

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,

 Respondent.

Case No. 70056

District Ct Case No. CV-30747

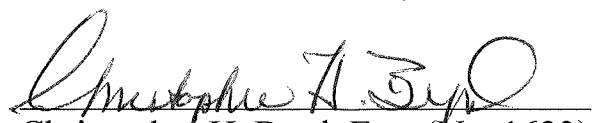
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Aug 08 2016 11:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

RESPONSE TO ORDER

8 Proimtu MMI LLC (“Proimtu”) files this Response to this Court’s
9 Order of July 20, 2016. Attached as **Exhibit”1”** is the district court’s order
10 finding that Proimtu’s Motion to Amend Judgment or Alternatively Motion
11 for Reconsideration (“Motion”) was timely filed under NRCP 59(e).
12 Proimtu has drafted an order granting the Motion and submitted it to
13 opposing counsel before forwarding it to the district court for signature.

14 DATED this 8th day of August, 2016.

15 **FENNEMORE CRAIG, P.C.**

16 
17 Christopher H. Byrd, Esq. (No. 1633)
18 Brenoch Wirthlin (No. 10282)
19 300 S. Fourth Street, Suite 1400
 Las Vegas, Nevada 89101
 Attorneys for Proimtu MMI LLC

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Becky A. Pintar, Esq.
Bryan L. Albiston, Esq.
PINTAR ALBISTON LLP
6053 S. Fort Apache Road, Suite 120
Las Vegas, NV 89148
*Attorneys for Respondent
TRP International, Inc.*

An employee of Fennemore Craig P.C.

Exhibit 1

1 **NEOJ**

Christopher H. Byrd, Esq. (No. 1633)

2 Brenoch R. Wirthlin, Esq. (No. 10282)

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6 *Attorneys for Plaintiff*

FILED

2016 JUL 29 P 2:14


NYE COUNTY CLERK
BY DEPUTY

7 **FIFTH DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability
10 company,

11 Plaintiff,

12 vs.

13 TRP INTERNATIONAL, INC., a Delaware
14 corporation, TONOPAH SOLAR ENERGY,
15 LLC, a Delaware limited liability company;
16 COBRA THERMOSOLAR PLANTS, INC., a
17 Nevada Corporation; STATE OF NEVADA ex
rel. the NEVADA STATE CONTRACTORS
BOARD, THE INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA, a
Pennsylvania corporation, DOES I-X, ROE
COMPANIES I-X;

18 Defendant.

19 COBRA THERMOSOLAR PLANTS, INC.
20 Nevada corporation; and TONOPAH SOLAR
ENERGY, LLC, a Nevada limited liability
company,

21 Crossclaimants

22 vs.

23 TRP INTERNATIONAL, INC., a foreign
24 corporation; DOES 1 through 50, inclusive, and
25 ROE CORPORATIONS 51 through 101,
inclusive,

26 Crossdefendants.

CASE NO.: CV-36747

DEPT. NO.: I

NOTICE OF ENTRY OF ORDER

27 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

28 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an Order

TDAY/11859330.1/034514.0013

1 Certifying Intent to Grant Proimtu MMI, LLC's Motion to Amend Judgment or, Alternatively,
2 Motion for Reconsideration was filed in the above-referenced matter on the 28th day of July,
3 2016, a copy of which is attached hereto.

4 DATED this 28 day of July, 2016.

5 FENNEMORE CRAIG, P.C.

6 By: 

7 Christopher H. Byrd, Esq. (No. 1033)
8 Brenoch R. Wirthlin, Esq. (No. 10282)
9 FENNEMORE CRAIG, P.C.
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2016, I served a copy of the **NOTICE OF ENTRY OF ORDER** upon the parties to this action by mailing a copy thereof, postage prepaid, via regular U.S. Mail, addressed as follows:

Becky A. Pintar, Esq.
Bryan L. Albiston, Esq.
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6053 S. Fort Apache Road, Suite 120
Las Vegas, NV 89148
Attorneys for TRP International, Inc.

William J. Wray, Esq.
Donna DiMaggio, Esq.
Holley, Driggs, Walch, Fine,
Wray, Puzey & Thompson
400 S. 4th Street, 3rd Floor
Las Vegas, NV 89191
Attorneys for Cobra Defendants



An employee of Fennemore Craig, P.C.

1 **ORD**

2 Christopher H. Byrd, Esq. (No. 1633)
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FILED

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Debra L. Melott

NYE COUNTY CLERK
BY DEPUTY

7 **FIFTH JUDICIAL DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability
10 company,

11 Plaintiff,

12 v.

