

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

Electronically Filed
Oct 31 2019 04:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Respondent.

Appeal from Judgment
Fifth Judicial District Court
The Honorable Steven Elliott, District Court Judge
District Court Case No. **CV 39348**

MOTION FOR EXTENSION TO FILE BRIEF OF RESPONDENT

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Attorneys for Respondent
Brahma Group, Inc.

Respondent, Brahma Group, Inc. (“Brahma”), hereby moves the Court for a thirty-day extension to file its Brief of Respondent. This is Brahma’s first request for an extension. Appellant has requested and been granted multiple extensions (to which Brahma has not objected) and Brahma anticipates that Appellant will likewise not object to this request.

Appellant, Tonopah Solar Energy, LLC (“TSE”) filed its Brief of Appellant on October 3, 2019. The Brief of Appellant was initially due on July 30, 2019.¹ By way of stipulation, TSE’s deadline was extended to August 29, 2019.² TSE then moved to extend its deadline pursuant to NRAP 31(b)(3), which was granted and which moved its deadline to September 12, 2019.³ On September 12, 2019, TSE again moved the Court for another extension, to October 3, 2019.⁴ Among other things, TSE advised the Court that this last extension was necessary “due to developments with settlement discussions that took place this morning, which would nullify the need for the opening brief, TSE requests to extend the deadline by 21 days” and that “the parties are working quickly to finalize a settlement agreement.”⁵

The settlement agreement was not executed and TSE filed its Brief of Appellant on October 3, 2019. Despite that filing, TSE’s counsel advised Brahma’s counsel that “the filing of the appeal [brief] should not be taken by Brahma as an indication that TSE is not interested in further settlement negotiations” and that it was filing the brief because it feared the Court would not grant it further extensions even if Brahma stipulated to the same (which it would have).⁶

¹ See **Exhibit 1**, Appellant’s Second Motion for Extension of Time to File Opening Brief, filed on September 12, 2019.

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ See *id.*

⁶ See **Exhibit 2**, redacted to remove all substantive settlement discussions.

These settlement discussions have continued until recently and Brahma has focused its efforts on resolution rather than preparing extensive briefing such as the Brief of Respondent. While it now appears that Brahma will have no choice but to file its brief, Brahma and its counsel need more time to prepare the Brief of Respondent and Brahma therefore respectfully requests an extension of 30 days to file its Brief of Respondent

Based on the foregoing, Brahma respectfully requests that the Court grant Brahma an extension of 30 days – to no sooner than December 4, 2019 - to file its Brief of Respondent.

Respectfully submitted this 30th day of October, 2019.

PEEL BRIMLEY LLP

/s/ Eric B. Zimbelman

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Brahma Group, Inc.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 31st day of October, 2019, I caused the above and foregoing document, **MOTION FOR EXTENSION TO FILE BRIEF OF RESPONDENT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Nevada Supreme Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
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Attorneys for Tonopah Solar Energy, LLC



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

Tonopah Solar Energy, LLC,
Appellant

Electronically Filed
Aug 28 2019 02:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

Brahma Group, Inc.,
Respondent

Appeal
Fifth Judicial District Court
The Honorable Steven P. Elliott
Case No. CV 39348

**MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S OPENING BRIEF**

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*Attorneys for Appellant
Tonopah Solar Energy, LLC*

Appellant Tonopah Solar Energy, LLC requests 14 additional days to file its opening brief, which would make its opening brief due on September 12, 2019. NRAP 31(b)(3). This is the first such motion.

The parties previously stipulated to extend the deadline pursuant to NRAP 31(b)(2). The brief was originally due on July 30, 2019, and without the requested extension, would be due on August 29, 2019, pursuant to the prior stipulation. No requests for extension have been denied or denied in part.

Additional time is necessary to complete the brief. The brief presents various complicated and unique issues concerning matters such as sovereign immunity. While the brief is far-along, additional time is needed to refine the arguments and complete the appendix. Progress on the brief was delayed due to an illness contracted by the primary drafting counsel. The additional time will enable counsel to ensure all relevant authorities and citations are presented as thoroughly and succinctly as possible. Appellant, therefore, requests this short additional extension of time.

Dated: August 28, 2019

/s/ Ryan T. Gormley
D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Ryan T. Gormley, Esq.
Attorneys for Appellant
Tonopah Solar Energy, LLC

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that on August 28, 2019, I submitted the foregoing **MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S OPENING BRIEF** for filing via the Court's electronic filing system. Electronic notification will be sent to the following:

Richard L. Peel, Esq.
Eric B. Zimbelman, Esq.
Cary B. Domina, Esq.
Ronald J. Cox, Esq.
Peel Brimley, LLP
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Attorneys for Brahma Group, Inc.

/s/ Cindy S. Bowman

EXHIBIT 2

From: [Balkenbush, Colby](#)
To: [Richard Peel](#)
Cc: [Eric Zimbelman](#); [Roberts, Lee](#); [Gormley, Ryan](#)
Subject: RE: Revised draft of BGI/TSE Settlement Agreement
Date: Thursday, October 3, 2019 4:08:49 PM
Attachments: [image021.png](#)
[image023.png](#)
[LOGO_ab89ebf0-bbc1-4cd6-98a7-7a9b4e554067.png](#)

Richard,

TSE is still interested in trying to negotiate a settlement with Brahma. However, we will not be in a position to memorialize and execute such a settlement today. Among other things, [REDACTED]

In the meantime, TSE must file its opening appellate brief with the Nevada Supreme Court today. We would hold off filing it given that negotiations are still ongoing but believe the Supreme Court is unlikely to grant us any further extensions (even if Brahma stipulated to such an extension). The filing of the appeal should not be taken by Brahma as an indication that TSE is not interested in further settlement negotiations.

Best,

Colby



Colby Balkenbush, Attorney

Weinberg Wheeler Hudgins Gunn & Dial

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From: Richard Peel [mailto:rpeel@peelbrimley.com]
Sent: Tuesday, October 01, 2019 11:17 AM
To: Balkenbush, Colby

Cc: Eric Zimbelman; Roberts, Lee; Gormley, Ryan
Subject: RE: Revised draft of BGI/TSE Settlement Agreement
Importance: High

This Message originated outside your organization.

FOR SETTLEMENT PURPOSES ONLY

Colby,

I tried calling you, but you were not available.

• [REDACTED]
• [REDACTED]

[REDACTED]

Sincerely,

Richard L. Peel, Esq.
MANAGING PARTNER



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Best 2			

(Attorneys licensed to practice in: Nevada ▪ Washington ▪ California ▪ Utah ▪ Arizona ▪ Hawaii ▪ North Dakota ▪ US Court of Federal Claims)

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