

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78256

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Elizabeth A. Brown
Clerk of Supreme Court

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Real Party in Interest.

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

**REAL PARTY IN INTEREST'S REPLY TO OPPOSITION OF COBRA
THERMOSOLAR PLANTS, INC. AND AMERICAN HOME ASSURANCE
COMPANY TO MOTION TO STRIKE JOINDER**

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I. ARGUMENT IN SUPPORT OF REPLY

Real Party in Interest, Brahma Group, Inc. (“Brahma”) moved the Court to strike (“Motion to Strike”) the “Joinder” filed by Third-Party Defendants Cobra Thermosolar Plants, Inc. and its surety, American Home Assurance Company (the “Cobra Parties”) to the Motion to Stay the Underlying District Court Case Pending Resolution of its Petition for Writ of Prohibition, or, Alternatively, Mandamus (the “Motion to Stay”) filed by Petitioner Tonopah Solar Energy. LLC’s (“TSE”).¹ Brahma noted, among other things, that the Nevada Rules of Appellate Procedure do not permit a “joinder.”²

In their opposition to the Motion to Strike (the “Opposition”), the Cobra Parties now contend that the document they filed titled “Joinder” was, in actuality, a “Response.” *See* Opposition p. 2. The Cobra Parties assert this position even though their basis for a stay is entirely separate – procedurally and substantively - from that asserted in TSE’s Motion to Stay. Specifically, TSE seeks a stay of proceedings based on the mere existence of, and until resolution of, the TSE’s Writ Petition (even though it waited nearly a year after filing the Petition to seek such relief). By contrast, the Cobra Parties (by way of their Joinder) seek a stay of a

¹ Brahma also moved, in the alternative, for leave to file a Response to the Joinder, which Response was filed concurrently with the Objection and Motion to Strike.

² See NRAP 27 (allowing for a Motion, a Response and a Reply).

proceedings until such time as the Federal Court decides their Motion to Intervene in that action.

The Cobra Parties made that motion to the District Court, which denied the same. While the denial of that motion may entitle the Cobra Parties to submit a separate Writ Petition to this Court (which they acknowledge and intend to do), it does not entitle them to intervene in the present Writ action arising from TSE's Writ Petition that seeks different relief on different procedural and substantive grounds. The Cobra Parties nonetheless assert that they are parties to this Writ action merely because they are parties to the District Court case from which that Petition arises. Yet the Cobra Parties did not respond to, seek leave to respond to, or join in, the Petition, for which Brahma is the Real Party in Interest. This is so because the underlying Order under review in this Writ Action does not address Brahma's claims against the Cobra Parties (other than to leave them pending).

Brahma's objection is that the Cobra Parties have no authority to intervene into a writ proceeding pertaining to Brahma's claims against TSE (which have now been enjoined by, and reside in, the Federal Court). To seek review and relief of the District Court's denial of the Cobra Parties' Motion to Stay pending the outcome of a Federal Court motion the Cobra Parties must proceed under the rules available to them – i.e., submitting a separate writ petition.

To sustain such a Petition, the Cobra Parties will be required to demonstrate³ that the District Court's discretionary decision denying them a stay was arbitrary or capricious. *See State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011) (“An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.”) This will be a tall order indeed, which is why the Cobra Parties are seeking relief in this proceeding, in an attempt to blur the clear and important procedural lines between these actions.

Simply stated, if the Cobra Parties are allowed to seek a stay in this writ action (based on a discretionary order that is different from the order underlying the Petition), there are no limits on any litigant seeking any relief from this Court in any writ action pending from any District Court action to which that litigant is a party. The Court should not countenance such a sleight of hand.⁴

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³ This Court has discretion as to whether to entertain a petition for extraordinary relief, *D.R. Horton, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007), and petitioners bear the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁴ Given the Cobra Parties' unmistakable effort to avoid the procedural hurdles presented by their own potential writ petition, their complaint of a “procedural mess” allegedly created by Brahma rings hollow indeed.

II. CONCLUSION

Based on the foregoing, Brahma respectfully requests that the Court strike the Cobra Parties' Joinder to TSE's Motion to Stay the District Court Proceedings.

Respectfully submitted this 20th day of February, 2020.

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/s/ Eric B. Zimbelman

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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 20th day of February, 2020, I caused the above and foregoing document, **REAL PARTY IN INTEREST'S REPLY TO OPPOSITION OF COBRA THERMOSOLAR PLANTS. INC. AND AMERICAN HOME ASSURANCE COMPANY TO MOTION TO STRIKE JOINDER**, 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:

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