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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT FOR THE STATE OF NEVADA

HOWARD SHAPIRO et al.,

Sup. Crt. No.: 73943

Appellant,

Dist. Crt. No.: A-14-706566-C

vs.

GLEN WELT et al.,

Respondent.

**EMERGENCY MOTION TO
STAY EXECUTION OF THE
JUDGMENT BELOW AND TO
WAIVE THE SUPERSEDEAS
BOND AND FOR A SINGLE
JUSTICE TO REVIEW
THE MATTER ON AN
EXPEDITED BASIS**

Comes Now Appellants, Howard Shapiro and Jenna Shapiro
("Appellants"), through their attorney Alex Ghibaud, Esq. of the Law
Office of Alex B. Ghibaud, PC, and files the instant motion requesting the
following relief:

RELIEF REQUESTED

1. *That the Court stay execution of the judgment below and to waive the supersedeas bond;*
2. *That a single Justice review and approve the instant motion*



1 *because time is of the essence; and*

2 3. *For such other relief as this Court deems just and equitable.*

3 This motion is based upon the following Memorandum of Points and
4 Authorities and any and all pleadings on file in this Court and the court
5 below.

6 **Memorandum of Points and Authorities**

7 Defendants filed a special motion to dismiss Plaintiff's claim under
8 Nevada's anti-SLAPP statute. The court granted that motion, over Plaintiffs
9 objection. A notice of appeal of the order granting Defendants motion was
10 timely filed. The matter has since been set for briefing with this Court and,
11 on May 15, 2018, screening was completed and Appellants are awaiting this
12 Court's decision.

13 Since then, the court below also awarded Defendants' attorney's fees
14 and sanctions in the amount of \$130,948.10. That Judgment was recorded in
15 the State of New Jersey under the Uniform Enforcement of Foreign
16 Judgment Act on October 18, 2017. Currently, Respondents are attempting
17 to executing that judgment on Mr. Shapiro and his interest in his business.

18 The judgment can have a serious impact on Plaintiff Howard
19 Shapiro's ability to continue to run his business, Overlook consulting group,
20 Inc., registered in the State of New Jersey in 2009, which grosses roughly
21 \$1,000,000.00 annually. That is because a portion of the business typically
22 involves monetary draws from lending institutions as well as specific client
23 requirements that may preclude Mr. Shapiro from being able to access
24 project related employment and/or compensation related to the business.

25 Given the high likelihood of success on appeal, as discussed below,
26 collection of the judgment prior to the exhaustion of the appeal process may
27 defeat the purpose of the claim: i.e., protecting Mr. Shapiro's reputation in
28 an effort to protect his ability to maintain his business. Therefore, it is



1 requested that a stay on execution of the judgment below be granted pending
2 the resolution of this appeal.

3 This motion follows.

4 **Legal Analysis**

5 **A. The Legal Standard to Apply in Determining Whether Proceedings to** 6 **Enforce a Judgment Should be Stayed In This Court**

7 Under NRAP 8, a party must ordinarily move in the district court first
8 to stay a judgment or order pending an appeal. Here, Appellants filed a
9 motion to stay proceedings in the court below. A hearing was held on that
10 matter on December 13, 2017. That motion was granted in part and the
11 district court ordered that collection efforts would be stayed pending the
12 posting of a supersedeas bond.¹ On January 25, 2018, a hearing was held on
13 Appellants' motion to reconsider the judgment. On February 9, 2018, the
14 order denying Appellants' motion was filed. Notice of entry of that order
15 was filed and served on February 9, 2018.² Since then, Appellants attempted
16 to secure a supersedeas bond but could not do so due to Appellant Howard
17 Shapiro's inability to qualify for such a bond. As such, collection efforts
18 were renewed.

19 Currently, Respondents are attempting to collect on that judgment in
20 the State of New Jersey. The case is docketed under DJ-180007-17.
21 Appellants have retained counsel V. James Castiglia, Esq. who holds offices
22 at 5561 Berkshire Valley Road, Suite 6, Oak Ridge, New Jersey 070438, and
23 are objecting to the collection efforts. The first hearing on the matter is
24 scheduled for September 14, 2018. As such, Appellants have satisfied NRAP
25 8(a)(1).

26
27 ¹ Attached as exhibit 1 is a copy of that order.

28 ² Attached as exhibit 2 is a copy of that order.

