

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-1
Electronically Filed
Apr 23 2020 04:51 p.m.

EMERGENCY
APPELLANT'S MOTION UNDER NRAP RULE 27(e)
TO STAY EXECUTION OF ORDER
FOR SANCTIONS/JUDGMENT
PENDING APPEAL

[Relief Requested by May 7, 2020]

Appellant, non-party Edward N. Detwiler ("Mr. Detwiler" or "Appellant") hereby moves this Court, pursuant NRAP 8 and 27(e), for an Order to Stay Execution of Order for Sanctions/Judgment pending Appeal on an emergency basis. This motion is based on the Appendix submitted herewith and the Memorandum of Points and Authorities which follows, all of which demonstrate that a stay should issue.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS¹

On August 31, 2017, an entity calling itself "Baker Boyer National Bank, a Washington corporation" ("Respondent"), purportedly domesticated a judgment from the State of Washington against an individual by the name of James Foust ("Mr. Foust" and "Foust Judgment"). There is no such entity known as "Baker Boyer National

¹ This Statement of Facts section is supported by the documents attached to the Appendix in support of this Motion, which is filed concurrently herewith. References to such Appendix within this Motion will be cited as follows: "Appx. Vol. [#], at MSA[#]-[#]".

Bank, a Washington corporation.” The Washington Secretary of State (“SOS”) confirms it does not exist.²

Despite this, the trial court, Honorable Richard Scotti (“Trial Court”), issued an Order on January 9, 2019 (“January 2019 Order”) regarding twenty (20) vehicles (the “Vehicles”) which the Respondent sought to obtain in order to partially satisfy the Foust Judgment.³ Mr. Foust had claimed that four (4) of the Vehicles were in the possession of his family and the remainder were either were owned by a Montana LLC known as Harry Hildibrand, LLC (“HH”) – of which Mr. Foust was an owner – or an alleged Wyoming LLC known as StarDust Classic, LLC (“StarDust”). *Id.* Mr. Detwiler was a manager of HH for a time with an extremely limited role, but resigned in September, 2019.⁴ A critical conclusion in the January 2019 Order was that “[a]s for the balance of the 20 cars [*i.e.* the Vehicles] **Mr. Foust controls them because he owns HH and StarDust Classic.**” *Id.* The Trial Court also found, on no fewer than five (5) occasions, that Mr. Foust owned all of the Vehicles.⁵ Yet, despite these clear findings, the Trial Court ordered that “Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered on penalty of contempt, ... to turn

² See Wash. SOS Certificates, Appx. Vol. IV, at MSA00799 and MSA00801.

³ See List of the Vehicles, Appx. Vol. I, at MSA00052.

⁴ See Resignation Letter of Mr. Detwiler, Appx. Vol. II, at MSA00467-468.

⁵ *Id.* at p. 21, ¶¶ 17-21 (Appx. Vol. I, at MSA00045).

over to the Bank promptly [the Vehicles]...”⁶ This ambiguous order – which appears to order Mr. Detwiler to turn over Vehicles owned and controlled by Foust – violates the requirement that “an order for civil contempt must be grounded upon one’s disobedience of an order that spells out ‘**the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.**’”⁷ How can Mr. Detwiler turn over Vehicles which the Trial Court found unequivocally were owned and controlled by the Defendant Mr. Foust?

Subsequently, on February 21, 2019, the Respondent filed an “Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt” for purportedly not turning over the Vehicles to the Respondent. Mr. Detwiler appeared, although with no attorney. In April and May of 2019, the Trial Court held an evidentiary hearing regarding the Respondent’s allegations that the “Defendants” – *i.e.* Mr. Foust and Mr. Detwiler (the Mr. Detwiler was not a defendant) – had committed contempt by not turning over the Vehicles. In a shocking violation of Mr. Detwiler’s constitutional rights, the Trial Court unlawfully excluded Mr. Detwiler from hearing the testimony of other witnesses **regarding Mr. Detwiler’s own purported contempt**

⁶ *Id.* at p. 22, ¶ 17-21 (Appx. Vol. I, at MSA00046).

⁷ Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983) (quoting *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex.1967)).

thereby denying Mr. Detwiler the opportunity to cross-examine them.

In June, 2019, the Trial Court issued an “Order for Punishment of Contempt” (“June 2019 Order”) in which it again found that Mr. Foust “directly and/or indirectly controlled HH”⁸ and that the Vehicles “**remain in the control of Mr. Foust.**”⁹ In fact, the Trial Court specifically and expressly incorporated “any other evidentiary findings in the [January 2019 Order] ... **to support Mr. Foust's ownership and control of the [Vehicles] directly or indirectly through HH and/or StarDust.**”¹⁰ Moreover, in violation of Callie v. Bowling¹¹, without a separate complaint as required, the Trial Court found that Mr. Foust, HH and StarDust “were and are alter egos of each other with respect to the [Vehicles].”¹²

In January 2020, Mr. Detwiler retained an attorney and, pursuant to NRS 22.030(3), objected to the Trial Court presiding over further proceedings regarding the alleged contempt. **Disturbingly, the Trial Court judge refused to recuse himself.** Instead, the Trial Court: (1) authorized filing and entry of a contempt order against Mr. Detwiler (“Contempt Order”); (2) issued a Bench Warrant for Mr. Detwiler’s arrest; and (3) instructed Mr. Detwiler to turn over his passport to his counsel, in further

⁸ See June 2019 Order at p. 5, ¶ 19, Appx. Vol. IV, at MSA00809.

⁹ See *id.* at pp 8-9, Appx. Vol. IV, at MSA00812-813.

