

1 **NOTC**

2 Christopher H. Byrd, Esq. (No. 1633)
3 Brenoch R. Wirthlin, Esq. (No. 10282)

4 FENNEMORE CRAIG, P.C.

5 300 S. Fourth Street, Suite 1400

6 Las Vegas, Nevada 89101

7 Telephone: (702) 692-8000

8 Facsimile: (702) 692-8099

9 e-mail: cbyrd@fclaw.com

bwirthlin@fclaw.com

10 *Attorneys for Plaintiff/Appellant*

11 **FIFTH DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

13 PROIMTU MMI LLC, a Nevada limited liability
14 company,

15 **Plaintiff,**

16 **vs.**

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

27 **Defendant.**

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

Crossclaimants

vs.

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

Crossdefendants.

FILED
FIFTH JUDICIAL DISTRICT COURT

JUL 28 2016

NYE COUNTY DEPUTY CLERK
DEPUTY

Electronically Filed
Aug 02 2016 10:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOTICE OF APPEAL

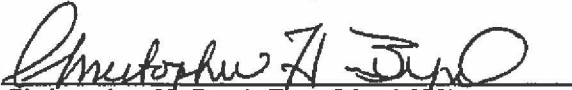
Notice is hereby given that Proimtu MMI LLC ("Proimtu"), Plaintiff above named,
appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order

TDAY/11852786.1/034514.0013

1 Granting Defendants Tonopah Solar Energy, LLC, Cobra Thermosolar Plants, Inc. and the
2 Insurance Company of the State of Pennsylvania's Motion for Summary Judgment entered in this
3 action on the 27th day of June, 2016.

4 DATED this 27 day of July, 2016.

5 FENNEMORE CRAIG, P.C.

6 By: 

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

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

9 FENNEMORE CRAIG, P.C.

10 300 S. Fourth Street, Suite 1400

11 Las Vegas, Nevada 89101

12 Telephone: (702) 692-8000

13 Facsimile: (702) 692-8099

14 e-mail: cbyrd@fclaw.com

15 bwirthlin@fclaw.com

16 Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2016, I served a copy of the NOTICE OF APPEAL 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.
Pintar Albiston LLP
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 ASTA
2 Christopher H. Byrd, Esq. (No. 1633)
3 Brenoch R. Wirthlin, Esq. (No. 10282)
4 FENNEMORE CRAIG, P.C.
5 300 S. Fourth Street, Suite 1400
6 Las Vegas, Nevada 89101
7 Telephone: (702) 692-8000
8 Facsimile: (702) 692-8099
9 e-mail: cbyrd@fclaw.com
10 bwirthlin@fclaw.com
11 Attorneys for Plaintiff/Appellant

FILED
FIFTH JUDICIAL DISTRICT COURT

JUL 28 2016

NYE COUNTY DEPUTY CLERK
DEPUTY

7 FIFTH DISTRICT COURT
8 NYE COUNTY, NEVADA

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

CASE NO.: CV-36747

11 Plaintiff,

DEPT. NO.: I

12 vs.

CASE APPEAL STATEMENT

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, ROE
22 COMPANIES I-X;

18 Defendants.

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

21 Cross-claimants

22 vs.

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

26 Cross-defendants.

27 Plaintiff/Appellant, Proimtu MMI LLC ("Proimtu"), pursuant to NRAP 3(f), hereby
28 submits its Case Appeal Statement as follows:

1 1. Name of appellant filing this case appeal statement: Proimtu MMI, LLC, a
2 Nevada limited liability company.

3 2. Identify the judge issuing the decision, judgment, or order appealed from:
4 Judge Steven Elliott; Findings of Fact, Conclusions of Law and Order Granting Defendants
5 Tonopah Solar Energy, LLC, Cobra Thermosolar Plants, Inc. and the Insurance Company of the
6 State of Pennsylvania's Motion for Summary Judgment entered in this action on the 26th day of
7 June, 2016 ("Order").

