

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

2 TRP INTERNATIONAL, INC., a
3 Delaware corporation,

4 Appellant,

5 vs.

6 PROIMTU MMI LLC, a Nevada
 limited liability company,

7 Respondent.

Case No. 71398

District Ct Case No. CV-2016-00147

Electronically Filed
Oct 11 2016 08:46 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 **DECLARATION OF CHRISTOPHER H. BYRD, ESQ. IN SUPPORT**
9 **OF RESPONSE TO EMERGENCY MOTION UNDER NRCP 27(e) and**
10 **NRAP 8(a)(2) REQUESTING CLARIFICATION IF THE MATTER IS**
11 **STAYED PENDING RESOLUTION OF APPEAL, OR IN THE**
12 **ALTERNATIVE, A TEMPORARY STAY**

11 STATE OF NEVADA)
)ss:
12 COUNTY OF CLARK)

13 Christopher H. Byrd, Esq., being first duly sworn upon his oath,
14 deposes and says that he has personal knowledge and is competent to testify
15 to the following:

16 1. I am a Director at the law firm of Fennemore Craig, P.C., duly
17 licensed to practice before all courts located in the State of Nevada, and I am
18 an attorney of record for Proimtu MMI, LLC ("Proimtu"), Respondent
19 herein.

1 6. On August 9, 2016, the Order was submitted to counsel for
2 TRP International Inc. for review and counsel for TRP approved it as to form
3 and content the same day. Exhibit "B".

4 7. On August 10, 2016 the Order was sent to Judge Elliott for
5 signature and counsel for TRP was copied with the letter. Exhibit "C".

6 8. Judge Elliott signed the Order granting Proimtu's Motion to
7 Amend Judgment or Alternatively For Reconsideration on September 12,
8 2016, although it is dated September 13, 2016, and written notice of entry of
9 that Order was personally served on counsel for TRP on September 12, 2016.
10 Exhibit "A".

11 9. On October 5, 2016, Proimtu personally served counsel for TRP
12 with a Notice of Intent to Take Default, which required TRP to answer no
13 later than October 10, 2016 or risk a default. Exhibit "D".

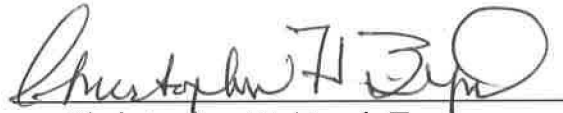
14 10. TRP filed a Notice of Appeal from the Order on or about
15 September 20, 2016 and served it by mail on counsel for Proimtu.

16 11. No motion for stay was presented to the district court before
17 TRP filed its emergency Motion.


18 12. Throughout the litigation in the district court, Proimtu employed
19 a delivery service to file papers with the clerk of the Fifth Judicial District

1 Court in Parhump, Nevada. The delivery service was able to file the
2 pleadings on the same day the service picked up the pleadings, and most
3 times within an hour of the request.

4 I declare the information in this Declaration to be true and correct to
5 the best of my knowledge and belief under penalty of perjury.

6 
7 Christopher H. Byrd, Esq.

8
9 Signed and sworn to (or affirmed) before
10 me on this 10th day of October, 2016.

11 
12 NOTARY PUBLIC in and for the
13 State of Nevada
14 My appointment expires 4-8-2018



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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 Appellant
TRP International, Inc.*

Light

Exhibit “A”

Exhibit “A”

1 **NEOJ**

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 Proimtu MMI LLC

FILED

2016 SEP 14 P 1:48

KELLY SIDMAN

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,

29 v.

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

34 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**NOTICE OF ENTRY OF ORDER
GRANTING 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.

35 \\\

1 **NOTICE OF ENTRY OF ORDER GRANTING PROIMTU MMI, LLC'S**
2 **MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY,**
3 **MOTION FOR RECONSIDERATION**

4 TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

5 PLEASE TAKE NOTICE that an Order Granting Proimtu MMI, LLC's Motion to Amend
6 Judgment or, Alternatively, Motion for Reconsideration, was entered on the 12th day of
7 September, 2016, copy of which is attached hereto.