¹⁰ See June 2019 Order at p. 6, ¶ 28, Appx. Vol. IV, at MSA00810.

¹¹ 123 Nev. 181, 160 P.3d 878 (2007).

¹² See June 2019 Order at p. 6, Appx. Vol. Vol. IV, at MSA00810.

violation of his due process rights.

On February 5, 2020, Mr. Detwiler filed a Motion for Reconsideration and for Relief under NRCP 60(b), 59 and 52. The Trial Court denied the Motion, and subsequently sanctioned Mr. Detwiler **\$100,000.00**, plus an additional \$218,000 in attorneys' fees and costs from before there was any order directed to Mr. Detwiler, and despite vacating the contempt and related bench warrant ("Detwiler Judgment").

On March 24, 2020, Mr. Detwiler filed a Motion to Stay Execution and Waive Supersedeas Bond. The motion was denied.

II. LEGAL ARGUMENT

A. This Court should issue a Stay after the District Court refused to do so.

1. Appellant is likely to prevail on the merits in the appeal

a. Reversible error no. 1: The Trial Court granted a judgment against Mr. Detwiler in favor of a nonexistent entity.

Respondent does not exist. No such entity known as "Baker Boyer National Bank, a Washington corporation" exists.¹³ The Detwiler Judgment is in favor of a **nonexistent entity**. This Court has made absolutely clear that "**[a] judgment for a legally nonexistent entity is a nullity.**"¹⁴ The Trial Court's entry of the Detwiler

¹³ A bank known as *The Baker Boyer National Bank of Walla Walla* exists, but that is not Respondent. See charter for "The Baker Boyer National Bank of Walla Walla" (Appx. Vol. IV, at MSA00770); see also Washington Secretary of State's Certificates of No Record (Appx. Vol. IV, at MSA00799 and MSA00801).

¹⁴ *Causey v. Carpenters S. Nevada Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979); *Garland Family Trust v. Melton*, 2020 WL 1531769 (March 2020).

Judgment is a nullity, and reversible error.

b. Reversible Error No. 2 - the Trial Court violated NRS 50.155

The Trial Court excluded Mr. Detwiler from the courtroom during contempt proceedings against him, indicating “*it doesn’t matter what [Mr. Detwiler] thinks*”¹⁵ regarding whether Mr. Detwiler wanted to hear the testimony of witnesses against him and cross examine them as is his due process right. While Mr. Detwiler is a non-party and appeals the Trial Court’s contrary determination, because the Trial Court determined Mr. Detwiler was a party, NRS 50.155(2)(a) specifically prohibited the Trial Court from excluding Mr. Detwiler.¹⁶ This Court has held that “prejudice is presumed when a violation of NRS 50.155 occurs unless the record demonstrates a lack of prejudice.”¹⁷ Mr. Detwiler’s due process rights were violated as he had no opportunity to cross examine Mr. Foust or other witnesses who testified at his contempt proceeding. This was reversible error.

c. Reversible Error No. 3. – Violation of Callie v. Bowling

The Trial Court’s improper finding of an alter ego relationship between Mr. Foust, HH, StarDust – and the resulting contempt finding against Mr. Detwiler based upon this purported relationship – violates Mr. Detwiler’s due process rights under

¹⁵ See Transcript of 5/17/19, pg.13, lines 8-19 (Appx. Vol. I, at MSA00174).

¹⁶ See Court Minutes dated March 17, 2020 (Appx. Vol. III, at MSA00693).

¹⁷ Heglemeier v. State, 878 P. 2d 294 (1994); Givens v. State, 99 Nev. 50, 55, 657 P.2d 97, 100 (1983), overruled on other grounds, Talancon v. State, 102 Nev. 294, 301, 721 P.2d 764, 768 (1986).

the US Constitution, Nevada Constitution and Callie v. Bowling, 123 Nev. 181, 160 P.3d 878 (2007). As this Court has recognized, “[a] **party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process.**”¹⁸ The Respondent failed to do this. The Trial Court therefore improperly found alter ego relationships, then used those findings against Mr. Detwiler. This was a direct violation by the Trial Court of Callie and Appellant’s due process rights.

d. Reversible Error No. 4. – Failure of the Trial Court to recuse himself and the resulting severe bias against Mr. Detwiler

Before the Contempt Order was entered, Mr. Detwiler timely filed his NRS 22.030(3) objection, objecting to Judge Scotti presiding at any further proceedings regarding Mr. Detwiler’s alleged contempt.¹⁹ Despite recusal being *automatic* under NRS 22.030(3), the Trial Court judge refused to recuse himself and continued to preside over the contempt proceedings, including entering the Contempt Order and Detwiler Judgment over Mr. Detwiler’s objection. The grievous and reversible nature of a violation of such an objection was set forth in this Court’s decision in Awad v. Wright²⁰ as follows:

Awad argues that Judge Shearing committed reversible error when she did not recuse herself under Awad’s NRS 22.030(3) peremptory

¹⁸ Callie v. Bowling, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007).

¹⁹ See Appx. Vol. II, MSA00486-487 and Appx. Vol. II/III, MSA00498-511.

²⁰ Awad v. Wright, 794 P.2d 713 (1990).

challenge. **We agree.** ...

And so the legislature of this state felt it important to eliminate the possibility of a reasonable apprehension that a judge might not be entirely free from bias in enforcing the orders and decrees of the court of which [she] he is the judge. ...

