-reference is for descriptive purposes as stated, the reference over can only be to the stock that is being described in NRS 78.746-2(c) and not to all of NRS 78.746. Debtor submits where the statute refers to “except as set forth in that section” it is referring to stock that is “except[ed]” from qualifying for exemption, it is not referring to the balance of NRS 78.746 as a whole. Debtor

does not “ignore” the last seven words of NRS 21.090-1(bb) as he has been accused of doing by Objecting Parties. (See Appellants’ Opening Brief, p. 4.) And Debtor agrees Nevada Supreme Court precedent “requires that all language in a statute be given meaning.” (See Appellants’ Opening Brief, p. 4 and cases cited.) He just disagrees with the interpretation and meaning given to all of those words by the Objecting Parties .

Of additional importance is NRS 78.746-2(b). This section exists independent of NRS 21.090-1 and provides:

“2. . . . , this section:

* * * *

(b) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder’s stock.”

If the Objecting Parties’ interpretation of NRS 21.090-1(bb) and NRS 78.746-2(c) is correct, how can it be held that NRS 78.746 as a whole or even NRS 78.746-1 by itself would not deny the Debtor the exemption given him by NRS 21.090-1(bb)? Debtor submits this Court should not so hold. If the charging order remedy of NRS 78.746-1 applies to Debtor’s stocks, surely he will be deprived of part of the exemption given him by NRS 21.090-1(bb). His exemption in that stock will be diminished, it will be lessened , and that is what NRS 78.746-2(b) is clearly meant to prohibit.

Objecting Parties cite *In re Foos*, 405 B.R. 604 (Bankr. N.D. Ohio 2009) to support the argument “that NRS 78.746 does not prohibit charging orders on stock in closely held corporations,” stating “the court held that the Debtor’s economic interest was not exempt under a statutory scheme similar to Nevada’s , which has a provision nearly identical to NRS 78.746(2)(b).” (Objecting Parties’ Opening Brief, p. 5.) The Debtor disagrees as the Ohio and Nevada statutes involved, because of the breadth of the exemption provided by NRS 21.090-1(bb) for stock of the description owned by Debtor, are not “nearly identical” to one another. In addition, Debtor submits the focus of the *Foos* court would have been very different had it been dealing with an entity that was fully protected from creditor claims by exemption and even though it would have had only one owner. However, the *Foos* court dealt with a 1/10th interest in a partnership that was found not to be fully exempt because of the less than 100 per cent ownership involved. For these reasons, Debtor submits the *Foos* decision is of very little precedential value, if any, to the case at bar.

The *Foos* court found “the Debtor’s position, for the exemption of his entire partnership interest, . . . [did not rely] on any specific statutory directive. . . .” *Ibid*, at 609. The exact opposite is true in the case at bar. Debtor’s position is based on a specific statutory exemption directive, NRS 21.090-1(bb),

incorporating by reference only the corporate criteria, the descriptive parameters, of NRS 78.746-2(c), which include a corporation with fewer than 100 stockholders and most importantly, a corporation which has only one stockholder.

NRS 21.090-1(bb) was specifically created to provide an exemption where none had existed before. 5/ Interestingly, this exemption was provided by the legislature in the same year, 2007, that the charging order remedy was first added to the Nevada Revised Statutes. 6/ The breadth of the exemption was soon after expanded to include stock of a corporation with less than 100 stockholders and specifically included a corporation all of which was owned by one stockholder. 7/ The Ohio statutes referenced in *Foos* did not deal with an entity that could have one owner. That is most important because the essence of *Foos* is it dealt with a multi-member entity and the Bankruptcy Court's perceived need to protect the existence of that entity for non-debtor owners. *In re Foos, supra* at 609-610. The Ohio court was concerned with having to protect the interests of entity owners

5/ See Addendum To Appellant's Opening Brief, 000084, 000091 and 000094, identifying as NRS 21.090-1(y) what is now NRS 21.090-1(bb).

6/ See Addendum To Appellant's Opening Brief, 000084 - 000085, lines 3-8.

7/ See Addendum To Appellants' Opening Brief, 000023.

other than a debtor in bankruptcy and found that so long as the partnership entity there at issue would not be destroyed by giving relief to a creditor of the debtor-partner, the charging order remedy would be available. *In re Foos, ibid.* The Nevada statutes go much further and provide a “specific statutory directive” to protect even a sole stockholder’s entire interest and not just those of other stockholders in the case of a multi-stockholder ownership situation.

