

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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.

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Case No. 68434
Tracie K. Lindeman
Clerk of Supreme Court

REPLY IN SUPPORT OF
EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

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I

INTRODUCTION

The Monas' writ petition argues that the District Court improperly permitted Far West to use sanctions to execute upon the separate bank account of a non-debtor (Rhonda), without naming her as a party or personally serving her. After the Monas received a stay from this Court, Far West moved the District Court for an order to require the Monas to post a supersedeas bond. The District Court ordered Mike to post a \$24,172,076.16 bond and Rhonda to post a \$490,000 bond. The posting of these bonds, in the amount of time required by the District Court, was not possible for the Monas.

Upon granting the Monas' emergency motion on this bond issue, the Court required the Monas to identify some alternative security. The Monas outlined options for alternative security in their supplement as follows: As to Mike, the real property at 2793 Red Arrow Drive, Las Vegas, NV 89135, and as to Rhonda, shares of stock options in Cannavest Corp. Far West has argued, in its opposition that the Court should not address alternative security. Opp. at 10. Far West has argued that the Court should deny the emergency motion on the basis of the NRAP 8(c) factors (Opp. at 11-14.) and the factors in *Nelson v. Heer*, 121 Nev. 832, 122 P.2d 1252 (2005) (Opp. at 14-20.), even though this Court has already stayed the entire District Court proceedings.

The Monas request a continued stay of all District Court proceedings in Case No. A-12-670352 because Nevada law allows for alternative security in lieu of a supersedeas bond. The purpose of a bond is to protect a party from

damages incurred as a result of a wrongful injunction, not to protect Far West from damages that existed before the injunction was issued. *See Am. Bonding Co. v. Roggen Enters.*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993). The Monas' offered alternative security provides adequate protection to Far West.

II

LEGAL ARGUMENT

A. The Court should disregard the judgment debtor exam transcript.

In its opposition, Far West presents facts related to a San Diego condo purchase from Rhonda's judgment debtor examination as trustee of the Mona Family Trust. Opp. at 5. These facts should be excluded from consideration in review of this bond issue because they are not properly submitted as a part of the District Court record. Rhonda's representative judgment debtor exam transcript that was attached to the opposition as Exhibit H does not bear a file stamp, contrary to the requirements of NRAP 30(c)(1) and NRAP 21(a)(4). This transcript cannot legally form the basis of the District Court's prior sanctions order (July 15, 2015), and the new materials should be stricken. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). In addition, the facts related to the San Diego condo exchange should never have been before the District Court in this case at all, as this issue is the subject of a new lawsuit in the District Court. *See* Emergency Motion for Relief under NRAP 27(e) at 2 and Exhibit 3 (Complaint in District Court Case No. A-12-670352-F) attached thereto. Since Far West has subverted this Court's stay order by filing a new lawsuit based upon facts in the

instant case, the Court should maintain its stay in the instant case. Far West has already chosen its remedy to pursue the Monas in a new lawsuit, and it would be unfair to require the Monas to post security in the instant case while defending a nearly identical new case.

B. The issue of alternative security was presented in the District Court by both the Monas and Far West.

Far West now argues that the Monas failed to raise the issue of alternative security during the District Court hearing. Far West misstates the facts and law on this issue. In the briefing on the issue of the bond in the District Court, Far West discussed the issue of alternative security in detail (*See* Opp., Exhibit A (Far West’s Mot. for Bond Pending Appeal) at 6-8.), and the Monas also addressed this issue and focused upon the possibility of alternative security as well as the option of no bond requirement at all in their District Court opposition (*See* Opp., Exhibit O (Mona’s Opp. to Far West’s Mot. for Bond Pending Appeal) at 6:9-14). Specifically, the Monas argued under Nevada case law in *Nelson v. Heer*, 121 Nev. 832, 122 P.2d 1252 (2005), that the District Court could consider the factors cited by Far West regarding alternative security to conclude that no bond was required at all. *See* Opp., Exhibit O at 4:8-10; 6:11-23; 6:12-14 (emphasis added) (“Two relevant examples are mentioned in *Nelson* when a **full** supersedeas **bond is not required**”); 6:22-23 (“Therefore, the Court should consider the **noted exceptions for the posting of a supersedeas bond**, as outlined in *Nelson*). Although the Monas argued in the hearing that the District Court could find an exception to the full bond requirement, the Monas did not waive the “issue” of

alternative security. Far West cites *Schuck v. Signature Flight Support*, 245 P.3d 542, 545 (Nev. 2010) for the notion that it is inequitable to consider new issues that were not “mere refinements of points already in play” but “potentially game-changing issues” for the first time on appeal. Opp. at 10. It is not inequitable for this Court to examine the issue of alternative security in lieu of a bond or no bond at all because the factors and case law permitting a reduced bond were briefed and argued by both parties in the District Court. Moreover, Far West’s District Court bond motion was filed on shortened time, for which a written opposition was not even required.

