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Tracie K. Lindeman
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN A. RITTER, an individual, and
DARRIN D. BADGER, an individual,

Petitioners,

Supreme Court Case No: 67835

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
in and for the COUNTY OF CLARK,
and the HONORABLE JERRY A.
WIESE, II., District Court Judge,

District Court Case No: A-13-680542-C

Respondents.

and

OMNI FAMILY LIMITED
PARTNERSHIP, a Nevada domestic
limited partnership,

Real Party in Interest.

**REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT
PROCEEDINGS**

Petitioners, John A. Ritter and Darrin D. Badger (“Petitioners”), through
their attorneys of record, Bogatz Law Group, hereby respectfully file this Reply In
Support of their Motion to Stay District Court Proceedings, which is made and

1 based upon the below Memorandum of Points and Authorities, the papers and
2 pleadings on file herein and such oral argument as the Court may permit.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. LEGAL ARGUMENT

5 A. A STAY SHOULD ISSUE IN THIS CASE BECAUSE 6 IMPORTANT ISSUES OF STATUTORY INTERPRETATION 7 MUST BE DETERMINED.

8 As Petitioners briefed in their underlying Motion, this Court routinely grants
9 stays of the lower court proceedings while it considers important issues of statutory
10 interpretation. This is especially true when Nevada's anti-deficiency statutes are
11 implicated. See Lavi v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 38, 325 P.3d
12 1265, 1266 (2014); Walters v. Eighth Jud. Dist. Ct., 263 P.3d 231, 232 (2011);
13 Sandpointe Apts. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 87, 313 P.3d 849,
14 852 (2013).

15 Respondents argue that a stay should not issue in this particular case because
16 the underlying facts are dissimilar to the facts in each of the foregoing cases where
17 this Court did issue a stay.¹ This argument lacks merit. To the contrary, the facts
18 in each of the foregoing cases are *very* similar to the facts of this case. See Lavi,
19 Docket No. 58968; Walters, Docket No. 55912; Sandpointe Apartments, LLC,
20 Docket No. 59507. In each of the foregoing cases, as in this case, a creditor sought
21 a deficiency judgment against a borrower/guarantor. See id. In each of the
22 foregoing cases, as in this case, the creditor claimed to have followed all of the
23 requirements necessary to seek a deficiency judgment against the
24 borrower/guarantor in accordance with Nevada law. See id. In each of the
25 foregoing cases, as in this case, the borrower/guarantor argued that contrary to the

26 ¹ See May 13, 2015 Opposition, on file herein at pp. 5 – 6.

1 creditor's assertions, the creditor did not satisfy the requirements necessary to seek
2 a deficiency judgment against the borrower/guarantor in accordance with Nevada
3 law. See id. In fact, the issue now before this Court (whether the creditor
4 complied with the six-month deadline contained in NRS 40.455(1)), *is the exact*
5 *same issue* that raised in the Lavi and Walters cases. In each of the foregoing
6 cases, this Court granted a stay of the lower court proceedings while it considered
7 the parties' competing arguments regarding the proper interpretation and
8 application of Nevada's anti-deficiency judgment statutes. Given that the same
9 public policy, statutory interpretation and probability of irreparable harm are
10 presently at issue as they were in Lavi, Walters, and Sandpointe Apartments, LLC,
11 Petitioners respectfully request this Court to issue the same stay in this case, that it
12 issued in each of those cases.

13 **B. THE NRAP 8 FACTORS, TAKEN AS A WHOLE, WEIGH**
14 **DECIDEDLY IN FAVOR OF THE ISSUANCE OF A STAY.**

15 **1. Petitioners' Writ Is Likely To Succeed On The Merits.**

16 The plain language of NRS 40.455 and the precedent set by Lavi both
17 suggest that Petitioners are likely to succeed on the merits of their Writ. Omni's
18 chief argument against Petitioners' likelihood of success on the merits – namely,
19 that the District Court already carefully considered the matter and did not agree
20 with Petitioners² – is the same unsuccessful argument presented in opposition to a
21 motion for stay in Walters. Docket No. 55912. This argument is again
22 unpersuasive here, as the point of Petitioners' Writ is that the District Court's
23 determination (however careful it may have been) was incorrect under Nevada law.
24 This is especially true given that this Court will review this issue de novo. See

25 ² Id. at p. 9.
26

1 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Put
2 simply, Omni's disagreement with Petitioner's position is insufficient to overcome
3 the plain language of NRS 40.455 and this Court's decision in Lavi, which both
4 clearly require creditors to make an application for deficiency judgment within six
5 months following the foreclosure sale – something that Omni failed to do in this
6 case. Omni's failure to comply with NRS 40.455 is likely to result in this Court
7 overturning the District Court's decision in this case. For this reason, Petitioners
8 respectfully request this Court grant a stay of the District Court proceedings while
9 it considers Petitioners' Writ.

