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Electronically Filed  
Apr 08 2020 06:07 p.m.  
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 WILLIAM 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

Appeal from the Second Judicial District Court, Case No. CV-13-02663

**OPPOSITION TO MOTION  
FOR EXTENSION OF TIME TO  
FILE APPELLANTS' OPENING  
BRIEF AND APPENDIX  
(SECOND REQUEST)**

Respondent William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito (“Respondent”), by and through his counsel, Garman Turner Gordon LLP, hereby respectfully submits his opposition (the “Opposition”) to the *Motion For Extension of Time to File Appellants’ Opening Brief and Appendix* (the “Motion”), filed on April 6, 2020 by appellants Superpumper, Inc. (“Superpumper”), Edward Bayuk (“Bayuk”), Salvatore Morabito (“Morabito”), and Snowshoe Petroleum, Inc. (“Snowshoe,” and collectively with Superpumper, Bayuk, and Morabito, the “Appellants”).

## **I. INTRODUCTION**

Appellants have already received a 68-day extension of the deadline to file their opening brief and appendix by the Court’s order on Appellants’ January 29, 2020 *Motion to Stay Briefing, or Alternatively, Motion for Extension of Time to File Opening Brief and Appendix* (the “First Request”). They now seek another 60-day extension, alleging “good cause.”

On its face, however, the Motion reflects that Appellants failed to exercise diligence in meeting the deadlines imposed by this Court. As with Appellants’ First Request, they waited until the day their opening brief and appendix were due to seek an extension, despite knowing the alleged basis for the extension for weeks. As such, Appellants have not demonstrated good cause for a further 60-day extension, much less extraordinary and compelling circumstances under NRAP 26(b)(1)(B) and 31(b)(3).

Rather, the Motion is merely the latest salvo in Appellants’ ongoing efforts to prevent execution on the district court’s March 29, 2019 Judgment<sup>1</sup> without having to post a bond. Though Appellants’ multiple collateral attacks on the Judgment in California, Arizona, and the United States Bankruptcy Court for the District of Nevada have failed, they ultimately obtained a stay of Respondent’s collection efforts in California by the Superior Court for Orange County (the “California Court”) on the basis that the Judgment is not a final order so long as this appeal remains pending, despite this Court’s denial of Appellants’ motion for a stay pending appeal.

Because Appellants’ have failed to establish grounds for the lengthy extension requested, Appellants have already engineered a 68-day extension of the deadline to file their opening brief and appendix in this now eight-month old appeal, and further delay is prejudicial to Respondent, Appellants’ requested 60-day extension should be denied.

## **II. STATEMENT OF FACTS**

1. On August 7, 2019, this Court docketed an appeal of the Judgment and related orders filed by Appellants, thereby commencing Case No. 79355 (the “Appeal”).

2. On August 15, 2019, after Respondent domesticated the Judgment in California (the “California Judgment”), where certain of Appellants’ property is

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<sup>1</sup> “Judgment” refers to the *Findings of Fact and Conclusions of Law and Judgment*, entered by the district court (Hon. Connie Steinheimer) on March 29, 2019 following an eight-day bench trial.

located, Appellants filed a *Motion to Vacate Sister State Judgment* in the California Court, seeking to vacate the California Judgment.

3. On September 10, 2019, this Court entered its *Order Denying Stay*, denying Appellants' *Emergency Motion for Relief Under NRAP 27(e)* in light of the NRAP 8(c) factors.

4. The California Court found no basis to vacate the California Judgment in its initial ruling. However, the California Court ultimately stayed Respondent's collection efforts in California due to this pending Appeal, though this Court had denied Appellants a stay. In issuing its ruling, the California Court considered that briefing in the Appeal would be completed by March 2020 based on the then-applicable briefing deadline of January 29, 2020. *See Notice of Ruling on Defendants' Motion to Vacate Sister State Judgment* (Dec. 6, 2019), at **Exhibit 1**.

5. On October 31, 2019, this Appeal was removed from the Settlement Program and briefing was reinstated, setting January 29, 2020 as the deadline for Appellants' opening brief and appendix.

6. On December 13, 2019, this Court docketed Case No. 80214, an appeal filed by Appellants of orders on post-judgment collection motions (the "Second Appeal," and together with this Appeal, the "Appeals").