8 3. Identify each appellant and the name and address of counsel for each
9 appellant:

10 Proimtu MMI, LLC - Appellant
11 Christopher H. Byrd, Esq. (No. 1633)
12 Brenoch R. Wirthlin, Esq. (No. 10282)
13 FENNEMORE CRAIG, P.C.
14 300 S. Fourth Street, Suite 1400
15 Las Vegas, Nevada 89101
16 Telephone: (702) 692-8000
17 Facsimile: (702) 692-8099
18 E-mail: cbyrd@fclaw.com
19 **bwirthlin@fclaw.com**

20 4. Identify each respondent and the name and address of appellate counsel, if
21 known, for each respondent (if the name of a respondent's appellate counsel is unknown,
22 indicate as much and provide the name and address of that respondent's trial counsel):

23 William J. Wray, Esq.
24 Donna DiMaggio, Esq.
25 Holley, Driggs, Walch, Fine,
26 Wray, Puzey & Thompson
27 400 S. 4th Street, 3rd Floor
28 Las Vegas, NV 89191
29 Telephone: (702) 791-0308
30 Facsimile: (702) 791-1912
31 E-mail: wwray@nevadafirm.com
32 **ddimaggio@nevadafirm.com**
33 Attorneys for Cobra Thermosolar Plants, Inc.
34 the Insurance Company of the State of Pennsylvania
35 and Tonopah Solar Energy, LLC

1 5. Indicate whether any attorney identified above in response to question 3 or 4
2 is not licensed to practice law in Nevada and, if so, whether the district court granted that
3 attorney permission to appear under SCR 42 (attach a copy of any district court order
4 granting such permission): All attorneys are licensed to practice law in Nevada.

5 6. Indicate whether appellant was represented by appointed or retained counsel
6 in the district court: Appellant was represented by retained counsel in the district court,
7 Fennemore Craig, P.C.

8 7. Indicate whether appellant is represented by appointed or retained counsel on
9 appeal: Appellant is represented by retained counsel on appeal, Fennemore Craig, P.C.

10 8. Indicate whether appellant was granted leave to proceed in forma pauperis,
11 and the date of entry of the district court order granting such leave: Appellant did not apply
12 for and was not granted leave to proceed in forma pauperis.

13 9. Indicate the date the proceedings commenced in the district court (e.g., date
14 complaint, indictment, information, or petition was filed): Proimtu filed this action on May 7,
15 2015. Proimtu filed an amended Complaint on July 10, 2015. The Motion for Summary
16 Judgment (the "Motion") was filed on or about October 9, 2015.

17 10. Provide a brief description of the nature of the action and result in the district
18 court, including the type of judgment or order being appealed and the relief granted by the
19 district court: Initially, Proimtu filed this action to perfect its mechanics' lien. The suit arose
20 out of contract between Proimtu and TRP International, Inc. ("TRP"). TRP failed to pay Proimtu
21 for all of the work on the Crescent Dunes Thermosolar Power Plant ("Project"). Subsequently,
22 The Insurance Company of the State of Pennsylvania ("ICP") posted a surety bond to remove the
23 lien from the property. Proimtu asserted claims against TRP, ICP and the owner, Tonopah Solar
24 Energy, LLC ("TSE") and the general contractor, Cobra Thermosolar Plants, Inc. ("Cobra"). The
25 district court granted summary judgment to Cobra TSE and ICP. Proimtu appeals from that Order.

26 The court also granted TRP's Motion to Dismiss, which the court certified as final
27 pursuant to NRCP 54(b). ("Judgment"). Proimtu filed a Motion to Amend Judgment or
28 Alternatively for Reconsideration ("Motion to Amend"). There was an issue whether the Motion

to Amend was timely because of the clerk's handling of the filing. As a result, Proimtu appealed the Judgment to preserve its rights. Subsequently, the court indicated that it intends to grant the Motion to Amend, but that order has not been entered.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: This dispute resulted in three prior appeals, involving the expungement of Proimtu's lien, the amount of attorneys' fees and costs awarded in connection with the expungement (these two appeals have been consolidated) and the appeal of the Judgment. The caption of the previous appeals is *Proimtu MMI LLC vs. TRP International, Inc.*, case nos.: 68942, 69336 and 70056.

12. Indicate whether this appeal involves child custody or visitation: This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: This is a civil case but there is no possibility of settlement until the first appeal involving TRP is resolved.

DATED this 27 day of July, 2016.

FENNEMORE CRAIG, P.C.

By: Christopher H. Byrd
Christopher H. Byrd, Esq. (No. 1633)
Brenoch R. Wirthlin, Esq. (No. 10282)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
e-mail: cbyrd@fclaw.com
bwirthlin@fclaw.com
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2016, I served a copy of the CASE
APPEAL STATEMENT 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.
Pintar Albiston LLP
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.