Judge Shearing's refusal to recuse herself, coupled with her fining Awad \$2,000.00 when the maximum fine provided by NRS 22.100(1) was only \$500.00, are strong indications of a bias against Awad. The purpose of the legislature in passing an **automatic recusal** was precisely to avoid such situations. **Based on NRS 22.030 and on the McCormick case, Judge Shearing committed reversible error when she did not recuse herself when Awad requested her to do so.**²¹

NRS 22.030(3) exists to prevent decisions based on anger at the presiding judge's own order purportedly having been violated. That is exactly what happened here. While the Judge in Awad only sanctioned the party at issue \$2,000 for alleged contempt –four (4) times the allowable limit in NRS 22.100 (1) – here the Trial Court sanctioned Mr. Detwiler **\$100,000.00 – over 200 times the allowable limit!**

In addition, the Trial Court's strong bias against Mr. Detwiler was demonstrated by the attorney's fee award against him. NRS 22.100(3) allows an award of only those attorneys' fees "incurred by the party **as a result of the contempt.**"²² Despite no finding by the Trial Court that the Respondent had incurred fees *as a result of Mr. Detwiler's purported contempt* – as opposed to that of Mr.

²¹ Id. (emphasis added).

²² See also Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); State, Dep't of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

Foust, whom the Trial Court repeatedly found owned, owned and controlled the Vehicles – the Trial Court awarded fees incurred from the time Mr. Detwiler “was officially a party in this action”.²³ Yet, despite there being no order directed at Mr. Detwiler before January 2019 – and in violation of its own statements – the Trial Court proceeded to award fees and costs from March, 2018, totaling \$218,885.52.^{24 25} Of that amount, more than half - \$118,036.72 – were incurred *prior to Mr. Detwiler having any order directing him to do anything in this matter!*²⁶ The impermissible bias of the Trial Court against Mr. Detwiler is clear, and a stay is warranted.

2. The object of the appeal will be defeated if the stay is denied.

This appeal is sought to challenge the Trial Court’s orders which amount to a monetary Judgment against Mr. Detwiler in excess of \$318,000.00.²⁷ The object of this appeal is to correct the reversible errors committed by the Trial Court. Preserving the status quo by issuing a stay best serves the public interest. A denial would only serve as a grave injustice to Mr. Detwiler’s due process rights as well as Nevada’s public policy (“for the preservation of the respect and high regard the public has always

²³ See Appx. Vol. III, at MSA00647.

²⁴ See Appx. III, at MSA 00693 and Appx. Vol. IV, at MSA00760-762.

²⁵ In further violation of Nevada law, and evidencing the Trial Court’s bias, the Trial Court failed to even attempt to apportion any fees to Mr. Foust. See Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008); State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1070 (1996).

²⁶ See Appx. Vol. III, at MSA00671, lines 14-25.

²⁷ See Appx. Vol. II-IV, at MSA00498-517, MSA00685-693, MSA00760-765.

maintained for the courts”), which was specifically upheld by this Court in Awad and McCormick.²⁸ As such, a stay pending appeal must be issued.

3. Appellant will suffer irreparable/serious injury if the stay is denied.

A denial of the stay would force Mr. Detwiler to either post a supersedeas bond, which he is likely unable to do, or potentially file bankruptcy. The reversible errors should be fully addressed by this Court prior to any collection activities by the Respondent, and a stay will allow that to occur. Failure to issue a stay will cause Mr. Detwiler to suffer irreparable, permanent harm far beyond this appeal. A stay pending appeal is the only fair and equitable result.

4. A stay being granted will not irreparably harm Respondent.

Granting of a stay will not irreparably harm or seriously injury the Respondent. As set forth above, the numerous reversible errors committed by the Trial Court make clear the amounts awarded against Mr. Detwiler – **in favor of a nonexistent entity** – are invalid. A Stay in this matter will not affect the Respondent’s ability, such as it is, to pursue the *actual judgment debtor* – Mr. Foust – while Mr. Detwiler’s appeal is pending. Allowing the Respondent to pursue collection against Mr. Detwiler would be a grave miscarriage of justice.

III. CONCLUSION

²⁸ Awad v. Wright, 794 P.2d 713 (1990); McCormick v. The Sixth Judicial Court, 67 Nev. 318, 218 P.2d 939 (1950).

Mr. Detwiler respectfully requests this Court grant his Motion to Stay.

DATED: April 23, 2020.

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq. (NV Bar 10282)
Attorneys for Appellant

NRAP 27(e) CERTIFICATE

I, **Brenoch Wirthlin, Esq.**, hereby certify, pursuant to NRAP 27(e), to the following:

1. The telephone number and office address of the attorney for the Respondent is follows:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
(702) 474-2625
Attorney for Respondent

2. An emergency exists requiring this Motion to be heard in less than 14 days in order to avoid the Appellant from suffering immediate, irreparable harm. If this Motion to Stay is denied, Respondent will commence collection proceedings against Mr. Detwiler and he will be forced to either post a supersedeas bond or file bankruptcy. Either option requires the Appellant to take immediate action given the quickly approaching stay expiration, and Appellant may be unable to post a bond. As this Court is well aware, the entire country is going through a global pandemic known as the Coronavirus, where businesses in Nevada, and throughout the country, have either shutdown entirely or are operating on a limited basis. The sooner Appellant is aware of the decision on his Motion to Stay, the sooner he can work to have the appropriate professionals assist in taking action, which will likely prove to be extremely problematic given the current pandemic. Without this Court hearing

this Motion to Stay on an emergency basis, the Appellant will suffer immediate, irreparable harm and will be subject to collection efforts being commenced against him.

