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Electronically Filed
Jan 29 2020 02:55 p.m.
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 BAYUK LIVING TRUST;
SALVATORE MORABITO, an
individual; and SNOWSHOE
PETROLEUM, INC., a New York
corporation,

Appellants,

v.

WILLIAM A. LEONARD, TRUSTEE
FOR THE BANKRUPTCY ESTATE
OF PAUL ANTHONY MORABITO,

Respondent.

Case No.: 80214

MOTION TO CONFIRM
APPELLATE JURISDICTION AND
MOTION TO CONSOLIDATE
APPEALS

**MOTION TO CONFIRM APPELLATE JURISDICTION AND MOTION
TO CONSOLIDATE APPEALS**

Appellants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc. (“Appellants”), through their attorneys, Claggett & Sykes Law Firm, hereby move this Court to confirm the Court’s appellate jurisdiction over this appeal, and to consolidate this appeal with Case No. 79355. Alternatively, if the Court determines that this Court does not have appellate jurisdiction over the appealed orders, Appellants request that this Court either convert this appellate proceeding into an original proceeding, or allow Appellants to file a writ petition to be consolidated into Case No. 79355.

Appellants filed a notice of appeal from the District Court’s (1) Order Denying Morabito’s Claim of Exemption; (2) Order Denying Bayuk’s Claim of Exemption and Third Party Claim; and (3) the Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085. *See* Notice of Appeal, attached as **Exhibit 1**. Appellants are proceeding in this appeal under the argument that their NRCP 52(b)/NRCP 59(e) motion had a tolling effect upon the time to appeal the two claims of exemption. *See* NRAP 4(a)(4) (listing tolling motions); *AA Primo Builders, Ltd. Liab. Co. v.*

Washington, 126 Nev. 578, 585, 245 P.3d 1190, 1194 (2010) (construing reconsideration as a tolling motion, and allowing the resulting order to be reviewed in an appeal from a final judgment); *Lytle v. Rosemere Estates Prop. Owners Ass’n*, 129 Nev. 923, 927, 314 P.3d 946, 949 (2013) (applying a tolling effect to any appealable order upon the filing of a tolling motion). Yet, the question remains whether the two claims of exemption are appealable.

In *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1214, 197 P.3d 1051, 1057–1058 (2008), this Court confirmed the language of NRS 31.460 (new trials and appeals), which states: “Motions for new trial may be made in the same time and manner and shall be allowed for the same grounds in garnishment proceedings as in other civil trials; and appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.”

Further, NRAP 3A(b)(8) allows for an appeal from a “special order entered after final judgment.” An appealable special order entered after final judgment is “an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment.” *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). Because of the uncertainty of the appealability of the order named in Appellants’

notice of appeal, Appellants ask this Court to confirm appellate jurisdiction, such that this case can continue as an appeal. Appellants filed a notice of appeal since a writ petition cannot substitute for an untimely notice of appeal. *See Pan v. Dist. Ct.*, 120 Nev. 222, 88 P.3d 840 (2004).

Alternatively, if the Court believes that it does not have appellate jurisdiction, Appellants ask this Court to either convert this appeal into an original proceeding, while satisfying the unique requirements of NRS Chapter 34. Or, the Court could simply allow Appellants to refile this case as a new original proceeding, if there is no appellate jurisdiction.

Regardless of whether the Court determines that this case can proceed as an appeal, or should proceed as a writ petition, Appellants ask this Court to consolidate the two proceedings. Notably, the issues presented in Case No. 79355 are inextricably intertwined, such that the issues in both cases are nearly identical. Both cases also involve the same parties and the same underlying District Court case. Appellants have filed a motion in Case No. 79355 to stay the briefing in that case, or to extend the briefing to match the briefing schedule in the instant case. If the Court allows the two cases to be consolidated, according to NRAP 3(b), the parties will be able to prepare one set of appendices, one set of briefs, and the Court can make a single decision for both consolidated cases.

Upon these grounds, Appellants respectfully request that this Court either confirm its appellate jurisdiction over the appealed orders, or alternatively, allow Appellants to present the arguments in an original proceeding. Under either scenario, the Court should consolidate this case with Case No. 79355.

