

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78256

Electronically Filed
Oct 21 2019 01:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Respondent.

Petition for Writ of Prohibition, or, Alternatively, Mandamus
Fifth Judicial District Court
The Honorable Steven Elliott, District Court Judge
District Court Case No. CV 39348

**MOTION FOR EXTENSION
TO FILE ANSWER TO WRIT PETITION**

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*Attorneys for Real Party in Interest,
Brahma Group, Inc.*

Real Party in Interest, Brahma Group, Inc. (“Brahma”) hereby moves the Court for a thirty-day extension to file its Answer to Petitioner Tonopah Solar Energy. LLC’s (“TSE”) Writ Petition (the “Petition”). On September 19, 2019, this Court issued its Order Denying Brahma’s Motion to Stay Briefing pending the outcome of two motions then simultaneously pending hearing before the United States District Court for the District of Nevada (the “Federal Court Motions” described more fully below). This Court then Ordered Brahma to file its Answer to the Writ Petition within 28 days, making the Answer due on October 21, 2019.

On September 25, 2019, the Federal Court issued an Order resolving the Federal Court Motions and, on October 4, 2019, Petitioner notified this Court of that Federal Court Order when it filed a Notice of Order in Related Case.¹ Accordingly, it must be assumed that TSE intends (by way of Reply or otherwise) to rely at least in part upon that new Federal Court Order. Brahma needs additional time to evaluate and anticipate such potential arguments.

In addition, the parties have, for several months, been engaged in settlement negotiations that recently appeared to have resulted in a settlement. Indeed, and although Petitioner recently filed its Brief of Appellant in the related appeal Case No. 78092, Petitioner’s counsel notified the undersigned that “the filing of the appeal should not be taken by Brahma as an indication that TSE is not interested in further settlement negotiations” and 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).² These settlement discussions have continued until recently and Brahma has focused its efforts on resolution rather than preparing extensive briefing such as the Answer. While it now appears that Brahma will have no choice but to Answer the Writ Petition herein and file a Brief of Respondent in Case No. 78092, Brahma and

¹ See **Exhibit 1**.

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

its counsel need more time to prepare the Answer and respectfully requests an extension of 30 days to file its Answer to Writ Petition.

Based on the foregoing, Brahma respectfully requests that the Court grant Brahma an extension of thirty (30) days – to no sooner than November 21, 2019 - to file its Answer to the Petition.

Respectfully submitted this 21st day of October, 2019.

PEEL BRIMLEY LLP

Eric B. Zimbelman

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Attorneys for Respondent

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 21st day of October, 2019, I caused the above and foregoing document, **MOTION FOR EXTENSION TO FILE ANSWER TO WRIT PETITION**, 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.
Ryan T. Gormley, 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. 78256
District Court Case No. CV 39348**

Tonopah Solar Energy, LLC,
Petitioner

Electronically Filed
Oct 04 2019 03:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

The Fifth Judicial District Court, State of Nevada, Nye County, and
the Honorable Steven P. Elliott, Senior Judge,
Respondent

and

Brahma Group, Inc.,
Real Party in Interest.

NOTICE OF ORDER IN RELATED CASE

D. LEE ROBERTS, JR., ESQ.
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*Attorneys for Petitioner
Tonopah Solar Energy, LLC*

Please take notice that the attached order has been issued in a related proceeding in Federal Court, on September 25, 2019. A copy of the Order is attached hereto as Exhibit 1.

Dated: October 4, 2019

/s/ Colby L. Balkenbush
D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Ryan T. Gormley, Esq.
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6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Attorneys for Petitioner
Tonopah Solar Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that on October 4, 2019, I submitted the foregoing **NOTICE OF ORDER IN RELATED CASE** via the Nevada Supreme Court's eFlex electronic filing system and served a copy to the addresses shown below (in the manner indicated below). Electronic notification will be sent to the following:

VIA EFLEX ELECTRONIC FILING SYSTEM:

Richard L. Peel, Esq.
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VIA U.S. MAIL:

The Honorable Judge Steven B. Elliott
Fifth Judicial District Court, Department No. 2
1520 E. Basin Ave. #105
Pahrump, Nevada 89060



An Employee of Weinberg, Wheeler,
Hudgins, Gunn & Dial, LLC

EXHIBIT 1

EXHIBIT 1

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 BRAHMA GROUP, INC., a Nevada
8 Corporation,

9 Plaintiff,

10 v.

11 TONOPAH SOLAR ENERGY, LLC, a
12 Delaware limited liability company

13 Defendant.

14 TONOPAH SOLAR ENERGY, LLC, a
15 Delaware limited liability company

16 Counter Claimant

17 v.