3. The counsel for Respondent was notified by e-mail on April 23, 2020 that the instant Motion would be filed. Additionally, my office notified the Nevada Supreme Court Clerk by phone on April 23, 2020.

4. A filed copy of this Motion will be served on the Respondent's attorney as indicated in the certificate of service provided below.

5. As such, before filing the motion, I have made every practicable effort to notify the clerk of the Supreme Court and opposing counsel, and to serve the motion at the earliest possible time.

6. This emergency motion is filed at the earliest possible time.

I declare under the penalty of perjury the statements herein are true and correct.

Dated: April 23, 2020.

By: /s/ Brenoch Wirthlin, Esq.
Brenoch Wirthlin, Esq.
Hutchison & Steffen
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Phone: (702) 385-2500

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT’S EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
JBragonje@lrrc.com
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume I; Pages MSA000001-MSA00250)

BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)

HUTCHISON & STEFFEN
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145

Attorneys for Appellant

TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518- MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445- MSA00447	1/28/2020	Notice of Appearance
I	MSA00071- MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001- MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766- MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384- MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473- MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719- MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

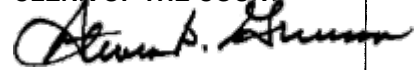
I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen



1 **NOFA**
John E. Bragonje
2 State Bar No. 9519
E-mail: jbragonje@lrrc.com
3 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**
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5 Fax: 702.949.8398

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 **BAKER BOYER NATIONAL BANK, a**
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

13 **JAMES PATTERSON FOUST, JR., also**
14 known as James P. Foust, Jr., individually, and
his marital community, if any,

15 Defendant/Judgment Debtor.
16

Case No.: A-17-760779-F

Dept. No.: 2

**NOTICE OF FILING OF FOREIGN
JUDGMENT AND AFFIDAVIT
PURSUANT TO NRS 17.360(2)**

17 **TO: JUDGMENT DEBTOR: JAMES PATTERSON FOUST, JR.**

18 **FROM: BAKER BOYER NATIONAL BANK**

19 You, and each of you, will please take notice that, pursuant to the Nevada Uniform
20 Enforcement of Foreign Judgments Act, NRS 17.330 *et seq.*, judgment creditor Baker Boyer
21 National Bank has filed, domesticated, and enrolled in the courts of the State of Nevada the
22 judgment rendered by the Superior Court of the State of Washington in and for Walla Walla
23 County in the action styled *Baker Boyer National Bank v. James Patterson Foust, Jr.* (case
24 number 16-2-00829-2) on July 20, 2017.

25 ...

26 ...

27 ...

28 ...

1 A copy of the Application, Affidavit in Support of Application, and Affidavit Showing Mailing of
2 Notice of The Filing of Judgment as required by NRS 17.350 and NRS 17.360 are included as
3 Exhibits A, B, and C to this notice.

4 DATED this 31st day of August, 2017.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6
7 By: /s/ John E. Bragonje

8 John E. Bragonje
9 State Bar No. 9519
10 E-mail: jbragonje@lrrc.com
11 3993 Howard Hughes Pkwy, Suite 600
12 Las Vegas, NV 89169-5996
13 Tel: 702.949.8200
14 Fax: 702.949.8398

15 *Attorneys for Plaintiff Baker Boyer National Bank*

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE FOR NOTICE OF FILING**
2 **OF FOREIGN JUDGMENT AND AFFIDAVIT PURSUANT TO NRS 17.360(2)**

3 Pursuant to NRS 17.360(2), I hereby certify that I mailed, by both regular mail and by
4 certified mail, return receipt requested, the forgoing "Notice of Filing of Foreign Judgment and
5 Affidavit Pursuant to NRS 17.360(2)" to the judgment debtor named in this action and listed
6 below. The certificates of certified mailing are appended to this certificate of service as Exhibit C
7 and the United State Postal Service tracking numbers are also noted on this certificate.

8

9 James P. Foust, Jr. 10 10821 Woodstream Ct Las Vegas, NV 89135 [7016 3010 0000 5911 0017]	Counsel: Lenard L. Wittlake Lenard L. Wittlake, PLLC P.O. Box 1233 Walla Walla, WA 99362 [7016 3010 0000 5911 0024]
12 Counsel: Cody Munteer Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 [7016 3010 0000 5911 0031]	

15 Dated this 31st day of August, 2017.

17 /s/ Luz Horvath

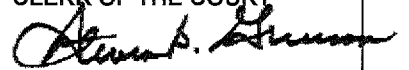
18 LUZ HORVATH, an employee of LEWIS ROCA
19 ROTHGERBER CHRISTIE

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

Exhibit A

Exhibit A



1 **AFJ**
2 John E. Bragonje
3 State Bar No. 9519
4 E-mail: jbragonje@lrrc.com
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6 3993 Howard Hughes Pkwy, Suite 600
7 Las Vegas, NV 89169-5996
8 Tel: 702.949.8200
9 Fax: 702.949.8398

10 *Attorneys for Plaintiff Baker Boyer National Bank*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 A-17-760779-F

14 BAKER BOYER NATIONAL BANK, a
15 Washington corporation,
16
17 Plaintiff/Judgment Creditor,

Case No.: Department 2

Dept. No.:

18 vs.