DATED this 29th day of January, 2020

CLAGGETT & SYKES LAW FIRM

/s/ Micah Echols

By _____
Micah S. Echols, Esq.
Nevada Bar No. 8437
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Attorneys for Appellants

CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2020, I served a copy of this **MOTION TO CONFIRM APPELLATE JURISDICTION AND MOTION TO CONSOLIDATE APPEALS** upon all counsel of record:

By electronic service in accordance with this Court's Master Service List

Gabrielle Hamm, Esq.
Jeffrey Hartman, Esq.
Erika Pike Turner, Esq.
Stephen A. Davis, Esq.
Debbie Leonard, Esq.

By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Gerald M. Gordon, Esq.
Teresa M. Pilatowicz, Esq.
Mark Weisenmiller, Esq.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119

Dated this 29th day of January, 2020.

/s/ Jocelyn Abrego

Jocelyn Abrego, an employee of
Claggett & Sykes Law Firm

INDEX OF EXHIBITS

Exhibit No.	Document Description	No. of Pages
1	Notice of Appeal	22

EXHIBIT 1

1 **\$2515**2 **Marquis Aurbach Coffing**

3 Micah S. Echols, Esq.

4 Nevada Bar No. 8437

5 10001 Park Run Drive

6 Las Vegas, Nevada 89145

7 Telephone: (702) 382-0711

8 Facsimile: (702) 382-5816

9 mechols@maclaw.com

10 *Attorneys for Defendants and Edward Bayuk, as Trustee for Non-Party the Edward Bayuk*
11 *Living Trust*Electronically Filed
Dec 13 2019 11:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court7 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**8 **IN AND FOR THE COUNTY OF WASHOE**9 WILLIAM A. LEONARD, Trustee for the
10 Bankruptcy Estate of Paul Anthony Morabito,

11 Plaintiff,

Case No.: CV13-02663
Dept. No.: 4

12 vs.

13
14 SUPERPUMPER, INC., an Arizona corporation;
15 EDWARD BAYUK, individually and as Trustee
16 of the EDWARD BAYUK LIVING TRUST;
17 SALVATORE MORABITO, an individual; and
18 SNOWSHOE PETROLEUM, INC., a New York
19 corporation,

20 Defendants.

21 **NOTICE OF APPEAL**22 Defendants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the
23 Edward Bayuk Living Trust; Edward Bayuk, as Trustee, for the benefit of Non-Party the Edward
24 Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc., by and through their
25 attorneys of record, Marquis Aurbach Coffing, hereby appeal to the Supreme Court of Nevada
26 from: (1) the Order Denying [Morabito's] Claim of Exemption, which was filed on August 2,
27 2019 and is attached as **Exhibit 1**; (2) the Order Denying [Bayuk's] Claim of Exemption and
28 Third Party Claim, which was filed on August 9, 2019 and is attached as **Exhibit 2**; and (3) the
Order Denying Defendants' Motion to Make Amended or Additional Findings Under

1 NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's
2 Countermotion for Fees and Costs Pursuant to NRS 7.085, which was filed on November 8, 2019
3 and is attached as **Exhibit 3**.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

5 The undersigned affirms that the pleading or document now being presented to the Court
6 in the above-entitled action does **not** contain any Personal Information (as defined in
7 NRS 603A.040).

8 Dated this 6th day of December, 2019.

9
10 MARQUIS AURBACH COFFING

11
12 By /s/ Micah S. Echols

13 Micah S. Echols, Esq.

14 Nevada Bar No. 8437

15 10001 Park Run Drive

16 Las Vegas, Nevada 89145

17 *Attorneys for Defendants and Edward Bayuk, as*
18 *Trustee for Non-Party the Edward Bayuk Living*
19 *Trust*
20
21
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23
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Second Judicial District Court on the 6th day of December, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

ERIKA TURNER, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ.
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,
and SUPERPUMPER, INC.

MARK WEISENMILLER, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

JEFFREY HARTMAN, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK

TERESA PILATOWICZ, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

MICHAEL LEHNERS, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and
SALVATORE R. MORABITO

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

GERALD M. GORDON, ESQ.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

INDEX OF EXHIBITS

Exhibit No.	Document Description	No. of Pages
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	3
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	5
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	10

FILED
Electronically
CV13-02663
2019-12-06 05:02:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7625741 : yvilorla

Exhibit 1

2840

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the
Bankruptcy Estate of Paul Anthony
Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,
vs.

SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST;
SALVATORE MORABITO, and individual;
and SNOWSHOE PETROLEUM, INC., a
New York corporation,

Defendants.

ORDER DENYING CLAIM OF EXEMPTION

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on July 2, 2019 by Defendant Salvatore Morabito ("Morabito"). The Claim of Exemption is supported by the *Declaration of Salvatore Morabito Claiming Exemption from Execution* (the "Morabito Declaration"), also filed on July 2, 2019. *Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing* (the "Objection") was filed on July 16, 2019, and *Morabito's Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution* (the "Reply") was filed on July 18, 2019.

The Court held a hearing on the Claim of Exemption on July 22, 2019. Morabito appeared by and through counsel, Michael Lehnrs. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

The Court has reviewed and considered the arguments made in the Claim of Exemption, the Objection, and the Reply, the papers and pleadings on file with the Court in this action, the testimony and exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment, entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing. The Court is persuaded by the argument and authorities in Plaintiff's Objection and the arguments of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record, and the findings and conclusions set forth in the Judgment. As such, the Court finds that Sam Morabito failed to meet his burden to show that there are assets in Nevada subject to exemption from execution.

Based on the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Claim of Exemption filed by Salvatore Morabito is denied.

Dated this 2 day of August, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

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CV13-02663
2019-12-06 05:02:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7625741 : yvilorla

Exhibit 2

2840

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the
Bankruptcy Estate of Paul Anthony
Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST;
SALVATORE MORABITO, and individual;
and SNOWSHOE PETROLEUM, INC., a
New York corporation,

Defendants.

ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to Property Levied Upon [NRS 31.070]* (the "Third Party Claim") filed on July 3, 2019 by the Bayuk Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward Bayuk Claiming Exemption from Execution* (the "Bayuk Declaration"), filed on July 2, 2019. *Plaintiff's Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)* (the "Objection") was filed on July 11, 2019, and Bayuk and the Bayuk Trust's *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon* (the "Reply") was filed on July 17, 2019.

1 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
2 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnars and Jeffrey
3 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
4 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

5 The Court has reviewed and considered the arguments made in the Claim of Exemption
6 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
7 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
8 exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment,
9 entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing.
10 The Court, persuaded by the argument and authorities in Plaintiff's Objection and the arguments
11 of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record,
12 and the findings and conclusions set forth in the Judgment, finds as follows:

13 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
14 trustee of the Bayuk Trust.

15 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
16 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently
17 transferred property which was established by clear and convincing evidence.

18 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
19 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in
20 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced
21 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
22 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
23 "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

24 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
25 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his
26 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
27 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
28 California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the June 28, 2019 Claim of Exemption filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust is DENIED.

IT IS HEREBY FURTHER ORDERED that the July 3, 2019 Third Party Claim to Property Levied Upon [NRS 31.070] filed by the Bayuk Trust is DENIED.

Dated this 9 day of August, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of August, 2019, I filed the **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 f **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MICAH ECHOLS, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST et al

JEFFREY HARTMAN, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC., SALVATORE R. MORABITO, SUPERPUMPER, INC.

MICHAEL LEHNERS, ESQ. for SALVATORE R. MORABITO

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

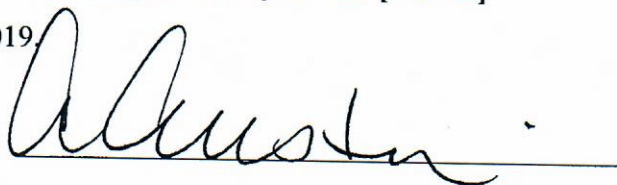
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 9 day of August, 2019



FILED
Electronically
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2019-12-06 05:02:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7625741 : yvilorla

Exhibit 3

2840

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the
Bankruptcy Estate of Paul Anthony
Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST;
SALVATORE MORABITO, and individual;
and SNOWSHOE PETROLEUM, INC., a
New York corporation,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO MAKE AMENDED OR
ADDITIONAL FINDINGS UNDER NRCP 52(B), OR, IN THE ALTERNATIVE,
MOTION FOR RECONSIDERATION AND DENYING PLAINTIFF'S
COUNTERMOTION FOR FEES AND COSTS PURSUANT TO NRS 7.085**

On November 26, 2018, the Court concluded the nine day Non-Jury Trial and took the matter under advisement.