8 DATED this 12th day of September, 2016.

9 FENNEMORE CRAIG, P.C.

10 By: 

11 Christopher H. Byrd, Esq. (No. 1633)
12 Brenoch Wirthlin (No. 10282)
13 300 S. Fourth Street, Suite 1400
14 Las Vegas, Nevada 89101
15 Telephone: (702) 692-8000
16 Facsimile: (702) 692-8099
17 Attorneys for Proimtu MMI LLC

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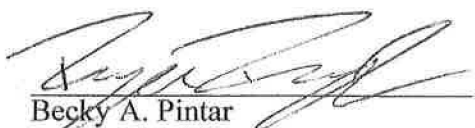
RECEIPT OF COPY

RECEIPT OF COPY of the Notice of Entry of Order Granting Proimtu MMI, LLC's Motion to Amend Judgment or, Alternatively, Motion for Reconsideration, is hereby acknowledged on the 12th day of September, 2016.

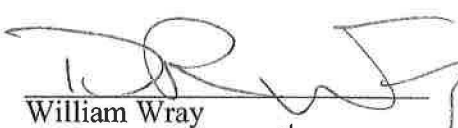
PINTAR ALBISTON LLP

HOLLEY DRIGGS WALCH

By:


Becky A. Pintar
Bryan L. Albiston
6053 S. Fort Apache Rd., Suite 120
Las Vegas, NV 89148

By:


William Wray
400 S. Fourth St., 3rd Floor
Las Vegas, NV 89101

*Attorneys for Defendant
TRP International, Inc.*

*Attorneys for Tonopah Solar
Energy, LLC; Cobra
Thermosolar Plants, Inc.; and
The Insurance Company of the
State of Pennsylvania*

12050125

1 **ORDG**
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
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8 Facsimile: (702) 692-8099
9 E-mail: cbyrd@fclaw.com
10 bwirthlin@fclaw.com
11 Attorneys for Proimtu MMI LLC

FILED

2016 SEP 12 A 9:51

AMY DOWERS
COUNTY CLERK
DEPUTY

7 **FIFTH JUDICIAL DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability
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11 Plaintiff,

12 v.

13 TRP INTERNATIONAL, INC., a Delaware
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15 LLC, a Delaware limited liability company;
16 COBRA THERMOSOLAR PLANTS, INC., a
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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
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28 Crossclaimants,

v.

29 TRP INTERNATIONAL, INC., a foreign
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32 inclusive,

33 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**ORDER GRANTING 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"); the Court having heard oral
36 argument on the Motion on June 21, 2016; Brenoch R. Wirthlin, Esq., having appeared at the
37 hearing on behalf of Proimtu; Becky Pintar, Esq., having appeared at the hearing on behalf of TRP

IDA V/11874114 2/03-1514 0013

1 International, Inc. ("TRP") ; Donna Dimaggio, Esq., having appeared at the hearing on behalf of
2 Cobra Thermosolar Plants, Inc., whom did not file a response to the Motion or present oral
3 argument regarding the Motion at the hearing; the Court having reviewed all pleadings on file with
4 respect to the Motion; good cause appearing, the Court hereby makes the following findings of fact
5 and conclusions of law¹:

6 **I. FINDINGS OF FACT**

7 1. TRP filed its Motion to Dismiss Proimtu's Complaint ("Motion to Dismiss"). The
8 Court granted the Motion to Dismiss and entered Findings of Fact, Conclusions of Law and Order
9 on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b) ("Judgment") on
10 February 16, 2016. Proimtu filed its Motion to amend the Judgment or in the alternative for
11 reconsideration.

