

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA AND MICHAEL J.
MONA, JR.,

Petitioners,

vs.

Electronically Filed
Jul 17 2015 02:43 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: _____

THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JOE HARDY, DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,

Real Party in Interest.

EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)
(Relief needed by Monday, July 20, 2015)

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I

INTRODUCTION¹

This case presents various personal jurisdiction and due process issues in the context of post-judgment execution proceedings. Petitioners, Rhonda Helene Mona (“Rhonda”) and Michael J. Mona, Jr. (“Mike”) (collectively “the Monas”) seek emergency relief from the District Court’s July 15, 2015 order that imposes sanctions on the Monas but places a temporary stay on the order through Monday, July 20, 2015. See *Exhibit 1* at 11. In particular, the District Court’s order permits real party in interest, Far West Industries (“Far West”), to execute upon Rhonda’s bank accounts and release the funds, even though she is not a party to the District Court litigation. *Id.* at 9-10. In other words, the order does not merely freeze Rhonda’s bank accounts; the order allows Far West to take money out of the accounts to satisfy the judgment against Mike. Thus, the Monas ask the Court to stay the entire District Court proceedings and the entire effect of the District Court’s sanctions order. Far West continues to seek execution upon Rhonda’s separate property based upon a foreign judgment originally entered against Mike in California. See *Exhibit 2*.

Upon weighing the NRAP 8(c) factors, this Court should grant a stay of all District Court proceedings. Absent a stay, the purpose of the Monas’ writ petition would be defeated since it focuses on relief from Far West’s ability to

¹ This motion is being filed concurrently with a petition for writ of mandamus or prohibition by the Monas. To the extent necessary, we refer the Court to the writ petition, which provides a more comprehensive recitation of facts and legal argument.

levy upon assets that are not subject to the foreign judgment. Additionally, a stay of all District Court proceedings will not prejudice Far West because it will be required to follow the normal rules of procedure to enforce its judgment, instead of seeking ex parte relief. *See* 1 Petitioners' Appendix ("App.") 127-43. Any delay caused by these proceedings can be addressed by legal interest, which this Court has held to be an adequate remedy for loss of use of funds. *See Waddell v. L.V.R.V., Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167 (2006).

The Monas are likely to prevail on the merits of their writ petition because as a non-party, the District Court never acquired personal jurisdiction over Rhonda. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) ("Nevada Rules of Civil Procedure 45(c) requires that a subpoena be personally served."). Additionally, Far West did not even attempt to amend its foreign judgment to add Rhonda, it just began identifying assets it believed were subject to the judgment and then sought relief from the District Court, without complying with any execution procedures outlined in NRS Chapter 21 and Chapter 31. This Court has already prohibited the practice of adding parties in post-judgment proceedings in an effort to satisfy a judgment, particularly when the added parties were never given fair notice or a full opportunity to appear and oppose being added. *See Callie v. Bowling*, 123 Nev. 181, 186, 160 P.3d 878, 881 (2007). The District Court also committed a variety of other due process violations, such as failing to consider the mandatory factors under *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990) and failing to hold an evidentiary hearing

before sanctioning the Monas under NRCP 37. The District Court also summarily disregarded the Monas' property settlement agreement and deemed it a fraudulent transfer—all without an evidentiary hearing. Overall, the Court should grant a stay of all District Court proceedings to maintain the status quo. *See Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005).

II

LEGAL ARGUMENT

A. Standards for obtaining a stay.

In determining whether to grant a stay, this Court considers the four NRAP 8(c) factors: (1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits of the appeal. *See Hansen v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004) (holding that while no one factor is more important, “if one or two factors are especially strong, they may counterbalance other weak factors”).

In reviewing these factors, this Court has recognized that the purpose of a stay is to preserve the status quo, which in this case means that the entire District Court proceedings should be stayed until this Court has the opportunity to decide what assets are actually subject to Far West's execution efforts. *See*

Nelson, 121 Nev. at 835, 122 P.3d at 1254; *see also U.S. v. State of Mich.*, 505 F. Supp. 467 (W.D. Mich. 1980) (stating that the purpose of a stay is to preserve, not change, the status quo). Therefore, after considering the NRAP 8(c) factors, the Court should enter a stay of the entire District Court proceedings pending the resolution of the Monas' writ petition.

B. The Monas satisfy the NRAP 8(c) factors for this Court to enter a stay of all District Court proceedings.

1. The object of the Supreme Court review will be defeated and the Monas will suffer serious injury if a stay is denied.

Very simply, if the status quo is not maintained, Rhonda's separate property will be lost to execution based upon a judgment that is only against Mike. *See Exhibit 2*. Mike has a vested interest in the outcome of these proceedings to ensure that Rhonda's separate property remains separate since the Monas are currently going through a divorce. If Rhonda's separate property is taken to satisfy Far West's judgment, Mike will have to look elsewhere to satisfy his obligations to Rhonda in the divorce proceedings. So, the loss of Rhonda's personal property would both defeat the object of this writ petition, and the Monas would both suffer serious irreparable injury. Therefore, the Court should conclude that the Monas have satisfied the first two factors of NRAP 8(c) in favor of granting a stay of all District Court proceedings.

