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Electronically Filed  
Nov 17 2020 08:20 a.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' REPLY  
BRIEF (First 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’ Reply Brief (First Request)* (the “Motion”), filed on November 13, 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**

For the seventh time in this case, Appellants have requested an extension of the deadline to file their papers. Appellants’ repeated requests have resulted in an appeal that was initially filed in August 2019, for a Judgment entered in March 2019, still not being fully briefed in over fifteen months. Appellants’ request is completely devoid of the required showing of extraordinary circumstances and extreme need justifying the lengthy delay. Instead, Appellants seek to catapult the “Stay at Home 2.0 Order” issued by Governor Sisolak just two business days before their reply brief was due into an additional 30-day extension.

The Motion is *yet another* transparent attempt to continue 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

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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.

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.

## **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 *Motion to Stay Briefing, or Alternatively, Motion for Extension of Time to File Opening Brief and Appendix* 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* Jan. 29, 2020 Motion, 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 *Motion for Extension of Time to File Opening Brief and Appendix* 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 *Motion for Extension of Time to File Appellants’ Opening Brief* seeking an additional 30 days to file their opening brief.

11. On July 13, 2020, Appellants filed their *Appellants’ Opening Brief*.

12. On July 14, 2020, Appellants filed their *Appellants’ Amended Opening Brief*.

13. On August 26, 2020, Respondent filed his *Respondent’s Answering Brief*.

14. On August 27, 2020, Respondent filed his *Respondent’s Amended Answering Brief* (the “Answering Brief”).

15. On September 28, 2020, the day their reply brief was initially due, Appellants instead filed their *Motion to Strike Respondent’s Amended Appendix and Respondent’s Amended Answering Brief and Motion to Stay Briefing* (“Motion to Strike/Stay”).

16. On October 14, 2020, this Court denied the Motion to Strike/Stay and ordered Appellants to file their reply brief on or before November 13, 2020.

17. On November 13, 2020, instead of filing their reply brief, Appellants filed the instant Motion, which seeks *another 30 days*, which Appellants contend is

largely based on an order issued by Governor Sisolak on November 10, 2020, just three days earlier.

18. As a result of Appellants multiple extensions, this Appeal, filed on August 5, 2020, still is not fully briefed, with the Opening Brief having been delayed by 166 days<sup>2</sup> and the reply brief still not filed 81 days after Respondent filed the Answering Brief.<sup>3</sup>

### **III. LEGAL ARGUMENT**

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 an extension, much less a 30-day extension.

As grounds for the requested extension, Appellants contend that the shift to work at home from the “Stay at Home 2.0 Order” has prevented Appellants from filing their reply brief. Appellants’ argument does not demonstrate grounds for a 30-day extension.

First, while Respondent understands that the transition to working remotely in accordance with the “stay-at-home” order currently in effect imposes certain limitations on attorneys and their supporting staff, Respondent also understands that,

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<sup>2</sup> Appellants opening brief was initially due on January 29, 2020 and was not filed until July 13, 2020.

<sup>3</sup> The reply brief was initially due on September 28, 2020.

based on Appellants' prior filings, Appellants' counsel's office has been effectively working from home for nearly eight months already. Parties and counsel, therefore, should not be permitted to continue to rely on COVID-19 as a universal scapegoat for failing to meet court-ordered deadlines. At most, a two business day extension should be granted to allow for the two business day adjustment between November 10, 2020, when the "Stay at Home 2.0 Order" was issued, and November 13, 2020, when the reply brief would have originally been due. To be sure, the reply brief should have been largely completed by the evening of November 10, 2020 when the "Stay at Home 2.0 Order" was issued. Appellants therefore fail to explain why the order issued on November 10 justifies the extraordinary relief of a 30-day extension.

Appellants also fail to explain why the burdens of the current crisis or counsel's difficulties assimilating to the same should continue to be borne by Respondent, who remains unable to execute upon the assets in California while this Appeal remains pending. 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 over a year and a half ago, none of which has been paid.

Second, Appellants' counsel has made no effort to discuss a modest extension with Respondent's counsel and waited until the day their reply brief was due to request an extension.

Finally, Appellants contend that they also need an extension because counsel was recently retained in a Federal District Court civil rights case (*Herndon v. City of Henderson*, 2:19-cv-00018-GMN-NJK). As this Court previously noted in its orders in this "Counsel's caseload normally will not be deemed [extraordinary circumstances and extreme need]. *Cf. Varnum u. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974)." Appellants have failed to set forth when counsel was retained, what his role is, and why such retention prohibits him from timely filing the reply brief. Notably, it does not appear that Appellants' counsel has entered any appearance in the referenced case. In any event, and as further set forth above, it is unclear why Appellants' counsel desire to take additional cases should permit Appellants' further delay which serves to prejudice Respondent.

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#### IV. CONCLUSION

Appellants continue to delay the resolution of this Appeal. Their latest effort, which seeks a thirty-day extension based on an order issued just three days before the reply brief was due, highlights that Appellants will continue to find excuses to not timely file their papers. Appellants have not shown good cause for a 30-day extension of the deadline to file their reply 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 two business days from the date an order is entered denying the requested extension. Appellants request such other relief as this Court deems just and proper.

Dated November 17, 2020.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz  
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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 November 17, 2020, I electronically filed the foregoing **Opposition to Motion for Extension of Time to File Appellants' Reply Brief (First 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  
Clinton L. Hubbard, Bar No. 81389  
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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>
----------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

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

**PROOF OF SERVICE**