12 2. This Court previously found that the Motion was timely filed. An Order
13 Certifying Intent to Grant Proimtu MMI LLC's Motion to Amend Judgment or Alternatively,
14 Motion for Reconsideration was entered on July 28, 2016.

15 3. Proimtu served its Motion on TRP on March 11, 2016. TRP received the Motion,
16 but did not file its Opposition to the Motion ("Opposition") until April 21, 2016, only after
17 Proimtu advised the Court in writing that the Motion was unopposed and requested the Court to
18 grant the Motion.

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

23 5. TRP argues that the Opposition is timely under NRCP 6(d). *See* NRCP 6(d) ("A
24 written motion . . . and notice of hearing shall be served not later than five days before the time
25 specified for the hearing" (emphasis added)). NRCP 6(d) does not extend the time for filing
26 an opposition and no extension was granted by Proimtu.

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¹ If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so deemed.
TDAY/11874114 2/034514 0013

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

4 7. The Court takes judicial notice of the Supreme Court's Order, entered July 20,
5 2016, which indicates that this Court may grant the Motion without a remand of jurisdiction
6 because it found the Motion was timely filed.

7 **II. CONCLUSIONS OF LAW**

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

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

20 3. Because TRP's Opposition was untimely the Court further finds that Proimtu's
21 Motion shall be deemed "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928,
22 124 P.3d 1161, 1162 (2005).

23 4. The Judgment is vacated and TRP's Motion to Dismiss is hereby denied because
24 TRP invoked the jurisdiction of this court and obtained a judgment on the merits on Proimtu's
25 Second and Seventh Claims for Relief, which conduct is inconsistent with assertion of the forum
26 selection clause and is a waiver of the forum selection clause.

27 ///

28 ///

1 NOW THEREFORE, based on the foregoing, good cause appearing.

2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted. TRP's
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20
5 days from written notice of entry of this Order to answer the First Amended Complaint.

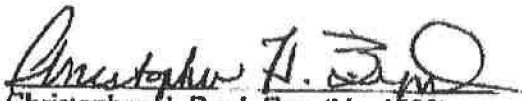
6 DATED this 13 day of September, 2016.

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9 District Court Judge

10 Submitted by:

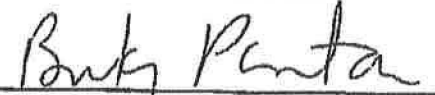
11 FENNEMORE CRAIG, P.C.

12 

13 Christopher H. Byrd, Esq. (No. 1633)
14 Brenoch Wirthlin (No. 10282)
15 300 S. Fourth Street, Suite 1400
16 Las Vegas, Nevada 89101
17 Telephone: (702) 692-8000
18 Facsimile: (702) 692-8099
19 Attorneys for Proimtu MMI LLC

20 Approved as to Form and Content by:

21 PINTAR ALBISTON LLP

22 

23 Becky Pintar, Esq.
24 Nevada Bar No. 7867
25 6053 S. Fort Apache Road, #120
26 Las Vegas, NV
27 Attorneys for TRP International, Inc.
28

Exhibit “**B**”

Exhibit “**B**”

BYRD, CHRIS

From: Becky Pintar <becky@pintaralbiston.com>
Sent: Tuesday, August 09, 2016 4:14 PM
To: WIRTHLIN, BRENOCH
Cc: BYRD, CHRIS; HARRIS, ADRINA
Subject: RE: SCAN from LAS-COP1416 [FC-Email.FID6106723]
Attachments: Order - signature page.pdf

I guess I can live with it – going to be appealed anyway. I have attached my signature page.

