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Elizabeth A. Brown
Clerk of Supreme Court

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,

v.

WILLIAM A. LEONARD, TRUSTEE FOR THE BANKRUPTCY ESTATE OF PAUL ANTHONY MORABITO,

Respondents.

Case No.: 79355

**NOTICE OF FILING OF MOTION
TO CONSOLIDATE**

Appellants Superpumer, Inc., Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc. (“Appellants”), through their counsel, Claggett & Sykes Law Firm, hereby file this

Notice of Filing of Motion to Consolidate, which attaches as **Exhibit 1** the Motion to Consolidate, along with other requested relief, filed in Case No. 80214.

DATED this 31st day of January, 2020

CLAGGETT & SYKES LAW FIRM

/s/ Micah Echols

By _____

Micah S. Echols, Esq.

Nevada Bar No. 8437

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

Attorneys for Appellants

CERTIFICATE OF SERVICE

I certify that on the 31st day of January, 2020, I served a copy of this **NOTICE OF FILING OF MOTION TO CONSOLIDATE** upon all counsel of record:

By electronic service in accordance with this Court's Master Service List

Gabrielle Hamm, Esq.
Michael Lehnert, Esq.
Frank Gilmore, Esq.
Jeffrey Hartman, Esq.
Erika Pike Turner, Esq.
Stephen A. Davis, Esq.
Debbie Leonard, Esq.

By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Gerald M. Gordon, Esq.
Teresa M. Pilatowicz, Esq.
Mark Weisenmiller, Esq.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119

Dated this 31st day of January, 2020.

/s/ Jocelyn Abrego

Jocelyn Abrego, an employee of
Claggett & Sykes Law Firm

INDEX OF EXHIBITS

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EXHIBIT 1

Claggett & Sykes Law Firm
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individually and as Trustee of the
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MOTION TO CONFIRM
APPELLATE JURISDICTION AND
MOTION TO CONSOLIDATE
APPEALS

**MOTION TO CONFIRM APPELLATE JURISDICTION AND MOTION
TO CONSOLIDATE APPEALS**

Appellants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc. (“Appellants”), through their attorneys, Claggett & Sykes Law Firm, hereby move this Court to confirm the Court’s appellate jurisdiction over this appeal, and to consolidate this appeal with Case No. 79355. Alternatively, if the Court determines that this Court does not have appellate jurisdiction over the appealed orders, Appellants request that this Court either convert this appellate proceeding into an original proceeding, or allow Appellants to file a writ petition to be consolidated into Case No. 79355.

Appellants filed a notice of appeal from the District Court’s (1) Order Denying Morabito’s Claim of Exemption; (2) Order Denying Bayuk’s Claim of Exemption and Third Party Claim; and (3) the Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085. *See* Notice of Appeal, attached as **Exhibit 1**. Appellants are proceeding in this appeal under the argument that their NRCP 52(b)/NRCP 59(e) motion had a tolling effect upon the time to appeal the two claims of exemption. *See* NRAP 4(a)(4) (listing tolling motions); *AA Primo Builders, Ltd. Liab. Co. v.*

Washington, 126 Nev. 578, 585, 245 P.3d 1190, 1194 (2010) (construing reconsideration as a tolling motion, and allowing the resulting order to be reviewed in an appeal from a final judgment); *Lytle v. Rosemere Estates Prop. Owners Ass’n*, 129 Nev. 923, 927, 314 P.3d 946, 949 (2013) (applying a tolling effect to any appealable order upon the filing of a tolling motion). Yet, the question remains whether the two claims of exemption are appealable.

In *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1214, 197 P.3d 1051, 1057–1058 (2008), this Court confirmed the language of NRS 31.460 (new trials and appeals), which states: “Motions for new trial may be made in the same time and manner and shall be allowed for the same grounds in garnishment proceedings as in other civil trials; and appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.”

Further, NRAP 3A(b)(8) allows for an appeal from a “special order entered after final judgment.” An appealable special order entered after final judgment is “an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment.” *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). Because of the uncertainty of the appealability of the order named in Appellants’

notice of appeal, Appellants ask this Court to confirm appellate jurisdiction, such that this case can continue as an appeal. Appellants filed a notice of appeal since a writ petition cannot substitute for an untimely notice of appeal. *See Pan v. Dist. Ct.*, 120 Nev. 222, 88 P.3d 840 (2004).

Alternatively, if the Court believes that it does not have appellate jurisdiction, Appellants ask this Court to either convert this appeal into an original proceeding, while satisfying the unique requirements of NRS Chapter 34. Or, the Court could simply allow Appellants to refile this case as a new original proceeding, if there is no appellate jurisdiction.

Regardless of whether the Court determines that this case can proceed as an appeal, or should proceed as a writ petition, Appellants ask this Court to consolidate the two proceedings. Notably, the issues presented in Case No. 79355 are inextricably intertwined, such that the issues in both cases are nearly identical. Both cases also involve the same parties and the same underlying District Court case. Appellants have filed a motion in Case No. 79355 to stay the briefing in that case, or to extend the briefing to match the briefing schedule in the instant case. If the Court allows the two cases to be consolidated, according to NRAP 3(b), the parties will be able to prepare one set of appendices, one set of briefs, and the Court can make a single decision for both consolidated cases.

Upon these grounds, Appellants respectfully request that this Court either confirm its appellate jurisdiction over the appealed orders, or alternatively, allow Appellants to present the arguments in an original proceeding. Under either scenario, the Court should consolidate this case with Case No. 79355.

DATED this 29th day of January, 2020

CLAGGETT & SYKES LAW FIRM

/s/ Micah Echols

By _____
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/s/ Jocelyn Abrego

Jocelyn Abrego, an employee of
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