Run: 07/28/16
14:52:11

Case Summary

Page 1
DC2100

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs
TRP INTERNATIONAL, INC., a Delaware
corporation; TONOPAH SOLAR ENERGY, LLC,
a Delaware limited-liability company;
COBRA THERMOSOLAR PLANTS, INC., a Nevada
corporation; STATE OF NEVADA ex rel. the
NEVADA STATE CONTRACTORS BOARD, DOES I-X
ROW COMPANIES I-X

Comments: FILE IN TONOPAH ***JUDGE WANKER RECUSED***

| | |
|--------------------------------|------------------------|
| Defendant(s) | Attorney(s) |
| TRP INTERNATIONAL, INC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| TONOPAH SOLAR ENERGY, LLC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| COBRA THERMOSOLAR PLANTS, INC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| STATE OF NEVADA | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| NEVADA STATE CONTRACTORS BOARD | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| INSURANCE COMPANY OF PENN... | No "Attorney 1" Listed |
| Plaintiff(s) | Attorney(s) |
| PROIMTU MMI LLC | WIRTHLIN, BRENOCH |

Disp/Judgment: MTDS Date: 03/01/16

Filings:

| Date | Pty | Filing | Fees |
|---------|-----|---|------|
| 5/07/15 | P | COMPLAINT | |
| 5/07/15 | P | INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19) | |
| 5/07/15 | C | SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS, INC.) | |
| 5/07/15 | C | SUMMONS (ISSUED - TONOPAH SOLAR ENERGY, LLC) | |
| 5/07/15 | C | SUMMONS (ISSUED - TRP INTERNATIONAL, INC.) | |
| 5/07/15 | C | SUMMONS (ISSUED- STATE OF NEVADA EXREL STATE CONTRACT BOARD) | |
| 5/07/15 | P | NOTICE OF PENDENCY OF ACTION AFFECTING REAL PROPERTY | |
| 6/25/15 | P | NOTICE OF FORECLOSURE OF LIEN | |
| 7/10/15 | P | FIRST AMENDED COMPLAINT | |
| 7/10/15 | P | RELEASE OF LIS PENDENS | |
| 7/10/15 | C | SUMMONS (ISSUED - INSURANCE CO. OF THE STATE OF PENNSYLVANIA) | |
| 7/10/15 | C | AMENDED SUMMONS (ISSUED - TONOPAH SOLAR ENERGY LLC) | |

| | | | |
|----------|---|---|--------|
| 7/10/15 | C | AMENDED SUMMONS (ISSUED - TRP INTERNATIONAL INC) | |
| 7/10/15 | C | AMENDED SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS INC) | |
| 7/10/15 | C | AMENDED SUMMONS (ISSUED - STATE OF NEVADA EX REL. THE NEVADA STATE CONTRACTORD BOARD) | |
| 7/27/15 | P | AFFIDAVIT OF SERVICE (TONOPAH SOLOR ENERGY LLC) | |
| 7/27/15 | P | AFFIDAVIT OF SERVICE (TRP INTERNATIONAL, INC) | |
| 7/27/15 | P | AFFIDAVIT OF SERVICE (STATE OF NEVADA/CONTRACTOR'S BOARD) | |
| 7/27/15 | P | AFFIDAVIT OF SERVICE (NEVADA CONTRACTOR'S BOARD) | |
| 8/07/15 | P | AFFIDAVIT OF SERVICE (THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA) | |
| 8/12/15 | P | NOTICE OF PUBLISHING FORCLOSURE OF LIEN | |
| 8/12/15 | P | AFFIDAVIT OF SERVICE | |
| 8/13/15 | D | DEFENDANT THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ANSWER TO PLAINTIFF PROIMTU MMI LLC'S COMPLAINT | |
| 8/18/15 | D | DEFENDANTS TONOPAH SOLAR ENERGY, LLC AND COBRA THERMOSOLAR PLANTS, INC.'S ANSWER TO PLAINTIFF PROIMTU MMI LLC'S FIRST AMENDED COMPLAINT AND CROSSCLAIM AGAINST TRP INTERNATIONAL, INC. | 228.00 |
| 8/20/15 | D | MOTION TO DISMISS PROIMTU'S COMPLAINT | |
| 8/20/15 | D | OPPOSITION TO RESPONDENT PROIMTU'S EMERGENCY MOTION TO STAY | |
| 8/24/15 | C | ORDER OF RECUSAL AND REQUEST FOR SENIOR JUDGE | |
| 8/27/15 | D | CERTIFICATE OF SERVICE FOR MOTION TO DISMISS PROIMTU'S COMPLAINT | |
| 8/27/15 | D | CERTIFICATE OF SERVICE FOR MOTION FOR ATTORNEY FEES | |
| 9/08/15 | P | OPPOSITION TO MOTION TO DISMISS COMPLAINT | |
| 10/12/15 | D | DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT | 220.00 |
| 10/16/15 | D | REPLY TO PROIMTU'S OPPOSITION TO MOTION TO DISMISS COMPLAINT *****END OF FILE #1***** | |
| 10/28/15 | P | PROIMTU MMI, LLC'S OPPOSITION TO DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT | |
| 11/09/15 | P | DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT | |
| 12/07/15 | D | CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEY FEES AND NOTICE OF ENTRY OF ORDER DENYING MOTION FOR EMERGENCY STAY | |
| 2/16/16 | D | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT | |
| 2/16/16 | D | FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B) | |
| 2/16/16 | D | NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW AND ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B) | |
| 2/18/16 | D | FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGEMENT PURSUANT TO NRCP 54(B) *****RESCINDED 6/24/16***** | |
| 3/01/16 | D | CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER | |

Run: 07/28/16
14:52:11

Case Summary

Page 3
DC2100

| | | | |
|---------|---|---|--------|
| | | TO DISMISS COMPLAINT | |
| 3/15/16 | P | PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION | |
| 3/25/16 | P | NOTICE OF APPEAL | 500.00 |
| 3/25/16 | P | CASE APPEAL STATEMENT | |
| 4/04/16 | S | RECEIPT FOR DOCUMENTS | |
| 4/25/16 | D | OPPOSITION TO PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR ALTERNATIVELY, MOTION FOR RECONSIDERATION | |
| 5/02/16 | P | PROIMTU MMI, LLC'S REPLY IN SUPPORT OF ITS MOTION TO AMEND JUDGMENT OR ALTERNATIVELY, MOTION FOR RECONSIDERATION | |
| 6/24/16 | C | ORDER (RESCINDING FINDINGS OF FACT, CONCLUSIONS OF LAW, ETC. FILED 2/18/16) | |
| 6/29/16 | D | NOTICE OF ENTRY OF ORDER (FINDINGS OF FACT CONCLUSIONS OF LAW, ETC. FILED 2/18/16 RESCINDED BY COURT 6/24/16) | |
| 7/22/16 | S | ORDER (GRANTING AN EXTENSION OF TIME FOR APPELLANT TO FILE A RESPONSE TO ORDER TO SHOW CAUSE) | |
| 7/28/16 | P | NOTICE OF APPEAL | 24.00 |
| 7/28/16 | P | CASE APPEAL STATEMENT | |

1 **ORDR**

2 **WILLIAM J. WRAY, ESQ.**

3 Nevada Bar No. 005834

4 E-mail: wwrap@nevadafirm.com

5 **GLENN F. MEIER, ESQ.**

6 Nevada Bar No. 006059

7 E-mail: gmeier@nevadafirm.com

8 **RACHEL E. DONN, ESQ.**

9 Nevada Bar No. 10568

10 E-mail: rdonn@nevadafirm.com

11 **DONNA DIMAGGIO, ESQ.**

12 Nevada Bar No. 009794

13 E-mail: ddimaggio@nevadafirm.com

14 **HOLLEY DRIGGS WALCH**

15 **FINE WRAY PUZEY & THOMPSON**

16 400 South Fourth Street, Third Floor

17 Las Vegas, Nevada 89101

18 Telephone: 702/791-0308

19 Facsimile: 702/791-1912

20 *Attorneys for Defendant The Insurance Company of the State of Pennsylvania;*

21 *Defendants/Crossclaimants Tonopah Solar Energy, LLC and*

22 *Cobra Thermosolar Plants, Inc.*

23 **FIFTH JUDICIAL DISTRICT COURT**

24 **NYE COUNTY, NEVADA**

25 **PROIMTU MMI LLC, a Nevada limited liability**
26 **company,**

27 **Plaintiff,**

28 **vs.**

1 **TRP INTERNATIONAL, INC., a Delaware corporation;**
2 **TONOPAH SOLAR ENERGY, LLC, a Delaware**
3 **limited liability company; COBRA THERMOSOLAR**
4 **PLANTS, INC., a Nevada corporation; STATE OF**
5 **NEVADA ex rel. the NEVADA STATE**
6 **CONTRACTORS BOARD, THE INSURANCE**
7 **COMPANY OF THE STATE OF PENNSYLVANIA, a**
8 **Pennsylvania corporation, DOES I-X, ROE**
9 **COMPANIES I-X,**

