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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 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
APPELLANTS' MOTION TO
STAY ISSUANCE OF
REMITTITUR**

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 *Appellants’ Motion to Stay Issuance of Remittitur* (the “Motion”), filed October 14, 2021, 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**

This appeal stems from a Judgment¹ entered in March 2019, over thirty months ago. During the pendency of the appeal, Appellants sought over *six extensions* to file their briefs and other appellate papers. The extreme delay at the insistence of Appellants was a clear strategy to delay collection efforts. Specifically, although no bond was posted and a stay had been denied by this Court, the Superior Court for Orange County (the “California Court”) issued a stay solely on the basis of the pending appeal. On September 16, 2021, two years after the appeal was filed, this Court issued its *en banc* decision rightfully affirming the Judgment and paving the way for Respondent to finally be able to collect the more than \$22,000,000 that

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.

is now owed.

With all appellate rights exhausted,² Appellants have now filed the instant Motion seeking *yet another* delay to prevent execution on the Judgment. Appellants claim they may file petition for a writ of certiorari (the “Petition”) to the United States Supreme Court, and seek a delay of issuance of the remittitur through at least February 8, 2022. Noticeably absent for Appellants’ Motion, however, is an explanation as to why such a lengthy delay is required or why the issues in this appeal fall within the grounds for a Petition to be granted. What is clear, however, is that a further delay of the issuance of the remittitur only serves the purpose of potentially continuing the unwarranted bondless stay of execution in California.

This Court was correct in its *en banc* appellate review of the Judgment. There are no grounds for the United States Supreme Court to accept the Petition and, even if it did, to overturn the sound reasoning of this Court. Simply, there is no reason why Appellants, having already enjoyed a two-and-a-half-year reprieve from collection on the Judgment in California, should be entitled to a further bondless stay. This is just Appellants’ latest attempt to delay the inevitable and take more time to try to siphon, conceal, or alter the assets available for collection. The Motion should be denied in its entirety or, at a minimum, a bond for the full amount of the

² While an appeal to an appellate court is a matter of right, a writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10.

Judgment to date, plus an additional year of interest, should be required for a stay.

II. **STATEMENT OF FACTS**

1. In March 2019, after an eight-day evidentiary hearing, the Second Judicial District Court for the County of Washoe (the “District Court”) entered its Judgment awarding damages in the amount of \$13,212,800.³

2. On August 7, 2019, following a series of unsuccessful post-trial motions filed by Appellants, this Court docketed an appeal of the Judgment and related orders filed by Appellants, thereby commencing this appeal.

3. On September 10, 2019, this Court entered its *Order Denying Stay*, denying Appellants’ *Emergency Motion for Relief Under NRAP 27(e)*.

4. On August 15, 2019, after Respondent domesticated the Judgment in California (the “California Judgment”),⁴ where certain of Appellants’ property is located, Appellants filed a *Motion to Vacate Sister State Judgment*.

5. The California Court found no basis to vacate the California Judgment in its initial ruling. However, the California Court ultimately stayed Respondent’s

³ The Judgment collectively totaled \$13,212,800 for the avoided transfers. In addition, the District Court awarded (1) pre-judgment interest in the approximate amount of \$5,673,275 and (2) awarded attorney’s fees and costs in the amount of \$874,414.33. The Judgment continues to accrue interest at the current rate of 5.25% or approximately \$693,672 per year.

⁴ Respondent sought to domesticate the Judgment in California because Appellants contend they do not have significant assets in Nevada.

collection efforts in California due to this pending appeal, though this Court had denied Appellants a stay. *See Notice of Ruling on Defendants’ Motion to Vacate Sister State Judgment* (Dec. 6, 2019), at **Exhibit 1**.

6. 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.

7. Between January 29, 2020, the day their opening brief and appendix in this Appeal were due, and December 15, 2020, the day their reply brief was filed, Appellants sought and were granted more than *six extensions* of the deadline to file their appellate papers.