Under NRAP 8(a)(2) a motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court upon a showing that a motion was made in the court below and the district court denied the motion after stating the reasons the court below denied the motion. NRAP 8(a)(2)(A)(ii). Here, the first motion was granted in part, as discussed above, but the condition that a supersedeas bond was required was not granted “for lack of information.” A motion to reconsider was subsequently filed but was denied upon the grounds that the financial affidavit provided was not verified, it was untimely, and the content was not sufficient to grant the motion. As such, the supersedeas bond was not waived. Since then, Appellants attempted to secure a supresedeas bond but were unsuccessful.³

As a result, on May 15, 2018 Respondents, through counsel Christian V. McOmber, Esq., NJ ID No. 102292010 filed a “Certification in Support of Motion For Order Enforcing Litigant’s Rights” in the Superior Court of New Jersey Law Division, Sussex County, Docket No. DJ-180007-17.⁴ Currently, New Jersey counsel for Appellants informs undersigned counsel that an objection is pending in that the New Jersey court based on improper venue and other reasons. The next hearing in the matter is set for September 14, 2018.

Under NRAP 8(a)(2)(D), when time constraints make consideration by a panel impracticable, the motion may be considered by a single Justice or Judge. Here, court proceedings to collect on the judgment are in progress. As such, time is of the essence and consideration by a single Justice is appropriate.

The following is a discussion of the merits of the argument.

³ Appellant Howard Shapiro sought a bond from CAN Surety on or about February 2018 but was denied.

⁴ See Exhibit 3.

B. NRCP 62(d)

Under N.R.C.P. 62(d), proceedings to enforce a judgment may be stayed in the district court by giving a supersedeas bond.⁵ The test applied in considering whether to grant a stay were set forth in *Fritz Hansen*, and is reiterated in NRAP 8(c):

1. *Whether the object of the appeal/writ petition will be defeated if the stay is denied;*
2. *Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;*
3. *Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and*
4. *Whether appellant/petitioner is likely to prevail on the merits.*

Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000); see also, e.g., *Wiese v. Granata*, 110 Nev. 1410, 887 P.2d 744 (1994); *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev. 42, 574 P.2d 272 (1978).

Additionally, when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply the factors

⁵ N.R.C.P. 62(d)

1 considered by the 7th Circuit Court of Appeals, as delineated in *Dillon v. City*
2 *of Chicago*, and adopted in *Nelson v. Heer*.⁶

3 The purpose of security for a stay pending appeal is to protect the
4 judgment creditor's ability to collect the judgment if it is affirmed by
5 preserving the status quo and preventing prejudice to the creditor arising
6 from the stay.⁷ However, a supersedeas bond should not be the judgment
7 debtor's sole remedy, particularly where other appropriate, reliable
8 alternatives exist. Thus, the focus is properly on what security will maintain
9 the status quo and protect the judgment creditor pending an appeal, to
10 include waiving the bond entirely.

11 In reflecting on the purposes of security for a stay, the Seventh
12 Circuit, in *Dillon v. City of Chicago*, set forth five factors to consider in
13 determining when a full supersedeas bond may be waived and/or alternate
14 security substituted:

- 15 1. *the complexity of the collection process;*
- 16 2. *the amount of time required to obtain a judgment after it is*
17 *affirmed on appeal;*⁸
- 18 3. *the degree of confidence that the district court has in the*
19 *availability of funds to pay the judgment;*
- 20 4. *whether the defendant's ability to pay the judgment is so plain*
21 *that the cost of a bond would be a waste of money; and*

22 ⁶ *Nelson v. Heer*, 121 Nev. 832 (2005).

23
24 ⁷ *Id.*

25 ⁸ In considering the second factor, the district court should take into account
26 the length of time that the case is likely to remain on appeal. See, *Nelson v.*
27 *Heer*, 121 Nev. 832 (2005).
28

1 5. *whether the defendant is in such a precarious financial*
2 *situation that the requirement to post a bond would place other*
3 *creditors of the defendant in an insecure position.*

4 **C. Discussion Concerning the Legal Standard**

5 **a. The Object of the Appeal**

6 This factor addresses whether an appeal would be rendered moot if an
7 order appealed from was allowed to go into effect. The question is whether
8 enforcing the judgment appealed from would “destroy the subject matter of
9 the appeal. The starkest example would be, for example, application of the
10 death penalty, which quite obviously makes a reversal on appeal useless. Put
11 another way, the question is whether a stay is necessary to “preserve the
12 issues of this appeal for determination” – whether the “object of the appeal”
13 is imperiled by enforcement of the underlying order, or the appeal would be
14 rendered moot by such enforcement.

15 Here, as stated above, the purpose of the claim was to protect the
16 harm that defamatory statements can have on a business owners ability to
17 maintain good will in the community and run his business. If the judgment
18 were maintained, the amount awarded and the effect of the judgment
19 registered in New Jersey would have the same effect as the defamatory
20 statements: the destruction of Mr. Shapiro’s ability to maintain his business.

21 **b. “Irreparable Harm” – Appellant**

22 In *Hansen*, the Court explicitly held that litigation expenses “are
23 neither irreparable nor serious.” The question, necessarily, is whether any
24 harm befalling Appellants is irreparable that reversal on appeal would not
25 ameliorate. Here, again, the harm is the loss of a business in operation since
26 2009 and all the good will attached to it. That is irreparable harm.