Debtor’s position does not suffer from the same “fundamental flaw” suffered by Foos because there is no risk under Nevada law of having to dissolve a corporate entity and thereby leave other stockholders at risk where a debtor would be the sole stockholder of a corporation. *In re Foos, supra*, at 609 . The Nevada corporation will remain in place and the stock will be completely exempt.

Neither is there a need “to strike a balance between protecting the rights of a debtor- . . . [stockholder’s] creditors, with the need to also protect the . . . [corporate entity]” as the NRS 21.090-1(bb) exemption protects the entire corporate entity and its stock by fully exempting the stock of the less than 100 stockholder or sole-stockholder corporation, by providing an exemption in the qualifying stock for all of the interests in the individual shares themselves. *Cf. In re Foos, supra*, at 610.

Given the decision of the Nevada legislature to exempt the stock of

corporations having fewer than 100 stockholders, specifically including a single-stockholder corporation, Debtor submits it would be accurate to rephrase the *Foos* court's decision to state, and for the Nevada Supreme Court to adopt as its conclusion, that,

“carried to its logical conclusion, the Debtor's position would [properly] allow persons, by simply transferring their property to a . . . [qualifying corporate] entity, to easily place their assets beyond the reach of their creditors. The Court is . . . willing to countenance such a fundamental shift in the law given the . . . [existence] of the express statutory language [in NRS 21.090-1(bb)] exhibiting an intent to effectuate such a change” to exempt all of the stock of a qualifying corporation. Cf. *In re Foos, supra*, at 610.

That is exactly what Nevada Revised Statutes exemptions do. Other than for exemptions measured by specific dollar amounts, see, e.g., NRS 21.090-1((f) providing an exemption for \$15,000.00 of vehicle equity, exemptions completely insulate property from judgment creditor claims. See, e.g., NRS 21.090-1(y), providing an exemption for all Social Security benefits, regardless of amount.

Objecting Parties cite *Weddell v. H2O, Inc.*, 127 P. 3d 743 (Nev. 2012), in support of their argument that “Debtor's claimed exemption of his entire interest (both economic and non-economic) in the . . . [stocks] is . . . overly-broad . . .” (Objecting Parties' Opening Brief, p. 4; also see pp. 12-13.). Debtor submits that decision is inapposite to the case at bar because it was not a bankruptcy case

dealing with the nature of exempt assets for bankruptcy purposes and that decision assumed the remedy of a charging order could in all events be an appropriate one in regard to any limited liability companies. NRS Section 86.401, in dealing with limited liability companies, does not provide any qualifying descriptors that either do or do not limit the application of its provisions to any particular limited liability company - all limited liability companies "may" be subject to it. The same cannot be said of NRS Section 78.746-2 which provides descriptors of exempt stock. Any attempt to rely on *Weddell* to explain the scope of a charging order as applied to an asset that is or could be exempt for bankruptcy purposes is misplaced. In any event, Debtor submits this Court need not reach the charging order question as the Debtor's stocks are initially fully exempt.

Although the potential exists to find the scope of the charging order remedy under all NRS provisions to be the same, it is not a given that NRS 78.746-1 applies to all corporate stock whereas NRS 86.401-1 certainly "may" apply to all limited liability companies, regardless of the number of members or any other qualifying descriptors. And that is what distinguishes those statutes from each other, at least as far as their initial application of the charging order remedy is relevant. A limited liability company membership interest is not exempt under NRS 21.090-1 and, therefore, at a minimum, must run the gauntlet of NRS 86.401.

The same cannot be said for corporate stock interests and NRS 78.746-1.

The *Weddell* decision dealt with the application of Nevada's limited liability statute to the interest in a limited liability company. There is no Nevada Revised Statute exemption for an interest in limited liability companies. Therefore, the decision of Court in Weddell could not have reflected what that Court could have thought had it been dealing with assets that could have been exempt.

Objecting Parties also cite *Renteria v. Canepa*, 2013 WL 3155348, at *2 (D. Nev. 2013), as a case allowing a charging order to be applied to corporate stock. (See Objecting Parties' Opening Brief, pp. 13-14.) This decision is clearly distinguishable from the case at bar as it was not a bankruptcy case and it did not involve any claim of exemption for stock pursuant to NRS 21.090-1(bb). In fact, the Court was careful to point out the owner of the stock was not himself in bankruptcy.

III. THE CHARGING ORDER REMEDY OF NRS 78.746-1 IS NOT AVAILABLE TO CREDITORS OF THE DEBTORS SO AS TO ALLOW THEM TO SATISFY A JUDGMENT AGAINST THE DEBTOR OR A DEBT OF THE DEBTOR OUT OF STOCKS EXEMPTED FROM EXECUTION BY NRS 21.090-1(bb) AND OWNED BY HIM.

