

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD 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.

No. 79355

Electronically Filed  
Oct 28 2021 06:41 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

*REPLY IN SUPPORT OF APPELLANTS'  
MOTION TO STAY ISSUANCE OF REMITTITUR*

Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Claggett & Sykes Law Firm  
4101 Meadows Lane, Ste. 100  
Las Vegas, Nevada 89107  
Telephone: (702) 655-2346  
Facsimile: (702) 655-3763  
micah@claggettlaw.com

Jeffrey L. Hartman, Esq.  
Nevada Bar No. 1607  
Hartman & Hartman  
510 W. Plumb Lane, Ste. B  
Reno, Nevada 89509  
Telephone: (775) 324-2800  
Facsimile: (775) 324-1818  
jlh@bankruptcyreno.com

*Attorneys for Appellants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc.*

## *INTRODUCTION*

Following this court's opinion affirming the district court's order, *see Superpumper, Inc. v. Leonard*, 137 Nev., Adv. Op. 43, 495 P.3d 101 (2021), and this court's denial of the petition for rehearing, *Superpumper, Inc.*, Docket Nos. 80214 & 82157, (Order Denying Rehearing, Oct. 11, 2021), appellants Superpumper, Inc., Edward Bayuk, Salvatore Morabito, and Showshoe Petroleum, Inc. (Superpumper) filed a motion for stay of remittitur pending application to the Supreme Court of the United States for a writ of certiorari under NRAP 41(b)(3), *Superpumper, Inc.*, Docket Nos. 80214 & 82157, (Appellants' Motion to Stay Issuance of Remittitur, Oct. 14, 2021). This court granted the motion, issuing a stay of remittitur until February 8, 2022. *Superpumper, Inc.*, Docket Nos. 80214 & 82157 (Order Granting Motion to Stay Issuance of Remittitur, Oct. 21, 2021). The same day, respondent William Leonard filed an opposition to appellants' motion, *Superpumper, Inc.*, Docket Nos. 80214 & 82157 (Respondent's Opposition to Appellants' Motion to Stay Issuance of Remittitur, Oct. 21 2021). This court then vacated its prior order and stayed remittitur pending resolution of the instant motion. *Superpumper, Inc.*, Docket Nos. 80214 & 82157 (Order

Vacating Order, Oct. 21, 2021). As the basis of Leonard’s opposition rests upon misstatements of the Nevada Rules of Appellate Procedure and upon factual allegations unsupported by the exhibits to his motion, Superpumper respectfully requests that this court reinstate the prior order granting stay such that Superpumper may pursue a writ of certiorari with the Supreme Court of the United States.

### *LEGAL ARGUMENT*

NRAP 41(b)(3) provides that “[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.” Such a stay cannot “exceed 120 days” unless this court extends the stay for cause shown. NRAP 41(b)(3)(B). Should the party file the petition for a writ, this court will extend the stay “until final disposition by the Supreme Court of the United States.” *Id.*

Leonard argues that this court should not issue a stay because Superpumper has not asserted that it will file a petition or demonstrated that such a petition has a chance of success on the merits. However, the plain language of NRAP 41(b)(3) does not require such a showing. Had this court intended for a party moving for a stay under NRAP 41(b)(3) to

make such a showing, it would have expressly included such a requirement in the rule. *See Weddell v. Stewart*, 127 Nev. 645, 651, 261 P.3d 1080, 1084 (2011) (holding that “[r]ules of statutory construction apply to court rules”); *Harvey v. State*, 136 Nev., Adv. Op. 61, 473 P.3d 1015, 1018 (2020) (noting that if the drafter’s intended for a rule to have a limitation, they “would have done so expressly”); *see also* NRAP 8(c) (providing express factors for Nevada appellate courts to weigh when considering a stay or injunction pending appeal or resolution of a writ petition). Indeed, this court has never held that NRAP 41(b)(3) requires such a showing.<sup>1</sup> Accordingly, Leonard’s arguments on these grounds lack merit.

