

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 RENO DISPOSAL COMPANY, INC., a
3 Nevada Corporation,

4 Petitioner,

5 vs.

6 THE SECOND JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF WASHOE,
8 and THE HONORABLE KATHLEEN
9 DRAKULICH, DISTRICT JUDGE,

10 Respondents.

11 GREEN SOLUTIONS RECYCLING, LLC, a
12 Nevada limited liability company; NEVADA
13 RECYCLING AND SALVAGE, LTD., a
14 Nevada limited liability company; AMCB, LLC,
15 a Nevada limited liability company dba
16 RUBBISH RUNNERS,

17 Real Parties in Interest (Defendants)

18 CITY OF RENO

19 Real Parties in Interest (Counter
20 Defendant)

Electronically Filed
Aug 12 2019 11:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**SUPREME COURT CASE
NO: _____**

**Second Judicial District
Court Case No. CV17-00143**

**PETITIONER'S
APPENDIX VOL. 3**

21
22 MARK G. SIMONS, ESQ.
23 Nevada Bar No. 5132
24 SIMONS HALL JOHNSTON PC
25 6490 S. McCarran Blvd., #F-46
26 Reno, Nevada 89509
27 T: (775) 785-0088
28 F: (775) 785-0089

Email: MSimons@SHJNevada.com

Attorneys for Petitioner Reno Disposal Company, Inc.

CHRONOLOGICAL

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Order (2 nd Judicial Case No. CV15-00497)	9/19/16	1	PA_0001-0006
GSR's Opposition to Defendants' Motion to Dismiss (Dkt 20)	11/30/16	1	PA_0007-0023
Order (on Motion to Dismiss) (ECF Dkt. #47)	3/27/17	1	PA_0024-0030
GSR's First Amended Complaint (ECF Dkt. #48)	4/26/17	1	PA_0031-0044
GSR's Motion to Stay or in the Alternative Motion to Dismiss	6/30/17	1	PA_0045-0087
Order After Hearing Denying Motion for Stay or in the Alternative Motion to Dismiss	11/13/17	1	PA_0088-0094
GSR's Answer to Complaint and Counterclaim	12/4/17	1	PA_0095-0130
Counterdefendants Reno Disposal's, WMON's and WMNS' Special Motion to Dismiss Counterclaims Pursuant to NRS 41.660	1/30/18	1	PA_0131-0138
Counterdefendant City of Reno's Special Motion to Dismiss Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to Dismiss	2/5/18	1	PA_0139-0184

Joint Case Management Report (Dkt. 92)	2/21/18	1	PA_0185-0195
Reno Disposal's First Amended Verified Complaint	3/9/18	2	PA_0196-0317
Excerpts of the Deposition of Richard C. Lake	7/16/18	2	PA_0318-0332
Order Affirming (134 Nev. Advance Opinion 55)	8/2/18	2	PA_0333-0340
Order Staying All Proceedings Sua Sponte	8/6/18	2	PA_0341-0344
Reno Disposal's Motion to Vacate Order to Stay	1/25/19	2	PA_0345-0394
City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
Order Denying Motion to Vacate Stay	4/18/19	3	PA_0398-0403

ALPHABETICAL

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
Counterdefendant City of Reno's Special Motion to Dismiss Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to Dismiss	2/5/18	1	PA_0139-0184

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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 12th day of August, 2019, I caused service of a true and correct copy of the above and foregoing **PETITIONER'S APPENDIX VOL. 3** on all parties to this action by the method(s) indicated below:

X by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

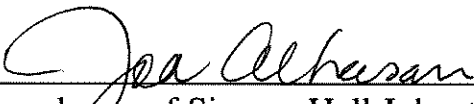
Honorable Kathleen Drakulich
Second Judicial District Court
75 Court Street, Dept. 1
Reno, NV 89501

John P. Sande, Esq.
Chase Whittemore, Esq.
Argentum Law
6121 Lakeside Dr., Ste. 208
Reno, NV 89511
Attorneys for GSR

Stephanie Rice, Esq.
Richard Salvatore, Esq.
Winter Street Law
96 & 98 Winter Street
Reno, NV 89503
Attorneys for NRS and RR

Karl Hall, Esq.
William McCune, Esq.
Assistant City Attorney
P.O. Box 1900
Reno, NV 89505
Attorneys for the City

DATED this 12 day of August, 2019.


An employee of Simons Hall Johnston PC

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 RENO DISPOSAL COMPANY, INC., a
10 Nevada Corporation,

11 Plaintiff,

CASE NO.: CV17-01143

12 vs.