7. On January 29, 2020, the day their opening brief and appendix in this Appeal were due, over five months after the Appeal was filed, Appellants filed their First Request in this Appeal, seeking to stay briefing entirely or, alternatively, until April 14, 2020, along with their *Motion to Confirm Appellate Jurisdiction and*

*Motion to Consolidate Appeals* in the Second Appeal. *See* First Request, at pp. 2-3 and *Notice of Filing of Motion to Consolidate*, on file herein.

8. On March 6, 2020, this Court entered its *Order Dismissing Appeal and Regarding Motions* in the Appeal (the “Order”), dismissing the Second Appeal, denying the request to consolidate as moot, and granting Appellants 30 days from the date of the Order, or until April 6, 2020, to file their opening brief and appendix.

9. Rather than file their opening brief and appendix pursuant to the Order, Appellants filed the instant Motion.

### **III. LEGAL ARGUMENT**

Because Appellants have already been granted one extension by Order of this Court, the appropriate standard for determining whether to grant an extension is “extraordinary and compelling circumstances,” rather than “good cause.” *See* NRAP 26(b)(1)(B) and 31(b)(3). Whether the Court applies the “good cause” standard or the “extraordinary and compelling circumstances” standard, however, Appellants have not demonstrated grounds for second extension, much less a 60-day extension.

As grounds for the requested extension, Appellants argue 1) that their counsel did not timely receive transcripts, 2) that lead counsel’s paralegal joined a different litigation team within the firm, and 3) the inability to effectively work remotely during the COVID-19 outbreak. None of Appellants’ arguments demonstrate grounds for a 60-day extension.

First, Appellants’ exhibits reflect that the only transcript which was not received as of February 25, 2020 was the district court’s July 22, 2019 hearing on

Appellants' exemption claims. As a result of this Court's March 6, 2020 Order, the transcript of that hearing, which took place approximately four months after entry of the Judgment, is not relevant to this Appeal. Despite the fact that Appellants' counsel failed to inquire regarding the status of other transcripts for weeks at a time, all other requested transcripts that are available were received by Appellants' counsel no later than February 25, 2020, well before this Court set Appellants' extended briefing deadline.<sup>2</sup> Moreover, other than the closing arguments that took place after the close of evidence, Appellants do not contend that they did not timely receive the trial transcripts. Therefore, any delay in receiving transcripts does not justify a further extension, much less an extension of 60 days.

Second, Appellants already relied upon administrative impediments to secure a 68-day extension of the briefing deadline from January 29 to April 6, 2020, arguing in their First Request that their lead counsel had recently moved to a new law firm and did not yet have access to all of his files. Now, Appellants argue that their lead counsel's paralegal joined a different litigation team within the same firm. Staffing decisions by Appellants' counsel, however, are not grounds for a 128-day delay in prosecution of this Appeal.

Third, Respondent understands that the transition to working remotely in accordance with the "stay-at-home" orders currently in effect imposes certain limitations on attorneys and their supporting staff. Parties and counsel, however,

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<sup>2</sup> See Motion, Exhibit 1, at pp. 11-12 (showing no follow-up correspondence regarding transcripts between December 9, 2019 and January 10, 2020) and pp. 1-2 (showing no follow-up correspondence regarding transcripts between January 31, 2020 and February 25, 2020).

should not be permitted to rely on “the overall quarantine situation and working from home” due to COVID-19 as a universal scapegoat for failing to meet court-ordered deadlines. Appellants fail to explain why the COVID-19 crisis justifies the extraordinary relief of a 60-day extension on top of the previously-granted 68-day extension, or why the burdens of the current crisis should be borne by Respondent, who remains unable to execute upon the assets in California while this Appeal remains pending. Finally, Appellants admit that their counsel has known of the transition to remote work since March 16, 2020, when counsel’s firm set up remote-work capabilities. Nonetheless, Appellants’ counsel made no effort to discuss a modest extension with Respondent’s counsel, and again waited until the day their opening brief and appendix were due—three weeks later—to request an extension.

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#### **IV. CONCLUSION**

Appellants have not shown good cause for a further 60-day extension of the deadline to file their opening brief and appendix, much less extraordinary and compelling circumstances. Accordingly, Respondent respectfully requests that the Court deny the Motion, or, alternatively, that any extension granted be limited to fourteen (14) days from the April 6, 2020 deadline applicable under the Court's prior Order, and for such other relief as this Court deems just and proper.

Dated April 8, 2020.