NRAP 41(b)(3)(C) provides that this “court may require a bond of other security as a condition to granting a stay of the remittitur. Should it grant the instant motion to stay the remittitur, Leonard argues

---

<sup>1</sup>This court has cited NRAP 41(b) in three dispositions, none of which included the Leonard’s proffered requirement. *See Branch Banking & Tr. Co. v. Gerrard*, 134 Nev. 871, 432 P.3d 736 (2018); *Chao v. State*, Docket No. 68379, 2017 Nev. Unpub. LEXIS 185 (Order of Affirmance, Mar. 15, 2017); *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, Docket No. 68630, 2017 Nev. LEXIS 15 (Order Granting Motion to Stay Remittitur, Feb. 8, 2017).

that this court should require Superpumper to post a nearly \$23 million dollar bond.

First, there currently is no stay preventing Leonard from executing on property located in Nevada. However, the Superior Court of California, County of Orange, issued a stay preventing Leonard from executing on real property located in California pending resolution of this matter. Ex. A. If Leonard seeks relief from that order, he should seek it in that court.

Second, Leonard asserts that the security interests that he has in the real property in California is insufficient protection. However, his motion provides no citation to the record before this court, nor does it proffer any exhibit to support such a claim. Thus, this court may summarily reject Leonard's unsupported contention. *Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case.").

Third, Leonard's reliance on Nevada caselaw regarding supersedeas bonds is misplaced. NRCP 62(d) provides that a party is entitled to security while an appeal proceeds. A party obtains such security through a supersedeas bond, other bond, or other security. *Id.*

NRAP 7(a) provides similar protection. Here, Leonard has a security interest in real property in California subject to a lien. Furthermore, the Superior Court of California's stay expressly does not apply to other assets. *See Exhibit 1*. Accordingly, Leonard's request for an exorbitant bond before Superpumper may exercise its right to file a petition for a writ of certiorari to the Supreme Court of the United States is legally incorrect. *See Sup. Ct. R. 12(4)* (providing that interested parties may file for a writ of certiorari).

### *CONCLUSION*

Based on the foregoing, Superpumper respectfully requests that this court reinstate its prior order granting stay of remittitur without a bond.

DATED this 28th day of October, 2021.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
4101 Meadows Ln., Ste. 100  
Las Vegas, Nevada 89107  
*Attorneys for Appellants*

*CERTIFICATE OF SERVICE*

I hereby certify that I electronically filed the foregoing Reply in Support of Appellants' Motion to Stay Issuance of Remittitur with the Supreme Court of Nevada on the 28th day of October, 2021. I shall make electronic service of the foregoing document in accordance with the Master Service List as follows:

Gerald M. Gordon, Esq.  
Erika Pike Turner, Esq.  
Gabrielle A. Hamm, Esq.  
Teresa Pilatowicz, Esq.  
Stephen Davis, Esq.  
Garman Turner Gordon LLP  
7251 Amigo Street, Ste. 210, Las Vegas, Nevada 89119  
*Attorneys for Respondent, William A. Leonard*

Jeffrey Hartman, Esq.  
Hartman & Hartman  
510 W. Plumb Lane, Ste. B, Reno, Nevada 89509  
*Attorneys for Appellants, Superpumper, Inc.;*  
*Edward Bayuk, individually and as Trustee of the Edward Bayuk*  
*Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc.*

/s/ Anna Gresl  
Anna Gresl, an employee of  
CLAGGETT & SYKES LAW FIRM

**EXHIBIT 1**

**EXHIBIT 1**



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Central Justice Center  
700 W. Civic Center Drive  
Santa Ana, CA 92702

**SHORT TITLE:** Leonard vs. Bayuk

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC  
SERVICE**

**CASE NUMBER:  
30-2019-01068591-CU-EN-CJC**

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 02/19/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 2/19/21. Following standard court practice the mailing will occur at Sacramento, California on 2/22/21.