Becky

From: BWIRTHLI@FCLAW.com [mailto:BWIRTHLI@FCLAW.com]
Sent: Tuesday, August 9, 2016 2:49 PM
To: Becky Pintar <becky@pintaralbiston.com>
Cc: CBYRD@FCLAW.com; AHARRIS@FCLAW.com
Subject: RE: SCAN from LAS-COP1416 [FC-Email.FID6106723]

Becky, did you get a chance to review the order? If so can you provide your comments by noon tomorrow? If we have not heard back by then we will submit the order noting no response received. Thanks

Brenoch Wirthlin, Esq. | [Fennemore Craig, P.C.](#)
300 S. Fourth Street, Suite 1400 | Las Vegas, NV 89101
Tel: 702.692.8005 | Fax: 702.692.8065
<mailto:bwirthli@fclaw.com> | Admitted in Nevada and Idaho

From: BYRD, CHRIS
Sent: Friday, August 05, 2016 10:51 AM
To: Becky Pintar; WIRTHLIN, BRENOCH
Cc: HARRIS, ADRINA
Subject: RE: SCAN from LAS-COP1416 [FC-Email.FID6106723]

Becky:

Here is the draft order for your review. Sorry for the false start yesterday. Let Brenoch know if you have any changes.

[Chris H. Byrd](#) | Director | [Fennemore Craig, P.C.](#)
300 S. Fourth Street, Suite 1400 | Las Vegas, NV 89101
Tel: 702.692.8002 | Fax: 702.692.8062 | Mobile: 702.592.3008

From: Becky Pintar [mailto:becky@pintaralbiston.com]
Sent: Thursday, August 04, 2016 1:07 PM
To: WIRTHLIN, BRENOCH
Cc: BYRD, CHRIS; HARRIS, ADRINA; 'Donna DiMaggio'
Subject: RE: SCAN from LAS-COP1416 [FC-Email.FID6106723]

Brenoch – did you get the filed stamped copy of the notice of entry back? Can you email me a copy for the appeal?

Thanks
Becky

From: BWIRTHLI@FCLAW.com [mailto:BWIRTHLI@FCLAW.com]
Sent: Tuesday, July 19, 2016 2:15 PM
To: bpintar@beckypintarlaw.com
Cc: CBYRD@FCLAW.com; AHARRIS@FCLAW.com; Donna DiMaggio (ddimaggio@nevadafirm.com)
<ddimaggio@nevadafirm.com>
Subject: FW: SCAN from LAS-COP1416 [FC-Email.FID6106723]

Becky, my assistant caught what apparently you and I had missed – the signature page for the judge did not have the signature line for him. We added that and will send it on to Judge Elliott.

Brenoch Wirthlin, Esq. | [Fennemore Craig, P.C.](#)
300 S. Fourth Street, Suite 1400 | Las Vegas, NV 89101
Tel: 702.692.8005 | Fax: 702.692.8065
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FENNEMORE CRAIG

ATTORNEYS

law that leads* ♦ for 130 years



www.FennemoreCraig.com

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

From: LAS-COP1416 [mailto:LAS-COP1416@fclaw.com]
Sent: Tuesday, July 19, 2016 2:13 PM
To: WIRTHLIN, BRENOCH
Subject: SCAN from LAS-COP1416

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

2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted, TRP's
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20
5 days from written notice of entry of this Order to answer the First Amended Complaint.

6 DATED this ____ day of _____, 2016.

7

8

District Court Judge

9

Submitted by:

10

FENNEMORE CRAIG, P.C.

11

12

13

Christopher H. Byrd, Esq. (No. 1633)
Brenoch Wirthlin (No. 10282)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Attorneys for Proimtu MMI LLC

14

15

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17

Approved as to Form and Content by:

18

PINTAR ALBISTON LLP

19

20



21

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

22

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27

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Exhibit “C”

Exhibit “C”

FENNEMORE CRAIG, P.C.