2. Far West will not suffer any serious or irreparable injury if a stay is granted.

The act of seeking stay relief pending the resolution of appellate proceedings does not in and of itself constitute harm to the non-moving party

for purposes of entering a stay. *See Hansen*, 116 Nev. at 658, 6 P.3d 982 at 986-87. A stay will not cause any serious or irreparable harm to Far West because it will be required to comply with the applicable rules of civil procedure and fundamental notions of fairness before seizing property belonging to the Monas. Moreover, Mike has already partially satisfied the judgment. Additionally, any delay caused by the writ proceedings can be addressed by the accrual of legal interest. *See Waddell*, 122 Nev. at 26, 125 P.3d at 1167. Therefore, the Court should similarly conclude that the Monas have satisfied the third NRAP 8(c) factor for granting a stay.

3. The Monas are likely to prevail in the proceedings before this Court.

In weighing this final factor, this Court has articulated that “a movant does not always have to show a probability of success on the merits, [but] the movant must ‘present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.’” *Hansen*, 116 Nev. at 659, 6 P.3d at 987. The Monas present at least serious legal questions to satisfy this final factor for entering a stay.

(1) Lack of personal jurisdiction over Rhonda. Rhonda was not a party to the foreign judgment (1 App. 1-7) originally obtained in California by Far West, nor was Rhonda ever made a party to the post-judgment proceedings in the District Court. As a fundamental right of due process, Far West was required to personally serve Rhonda before acquiring jurisdiction over her. *See, e.g., Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998)

(explaining that service of process is required to satisfy due process). The same holds true for discovery proceedings involving non-parties, which requires personal service of a subpoena according to NRCP 45. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (“Nevada Rules of Civil Procedure 45(c) requires that a subpoena be personally served.”). Due to the lack of personal service upon Rhonda, the Monas are likely to prevail on the merits of their writ petition.

(2) A separate action was needed against Rhonda. As a matter of law, Far West was not permitted to add new parties, such as Rhonda, in post-judgment proceedings, even if she had been personally served. In *Callie v. Bowling*, 123 Nev. 181, 186, 160 P.3d 878, 881 (2007), this Court explained that new parties cannot be added to a judgment in post-judgment proceedings based upon an alter ego theory because the new party is completely deprived of formal notice, discovery, fact finding, and an opportunity to be heard before the claim is resolved. The Court’s holding in *Callie* specifically overruled the former practice of simply adding new parties to a judgment in post-judgment proceedings by amendment. *See McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d 957 (1957). Contrary to *Callie*, the District Court relied upon *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970) for the notion that a judgment against Mike could be levied against Rhonda’s separate property without due process. Since *Randono* violates Rhonda’s due process rights, it should be overruled on the same basis that *Callie* overruled *McCleary Cattle*. Further, the District Court relied, in part, upon NRS 21.330 to sanction Rhonda

as a non-party. Yet, this statute expressly requires a judgment creditor, such as Far West, to “institute an action” against a non-party, such as Rhonda, instead of attaching her separate property and entering sanctions. Since Far West did not institute a separate action against Rhonda, the Monas are likely to prevail on the merits of their writ petition.

(3) Further violations of the Monas’ procedural due process rights. Everything about the District Court sanctions proceeding demonstrates that it should have never even taken place. Far West was required according to NRCP 37(a)(2)(A) to “include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.” Similarly, EDCR 2.34(d) mandated that Far West was to provide an affidavit of counsel that this meet and confer had taken place or the “[d]iscovery motion[] may not be filed” Yet, Far West’s motion under NRCP 37 was made ex parte and without any certification. 1 App. 127-43. No explanation was given why Far West’s motion was made ex parte.

Although the District Court imposed “ultimate” sanctions upon the Monas, the District Court refused to hold an evidentiary hearing. According to well established Nevada law, this was reversible error. *See, e.g., Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992). Although the District Court’s sanctions order is premised on NRCP 37, it did not even consider the factors outlined in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev.

88, 787 P.2d 777 (1990). And, Far West did not even attempt to comply with any of the execution protocols in NRS Chapter 21 and Chapter 31.

The District Court's sanctions order also makes a binding determination on fraudulent transfer against the Monas according to NRS Chapter 112 (Uniform Fraudulent Transfer Act) ("UFTA"), again without any separate complaint against the Monas, no evidentiary hearing, and no opportunity to conduct additional discovery. The District Court's flagrant violation of the Monas' due process rights provides an additional basis to demonstrate their likelihood of success in these proceedings.

(4) The post-marital property settlement agreement protects Rhonda's separate property. According to *Jewett v. Patt*, 95 Nev. 246, 247-48, 591 P.2d 1151, 1152 (1979), Rhonda's marriage to Mike does not make her automatically liable for the foreign judgment against him, especially since the judgment was based upon fraud. 1 App. 173-93. Other courts citing *Jewett* have held that "a spouse is not personally liable for his or her spouse's intentional torts committed during marriage merely by virtue of being married." *Henry v. Rizzolo*, 2012 WL 1376967, at *2 (D. Nev. 2012).