10 **Defendants.**

11 **COBRA THERMOSOLAR PLANTS, INC. a Nevada**
12 **corporation; and TONOPAH SOLAR ENERGY, LLC, a**
13 **Nevada limited liability company,**

14 **Crossclaimants,**

15 **vs.**

FILED

2016 FEB 16 P 1:59

Dmo

CLERK

Case No. CV36747

Dept. No. 1

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER GRANTING
DEFENDANTS TONOPAH
SOLAR ENERGY, LLC, COBRA
THERMOSOLAR PLANTS, INC.
AND THE INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA'S MOTION
FOR SUMMARY JUDGMENT**

1 TRP INTERNATIONAL, INC., a foreign corporation;
2 DOES 1 through 50, inclusive, and ROE
3 CORPORATIONS 51 through 101, inclusive,

4 Crossdefendants.

5 Defendants, TONOPAH SOLAR ENERGY, LLC ("TSE"), COBRA THERMOSOLAR
6 PLANTS, INC. ("Cobra") and THE INSURANCE COMPANY OF THE STATE OF
7 PENNSYLVANIA'S ("ICSP"), (collectively, the "Cobra Defendants") Motion to for Summary
8 Judgment (the "Motion") came on for hearing before this Court on November 12, 2015. Donna
9 DiMaggio, Esq., William J. Wray, Esq., James W. Puzey, Esq. and Rachel E. Donn, Esq. of the
10 law firm of Holley Driggs Walch Fine Wray Puzey & Thompson appeared on behalf of the
11 Cobra Defendants, Brenoch Wirthlin, Esq. of the law firm of Fennemore Craig, P.C., on behalf
12 of Plaintiff, PROIMTU MMI LLC ("Proimtu") and Becky A. Pinter, Esq. of the law firm of
13 Pinter Albiston LLP on behalf of Defendant TRP INTERNATIONAL, INC. ("TRP").

14 The Court having reviewed the pleadings, briefs and papers on file, and having
15 considered the arguments of Counsel at the time of the hearing, the Court makes the following
16 Findings of Fact, Conclusions of Law and Order.

17 **FINDINGS OF FACT**

18 1. Cobra entered into a contract with TRP, wherein TRP agreed to perform
19 construction services at the Crescent Dunes Thermosolar Power Plant in Tonopah, Nevada (the
20 "Project").

21 2. TRP and Cobra entered into a contract that contained an arbitration provision,
22 which stated that any dispute would be subject to arbitration in Madrid, Spain, in the Spanish
23 language, under Spanish law and subject to the rules of the Civil and Mercantile Court of
24 Arbitration ("CIMA").

25 3. The provision in the contract between Cobra and TRP further stated that the
26 parties agreed to waive any other legal forum to which they might have been entitled.

27 4. In order to fulfill its contractual responsibilities to Cobra, TRP entered into a
28 subcontract with Proimtu that also contained an arbitration provision, which stated that any

1 dispute would be subject to arbitration in Madrid, Spain, in the Spanish language, under Spanish
2 law and subject to the rules of CIMA.

3 5. The provision in the contract between TRP and Proimtu further stated that the
4 parties agreed to waive any other legal forum to which they might have been entitled.

5 6. Proimtu is a division of a Spanish company.

6 7. Proimtu entered into a contract with TRP with full knowledge that it agreed that
7 any and all disputes would be litigated in Spain.

8 8. Cobra and TRP relied upon a forum in the contracts that was for greater
9 convenience and that forum should be honored.

10 CONCLUSIONS OF LAW

11 1. There are no issues of material fact and judgment should enter as a matter of law
12 in favor of Cobra, TSE and ICSP. *See Wood v. Safeway, Inc.*, 121 Nev. 724 (2005).

13 2. A contractual forum selection clause is *prima facie* valid and enforceable. *See*
14 *Dockside, Ltd. v. Sea Technology, Ltd.*, 875 F.3d 762 (9th Cir.1989).

15 3. When the provision is specified with mandatory language, the clause will be
16 enforced. *See Id.*

17 4. The forum selection clause in the contract between Cobra and TRP and TRP and
18 Proimtu was mandatory and therefore, enforceable.