DEPT. NO.: 1

13 GREEN SOLUTIONS RECYCLING, LLC, a
14 Nevada limited liability company; NEVADA
15 RECYCLING AND SALVAGE, LTD., a
16 Nevada limited liability company; AMCB,
17 LLC, a Nevada limited liability company dba
18 RUBBISH RUNNERS; DOES I through X,
19 inclusive,

20 Defendants.
21 _____/

22 AND RELATED MATTERS.
23 _____/

24 **ORDER DENYING MOTION TO VACATE STAY**

25 Currently before this Court is Plaintiff/Counterdefendant Reno Disposal Company, Inc. dba
26 Waste Management ("Reno Disposal"), and Counterdefendants Waste Management of Nevada, Inc.
27 ("WMON") and Waste Management National Services, Inc.'s ("WMNS") (collectively "Waste
28 Management") *Motion to Vacate Order to Stay* filed on January 25, 2019. Counterdefendant City
of Reno ("the City") filed a *Non-Opposition* on February 8, 2019. On February 11, 2019,
Defendant/Counterclaimant Green Solutions Recycling, LLC ("GSR") filed an *Opposition*.

1 Immediately thereafter, Defendants Nevada Recycling and Salvage, LTD. (“NRS”) and AMCB,
2 LLC, dba Rubbish Runners (“RR”) filed a *Joinder in Green Solutions Recycling, LLC’s Opposition*.
3 On February 22, 2019, Waste Management filed a *Reply*. On February 25, 2019, the matter was
4 submitted to the Court for consideration.

5 **I. Background**

6 This action was commenced on June 13, 2017, by Reno Disposal filing a *Complaint*, alleging
7 the following claims for relief: 1) Intentional Interference with Contract – GSR, NRS, RR; 2)
8 Intentional Interference with Prospective Economic Advantage – GSR, NRS, RR; 3) Civil
9 Conspiracy – GSR, NRS, RR; 4) Civil Aiding and Abetting – GSR, NRS, RR; 5) Code Violations–
10 GSR, NRS, RR; 6) Breach of Franchise Agreement – GSR, NRS, RR; 7) Declaratory Relief– GSR,
11 NRS, RR; and 8) Injunctive Relief – GSR, NRS, RR. The Defendants were duly served pursuant to
12 statute. *See Proof of Service* (Jun. 20, 2017). On December 4, 2017, GSR filed an *Answer to*
13 *Complaint and Counterclaim* (“Counterclaim”), which is the subject of the instant motions before
14 this Court. The Counterclaim alleges the following: 1) Defamation Per Se – All Counterdefendants;
15 2) Intentional Interference with Contractual Relations – All Counterdefendants; 3) Intentional
16 Interference with Prospective Economic Advantage – All Counterdefendants; 4) Abuse of Process
17 – Against Reno Disposal and City of Reno; 5) Breach of the Implied Covenant of Good Faith and
18 Fair Dealing – Reno Disposal and City of Reno; and 6) Declaratory Relief – All Counterdefendants.

19 The action is centered on Reno Disposal’s allegations of violations of the City’s Franchise
20 Agreement by GSR, NRS, and RR. Specifically, Reno Disposal asserts that GSR, NRS and RR
21 implemented illegal practices in the collection and disposal of City waste, allowing them to charge
22 City customers less than Reno Disposal can charge under the City’s Franchise Agreement. *See*
23 *generally* Compl.

24 On February 5, 2018, the City filed a *Special Motion to Dismiss Counterclaims Pursuant to*
25 *NRS 41.660 and Joinder in Other Counterdefendants’ Special Motion to Dismiss*. The City’s Motion
26 was fully briefed and set for oral argument. Following oral argument on May 29, 2018, the Court
27 entered an *Order Staying all Proceedings Sua Sponte*, wherein the Court found that the issues
28 relating to the validity of the underlying Franchise Agreement needed to be resolved in the pending

1 Federal Case before the Court could rule on the City's Motion to Dismiss. Finding it necessary to
2 reach a resolution in the Federal Case prior to proceeding with the state action, the Court stayed all
3 further proceedings in this case until the Federal Case has been resolved.

