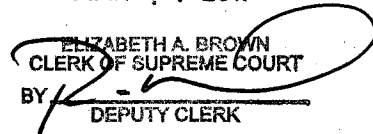


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FILED

MAR 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

6 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

7 FRANCO SORO, an individual; MYRA
8 TAIGMAN-FARRELL, an individual;
9 ISAAC FARRELL, an individual;
10 KATHY ARRINGTON, an individual;
and AUDIE EMBESTRO, an individual;

Case No: 72086

District Court Case No: A-13-679511-C

Petitioners,

11 v.

12 THE EIGHTH JUDICIAL DISTRICT
13 COURT OF THE STATE OF
14 NEVADA, in and for the COUNTY OF
CLARK, and the HONORABLE JERRY
A. WIESE, District Court Judge,

MOTION TO EXCEED PAGE
LIMIT OF REPLY IN
SUPPORT OF MOTION TO
STAY

15 Respondents,

16 And

17 AMERICA FIRST FEDERAL CREDIT
18 UNION, a federally chartered credit
union,

19 Real Party in Interest.

20 **RECEIVED**
21 MAR 09 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 27(d)(2) stipulates that all replies before this Court are not to exceed five pages. However, NRAP 27(d)(2) also allows parties to exceed the page limit upon permission of the Court.

In the underlying case, Petitioners' Reply contains six (6) pages. See Exhibit 1. Good cause exists to allow the Reply to exceed the page limit. The following reasons are outlined in and supported by the Declaration of Jaimie Stilz, Esq., attached hereto as Exhibit 2:

1) Petitioners request that this Court allow the Reply to be filed with this Court due to the numerous legal issues raised in this matter.

2) Petitioners request permission to exceed the page limit of the Reply due to the complexity of the briefing associated with the underlying Motion to Stay District Court Proceedings.

3) Petitioners have attempted to adhere to the page limit, but are unable to reduce the Reply by one last page.

4) Despite Petitioners' best efforts, responding to the Opposition to Petitioners' Motion to Stay and documenting the factors justifying a stay as outlined in NRAP 8 has required slightly more than the five pages allotted by the rule. It is entirely necessary for Petitioners to address the details associated with the underlying Motion and Opposition in Petitioners' Reply.

5) Therefore, Petitioners believe good cause exists to allow the

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Reply to exceed this Court's page limit.

Accordingly, for the foregoing reasons and good cause shown, and pursuant to NRAP 27(d)(2), this Court should allow Petitioners to file their current Reply consisting of six (6) pages.

Dated this 9th day of March, 2017.

REID RUBINSTEIN & BOGATZ

By: /s/ Jaimie Stilz, Esq.
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EXHIBIT 1

EXHIBIT 1

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6 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

7 FRANCO SORO, an individual; MYRA
8 TAIGMAN-FARRELL, an individual;
9 ISAAC FARRELL, an individual; KATHY
ARRINGTON, an individual; and AUDIE
10 EMBESTRO, an individual;

Case No: 72086

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Petitioners,

11 v.

12 THE EIGHTH JUDICIAL DISTRICT
13 COURT OF THE STATE OF NEVADA,
in and for the COUNTY OF CLARK, and
14 the HONORABLE JERRY A. WIESE,
District Court Judge,

15 Respondents,

16 And

17 AMERICA FIRST FEDERAL CREDIT
UNION, a federally chartered credit union,

18 Real Party in Interest.

19 **REPLY IN SUPPORT OF MOTION TO STAY**

20 Petitioners, Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy
21 Arrington, and Audie Embestro (“Petitioners”), by and through their attorneys of

1 record, Reid Rubinstein & Bogatz, hereby respectfully file this Reply in Support
2 of their Motion to Stay District Court Proceedings. This Reply is made and based
3 upon the following Memorandum of Points and Authorities, the papers and
4 pleadings on file herein and such oral argument as the Court may permit.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. LEGAL ARGUMENT**