27 **c. “Irreparable Harm” – Respondent**

28

Though, in a theoretical sense, the relative interests of the parties are equal when the issue is strictly monetary, money may not always be a zero-sum game. Where the parties' situations are vastly different, even money changing hands could have vastly different impacts on the parties' relative welfare during the pendency of an appeal – an inconvenience to one could be a matter of life and death to the other. In this case, Respondents in this matter are of considerable financial means. Staying the judgment pending appeal will not have an impact on them.

d. Likelihood of Prevailing

The Nevada Supreme Court held in *Hansen* that when moving for a stay pending an appeal or writ proceeding, a movant must “present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” Here, there is a high likelihood of success on the merits and Appellants, and undersigned counsel, have proven that their appeals are not frivolous as the last time this matter was appealed it was reversed and remanded for further proceedings. Most importantly, the order contains several misstatements of law that this court relied upon in dismissing the matter the make the likelihood of success on the merits highly probable.

For example, the following statement was contained in the order granting Respondents' motion to dismiss that material affects the analysis:

By borrowing from California, Nevada implicitly adopted *California case law* interpreting that statute, citing *International Game Technology, Inc. v. Dist. Ct.*, 122 Nev. 132, 153, 127 P.3d 1088, 1103 (2006).

There is absolutely no authority that supports this contention – nor do Respondents cite any such authority. Instead, Respondents misstate the law. The case cited in support actually states the following:

1
2 "[W]hen a federal statute is adopted in a statute of this state, a
3 presumption arises that the legislature knew and intended to
4 adopt the construction placed on the federal statute by federal
5 courts. This rule of [statutory] construction is applicable,
6 however, only if the state and federal acts are substantially
7 similar and the state statute does not reflect a contrary legislative
8 intent." Edgington v. Edgington, 119 Nev. 577, 80 P.3d 1282
9 (Nev., 2003) [80 P.3d 1288]

10 Though the district court erroneously stated that the Nevada
11 legislature adopted California case law, in actuality, the rule is that a
12 presumption arises that the legislature intended to adopt such a construction.
13 This court missed a step in the analysis by stating the Nevada legislature
14 adopted case law that may not be inapplicable.

15 Indeed, in the previous appellate matter in this case, *Shapiro v. Welt*,
16 Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014), the Nevada Supreme Court
17 stated something entirely different:

18 Because this court has recognized that California's and Nevada's
19 anti-SLAPP "statutes are similar in purpose and language," John,
20 125 Nev. at 752, 219 P.3d at 1281; compare NRS 41.637(4), with
21 Cal. Civ. Proc. Code § 425.16(e) (West 2016), *we look to*
22 *California law for guidance on this issue. (Emphasis Added).*

23 That is, rather than adopting California case law, the Nevada Supreme Court
24 looks to it as persuasive authority, nothing more. On appeal, questions of
25 statutory construction, i.e., whether or not California case law is adopted in
26 this matter or not, is reviewed de novo, whether reference to the district
27
28

1 court's findings, which are threadbare to begin with.⁹ Whether California
2 case law is adopted, whether a presumption should have arisen in
3 determining its adoption, is a material question of law that the Nevada
4 Supreme Court will review de novo, likely in favor of Appellants.

5 The order contains further misstatements of law and fact that are
6 material to the appeal. As an example, the following was contained in this
7 court's order:

8
9 The core question under review by the New Jersey judicial body
10 was whether Walter needed a conservator and, if so, whether
11 Howard was qualified and suitable for that role. NRS 41.637(3)
12 protects a "written or oral statement made in direct connection
13 with an issue under consideration by a...judicial body." **No**
14 ***Nevada appellate court has yet addressed this definition***, so the
15 court considers persuasive California case law interpreting its
16 statute protecting "any written or oral statement or writing made
17 in connection with an issue under consideration or review by
18 a...judicial body...." (Emphasis Added).

19 Order Granting Defendants Motion to Dismiss, page 5, lines 10-16. This
20 statement is incorrect. In fact, not only was the issue previously addressed at
21 least twice by the Nevada Supreme Court, ***it was addressed in the previous***
22 ***appeal in this matter***. In their answering brief, Defendants specifically
23 addressed this issue as follows:

24 Applied here, the statements on
25 www.howardshapirovictims.com were made in direct
26 connection with an issue under consideration by a New Jersey

27 ⁹ *Shapiro v. Welt*, Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014). (This court
28 reviews the constitutionality of a statute and questions of statutory
construction de novo).

1 judicial body. The New Jersey court was evaluating a petition to
2 appoint a conservator over Walter and whether Howard should
3 be that conservator. The statements on
4 www.howardshapirovictims.com directly concerned whether
5 Howard was suitable for that role. The website also requested
6 information from others with information that might reflect upon
7 Howard's suitability to be Walter's conservator.

