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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 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 (Third 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* (the “Motion”), filed on June 5, 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 128-day extension of the deadline to file their opening brief by the Court’s orders 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”) and Appellants’ April 6, 2020 *Motion for Extension of Time to File Opening Brief and Appendix* (the “Second Request”). They now seek another 30-day extension alleging “good cause,” but cite no grounds, save a short several day illness of counsel, that were not already in existence when the Second Request was made and approved.

Again, on its face, the Motion reflects that Appellants failed to exercise diligence in meeting the deadlines imposed by this Court. As with Appellants’ First Request and Second Request, they waited until after the close of business on the day their opening brief was 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 30-day extension, much less extraordinary and compelling circumstances under NRAP 26(b)(1)(B) and 31(b)(3).

Rather, the Motion is again a transparent attempt to continue Appellants' ongoing efforts to prevent execution on the district court's March 29, 2019 Judgment¹ 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") without posting a bond 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 *third* extension requested, Appellants have already engineered a 128-day extension of the deadline to file their opening brief in this now ten-month old appeal, and further delay is prejudicial to Respondent, Appellants' requested 30-day extension should be denied and that Appellants be granted no longer than a short one week extension to accommodate Appellants' counsel several day illness.

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¹ "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.

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 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 “First 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 First Order, Appellants filed the Second Request based in large part on the transition to working from home due to COVID-19, which this Court granted permitted Appellants up to and including June 5, 2020 to file their opening brief (the “Second Order”).

10. On June 5, 2020 at 5:24 p.m., without ever first trying to contact Respondent’s counsel to discuss a proposed extension to accommodate counsel’s several day illness, again, rather than file their opening brief pursuant to the Second Order, Appellants filed the Third Request seeking an additional 30 days to file their opening brief.

III. LEGAL ARGUMENT

Because Appellants have already been granted two extension by the First Order and Second 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 a third extension, much less a 30-day extension.

As grounds for the requested extension, Appellants argue 1) the inability to effectively work remotely during the COVID-19 outbreak and 2) counsel’s illness of “several days.” Neither of Appellants’ arguments demonstrate grounds for a 30-day extension.

First, 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, 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 for an additional 30 day extension, on top of the previously-granted 128-day extension, which itself was permitted as a result of the COVID-19 work from home orders. Appellants admit that their counsel has known of the transition to remote work since early March 2020 when the work at home orders

were issued, and that Appellants' counsel's office has been effectively working from home for nearly three months already.

Appellants also fail to explain why the burdens of the current crisis or counsel's difficulties assimilating to the same² should be borne by Respondent, who remains unable to execute upon the assets in California while this Appeal remains pending. To be clear, despite this Court previously denying Appellants request for a stay in September 2019, Appellants are enjoying a stay from the California courts while this Appeal is pending. The continued delay in briefing has the effect of permitting Appellants a stay in the jurisdiction where the collectible assets are located, all without posting a bond. Each additional delay is severely prejudicing Respondent's rights and ability to collect on the multi-million dollar fraudulent transfer judgment he obtained nearly fourteenth months ago, none of which has been paid.

Second, while Respondent is sympathetic to the several day illness that Appellants' counsel has suffered, Appellants' counsel made no effort to discuss a modest extension with Respondent's counsel, and again waited until the day their

² This appears to be at least the seventh request for extension that Appellants' counsel has filed with this Court since April 14, 2020. See *Gautam v. Bank of America, N.A.*, Case No. 79431 (filed April 14, 2020), *Peeler v. Aiello*, Case No. 79630 (filed May 26, 2020), *In re Basil Howell*, Case No. 79578 (filed May 27, 2020), *Perez v. Talley*, Case No. 79094 (filed May 27, 2020), *Harvest Management Sub LLC v. Eighth Judicial District Court*, Case No. 80837 (filed June 1, 2020), *Campbell v. Laughlin*, Case No. 77589 (filed June 5, 2020). Notably, while counsel indicated that he was ill in the week prior to filing the *Talley* request on May 27, 2020, counsel makes no mention of such illness in the request filed in the *Harvest Management* case filed on June 1, 2020 or in the request filed on June 5, 2020 in the *Campbell* case.

opening brief was due to request an extension. Furthermore, Appellants have made no effort to explain to this Court how a several day illness prevented preparation of filing of the brief in the remaining 60 days of the previously granted extension. Respondent would have accommodated a one week extension of the deadline to accommodate the illness and request that this Court grant no more than that one week in response to Appellants' dilatory request seeking an extension even beyond the 128-day extension that Appellants have already enjoyed.

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IV. CONCLUSION

Appellants have not shown good cause for a further 30-day extension of the deadline to file their opening brief, 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 seven (7) days from the June 5, 2020 deadline applicable under the Court's prior Order, and for such other relief as this Court deems just and proper.

Dated June 8, 2020.

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CERTIFICATE OF SERVICE

I certify that on June 8, 2020, I electronically filed the foregoing **Opposition to Motion For Extension of Time to File Appellants’ Opening Brief (Third 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
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