

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

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Elizabeth A. Brown  
Clerk of Supreme Court

*APPELLANTS' RESPONSE TO RESPONDENT'S NOTICE OF FILING LETTER  
RECEIVED FROM EDWARD BAYUK*

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Salvatore Morabito; and Snowshoe Petroleum, Inc.*

## *INTRODUCTION*

Appellants Superpumper, Inc., Edward Bayuk, Salvatore Morabito, and Snowshoe Petroleum, Inc. (Superpumper) filed a reply in support of its motion to stay issuance of remittitur pending application to the Supreme Court of the United States for a writ of certiorari under NRAP 41(b)(3). *Superpumper, Inc. v. Leonard*, Docket Nos. 80214 & 82157, (Reply in Support of Appellants' Motion to Stay Issuance of Remittitur, Oct. 28, 2021). Three days later, respondent William Leonard filed a fugitive notice of a letter from Bayuk relating to a case pending in the Superior Court of California, County of Orange. *Superpumper, Inc.*, Docket Nos. 80214 & 82157, (Notice of Filing Letter Received from Edward Bayuk, Oct. 31, 2021). As Leonard's filing has no procedural basis under NRAP, and as it introduces information outside of the record before this court, Superpumper respectfully urges this court to strike Leonard's notice and rule on the merits of its motion for stay under NRAP 41(b)(3).

## *LEGAL ARGUMENT*

The Nevada Rules of Appellate Procedure allow a party to provide notice to this court in a narrow set of circumstances. *See* NRAP

3C(l) (providing an appellate may provide notice of a withdrawal of appeal); NRAP 4(b)(6) (same); NRAP 28(c) (providing an appellant may provide notice to this court when he or she waives his or her reply brief); NRAP 31(e) (providing that a party may provide notice to this court of supplemental authorities); NRAP 46(a)(2) (providing that counsel for a party shall file a notice of appearance). However, the Nevada Rules of Appellate Procedure do not allow a party to present new information to this court. Indeed, Leonard's notice does not cite any rule in support of his fugitive notice. Leonard's mere belief that this court should know this information does not cure his notice's procedural defect. Accordingly, this court should strike Leonard's procedurally defective notice.

Not only is Leonard's notice without procedural basis, it also violates Nevada appellate jurisprudence. This court has long held that it can only consider the record as it existed before the lower court. *See Peri v. Jeffers*, 53 Nev. 49, 51, 292 P. 1, 2 (1930) (striking a motion for a new trial from the appellate record that the appellant failed to properly include in the appellate record). This rule is sound, as appellate courts are not suited to make factual findings in the first instance. *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299,

279 P.3d 166, 172 (2012). The Nevada Rules of Appellate Procedure comport. *See* NRAP 10(c) (providing that the district court shall settle differences about the accuracy of the record before this court). Here, Leonard attempts to expand the record that was before the district court by including a letter that he received on October 29, 2021, 842 days after the district court last entered an order in this matter. Thus, this letter is not relevant to underlying matter, was never before the district court, and is not relevant to the motion to stay issuance of remittitur pending before this court. Accordingly, this court should strike Leonard's improper attempt to expand the record through a procedurally defective notice.

The attached letter to Leonard's defective and improper notice demonstrates that it pertains to a Superior Court of California matter. The letter does not mention a controversy before this court, nor does it mention any property located within Nevada. It is merely a letter involving a dispute regarding satisfaction of a Nevada judgment that Leonard domesticated in California. Whatever evidentiary value this letter has is for the Superior Court of California, a fact-finding court with

subject matter jurisdiction over the California-domesticated judgment, to decide.

*CONCLUSION*

Based on the foregoing, Superpumper respectfully requests that this court strike Leonard's notice of a letter from Bayuk and rule on Superpumper's motion to stay issuance of remittitur under NRAP 41(b)(3).

DATED this 1st day of November 2021.

CLAGGETT & SYKES LAW FIRM

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*CERTIFICATE OF SERVICE*

I hereby certify that I electronically filed the foregoing *APPELLANTS'*  
*RESPONSE TO RESPONDENT'S NOTICE OF FILING LETTER RECEIVED FROM*  
*EDWARD BAYUK* with the Supreme Court of Nevada on the 1st day of  
November 2021. I shall make electronic service of the foregoing document  
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/s/ Anna Gresl

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