

IN THE SUPREME COURT OF THE STATE OF NEVADA

PACIFIC WESTERN BANK, a California banking
corporation,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, in
and for the County of Clark, State of Nevada, and
THE HONORABLE SUSAN W. SCANN, District
Judge,

Respondent,

and

JOHN A. RITTER, an individual; DARRIN D.
BADGER, an individual; VINCENT T.
SCHETTLER, an individual; and DOES 1
THROUGH 50,

Real Parties in Interest.

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Case No. 69048
Aug 05 2016 10:55 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
District Court No:
A-14-710645-B
Dept. No. XXIX

PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

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INTRODUCTION

On July 28, 2016, this Court issued an Order to Show Cause, ordering Petitioner, Pacific Western Bank (“PWB”) to demonstrate why its Petition is not moot in light of the dismissal of an action that also involves Real Party in Interest, Darrin Badger (“Badger”). PWB’s Petition is not moot because this Court’s ruling in *Badger v. Eighth Judicial District Court*, 132 Nev., Adv. Op. 39, --- P.3d ---- (2016) arises from an entirely separate suit, involving different claims, based on a different contract, and different parties. Because Badger’s Petition, on which this Court recently ruled, and this Petition arise from different underlying cases, the resolution of one does not moot the other.

RELEVANT FACTUAL BACKGROUND

I. The PWB Action

On November 14, 2007, PWB loaned Defendants, John Ritter, Darrin Badger, and Vincent Schettler, \$10,000,000.00 (the “Loan”). The Loan matured on December 5, 2012, but Defendants refused to repay the Loan. PWB brought suit on December 9, 2012 against Defendants in the Superior Court of the State of California (“California Court”) to recover the unpaid Loan balance of \$2,497,568.73. On September 26,

2014, the California Court ordered that judgment be entered in PWB's favor against Ritter and Badger, jointly and severally with Schettler in the amount of \$2,717,490.79.¹ PA 3.

PWB domesticated the Judgment in Nevada on December 4, 2014. PA 195; Dist. Ct. Case No. A-14-710645-B. On May 6, 2015, the California Court amended the Judgment ("Amended Judgment") to include \$549,891.10 in attorneys' fees against the Defendants, \$80,000 attributable to Schettler and the remaining \$469,891.10 attributable to Ritter and Badger. PA 16-17.

PWB attempted to collect on the judgment, in part, by executing against three 529 Accounts that Badger owns, and which were formed under the auspices of New Mexico's state-sponsored 529 Plan. PA 21, 77-78, 168. The district court ultimately ruled that PWB would have to execute against the accounts in New Mexico, through New Mexico courts. PWB filed a Petition for Writ of Mandamus with this Court on October 23, 2015 challenging that ruling. *See* Supreme Ct. No. 69048.

¹ That amount included the principal sum of \$2,497,568.73, plus accrued interest through December 5, 2012 in the amount of \$10,406.54, and *per diem* interest, at the daily rate of \$346.88, from December 5, 2012 through August 1, 2014 in the amount of \$209,515.52. The current amount includes interest accrued since that date.

II. The Omni Family Limited Partnership Action

The Petition this Court granted in *Badger v. Eighth Judicial District Court*, No. 67835, 132 Nev., Adv. Op. 39, --- P.3d ---- (2016) arose from an action brought by the Omni Family Limited Partnership seeking to recover a deficiency on a loan secured by real property that Ritter and Badger guaranteed. According to that Petition, and this Court's order, Southwest Desert Equities, LLC borrowed over \$2,180,000 from OneCap Mortgage Corporation. *Badger*, Nev. Adv. Op. at 2. Badger personally guaranteed that loan by executing a guaranty. *Id.* Omni filed suit based on the alleged default on the guaranty. *Id.* at 3; see Dist. Ct. No. A-13-680542-C. Badger ultimately petitioned this Court for mandamus relief based on the guarantor's alleged failure to timely apply for a deficiency judgment. *See generally id.* This Court granted Badger's petition, directing the district court to dismiss the action. *Id.*

III. The PWB and Omni Actions Are Unrelated.

A review of these two matters makes clear that they are two separate suits based on two separate disputes, against different parties. In the instant Petition, PWB domesticated a judgment it had obtained

in a California court based on the default on its \$10,000,000 Loan to Defendants. In the Omni matter, Omni brought suit in Nevada state court to recover a deficiency on a loan for \$2,180,000 guaranteed by Badger and Ritter. Nothing about the two disputes is related. The only thing they have in common is that they both result from Defendants' failure to repay money they borrowed.

LEGAL ARGUMENT

Because the Actions Are Unrelated, the Dismissal of the Omni Action In No Way Moots the PWB Petition.

This Court has “a duty to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before [us].” *Majuba Mining v. Pumpkin Copper*, 129 Nev. Adv. Op. 19, 299 P.3d 363, 364 (2013) (citing *NCAA v. Univ. of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981)). “[C]ases presenting live controversies at the time of their inception may become moot by the occurrence of subsequent events.” *Id.* (citing *University Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004)).

Here, the controversy between PWB and Badger that gave rise to the instant Petition in No. 69048 remains. PWB is still attempting to execute on its live and valid judgment against Defendants. The dismissal of the Omni Action, which concerns an altogether different loan, different creditor, and different default, has not affect PWB's dispute with Badger in any way whatsoever. Accordingly, PWB's Petition has not been mooted or otherwise affected by the decision in the Omni matter.

CONCLUSION

For the foregoing reasons, this Court should retain the Petition, as it is not moot.

Dated: August 5, 2016

SNELL & WILMER L.L.P.

By: /s/ Kelly H. Dove

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date August 5, 2016, I caused to be served a true and correct copy of the foregoing **PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE** by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☒ **BY U.S. MAIL:** by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

The Honorable Susan Scann, Dept. 29
The Honorable Elizabeth Gonzalez,
Dept. 11
Regional Justice Center, Courtroom 14C
200 Lewis Ave.
Las Vegas, NV 89155
Respondent

Constable/Sheriff
Las Vegas Township
302 E. Carson Avenue
5th Floor, Box 552110
Las Vegas, NV 89101

- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____, a messenger service with which this firm maintains an account, of the document listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court pursuant to EDCR 8.05(a) and 8.05(f) to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail.

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