C. The Monas have satisfied the requirements under NRAP 8(a) because the Monas previously requested a stay in the District Court.

Far West argues that the Court should deny the emergency motion because, under NRAP 8, the Monas were required to first move the District Court for a stay. Opp. at 10. Far West has removed the word “ordinarily” from NRAP 8(a) (Opp. at 10 (“NRAP 8 requires that a “party **must** . . . move first in the district court for . . . a stay.”) (emphasis added)), which states, “A party must ordinarily move first in the district court for the following relief” The term “ordinarily” is of significance here because it would be illogical for the parties here to first move the District Court for a stay where this Court has already stayed the entire District Court proceedings. Thus, Far West’s NRAP 8(a) argument is misplaced.

D. The NRAP 8(c) Factors Support the Granting of a Continued Stay.

1. The Object of the Writ Petition will be defeated if the stay is lifted.

In its opposition addressing the NRAP 8(c) factors, Far West does not analyze whether the object of the writ petition will be defeated if the stay is lifted. Instead, Far West makes a blanket statement that the bond “does not defeat the object of [the Monas’] Writ” and instead analyzes why the bond order serves the purposes of NRCP 62(d). Opp. at 11. This first NRAP 8(c) factor weighs heavily in favor of a continued stay. Nevada case law has explained, “[I]f one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

The bonds, as set forth in the District Court’s order, prevent the Monas from pursuing this original proceeding because the bond requirements, in both amount and timing, will permit execution upon the assets that are the subject of the writ petition. If the Monas prevail on their writ petition, this Court may find that Rhonda’s bank accounts are not subject to execution. However, if Far West executes on these separate accounts immediately, the object of the writ petition will be defeated before it can be decided.

2. The Monas will suffer irreparable or serious harm if the stay is not maintained.

The Monas do not argue that posting “a bond” would subject them to irreparable or serious harm, as Far West contends, but that posting **these** bonds for \$24,172,076 and \$490,000, as ordered the District Court, will subject them

to serious or irreparable harm because the judgment will be executed prior to a decision on the Monas' writ petition. Rhonda is not a judgment debtor in this case, and she was never personally served in her individual capacity. The denial of this motion would subject Rhonda, as a non-party, to execution of the funds in her personal bank accounts. Regardless of whether she receives alimony from her husband and whether Far West considers her alimony to be sufficient monthly living expenses, executing on her bank accounts without sufficient due process subjects Rhonda to serious harm. Far West should not be allowed to execute before this Court may address the issues in the writ petition as to whether the execution is contrary to Nevada law.

3. Far West will not suffer serious injury if the stay is maintained.

This writ petition has been submitted to the Court for screening, as briefing is completed. Considering that Far West holds a 2012 judgment based on events from 2004-2006 (*See Opp.*, Exhibit C.), Far West will not suffer serious injury if the stay is granted pending a decision on this writ petition. Although Far West claims it will suffer a serious injury by a delay in its execution because the collection has been complex, time-consuming, or resource-consuming, the complexity of this collection is, in part, due to the atypical procedural mechanisms Far West has pursued for collections, which is the subject of this writ petition. For example, Far West has not followed any of the procedures for execution outlined in NRS Chapters 21 and 31. Thus, Far West will not be seriously injured by a continued stay pending a decision on this writ petition.

4. The Monas are likely to prevail.

Under the analysis of *Nelson*, 121 Nev. at 835, alternative security is appropriate. Far West cites Ninth Circuit law to argue the District Court's bond order should only be vacated if it was an abuse of discretion. Opp. at 14 (citing *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1027 (9th Cir. 1991)). The Court in *Pac. Reinsurance Mgmt. Corp.* specifically stated the standard of review was for the Ninth Circuit, "**This court** reviews supersedeas bond orders for abuse of discretion." (emphasis added). However, the question of whether the District Court's bond order was error is a question of law. See, e.g. *Cameron v. Hughes*, 825 P.2d 882, 884, n.2 (Alaska 1992) (stating that the question of whether the trial court erred in requiring a supersedeas bond on appeal was a question of law to be reviewed de novo). This standard is particularly applicable to the instant case where there is a legal question as to whether the District Court erred in considering new evidence from a different District Court case in making a bond determination. See Emergency Mot. at 7-8.