19 JAMES PATTERSON FOUST, JR., also
20 known as James P. Foust, Jr., individually, and
21 his marital community, if any,

**APPLICATION FOR ENFORCEMENT
OF FOREIGN JUDGMENT PURSUANT
TO NRS 17.330 ET SEQ.**

22 Defendant/Judgment Debtor.

23 Pursuant to NRS 17.330 *et seq.*, plaintiff and judgment creditor Baker Boyer National
24 Bank, by and through its counsel of record, Lewis Roca Rothgerber Christie LLP, hereby files its
25 application for enforcement of the foreign judgment against defendant and judgment debtor James
26 Patterson Foust, Jr., also known as James P. Foust, Jr., individually, and his marital community, if
27 any, and registers an exemplified copy of the judgment rendered by the Superior Court of the State
28 of Washington in and for Walla Walla County in the action styled *Baker Boyer National Bank v.*
James Patterson Foust, Jr. (case number 16-2-00829-2; judgment number 17-9-00590-4) on July

...

...

...

...

...

20, 2017 (Exhibit 1 hereto) as well an exemplified copy of the attorney-fee award order that was added to the judgment on August 18, 2017 (Exhibit 2 hereto).

Dated August 30, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: s/ John E. Bragonje

John E. Bragonje

State Bar No. 9519

E-mail: jbragonje@lrrc.com

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, NV 89169-5996

Tel: 702.949.8200

Fax: 702.949.8398

Attorneys for Plaintiff Baker Boyer National Bank

Exhibit 1

Exhibit 1

FILED
KATHY MARTIN
COUNTY CLERK

2017 JUL 20 P 3: 08

WALLA WALLA COUNTY
WASHINGTON

BY

SUPERIOR COURT OF WASHINGTON
IN AND FOR WALLA WALLA COUNTY

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually,
and his marital community, if any,

Defendants.

No. 16-2-00829-2

JUDGMENT FOR BAKER BOYER
NATIONAL BANK

and

Order Denying Reconsideration

17 9 00590 4

JUDGMENT #

JUDGMENT SUMMARY:

1. Judgment Creditor:	Baker Boyer National Bank
2. Attorneys for Judgment Creditor:	Foster Pepper PLLC
3. Judgment Debtors:	James Patterson Foust, Jr., aka James P. Foust, Jr., individually and his marital community
4. Principal:	\$662,287.96
5. Interest through June 7, 2017:	\$100,757.16
6. Late Charges:	\$ 525.68
7. Force Place Insurance Premiums - Net Amount	\$ 48,222.00
8. Fees Paid to Third-Parties to Repossess Collateral:	\$ 31,823.50
TOTAL Judgment Amount as of June 7, 2017: *	\$843,616.30
Interest Rate:	7.88 % Per Annum

* Plus interest at 7.88% per annum from June 7, 2017 to entry of Judgment and until paid in full; and plus ongoing attorneys' fees, costs and expenses.

JUDGMENT FOR BAKER BOYER - I

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

1 This matter came before the court on Plaintiff Baker Boyer National Bank's ("Baker
2 Boyer") presentation of a judgment based on the court's order granting summary judgment in
3 Baker Boyer's favor on all claims. The court heard oral argument of counsel for the plaintiff,
4 Todd Reuter, and counsel for the defendant, Lenard Wittlake. The court considered the pleadings
5 filed in the action.

6 I. DOCUMENT AND EVIDENCE CONSIDERED

7 The court also considered the documents and evidence that was brought to the court's
8 attention before the order on summary judgment was entered:

- 9 1. Baker Boyer's Motion for Summary Judgment as to All Claims;
- 10 2. Memo in Support of Baker Boyer's Motion for Summary Judgment as to All
11 Claims;
- 12 3. Declaration of John Blackmon;
- 13 4. Declaration of Tom Palumbo;
- 14 5. Declaration of Lacey Quiggle;
- 15 6. Declaration of Christopher Sentz;
- 16 7. Declaration of Russell S. Colombo in Support of Baker Boyer's Motion for
17 Summary Judgment as to All Claims;
- 18 8. December 14, 2016 Affidavit of Russell S. Colombo of Sums Certain and in
19 Support of Motion for entry of Default and Default Judgment, or in the Alternative, for Summary
20 Judgment;
- 21 9. Declaration of Todd Reuter in Support of Baker Boyer's Motion for Summary
22 Judgment as to All Claims;
- 23 10. January 19, 2017 Memorandum of Law Opposing Plaintiff's Motion for
24 Summary Judgment;
- 25 11. January 19, 2017 Declaration of James P. Foust, Jr.;
- 26

JUDGMENT FOR BAKER BOYER - 2

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

12. Second Declaration of James P. Foust, Jr. Opposing Second Motion for Summary Judgment;

13. Declaration of John Eakin;

14. Memo of Law Opposing Plaintiff's Second Motion for Summary Judgment;

15. Reply in Support of Baker Boyer's Motion for Summary Judgment as to All Claims; and

16. Affidavit of Russell S. Colombo Regarding Amounts Owed.

17. *Motion for Reconsideration and Memorandum in Support (June 30, 2017) and*
II. JUDGMENT *Baker Boyer's Response (July 17, 2017).* (HL)

Based on the argument of counsel, the pleadings, order and evidence, judgment is entered as follows:

1. Plaintiff Baker Boyer is awarded \$662,287.96 in principal. This includes a \$223,125.00 reduction in the amount owed the bank based on Baker Boyer's receipt of net sale proceeds in that amount from the sale of 27 trailers in North Dakota. In the event the remaining three trailers are sold, this amount shall be reduced by the amount of the net sale proceeds received from such sale.

2. \$100,757.16 in prejudgment interest on the principal amount to June 7, 2017. A per diem of \$144.97 will accrue from June 7, 2017 to the date of the entry of this Judgment at the rate of 7.88%, as allowed in the Promissory Note.