10 **2. Petitioners Will Lose The Ability To Avoid Unnecessary,**
11 **Costly, Time Consuming And Inconvenient Litigation - The**
12 **Object Of Their Appeal – If A Stay Is Not Granted.**

13 As detailed extensively in the underlying Motion, Petitioners will lose the
14 protections afforded by Nevada's anti-deficiency judgment protections – the ability
15 to avoid unnecessary, costly, time consuming and inconvenient litigation – in other
16 words, the object of their appeal – if this Court does not grant a stay of the District
17 Court proceedings. Omni's arguments regarding the Borrower's involvement in
18 the underlying case misses the point,³ because Omni is not merely proceeding
19 against the Borrower. It is proceeding against the Borrower *and the Petitioners as*
20 *guarantors*. In other words, the Petitioners as guarantors, are being forced to
21 participate in the District Court litigation unnecessarily. Accordingly, this Court
22 must issue a stay of the District Court litigation while it considers this Writ,
23 otherwise, Petitioners will lose the protections afforded by Nevada's anti-
24 deficiency judgment protections – the ability to avoid unnecessary, costly, time
25 consuming and inconvenient litigation – the object of their appeal. For this

26 ³ Id. at pp. 6 – 7.

1 additional reason, Petitioners respectfully request this Court grant a stay of the
2 District Court proceedings while it considers Petitioners' Writ.

3 **3. Denial Of A Stay Will Result In Irreparable Harm To**
4 **Petitioners.**

5 Petitioners will be irreparably harmed if a stay is not granted. Omni
6 mistakenly contends that the substantial inconvenience, wasted time and legal
7 expenses Petitioners face in being forced to unnecessarily defend themselves in the
8 underlying litigation are insufficient to warrant irreparable harm.⁴ Contrary to
9 Omni's position, however, "[t]he Legislature has shown a strong inclination
10 towards protecting an obligor's rights under the anti[-]deficiency statutes." Lavi,
11 325 P.3d at 1268 (*citing* Lowe Enters. Residential Partners, L.P. v. Eighth Judicial
12 Dist. Court, 118 Nev. 92, 103-04, 40 P.3d 405, 412-13 (2002)). Indeed, forcing
13 Petitioners to proceed with the unnecessary burden of litigation when they clearly
14 have no liability under Nevada's anti-deficiency judgment statutes, and then
15 possibly being forced to post a huge supersedeas bond in order to stay execution
16 pending an appeal is *precisely* the type of irreparable harm this Court must prevent.
17 For this additional reason, Petitioners respectfully request this Court grant a stay of
18 the District Court proceedings while it considers Petitioners' Writ.

19 **4. A Stay Will Not Result In Irreparable Harm To Omni.**

20 Omni will not suffer irreparable harm if a stay is granted. First, Omni's
21 suggestion that Petitioners might suddenly attempt to divest themselves of assets
22 during a stay is offensive and unsubstantiated.⁵ If Omni truly believed this was a
23 concern, they surely would not have let this case linger with the District Court for
24

25 ⁴ Id. at pp. 7 – 8.

26 ⁵ Id. at pp. 8 – 9.

1 the past two years, and could have raised this issue with the District Court at some
2 point before now. Moreover, the whole point of the underlying Writ is that Omni
3 is not entitled to any judgment against the Petitioners. Accordingly, by definition,
4 Omni will not suffer any harm during a stay, because they are not entitled to any
5 judgment against the Petitioners in the first place. Finally, the argument that a
6 delay in the resolution of litigation equates to irreparable harm has also been
7 soundly rejected by this Court on multiple occasions. See Fritz Hanson A/S v.
8 Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 987 (2000) (noting that a delay in time is
9 not irreparable harm); Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89
10 P.3d 36, 39 (2004) (reaffirming that a mere delay is not irreparable harm). For this
11 additional reason, Petitioners respectfully request this Court grant a stay of the
12 District Court proceedings while it considers Petitioners' Writ.

13 **II. CONCLUSION**

14 Based upon the foregoing, good cause exists for a stay. Petitioners therefore
15 respectfully request this Court grant their Motion To Stay District Court
16 Proceedings.

17 Dated this 20th day of May, 2015.

18 BOGATZ LAW GROUP

19 By: /s/ Charles M. Vlasic III, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of May, 2015, our office caused service of a true and correct copy of the above and foregoing **REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT PROCEEDINGS** pursuant to the Supreme Court Electronic Filing System, to the following:

Roger P. Croteau, Esq.
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9120 W. Post Rd., #100
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Attorneys for Real Party in Interest Omni Family Limited Partnership

And by first class United States mail, postage prepaid, Las Vegas, Nevada, to the following:

The Honorable Jerry A. Wiese II
Eighth Judicial District Court
Department 30
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Jaimie Stilz-Outlaw
An employee of Bogatz Law Group