13 TRP INTERNATIONAL, INC., a Delaware
14 corporation; TONOPAH SOLAR ENERGY,
15 LLC, a Delaware limited liability company;
16 COBRA THERMOSOLAR PLANTS, INC., a
17 Nevada corporation; STATE OF NEVADA ex
18 rel. the NEVADA STATE CONTRACTORS
19 BOARD; THE INSURANCE COMPANY OF
20 THE STATE OF PENNSYLVANIA, a
21 Pennsylvania corporation; DOES I-X; and
22 ROE COMPANIES I-X,

23 Defendants.

24 COBRA THERMOSOLAR PLANTS, INC. a
25 Nevada corporation; and TONOPAH SOLAR
26 ENERGY, LLC, a Nevada limited liability
27 company,

28 Crossclaimants,

v.

29 TRP INTERNATIONAL, INC., a foreign
30 corporation; DOES 1 through 50, inclusive, and
31 ROE CORPORATIONS 51 through 101,
32 inclusive,

33 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

ORDER CERTIFYING INTENT TO
GRANT PROIMTU MMI, LLC'S
MOTION TO AMEND JUDGMENT
OR, ALTERNATIVELY, MOTION
FOR RECONSIDERATION

Date of Hearing: June 21, 2016

Time of Hearing: 11:00 a.m.

34 This matter came before the Court on Proimtu MMI, LLC's ("Proimtu") Motion to Amend
35 Judgment or, Alternatively, Motion for Reconsideration ("Motion") received by the Nye County
36 Court Clerk's Office ("Court Clerk") on March 11, 2016; Proimtu having served its Motion upon
37 defendant TRP International, Inc. ("TRP") on March 11, 2016; TRP having filed its opposition
38

1 ("Opposition") to the Motion on April 21, 2016; Proimtu having filed its reply ("Reply") in support
2 of the Motion on May 2, 2016; the Court having heard oral argument on the Motion on June 21,
3 2016; Brenoch R. Wirthlin, Esq., having appeared at the hearing on behalf of Proimtu; Becky
4 Pinter, Esq., having appeared at the hearing on behalf of TRP; Donna Dimaggio, Esq., having
5 appeared at the hearing on behalf of Cobra Thermosolar Plants, Inc., which did not file a response
6 to the Motion or present oral argument regarding the Motion at the hearing; the Court having
7 reviewed all pleadings on file with respect to the Motion; good cause appearing; the Court hereby
8 makes the following findings of fact and conclusions of law¹:

9 **I. FINDINGS OF FACT**

10 1. Proimtu's Motion sought to amend the Findings of Fact, Conclusions of Law and
11 Order on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b)
12 ("Judgment").

13 2. Proimtu's Motion was received by the Court Clerk on March 11, 2016.

14 3. The Court Clerk did not file the Motion until March 15, 2016.

15 4. Consequently, Proimtu filed its Notice of Appeal of the Judgment on March 25,
16 2016.

17 5. Proimtu served its Motion on TRP on March 11, 2016.

18 6. TRP did not file its Opposition to the Motion until April 21, 2016, only after
19 Proimtu requested that the matter be decided.

20 7. Proimtu argues the Opposition is untimely under DCR 13(3). *See* DCR 13(3)
21 ("Within 10 days after the service of the motion, the opposing party shall serve and file his
22 written opposition thereto, together with a memorandum of points and authorities and supporting
23 affidavits, if any, stating facts showing why the motion should be denied.").

24 8. TRP argues that the Opposition is timely under NRCP 6(d). *See* NRCP 6(d) ("A
25 written motion . . . and notice of hearing shall be served **not later than** five days before the time
26
27

28 ¹ If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so
deemed.

1 specified for the hearing" (emphasis added)). At the hearing, TRP also orally argued that
2 Proimtu was not prejudiced and that Nevada has a strong policy of deciding matters on the merits.

3 9. Proimtu further argues that TRP's "delay alone [is] sufficient grounds" for this
4 Court to deem Proimtu's Motion "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev.
5 926, 928, 124 P.3d 1161, 1162 (2005).

6 **II. CONCLUSIONS OF LAW**

7 1. Proimtu's Motion is deemed filed on March 11, 2016 as the Motion should have
8 been filed by the Court Clerk upon receipt on that date.

9 2. Proimtu's Motion was timely filed as a motion under NRCP 59(e) or alternatively,
10 a motion for reconsideration.