18 BRAHMA GROUP, INC., a Nevada
19 Corporation,

20 Counter Defendant

Case No. 2:18-cv-01747-RFB-GWF

ORDER

21 Two motions are pending before the Court. First, Plaintiff Brahma Group, Inc. ("Brahma"
22 or "Plaintiff") moves to stay this matter or, alternatively, to amend the complaint. ECF No. 13.
23 Second, Defendant Tonopah Solar Energy, LLC ("TSE" or "Defendant") moves this Court for a
24 permanent injunction. ECF No. 16. For the reasons stated below, the Court denies Brahma's
25 motion and grants TSE's motion.

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27 ///

28 ///

1 **I. PROCEDURAL BACKGROUND**

2 Brahma sued TSE in state court on July 17, 2018, asserting claims for breach of contract,
3 breach of the implied covenant of good faith and fair dealing, unjust enrichment, and a violation
4 of Nevada Revised Statutes (“NRS”) 624.609 and 624.610. ECF No. 1-1. TSE removed the matter
5 to this Court on September 10, 2018. ECF No. 1. TSE then answered the complaint and asserted
6 counterclaims against Brahma. ECF No. 4.

7 Brahma amended the complaint on September 25, 2018. ECF No. 8. In the amended
8 complaint, Brahma asserted a single claim for unjust enrichment. Id. TSE answered the amended
9 complaint on October 9, 2018. ECF No. 11.

10 Brahma now moves to stay the case or, alternatively, to amend the complaint for a second
11 time. ECF No. 13. TSE opposed the motion, and Brahma replied. ECF Nos. 18, 24.

12 Additionally, TSE seeks an injunction. ECF No. 16. Brahma opposed, and TSE filed a
13 reply. ECF Nos. 20, 28.

14 The Court entertained oral arguments on the two motions on June 25, 2019. ECF No. 50.
15 This order now follows.

16
17 **II. FACTUAL BACKGROUND**

18 The Court makes the following factual findings. TSE owns the Crescent Dunes Solar
19 Energy Project, which is constructed on real property located in Nye County, Nevada (the “Work
20 of Improvement”). On February 1, 2017, TSE entered into a services agreement (“Agreement”)
21 with Brahma. Under the Agreement, Brahma agreed to provide specific work, materials, and
22 equipment for the Work of Improvement. Brahma fulfilled its obligations under the Agreement.
23 However, a dispute arose concerning performance of the Agreement and TSE failed to fully pay
24 Brahma for its services.

25 In response to TSE failing to pay Brahma in full, Brahma recorded a notice of lien on April
26 9, 2018 with the Nye County Recorder. On April 17, 2018, Brahma filed a complaint in the Fifth
27 Judicial District Court in Nye County (Case No. CV39237) to foreclose against the lien and to

28 ///

1 assert additional claims. Brahma also filed with the Nye County Court a notice of lis pendens and
2 notice of foreclosure of mechanic's lien and recorded the same against the Work of Improvement.

3 On April 24, 2018, TSE filed a motion to expunge Brahma's lien in the Nye County Court.
4 Before Brahma received notice of the motion to expunge, Brahma voluntarily dismissed its
5 complaint the same day. But Brahma declined to discharge and release its lien. TSE decided to
6 withdraw its first motion to expunge rather than proceed in that case.

7 On June 11, 2018, TSE filed a second motion to expunge the lien pursuant to NRS
8 108.2275(1). Because there was no complaint pending, the second motion to expunge created a
9 special proceeding in the Fifth Judicial District Court, Nye County, Nevada, ("Nye County Special
10 Proceeding") in accordance with NRS 108.2275(5) which provides that "[i]f, at the time the
11 [motion] is filed, an action to foreclose the notice of lien has not been filed, the clerk of the court
12 shall assign a number to the [motion] and obtain from the [moving party] a filing fee of \$85." NRS
13 108.2275(5).

14 On July 17, 2018, while the motion to expunge in the Nye County Special Proceeding was
15 still pending, Brahma filed a new complaint in the Eighth Judicial District Court, Clark County
16 Nevada ("Clark County Action"). This complaint asserted the same claims against TSE as the
17 previously dismissed Nye County Action, with the exception of the lien foreclosure claim: (1)
18 breach of the Agreement, (2) breach of the implied covenant of good faith and fair dealing, (3)
19 unjust enrichment, (4) and violation of Nevada's prompt payment act (together "contract claims").
20 TSE removed the Clark County Action to federal court on the basis of diversity jurisdiction on
21 September 10, 2018.