7 **A. PETITIONERS ARE ENTITLED TO A STAY GIVEN THIS**
8 **COURT'S PRECEDENT OF ISSUING STAYS FOR WRITS**
9 **INVOLVING DEFICIENCY STATUTES.**

10 As set forth in Petitioners' underlying Motion, this Court routinely grants
11 stays when considering writs involving important issues that implicate anti-
12 deficiency statutes and borrower/guarantor protections. See Walters v. Eighth
13 Jud. Dist. Ct., 127 Nev. 723, 726, 263 P.3d 231, 233 (2011); Sandpointe Apts. v.
14 Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 87, 313 P.3d 849, 852 (2013); Lavi v.
15 Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 38, 325 P.3d 1265, 1266 (2014); Badger
16 v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 39, 373 P.3d 89, 96 (2016); see also
17 Nelson v. Heer, 121 Nev. 832, 836-37, 122 P.3d 1252, 1254-55 (2005).

18 Similar to this action, Walters, Sandpointe, Lavi, and Badger all involved
19 facts and issues regarding statutory interpretation and public policy related to
20 Nevada's anti-deficiency protections that entitled the borrowers/guarantors to a
21 stay. See Walters, Docket No. 55912; Sandpointe, Docket No. 59507; Lavi,
Docket No. 58968; Badger, Docket No. 67835. Specifically, in each of the

1 aforementioned cases¹ – as in this case – a creditor sought a deficiency judgment
2 against borrowers/guarantors and claimed to have followed all of the requirements
3 necessary to seek a deficiency judgment against the borrower/guarantor in
4 accordance with Nevada law. See id. In each case, as in this one, the
5 borrower/guarantor argued that contrary to the creditor’s assertions, the creditor
6 did not satisfy the requirements necessary to seek a deficiency judgment against
7 the borrowers/guarantors. See id. Accordingly, in each case, this Court granted
8 a stay while it considered the parties’ arguments regarding proper interpretation
9 and application of anti-deficiency judgment statutes. See id. In light of the
10 foregoing and given that the same public policy, statutory interpretation and
11 probability of irreparable harm to the borrowers/guarantors absent a stay are
12 present here as they were in Walters, Sandpointe, Lavi, and Badger, Petitioners
13 respectfully request a stay here as was issued in each of those cases.

14 **B. PETITIONERS ARE ENTITLED TO A STAY GIVEN THAT**
15 **THE NRAP 8 FACTORS OVERALL WEIGH IN FAVOR OF**
16 **ISSUANCE OF A STAY.**

17 **1. The Writ Is Likely To Succeed On The Merits.**

18 The plain language of Utah Code Ann. § 57-1-32 and the precedent set by
19 Key Bank, Mardian, and Windhaven suggest Petitioners are in fact likely to

20

¹ AFCU incorrectly argues citation to these cases is not allowed and unhelpful. See
21 February 24, 2017 Opposition, on file herein, at p. 3 n.1. However, a full reading of
NRAP 36 reveals the unpublished decisions rule pertains to *final* decisions. See NRAP
36, entitled ‘Entry of Judgment.’ Further, a review of the dockets reveals similar
arguments for issuance of a stay, and this Court’s apparent agreement.

1 succeed on the merits of their Writ. Utah Code Ann. § 57-1-32, the pertinent
 2 statute under the Loan Documents, clearly denotes a three-month statute of
 3 limitations for deficiency actions. This Court has previously determined that out-
 4 of-state choice-of-law provisions apply to deficiency actions, including an outside
 5 state’s deficiency action limitation period. See Mardian v. Greenberg Family
 6 Trust, 131 Nev. Adv. Op. 72, 359 P.3d 109 (2015); Key Bank of Alaska v.
 7 Donnels, 106 Nev. 49, 787 P.2d 382 (1990). There is no dispute that AFCU failed
 8 to apply for deficiency judgment within the three-month period, and therefore the
 9 District Court erred in failing to dismiss the underlying action.

