
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

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Elizabeth A. Brown
Clerk of Supreme Court

v.

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

and

BRAHMA GROUP, INC.,
Real Party in Interest.

**COBRA THERMOSOLAR PLANTS, INC. AND AMERICAN HOME
ASSURANCE COMPANY'S OPPOSITION TO BRAHMA GROUP, INC.'S
MOTION TO STRIKE JOINDER TO PETITIONER'S MOTION TO STAY
DISTRICT COURT PROCEEDINGS**

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Third-Party Defendants Cobra Thermosolar Plants, Inc. (“Cobra”) and American Home Assurance Company (“AHAC”) (collectively, for purposes of this pleading, “Cobra”), submit the following Opposition to Brahma Group Inc.’s (“Brahma”) Motion to Strike Cobra and AHAC’s Joinder to the Motion to Stay filed by Petitioner Tonopah Solar Energy, LLC (“TSE”) on January 10, 2020.

Brahma’s Motion to Strike speaks volumes about the procedural mess it has created, and its goal of perpetuating the disorderly status quo, which is unfairly prejudicial to Cobra’s right to defend Brahma’s claims (which are dependent upon Brahma’s claims against TSE). Cobra and TSE seek to effect a consistent and efficient resolution of the dispute between Brahma and TSE over monies Brahma claims are owed by TSE for work, materials and equipment with respect to the Crescent Dunes Solar Energy Facility (the “Plant”), and Brahma’s dependent claim against the Surety Bond that Cobra posted to guarantee the liabilities, if any, that TSE may have to Brahma for work performed at the Plant.

Brahma admits that Cobra is a party to the district court action underlying TSE’s writ petition (the “Nye County Action”), but then contends (without citation to any source of authority), that Cobra is *not* a party to TSE’s writ petition arising out of that same action. (Mot. 2-3.) Turning to TSE, Brahma argues that TSE is not a party to its own writ petition, as a result of an order from a closely related action in federal court (the “Federal Court Action”) enjoining Brahma from litigating its

claims against TSE in any state court. Brahma contends that TSE’s writ petition is either moot or that TSE lacks standing, and invites Cobra to file a *separate* writ petition seeking the same relief as TSE’s pending Motion to Stay. Brahma further contends that a “joinder” to TSE’s writ is not permitted, but admits that a “response” is. (Mot. 3.)

Brahma’s breathless procedural arguments are nothing more than an attempt to obfuscate the common-sense (and completely appropriate from a legal and procedural standpoint) relief sought by TSE and Cobra. Rule 27 of the Nevada Rules of Appellate Procedure clearly provide: “***Any party may file a response to a motion . . . within 7 days after service of the motion.***” NRAP 27(a)(3)(A). TSE served Cobra, as a party to the Nye County Action, with a copy of the Motion to Stay via U.S. Mail on January 10, 2020. *See* Mot. to Stay, at p. 11-12 (“Certificate of Service”). Cobra responded on January 17, 2020 – within the 7-day time period prescribed by the Rules. *See* NRAP 27(a)(3)(A). Cobra’s use of the title “Joinder”—for the sake of clarity where it was not responding in opposition to the Motion to Stay—does not run afoul of any Rule. There is no reason for this Court to disregard Cobra’s response to TSE’s Motion to Stay and endorse Brahma’s attempts to muddy these proceedings in the hope that it can quickly (and unfairly) collect against the Surety Bond in the Nye County Action before it must litigate the claims of fraud

against it pending in the Federal Action and demonstrate the liabilities, if any, that TSE may have to Brahma.

CONCLUSION

For these reasons, this Court should deny Brahma's Motion to Strike, and for the reasons set forth in Cobra's Joinder and TSE's Motion to Stay, stay the underlying Nye County Action pending resolution of TSE's writ petition.

DATED this 31st day of January, 2020.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Weil & Drage, APC, and that on this 31st day of January, 2020, I filed the foregoing **COBRA THERMOSOLAR PLANTS, INC. AND AMERICAN HOME ASSURANCE COMPANY'S OPPOSITION TO BRAHMA GROUP, INC.'S MOTION TO STRIKE JOINDER TO PETITIONER'S MOTION TO STAY DISTRICT COURT PROCEEDINGS** with the Clerk of the Nevada Supreme Court and served a copy of the same to the addresses shown below (in the manner indicated below):

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