22 In September and October of 2018, nonparty Cobra Thermosolar Plant, Inc., ("Cobra")
23 recorded surety bonds that detached Brahma's mechanic's lien and the mechanic's lien of nonparty
24 H&E Equipment Services, Inc, (one of Brahma's suppliers) from the Work of Improvement
25 pursuant to NRS 108.2415(6).

26 On September 12, 2018, state court Judge Elliott heard and denied from the bench the
27 second motion to expunge filed by TSE. A written order later issued in October 2018. Shortly after
28 the hearing on the motion to expunge, on September 20, 2018, Brahma filed a lien foreclosure

1 complaint within the same Nye County Special Proceeding. The complaint asserted a single claim
2 for foreclosure of notice of lien against TSE. The complaint also named nonparties Cobra and
3 H&E as third-party defendants in that action. Brahma then filed an amended complaint in this
4 case on September 25, 2018. The amended complaint removed Brahma's three other previously
5 asserted claims for (1) breach of the Agreement, (2) breach of the implied covenant of good faith
6 and fair dealing, and (3) violation of Nevada's prompt payment act. Brahma then filed an amended
7 counter-complaint and third-party complaint in the Nye County Special Proceeding, asserting the
8 contract claims that had been dropped from its complaint in the Federal Action.

10 III. LEGAL STANDARD

11 a. Colorado River Abstention

12 "Abstention from the exercise of federal jurisdiction is the exception, not the rule." Colo.
13 River Water Conservation Dist v. U.S., 424 U.S. 800, 813 (1976). Nevertheless, the Supreme Court
14 has recognized that there may be "exceptional circumstances," that warrant federal abstention from
15 concurrent federal and state proceedings. Id. at 813. As developed by Colorado River and its
16 progeny, federal courts use a multi-pronged test that includes eight factors to consider when
17 assessing the appropriateness of a Colorado River stay: (1) which court first assumed jurisdiction
18 over any property at stake; (2) the inconvenience of the federal forum (3) the desire to avoid
19 piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal
20 law or state law provides the rule of decision on the merits; (6) whether the state court proceedings
21 can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping;
22 and (8) whether the state court proceedings will resolve all issues before the federal court. Seneca
23 Ins. Co. Inc. v. Strange Land, Inc., 862 F.3d 835, 841– 42 (9th Cir. 2017) (internal citations
24 omitted). "These factors are not a 'mechanical checklist,'" and may not always be applicable to
25 any given case. Id. at 842 (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S.
26 1, 16 (1983). Rather, the Court must examine them "in a pragmatic, flexible manner with a view
27 to the realities of the case at hand." Seneca, 862 F.3d at 842. "The underlying principle guiding
28 this review is a strong presumption against federal abstention." Id.

1 **b. Anti-Injunction Act and Permanent Injunction**

2 The Anti-Injunction Act, 28 U.S.C. § 2283, forbids a federal court from staying
3 proceedings in state court “except as expressly authorized by Act of Congress, or where necessary
4 in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283. “Any doubts
5 as to the propriety of a federal injunction against state court proceedings should be resolved in
6 favor of permitting the state courts to proceed.” Montana v. BNSF Ry. Co., 623 F.3d 1312, 1315
7 (9th Cir. 2010) (internal citations omitted). Removal pursuant to 28 U.S.C. § 1446 is a law
8 expressly authorizing the federal court to stay state proceedings when necessary. Lou v. Belzberg,
9 834 F.2d 730, 740 (9th Cir. 1987) (“It is thus clear that a federal court may enjoin the continued
10 prosecution of the same case in state court after its removal.”).

11 A court may issue a permanent injunction if it finds that there is (1) a likelihood of
12 substantial and irreparable injury, and (2) inadequate remedies at law. G.C. & K.B. Invs., Inc. v.
13 Wilson, 326 F.3d 1096, 1107 (9th Cir. 2003) (internal citations omitted).

14 **IV. DISCUSSION**

15 Both Brahma and TSE urge the Court to decide their respective motions first. However,
16 the Court finds that the order in which it decides the motions is immaterial. Based on the facts
17 alleged, the Court finds that the Colorado River factors do not support federal abstention and that,
18 by amending its complaint and asserting its contract claims against TSE in the state court action,
19 Brahma was attempting to subvert removal of this action. The Court thus denies Brahma’s motion
20 for a stay and grants TSE’s motion to enjoin Brahma from litigating its contract claims against
21 TSE in state court.

