

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS
LAND PARTNERS, LLC; MEYER
PROPERTY LTD.; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC;
WINK ONE, LLC; AQUARIUS
OWNER, LLC; LVLP HOLDINGS,
LC; ANDLIVE WORKS TIC
SUCCESSOR, LLC,

Appellants,

vs.

RUSSELL L. NYPE, REVENUE
PLUS, LLC, AND SHELLY D.
KROHN,

Respondents.

Supreme Court No. 80693 Electronically Filed
Sep 28 2021 01:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR EXTENSION
OF TIME TO FILE
ANSWERING BRIEF
(FIFTH REQUEST)

Respondents Russell L. Nype, Revenue Plus, LLC and Shelly D. Krohn (collectively, "Respondents"), hereby file, pursuant to Nevada Rule of Appellate Procedure ("NRAP") 26(b)(1)(B) and NRAP 31(b)(3), their Motion for Extension of Time to File Answering Brief.

The remaining Appellants¹ Opening Brief was originally due on or about January 4, 2021, but was extended twice (once by stipulation joined by the Nype

¹ On February 26, 2021, this Court entered an order removing Liberman Holdings, LLC, as an appellant in this appeal and dismissing Casino Coolidge, LLC's and Barnet Liberman's appeals. (*See February 26th Order at 1.*)

Respondents, and once by unopposed motion) to March 18, 2021. On March 18, 2021, the Appellants filed their Opening Brief. As a result, Respondents' Answering Brief was originally due on April 19, 2021. Pursuant to NRAP 26(b)(1)(B), a 14-day telephonic extension of time was granted to Respondents on April 16, 2021, resulting in their Answering Brief being due on May 3, 2021. Pursuant to orders dated May 6th and 12th, 2021, and June 11, 2021, this Court granted Respondents an extension of time for their Answering Brief to August 31, 2021, to provide the parties with additional time to finalize a pending settlement. On August 12, 2021, the parties filed a joint motion for an additional extension of time, which was granted on August 23, 2021, granting Respondents an extension of time to file their Answering Brief to September 28, 2021.

Pursuant to NRAP 26(b)(1)(B), extraordinary and compelling circumstances exist which necessitate an additional extension of time. The parties have reached a settlement that will result in the dismissal of the appeal once the settlement is funded. Indeed, the parties have executed the approved settlement agreement. The only thing that remains is Appellant Mitchell's receipt of the monies that he will use to fund the settlement (Appellant Mitchell's signed copy of the agreement is being held in escrow pending his receipt of the settlement funds).

Unfortunately, it is taking Appellant Mitchell much longer than anticipated to accumulate the agreed settlement funds because, according to Appellant Mitchell, his efforts to finalize financing arrangements to obtain such funding have proven more difficult than originally contemplated.

As recently as Sunday, September 26th, Mitchell indicated to Plaintiff Russell Nype that he was still working on getting the funding finalized and wired, but then indicated on Monday, September 27th, that the series of Jewish Holidays was delaying and complicating such further. He promised to reach out to his counsel, Stan Johnson, and ask him to consent to a further extension. Respondents' Counsel texted Appellants' counsel, Mr. Johnson, this morning. Mr. Johnson promised to reach out to Mr. Mitchell and get an answer. Complicating the matter further, however, Mr. Mitchell claims to be a devout Jew, and today, September 28, 2021, is part of the Jewish holiday of Simchat Torah.

Once the funds are received, the parties will immediately exchange fully executed copies of the settlement agreement, which must then be submitted to the United States Bankruptcy Court for the District of Nevada, Case No. BK-19-15333-mkn, for that Court's approval. Respondents have already drafted that motion for the bankruptcy Court's approval, and will seek to have that motion

heard on order shortening time. Once funded and approved by the bankruptcy court, the settlement will result in the dismissal of this appeal.

For the record, however, Respondents have not been sleeping on their rights and obligations. Respondents' counsel have in fact compiled a comprehensive and complex brief, given the many issues and voluminous record (Appellants compiled a 29 volume Appendix containing approximately 5364 pages). Indeed the rough draft of that brief substantially exceeds the word-count limitation under NRAP 32(a)(7)(A)(ii). A further complication has also arisen insofar as Appellants compiled their Appendix in derogation of NRAP 30, not even attempting to meet and confer with Respondents in order to compile a joint appendix. As a result, the currently filed appendix does NOT contain numerous Exhibits that the District Court admitted into evidence.

Consequently, Respondents are also in the process of compiling another complex and voluminous Appendix in order to provide the Court additional evidence and items from the record necessary for the Court to fully understand what occurred at the District Court level.

Accordingly, given a realistic possibility that the matter may yet settle, coupled with assuring that Respondents have sufficient time to compile the rest of the record while providing a succinct and focused brief, Respondents respectfully

request one final thirty-day extension of time, to October 28, 2021, for Respondents to file their Answering Brief.²

DATED this 28th day of September, 2021.

JOHN W. MUIJE & ASSOCIATES



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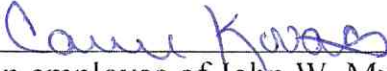
² If the Court is unwilling to grant the full amount of time requested in this motion, the parties respectfully request at least fourteen days for Respondents to file their Answering Brief from the order resolving this Motion. This amount of time is necessary for Respondents' counsel to complete their briefing of this complex appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing **MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF (FIFTH REQUEST)** with the Nevada Supreme Court on the 28th day of September, 2021.

Electronic service of the foregoing document shall be made in accordance with the Master Service list as follows:

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