While the District Court claimed to have construed NRS 123.220 defining community property, it avoided the stated exception in subsection 1 of the statute for "[a]n agreement in writing between the spouses." Far West itself presented a copy of the Monas' post-marital property settlement agreement, defining Rhonda's separate property. 1 App. 144-56. Yet, the District Court concluded that the entire agreement was a fraudulent transfer, without

conducting an evidentiary hearing and without hearing testimony from the Monas. Since there were factual issues regarding the property agreement, the District Court was required to hold an evidentiary hearing and trace the source of the assets before summarily concluding that the Monas committed a fraudulent transfer. *See Hardy v. U.S.*, 918 F.Supp. 312, 317 (D. Nev. 1996) (“The question whether the property belongs solely to one spouse or to the marital community depends on the source of the funds with which it was acquired.”). The District Court’s summary treatment of this issue similarly demonstrates the Monas’ likelihood of success in these proceedings. As such, the Monas have satisfied the four NRAP 8(c) factors, justifying a stay from this Court. Therefore, the Court should grant a stay of the entire District Court proceedings.

III

CONCLUSION

After weighing the four NRAP 8(c) factors, this Court should grant a stay of the entire District Court proceedings. The Monas have satisfied all four factors and have demonstrated that this Court is likely to exercise its original jurisdiction to vacate the District Court’s sanctions order.

Therefore, the Monas respectfully request that the Court grant a stay of the entire District Court proceedings by the Monday, July 20, 2015 deadline set by the District Court's order.

DATED: July 17, 2015

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NRAP 27(e) CERTIFICATE

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At a hearing on Thursday, July 9, 2015, the District Court ordered post-judgment sanctions against the Monas and ordered that Rhonda's separate bank accounts were subject to execution and the release of all funds in her accounts at the end of the temporary stay on July 20, 2015. The written order was entered on July 15, 2015. 2 App 348-58. Intervention by this Court is needed by July 20, 2015 to prevent the release of funds from Rhonda's separate accounts. Counsel for Far West was notified in a telephone conversation on Friday, July 10, 2015, that Petitioners intended to seek emergency relief from this Court.

I hereby certify that this Emergency Motion for Stay under NRAP 27(e) relies upon issues raised by Petitioners in the District Court, and otherwise complies with the provisions of NRAP 27(e).

DATED: July 17, 2015

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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition 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 it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font. I further certify that this petition complies with the page- or type-volume limitations of NRAP 40 because it does not exceed 10 pages.

DATED: July 17, 2015

/s/ Robert L. Eisenberg

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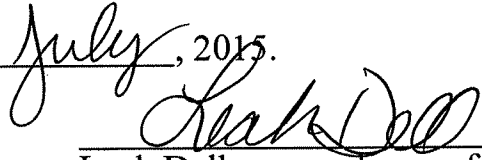
CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1), I certify that I am an employee of Marquis Aurbach Coffing and that on this date I caused to be served at Las Vegas, Nevada, a true copy of the Emergency Motion for Relief Under NRAP 27(e) addressed to:

The Honorable Joe Hardy
Eighth Judicial District Court, Dept. 15
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Via Hand Delivery

F. Thomas Edwards
Andrea M. Gandara
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DATED this 17th day of July, 2015.

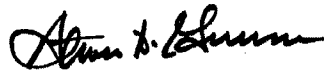


Leah Dell, an employee of
Marquis Aurbach Coffing

INDEX OF EXHIBITS TO
EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

Exhibit	Document Description
1	Order Regarding Order to Show Cause Why Accounts of Rhonda Mona Should Not Be Subject to Execution and Why the Court Should Not Find Monas In Contempt (filed 07/15/15)
2	Application of Foreign Judgment (filed 10/18/12)

Exhibit 1


CLERK OF THE COURT

ORDER
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DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California
corporation,

Plaintiff,

v.

RIO VISTA NEVADA, LLC, a Nevada limited
liability company; WORLD DEVELOPMENT,
INC., a California corporation; BRUCE MAIZE,
an individual; MICHAEL J. MONA, JR., an
individual; DOES 1 through 100, inclusive,

Defendants.

Case No.: A-12-670352-F
Dept. No.: XV

Hearing Date: July 9, 2015
Time of Hearing: 9:00 a.m.

**ORDER REGARDING ORDER TO SHOW CAUSE WHY
ACCOUNTS OF RHONDA MONA SHOULD NOT BE SUBJECT TO
EXECUTION AND WHY THE COURT SHOULD NOT FIND MONAS IN CONTEMPT**

The Court held a hearing regarding its Order To Show Cause Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should Not Find Monas In Contempt ("Order to Show Cause") on July 9, 2015, at 9:00 a.m. ("July 9 Hearing"). F. Thomas Edwards, Esq. and Andrea M. Gandara, Esq. of the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, appeared on behalf of Plaintiff Far West Industries ("Plaintiff" or "Far West"). Terry A. Coffing, Esq., of the law firm of Marquis Aurbach Coffing, appeared on behalf of Defendant Michael J. Mona, Jr. ("Mr. Mona") and Rhonda Helene Mona ("Mrs. Mona") (collectively referred to as the "Monas"). Edward L. Kainen, Esq., and Andrew L.