GARMAN TURNER GORDON LLP

By: /s/ Gabrielle A. Hamm  
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Nevada Bar No. 229  
ERIKA PIKE TURNER, ESQ.  
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Las Vegas Nevada 89119  
*Counsel for Respondent*



### **CERTIFICATE OF SERVICE**

I certify that on April 8, 2020, I electronically filed the foregoing **Opposition to Motion For Extension of Time to File Appellants' Opening Brief and Appendix (Second Request)** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic filing system. I further certify that counsel of record for all other parties to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

By: /s/ Melissa Burkart  
An employee of Garman Turner  
Gordon LLP

# **EXHIBIT 1**

# **EXHIBIT 1**

LAW OFFICES OF CLINTON L. HUBBARD  
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Attorney for EDWARD BAYUK, individually and as Trustee of the Edward William Bayuk Living Trust; THE EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO, also known as SAM MORABITO, an individual; SNOWSHOE PETROLEUM, INC., a New York Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

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

Plaintiff,

vs.

EDWARD BAYUK, individually and as  
Trustee of the Edward William Bayuk Living  
Trust; THE EDWARD WILLIAM BAYUK  
LIVING TRUST; SALVATORE  
MORABITO, also known as SAM  
MORABITO, an individual; SNOWSHOE  
PETROLEUM, INC., a New York  
Corporation,

Defendants.

Case No.: 30-2019-01068591-CU-EN-CJC

**NOTICE OF RULING ON  
DEFENDANTS' MOTION TO VACATE  
SISTER STATE JUDGMENT**

Date: September 27, 2019

Time: 9:30 a.m.

Dept.: 16

Judge: Hon. James J. Di Cesare

**PLEASE TAKE NOTICE** that the Motion to Vacate Sister State Judgment came on for hearing on December 6, 2019 at 9:30 a.m. in Department 16 of the Orange County Superior Court. Jonathan S. Dabbieri, Esq. of Sullivan Hill Rez & Engel appeared on behalf of Plaintiff

1 William A. Leonard Trustee for the Bankruptcy Estate of Paul Morabito, and Clinton L. Hubbard  
2 appearing on behalf of all Defendants.

3 The Tentative Ruling of the Court is attached hereto as Exhibit "A", and became the  
4 Order of the Court.

5  
6 DATED: December 6, 2019

LAW OFFICES OF CLINTON L. HUBBARD

7  
8 By: 

CLINTON L. HUBBARD,

9 Attorney for Defendants EDWARD BAYUK,  
10 individually and as Trustee of the Edward William  
11 Bayuk Living Trust; THE EDWARD WILLIAM  
12 BAYUK LIVING TRUST; SALVATORE  
13 MORABITO, also known as SAM MORABITO, an  
14 individual; SNOWSHOE PETROLEUM, INC., a  
15 New York Corporation  
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**EXHIBIT "A"**

5. LEONARD VS. BAYUK 2019-01068591	MOTION TO SET ASIDE/VACATE JUDGMENT
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This is a special ministerial proceeding to domesticate a foreign judgment and debtor's motion to vacate that domesticated judgment.

Under the Sister State Money-Judgments Act (CCP §1710.10 *et seq*), a money judgment obtained in another state may be filed with a California court and a California judgment immediately entered thereon. The statute provides a summary, expeditious and economical registration procedure for permitting out-of-state creditors to reach assets here in California. See *Conseco Marketing, LLC v. IFA & Ins. Services, Inc.* (2013) 221 Cal.App.4<sup>th</sup> 831, 838. The original judgment is referred to as the "foreign" judgment, and the locally-entered judgment is referred to as the "domesticated" judgment. It is important not to confuse the two.

A foreign judgment domesticated here by clerical entry does not necessarily mean that the judgment can be fully enforced locally. For example, if enforcement of the foreign judgment has been stayed for any reason in the foreign state, the domesticated judgment cannot be entered (or if entered, it cannot thereafter be enforced). CCP §1710.55(a). Moreover, if the debtor timely moves to vacate the domesticated judgment, or is presently attacking the foreign judgment directly, the creditor may not seek to enforce the domesticated judgment. CCP §1710.50(a)(3). Finally, a domesticated judgment can be vacated if the foreign judgment:

- is not final and unconditional;
- was obtained by extrinsic fraud;
- was rendered in excess of the foreign court's jurisdiction;
- is void for lack of fundamental jurisdiction (meaning a lack of personal jurisdiction over the debtor).