8 The Welts' statements on the website were "made in direct
9 connection with an issue under consideration by a ... judicial
10 body...." This qualifies the statements as "[g]ood faith
11 communication in furtherance of the right ... to free speech in
12 direct connection with an issue of public concern." The Shapiros'
13 complaint is premised exclusively upon these statements. Given
14 these facts, the Welts' statements are protected and they are
15 immune from suit.

16 The district court's conclusion was correct and should be
17 affirmed.

18 In response, in its opinion on that case, the Nevada Supreme Court held the
19 following:

20 **Absolute litigation privilege**

21 The Shapiros argue that the district court erred in its application
22 of the absolute litigation privilege test articulated in *Jacobs v.*
23 *Adelson*, 130 Nev., Adv. Op. 44, 325 P.3d 1282 (2014), in this
24 matter. We agree.

25 "Nevada has long recognized the existence of an absolute
26 privilege for defamatory statements made during the course of
27 judicial and quasi-judicial proceedings." *Id.* at 1285.

28 This privilege, which acts as a complete bar to
defamation claims based on privileged statements,
recognizes that certain communications, although
defamatory, should not serve as a basis for liability
in a defamation action and are entitled to an absolute
privilege because the public interest in having

1 people speak freely outweighs the risk that
2 individuals will occasionally abuse the privilege by
3 making false and malicious statements.

4 Id. (internal quotation marks omitted). In order for the privilege
5 to apply to defamatory statements made in the context of a
6 judicial proceeding, "(1) a judicial proceeding must be
7 contemplated in good faith and under serious consideration, and
8 (2) the communication must be related to the litigation." Id.
9 (internal quotation marks omitted). However, a "[party's]
10 statements to someone who is not directly involved with the
11 actual or anticipated judicial proceeding will be covered by the
12 absolute privilege only if the recipient of the communication is
13 significantly interested in the proceeding" Fink v. Oshins, 118
14 Nev. 428, 436, 49 P.3d 640, 645-46 (2002)
15 (internal quotation marks omitted).

16 For a statement to fall within the scope of the absolute litigation
17 privilege it must be made to a recipient who has a significant
18 interest in the outcome of the litigation or who has a role in the
19 litigation. Id. at 436, 49 P.3d at 645-46; see also Jacobs, 130
20 Nev., Adv. Op. 44, 325 P.3d at 1287. In order to determine
21 whether a person who is not directly involved in the judicial
22 proceeding may still be "significantly interested in the
23 proceeding," the district court must review "the recipient's legal
24 relationship to the litigation, not their interest as an observer."
25 Jacobs, 130 Nev., Adv. Op. 44, 325 P.3d at 1287. The review "is
26 a case-specific, fact-intensive inquiry that must focus on and
27 balance the underlying principles of the privilege." Id. (internal
28 quotation marks omitted).

Here, the district court failed to conduct a case-specific, fact
intensive inquiry that focused on and balanced the underlying
principles of the privilege as required by Jacobs. Thus, the
district court erred in its analysis of the Welts' statements.
Accordingly, we reverse the district court's order and remand for
further proceedings consistent with this opinion.



1 In short, the Nevada Supreme Court addressed the issue relied upon
2 by the district court in the *Jacobs, Oshins, and Shapiro* matter. The district
3 court, however, stated the issue was never addressed and turned to California
4 case law for answers. This is clear legal error that will likely result in the
5 matter being reversed and remanded.

6 Finally, the Nevada Supreme Court directed the district court to
7 conduct a case specific, fact intensive inquiry that focused on and balanced
8 the underlying principles of the privilege as required by *Jacobs*. This court
9 did not do that. Instead, the district court relied on California case law. As a
10 result, the likelihood of success on appeal is high.

11 **e. Waiver of the Supersedeas Bond is Appropriate**

12 The following factors must be considered in determining if full waiver
13 of the bond is appropriate: 1) the complexity of the collection process; 2) the
14 amount of time required to obtain a judgment after it is affirmed on appeal;
15 3) the degree of confidence that the district court has in the availability of
16 funds to pay the judgment; 4) whether the defendant's ability to pay the
17 judgment is so plain that the cost of a bond would be a waste of money; and
18 5) whether the defendant is in such a precarious financial situation that the
19 requirement to post a bond would place other creditors of the defendant in an
20 insecure position.

21 Here, the collection process is fairly straightforward, so much so that
22 it has already commenced. Appellants have an existing business that grosses
23 a fair amount of income annually. The judgment has been registered and
24 what follows is a writ of execution on that business's accounts or on the
25 judgment debtors personal account. After the matter is affirmed on appeal,
26 collecting on the judgment will not take any additional time such that
27 Respondents will be prejudiced and, Appellants' company, established in
28 2009, is not going anywhere and will still earn an income. Finally, failing to

1 waive the supersedeas bond allowing collection to proceed may destroy
2 Appellants ability to maintain the business that is the only source of income
3 for his family. Given the likelihood of success on appeal, as discussed
4 above, this eventuality would be highly prejudicial to Appellants and would
5 realize what the lawsuit was intended to ameliorate: the loss of the business.
6 As such, a complete waiver of the supersedeas bond is appropriate in this
7 matter.