1 Kynaston, Esq., of the law firm of Kainen Law Group, LLC, also appeared as divorce counsel
2 for Mrs. Mona.

3 Prior to the July 9 Hearing, the Court reviewed all relevant pleadings and papers before
4 it, including, but not limited to: (1) Plaintiff's Ex Parte Application For Order To Show Cause
5 Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court
6 Should Not Find The Monas In Contempt ("Application") and the attached Exhibits 1-4; (2) the
7 Order to Show Cause and the notice of entry and receipt of copy associated therewith; (3) the
8 Response to Order To Show Cause Why Accounts Of Rhonda Mona Should Not Be Subject To
9 Execution And Why The Court Should Not Find The Monas In Contempt ("Response") and the
10 attached Exhibits A-C; (4) the Plaintiff's Reply in Support of Order To Show Cause Why
11 Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should
12 Not Find The Monas In Contempt ("Reply"); (4) the Supplement to Response to Order To Show
13 Cause Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The
14 Court Should Not Find The Monas In Contempt ("Supplement"). The Court was presented the
15 Declaration in Support of Request for Contempt of Plaintiff's counsel, F. Thomas Edwards, Esq.,
16 at the July 9 Hearing, which it accepted without objection.

17 With no other appearances having been made, the Court having reviewed and examined
18 the papers, pleadings and records on file in the above-entitled matter and heard the argument of
19 counsel, and good cause appearing therefore, the Court enters the following findings facts and
20 conclusions of law. To the extent any finding of fact should properly be designated a conclusion
21 of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should
22 properly be designated a finding of fact, it shall be deemed a finding of fact.

23 The Court makes the following findings of facts and conclusions of law:

24 On April 27, 2012, Plaintiff obtained a Judgment entered against Mr. Mona and the Mona
25 Family Trust Dated February 21, 2002 ("Mona Family Trust"). See Judgment, attached as Ex. 4
26 to Application. Mr. Mona and Mrs. Mona were at all relevant times co-trustees of the Mona
27 Family Trust, although after this Court ordered Mrs. Mona to appear for a judgment debtor
28 examination, based upon her capacity as trustee of the Mona Family Trust, Mrs. Mona resigned

1 and/or was removed as a trustee.

2 On January 30, 2013, the Court entered its original order for the judgment debtor
3 examination of Mr. Mona, setting forth certain documents that Mr. Mona was required to
4 produce, including:

5 8. Documents reflecting all assets (real, personal or mixed),
6 whether owned by you individually, in any partnership or
7 corporation form or in joint tenancy or in tenancy in common for
8 the past five (5) years.

9 11. A copy of all statements, and a copy of each check
10 register for each account, for each and every financial
11 institution (including but not limited to all banks, savings and
12 loans, credit unions, and brokerage houses) where you have an
13 account, where you have signature authority on an account, or in
14 which you have held or now hold an interest from January 2005
15 through to the present.

16 12. A copy of all bank statements, deposit slips, and canceled
17 checks for all bank, money market accounts which you own or in
18 which you owned any interest whatsoever, or on which you were
19 authorized to draw checks, whether said documents were in your
20 name alone, in the name of another person/entity, or in the
21 name of another and yourself as joint tenants, for the period of
22 three (3) years prior to the date hereof.

23 13. All savings account passbooks, bank statements and
24 certificates of deposit for any and all accounts, in which you
25 owned any interest whatsoever, or from which you were
26 authorized to make withdrawals, whether said accounts were in
27 your name alone, in the name of any other person, or in your name
28 and another as joint tenants, for the period of five (5) years prior to
the date hereof.

39. Copies of any and all contracts to which you are a party
entered into within the last five (5) years.

See Ex. A to Order entered 1/30/13 ("January 2013 Order") (emphasis added).

The Court subsequently ordered Mr. Mona to make a complete production of documents
by September 25, 2013. See Order entered 10/7/13 ("October 2013 Order"), 2:9-13.

On or about September 13, 2013, the Monas executed a Post-Marital Property Settlement
Agreement, in which Mr. and Mrs. Mona explain that they have sold their community property
shares of Medical Marijuana, Inc., for \$6,813,202.20. See Ex. 1 to the Application. The
Agreement then purports to divide the proceeds equally between themselves as their separate
property, with each receiving \$3,406,601.10. Id.

1 Although Mr. Mona produced approximately 33,000 documents in response to the
2 January 2013 Order and the October 2013 Order, Mr. Mona did not produce the Post-Marital
3 Settlement Agreement, in violation of both the January 2013 Order and the October 2013 Order.

