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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No.: 79355

**REPLY IN SUPPORT OF  
EMERGENCY MOTION FOR  
RELIEF UNDER NRAP 27(e)**

Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

MAC:15765-001 3834003\_1

## **I. INTRODUCTION**

This Court should stay execution of the judgment pending appeal. Appellants present a substantial case on the merits demonstrating serious legal questions—namely that the District Court acted without subject matter jurisdiction in interpreting the statutes, case law, and bankruptcy codes underlying the judgment itself—that would be defeated if the Trustee executes on Appellants’ assets. Thus, this Court should grant Appellants an immediate temporary stay, as well as a full stay pending appeal, without the need for a supersedeas bond.

## **II. THE MOTION COMPORTS WITH NRAP 8(a) AND NRAP 27(e).**

In opposing the Motion, the Trustee argues that Appellants failed to meet two procedural requirements for filing an emergency motion for stay in this Court. Opp. at 2. Neither argument succeeds. To begin, the Trustee mistakenly asserts that Appellants failed to “exhaust their request for stay relief with the district court.” *Id.* Respondent is incorrect—Appellants moved for a stay in the District Court, *see Exhibit 3*.<sup>1</sup> Thus, Appellants’ Motion comports with NRAP 8(a)(1). Appellants do need to obtain multiple denials from the District Court to satisfy this Rule.

Next, in arguing that Appellants failed to move for an emergency stay at the “earliest possible time,” *see* Opp. at 2, the Trustee overlooks the significant and

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<sup>1</sup> The referenced **Exhibits 1–12** are attached to Appellants’ Motion.

relevant procedural developments that have taken place since the District Court entered the judgment, including extensive post-trial proceedings, and that the District Court only recently denied Appellants' claims of exemption to allow execution to go forward in Nevada, *see Exhibits 5 & 6*, and that the Trustee has begun domesticating the judgment in Maricopa County, Arizona and recently obtained a ruling *last week*, allowing the Trustee to go forward with collection. *See Exhibit 7; Exhibit D* (attached to Opp.). The Trustee also ignores the fact that there are hearings in the Orange County, California matter as recent as *last week* as well. *See Exhibit 8*. Thus, the Trustee's contrary arguments do not take into account his own activities in Nevada, Arizona, and California.

### **III. A STAY OF THE JUDGMENT IS WARRANTED.**

#### **A. THE OBJECT OF THE APPEAL WILL BE DEFEATED AND APPELLANTS WILL SUFFER IRREPARABLE HARM IF THE STAY IS DENIED.**

Given the unique nature of the real property subject to execution, "the object of the appeal . . . will be defeated if the stay . . . is denied," NRAP 8(c)(1), and, as a result, Appellants "will suffer irreparable or serious injury if the stay . . . is denied," NRAP 8(c)(2). Notably, the Trustee does not oppose Appellants' references to *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) ("Because real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm, the district court erred in

holding otherwise.”); *Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 958 (5th Cir. 1981) (“If appellants refrain from selling arguably proscribed items during the pendency of this appeal they may suffer substantial business losses that they may not be able to recoup should they ultimately succeed on appeal.”); and *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974) (stating that acts committed that unreasonably interfere with a business or destroy its credit or profits, constitute irreparable injury). Instead, the Trustee presents a confusing counterargument: that, somehow, the object of Appellants’ appeal will actually be defeated if Appellants’ stay is granted. *See* Opp. at 15. It is difficult to understand how staying execution of a judgment rendered without subject matter jurisdiction will defeat an appeal about whether the judgment was rendered without subject matter jurisdiction. Because Respondent failed to coherently articulate this argument, this Court need not consider it. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (concluding that this court need not address issues not cogently argued and supported by relevant authority). Thus, the first and second NRAP 8(c) factors weigh in favor of Appellants’ requested stay.<sup>2</sup>

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<sup>2</sup> On this same note, the Trustee argues that, if execution of the judgment entered without subject matter jurisdiction is stayed, that the Trustee will actually suffer irreparable harm because “[i]t is believed” that Appellants have no additional

**B. APPELLANTS PRESENT A SUBSTANTIAL CASE ON THE MERITS DEMONSTRATING SERIOUS LEGAL ISSUES.**

Appellants present a substantial case on the merits demonstrating the District Court acted without subject matter or personal jurisdiction while misinterpreting relevant statutes, statutes of limitations, Nevada case law, and applicable bankruptcy provisions. *See* Mot. at 10–15. As a result, the appeal is likely to succeed. NRAP 8(c)(4); *Fritz Hansen v. Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