The case at bar is about an exemption, not a remedy. The scope of the relief afforded a judgment creditor by a charging order authorized by NRS 78.746-1 is not at issue. The statute is clear as to what the relief is when the remedy is

available. 8/ Even when the charging order provision is applicable, whether it will be made available to a judgment creditor remains within the Court's discretion. 9/

Objecting Parties' discussion of the legislative history of the charging order as applied to corporations, although it may be accurate as far as it goes, does not reveal there was any mention of the corporate stock exemption provided by NRS 21.090-1(bb) and its relationship to NRS 78.746. (Objecting Parties' Opening Brief, pages 6-9.) However, Debtor's reading of that legislative history and a recognition of the substantive difference between the exact words used by the legislature in 2005 and 2007 provides significant support for Debtor's interpretation of NRS 21.090-1(bb) and its cross-reference to NRS 78.746-2.

In 2005 an attempt was made to make the charging order remedy applicable to NRS Chapter 78 and have it apply to corporations having more than 1 but fewer than 75 stockholders. (Nev. S.B. 453 (Second Reprint) at Addendum of Respondent 000042, lines 1-6 and 000043, lines 1-4.) This bill would also have

8/ See NRS 78.746-1; also see NRS 86.401-1 (limited-liability companies); NRS 87.280-1 (partnerships); NRS 87.4342 (partnerships); NRS 87A.480-1 (limited partnerships); NRS 88.535-1 (partnerships) regarding other entity forms.

9/ N.R.S. 78.746-1 states "On application to a court of competent jurisdiction by any judgment creditor of a stockholder, the court may charge the stockholder's stock (Emphasis supplied.)

amended NRS 21.090-1 to add subsection “(x)” providing an exemption for “Stock of certain corporations, subject to the provisions of section 1 of this act,” section 1 being the amendment to NRS Chapter 78 for corporations. (Nev. S.B. 453 (Second Reprint) at Addendum of Respondent 000049, lines 44-45.) (Emphasis supplied.) This bill failed to pass.

In 2007, in Senate Bill 242, the Nevada legislature revisited the issue of making the charging order remedy applicable to corporations that had “more than 1 but fewer than 75 stockholders” (Nev. S.B. 242 (Second Reprint) at Addendum of Respondent 000111, lines 43-4.) This time the bill passed. However, the legislature also added subsection “(y)” to NRS 21.090-1 and rather than saying the exemption was “subject to the provisions of section 1 of this act,” as it had done in 2005, which language would have incorporated all of what became NRS 78.746, the legislature provided the exemption would be for “Stock of a corporation described in subsection 2 of section 43.5 of this act except as set forth in that section.” (Nev. S.B. 242, *supra*, at 000121, lines 11-12.) (Emphasis added.) This difference in language is critical to Debtor’s case for in the introduction to SB 242, referring to Section 171.2-171.6 of the bill, which would encompass what was designated as NRS 21.090-1(y), the Senate Judiciary Committee specifically stated those provisions would “provide the stock of certain corporations may be exempt

from execution under certain circumstances.” (Nev. S.B. 242, *supra*, at 000100, lines 64-66.) (Emphasis supplied.) And what would those “circumstances” most logically be other than those described, the definitional descriptors, the criteria that were placed in what became NRS 78.746-2(c). (Nev. S.B. 242, *supra*, at 000111, lines 41-44 and 000112, lines 1-4.)

Debtor submits the legislative history of S.B. 242 clearly shows corporate stock exempted under what is now NRS 21.090-1(bb) was meant to be “exempt from execution,” not subject to a charging order, so long as it satisfied the criteria contained in 78.746-2(c). To the extent corporate stock was not so described it was not exempt and only then could the charging order remedy potentially apply. If the legislature had meant to have all of NRS 78.746 apply to exempt stock it would have used the language used in 2005. It did not do that. The language of the cross-reference from NRS 21.090-1(bb) to NRS 78.746-2 adopted in 2007 clearly was meant to refer only to the stock criteria contained in NRS 78.746-2(c) and not to all of NRS 78.746 (including NRS 78.746-1) . Debtor has found nothing contrary to his interpretation of NRS 21.090-1(bb) in the legislative history relied on by the parties.

The matter relevant to the case at bar is the scope of the exemption the Debtor is afforded by NRS 21.090-1(bb). Debtor submits the stock interests he

owns in corporations meeting the definitional requirements of NRS 21.090-1(bb) are fully exempt from the application of the charging order remedy provided in NRS 78.746-1. Debtor submits the exemption provided by NRS 21.090-1(bb) trumps the charging order remedy.