4 At his judgment debtor examination on November 25, 2013, when Mr. Mona was asked
5 what he did with the more than \$6 million in stock sale proceeds, Mr. Mona lied and failed to
6 disclose the transfer of \$3,406,601.10 to Mrs. Mona. Specifically, at the judgment debtor
7 examination on November 25, 2013, Mr. Mona testified as follows:

8 Q. When you got out of Alpine Securities, how much was the
9 stock worth?

10 A. About \$0.12 a share.

11 Q. And translate that into an aggregate.

12 A. About \$6 million.

13 Q. Did you cash out?

14 A. Yes.

15 Q. What did you do with that \$6 million?

16 A. Paid bills.

17 Q. What bills?

18 A. Paid off some debts that I had.

19 Q. What bills?

20 A. Just personal bills. Gave 2.6 – loaned \$2.6 million to Roen
Ventures.

21 See Transcript of 11/25/13 Judgment Debtor Examination of Mr. Mona, 9:8-21, attached as Ex. 2
22 to the Application.

23 Mr. Mona's deceit and omission cannot be excused by a lack of memory because the
24 purported transfer through the Post-Marital Settlement Agreement occurred only shortly before
25 his examination. Likewise, Mr. Mona's deceit and omission cannot be blamed on his attorney,
26 as Mr. Mona was in control of his testimony at the judgment debtor examination in 2013. At his
27 more recent judgment debtor examination, Mr. Mona admitted that he should have produced the
28 Post-Marital Settlement Agreement in 2013 and that he should have disclosed it during the

1 November 25, 2013 examination and, on this point, the Court agrees with Mr. Mona.

2 The Court finds that the money purportedly transferred through the Post-Marital
3 Settlement Agreement was community property as it was acquired during the Monas' marriage.
4 The Monas have been married for more than 30 years. All property acquired after the marriage
5 by either husband or wife is community property, subject only to limited exceptions identified in
6 NRS 123.220. All debts incurred during that time are community debts under Randono v. Turk,
7 86 Nev. 123, 466 P.2d 218 (1970). See also Cirac v. Lander Cnty., 95 Nev. 723, 602 P.2d 1012;
8 In re Bernardelli, 12 B.R. 123 (Bankr. D. Nev. 1981); Nelson v. United States, 53 F.3d 339, 1995
9 WL 257884; F.T.C. v. Neiswonger, 580 F.3d 769 (8th Cir. 2009).

10 Plaintiff obtained the Judgment against Mr. Mona during the Monas' marriage, and it
11 therefore is a community debt. That community debt can be collected against the entirety of the
12 Monas' community property under Randono v. Turk, 86 Nev. 123, 466 P.2d 218 (1970) and
13 Henry v. Rizzolo, 2012 WL 1376967 (Dist. Nev. April 19, 2012). See also Cirac v. Lander
14 Cnty., 95 Nev. 723, 602 P.2d 1012; In re Bernardelli, 12 B.R. 123 (Bankr. D. Nev. 1981); Nelson
15 v. United States, 53 F.3d 339, 1995 WL 257884; F.T.C. v. Neiswonger, 580 F.3d 769 (8th Cir.
16 2009). The Court finds Norwest Fin. v. Lawver, 849 P.2d 324 (Nev. 1993) and Hogevoll v.
17 Hogevoll, 59 Cal.App.2d 188, 138 P.2d 693 (1943), which are cited in the Response,
18 distinguishable as those cases involved determinations of lender intent and community debt with
19 respect to loans made during marriage, as opposed to collection on a judgment for fraud
20 committed by a spouse during marriage. Mrs. Mona's alleged lack of involvement in the
21 underlying litigation that gave rise to Far West's Judgment is not relevant as to judgment
22 collection. There is no evidence that the assets and debts at issue here were acquired by either of
23 the Monas before marriage.

24 On May 13, 2015, the Court entered orders scheduling the judgment debtor examinations
25 of Mr. and Mrs. Mona. The order set forth a list of documents that Mr. and Mrs. Mona were
26 required to produce, including:

- 27 1. For the period beginning April 2012 through the present
28 date, financial documents of Judgment Debtor, including, but
not limited to, but not limited to, statements for checking,

1 savings or other financial accounts, securities brokerage
2 accounts, certificates of deposit, shares in banks, savings and loan,
3 thrift, building loan, credit unions, or brokerage houses or
4 cooperative, and records of income, profits from companies, cash
5 on hand, safe deposit boxes, deposits of money with any other
6 institution or person, cash value of insurance policies, federal and
7 state income tax refunds due or expected, any debt payable to or
8 held by or for Judgment Debtor, checks, drafts, notes, bonds,
9 interest bearing instruments, accounts receivable, liquidated and
10 unliquidated claims of any nature, or any and all other assets.

11 23. For the period beginning April 2012 through the present
12 date, Documents relating to monies, gifts, bequests, dispositions,
13 or transfers paid or given to Judgment Debtor.

14 26. For the period beginning April 2012 through the present
15 date, Documents relating to all tangible or intangible property or
16 other assets sold, assigned, transferred, or conveyed by
17 Judgment Debtor to any person or entity.

18 29. Documents evidencing any and all other intangible
19 personal, tangible, and/or real property of Judgment Debtor not
20 already identified in the items set forth above.