On January 30, 2019, Plaintiff William A. Leonard. Leonard, Trustee of the Bankruptcy Estate of Paul Anthony Morabito (hereinafter "Leonard"), by and through his attorney, Erika Pike Turner, Esq. Teresa M. Pilatowicz, Esq. and Gabrielle A. Hamm, Esq. of Garman Turner Gordan LLP, filed *Plaintiff's Motion to Reopen Evidence*. Also, on January 30, 2019, Leonard filed an *Errata to Plaintiff's Motion to Reopen Evidence*, and an *Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing*. On February 4, 2019, the Court entered an *Order Shortening Time on Plaintiff's Motion to Reopen Evidence and Setting*

1 *Expedited Hearing* wherein the Court set forth the shortened briefing deadlines and scheduled a
2 hearing on the motion to reopen evidence for February 8, 2019. Also, on February 4, 2019,
3 Leonard filed a *Supplement to Plaintiff's Motion to Reopen Evidence*.

4 On February 6, 2019, Defendants Superpumper, Inc., Edward Bayuk, individually and as
5 Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Snowshoe Petroleum,
6 Inc. (hereinafter collectively "Superpumper Defendants"), by and through their attorney, Frank C.
7 Gilmore, Esq. of Robison, Sharp, Sullivan & Brust, filed *Defendants' Response to Motion to*
8 *Reopen Evidence*.

9 On February 7, 2019, Leonard filed *Plaintiff's Reply to Defendants' Response to Motion*
10 *to Reopen Evidence*.

11 On February 8, 2019, Erika Turner, Esq. appeared on behalf of Leonard, and Frank
12 Gilmore, Esq. appeared on behalf of the Superpumper Defendants at the scheduled hearing on
13 Leonard's Motion to Reopen Evidence. After hearing the arguments of the parties, the Court
14 granted Leonard's motion to reopen evidence and set an ongoing non-jury trial wherein the
15 Superpumper Defendants would have the opportunity to present rebuttal evidence for March 1,
16 2019.

17 On February 28, 2019, an *Amended Stipulation to Vacate March 1, 2019 Hearing* was filed
18 wherein the Superpumper Defendants waived any rebuttal to the evidence admitted at the February
19 8, 2019 hearing, Trial Exhibits 305, 306, 307, 308 and 309, and the parties stipulated to vacating
20 the March 1, 2019 ongoing non-jury trial. Thereafter, on February 28, 2019, the Court entered an
21 *Order Granting Amended Stipulation to Vacate March 1, 2019 Hearing*.

22 On March 6, 2019, Leonard filed *[Plaintiff's Proposed] Findings of Fact, Conclusions of*
23 *Law, and Judgment*. On March 8, 2019, the Superpumper Defendants filed *[Defendants' Proposed*
24 *Amended] Findings of Fact, Conclusions of Law and Judgment*.

25 On March 29, 2019, the Court entered its *Findings of Fact, Conclusions of Law and*
26 *Judgment*. Also, on March 29, 2019, Leonard filed a *Notice of Entry of Findings of Fact,*
27 *Conclusions of Law and Judgment*.

1 On April 11, 2019, Leonard filed *Plaintiff's Memorandum of Costs and Disbursements*.
2 On April 12, 2019, Leonard filed an *Application for Attorneys' Fees and Costs Pursuant to NRC*
3 *68*. On May 15, 2019, the Superpumper Defendants filed a *Motion to Retax Costs*. On April 17,
4 2019, *Plaintiff's Opposition to Motion to Retax Costs* was filed. On April 22, 2019, the
5 Superpumper Defendants filed their *Reply in Support of Motion to Retax Costs*. On April 25, 2019,
6 the Superpumper Defendants filed their *Opposition to Application for Attorneys' Fees and Costs*.

