

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRUPO FAMSA, S.A. DE C.V.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE ROB
BARE, DISTRICT JUDGE,

Respondents,

and

B.E. UNO, LLC,
Real Party in Interest.

No. 68626

FILED

AUG 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY AND DIRECTING ANSWER

This original petition for a writ of prohibition challenges a district court order denying a motion to quash service of process and setting a deadline to file an answer to a complaint. Petitioner has filed an emergency motion to stay the district court's order pending this court's resolution of the writ petition, and real party in interest has filed an opposition.¹ Having considered the motion and opposition, we conclude that a temporary stay is warranted pending receipt and consideration of petitioner's reply. *See* NRAP 8(c); *Fritz Hansen A/ S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000). Accordingly, we temporarily

¹The opposition requests that a bond of \$1,000,000 be required as a condition of any stay. It is not clear whether the district court has yet considered the proper amount of any supersedeas bond. NRAP 8(a)(1)(B). We have routinely recognized that the district court is better suited for making supersedeas bond determinations. *See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005).

stay the district court's "Order Denying Defendant Grupo Famsa's Motion for Order to Quash Service of Process and Setting Deadline to File an Answer to Complaint" in Eighth Judicial District Court Case No. A-14-706336-C pending further order of this court.

Additionally, having considered the petition and reviewed the documents submitted with it, it appears that an answer to the petition will assist this court in resolving the matter.² Therefore, real party in interest, on behalf of respondents, shall have 30 days from the date of this order within which to file an answer, including authorities, against issuance of the requested writ. Petitioner shall have 15 days from service of the answer to file and serve any reply.

It is so ORDERED.

Hardesty, C.J.
Hardesty

Douglas, J.
Douglas

²It appears the district court ruled as a matter of law that service was sufficient based upon the Mexican court's certificate that the service complied with Mexican law and the Hague Convention, but did not resolve the factual dispute over the authority of Ms. Martinez to accept service or resolve whether service satisfied due process under Nevada law. Therefore, we have concerns as to the documents submitted that bear on the issue of due process not shared by our dissenting colleague.

CHERRY, J., dissenting:

While the majority relies solely upon Grupo's affidavits to dispute whether Ms. Martinez was authorized to accept service on Grupo's behalf, the record indicates that this evidence, along with evidence to the contrary, was presented to the district court and the district court nonetheless found as a matter of fact that Uno properly effectuated service pursuant to the Hague Service Convention's procedures.

In considering a writ petition, this court gives deference to a district court's factual determinations and reviews questions of law de novo. *Gonski v. Second Judicial Dist. Court*, 126 Nev. 551, 557, 245 P.3d 1164, 1168 (2010). Grupo argued Ms. Martinez's employment status to the district court and presented a declaration from Grupo's legal director that Ms. Martinez did not have the authority to accept service of process on Grupo's behalf. Uno presented the official certificate from the Mexican authority stating that Ms. Martinez was part of Grupo's legal department. After considering both parties' arguments and evidence, the district court found that Uno properly served Grupo. The district court then ordered Grupo to file an answer by August 13, 2015; instead Grupo filed a petition with this court on August 14, 2015.

Further, Grupo does not dispute that Uno followed proper Hague Convention procedure and properly relied upon the certificate presented from the Mexican authority. If Uno had failed to follow the Hague Convention and/or constitutional due process it would have required a different set of facts or a new factual interpretation, which this court simply cannot provide. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (explaining that "an

appellate court is not an appropriate forum in which to resolve disputed questions of fact”).

Given the district court’s factual findings, the only tenable legal conclusion is that Uno properly served Grupo. I would accordingly deny the writ and the motion to stay. For these reasons, I respectfully dissent.

Cherry J.
Cherry

cc: Hon. Rob Bare, District Judge
Fennemore Craig Jones Vargas/Las Vegas
Levinson Arshonsky & Kurtz, LLP
Goold Patterson
Eighth District Court Clerk