21 See Orders entered 5/13/15 ("May 2015 Orders").

22 In their response to the May 2015 Orders, the Monas did not produce certain bank
23 records purportedly because the bank accounts are in the name of Mrs. Mona only, despite the
24 fact that the accounts hold community property, in violation of the May 2015 Orders. Mrs.
25 Mona made no efforts to produce any documents in response to the May 2015 Orders. Mr.
26 Mona's failure to produce these bank records in response to the January 2013 Order and the
27 October 2013 Order was also a violation of said orders.

28 According to Mrs. Mona's testimony during examination, she has three (3) different bank
29 accounts in her name. The first account is a checking account at Bank of George, which contains
30 approximate \$190,000.00 in purported earnings from design projects performed by Mrs. Mona
31 during the marriage, such that the funds are community property. See Rough Transcript of
32 06/26/15 Judgment Debtor Examination of Mrs. Mona, 26:6-14 and 27:19-29:19 attached as Ex.
33 3 to the Application.

34 The second account is a money market account at the Bank of George, which contains
35 approximately \$300,000.00 that is purportedly the only remaining money from the transfer to
36 Mrs. Mona through the Post-Marital Settlement Agreement. Mrs. Mona testified that she

1 believes she only received approximately \$2 million based upon the Post-Marital Settlement
2 Agreement, instead of the full \$3.4 million identified in the Post-Martial Settlement Agreement.
3 See Rough Transcript of 06/26/15 Judgment Debtor Examination of Mrs. Mona, 21:18-23
4 attached as Ex. 3 to the Application. These funds constitute community property because they
5 were acquired during marriage. This remains true despite the Monas fraudulent transfer of the
6 community property to Mrs. Mona, as explained in more detail below.

7 The third account is a checking account from Bank of Nevada, which is purportedly
8 funded through the money market account at Bank of George, and thus also contains community
9 property.

10 The Monas did not produce any records related to these three (3) accounts that contain
11 community property in Mrs. Mona's name and so it is not possible to determine the account
12 numbers and identifying information associated with these accounts.

13 While the Response mentions the Monas' divorce proceedings, the Response omitted key
14 facts about the divorce, including that the divorce proceeding was only filed on July 2, 2015, and
15 that the Monas testified at their respective judgment debtor examinations just a few days earlier
16 that they had no plans to get divorced. The omission of these material facts in the Response
17 reflects on the Monas' credibility.

18 The fact that Mrs. Mona filed for divorce after the Court issued its Order to Show Cause
19 does not deprive the Court of its jurisdiction to rule on the Order to Show Cause. The Monas
20 have cited to no authority that the filing of a divorce complaint imposes a stay of execution upon
21 a judgment.

22 The Response to the Order to Show Cause complains about the timing of the briefing
23 schedule and the hearing date. However, the Response failed to disclose that Plaintiff offered to
24 both extend the briefing schedule and continue the hearing. At the hearing, the Court offered
25 additional time to the Monas, but the Monas declined. Accordingly, the Court proceeded to issue
26 its ruling.

27 The Monas have preempted the presiding judge as to any request for contempt in the
28 Application, as they are entitled to do. The Court expressly makes no finding of contempt as to

1 Mr. and Mrs. Mona without prejudice to Plaintiff pursuing such a request before another judge.
2 The Court only is considering whether sanctions should be issued pursuant to NRCP 37 as
3 requested in the Application.

4 The Court finds that Mr. Mona violated the January 2013 Order and October 2013 Order
5 by not producing the Post-Marital Settlement Agreement and the bank account records for Mrs.
6 Mona's three (3) bank accounts that contained community property. The Court further finds that
7 both Mr. and Mrs. Mona violated the May 2015 Orders by failing to produce bank records for
8 Mrs. Mona's three (3) bank accounts that contained community property.

9 The Court concludes that Mr. Mona's failure to produce the Post-Marital Settlement
10 Agreement as ordered and Mr. Mona and Mrs. Mona's failure to disclose Mrs. Mona's bank
11 records for the three (3) accounts in Mrs. Mona's name were not substantially justified and
12 constitute serious violations subject to sanctions under NRCP 37. Considering all available
13 sanctions under NRCP 37 for such violations, the Court finds grounds to designate the Post-
14 Marital Settlement Agreement a fraudulent transfer under NRS 112.180 on the merits based on
15 the following badges of fraud associated with that transfer.

16 First, the transfer in the Post-Marital Settlement Agreement was to an insider, Mrs.
17 Mona, as she is the wife of Mr. Mona, a judgment debtor, and was at all relevant times the
18 Trustee of the Mona Family Trust, a judgment debtor.

19 Second, Mr. Mona appears to have retained possession and control over some portion of
20 the funds that were purportedly transferred pursuant to the Post-Marital Settlement Agreement.

21 Third, Mr. Mona concealed the transaction by not producing the Post-Marital Settlement
22 Agreement as required by the January 2013 Order and October 2013 Order and by not disclosing
23 the transfer during his judgment debtor examination on November 25, 2013. Mr. Mona was not
24 truthful when he was asked during the November 25, 2013 examination about what he did with
25 the approximately \$6.8 million dollars.

26 Fourth, prior to effectuating the transfer through the Post-Marital Settlement Agreement,
27 Far West sued and obtained the Judgment against Mr. Mona and the Mona Family Trust.

