

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation,

Petitioner,

vs.

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

Respondents.

GREEN SOLUTIONS RECYCLING, LLC, a
Nevada limited liability company; NEVADA
RECYCLING AND SALVAGE, LTD., a
Nevada limited liability company; AMCB,
LLC, a Nevada limited liability company dba
RUBBISH RUNNERS,

Real Parties in Interest (Defendants)

CITY OF RENO,

Real Parties in Interest (Counter
Defendant)

Case No. 79383

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Elizabeth A. Brown
Second Judicial District
Clerk of Supreme Court
Court Case No. CV17-
01143

CITY OF RENO'S NOTICE OF NON-OPPOSITION

Real Party in Interest, the City of Reno (the "City"), submits this Non-
Opposition to the Petition For Writ of Mandamus of Reno Disposal Company, Inc.
("Reno Disposal") as directed by this Court's order of October 24, 2019.

I. Factual Background

The City has an exclusive franchise agreement with Reno Disposal for the
collection and disposal of solid waste and recyclable material within the city.

2PA_0228-294.¹ Non-franchised entities, such as Respondent-Defendants, Green Solutions Recycling, LLC (“GSR”), Nevada Recycling and Salvage, Ltd. (“NRS”) and AMCB, LLC dba Rubbish Runners (“RR,” collectively “Defendants”), are prohibited from providing such services in exchange for payment or consideration in any form or amount. Reno Mun. Code §§ 5.90.030 (a) & 10.08.040.

The franchise does not preclude a non-franchised entity from buying recyclable material from the owner of such material. Reno Mun. Code § 5.90.010 (defining “excluded recyclable materials”). In order for that to occur, however, the generator of such material must actually be selling the recyclable material to the non-franchised entity. 2PA_0374. If a generator of such material pays someone to take it away, then the material constitutes solid waste subject to the franchise. *Id.*

On this basis, the City informed GSR that it must cease collecting recyclable materials for compensation in violation of the exclusive franchise. 2PA_0365.² The City informed GSR that it could lawfully collect and remove recyclable materials *only* if its customers actually sold the recyclable materials to GSR (as opposed to paying a fee to have them removed). *Id.* In other words, to operate

¹ References to the three (3) volume Petitioner’s Appendix (“PA”) are cited with the volume number first, and the Bates stamped pages after “PA.”

² GSR picks-up and removes such materials for compensation by providing its customers with a recycling container in exchange for a rental payment (*e.g.*, \$440.00 per month) offset by a *de minimis* rebate (*e.g.*, \$2.52). *Id.*

lawfully, GSR's customers must actually realize a net profit from the arrangement.

Id. If not, then GSR is essentially providing a waste collection service for compensation in violation of the exclusive franchise. *Id.*

II. Procedural History: The Federal Case, and State Enforcement Action

In May 2017, in response to the City's demand that GSR cease its collection business, GSR commenced an action in federal court (the "Federal Case").

1PA_0031-44. GSR alleged the City exceeded its authority under NRS Chapter 268 in franchising the service of collecting of recyclable materials. 1PA_0034. On that basis, GSR alleged that the franchise violates the Sherman Antitrust Act.

1PA_0037. In January 2019, the federal district court issued its order and judgment on summary judgment in favor of Reno Disposal and the City (the "Du Order"). The Du Order rules that the franchise *does* grant Reno Disposal the exclusive right to collect and remove solid waste and recyclable material within the city, and its effect of prohibiting GSR from providing its collection service for compensation *is* authorized by NRS Chapter 268. 2PA_0365, 0376. GSR has appealed the Du Order to the Ninth Circuit Court of Appeals.

In March 2018, Reno Disposal commenced the state action that is the subject of this writ proceeding (the "State Enforcement Action"). 2PA_0196-317. Reno Disposal sought injunctive relief preventing Defendants from continuing to provide waste collection services for compensation in violation of the exclusive franchise.

2PA_0196-0317. Defendants’ counterclaimed against the City on grounds the City’s statements were false and defamatory. 1PA_0095-130. The gravamen of the counterclaims is that the City “knew that GSR was operating legally under the [franchise].” 1PA_0119. The District Court has stayed the State Enforcement Action “until the issues related to the validity of the Franchise Agreement are resolved in the Federal Case.” 2PA_0343.

III. Response to Writ Petition

The City does not oppose Reno Disposal’s request for an order from this Court compelling the District Court to vacate its order staying the State Enforcement Action. Petition at 6. As noted above, the federal court has ruled that the franchise is valid and does prohibit GSR from providing its collection service for compensation. 2PA_0365, 0376. The District Court’s stay is premised on the erroneous understanding that the “issues related to the validity of the Franchise Agreement” have not yet been “resolved in the Federal Case.” 2PA_0343. In other words, that the Du Order is not final because it has been appealed.

As Reno Disposal points out, however, the Du Order *is* a final order for purposes of res judicata. Petition at 31. As courts in other jurisdictions have ruled, a federal court’s summary judgment does constitute a final judgment for a claim and issue preclusion analysis. *See, e.g., Lumpkin v. Jordan*, 57 Cal. Rptr. 2d 303, 307 (Cal. Ct. App. 1996) (federal court’s ruling on the summary judgment, even

though appealed, must be considered final for collateral estoppel purposes); *Bhatnagar v. Mid-Maine Medical Center*, 510 A.2d 233, 236 (Me. 1986) (federal court's summary judgment is a final judgment for res judicata purposes); *Cunningham v. State*, 811 P.2d 225 (Wash. Ct. App. 1991) (federal court's partial summary judgment order was sufficiently firm for collateral estoppel purposes).

Here, the District Court's stay is based on an erroneous legal premise that the Du Order is not final for purposes of res judicata. Each day the stay remains in place is another day that Defendants will continue to operate their unlawful waste collection business. This Court should intervene to ensure that the State Enforcement Action does not continue to be stayed based on an error of law.

IV. Conclusion

Based on the foregoing, the City respectfully requests this Court grant the Petition.

DATED this 21st day of November, 2019.

KARL S. HALL
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

 X Eflex electronic filing service to:

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Attorneys for Petitioner Reno Disposal Company, Inc.

 X Placing an original or true copy in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

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DATED this 21st day of November, 2019.

/s/ Jeanette Sparks
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