See *Wells Fargo Bank, NA v. Baker* (2012) 204 Cal.App.4<sup>th</sup> 1063, 1068; *Arizona ex rel. Arizona Dept. of Revenue v. Yuen* (2009) 179 Cal.App.4<sup>th</sup> 169, 178-181; *Traci & Marx Co. v. Legal Options, Inc.* (2005) 126 Cal.App.4<sup>th</sup> 155, 159-160; *Capital Trust, Inc. v. Tri-National Develop. Corp.* (2002) 103 Cal.App.4<sup>th</sup> 824, 830-831; *Washoe Develop. Co. v. Guaranty Fed'l Bank* (1996) 47 Cal.App.4<sup>th</sup> 1518, 1522-1523.

As previously indicated, this Court does not clearly see any basis for vacating the Nevada state court judgment. Although debtor contends that the Nevada state court never had fundamental jurisdiction that does not appear to be the case. Fundamental jurisdiction involves jurisdiction over the person, or the subject. There is no question that the Nevada state court had jurisdiction over the person (debtor here) by virtue of service of a summons, and jurisdiction over the subject of the dispute because state courts are empowered to resolve claims of fraudulent conveyance. After all, it is a state tort. Debtor here claims that the Nevada state court did not have personal or subject-matter jurisdiction over the fraudulent conveyance dispute because *one of the actors* (Paul) was in bankruptcy, and the proposed plaintiff was not the real party in interest for purposes of an ordinary civil action. These issues, even if true, do not seem to implicate the fundamental due process concerns of the debtor. A court decided that debtor received transfers knowing them to be part of scheme to avoid collection. It is not clear why debtor has due process grounds to control who pursued the action to judgment, or which court made the ruling. Of course, the Nevada Supreme Court is apparently going to answer that for this Court.

It is not critical to decide the issue now because by all appearances the foreign judgment is not yet final. According to plaintiff, the matter is now pending before the Nevada Supreme Court, with briefing to be completed by March 2020. Although counsel is "confident the judgment will be affirmed," so long as a direct attack of the foreign judgment is pending, a stay of enforcement is required. CCP §1710.50(a)(1). Since enforcement must be stayed, there is no need to reach the merits of the motion to vacate – particularly since the very issue at the heart of the motion to vacate is part and parcel of the debtor's appeal in Nevada. Once that issue is ruled upon in the foreign state, it will more than likely be collateral estoppel here.

Motion to vacate is Stayed pending final resolution by the Nevada Supreme Court of the validity of the foreign judgment. Status conference set for this dept. on 3/20/20.

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**PROOF OF SERVICE**

William A. Leonard, Jr., etc. v. Edward Bayuk, etc., et al.  
Orange County Superior Court Case No: 30-2019-01068591-CU-EN-CJC

I am employed by the Law Offices of Clinton L. Hubbard and my business address is 2030 Main Street, Suite 1200, Irvine, California 92614. I am over the age of 18 and not a party to the action.

On **December 6, 2019**, I served by the foregoing document(s) described as **NOTICE OF RULING ON DEFENDANTS' MOTION TO VACATE SISTER STATE JUDGMENT** on all interested parties in this action by placing ☐ the original ☒ a true copy thereof in a sealed envelope addressed as follows:

Jonathan S. Dabbieri, Esq. SULLIVAN HILL REZ & ENGEL A Professional Law Corporation 600 B Street, Suite 1700 San Diego, CA 92101	<b>ATTORNEYS FOR PLAINTIFF WILLIAM A. LEONARD, JR., TRUSTEE</b>
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Phone: (619) 233-4100  
Fax: (619) 231-4372

☒ **MAIL** I am "readily familiar" with the Law Offices of Clinton Hubbard's practice of collection and processing of correspondence for mailing. Under that practice the envelope would be deposited with the U.S. Postal Service at Irvine, California, on that same date with postage thereon fully prepaid and in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ **BY E-MAIL** – I caused the above document to be served by electronic mail to the above interested parties. Each e-mail transmission was completed, without error or interruption on April 22, 2019.

☐ **BY FACSIMILE TRANSMISSION** – I caused the above document to be served by facsimile transmission to the above interested parties. Each fax transmission was completed, without error or interruption on \_\_\_\_\_.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **December 6, 2019** at Irvine, California.

  
GENEVIEVE C. RAMIREZ