28 ///

1 Fifth, the Post-Marital Settlement Agreement, and the related transfers of the proceeds
2 from the sale of the stock, transferred substantially all of Mr. Mona's assets as he was insolvent
3 at the time of the transfers, or rendered Mr. Mona insolvent shortly after they were made.

4 Sixth, Mr. Mona concealed assets by failing to disclose the Post-Marital Settlement
5 Agreement in 2013, by not disclosing the transfer during his judgment debtor examination on
6 November 25, 2013, and by not producing the bank account records for the accounts in Mrs.
7 Mona's name.

8 Seventh, at the time of the transfer through the Post-Marital Settlement Agreement, Mr.
9 Mona was insolvent, or the transfer rendered Mr. Mona insolvent shortly after it was made.

10 These considerations are several of many factors in NRS 112.180(2), which provides a
11 non-exhaustive list of considerations that support a determination that there was an actual intent
12 to hinder, delay, or defraud a creditor. To find a fraudulent transfer, not every factor must be
13 shown and the lack of one or more badges of fraud among many is not dispositive. The badges of
14 fraud described above provide overwhelming evidence that the Post-Marital Settlement
15 Agreement was a fraudulent transfer.

16 The Court therefore concludes that the Post-Marital Settlement Agreement is a fraudulent
17 transfer intended to hinder, delay and defraud Plaintiff in its efforts to execute upon the
18 Judgment and the \$6,813,202.20 remains community property that is subject to execution by Far
19 West in satisfaction of its Judgment. The funds in Mrs. Mona's three (3) bank accounts shall be
20 applied towards satisfaction of the Judgment pursuant to NRS 21.320. The Court finds the
21 sanctions imposed herein to be appropriate in light of the very serious misconduct at issue,
22 specifically the failure to disclose documents as ordered, which resulted in the dissipation of
23 millions of dollars in assets, of which only a relatively small amount remains (\$300,000 in Mrs.
24 Mona's Bank of George money market account) and concealment of significant community
25 property (\$190,000.00 in Mrs. Mona's Bank of George checking account) which could have
26 gone to satisfy Plaintiff's Judgment. The Court has also previously found that Mr. Mona is not
27 taking this proceeding seriously. See Order entered 06/17/2015. The sanctions are meant to deter
28 the Monas and future litigants from similar abuses.

1 This Court has authority pursuant to NRS 21.280 and, to the extent Mrs. Mona is
2 considered a third party, pursuant to NRS 21.330, to order Mr. and Mrs. Mona to not dispose
3 and/or transfer their assets as the Court has done in the past and does again in this Order.

4 Based on the foregoing, and good cause appearing:

5 **IT IS HEREBY ORDERED** that the relief requested in the Application is **GRANTED**
6 **IN PART and DENIED IN PART;**

7 **IT IS HEREBY FURTHER ORDERED** that the Monas' purported transfer pursuant to
8 the Post-Marital Property Settlement Agreement is a fraudulent transfer, and the facts proving
9 the fraudulent transfer, including the badges of fraud outlined above, are deemed established;

10 **IT IS HEREBY FURTHER ORDERED** that the facts entitling Plaintiff to execute
11 upon the bank accounts in the name of Mrs. Mona are deemed established;

12 **IT IS HEREBY FURTHER ORDERED** that the Monas are prohibited from claiming
13 that any money purportedly transferred pursuant to the Post-Marital Property Settlement
14 Agreement and any money in the bank accounts in the name of Mrs. Mona are exempt from
15 execution;

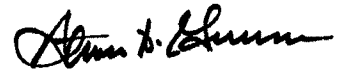
16 **IT IS HEREBY FURTHER ORDERED** that the Monas produce any previously
17 undisclosed bank records (including signature cards, bank statements, front and back of all
18 checks, check books and registers, deposit slips or receipts, withdrawal slips or receipts, wire
19 transfer confirmations or reports, etc.) for the past five (5) years, regardless of whose name is on
20 the account, no later than July 20, 2015;

21 **IT IS HEREBY FURTHER ORDERED** that Plaintiff is awarded reasonable expenses,
22 including, without limitation, attorney's fees and costs incurred as a result of the failure to
23 comply with the Court's orders, with Plaintiff to submit a bill of fees and costs no later than July
24 20, 2015; and

25 **IT IS HEREBY FURTHER ORDERED** that Mr. Mona, Mrs. Mona, and the Monas
26 collectively are prohibited from effectuating any transfers or otherwise disposing of or
27 encumbering any property not exempt from execution and until the money in the bank accounts
28 in the name of Mrs. Mona are applied to Plaintiff's Judgment.

10594-01/1542544.doc

Exhibit 2



CLERK OF THE COURT

FORJ
John R. Hawley
Nevada Bar No. 001545
LEE, HERNANDEZ, LANDRUM,
GAROFALO & BLAKE
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128
(702) 880-9750
Fax: (702) 314-1210
jhawley@leelawfirm.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California
corporation,

Plaintiff,

vs.

