

In the Supreme Court of Nevada

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as trustee of the MARIE-ANNE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI; GEORGE VAGUJHELYI, as trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT u/t/a April 13, 2001; D'ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD January 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as trustee of the RAJ AND USHA RAGHURAM LIVING TRUST dated April 25, 2001; USHA RAGHURAM, as trustee of the RAJ AND USHA RAGHURAM LIVING TRUST dated April 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as trustee of the GARRET AND ANITA TOM TRUST, dated 5/14/2006; ANITA TOM, as trustee of the GARRET AND ANITA TOM TRUST, dated 5/14/2006; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE; MONICA L. LEE, as trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN, individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN H. CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as manager of CONDOTEL 1906, LLC; MAY

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Elizabeth A. Brown
Clerk of Supreme Court

ANNE HOM, as trustee of the MAY ANNE HOM TRUST;
MICHAEL HURLEY, individually; DUANE WINDHORST,
trustee of DUANE WINDHORST TRUST u/a DTD.
01/15/2003 and MARILYN WINDHORST TRUST u/a DTD.
01/15/2003; MARILYN WINDHORST, as trustee of DUANE
WINDHORST TRUST u/a DTD. 01/15/2003 and MARILYN
L. WINDHORST TRUST u/a DTD. 01/15/2003; VINOD
BHAN, individually; ANNE BHAN, individually; GUY P.
BROWNE, individually; GARTH A. WILLIAMS, individu-
ally; PAMELA Y. ARATANI, individually; DARLEEN
LINDGREN, individually; LAVERNE ROBERTS, individu-
ally; DOUG MECHAM, individually; CHRISTINE
MECHAM, individually; KWANG SOON SON, individual-
ly; SOO YEU MOON, individually; JOHNSON AKINDO-
DUNSE, individually; IRENE WEISS, as trustee of the
WEISS FAMILY TRUST; PRAVESH CHOPRA, individually;
TERRY POPE, individually; NANCY POPE, individually;
JAMES TAYLOR, individually; RYAN TAYLOR, individu-
ally; KI NAM CHOI, individually; YOUNG JA CHOI, indi-
vidually; SANG DAE SOHN, individually; KUK HYUN
(CONNIE) YOO, individually; SANG SOON (MIKE) YOO,
individually; BRETT MENMUIR, as manager of CARRE-
RA PROPERTIES, LLC; WILLIAM MINER, JR., individually;
CHANH TRUONG, individually; ELIZABETH ANDERS
MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROB-
ERT BRUNNER, individually; AMY BRUNNER, individu-
ally; JEFF RIOPELLE, as trustee of the RIOPELLE FAMI-
LY TRUST; PATRICIA M. MOLL, individually; and DAN-
IEL MOLL, individually,

Appellants,

vs.

MEI-GSR HOLDINGS, LLC, a Nevada limited liability
company,

Respondent.

**REPLY IN SUPPORT OF
“MOTION FOR EXTENSION TO FILE ANSWERING BRIEF”**

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1. *Respondent’s Counsel Moved in Good Faith*

Undersigned counsel seek this extension in good faith for the medical and scheduling reasons described in the motion.¹ The accusation that this motion for a 30-day extension is comparable to what appellants characterize as “four years of Rambo-style litigation” (Opp. 8) is insulting. Appellants have converted their opposition brief into a supplemental merits brief with unsubstantiated assertions of attorney misconduct. (Opp. 8–9.) Undersigned counsel affirm under NRCP 11 and NRAP 28(j) that they have no knowledge of such conduct and would never seek an extension to countenance attorney misconduct.