8 **D. Conclusion**

9 Appellants' motion should be granted in its entirety.

10 DATED this 13th day of September, 2018.

11
12 /s/ Alex Ghibaud

13 ALEX B. GHIBAUDO, Nevada Bar No. 10592

14 **ALEX B. GHIBAUDO, PC**

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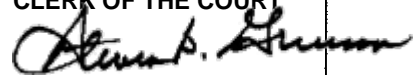
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2018, I served a true and correct copy of the foregoing **MOTION**, via the Court designated electronic service, addressed to the following:

Michael Lowry
Michael.lowry@wilsonelser.com

/s/ Joslyne Simmons
An Employee of ALEX B. GHIBAUDO, P.C.

EXHIBIT 1



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Attorneys for Glenn Welt, Rhoda Welt,
Lynn Welt, and Michele Welt

DISTRICT COURT
CLARK COUNTY, NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO, Case A-14-706566-C
Dept. 27

Plaintiffs,

vs.

**Order re Plaintiffs' Motion to Stay
Proceedings and to Waive Supersedeas Bond**

GLEN WELT, RHODA WELT, LYNN WELT,
MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

On September 20, 2017 the court entered a judgment against the Shapiros and in favor of the Welts. The Shapiros have appealed the court's order granting summary judgment, but the Welts have begun collection efforts. On November 9, 2017 the Shapiros moved to stay these collection efforts and waive a supersedeas bond requirement. The Welts opposed on November 27 and the motion was heard on December 13, 2017. Alex Ghibauda appeared for the Shapiros, Michael Lowry appeared for the Welts.

Based upon the briefing and oral argument of counsel, the motion is granted in part. Collection efforts will be stayed once the Shapiros post a supersedeas bond for the full amount of the judgment, plus two years of interest at the judicial rate. The principal amount of the judgment is \$130,448.90. Between when the judgment was entered on September 20 and when this motion was heard on December 13, 2017, the judicial interest rate was 6.25%. This results in \$8,153.06 of interest, per year. As a result, the Shapiros must post a supersedeas bond in the

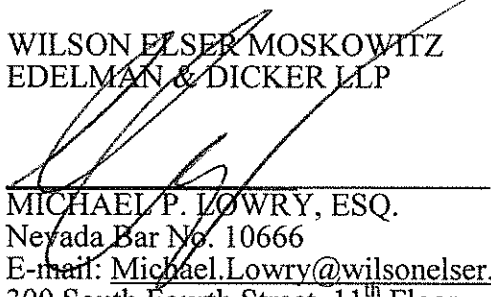
1 amount of \$146,755.02 for the stay of collection efforts to take effect. The remaining relief
2 sought the Shapiros seek is denied, without prejudice.

3 It is so ordered this 28 day of Dec, 2017.

4 Nancy L Alt
5 DISTRICT JUDGE ne

6 Submitted by:

7 WILSON ELSER MOSKOWITZ
8 EDELMAN & DICKER LLP

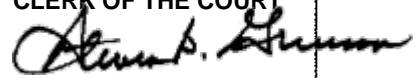
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17 Welt, and Michele Welt

Approved as to form and content by:

G LAW

18 *Approval requested December 13, 2017. No*
19 *response received.*
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EXHIBIT 2



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DISTRICT COURT
CLARK COUNTY, NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO, Case A-14-706566-C
Dept. 27

Plaintiffs,

vs.

**Order re Plaintiffs' Renewed Motion to Stay
Proceedings and to Waive Supersedeas Bond,
or in the Alternative Motion to Reconsider**

GLEN WELT, RHODA WELT, LYNN WELT,
MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

On September 20, 2017 the court entered a judgment against the Shapiros and in favor of the Welts. The Shapiros have appealed the court's order granting summary judgment, but the Welts have begun collection efforts. On November 9, 2017 the Shapiros moved to stay these collection efforts and waive a supersedeas bond requirement. The court granted the motion in part, as stated in the order filed on January 2, 2018.

On January 17, 2018 the Shapiros filed a renewed motion on this topic. The court granted the Shaprios request to have the motion heard on an order shortening time. The Welts opposed the motion on January 23, 2018, and the motion was heard on January 25, 2018. Alex Ghibardo appeared for the Shapiros and Michael Lowry appeared for the Welts.