10 Further, Petitioners may seek writ relief for denial of their motion to
 11 dismiss. AFCU claims, incorrectly, that said denial may not form the basis for a
 12 writ petition. While not routine, this Court does entertain motion to dismiss denial
 13 writs when “the issue is not fact-bound and involves an unsettled and potentially
 14 significant, recurring question of law.” See, e.g., Badger, 132 Nev. Adv. Op. 39,
 15 373 P.3d at 93 (*citing* Buckwalter v. Eighth Jud. Dist. Ct., 126 Nev. 200, 201, 234
 16 P.3d 920, 921 (2010)).² In this matter, there are no factual disputes, and the issue
 17 is uncontrovertibly unsettled – indeed, AFCU admits this Court “has never
 18 revisited the central holding of Key Bank.”³ Moreover, as detailed in the Motion

19
 20 ² AFCU also cites to Badger, purportedly in support of its argument, but apparently
 failed to note that Badger was also an appeal from a motion to dismiss and this Court
 granted the Badger petitioners a stay.

21 ³ See February 24, 2017 Opposition, on file herein, at p. 8.

1 and referenced in Section A, *supra*, this Court has held that matters impacting
2 guarantor rights are of great significance and importance. As such, this Court may
3 entertain Petitioners' Writ, upon which Petitioners are likely to succeed.

4 **2. Petitioners Will Lose The Object Of Their Writ –**
5 **Protection From Statutorily-Impermissible Deficiency**
6 **Actions – If A Stay Is Not Granted.**

7 Petitioners will lose the object of their writ – specifically, enforcement of
8 the anti-deficiency protections afforded by Utah Code Ann. § 57-1-32 – if a stay
9 is not granted. As has been standard throughout their entire belated attempt to
10 seek a deficiency judgment, AFCU tries to ignore the serious nature of the anti-
11 deficiency protections, mischaracterizing the object of Petitioners' writ as merely
12 “establishing that AFCU’s complaint is untimely.”⁴ On the contrary, the purpose
13 of Petitioners' writ is much more significant. Statutes of limitation are crucial
14 because they provide important protections “against the evidentiary problems
15 associated with defending a stale claim” and “promote repose by giving security
16 and stability to human affairs.” See Nev. State Bank v. Jamison Family P’ship,
17 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990); see also Badger, 132 Nev. Adv.
18 Op. 39, 373 P.3d at 95 (stating failure to timely file for deficiency “is fatal” and
19 disavowing methods that “allow creditors to bypass the deadline” as “inconsistent
20 with Nevada's aim to protect borrowers and guarantors”). Without a stay,
21 Petitioners will irrefutably be denied the protections they are supposed to be

⁴ See id. at p. 3.

1 afforded under the statute, forced to continue defending themselves in litigation
2 that should have been statutorily barred from proceeding in the first place.

3 **3. Denial Of Petitioners' Request For Stay Will Result In**
4 **Irreparable Harm To Petitioners.**

5 Petitioners will be irreparably harmed in the event a stay is denied. AFCU
6 misguidedly contends that the substantial inconvenience, effort, time and legal
7 expenses Petitioners face (as well as the District Court's time, effort and
8 resources) in being forced to unnecessarily defend themselves in the underlying
9 litigation do not constitute irreparable harm.⁵ AFCU mistakenly relies on Hansen,
10 which is inapplicable as the district court proceedings in Hansen would have
11 continued regardless of the decision on the writ since the issue of the motion to
12 quash was deferred to trial. Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657-
13 58, 6 P.3d 982, 986-87 (2000). Moreover, contrary to AFCU's position, "[t]he
14 Legislature has shown a strong inclination towards protecting an obligor's rights
15 under the anti[-]deficiency statutes." Lavi, 325 P.3d at 1268 (*citing* Lowe Enters.
16 Residential Partners, L.P. v. Eighth Judicial Dist. Court, 118 Nev. 92, 103-04, 40
17 P.3d 405, 412-13 (2002)). Indeed, forcing Petitioners to proceed with the
18 unnecessary, pointless, time-consuming burden of litigation despite having no
19 liability under Utah's anti-deficiency statutes, and then possibly being forced to
20 post a supersedeas bond in order to stay execution pending an appeal, is *precisely*

21 ⁵ See id. at p. 3.