**2. *Unexpected Medical Complications
Delayed Reassignment of the Brief***

The medical issues cited in the motion are genuine. While Mr. Henriod is reluctant to divulge the details of his medical history, he

¹ Although appellants insinuate otherwise (at Opp. 4, 5), respondent’s motions for extensions were both timely. As NRAP 31(b)(3) permits, the motions were electronically submitted on the due date and processed the next morning by the court clerk. See NEFCR 8(d) (“Any document electronically submitted for filing by 11:59 p.m. at the court’s local time shall be deemed to be filed on that date, so long as it is accepted by the clerk upon review.”).

struggled in 2016 with early-onset cataracts. Over the course of a year, Mr. Henriod's vision deteriorated from 20% to 40%. Then, in the time he was working on this brief, the problem worsened drastically, from 40% to 70% reduction in about 45 days. He underwent surgery to have the cataract removed and the lens replaced. Given the prognosis of a complete recovery within a month, and given the sizable record in this case, it did not make sense for Mr. Henriod to reassign the drafting to another attorney. It turned out that the first surgery was done improperly and required a second remedial surgery. Then he needed a third surgery to remove an unexpected secondary cataract. While his vision problems appear to have stabilized, these surgeries were not "elective."

Only after the failure of the first surgery became apparent did Mr. Henriod realize that he needed to ask other attorneys to immerse themselves in the case and take over the drafting process. Throughout Mr. Henriod was pursuing what seemed to be the efficient route; it was the unexpected need for additional surgeries and a significantly longer recovery that frustrated that intention.

Mr. Smith, who regularly works with Mr. Henriod and Mr. Polsenberg, drafted the motion for extension and this reply, but has been

unable to devote time to the answering brief: he has billed more than 70 hours so far this week on other cases and is dealing with a five-month old daughter with severe gastroesophageal reflux disease.

3. *Unexpected Circumstances Interfered in Counsel's Sincere Efforts to Take Over for Mr. Henriod*

It was the extraordinary, unforeseeable problems in Mr. Henriod's recovery that necessitated this motion. The litigation conflicts of the replacement attorneys are valid concerns because, due to Mr. Henriod's initial prognosis of a speedy recovery, those attorneys had not anticipated their involvement in this case at all. Those conflicts arise out counsel's legitimate efforts to remediate Mr. Henriod's unavailability.

Those scheduling difficulties were genuine, too, despite appellants' objection that the motion did not identify the affected attorneys by name. Mr. Polsenberg traveled to four states—Florida, Illinois, New York, and Georgia—over the last four weeks to conduct or defend five expert depositions in a highly publicized suicide case.² Mr. Polsenberg

² In response to appellants' question "why the firm's appellate attorney's are involved in depositions" (Opp. 6), those attorneys regularly take over aspects of the district-court proceedings, including depositions, to preserve issues for an anticipated appeal. A portion of the suicide case, for example, is on appeal now in the Ninth Circuit.

returned to Las Vegas just briefly to conduct another deposition, to coordinate discovery in a multimillion-dollar class-action litigation, and to prepare for and assist today during an all-day evidentiary hearing in another case expected to result in an appeal.

Mr. Robert Schaffer, an appellate lawyer enlisted to become familiar with the record and draft the answering brief, was drawn into emergency proceedings arising from a partition action in Maricopa County Superior Court. Pursuant to an emergency motion, the court ordered the property sold and denied Mr. Schaffer's request for a stay pending a petition for special action (like a writ petition) in the Arizona Court of Appeals, granting just a temporary stay to draft such a request to the appellate court. Thus, as this brief was coming due Mr. Schaffer had to divert attention to preparing the emergency petition, as well as a motion to dismiss a separate appeal in the Ninth Circuit. During this time, Mr. Schaffer also had to attend to his mother in prescheduled travels between Arizona and Colorado.

It is not a question of which case is "more important" than another. (*Contra* Opp. 6.) Counsel were trying to be honest about the staffing problems that followed Mr. Henriod's medical crises. Counsel's

good-faith efforts to resolve those problems have been stymied by the litigation conflicts.

CONCLUSION

In light of the foregoing extraordinary circumstances, respondent's request for an extension through February 3 should be granted.

DATED this 13th day of January, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

DANIEL F. POLSENBERG (SBN 2376)

JOEL D. HENRIOD (SBN 8492)

ABRAHAM G. SMITH (13,250)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on January 13, 2017, I submitted the foregoing “Motion for Extension to File Answering Brief” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

G. David Robertson
Jarrad C. Miller
Jonathan J. Tew
ROBERTSON, JOHNSON, MILLER
& WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

Robert L. Eisenberg
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519

/s/ Abraham G. Smith
An Employee of Lewis Roca Rothgerber Christie LLP