LAW OFFICES OF CLINTON L HUBBARD  
2030 MAIN STREET 1200  
IRVINE, CA 92614

Clerk of the Court, by: Stacie Juner, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 02/19/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on February 19, 2021, at 11:43:45 AM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

GARMAN TURNER GORDON LLP  
ETURNER@GTG.LEGAL

GARMAN TURNER GORDON LLP  
TPILATOWICZ@GTG.LEGAL

LAW OFFICES OF CLINTON L HUBBARD  
CLINT@CHUBBARDLAW.NET

SULLIVAN HILL REZ & ENGEL  
MATHENY@SHLAW.COM

SULLIVAN HILL REZ & ENGEL  
SAURER@SULLIVANHILL.COM

Clerk of the Court, by: Stacie Juner, Deputy

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 02/19/2021

TIME: 11:35:00 AM

DEPT: C12

JUDICIAL OFFICER PRESIDING: Supervising Judge Layne H. Melzer

CLERK: Stacie Turner

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01068591-CU-EN-CJC** CASE INIT.DATE: 05/07/2019

CASE TITLE: **Leonard vs. Bayuk**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Enforcement

---

EVENT ID/DOCUMENT ID: 73474233

**EVENT TYPE:** Under Submission Ruling

---

**APPEARANCES**

There are no appearances by any party.

After further consideration of the briefing and oral argument at the hearing on 1/22/21, the Court is inclined to deny Plaintiff/Trustee William A. Leonard's motion for an order for Defendants to post an undertaking of \$11,967,554.37 to secure the stay of enforcement of judgment.

On 9/27/19 and on 12/6/19, this Court stayed execution efforts and Defendants' motion to vacate the sister-state judgment, pending the outcome of the appeal before the Nevada Supreme Court.

At the hearing on 1/22/21 on Plaintiff's motion for an undertaking, Defendants' counsel represented that Defendants lack sufficient assets to afford the bond, and indicated that they would prefer the Court to lift the stay to allow Plaintiff/Creditor to levy their assets.

Code Civ. Proc., § 1710.50(c) provides for this alternatively relief, stating that the court may condition a stay when there is a pending appeal in the sister state, on such terms and conditions are just, including but not limited to the following:

- (1) The court may require an undertaking in an amount it determines to be just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim.
- (2) If a writ of execution has been issued, the court may order that it remain in effect.
- (3) If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to retain possession of the property capable of physical possession and to maintain the levy on other property.

(Emphasis added.) According to the law revision comments, "[w]hether an undertaking is to be required, and the amount of the undertaking if one is required, is left to the discretion of the court which may consider factors such as whether (1) a successful defense is probable, (2) it is likely that the debtor will conceal or transfer his assets, (3) the debtor has already given a bond on appeal in the sister state, and (4) the debtor prefers having his property held subject to levy rather than giving an undertaking."

(Comments to § 1710.50 (emphasis added).)

In requesting an undertaking, Plaintiff argued that the longer Defendants are allowed to continue without posting bond to secure the stay of enforcement of Trustee's judgment, the greater the likelihood that they will attempt to conceal or transfer assets to further avoid satisfying the Judgment.

The Court has considered the balance of harms. It would seem that lifting the stay will allow Defendants to conduct a judgment debtor exam and begin immediately executing on Defendants' assets to satisfy the judgment, which should alleviate their concerns regarding any future attempts by Defendants to conceal or transfer assets. In light of Defense counsel's representations regarding his clients' inability to post the full amount of the undertaking, the creditor would seem to be no worse off by taking this approach.

As a result, the Court is inclined to vacate the stay as to everything but the secured liened properties without prejudice to the creditor's discovery of further information whether through a judgment debtor examination or alternate means.

The parties are invited to file with the Court further briefing of no more than five pages for the Court's consideration before this ruling becomes final, no later than **February 26, 2021**.

Clerk to give notice.