4 **II. Analysis**

5 Waste Management comes now asserting that the Federal Action has been resolved and
6 requesting the Court to vacate its August 6, 2018 *Order Staying All Proceedings Sua Sponte* ("Stay
7 Order"). *See generally* Mot. Waste Management asserts that on January 7, 2019, Judge Du entered
8 an Order in the Federal Case, granting summary judgment in favor of Waste Management and the
9 City and dismissing in total GSR's claims. *Id.* at 3:20-22. Further, Waste Management alleges that
10 Judge Du then granted judgment in favor of the City and Reno Disposal. *Id.* at 3:22-25. Waste
11 Management now contends that the Federal Case is resolved, allowing the present state action to
12 proceed. *Id.* at 3:26-4:1. Waste Management additionally contends that Judge Du's Order
13 specifically addressed the questions of validity relating to the Franchise Agreement, finding that the
14 agreement "basically grants Reno Disposal the exclusive right to pick up and remove solid waste
15 and certain recyclable materials from commercial entities" and that GSR was acting in violation of
16 the Franchise Agreement. *Id.* at 4:8-20 (citing Du Order). Further, Waste Management asserts that
17 Judge Du's Order found that the City's Franchise Agreement was an approved and valid exercise of
18 the City's authority under NRS Chapter 268, that the City had the statutory authority to define what
19 is waste, and that the City's definition of "other waste" is a valid exercise of the City's authority.
20 *Id.* at 6:21-27. As such, Waste Management contends that it is proper to proceed with the present
21 action and requests the Court to address the following pending motions: (1) Reno Disposal, WMON,
22 and WMNS's *Special Motion to Dismiss*; (2) the City's *Special Motion to Dismiss*; (3) Waste
23 Management's *Motion to Compel: Re GSR*; (4) Waste Management's *Motion to Compel*. *Id.* at 9:21-
24 10:1.

25 In their *Opposition*, GSR contends that the Federal Case has not concluded nor is it resolved.
26 Opp. at 2:8-9. GSR asserts that the Federal Case is currently being appealed to the United States
27 District Court, District of Nevada, as GSR filed a *Notice of Appeal* of Judge Du's Order to the Ninth
28 Circuit Court of Appeals. *Id.* at 2:9-11. Further, GSR contends that Waste Management inaccurately

1 dissects the Du Order and made arguments supported by disingenuous assertions. *Id.* at 2:12-17.
2 GSR then disputes each assertion within Waste Management's Motion, alleging that the Du Order
3 does not answer any of the questions central to the resolution of the present action as the Du Order
4 was very limited in scope, relating only to the determination of whether there had been a violation
5 of the Sherman Antitrust Act within the contexts of federal law. *Id.* at 2:18-27. GSR further contends
6 that lifting the stay would result in unnecessary duplicative litigation that could burden both the
7 parties and the Court's resources. *Id.* at 5:3-8. The *Joinder* filed by NRS and RR incorporates and
8 joins in the arguments of GSR's *Opposition*.

9 Upon careful review of the record, the pleadings, and the arguments presented, this Court
10 finds good cause to deny Waste Management's Motion. In this Court's August 6, 2018 Order, the
11 Court found that it was at an impasse in its ability to rule on the pending Motions until the issues in
12 the Federal Case were resolved. *See generally* Order. As the Court noted in the August 6, 2018
13 Order, granting a stay is a matter of judicial discretion depending upon an equitable and practical
14 assessment of the relevant circumstances. *Ferguson v. Tabah*, 288 F.2d, 665, 673 (2d Cir. 1961).
15 Here, Waste Management's Motion is predicated on the assertion that the Federal Case is resolved,
16 through the entry of Judge Du's Order. However, this Court finds that GSR's appeal of Judge Du's
17 Order to the Ninth Circuit Court of Appeals has extended the proceedings in the Federal Case and a
18 final resolution has not been met. As such, this Court finds, under a practical assessment of the
19 relevant circumstances, it is in the best interest of judicial economy to continue the stay of this
20 Court's proceedings until the final resolution of the Federal Case.

21 Accordingly, and good cause appearing,

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1 IT IS HEREBY ORDERED that Plaintiff/Counterdefendant Reno Disposal Company, Inc.
2 dba Waste Management, and Counterdefendants Waste Management of Nevada, Inc. and Waste
3 Management National Services, Inc.'s *Motion to Vacate Order to Stay* is DENIED. The stay shall
4 remain in place until the conclusion of the Federal Case.

5 Dated this 18th day of April, 2019.

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8 KATHLEEN DRAKULICH
9 DISTRICT JUDGE
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I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18th day of April, 2019, I electronically filed the **ORDER DENYING MOTION TO VACATE STAY** with the Clerk of the Court by using the ECF system.

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

RICHARD SALVATORE, ESQ. for NEVADA RECYCLING AND SALVAGE, LTD.,
AMCB, LLC DBA RUBBISH RUNNERS

J. CHASE WHITTEMORE, ESQ.
ARGENTUM LAW
6121 LAKESIDE DR., SUITE 208
RENO, NV 89511

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