Far West argues that under the *Nelson* factors for determining whether a supersedeas bond may be waived or substituted with alternative security, the bond order is proper. Contrary to Far West's argument that the Monas have made collections "extraordinarily complex" (Opp. at 15.), and the full judgment bond should be required on that basis, the collection process has been complex as a result of Far West's own conduct. The Monas should not be required to post a full-judgment bond based on the complexity in this action, which is

largely due to the procedures pursued by Far West, not only in pursuing Rhonda as a representative trustee but also in other conduct in the District Court. *See* Opp., Exhibit O: Exhibit C (*Far West Industries v. Cannavest Corp.*, Case No. A695786, Department 21 (filed on February 7, 2014), attempting to establish a constructive trust); Opp., Exhibit O: Exhibit D (*Far West Industries v. Mona*, Case No. A724490, Department 32 (filed on September 11, 2015), naming both Mike and Rhonda as defendants); Opp., Exhibit O: Exhibit E (*Mona v. Mona*, Case No. D517425, Department B (filed on September 4, 2015), involving Far West’s attempt to intervene into a closed divorce case). In addition, the Monas are unable to pay this bond amount and continue to have money for living. While the facts in the case law cited in the Monas’ emergency motion may not involve identical financial circumstances to that of the Monas, the case law, nonetheless, reflects that a court has discretion to reduce a bond amount or permit alternative security based on an undue financial burden and when alternative security can be provided. *See, e.g. Poplar Grove, Etc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979).

5. The Proposed Alternative Security is Appropriate.

The purpose of posting a security bond is “to protect a party from damages incurred as a result of a wrongful injunction, not from damages existing before the injunction was issued.” *Am. Bonding Co. v. Roggen Enters.*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993). Far West attempts to use this bond as a form of securing all damages existing from the judgment, rather than to serve its proper purpose, which is to protect a party from damages incurred

by the injunction or stay. The protection provided by a bond or alternative security may maintain the “status quo” as it relates to the status quo during the writ proceeding. Notably, Far West has not clearly articulated what serious or irreparable harm it has already suffered during the temporary stay already ordered by this Court.

The alternative security in the form of the house on Red Arrow Drive is appropriate. A recent appraisal has not been performed on this property. According to the Clark County Assessor, the assessed value for the tax year is was \$2,348,477. *See* Supp. to Emergency Mot. at 1. However, Zillow has estimated the property value at \$3,116,174, with a rising property value within the last thirty days. *See* **Exhibit 1**. This property as collateral is not a meaningless gesture that should be rejected. In addition, the stock options in Cannavest are of value, which depends on the sale price at the time of the exercise of the option. Particularly in light of the rapidly changing political climate that affects stock, the stock options in this company have value. Combined, the property and the stock options provide sufficient security to maintain the status quo during the short time for this writ proceeding, even if they do not equal the full judgment amount.

III

CONCLUSION

The Monas respectfully request this that Court maintain the stay on the District Court proceedings in this case. The facts of this case weighing heavily in favor of a stay because the object of the writ petition will be defeated if a

large bond is required, permitting Far West to execute upon Rhonda's personal accounts. In addition, the Monas request that this Court consider alternative security in lieu of the full judgment and \$490,000 bond. In light of the financial circumstances of the Monas and their inability to post this bond, the District Court's bond order would effectively eliminate the stay by allowing immediate execution of the judgment from Rhonda's personal accounts before a decision is reached in the writ petition.

DATED: 11/12/15

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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 Reply in Support of Emergency Motion for Relief Under NRAP 27(e) addressed to:

The Honorable Joe Hardy
Eighth Judicial District Court, Dept. 15
200 Lewis Avenue
Las Vegas, Nevada 89155

F. Thomas Edwards
Andrea M. Gandara
Holley Driggs Walch
Fine Wray Puzey & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

DATED this 12th day of November, 2015.

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

Exhibit 1

2793 Red Arrow Dr, Las Vegas, NV 89135

4 beds · 2 baths · 6,644 sqft [Edit](#)
Edit home facts for a more accurate Zestimate.

OFF MARKET
Zestimate®:
\$3,116,174
Update my Zestimate
Rent Zestimate®: \$16,522/mo

Est. Refi Payment
\$3,309/mo
See current rates on Zillow
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Zestimate Details

Add owner estimate

Zestimate
\$3,116,174
+\$6,363 Last 30 days
\$2.34M \$3.90M
Zestimate range

Rent Zestimate
\$16,522/mo
-\$155 Last 30 days
\$10K \$31K
Zestimate range

Zestimate forecast

\$XXX,XXX
12 mo Zestimate forecast
 Create a free account
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SOLD: \$1,890,000
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4 beds, 5.0 baths, 5122 sqft
2939 Red Arrow Dr, Las Vegas, NV 89135

SOLD: \$1,900,000
Sold on 7/29/2015
4 beds, 5.0 baths, 5268 sqft
2620 Red Arrow Dr, Las Vegas, NV 89135

SOLD: \$1,950,000
Sold on 3/18/2015
4 beds, 4.5 baths, 5268 sqft
2955 Red Arrow Dr, Las Vegas, NV 89135

SOLD: \$3,000,000
Sold on 9/2/2015
5 beds, 6.0 baths, 6648 sqft
2592 Red Arrow Dr, Las Vegas, NV 89135

SOLD: \$3,100,000
Sold on 10/19/2015
3 beds, 6.0 baths, 7240 sqft
2537 Red Arrow Dr, Las Vegas, NV 89135

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