22 **a. Colorado River Abstention**

23 The Court first examines the Colorado River factors and explains why they do not favor
24 federal abstention.

25 **i. Jurisdiction Over a Res**

26 Both parties confirmed at the hearing on this matter that there is no lien currently attached
27 to TSE’s property. Tr. Hr’g on June 25, 2019 at 7. Although Brahma has recorded mechanics’
28 liens against the Work of Improvement, all such liens are no longer attached after surety bonds

1 were recorded releasing the liens pursuant to NRS 108.2415(6). Furthermore, this Court has only
2 ever had contractual and quasi-contractual claims before it, so there is no possibility that the
3 parallel proceedings will result in inconsistent dispositions of a single res. Seneca, 862 F.3d at 842.
4 The Court thus finds that this factor leans against abstention.

5 **ii. Inconvenience of the Federal Forum**

6 In considering this factor, the Court must consider “whether the inconvenience of the
7 federal forum is so great” that it favors abstention. Travelers Indem. Co. v. Madonna, 914 F.2d
8 1364, 1368 (9th Cir. 1990). As this Court and the Nye County Court are located less than an hour’s
9 drive from each other, the Court finds that this factor does not favor abstention.

10 **iii. Avoidance of Piecemeal Litigation**

11 “Piecemeal litigation occurs when different tribunals consider the same issue, thereby
12 duplicating efforts and possibly reaching different results.” Am. Int’l Underwriters (Philippines),
13 Inc. v. Cont’l Ins. Co., 843 F.2d 1253, 1258 (9th Cir. 1988). While piecemeal litigation is to be
14 avoided when possible, a “general preference for avoiding piecemeal litigation is insufficient to
15 warrant abstention.” Seneca, 862 F.3d at 842. Brahma argues that this factor favors abstention
16 because the Nye County Court will necessarily need to determine issues pertinent to the contract
17 claims, such as the agreed upon contract value of the work. The Court is unconvinced by this
18 argument. Multiple defendants, claims, and cross-claims are routine in diversity cases. Seneca,
19 862 F.3d at 843. Brahma fails to identify any special or important rationale or legislative preference
20 for having these issues be resolved in a single proceeding, and so the Court finds that this factor
21 does not favor abstention.

22 **iv. The Order In Which the Fora Obtained Jurisdiction**

23 “In determining the order in which the state and federal courts obtained jurisdiction, district
24 courts are instructed not simply to compare filing dates but to analyze the progress made in each
25 case.” Seneca, 862 F.3d at 843. As a preliminary matter, the Court notes that Brahma did not bring
26 its contract claims to the Nye County action until after this case had already been filed in Clark
27 County and subsequently removed to this Court. Thus while the Court will do more than compare
28 filing dates under this factor, the filing dates indicate that *this* Court, rather than the Nye County

1 Court, first had jurisdiction over the contract claims at issue in this case. Brahma argues that
2 because TSE filed its motion to expunge in Nye County prior to Brahma filing its complaint in
3 Clark County, that the Nye County case was filed first. But while Brahma is correct that the Nye
4 County proceeding began prior to this case, it was this Court that first obtained jurisdiction over
5 the contract claims. The Court also finds that the cases are progressing commensurately. Discovery
6 has commenced in this case, and per the parties' reports at the hearing on this matter, discovery
7 has also just begun in the Nye County Action. Tr. Hr'g on June 25, 2019 at 40. The Court thus
8 finds this factor neutral.

9 **v. Rule of Decision**

10 While the presence of federal law issues will always be a major consideration weighing
11 against abstention, the presence of state law issues may favor abstention only in rare cases. Seneca,
12 862 F.3d at 844. "Cases implicating only routine issues of state law—misrepresentation, breach of
13 fiduciary duty, and breach of contract—which the district court is fully capable of deciding—do
14 not entail rare circumstances." Id. (internal citations omitted). This case was brought before this
15 Court pursuant to diversity jurisdiction only, so there are no federal law issues in this case. The
16 claims alleged are routine issues of state law. There is no issue before the Court that is so complex
17 or difficult that it is better resolved by a state court. Thus this factor weighs against abstention.