300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
(702) 692-8000

Christopher H. Byrd
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Phoenix	(602) 916-5000
Reno	(775) 788-2200
Tucson	(520) 879-6800

August 3, 2016

VIA FACSIMILE AND U.S. MAIL:

775-482-8133

Nye County - Fifth Judicial District Court
Department 1
1520 E. Basin Avenue, #105
Pahrump, NV 89060

Re: Proimtu MMI LLC v. TRP International, Inc., et al. – Case No. CV36747

Dear Judge Elliott:

Enclosed for your signature is the order granting Proimtu's Motion to amend. I have also enclosed the Order from the Nevada Supreme Court, dated July 20, 2016, indicating that you have the necessary jurisdiction to grant the motion without any remand from the Supreme Court. Thank you for your attention to this matter.

Sincerely,

FENNEMORE CRAIG, P.C.



Christopher H. Byrd, Esq.

CBYR:tdd

cc: Becky A. Pintar
becky@pintaralbiston.com

cc: William Wray
WWray@nevadafirm.com

1 **ORDG**

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
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11 Attorneys for Proimtu MMI LLC

7 **FIFTH JUDICIAL DISTRICT COURT**

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Time of Hearing: 11:00 a.m.

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3 argument regarding the Motion at the hearing; the Court having reviewed all pleadings on file with
4 respect to the Motion; good cause appearing, the Court hereby makes the following findings of fact
5 and conclusions of law¹:

6 **I. FINDINGS OF FACT**

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8 Court granted the Motion to Dismiss and entered Findings of Fact, Conclusions of Law and Order
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10 February 16, 2016. Proimtu filed its Motion to amend the Judgment or in the alternative for
11 reconsideration.

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20 ("Within 10 days after the service of the motion, the opposing party shall serve and file his written
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¹ If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so deemed.
TDAY/11874114.2/034514.0013

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

4 7. The Court takes judicial notice of the Supreme Court's Order, entered July 20,
5 2016, which indicates that this Court may grant the Motion without a remand of jurisdiction
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7 **II. CONCLUSIONS OF LAW**

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

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

20 3. Because TRP's Opposition was untimely the Court further finds that Proimtu's
21 Motion shall be deemed "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928,
22 124 P.3d 1161, 1162 (2005).

23 4. The Judgment is vacated and TRP's Motion to Dismiss is hereby denied because
24 TRP invoked the jurisdiction of this court and obtained a judgment on the merits on Proimtu's
25 Second and Seventh Claims for Relief, which conduct is inconsistent with assertion of the forum
26 selection clause and is a waiver of the forum selection clause.

27 ///

28 ///

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

2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted. TRP's
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20
5 days from written notice of entry of this Order to answer the First Amended Complaint.

6 DATED this ____ day of _____, 2016.

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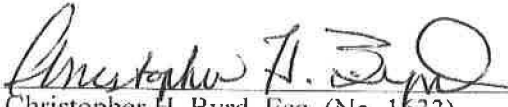
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District Court Judge

10 Submitted by:

11 **FENNEMORE CRAIG, P.C.**

12

13 

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

15 Brenoch Wirthlin (No. 10282)

16 300 S. Fourth Street, Suite 1400

17 Las Vegas, Nevada 89101

18 Telephone: (702) 692-8000

19 Facsimile: (702) 692-8099

20 *Attorneys for Proimtu MMI LLC*

21

22 Approved as to Form and Content by:

23

24 **PINTAR ALBISTON LLP**

25

26 

27 Becky Pintar, Esq.

28 Nevada Bar No. 7867

6053 S. Fort Apache Road, #120

Las Vegas, NV

Attorneys for TRP International, Inc.

24

25

26

27

28

IN THE SUPREME COURT OF THE STATE OF NEVADA

PROIMTU MMI LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Appellant,

vs.

TRP INTERNATIONAL, INC., A
DELAWARE CORPORATION,

Respondent.

No. 70056

FILED

JUL 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER

This is an appeal from a judgment certified as final pursuant to NRCP 54(b) in a breach of contract action. When our initial review of the docketing statement and documents before this court revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the notice of appeal was prematurely filed after the filing of a timely motion to amend judgment, and before that tolling motion was resolved in a written order. See NRAP 4(a)(6). It appeared that the tolling motion remained pending in the district court.

