

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 GRUPO FAMSA, S.A. DE C.V., a
3 Mexican corporation,

4 Petitioner and Defendant,

5 vs.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT of the State of Nevada, in and
8 for the County of Clark, and THE
HONORABLE ROB BARE, District
Court Judge,

9 Respondents,

10
11 B.E. UNO, LLC, a Nevada limited
12 liability company,

13 Real Party in Interest and
14 Plaintiff.

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Tracie K. Lindeman
Clerk of Supreme Court

SUPREME COURT CASE NO.:
68626

DISTRICT COURT CASE NO.:
A-14-706336-C

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16 **REAL PARTY IN INTEREST'S REPLY TO PETITIONER'S**
17 **OPPOSITION TO MOTION FOR**
18 **CLARIFICATION OF ORDER GRANTING TEMPORARY STAY**
19 **AND DIRECTING ANSWER**
20
21

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1 B.E. Uno, LLC, as Real Party in Interest and Plaintiff (“Plaintiff”),
2 hereby files this reply to Petitioner’s Opposition to Plaintiff’s Motion for
3 Clarification relating to this Court’s Order Granting Temporary Stay.

4 1. Petitioner’s Admitted Failure to Timely File a Reply, Even if Done
5 in Good Faith, Is Not Grounds to Re-impose the Stay.

6 Petitioner argues that it misunderstood the necessity of filing a
7 reply to Petitioner’s own motion for a stay. See Opposition, Section I.
8 Specifically, Petitioner’s counsel asserts that he confused the “reply”
9 reference in the first of two paragraphs of the Temporary Stay Order with
10 Petitioner’s reply to its writ of prohibition.

11 The Temporary Stay Order is broken down into two parts: Part 1
12 discusses Petitioner’s motion for an emergency stay. Part 2 discusses
13 Petitioner’s writ of prohibition. These are two separate paragraphs based,
14 in part, on the fact that Petitioner filed two separate pleadings: (a) a motion
15 for a stay; and (b) a writ of prohibition. Notwithstanding, Petitioner asserts
16 that it somehow confused these paragraphs and the timing set forth in each
17 such paragraph. Even if this is true, such confusion is not grounds to permit
18 a late-filed reply to Petitioner’s own stay motion nor to unwind the
19 temporary and conditional nature of the stay. See Gazin v. Hoy, 102 Nev.
20 621, 730 P.2d 436 (1986) (failure to answer complaint within deadline not a
21 mistake warranting relief from a default judgment).

22 As set forth in Plaintiff’s Motion for Clarification, Petitioner had
23 until August 31, 2015 to file its reply to its emergency motion for a stay.
24 See NRAP 27(a)(4). Petitioner did not file its reply by this August 31st
25 deadline. Moreover, the attempted late-filed reply on September 11, 2015 –
26 eleven days beyond the time permitted – must not be condoned.¹ Further,
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28 ¹ It is not clear that Petitioner’s Opposition should be considered a
reply to the stay motion. The title of Petitioner’s pleading makes no such
reference that it is a reply – rather the title is “Opposition to . . . Motion for
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1 Petitioner fails to support, much less attach, the two exhibits referenced in
2 its Opposition, including counsel's own affidavit attempting to justify its
3 misunderstanding for not timely filing a response to keep the temporary
4 stay in place. Given that the temporary stay was expressly conditioned
5 upon the filing of a reply by Petitioner and no such reply was timely filed
6 (if at all), Plaintiff requests the conditions necessary for the temporary stay
7 have not been met and therefore, the stay is no longer in effect.

8 2. Who Has the Authority to Determine the Bond Amount?

9 In its Motion for Clarification, Plaintiff requested clarification from
10 this Court as to who has the authority to determine the appropriate bond
11 amount – this Court or the lower court? In footnote 1 of its Temporary Stay
12 Order, this Court suggested that the lower court was better suited to make
13 bond determinations considering its familiarity with the underlying facts
14 and circumstances of the particular case. See Temporary Stay Order, fnt 1,
15 citing Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252 (2005). Plaintiff has
16 no preference as to which court should determine the amount of the bond –
17 this Court or the lower court. Instead, Petitioner simply requests that either
18 court determine the amount of the bond pursuant to NRAP 8(a)(1)(B).

19 As previously indicated in its Motion for Clarification, the lower
20 court never had to determine the amount of a bond since that court denied
21 Petitioner's stay motion. See Order Denying Stay issued by the district
22 court attached as Exhibit 2 to the Motion for Clarification. Thus, when
23 Plaintiff filed its Opposition to Petitioner's stay motion, it provided this
24 Court with evidence and information to determine the appropriate bond
25 amount if this Court was inclined to grant Petitioner a stay. In particular,
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27 Clarification . . . “ Notwithstanding, Petitioner states at page 2 of its
28 Opposition that it submits “this Reply in Support of its Emergency Motion
under NRAP 27(e) to Stay Proceedings and Opposition to Real Party in
Interest's Motion for Clarification . . .”

1 Plaintiff requests a bond in the minimum amount of \$1,000,000, based upon
2 the existing \$882,683.71 Judgment obtained in the related litigation (Case
3 No. A-12-672870). See Plaintiff's Appx. 0122-0123. This Judgment is
4 conclusive and binding upon Petitioner pursuant to Petitioner's Guaranty
5 with Plaintiff. See Guaranty attached to Plaintiff's Appx. 0113-0117
6 ("Guaranty agrees that any judgment rendered against Tenant for monies
7 or performance due Landlord shall in every and all aspects bind and be
8 conclusive against Guarantor to the same extent as if Guarantor had
9 appeared in any such proceedings and judgment herein had been rendered
10 against Guarantor.").

11 The purpose of a bond is to protect Plaintiff's ability to collect on a
12 judgment and prevent prejudice to Plaintiff arising from the stay. Nelson v.
13 Heer, 122 P.3d at 1254. Given that this Court elected to grant a temporary
14 stay to Petitioner, a bond is warranted pursuant to NRAP 8(a)(1)(B). The
15 only question is for how much and which court should hear the
16 determination amount? Plaintiff has supplied ample evidence to this Court
17 to support its request for a bond in the minimum amount of \$1,000,000.00.
18 Petitioner, by not timely filing a response, waived its right to argue for a
19 lower bond amount (or no bond). Absent a determination by either this
20 Court or the district court of the appropriate bond amount, Petitioner has
21 been allowed a temporary stay without meeting the requirements for such
22 stay.

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WHEREFORE, Plaintiff respectfully requests an order clarifying: (1) whether a stay is still in place given that such stay was conditioned upon the filing of a reply by Petitioner, which reply, to the extent Petitioner's Opposition to the Motion for Clarification can be considered a reply, was filed late; and (2) if a stay is still in place, that either this Court determine the amount of such bond, or authorize the lower court to determine such bond amount even though a stay is in place.

DATED this 11th day of September, 2015.

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