19 5. Pursuant to the doctrine of *forum non conveniens*, this Court will not exercise
20 jurisdiction over this matter. *See Contact Lumber Co. v. P.T. Moges Shlpping, Co.*, 918 F.2d
21 1446 (9th Cir.1990).

22 6. Proimtu will not suffer irreparable harm if this matter is dismissed and litigated in
23 Spain pursuant to the contract. *See Id.*

24 7. An adequate alternative forum exists for this case to be litigated. *See Id.*

25 8. Both private and public interests factors favor dismissal of this action. *See Id.*

26 9. Proimtu is not a lien claimant and therefore, does not have standing to claims the
27 protections afforded under NRS 108.2453. *See NRS 108.2453.*

28

DATED this 16 day of FEBRUARY 2016.

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON

- 4 -

Run: 07/28/16
14:51:41

Case Summary

Page 1
DC2100

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs
TRP INTERNATIONAL, INC., a Delaware
corporation; TONOPAH SOLAR ENERGY, LLC,
a Delaware limited-liability company;
COBRA THERMOSOLAR PLANTS, INC., a Nevada
corporation; STATE OF NEVADA ex rel. the
NEVADA STATE CONTRACTORS BOARD, DOES I-X
ROW COMPANIES I-X

Comments: FILE IN TONOPAH ***JUDGE WANKER RECUSED***

| | |
|--------------------------------|------------------------|
| Defendant(s) | Attorney(s) |
| TRP INTERNATIONAL, INC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| TONOPAH SOLAR ENERGY, LLC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| COBRA THERMOSOLAR PLANTS, INC | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| STATE OF NEVADA | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| NEVADA STATE CONTRACTORS BOARD | No "Attorney 1" Listed |
| Defendant(s) | Attorney(s) |
| INSURANCE COMPANY OF PENN... | No "Attorney 1" Listed |
| Plaintiff(s) | Attorney(s) |
| PROIMTU MMI LLC | WIRTHLIN, BRENOCH |

Disp/Judgment: MTDS Date: 03/01/16

Hearings:

| Date | Time | Hearing | Reference |
|--|------|-------------------|-----------|
| 9/09/15 | 9:00 | MOTION TO DISMISS | |
| JUDGE: STEVEN P ELLIOT | | | |
| CLERK: AMY DOWERS | | | |
| APP: BECKY PINTAR; BRENOCK WIRTHLIN; DONNA DI MAGGIO | | | |
| HEARING CONTINUED TO NOVEMBER 12, 2015 @ 9:00 AM | | | |

11/12/15 9:00 MOTION TO DISMISS

11/12/15 9:00 MOTION FOR SUMMARY JUDGMENT

5/16/16 1:30 STATUS CHECK

SENIOR JUDGE: STEVEN ELLIOT; CLERK: AMY DOWERS; APPEARANCES: DONNA
DIMAGIO, ESQ. FOR COBRA THERMOSOLAR PLANTS, INC., TONOPAH SOLAR ENERGY, LLC
AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA BECKY PINTAR, ESQ. FOR