3. \$525.68 in accumulated late charges.

4. \$31,823.50 in repossession costs.

5. \$48,222.00 for force-placed insurance on the trailers.

6. Post-judgment interest on the judgment amount at 7.88% per annum from the date of entry of this Judgment until the Judgment amount is paid in full.

7. Baker Boyer shall file a motion for award of reasonable attorneys' fees and costs within ten days of the entry of this Judgment, as allowed by Civil Rule 54(d)(2). Any amounts awarded will be added to the judgment amount. The court retains jurisdiction to add attorneys'

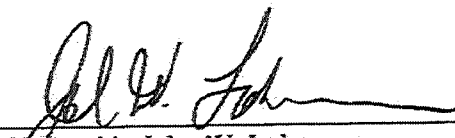
JUDGMENT FOR BAKER BOYER - 3

FOSTER PEPPER PLLC
615 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

1 fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are
2 incurred and sought by Baker Boyer in collecting on its judgment.

3 *8. Defendants' Motion to Reconsider is denied for the reasons set*
4 *forth in Plaintiff's Response.*

ENTERED this 20th day of July, 2017.

5
6
7 
Honorable John W. Lohrmann

9 Presented by:


10 FOSTER PEPPER PLLC

11 

12 Todd Reuter, WSBA # 20859
13 Attorneys for Plaintiff
14 Baker Boyer National Bank

Approved as to content and form:

LENARD L. WITTLAKE, PLLC

15
16
17
18
19
20
21
22
23
24
25
26

Lenard L. Wittlake, WSBA # 15451
Attorneys for Defendant

JUDGMENT FOR BAKER BOYER - 4

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of June, 2017, I caused to be served a true and correct copy of the foregoing upon the person below stated and in the manner indicated:

Lenard L. Wittlake Lenard L. Wittlake, PLLC P. O. Box 1233 Walla Walla, WA 99362 E-Mail: lwlaw@my180.net Attorney for Defendant	VIA FIRST CLASS MAIL <input checked="" type="checkbox"/> VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED <input type="checkbox"/> VIA HAND DELIVERY <input type="checkbox"/> VIA FACSIMILE <input type="checkbox"/> VIA EMAIL <input checked="" type="checkbox"/>
--	---

Melody A. Roberts
Melody A. Roberts, Paralegal

JUDGMENT FOR BAKER BOYER - 5


FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.

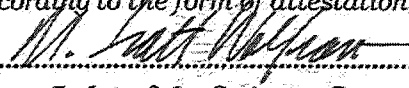
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this22nd..... day ofAugust....., 2017.....

.....Kathy Martin.....
County Clerk and ex-officio Clerk of the Superior Court
By..... Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,M. Scott Wolfram..... Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatKathy Martin....., whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.

..........
Judge of the Superior Court.

Dated at Walla Walla, Washington, this22nd..... day ofAugust..... A.D., 2017.....

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I,Kathy Martin..... County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify thatM. Scott Wolfram..... whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this22nd..... day ofAugust..... A.D., 2017.....

Exhibit 2

Exhibit 2

FILED
KATHY MARTIN
COUNTY CLERK

2017 AUG 18 A 9:11

WALLA WALLA COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON IN AND FOR WALLA WALLA COUNTY

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually,
and his marital community, if any,

Defendants.

No. 16-2-00829-2

STIPULATED ORDER AWARDING
ATTORNEYS' FEES AND COSTS TO
BAKER BOYER NATIONAL BANK

THIS MATTER comes before the court on the parties' stipulation to the entry of an order granting Baker Boyer's Motion for Award of Attorneys' Fees and Costs in the amount of \$90,000. Solely to resolve the pending motion the parties have stipulated that:

1. The rates charged by Baker Boyer's counsel are reasonable, that Baker Boyer's legal team consists of experienced litigators, and that their work was of high quality.
2. The amount of money at stake warranted the level and extent of legal work done by Baker Boyer's counsel in this matter. Defendant retains the right to challenge the reasonableness of any attorneys' fees and costs incurred in the future in this matter, whether in the trial court or appellate court.
3. The legal work on behalf of Baker Boyer led to the bank fully prevailing in this matter.

ORDER - I
51629247

FOSTER PEPPER PLLC
615 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

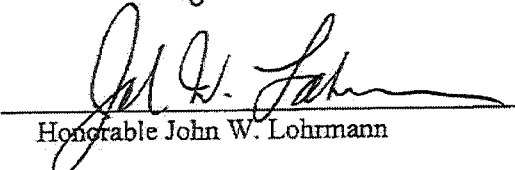
MSA00015

1 4. Regarding the attorneys' fees and costs incurred by Crowley Fleck, Baker Boyer
2 is free to pursue recovery of those fees and costs from JPF Enterprises LLC in the North Dakota
3 action, McKenzie County cause No. 27-2016-CV-00392.

4 Based upon the parties' stipulation, **IT IS HEREBY ORDERED:**

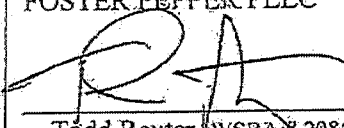
- 5 1. Baker Boyer's motion for award of attorneys' fee and costs is **GRANTED**.
6 2. Defendant shall pay Baker Boyer \$90,000 in attorneys' fees and costs.
7 3. Payment is due immediately.
8 4. The \$90,000 awarded here is added to the judgment amount previously awarded
9 to Baker Boyer in this matter.