18 **vi. Adequacy of the State Forum and Parallel Suits**

19 This factor has two components: the "adequacy" factor, which examines whether the state
20 court proceedings can adequately protect the rights of the federal litigants, and the "parallelism"
21 factor which considers whether the state courts will resolve all issues before the federal court.
22 Seneca, 862 F.3d at 845.¹ The adequacy factor looks to whether the state court can enforce federal
23 rights, while the parallelism factor looks to whether the proceedings address substantially similar
24 claims. Id. Each factor is more relevant when it counsels against abstention, because inadequacy
25

26 ¹ The parallelism factor is often considered separately as the eighth factor under the
27 Colorado River doctrine. However because the analysis is similar, the Court will consider them
28 together. Compare Seneca Ins. Co. Inc. v. Strange Land, Inc., 862 F.3d 835, 845 (9th Cir. 2017)
(discussing adequacy of state forum and parallelism together) with Montanore Minerals Corp. v. Bakie, 867 F.3d 1160, 1169 (9th Cir. 2017) (discussing parallelism and adequacy of state forum separately).

1 of state forum or insufficient parallelism may preclude abstention, but the alternatives do not
2 compel it. Id. The Court finds these factors to be neutral. There are no federal rights at issue so
3 the adequacy factor is not really at play here. Regarding parallelism, it is true that the claims at
4 issue are not just substantially similar, but indeed identical to the contract claims that had been
5 brought before this Court prior to Brahma amending its complaint. But substantially similar claims,
6 while necessary, are not enough, absent more, to weigh in favor of abstention. Id. Thus the Court
7 finds these factors neutral.

8 **vii. Avoidance of Forum Shopping**

9 Under this factor, the Court considers whether “either party improperly sought more
10 favorable rules in its choice of forum or pursued suit in a new forum after facing setbacks in the
11 original proceeding.” Seneca, 862 F.3d at 846. The Court finds that there is considerable evidence
12 of forum shopping on the part of Brahma here. Brahma filed its complaint asserting its contract
13 claims against TSE in Clark County Court. It was only after receiving a favorable ruling on its
14 motion to expunge in Nye County that Brahma then sought to amend its complaint in this case and
15 reassert those same claims before Judge Elliot in Nye County. Brahma spends considerable time
16 in its briefing insisting that it filed the case in Clark County based on a misreading of a forum
17 selection clause in the Services Agreement between the parties. That argument, however, carries
18 little weight. The plaintiff is master of its complaint, and this plaintiff chose to file in Clark County.
19 Holmes Grp. Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002). Presumably
20 Brahma was aware that TSE was not a Nevada citizen, and so there was a possibility that TSE
21 would seek to remove the case to federal court. The Court cannot assist Brahma in undoing what
22 it now alleges was an error of filing by granting a meritless stay.

23 All of the factors considered under the Colorado River doctrine are neutral or favor the
24 district court’s exercise of jurisdiction. Seneca, 862 F.3d at 847. In light of the strong presumption
25 against abstention, the Court will not grant federal abstention pursuant to Colorado River.

26 **b. TSE’s Permanent Injunction**

27 Next the Court examines TSE’s request for a permanent injunction. The Court has the
28 power to enjoin state court proceedings if it finds that the state court action was “fraudulently filed

1 in an attempt to subvert the removal of a prior case.” Lou v. Belzberg, 834 F.2d 730, 741 (9th Cir.
2 1987). By amending its complaint in this case and reasserting identical claims in the Nye Court
3 action, the Court finds that Brahma was attempting to subvert removal of this case. The Court also
4 finds that there would be immediate and irreparable injury to TSE for which there would not be an
5 adequate remedy at law if Brahma’s behavior is rewarded. The Court therefore grants TSE’s
6 motion and enjoins Brahma from litigating its contract claims in the Nye County Action.

7
8 **V. CONCLUSION**

9 **IT IS ORDERED** that Plaintiff’s Motion for Stay, or in the alternative, Motion to Amend
10 Complaint (ECF No. 13) is DENIED.

11 **IT IS FURTHER ORDERED** that Defendant’s Motion for an Injunction and to Strike
12 (ECF No. 16) is GRANTED. The Court strikes Plaintiff’s amended complaint (ECF No. 8), and
13 reinstates Plaintiff’s original complaint (ECF No. 1-1) as the operative complaint in this matter.

14 **IT IS FURTHER ORDERED** that Plaintiff is enjoined from litigating the following
15 claims alleged against Defendant in any state court action: 1) breach of contract, 2) breach of
16 implied covenant of good faith and fair dealing and 3) violation of NRS 624.

17
18 DATED: September 25, 2019.

19
20 

21 **RICHARD F. BOULWARE, II**
22 **UNITED STATES DISTRICT JUDGE**
23
24
25
26
27
28

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, 



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

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118

D: 702.938.3821 | F: 702.938.3864

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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]

[REDACTED]

[REDACTED]

Sincerely,

Richard L. Peel, Esq.
MANAGING PARTNER



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2016 RLP Best Lawyers



2016 Peel Brimley



Best 2



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

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