7 On April 25, 2019, Jeffrey L. Hartman, Esq. and the law firm of Hartman & Hartman,
8 substituted in the place and stead of Frank Gilmore, Esq. and Robison, Sharp, Sullivan & Brust,
9 as attorney of record for Defendant Edward Bayuk, individually and as Trustee of the Edward
10 William Bayuk Living Trust (hereinafter "Bayuk")

11 Also, on April 25, 2019, Defendants Salvatore Morabito, Snowshoe Petroleum, Inc. and
12 Superpumper, Inc. (hereinafter the "Morabito Defendants") filed a *Motion for New Trial and/or to*
13 *Alter or Amend Judgment Pursuant to NRC* 52, 59 and 60. On April 26, 2019, Bayuk filed a
14 *Motion for New Trial and/or to Alter or Amend Judgment*.

15 On April 30, 2019, *Plaintiff's Reply in Support of Application for Attorneys' Fees and*
16 *Costs Pursuant to NRC* 68 was filed. On May 1, 2019, Leonard submitted his Application for
17 Attorneys' Fees and Costs Pursuant to NRC 68 and the Superpumper Defendants' Motion to
18 Retax Costs for the Court's consideration.

19 On May 7, 2019, *Plaintiff's Opposition to Defendants' Motions for New Trial and/or to*
20 *Alter or Amend Judgment* was filed. On May 14, 2019, the Morabito Defendants filed *Defendants'*
21 *Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRC*
22 *52, 59 and 60*, and submitted the motion for the Court's consideration. After the time to file a
23 reply had expired, Leonard submitted Defendant Bayuk's Motion for New Trial and/or to Alter or
24 Amend Judgment for the Court's consideration on May 21, 2019.

25 On June 24, 2019, the Court held a telephonic hearing on its decision concerning the
26 submitted motions of Leonard's application for attorneys' fees and costs, the motion to retax costs
27 and the Morabito Defendants' and Bayuk's motions for new trial and/or alter or amend judgment
28 wherein Erika Turner, Esq., Teresa Pilatowicz, Esq. and Gabrielle Hamm, Esq. appeared on behalf

1 of Leonard, Jeffrey Hartman, Esq. appeared on behalf of Bayuk, and Frank Gilmore, Esq. appeared
2 on behalf of the Morabito Defendants.

3 At the hearing, the Court stated that it was persuaded by a majority of the arguments of
4 Leonard; therefore, it was granting in part and denying in part the Motion to Retax Costs. As a
5 result, the Court found that reasonable costs were incurred in the amount of \$152,856.84. As to
6 Leonard's motion for attorneys' fees and costs, the Court found that Bayuk and the Morabito
7 Defendants' rejection of the offer of judgment was unreasonable, and ordered costs incurred from
8 June 1, 2016 which were reduced by the decision in the motion to retax costs, and that Bayuk and
9 the Morabito Defendants were to pay Leonard's attorneys' fees in the amount of \$773,116.00, less
10 \$8,128.87 for sanctions previously paid.

11 Next, the Court turned its attention to Bayuk and the Morabito Defendants' motions for
12 new trial and/or to amend or alter judgment. Having reviewed all the pleadings filed related to the
13 motions, the entire file, and presided over the trial, the Court found it was persuaded by a majority
14 of the arguments of Leonard, and found that there were no clerical mistakes, oversights or newly
15 discovered evidence or any other reason to justify relief from the judgment pursuant to NRCP 60,
16 that NRCP 52 does not support modification of the judgment as written, and that there were no
17 irregularities that denied Bayuk and the Morabito Defendants a fair trial nor error in law over
18 defendants' objections that would justify a new trial and/or altering the judgment pursuant to
19 NRCP 59, and that in light of the evidence supporting the Court's finding regarding multiple
20 badges of fraud and lack of good faith by Bayuk and the Morabito Defendants, they could not
21 demonstrate that any error materially affected their substantial rights or affected the outcome of
22 the trial. As such, the Court denied Bayuk's and the Morabito Defendants' Motions for New Trial
23 and/or Alter or Amend Judgment Pursuant to NRCP 52, 59 and 60.

24 On July 2, 2019, Salvatore Morabito filed a *Notice of Claim of Exemption from Execution*
25 and a *Declaration of Salvatore Morabito Claiming Exemption from Execution*. On July 3, 2019,
26 Edward Bayuk filed a *Third-Party Claim to Property Levied Upon NRS 31, 070*.