All of the Nevada Revised Statutes provisions dealing with entity forms of organizations, e.g., partnerships, limited partnerships, limited liability companies and corporations, and with charging orders, protect exemptions to which an entity owner is entitled.^{10/} However, under NRS 21.090-1, of those entity forms only stock of a corporation has actually been granted an exemption from creditor claims. No exemptions from creditor claims are otherwise available under NRS 21.090-1 for the ownership interests of partners, limited partners or members of a limited liability company. The omissions of these other types of interests from N.R.S. 21.090-1 creates an inference that our legislature did not intend to exclude them from the scope of a charging order. *In re Norris, supra*, at 467. ^{11/} As a corollary,

^{10/} See, for example, NRS 86.401-2(b), dealing with limited liability companies; NRS 87.280-3 and 87.4342-4 dealing with partnerships; and NRS 87A.480-2(b) and 88.535-2(b) dealing with limited partnerships.

^{11/} Also see *Department of Taxation v. DaimlerChrysler*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005). “[O]missions of subject matters from statutory provisions are presumed to have been intentional.”

the separate, special and unique exempt status given by the Nevada legislature to qualifying corporate stock compared to these other forms of entity ownership must be given meaning and should not be lightly dismissed. Yet, Objecting Parties want to limit the scope of the stock exemption in question. However, as this Court well knows, exemptions are to be liberally construed. *In re Norris, supra*. If Objecting Parties are correct, stockholders of corporations, regardless of their number, would be treated the same as owners of other types of operating entities when it came to the application of the charging order remedy. This conclusion cannot be correct as it would make a nullity of the exemption provided for corporate stock in NRS 21.090-1(bb).

In 2007 the Nevada legislature enacted N.R.S. 78.746. 12/ If N.R.S. 78.746-1 was to be looked at in isolation, it could be said the legislature had provided the charging order remedy applied to all corporate stock. And, had the legislature stopped there it would have been difficult to argue to the contrary. However, the legislature did not stop there. At the same time that it added NRS 78.746 to the Nevada statutes it also added NRS 21.090-1(bb) and made certain

12/ See footnote 5, *supra*.

corporate stock exempt from creditor claims. 13/ Why would there have been a need at that same time to exempt specifically described corporate stock if all corporate stock was otherwise to remain subject to the charging order remedy? Clearly, the enactment of the exemption was meant to ensure corporate stock, as provided in NRS 21.090-1(bb) and defined in NRS 78.746-2(c), would remain safe and exempt from the reach of a charging order. Anything less would make that additional enactment meaningless.

Prior to 2011, the Nevada Revised Statutes denied exemption to stock of a corporation that had one stockholder. And, the exemption initially provided in 2007 also disqualified stock of corporations with more than 74 stockholders. 14/ In 2011 the Nevada legislature broadened the scope of the NRS 21.090-1(bb) exemption by including the stock of a single stockholder corporation in the defined group eligible for exemption, 15/ the limit on the number of stockholders having been increased earlier in 2009 to 99. 16/ Disqualification regarding number of

13/ See footnote 4, *supra*.

14/ Addendum to Appellant's Opening Brief, 000016

15/ Addendum to Appellant's Opening Brief, 000023

16/ Addendum to Appellant's Opening Brief, 000022

stockholders was now limited to corporations with 100 stockholders or more and a one stockholder corporation qualified.

Why act in 2007 to exempt stock for the first time and act again in 2011 to expand the parameters of that exemption to include stock of a corporation having only one stockholder if the stock was meant to remain subject to the same remedy the ownership interests in non-exempt entities were subject to and which remedy would otherwise have been applicable to the stock in any event if there had been no expanded exemption? Debtor submits that would not have made legislative sense and was not the intention of the Nevada legislature. The Nevada legislature has made corporations with fewer than 100 stockholders different from the forms of other operating entities recognized by the Nevada statutes by exempting the stock of those corporations from claims of creditors. This is now true even if there is only one stockholder. No similar exemption is available to single-member limited liability companies or any other entity forms. If the charging order remedy applied to such stock that legislative difference would evaporate. This Court should not allow that to happen.

The Nevada legislature, in the span of only 4 years, had twice significantly broadened the exemption for corporate stock. To have such stock remain subject to the charging order remedy subsequent to those changes, after it was exempted,

as Objecting Parties argue should happen, would make the statutory changes superfluous acts.