1 the type of irreparable harm this Court must prevent.

2 **4. A Stay Will Not Result In Irreparable Harm To AFCU.**

3 AFCU will not suffer irreparable harm if a stay is granted in this matter.
4 Ironically, AFCU claims that time is “not enough to show irreparable injury” to
5 Petitioners,⁶ then in the next breath argues that it will be seriously harmed by a
6 delay from a stay.⁷ As discussed *supra*, AFCU’s Hansen citation is misplaced
7 given the factually-inapposite scenario in that matter. Indeed, the Hansen Court
8 stated that “a mere delay in pursuing discovery in the litigation normally does not
9 constitute irreparable harm.” Hansen, 116 Nev. at 658, 6 P.3d at 987; see also
10 Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004)
11 (reaffirming mere delay is not irreparable harm). Moreover, as detailed in the
12 Writ, AFCU is statutorily prevented from seeking judgment against Petitioners.
13 Accordingly, AFCU cannot suffer any harm during a stay because it is not entitled
14 to proceed against Petitioners in the first place.

15 **II. CONCLUSION**

16 Based upon the foregoing, good cause exists for a stay of the lower court
17 proceedings. Accordingly, Petitioners respectfully request this Court grant the
18 underlying Motion To Stay District Court Proceedings.

19 ...

20 ⁶ See id. at p. 4.

21 ⁷ See id. at p. 5.

1 Dated this 9th day of March, 2017.

2 REID RUBINSTEIN & BOGATZ

3
4 By: /s/ Jaimie Stilz, Esq.

5 Charles M. Vlastic III, Esq.

6 Nevada Bar No. 11308

7 Jaimie Stilz, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2017, I served a copy of the foregoing **REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT PROCEEDINGS** by first class United States mail, postage prepaid, Las Vegas, Nevada, to the following:

Matthew D. Lamb, Esq.
Joseph P. Sakai, Esq.
Mark R. Gaylord, Esq.
BALLARD SPAHR, LLP
100 N City Pkwy, Ste. 1750
Las Vegas, Nevada 89106

Attorneys for Real Party in Interest

and

The Honorable Jerry A. Wiese
Eighth Judicial District Court
Department 30
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kristee Kallas
An employee of Reid Rubinstein & Bogatz

EXHIBIT 2

EXHIBIT 2

DECLARATION OF JAIMIE STILZ, ESQ.

I, JAIMIE STILZ, ESQ., being first duly sworn, declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief and, as to those facts, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am an associate with the law firm of Reid Rubinstein & Bogatz, counsel of record for Petitioners in Case No. 72086.¹

3. Petitioners are filing the Reply to address the numerous legal issues raised in this matter.

4. Petitioners are requesting permission to exceed the page limit of the Reply due to the complexity of the briefing associated with the underlying Motion to Stay District Court Proceedings.

5. Petitioners have attempted to adhere to the page limit, but are unable to reduce the Reply by one last page.

6. Despite Petitioners' best efforts, responding to the Opposition to Petitioners' Motion to Stay and documenting the factors justifying a stay as outlined in NRAP 8 has required slightly more than the five pages allotted

¹ Unless otherwise stated herein, the capitalized terms used herein have the same meaning ascribed to them in the accompanying Motion To Exceed Page Limit Of Reply in Support of Motion To Stay.

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1 by the rule. It is entirely necessary for Petitioners to address the details
2 associated with the underlying Motion and Opposition in Petitioners' Reply.

3 7. Good cause exists to allow the Reply to exceed this Court's
4 page limit.

5 I declare under penalty of perjury under the laws of the State of
6 Nevada (NRS 53.045),² that the foregoing is true and correct.

7 Dated this 9th day of March, 2017.

8 /s/ Jaimie Stilz, Esq.
9 JAIMIE STILZ, ESQ., Declarant

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² **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form.