RIO VISTA NEVADA, LLC, a Nevada
limited liability company; WORLD
DEVELOPMENT, INC., a California
corporation; BRUCE MAIZE, and individual;
MICHAEL J. MONA, JR., an individual;
DOES I through 100, inclusive,

Defendants.

CASE NO.: A - 12 - 670352 - F

IV

**APPLICAION OF FOREIGN
JUDGMENT**

AFFIDAVIT OF JOHN R. HAWLEY, ESQ.

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

COMES NOW, JOHN R. HAWLEY, ESQ., being first duly sworn, and states as follows:

1. That Affiant is an attorney, duly licensed to practice in the State of Nevada and is a
member of the law firm of LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE.

LEE, HERNANDEZ, LANDRUM,
GAROFALO & BLAKE
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

LEE, HERNANDEZ, LANDRUM,
GAROFALO & BLAKE
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

1 2. That Affiant is counsel of record for FAR WEST INDUSTRIES, a California
2 corporation in the instant matter.

3 3. That the name and last known address of the Judgment Debtors herein are as follows:

4 Michael J. Mona, Jr.
5 2793 Red Arrow Drive
6 Las Vegas, NV 89135

7 Michael J. Mona, Jr., as trustee of the Mona Family Trust dated February 21,
8 2002
9 2793 Red Arrow Drive
10 Las Vegas, NV 89135

11 4. That the name and address of the Judgment Creditor herein is as follows:

12 Far West Industries, a California corporation
13 2922 Daimler Street
14 Santa Ana, CA 89128

15 5. That the Judgment herein, a duly exemplified copy of which is attached hereto, is valid
16 and enforceable.

17 6. That no portion of the Judgment herein has been satisfied.

18 FURTHER Affiant sayeth naught.


19 DATED this 18th day of October, 2012.

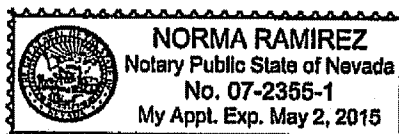
20 
JOHN R. HAWLEY, ESQ.

21 SUBSCRIBED and SWORN to

22 before me this 18th day of

23 October, 2012.

24
25
26 
27 NOTARY PUBLIC



28 (SEAL)

EXEMPLIFICATION CERTIFICATE

The documents to which this certificate is attached are full, true and correct copies of the originals on file and of record in my office. All of which we have caused by these presents to be exemplified, and the seal of our Superior Court of California, County of Riverside to be hereunto affixed.



IN WITNESS WHEREOF, I have hereto set my hand
and affixed the Seal of the said Court,

This 7th day of June
Sherri R. Carter
Sherri R. Carter, Clerk
Superior Court of California, County of Riverside

I, Mac R. Fisher, Judge of the Superior
Court of the State of California, in and for the County of Riverside, do hereby certify that
SHERRI R. CARTER whose name is subscribed to the preceding exemplification, is the
Clerk of the said Superior Court of the State of California, in and for the County of
Riverside, and that full faith and credit are due to her official acts. I further certify, that the
seal affixed to the exemplification is the seal of our said Superior Court and that the
attestation thereof is in due form and according to the form of attestation used in this State.

Date June 7, 2012

[Signature]
Judge of the Superior Court of California
County of Riverside

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 27 2012

MJV

APR 30 2012

PM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE COURT

FAR WEST INDUSTRIES, a California
corporation,

Plaintiff,

vs.

RIO VISTA NEVADA, LLC, a Nevada limited
liability company; WORLD DEVELOPMENT,
INC., a California corporation; BRUCE MAIZE,
an individual; MICHAEL J. MONA, JR., an
individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. RIC495966

JUDGE: Hon. Jacqueline Jackson

~~[PROPOSED] JUDGMENT NUNC PRO TUNC~~

Action Filed: March 24, 2008

Trial Date: September 23, 2011

On February 23, 2012, the Honorable Jacqueline Jackson entered Finding of Fact and Conclusion of Law in the above-referenced matter. Based upon those Findings and Conclusion, Judgment is hereby entered in favor of Plaintiff Far West Industries, a California corporation and against the following Defendants, jointly and severally: (1) Michael J. Mona, Jr.; (2) Michael J. Mona, Jr., as Trustee of the Mona Family Trust dated February 21, 2002; (3) Rio Vista Nevada, LLC, a Nevada limited liability company; and (4) World Development, Inc., a California corporation in the amount of \$17,777,562.18. Recoverable court costs of \$25,562.56 and attorney's fees of \$327,548.84 are also awarded to Far West Industries, jointly and severally against all Defendants. The Clerk is hereby directed to enter those amounts on this Judgment following Far West Industries' post-Judgment petition for them. Finally, the Clerk is hereby

~~[PROPOSED] JUDGMENT NUNC PRO TUNC~~

GREEN & HALL
ATTORNEYS AT LAW
RIVERSIDE, CALIFORNIA

1 directed to release the \$32,846 that was interplead by Defendant Fidelity National Title Company
2 to Far West Industries upon entry of this Judgment.

3 Dated: 4/27/12


The Honorable Jacqueline Jackson,
Judge Presiding

GREEN & HALL
ATTORNEYS AT LAW
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