One of the factors the court considered in partially granting the first motion to stay was the lack of information provided concerning the Shapiros' financial condition and ability to satisfy the judgment if affirmed on appeal. The Shapiros' renewed motion indicated it would rely upon an affidavit of financial condition that would be provided to the court for an in camera

1 review. The court did not receive any affidavit, or other supporting documentation, before the
2 January 25, 2018 hearing. Counsel for the Welts represented he received the documentation
3 from counsel for the Shapiros only five minutes before the hearing. The court then received this
4 documentation during the hearing itself.

5 The document is entitled "General Financial Disclosure Form" and is reportedly a form
6 used in the Family Division of the Eighth Judicial District Court. It is eight pages and states it is
7 for a Howard Andrew Shapiro. A signature appears on page 7. The court declined to consider
8 this documentation when ruling on the renewed motion. The document is unverified, lacks an
9 original signature, may be incomplete, and is too late. Even if it had been filed with the motion,
10 the document's content would not have been sufficient for the court to grant the relief the
11 Shapiros seek.

12 The Shapiros' motion is denied. The court declines to waive the supersedeas bond
13 requirement. It also declines to reconsider January 2, 2018 order.

14 It is so ordered this 2 day of Feb, 2018.

15
16 Nancy L. Alf
DISTRICT JUDGE NE

<p>Submitted by:</p> <p>18 WILSON ELSEER MOSKOWITZ 19 EDELMAN & DICKER LLP</p> <p>20</p> <p>21 MICHAEL P. LOWRY, ESQ. 22 Nevada Bar No. 10666 23 E-mail: Michael.Lowry@wilsonelser.com 24 300 South Fourth Street, 11th Floor 25 Las Vegas, Nevada 89101-6014 26 Tel: 702.727.1400/Fax: 702.727.1401 27 Attorneys for Glenn Welt, Rhoda Welt, Lynn 28 Welt, and Michele Welt</p>	<p>Approved as to form and content by:</p> <p>G LAW</p> <p>Proposed order submitted 1/25/18, no response received.</p> <p>ALEX B. GHIBAUDO, ESQ. Nevada Bar No. 10592 E-mail: alex@alexglaw.com 7720 Cimarron Rd., Suite 110B Las Vegas, NV 89113 Tel: 702.778.1238/Fax: 702.924.6553 Attorneys for Howard Shapiro and Jenna Shapiro</p>
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EXHIBIT 3

Christian V. McOmber, Esq., NJ ID #102292010
McOMBER & McOMBER, P.C.
54 Shrewsbury Avenue
Red Bank, NJ 07701
Phone: 732.842.6500
Fax: 732.530.8545
Email: cvm@njlegal.com
Attorneys for Defendants Glenn Welt,
Rhoda Welt, Lynn Welt and Michele Welt

HOWARD SHAPIRO and JENNA SHAPIRO,
Plaintiffs,

vs.

GLENN WELT, RHODA WELT,
LYNN WELT, MICHELE WELT,
individuals; CHECKSNET.COM., a
corporation; DOES 1 through X, and ROE
CORPORATIONS 1 through X, inclusive,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SUSSEX COUNTY

DOCKET NO.: DJ-180007-17

CIVIL ACTION

**CERTIFICATION IN SUPPORT OF
MOTION FOR ORDER ENFORCING
LITIGANT'S RIGHTS**

I, CHRISTIAN V. McOMBER, ESQUIRE, an attorney-at-law duly licensed to practice before the Courts of the State of New Jersey and a partner with McOmber & McOmber, P.C., the attorneys for the Defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt ("Judgment-Creditors"), respectfully certify as follows:

1. This Certification is made in support of Judgment-Creditors' Motion for an Order Enforcing Litigant's Rights.
2. On October 18, 2017, Judgment-Creditors recovered a Final Judgment against the Plaintiffs Howard Shapiro and Jenna Shapiro ("Judgment-Debtors") in the Superior Court of New Jersey, Sussex County, in the amount of \$130,948.10, plus costs.
3. On April 5, 2018, I served an information subpoena and attached questions as permitted by the Court Rules on Judgment-Debtors by sending it simultaneously by regular and

certified mail, return receipt requested, to Judgment-Debtors' last-known address as shown on the accompanying Motion.

4. The regular mail has not been returned by the United States Postal Service.
5. The certified mail return receipt cards have been signed for and returned to me.
6. Judgment-Debtors have failed to comply with the information subpoena.
7. I request that the Court enter an Order enforcing litigant's rights.
8. On May 15, 2018, I served copies of the Motion, Certification and proposed Order on Judgment-Debtors by sending them simultaneously by regular and certified mail, return receipt requested, to:

Howard Shapiro
623 Skyline Drive
Lake Hopatcong, NJ 07849

Jenna Shapiro
623 Skyline Drive
Lake Hopatcong, NJ 07849

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

McOMBER & McOMBER, P.C.
*Attorneys for Defendants Glenn Welt,
Rhoda Welt, Lynn Welt, and Michele Welt*

