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Electronically Filed
Dec 03 2020 10:30 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 (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’ Reply Brief (Second Request)* (the “Motion”), filed on December 2, 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 ninth time in this case, Appellants have requested an extension of the deadline to file their papers despite the *Order Granting Motion in Part* entered by the Court on November 18, 2020, limiting any further extensions to “extraordinary circumstances” and raising the remedy for failure to timely file Appellants’ reply brief as a waiver of the right to file a reply brief. Appellants’ request is completely devoid of the required showing of extraordinary circumstances and extreme need justifying any delay. Instead, this time, counsel blames an associate and third year law student for not timely completing his work. There comes a time when enough is enough, and that time is now.

The Motion is *yet another* 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

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,

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. On December 2, 2020, just hours before Appellants filed their Motion, the California Court continued a hearing on Respondent's request to set a bond, pending since August 2020, from December 18 to January 22, 2021. The delay is crippling at this point and, as no extraordinary circumstances have been shown, the Motion must 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 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.

following an eight-day bench trial.

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 24, 2020, Respondent filed his *Motion to Set Undertaking to Secure Stay of Enforcement* (the “Bond Motion”) in the California Court seeking to set a bond for the continued stay. The Bond Motion was originally scheduled for hearing on December 18, 2020

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

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

16. 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”).

17. 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.

18. On November 13, 2020, instead of filing their reply brief, Appellants filed the *Motion for Extension of Time to File Appellants' Reply Brief (First Request)*, seeking *another 30 days*, which Appellants contended was largely based on an order issued by Governor Sisolak on November 10, 2020, just three days earlier.

19. On December 2, 2020, the day their reply brief was due, Appellants filed the instant Motion, seeking another 14-day extension. Also on December 2, 2020, just hours before the Motion was filed, the California Court continued the hearing on the Bond Motion to January 22, 2021.

20. 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 days² and the reply brief still not filed 99 days after Respondent filed the Answering Brief.³

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

³ The reply brief was initially due on September 28, 2020.

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). Indeed, as made clear by the Order entered by this Court on November 18, 2020, which already granted an extension to file the reply brief, “No further extensions of time shall be permitted absent demonstration of extraordinary circumstances.” Given fair warning from the Court that any further extension would require extraordinary circumstances, Appellants seek an additional 14-day extension.

Appellants contend that because an associate Appellants’ counsel hired, who appears to have been hired in October 2020, was no longer employed “as of this week” (meaning as of – *at the latest* – November 30, 2020, just two days before the brief was due) the reply brief could not be completed. Tellingly however, the last request for an extension was similarly made based on an occurrence (the “Stay at Home 2.0 Order”) that occurred just two days before the reply brief was due. It is painfully clear that, despite the Answering Brief having been filed 99 days ago, Appellants have not spent the requisite time necessary to timely complete their brief. Instead, Appellants’ counsel spends the time drafting extension requests and launching excuses, all while Respondent is being harmed because he has been stayed from collecting in California, where the majority of Appellants’ assets are believed to be, *for over fifteen months*.

Appellants also fail to explain why the burdens of counsel 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. Respondent filed his Bond Motion in August 2020, which has now been delayed to January 2021. Notably, Appellants have repeatedly misrepresented the status of this appeal (telling the California Court it has been fully briefed) at status conferences before the California Court in an effort to continue the stay. 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 twenty months ago, none of which has been paid.

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IV. CONCLUSION

Appellants continue to delay the resolution of this Appeal. There comes a time when enough is enough. Their latest effort, which seeks a 14-day extension on the day their reply brief was due, highlights that Appellants will continue to find excuses to not file their papers. Appellants have not shown the extraordinary circumstances necessary for a 14-day extension of the deadline to file their reply brief. Accordingly, Respondent respectfully requests that the Court deny the Motion and treat the failure by Appellants to file a timely reply brief as a waiver of the right to file such a reply brief. Appellants request such other relief as this Court deems just and proper.

Dated December 3, 2020.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz
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Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on December 3, 2020, I electronically filed the foregoing **Opposition to Motion for Extension of Time to File Appellants' Reply Brief (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.4th 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.4th 1063, 1068; *Arizona ex rel. Arizona Dept. of Revenue v. Yuen* (2009) 179 Cal.App.4th 169, 178-181; *Traci & Marx Co. v. Legal Options, Inc.* (2005) 126 Cal.App.4th 155, 159-160; *Capital Trust, Inc. v. Tri-National Develop. Corp.* (2002) 103 Cal.App.4th 824, 830-831; *Washoe Develop. Co. v. Guaranty Fed'l Bank* (1996) 47 Cal.App.4th 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	ATTORNEYS FOR PLAINTIFF WILLIAM A. LEONARD, JR., TRUSTEE
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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

PROOF OF SERVICE