11 3. Proimtu was not required to serve a notice of hearing with the Motion in order for
12 the applicable deadlines under DCR 13 to begin running. *See Grouse Creek Ranches v. Budget*
13 *Fin. Corp.*, 87 Nev. 419, 426, 488 P.2d 917, 922 (1971) ("NRCP 52(b) refers only to service of
14 the motion to amend and requires service within ten days of service of notice of entry of
15 judgment. NRCP 6(d) simply adds the requirement that such a motion, as well as the notice of
16 hearing of such motion, be served at least five days before the hearing. There is not such an
17 overlapping as would require service of both the motion and notice of hearing thereof within ten
18 days of service of notice of entry of judgment.").

19 4. Based upon the Motion, Opposition and Reply, and oral argument heard by the
20 Court from counsel for the parties, as well as the Nevada Supreme Court's decision in *Grouse*
21 *Creek Ranches, supra*, the Court finds that TRP's Opposition to the Motion is untimely under
22 DCR 13(3).

23 10. The Court further finds that Proimtu's Motion shall be deemed "unopposed and
24 thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005).

25 11. The Court further finds that it has jurisdiction to consider the Motion. *See Foster*
26 *v. Dingwall*, 126 Nev. 49, 52, 228 P.2d 453, 455 (2010) (confirming that a district court "retains
27 limited jurisdiction to review motions made in accordance with [the *Huneycutt*] procedure").
28 Pursuant to *Huneycutt*, "[i]n considering such motions, the district court has jurisdiction to direct

1 briefing on the motion, hold a hearing regarding the motion, and enter an order denying the
2 motion, but lacks jurisdiction to enter an order granting such a motion." *Id.* at 52-53, 228 P.2d at
3 455 (citing *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978)). "[I]f the district court is
4 inclined to grant the relief requested, then it may certify its intent to do so" to the appellate court.
5 *Id.* at 53, 228 P.2d at 455).

6 NOW THEREFORE, based on the foregoing, good cause appearing,

7 THE COURT HEREBY certifies its intent to grant the Motion and to vacate the Judgment
8 and to permit the case to proceed on all claims asserted by Proimtu against TRP, or its
9 contractor's bond and upon remand of jurisdiction from the Nevada Supreme Court it will enter
10 the appropriate order.

11 DATED this 28 day of July, 2016.

12 Steven Elliott
13 District Court Judge

14 Submitted by:

15 FENNEMORE CRAIG, P.C.

16 [Signature]
17 By: Christopher H. Byrd, Esq. (No. 1633)
18 Brenoch Wirthlin (No. 10282)
19 300 S. Fourth Street, Suite 1400
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23 Attorneys for Proimtu MMI LLC

24 Approved as to Form and Content by:

25 PINTAR ALBISTON LLP

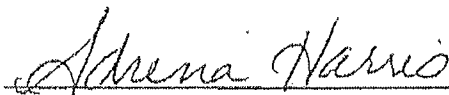
26 By: Becky A. Pintar
27 Becky Pintar, Esq.
28 Nevada Bar No. 7867
6053 S. Fort Apache Road, #120
Las Vegas, NV
Attorneys for TRP International, Inc.

1
2
3 CERTIFICATE OF MAILING

4 I hereby certify that on the 19th day of July 7/16/2016, I caused a copy of
5 the foregoing ORDER CERTIFYING INTENT TO GRANT PROIMTU MMI, LLC'S MOTION
6 TO AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION to
7 be served upon the following at their last known address by placing a true and correct copy
8 thereof, enclosed in a sealed envelope with first-class postage thereon fully prepaid, at Las Vegas,
9 Nevada for deposit in the U.S. Mail for service by the United States Postal Service, addressed as
10 follows:

11 Becky A. Pintar
12 Bryan L. Albiston
13 Pintar Albiston LLP
14 6053 S. Fort Apache Road, Suite 120
15 Las Vegas, NV 89148
16 beckv@pintaralbiston.com
17 *Attorneys for Defendant*
18 *TRP International, Inc.*

19 William Wray
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21 400 S. Fourth Street, 3rd Floor
22 Las Vegas, NV 89101
23 WWray@nevadafirm.com
24 *Attorneys for Tonopah Solar Energy, LLC,*
25 *Cobra Thermosolar Plants, Inc. and*
26 *The Insurance Company of the State of Pennsylvania*

27
28


An employee of Fennemore Craig, P.C.