

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 PROIMTU MMI LLC, a Nevada
3 limited liability company,

4 Appellant,

5 vs.

6 TRP INTERNATIONAL, INC., a
7 foreign corporation,

8 Respondent.

Case No. 70056

District Ct Case No. CV-16-0047

Electronically Filed
Jun 01 2016 03:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

9 **DECLARATION OF**
10 **CHRISTOPHER H. BYRD,**
11 **ESQ. IN SUPPORT OF**
12 **RESPONSE TO ORDER TO**
13 **SHOW CAUSE**

14 STATE OF NEVADA)
15)ss:
16 COUNTY OF CLARK)

17 I, Christopher H. Byrd, Esq., state under penalty of perjury that I have
18 personal knowledge and am competent to testify to the following:

19 1. I am a Director at the law firm of Fennemore Craig, P.C. duly
20 licensed to practice before all courts located in the State of Nevada and I am
21 an attorney of record for Proimtu MMI, LLC (“Proimtu”).

22 2. I make this Declaration in support of Proimtu’s Response to
23 Order to Show Cause in the above-entitled action. All facts stated herein are
24 based upon my personal knowledge, except for those matters stated on
25 information and belief and as to those matters, I believe them to be true.

1 3. Proimtu's tolling motion ("Motion") was filed timely. The
2 Judgment was entered on February 16, 2016, but written notice of entry was
3 delayed. On February 16, 2016, Respondent TRP International, Inc. filed a
4 Notice of Entry of the Judgment in the district court with the Judgment
5 attached, but did not serve it. There was no service page attached to this first
6 Notice of Entry.

7 4. Subsequently, Proimtu received a Certificate of Service
8 ("Certificate") by mail that indicated that Written Notice of the Judgment
9 was served on February 26, 2016. This Certificate had no date or service
10 page, so Proimtu used the date service of written notice was allegedly
11 accomplished according to the Certificate.


12 5. Proimtu submitted the Motion for filing to the clerk of the Fifth
13 Judicial District Court on March 11, 2016, which was within 10 judicial days
14 of February 26, 2016. A copy of the Motion with a receipt stamp from the
15 clerk is attached as Exhibit "1E" to the Docketing Statement.

16 6. The clerk refused to file the Motion until Judge Elliot set a
17 hearing date. No hearing was set because Judge Elliott was out of the
18 country. The clerk finally allowed the motion to be filed without a hearing
19 date on March 15, 2016. Exhibit "1F" to the Docketing Statement.

7. Proimtu requested the clerk correct the filing date on the Motion. The clerk advised that the filing date should be addressed with Judge Elliott in open court at the hearing on the Motion and that Proimtu could use the receipt stamp on the Motion as proof of a timely filing.

8. Judge Elliot refuses to rule on the issue of timely filing without a hearing. Judge Elliott held a conference call with all counsel on May 16, 2016. During that call, Proimtu's counsel advised him of the Order to Show Cause. Counsel explained the filing issue and requested a ruling on the timeliness of the Motion. Judge Elliott set the matter for hearing on June 21, 2016.

Dated this 1st day of June, 2016.


Christopher H. Byrd, Esq.

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