TRP INTERNATIONAL INC. BRENOCH R. WIRTHLIN, ESQ. AND CHRISTOPHER BYRD FOR PROIMTU MMI LLC; THE COURT CALLS THE CASE. MS. PINTAR IS NOT ON THE CALL. MR. BYRD ADVISES THE COURT THAT THEY ARE TRYING TO CONTACT MS. PINTAR'S OFFICE BUT HAVE BEEN UNABLE TO REACH ANYONE. THE COURT GIVES A HISTORY OF THE CORRESPONDENCES THAT INITIATE TODAY'S HEARING. MS. DIMAGGIO STATES SHE IS HAVING A PROBLEM HEARING THE COURT. THE COURT STATED A MOTION WAS FILED WITH NO REPLY AND PROIMTU'S POSITION IS THAT THE MOTION SHOULD BE GRANTED. THE COURT STATES HE WANTED TO GIVE TRP THE OPPORTUNITY TO EXPLAIN WHY THEY DID NOT RESPOND TO THE MOTION. THE COURT STATES A NEED FOR TIME TO READ THE BRIEFS AND RESEARCH THE MATTER. THE COURT STATES THE MATTER CALLS FOR A HEARING IN TONOPAH. MR. BYRD ADDRESSES THE COURT. MR. BYRD GIVES A HISTORY OF HIS MOTION TO DISMISS STATING THEY FILED THE MOTION, MS. PINTAR FILED AN OPPOSITION, AND THEN THEY FILED A REPLY. MR. BYRD STATES HE GOT AN ORDER TO SHOW CAUSE FROM THE SUPREME COURT ON THE NOTICE OF APPEAL THAT HE FILED WITH RESPECT TO THE RULING ON THE MOTION TO DISMISS. MR. BYRD STATES HE LODGED HIS MOTION FOR FILING WITH THE CLERK BUT THE CLERK DID NOT FILE IT FOR SEVERAL DAYS AND AS A RESULT THERE IS SOME LACK OF CLARITY AS TO WHETHER THE TIME TO APPEAL WAS ACTUALLY CLOSED. MR. BYRD STATES HE HAD TO FILE HIS APPEAL WITHIN 30 DAYS WRITTEN NOTICE OF ENTRY OF JUDGMENT. MR. BYRD STATES HE WENT AHEAD AND DID THAT NOT KNOWING HOW THE COURT WOULD RULE AS TO WHETHER THE FILING COULD BE CONSIDERED BACK DATED OR TIMELY BECAUSE IT WAS NOT FILED WHEN IT WAS PRESENTED. MR. BYRD STATES HE HAS TO FILE A RESPONSE TO THE SUPREME COURT BY JUNE 2, 2016. MR. BYRD ASKS THE COURT IF HE WOULD CONSIDER HEARING THE ISSUE TODAY AS TO WHETHER THE COURT DEEMS THE DOCUMENT FILED ON THE DAY ACTUALLY FILED BY THE CLERK. THE COURT STATES HE HAS NOT HAD TIME TO RESEARCH THE ISSUE OR GIVEN IT A LOT OF THOUGHT. MR. BYRD ASKS THE COURT FOR A HEARING DATE. THE COURT ASKS MR. BYRD FOR A TIME LINE FOR THE HEARING. MR. BYRD ASKS FOR A MORE CONVENIENT FORUM THAN TONOPAH, SUGGESTING RENO. MS. PINTAR JOINS THE CALL. THE COURT STATES A NEED TO HAVE ORAL ARGUMENTS TO WORK THROUGH ALL OF THE ISSUES. MS. PINTAR IS GOING TO TRY AND FACILITATE A HEARING IN LAS VEGAS. MS. PINTAR WILL ENQUIRE ABOUT A COURT ROOM AND THEN EMAIL EVERYONE WITH THE AVAILABILITY. THE COURT WOULD LIKE THE HEARING TO BE HELD BEFORE JUNE 27, 2016. DONNA DIMAGGIO STATES SHE WILL NOT BE ATTENDING ORAL ARGUMENT. MS. DIMAGGIO STATES AN ISSUE WITH THE ORDER DISMISSING COBRA AND ITS SURETY, AND ASKS FOR THE STATUS ON THE ORDERS. THE COURT STATES HE THOUGHT HE HAD THE ISSUE WORKED OUT BEFORE HE WENT ON VACATION. THE PARTIES STATE THEY HAVE NOT SEEN THE ORDER THAT IS IN QUESTION. THE COURT STATES THAT IF A HEARING CANNOT BE SET UP IN LAS VEGAS HE CAN COME TO PAHRUMP. THE COURT ADJOURNS.

6/21/16 11:00 MOTION FOR RECONSIDERATION

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

August 1, 2016

VIA E-FILE

Ms. Tracie Lindeman
Supreme Court Clerk
201 South Carson Street, #201
Carson City, NV 89701-4702

Re: CV36747, PROIMTU MMI, LCC VS TRP INTERNATIONAL, INC., & ET AL.

Dear Ms. Lindeman:

I am submitting a Notice of Appeal filed on July 28, 2015, in the above referenced matter. I have included the supporting documents required on this appeal. The \$250.00 Supreme Court Filing Fee has been mailed to your office as of July 28, 2016; and the \$500.00 Bond has been collected.

If you have any questions or need any additional information, please contact the Pahrump office at the number above.

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By:


Veronica Aguilar, Deputy Clerk

cc: Christopher H. Byrd, Esq., on behalf of PROIMTU MMI, LLC
The Honorable Judge Steven Elliott
Beck A. Pintar, Esq., on behalf of TRP International, Inc.
William J. Wray, Esq., on behalf of Cobra Defendants