Appellant has filed a response and supplemental response in which it informs this court that there is a question of whether the motion was timely filed in the district court; although the motion was submitted to the clerk on March 11, 2016, it was not filed until March 15, 2016. Appellant asks that this court refrain from acting on the order to show cause until the district court enters a written order determining whether the motion was timely filed.

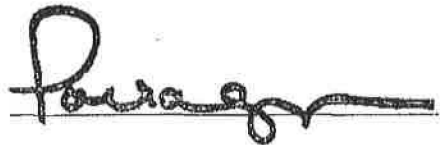
We elect to treat the response and supplemental response as a request for an extension of time to file a response to the order to show cause. Cause appearing, we grant the motion. NRAP 26(b)(1)(A).

16-22610

Appellant shall have 20 days from the date of this order to inform this court, in writing, of the status of the district court proceedings and provide this court with a copy of any written order regarding the date of filing of the motion to amend judgment.

We note that, should the district court determine that the motion to amend was timely filed, the notice of appeal was prematurely filed before resolution of that motion. NRAP 4(a)(4). The district court is not divested of jurisdiction when a notice of appeal is premature and may thus rule on the motion without a remand from this court. NRAP 4(a)(6).

It is so ORDERED.

 C.J.

cc: Chief Judge, The Fifth Judicial District Court
Hon. Steven Elliott, Senior Judge
Fennemore Craig, P.C./Las Vegas
Pintar Albiston LLP
Nye County Clerk

Exhibit “D”

Exhibit “D”

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
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10 bwirthlin@fclaw.com
11 Attorneys for Proimtu MMI LLC

12 **FIFTH JUDICIAL DISTRICT COURT**

13 **NYE COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

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

28 Defendants.

29 COBRA THERMOSOLAR PLANTS, INC. a
30 Nevada corporation; and TONOPAH SOLAR
31 ENERGY, LLC, a Nevada limited liability
32 company,

33 Crossclaimants,

34 v.

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

39 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1


THREE DAY NOTICE OF
INTENT TO DEFAULT

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PLEASE TAKE NOTICE that unless Defendant TRP International, Inc. answers or otherwise pleads to Plaintiff PROIMTU MMI, LLC's ("Plaintiff") Complaint on file herein within three (3) days of service of this notice, Plaintiff intends to take default against Defendant TRP International, Inc. and request the Court to enter a judgment against Defendant by default.

DATED this 5 day of October, 2016.

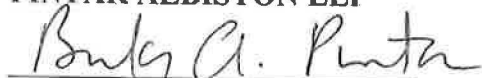
By: 
Christopher H. Byrd, Esq. (No. 1633)
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Attorneys for Proimtu MMI LLC

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RECEIPT OF COPY

RECEIPT of the foregoing **THREE DAY NOTICE OF INTENT TO DEFAULT** is hereby acknowledged this 5 day of October, 2016.

PINTAR ALBISTON LLP



Becky A. Pintar, Esq.

Bryan L. Albiston, Esq.

6053 S. Fort Apache Road, Suite 120

Las Vegas, NV 89148

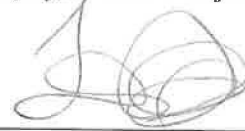
Attorneys for TRP International, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 5th day of October, 2016, I served a copy of the **THREE**
3 **DAY NOTICE OF INTENT TO DEFAULT** upon the parties to this action by mailing a copy
4 thereof, postage prepaid, via regular U.S. Mail, addressed as follows:

5 Becky A. Pinta, Esq.
6 Bryan L. Albiston, Esq.
7 Pinta Albiston LLP
8 6053 S. Fort Apache Road, Suite 120
9 Las Vegas, NV 89148
10 *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

11 

12 _____
13 An employee of Fennemore Craig, P.C.
14
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