27 On July 10, 2019, the written *Order Denying Defendants' Motions for New Trial and/or to*
28 *Alter or Amend Judgment* was entered. Also, on July 10, 2019, the written *Order Granting in Part*

1 *and Denying in Part Motion to Retax Costs and the written Order Granting Plaintiff's Application*
2 *for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68* were entered.

3 On July 11, 2019, Leonard filed *Plaintiff's Objection to (1) Claim of Exemption from*
4 *Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant*
5 *to NRS 21.112 and 31.070(5).*

6 On July 16, 2019, Leonard filed a *Notice of Hearing on Plaintiff's Objection to (1) Claim*
7 *of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request*
8 *for Hearing Pursuant to NRS 21.112 and 31.070(5)* wherein the hearing on the claims of
9 exemption was scheduled for July 22, 2019. Also, on July 16, 2019, *Plaintiff's Objection to Notice*
10 *of Claim of Exemption from Execution filed by Salvatore Morabito and Request for Hearing* was
11 filed. Additionally, on July 16, 2019, Leonard filed notices of entry of orders concerning the Order
12 Denying Defendants' Motion for New Trial and/or Alter or Amend Judgment, Order Granting in
13 Part and Denying in Part Motion to Retax Costs, and the Order Granting Plaintiff's Application
14 for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68.

15 On July 17, 2019, Bayuk filed his *Reply to Objection to Claim of Exemption and Third-*
16 *Party Claim to Property Levied Upon.*

17 On July 18, 2019, Michael Lehnert, Esq. filed a *Notice of Appearance* as attorney of record
18 on behalf of Salvatore Morabito, and associating as co-counsel for Bayuk. Also, on July 18, 2019,
19 Salvatore Morabito filed his *Reply to Plaintiff's Objection to Notice of Claim from Exemption from*
20 *Execution.* Also, on July 18, 2019, Leonard filed a *Notice of Hearing on Plaintiff's Objection to*
21 *Notice of Claim of Execution Filed by Salvatore Morabito* was filed setting the hearing on
22 Salvatore Morabito's claims of exemption for July 22, 2019.

23 On July 22, 2019, Erika Turner, Esq. and Teresa Pilatowicz, Esq. appeared on behalf of
24 Leonard, Jeffrey Hartman, Esq. appeared with Defendant Edward Bayuk, and Michael Lehnert,
25 Esq. appeared as co-counsel on behalf of Edward Bayuk, and counsel for Salvatore Morabito at
26 the scheduled hearing on the objections to claims of exemption. After hearing argument of the
27 parties, the Court found that there were not sufficient factors in the case to create trust protections.
28 Neither a trustee or beneficiary of the Edward William Bayuk Living Trust live in the State of

1 Nevada, the Court does have the necessary jurisdiction to rule in the case, and the objection was
2 waived by the Defendants as it was not raised during the course of the trial. As such, the Court
3 denied the claims of exemption. Additionally, the Court heard argument on Mr. Lehner's oral
4 motion for stay of proceedings pending appeal, and a motion for leave to supplement record as to
5 the burial plot. After hearing argument of the parties, the Court denied the request to supplement
6 the record with testimony of Edward Bayuk regarding the burial plot, and denied the motion to
7 stay proceedings with leave to renew once written decision is entered regarding the request for
8 exemption. Finally, the Court rendered its oral decision denying Edward William Bayuk Living
9 Trust's third-party claim.

10 On August 5, 2019, Micah S. Echols, Esq. and Kathleen A. Wilde, Esq. of Marquis
11 Aurbach Coffing filed a *Notice of Appearance* as attorney of record on behalf of Defendants
12 Superpumper, Inc., Bayuk, Salvatore Morabito and Snowshoe Petroleum, Inc. Additionally, on
13 August 5, 2019, Defendants Superpumper, Inc., Edward Bayuk, Salvatore Morabito and Snowshoe
14 Petroleum, Inc., by and through the law firm of Marquis Aurbach Coffing, filed a *Notice of Appeal*
15 concerning the Findings of Fact, Conclusions of Law, and Judgment filed March 29, 2019, the
16 Order Denying Defendants' Motion for New Trial and/or to Alter or Amend Judgment filed July
17 10, 2019, the Order Granting in Part and Denying in Part Motion to Retax Costs, filed July 10,
18 2019, and the Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs
19 Pursuant to NRCP 68 filed July 10, 2019.