By: 
CHRISTIAN V. McOMBER

Dated: May 15, 2018

A PROFESSIONAL CORPORATION

**McOmber
& McOmber**

COUNSELLORS AT LAW

RICHARD D. McOMBER
ADRIENNE HAROUTUNIAN McOMBER
R. ARMEN McOMBER*
CHRISTIAN V. McOMBER*
MATTHEW A. LUBER ◊
EDMUND F. FITTERER, JR.
ELIZABETH A. MATECKI △
KAITLYN R. GRAJEK
AUSTIN B. TOBIN

54 SHREWSBURY AVENUE
RED BANK, NEW JERSEY 07701
(732) 842-6500
FAX: (732) 530-8545

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Reply to Red Bank

30 S. MAPLE AVENUE, SUITE 201
MARLTON, NEW JERSEY 08053
(856) 985-9800
FAX: (732) 530-8545

OF COUNSEL

J. PETER SOKOL
ROBERT J. MALLOY ◊
ALAN SERRINS •

* RULE 1:40 QUALIFIED MEDIATOR

◊ ADMITTED IN NJ & PA

△ ADMITTED IN NJ & NY

• ADMITTED IN NY

May 15, 2018

Clerk, Superior Court of New Jersey
Sussex County Courthouse
Civil Division
43-47 High Street
Newton, NJ 07860

RE: Howard Shapiro and Jenna Shapiro vs. Glenn Welt,
Rhoda Welt, Lynn Welt, and Michele Welt, et al.
Docket No. DJ-180007-17
Our File No. 11586

Dear Sir or Madam:

This firm represents Defendants Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt with regard to the above-captioned matter. Enclosed please find an original and one (1) copy of Notice of Motion for Order Enforcing Litigant's Rights, Certification in Support of Motion for Order Enforcing Litigant's Rights, and proposed form of Order ("Motion").

Kindly file the Motion and return a copy marked "filed" to the undersigned in the envelope provided herewith. I am enclosing an additional return envelope for return of the Order to this firm. Please charge the filing fee of \$50.00 to this firm's Collateral Account #143284. Thank you.

This correspondence is from a debt collector and is an effort to collect a debt. Any information obtained will be used for that purpose.

Very truly yours,

/s/ Christian V. McOmber

CVM:tmb
Enclosures

cc: Mr. Glenn Welt (*without enclosures; via email only*)
Howard Shapiro, Judgment-Debtor (*with enclosures; via certified & regular mail*)
Jenna Shapiro, Judgment-Debtor (*with enclosures; via certified & regular mail*)

Christian V. McOmber, Esq., NJ ID #102292010
McOMBER & McOMBER, P.C.
54 Shrewsbury Avenue
Red Bank, NJ 07701
Phone: 732.842.6500
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HOWARD SHAPIRO and JENNA SHAPIRO,

Plaintiffs,

vs.

GLENN WELT, RHODA WELT,
LYNN WELT, MICHELE WELT,
individuals; CHECKSNET.COM., a
corporation; DOES 1 through X, and ROE
CORPORATIONS 1 through X, inclusive,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SUSSEX COUNTY

DOCKET NO.: DJ-180007-17

CIVIL ACTION

**NOTICE OF MOTION FOR ORDER
ENFORCING LITIGANT'S RIGHTS**

TO: Howard Shapiro, Plaintiff (Judgment-Debtor)
623 Skyline Drive
Lake Hopatcong, NJ 07849

Jenna Shapiro, Plaintiff (Judgment-Debtor)
623 Skyline Drive
Lake Hopatcong, NJ 07849

SIR OR MADAM:

PLEASE TAKE NOTICE, that the undersigned attorneys for Defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt ("Judgment-Creditors") will apply to this Court located at 43-47 High Street, Newton, New Jersey 07860, on the 6th day of July, 2018, at 9:00 AM, or as soon thereafter as counsel may be heard, for an Order:

1. Adjudicating that you have violated the litigant's rights of the Judgment-Creditors by failure to comply with the information subpoena served upon you;

2. Compelling you to immediately furnish answers as required by the information subpoena;

3. Directing that if you fail to appear in Court on the date written above, you may be arrested by an Officer of the Court or the Sheriff and confined in the county jail until you comply with the information subpoena;

4. Directing that if you fail to appear in Court on the date written above, you shall pay the Judgment-Creditors' attorneys' fees in connection with this Motion;

5. Granting such other relief as may be appropriate.

If you have been served with an information subpoena, you may avoid having to appear in Court by sending written answers to the questions attached to the information subpoena to me no later than three (3) days before the Court date.

I will rely on the Certification attached hereto.