In opposition, the Trustee seemingly argues that, in presenting the questions at the crux of this appeal—questions of first impression regarding the complex interplay between principals of agency law, binding case law, Nevada’s spendthrift trust statutes, Nevada’s fraudulent transfer statutes, and federal bankruptcy codes—that Appellants have not “present[ed] a substantial case on the merits” involving “serious legal question[s].” Opp. at 7–14; *Fritz Hansen*, 116 Nev. at 659, 6 P.3d at 987. To support this assertion, the Trustee provides his own analysis, as well as the analysis of a Bankruptcy Court and a Judge in Maricopa

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assets. *See* Opp. at 14–15. However, rather than citing the Trustee’s “belie[f],” it is the Trustee’s responsibility to present relevant citations to the record to support its assertions. Assertions that are not so supported need not be entertained by this Court. *See Carson v. Sheriff*, 87 Nev. 357, 360–361, 487 P.2d 334, 336 (1971). Thus, the third NRAP 8(c) factor weighs in favor of Appellants, particularly because all the assets subject to the judgment are already secured. *See Exhibits 1*, pg. 63, **7 & 8**; and **Exhibit D** (attached to Opp.).

County, Arizona. *See* Opp. at 7–14. The Trustee’s competing arguments actually operate to satisfy the fourth NRAP 8(c) factor in favor of Appellants because the Trustee has demonstrated that serious legal questions are involved in this appeal. However, missing from the Opposition is a single citation to any Nevada case law which squarely governs the unique issues presented in this appeal.<sup>3</sup> Irrespective of the analysis provided by the Trustee, this Court has not articulated what Nevada law says about many of the issues raised by the appeal. *See West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940) (“[T]he highest court of the state is the final arbiter of what is state law.”). The Trustee even argues in his Opposition that subject matter jurisdiction can be conferred by a stipulation of the parties, which is contrary to Nevada law. *See Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990). *Cf. Walker v. Scully*, 99 Nev. 45, 46, 657 P.2d 94, 94–95 (1983) (a stipulation to extend the time to appeal is ineffective, and the appellate court still lacks subject matter jurisdiction over an untimely appeal). Thus, Appellants have presented a substantial case on the serious, unsettled legal issues presented by this appeal, warranting a stay.

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<sup>3</sup> Notably absent is any citation to *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), in which this Court decided several of the issues at the heart of this appeal contrary to the conclusions reached by the District Court.

**C. THE COURT SHOULD NOT REQUIRE A SUPERSEDEAS BOND.**

Finally, this Court should not require a supersedeas bond to order a full stay pending appeal because the real properties and businesses at issue provide alternative security for the judgment. Indeed, the judgment already “enjoins and restrains Defendants” from “concealing, transferring, disposing of, or encumbering the El Camino Property, the Los Olivos Property, the Baruk Properties LLC (or their proceeds), Snowshoe Properties or any successor thereto, or any assets held for the benefit of Paul Morabito.” *See Exhibit 1*, pg. 63. That injunction, coupled with the Trustees’s Arizona and California lawsuits, secures all the real properties and assets that are subject to the judgment, many of which have substantial equity. *See id.*, pgs. 23 & 60–61. Further, this Court “retain[s] the inherent power to grant a stay in the absence of a full bond.” *Nelson*, 121 Nev. at 834, 122 P.3d at 1253. And, as is true here, “a supersedeas bond should not be the judgment debtor’s sole remedy, particularly where other appropriate, reliable alternatives exist.” *Id.* at 835, 122 P.3d at 1254. Thus, because the Trustee has already secured his judgment, no supersedeas bond should be required. Importantly, the Trustee’s Opposition does not deny that he has already secured these real properties and businesses, such that they cannot be transferred during the pendency of this appeal. The Trustee also does not deny that the real properties and businesses provide sufficient security to stay the judgment pending appeal.

Nevertheless, the Trustee's Opposition asks for a \$10 million bond—*in addition to* an injunction and liens already enjoining Appellants from “concealing, transferring, disposing of, or encumbering” the real properties and businesses subject to the judgment. See **Exhibit 1**, pg. 63; *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005). But, the Trustee also confesses that there are no assets beyond the secured real properties and businesses. Opp. at 15. Very simply, the Trustee is not entitled to double security. Therefore, the Court should enter a stay pending appeal, with no supersedeas bond required beyond the real properties and businesses that the Trustee has already secured.

#### **IV. CONCLUSION**

In summary, after weighing the four NRAP 8(c) factors, and considering that the Trustee has already secured Appellants' real properties, businesses, and all assets, this Court should enter a full stay pending appeal without requiring a supersedeas bond.

Dated this 3rd day of September, 2019.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 3rd day of September, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List.

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Settlement Judge

I further certify that I served a copy of this document by emailing a true and correct copy thereof, addressed to:

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/s/ Leah Dell  
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