20 Also, on August 5, 2019, Bayuk, by and through Jeffrey Hartman, Esq. and Michael
21 Lehner, Esq. filed a *Notice of Appeal* of eight orders entered in the instant matter from August 17,
22 2014 to July 20, 2019.

23 On August 19, 2019, Bayuk and the Superpumper Defendants filed a *Motion to Amended*
24 *or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration.*

25 On August 30, 2019, Bayuk and the Superpumper Defendants filed an *Errata to Motion to*
26 *Make Amended or Additional Findings under NRCP 52(b), or in the Alternative, Motion for*
27 *Reconsideration.* On August 30, 2019, Leonard filed *Plaintiff's Opposition to Motion to Make*
28 *Amended or Additional Findings Under NRCP 52(b), or in the Alternative, Motion for*

1 *Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085.* Thereafter, also
2 on August 30, 2019, Leonard filed an *Errata to Plaintiff's Opposition to Motion to Make Amended*
3 *or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and*
4 *Countermotion for Fees and Costs Pursuant to NRS 7.085.*

5 On September 4, 2019, Bayuk and the Superpumper Defendants filed their *Reply in*
6 *Support of Motion to Amended or Additional Findings Under NRCP 52(b), or, in the Alternative,*
7 *Motion for Reconsideration and Opposition to Countermotion for Fees and Costs,* and submitted
8 their motion for the Court's consideration.

9 The Court has considered the pleadings noted above, in addition to all exhibits, papers and
10 pleadings on file in the case; the record of the trial including trial transcripts and exhibits, the
11 Court's Findings of Fact, Conclusion of Law and Judgment dated March 29, 2019, and the record
12 of the July 22, 2019 hearing.

13 Based upon the above, the Court finds no basis in law or fact to support amending or
14 supplementing the Court's previously entered orders or findings.

15 Good cause appearing,

16 IT IS HEREBY ORDERED that Defendants' Motion to Make Amended or Additional
17 Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration is DENIED.

18 IT IS HEREBY FURTHER ORDERED that Plaintiff's Countermotion for Fees and Costs
19 Pursuant to NRS 7.085 is DENIED.

20 Dated this 8 day of November, 2019.

21
22 Connie J. Steinheimer
23 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 8 day of November, 2019, I filed the **ORDER DENYING DEFENDANTS' MOTION TO MAKE AMENDED OR ADDITIONAL FINDINGS UNDER NRCP 52(B), OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND DENYING PLAINTIFF'S COUNTERMOTION FOR FEES AND COSTS PURSUANT TO NRS 7.085** with the Clerk of the Court.

I FURTHER CERTIFY THAT I TRANSMITTED A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT BY THE METHOD(S) NOTED BELOW:

 PERSONAL DELIVERY TO THE FOLLOWING: [NONE]

ELECTRONICALLY FILED WITH THE CLERK OF THE COURT, USING THE EFLEX SYSTEM WHICH CONSTITUTES EFFECTIVE SERVICE FOR ALL EFILED DOCUMENTS PURSUANT TO THE EFILE USER AGREEMENT.

GABRIELLE HAMM, ESQ. FOR WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

JEFFREY HARTMAN, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

TERESA PILATOWICZ, ESQ. FOR WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

TOM STEWART, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

ERIKA TURNER, ESQ. FOR WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MARK WEISENMILLER, ESQ. FOR WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

KATHLEEN WILDE, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

MICHAEL LEHNERS, ESQ. FOR SALVATORE R. MORABITO

MICAH ECHOLS, ESQ. FOR EDWARD WILLIAM BAYUK LIVING TRUST ET AL

FRANK GILMORE, ESQ. FOR SALVATORE R. MORABITO, SUPERPUMPER, INC., SNOWSHOE PETROLEUM, INC.

PLACED A TRUE COPY IN A SEALED ENVELOPE FOR SERVICE VIA:

Federal Express or other overnight delivery service [NONE]

DATED this 8 day of November, 2019.

Albus