10 ENTERED this 18th day of August, 2017.

11
12 
13 Honorable John W. Lohrmann

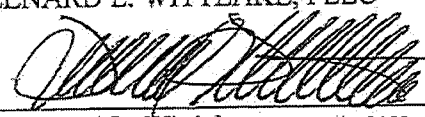
14 Presented by:

15 FOSTER PEPPER PLLC

16 
17 Todd Reuter, WSBA # 20859
18 Attorneys for Plaintiff
19 Baker Boyer National Bank

20 Approved as to form, notice of presentment waived:

21 LENARD L. WITTLAKE, PLLC

22 
23 Lenard L. Wittlake, WSBA # 15451
24 Attorneys for Defendant
25
26

ORDER - 2
51629247

FOSTER PEPPER PLLC
618 W. RIVERSIDE, SUITE 300
SPOKANE, WASHINGTON 99201-5102
PHONE (509) 777-1600 FAX (509) 777-1616

MSA00016

**In the Superior Court of the State of Washington
For the County of Walla Walla**

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin..... County Clerk of the County of Walla Walla, State of Washington, and ex-officio Clerk of the Superior Court of the State of Washington for Walla Walla County, do hereby certify that the within and foregoing are full, true and correct copies of the originals and of the whole thereof as the same are now on file and of record in the within entitled action in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this 23rd day of August, 2017.....

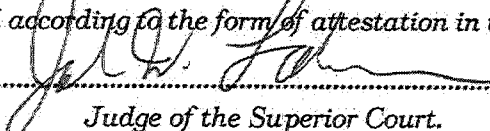
.....Kathy Martin.....
County Clerk and ex-officio Clerk of the Superior Court

By Linda Palmer..... Deputy

STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, John W. Lohrmann..... Judge of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that Kathy Martin....., whose name is subscribed to the preceding exemplification is the County Clerk of Walla Walla County and ex-officio Clerk of the Superior Court of said County, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.


.....
Judge of the Superior Court.

Dated at Walla Walla, Washington, this 23rd day of August..... A.D., 2017.....

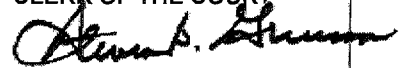
STATE OF WASHINGTON, }
County of Walla Walla, } ss.

I, Kathy Martin..... County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Walla Walla County, do hereby certify that John W. Lohrmann..... whose name is subscribed to the preceding certificate, is Judge of the Superior Court of the State of Washington, for Walla Walla County, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed MSA90017

Exhibit B

Exhibit B



1 AFFT
John E. Bragonje
2 State Bar No. 9519
E-mail: jbragonje@lrrc.com
3 LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
4 Las Vegas, NV 89169-5996
Tel: 702.949.8200
5 Fax: 702.949.8398

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 BAKER BOYER NATIONAL BANK, a
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

13 JAMES PATTERSON FOUST, JR., also
14 known as James P. Foust, Jr., individually, and
his marital community, if any,

15 Defendant/Judgment Debtor.
16

Case No.: A-17-760779-F

Dept. No: 2

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ENFORCEMENT
OF FOREIGN JUDGMENT PURSUANT
TO NRS 17.360(1)**

17 STATE OF NEVADA)
18 COUNTY OF CLARK) ss:

19 JOHN E. BRAGONJE, being first duly sworn, deposes and says:

20 1. I am an attorney licensed to practice law in the State of Nevada and am a partner of
21 the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP.

22 2. I am counsel to plaintiff and judgment creditor in the above-captioned matter. I am
23 over the age of 18 years and a resident of Clark County, Nevada. I make this affidavit based upon
24 personal knowledge (except where stated to be upon information and belief, and as to that
25 information, I believe it to be true). If called upon to testify as to the contents of this affidavit, I
26 am legally competent to testify thereto in a court of law.

27 3. I make this affidavit to fulfill the requirements of NRS 17.360(1).
28

1 4. The names and the last-known post office addresses of the defendant and judgment
2 debtor, or his counsel of record, are as follows:

3 James P. Foust, Jr.
4 10821 Woodstream Ct
5 Las Vegas, NV 89135
6 [16-digit mail code]

7 Counsel: Lenard L. Wittlake
8 Lenard L. Wittlake, PLLC
9 P.O. Box 1233
10 Walla Walla, WA 99362
11 [16-digit mail code]

12 Counsel: Cody Munteer
13 Marquis Aurbach Coffing
14 10001 Park Run Drive
15 Las Vegas, NV 89145
16 [16-digit mail code]

17 5. The name of and post office address of the judgment creditor is as follows:

18 Baker Boyer National Bank
19 P.O. Box 1796
20 Walla Walla, WA 99362

21 6. Upon information and belief, I attest that the foreign judgment is valid and
22 enforceable based on my conversations with the authorized representatives of Baker Boyer
23 National Bank and my review of the exemplified copy of the foreign judgment filed concurrently
24 herewith.

25 7. The foreign judgment has not been satisfied at all.

26 8. The rendering court in Washington state entered a judgment for principal in the
27 amount of \$622,287.96; pre-judgment interest through June 7, 2017 in the amount of \$100,757.16;
28 late charges in the amount of \$525.68; "force place insurance premiums—net amount" in the
amount of \$48,222.00; collateral repossession costs in the amount of \$31,823.50; and attorney fees
in the amount of \$90,000.00, for a total judgment on the rendering dates of July 20, 2017 (for the
original judgment) and August 18, 2017 (for the award of attorney fees) of \$933,616.30.

According to the express terms of the judgment and the underlying loan documents supporting the

1 judgment, the judgment was to bear interest at a rate of 7.88% per annum until satisfied. (See
2 generally the exemplified foreign judgment and attorney fee award filed concurrently herewith.)