The legislative history of NRS 21.090-1(bb) shows that of all of the types of business entity forms sanctioned by the Nevada statutes, the Nevada legislature chose to exempt from execution on creditor claims only certain types of corporate stock, owned by a limited number of stockholders. Debtor's stock meets the statutory criteria provided for exemption. Debtor submits the broadening of the exemption criteria over but a few years to include more stockholders is evidence the exemption is to be liberally applied. Objecting Parties attempt to have the scope of the exemption limited and to have Debtor's economic interests in his stock potentially subject to a charging order is not correct. Debtor submits it would be wrong for this Court to limit the scope of the statutory expansion by holding the charging order remedy applies in all events to all corporate stock.

CONCLUSION

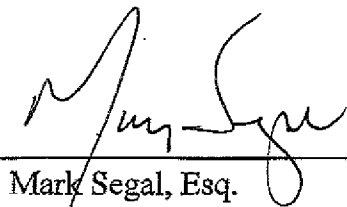
Debtor submits the reference in NRS 21.090-1(bb) to NRS 78.746-2 is for definitional purposes only, incorporating in NRS 21.090-1(bb) the corporate stockholder criteria provided in NRS 78.746-2(c) to define the particular corporate stock that is exempt (and not exempt) from creditor claims. The reference is not a remedy reference, is not meant to bring the charging order remedy of NRS 78.746-

1 into play to limit the exemption otherwise provided by NRS 21.090-1(bb). Debtor submits his corporate stocks satisfy the criteria of NRS 78.746-2(c), are not subject to the charging order provided by NRS 78.746-1 and are fully exempt under NRS 21.090-1(bb) from creditor claims.

MARK SEGAL, CHARTERED

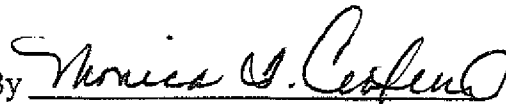
THE LAW OFFICE OF MONICA T.
CENTENO, A PROFESSIONAL
CORPORATION

By



Mark Segal, Esq.
NV Bar No. 01963
720 S. Fourth Street, Suite 301
Las Vegas, NV 89101

By



Monica T. Centeno, Esq.
NV Bar No. 11078
285 E. Warm Springs Road, #105
Las Vegas, NV 89119

ATTORNEYS' CERTIFICATE PURSUANT TO NRAP 28.2

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect Version 9 in Times New Roman, size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,758 words.

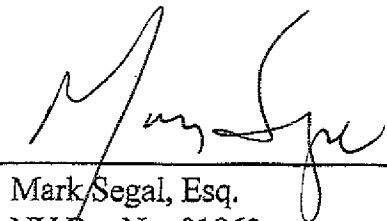
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that his brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: 17 day of December, 2014.

MARK SEGAL, CHARTERED

THE LAW OFFICE OF MONICA T.
CENTENO, A PROFESSIONAL
CORPORATION

By



Mark Segal, Esq.
NV Bar No. 01963
720 S. Fourth Street, Suite 301
Las Vegas, NV 89101

By



Monica T. Centeno, Esq.
NV Bar No. 11078
285 E. Warm Springs Road, #105
Las Vegas, NV 89119

CERTIFICATE OF SERVICE

I certify that on the 17th day of December, 2014, I served a copy of this Respondent's Answering Brief by mailing it by first class mail with sufficient postage prepaid to the following address(es) or by electronic filing notice:

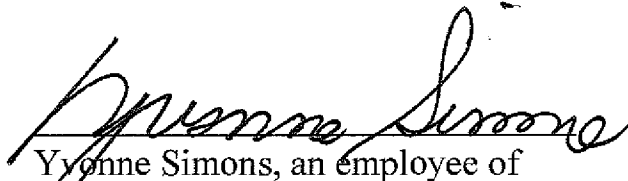
James H. Walton, Esq.
Nitz, Walton & Heaton, Ltd.
601 S. Tenth St., Suite 201
Las Vegas, NV 89101

James A. Imes, Esq.
Schwartz & McPherson Law Firm
2850 S. Jones Blvd., Suite 1
Las Vegas, NV 89146

Douglas Payne, Esq.
Fabrian & Clendenin, P.C.
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323

Honorable Bruce T. Beesley
U.S. Bankruptcy Judge
300 Las Vegas Blvd. South, 4th Fl.
Las Vegas, NV 89101

William A. Leonard, Trustee
6625 S. Valley View, #224
Las Vegas, NV 89118


Yvonne Simons, an employee of
Mark Segal, Chartered