8. In December 2020, Appellants opposed attempts by Respondent to have a bond issue in the California matter for a continued stay of collection activities against Appellants’ real properties (the “Real Property”), which stay remains through today.⁵

9. On September 16, 2021, this Court issued its *en banc* opinion affirming the Judgment (the “Opinion”).

10. On September 28, 2021, Appellants filed a Motion for Rehearing, which was denied on October 11, 2021.

⁵ The California Court lifted the stay as to Appellants’ personal property, but the stay remains in place with respect to the Real Property.

11. On October 14, 2021, Appellants filed the instant Motion seeking a stay of issuance of the remittitur for a minimum of 120 days through February 8, 2022.

12. Any delay in issuing the remittitur has the likely effect of continuing the stay of collection against Appellants' Real Property.

III. LEGAL ARGUMENT

A. Appellants Have Failed to Articulate Grounds Sufficient to Obtain a Stay of Issuance of the Remittitur.

NRAP 41, titled *Issuance of Remittitur; Stay of Remittitur*, provides, in relevant part:

(A) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari...

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

NRAP 41(3).

Through their Motion, Appellants request a stay for 120 days, but fail to actually assert whether they will even file the Petition. If they do, Appellants have requested a stay past their deadline to do so.⁶ Thus, instead of placing the burden on themselves to move expeditiously in filing the Petition, Appellants are requesting that this Court shift the burden and risk to Respondent while they determine how to

⁶ Notably, Sup. Ct. R. 13 provides that a Petition must be filed within 90 days from the order denying reconsideration, which is January 19, 2022.

proceed. Furthermore, Appellants have failed to assert any grounds on which the Petition would be accepted, much less why this Court's *en banc* Opinion would be overturned. Specifically, while Appellants identify potential federal questions, they do not assert that (1) this Court's Opinion conflicts with the decisions of another state court of last resort or of a United States Court of Appeals; (2) that the issues raised have not been, or should be, settled by the United States Supreme Court; or (3) that this Court's *en banc* Opinion conflicts with relevant decisions of the United States Supreme Court. *See* Sup. Ct. R. 10(b) and (c). Having failed to meet even this minimum threshold to show that the Petition has any chance of success, Appellants have failed to assert any grounds that would warrant a further delay of issuance of the remittitur. Therefore, the Motion should be denied.

B. If this Court Does Grant a Stay, the Court Should Condition the Stay on Appellants Posting a Bond of No Less Than \$22,788,047.

Should the Court be inclined to grant a stay, then it should set the bond sufficient to cover the damages Respondent will suffer. *See* NRAP 41(3)(c) "The purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment." *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), *dismissed*, 100 Nev. 816, 808 P.2d 18 (1984), holding modified by *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). Indeed, a supersedeas bond's purpose is not only "to preserve the *status quo* for the sake of the appellant, but also to secure the [respondent] from loss resulting from a stay of

execution, as well as to compensate it for the deprivation of the immediate benefits of its judgment.” *Tri County Wholesale Distributors, Inc. v. Labatt USA Operating Co., LLC*, 311 F.R.D. 166, 176 (S.D. Ohio 2015)

Here, in if a stay is permitted, this Court should require Appellants to post a bond as, to date, Appellants’ extraordinary delay has already prevented Respondent from pursuing collectible assets to satisfy the Judgment. Additional delay, after this Court has already issued its *en banc* Opinion paving the way for collection, will unduly prejudice Respondent’s rights and ability to collect on the multi-million-dollar fraudulent transfer Judgment obtained over two and a half years ago.

1. Appellants Have Proven that They Will Conceal and Transfer Assets.

The District Court, after an eight-day evidentiary hearing, found that Appellants have proven that they have and will conceal and transfer assets. Specifically, the District Court expressly held that the transfers that were the subject of the Judgment were made with the intent to hinder, delay, and defraud. When coupled with Appellants’ repeated attempts to delay the conclusion of this appeal and lifting the stay in California, there is a significant likelihood that Appellants are simply attempting to buy time to further continue the exact type of behavior of which Appellants were found liable by the District Court. Simply, the longer Appellants are allowed to continue without posting bond to secure the stay of enforcement of the Judgment, the greater the likelihood that they will attempt to conceal or transfer

assets to further avoid satisfying the Judgment. Appellants should not be permitted to continue their deceitful pattern of behavior.