McOMBER & McOMBER, P.C.
*Attorneys for Defendants Glenn Welt,
Rhoda Welt, Lynn Welt, and Michele Welt*

By: _____
CHRISTIAN V. McOMBER

Dated: May 15, 2018

NOTICE: THIS IS A PUBLIC DOCUMENT, WHICH MEANS THE DOCUMENT AS SUBMITTED WILL BE AVAILABLE TO THE PUBLIC UPON REQUEST. THEREFORE, DO NOT ENTER PERSONAL IDENTIFIERS¹ ON IT.

Christian V. McOmber, Esq., NJ ID #102292010
McOMBER & McOMBER, P.C.
54 Shrewsbury Avenue
Red Bank, NJ 07701
Phone: 732.842.6500
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Attorneys for Defendants Glenn Welt,
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HOWARD SHAPIRO and JENNA SHAPIRO,
Plaintiffs,

vs.

GLENN WELT, RHODA WELT,
LYNN WELT, MICHELE WELT,
individuals; CHECKSNET.COM., a
corporation; DOES 1 through X, and ROE
CORPORATIONS 1 through X, inclusive,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SUSSEX COUNTY

DOCKET NO.: DJ-180007-17

CIVIL ACTION

**ORDER TO ENFORCE
LITIGANT'S RIGHTS**

THIS MATTER being opened to the Court by McOmber & McOmber, P.C., attorneys for Defendants Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt ("Judgment-Creditors"), for an Order enforcing litigant's rights, and the Plaintiffs Howard Shapiro and Jenna Shapiro ("Judgment-Debtors") having failed to appear on the return date and having failed to comply with:

- ☐ Order for Discovery previously entered in this case;
☒ Information Subpoena.

DO NOT WRITE BELOW THIS LINE – For Court Use Only

¹ Personal identifiers include your Social Security No., Driver's License No., Vehicle Plate No., Insurance Policy No., Active Financial Account No., or Active Credit Card numbers.

IT IS on the _____ day of _____, 2018,

ORDERED and adjudged:

1. Judgment-Debtors have violated Judgment-Creditors' rights as a litigant;

2. Judgment-Debtors shall immediately furnish answers as required by:

- ☐ Order for Discovery,
- ☐ Information Subpoena

3. If Judgment-Debtors, _____, fail

to comply with the:

- ☐ Order for Discovery,
- ☐ Information Subpoena within ten (10) days of the certified date of personal service or mailing of this Order, a warrant for the Judgment-Debtors' arrest may issue out of this Court without further notice.

4. Judgment-Debtors shall pay Judgment-Creditors' attorney fees in connection with this Motion in the amount of \$_____.

JSC

PROOF OF SERVICE

On _____, 2018, I served a true copy of this Order on Judgment-Debtors Howard Shapiro and Jenna Shapiro,

- ☐ personally,
- ☒ by sending it simultaneously by regular and certified mail, return receipt requested, to:

Howard Shapiro
623 Skyline Drive
Lake Hopatcong, NJ 07849

Jenna Shapiro
623 Skyline Drive
Lake Hopatcong, NJ 07849

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date:_____

Signature:_____

APPENDIX VI. NOTICE TO DEBTOR
Rule 4:59-1 (h)
Superior Court of New Jersey

Docket# DJ-180007-17

Sheriff# 18001350

Plaintiff:

GLENN WELT, RHODA WELT, LYNN WELT, MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES 1 through X, and ROE
CORPORATIONS 1 through X, inclusive,

To: Howard Shapiro

623 Skyline Drive
Lake Hopatcong, NJ 07849

Overlook Consulting Group, Inc. has been levied upon at the instruction of McOMBER & McOMBER to satisfy in whole or in part the judgment against you in the above matter. Some property may be exempt from execution by Federal and State law, including but not limited to clothing and a total of \$1,000.00 of cash and personal property, except for goods purchased as part of the transaction which led to the judgment in this case. In addition, welfare benefits, social security benefits, S.S.I. benefits, V.A. benefits, unemployment benefits, workers' compensation benefits and child support you receive are exempt, even if the funds have been deposited in a bank account.

If the levy is against a bank account, the bank has already been notified to place a hold on your account for the full amount. However, the funds will not be taken from your account until the Court so orders. You may claim your exemption by notifying the Clerk of the Court and the person who ordered this levy of your reasons why your property is exempt. This claim must be in writing and if it is not mailed within 10 days of service of this notice, your property is subject to further proceedings for execution. The address of the Court is:

Sussex County Law Division
Superior Court
43-47 High Street
Newton, NJ 07860

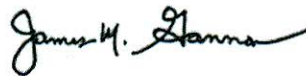
The address of the person who ordered this levy is 54 Shrewsbury Avenue Red Bank, NJ 07701 .

CERTIFICATION OF SERVICE

I mailed a copy of this notice to the defendant(s), the Clerk of the above named Court and the person who requested the levy on 6/25/2018. I certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to the punishment.

Date: 6/25/2018

Maggie Chappell
Executions Unit

For 
James M. Gannon
Sheriff of Morris County