2. Defendants Should Be Required To Post a Bond of No Less than \$22,788,047 In Order to Obtain a stay of the Remittitur.

The Judgment totals no less than \$22,094,375⁷ as of September 16, 2021, which is the amount that Respondent is seeking. Respondent has already proven his likelihood of success, as he succeeded at the District Court and through the *en banc* Opinion entered by this Court. The likelihood that the Petition will be granted is slim in any event,⁸ but even more so when, as here, Appellants cannot even articulate a valid basis for review. Therefore, Respondent is entitled to protection that, when the Petition is denied, if ever filed at all, there will be sufficient assets against which to collect that have not been dissipated during a bondless stay. That requires a bond in the amount of \$22,788,048 which reflects the approximate current balance of the Judgment plus interest for one additional year in the amount of \$693,672.

Finally, it cannot go without stating that Appellants requested a stay from this

⁷ To date, Respondent has only recovered funds through a subsequent transferee action against the current owners of the assets of Superpumper. The amount recovered to date is \$500,000. None of the amount is currently credited against the Judgment as Respondent believes post-Judgment collection attorney's fees exceed the amount recovered thus far.

⁸ On average, Petitions for Writ of Certiorari have a success rate of around 1%. *Supreme Court of the United States, FAQs – General Information*, [supremecourt.gov](https://www.supremecourt.gov) (last visited October 21, 2021).

Court and that request was as denied on September 10, 2019, over two years ago. Nonetheless, under Nevada law, Appellants were always able to obtain a stay by posting a supersedeas bond.⁹ To date, Appellants have refused to post the necessary bond in order to obtain their stay, instead repeatedly delaying briefing of their appeal in order to obtain the stay they sought without a bond in California. There is no reason why this Court should allow Appellants to continue their bondless stay in California by delaying the conclusion of this Appeal.

3. The Real Property Liens in California Are Not a Replacement for a Bond.

Respondent expects Appellants to argue, like they did in California, that because abstracts of judgment have been recorded against certain of Appellants' Real Property, there is no need for a bond. However, the Real Property appears insufficient to satisfy the full amount owed to Respondent under the Judgment. Appellants have never presented any evidence as to the value of the Real Property. Even if they did, there is nothing to protect Respondent against damage or value fluctuations of the Real Property. Moreover, there is no protection for payment of continuing accrued interest. Furthermore, there is simply no reason why Respondent should be further delayed from proceeding with its collection against those real

⁹ Nevada Rule of Civil Procedure 62 provides that: "If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2)." *See* Nev. R. Civ. P. 62(d)(1).

properties when the District Court and this Court have spoken, and no grounds for further review have been set forth by Appellants.

IV. CONCLUSION

Appellants continue to delay the final resolution of this Appeal because the longer they do so, the longer they can prevent collection on their California Real Property and whatever additional assets are subject to collection. Appellants have not articulated any basis for Supreme Court review, nor have they presented any basis for the extraordinary remedy of a further stay without a bond. The Motion should be denied, and the remittitur should issue pursuant to NRAP 41(a)(1) on November 5, 2021. Alternatively, if a stay is granted, a bond should be required in the amount of \$22,788,048. Respondent further requests such other relief as this Court deems just and proper.

Dated October 21, 2021.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz
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CERTIFICATE OF SERVICE

I certify that on October 21, 2021, I electronically filed the foregoing **Opposition to Appellants' Motion to Stay Issuance of Remittitur** 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.

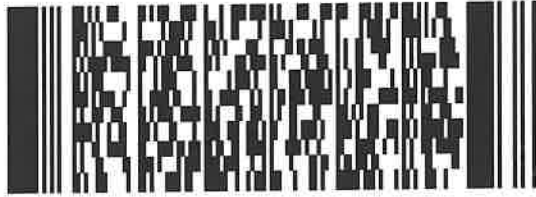
By: /s/ Caitlin Halm
An employee of Garman Turner
Gordon LLP

EXHIBIT 1

EXHIBIT 1

Sullivan Hill Rez & Engel

2019.12.06 - Notice of Ruling on Defendants' Motion to Vacate Sister State Judgment



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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,
Attorney for Defendants 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

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
--	---

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