3 9. At the time of this filing, then, the current value of the judgment, with interest, is
4 \$941,880.21. (Interest on \$933,616.30 at an interest rate of 7.88% per annum is \$201.55 per day;
5 41 days have elapsed between July 20, 2017 and August 30, 2017; this amounts to \$8,263.91 in
6 post-judgment interest for a total judgment of \$941,880.21.)

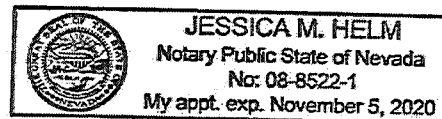
7 10. Further your affiant saith naught.


8 Dated August 31, 2016.

9
10
11 
12 JOHN E. BRAGONJE

13 On this 29th day of August, 2017, personally appeared before me, a Notary Public, in
14 and for said County and State, John E. Bragonje, known to me to be the person described,
15 and executed the foregoing instrument in the capacity set forth therein, who acknowledged to
16 me that he executed the same freely and voluntarily and for the uses and purposes therein
17 mentioned.

18 SUBSCRIBED and SWORN to before me
19 this 31st day of August, 2017.

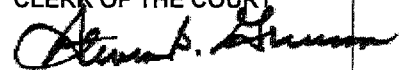



Notary Public in and for said

County and State

Exhibit C

Exhibit C



1 AFFT
John E. Bragonje
2 State Bar No. 9519
E-mail: jbragonje@lrrc.com
3 LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
4 Las Vegas, NV 89169-5996
Tel: 702.949.8200
5 Fax: 702.949.8398

6 *Attorneys for Plaintiff Baker Boyer National Bank*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 BAKER BOYER NATIONAL BANK, a
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

13 JAMES PATTERSON FOUST, JR., also
14 known as James P. Foust, Jr., individually, and
his marital community, if any,

15 Defendant/Judgment Debtor.
16

Case No.: A-17-760779-F

Dept. No.: 2 II

**AFFIDAVIT OF MAILING IN
SUPPORT OF APPLICATION FOR
ENFORCEMENT OF FOREIGN
JUDGMENT PURSUANT TO NRS
17.360(2)**

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss:

19 LUZ HORVATH, being first duly sworn, deposes and says:

20 1. I am an employee of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP.

21 2. I assist attorney John E. Bragonje, the lawyer that acts as counsel of record to
22 plaintiff and judgment creditor Baker Boyer National Bank in the above-captioned matter.

23 3. I am over the age of 18 years and a resident of Clark County, Nevada. I make this
24 affidavit based upon personal knowledge. If called upon to testify as to the contents of this
25 affidavit, I am legally competent to testify thereto in a court of law.

26 4. I make this affidavit to fulfill the requirements of NRS 17.360(2).

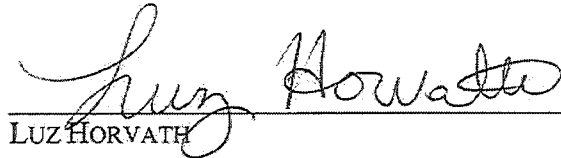
27 5. I hereby certify that on August 31, 2017, I mailed, by both regular mail and by
28 certified mail, return receipt requested, the "Notice of Filing of Foreign Judgment and Affidavit

1 Pursuant to NRS 17.360(2)" required by law. I mailed said notice to the judgment debtor and his
2 attorneys of record in this action and listed below:

3 James P. Foust, Jr. 4 10821 Woodstream Ct 5 Las Vegas, NV 89135 6 [16-digit mail code]	Counsel: Lenard L. Wittlake Lenard L. Wittlake, PLLC P.O. Box 1233 Walla Walla, WA 99362 [16-digit mail code]
7 Counsel: Cody Munteer 8 Marquis Aurbach Coffing 9 10001 Park Run Drive 10 Las Vegas, NV 89145 [16-digit mail code]	

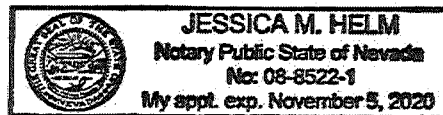
11 6. Further your affiant saith naught.


12 Dated August 31, 2017.

13
14 
LUZ HORVATH

15 On this 30th day of August, 2017, personally appeared before me, a Notary Public, in
16 and for said County and State, LUZ HORVATH, known to me to be the person described, and
17 executed the foregoing instrument in the capacity set forth therein, who acknowledged to me
18 that she executed the same freely and voluntarily and for the uses and purposes therein
19 mentioned.

20 SUBSCRIBED and SWORN to before me
21 this 31st day of August, 2017.



22 
23 Notary Public in and for said
24 County and State

Steven D. Grierson

1 **FFCL**
2 John E. Bragonje
3 State Bar No. 9519
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11 *Baker Boyer National Bank*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **BAKER BOYER NATIONAL BANK, a**
15 **Washington corporation,**
16
17 **Plaintiff/Judgment Creditor,**

18 **vs.**

19 **JAMES PATTERSON FOUST, JR., also**
20 **known as James P. Foust, Jr., individually, and**
21 **his marital community, if any,**

22 **Defendant/Judgment Debtor.**

Case No.: A-17-760779-F

Dept. No.: II

Hearing Date: November 5, 2018

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

MPX

23 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT**

24 This matter having come on for an evidentiary hearing and non-jury trial before the
25 Honorable Richard Scotti on November 5, 2018 and pertaining to plaintiff and judgment creditor
26 Baker Boyer National Bank's (the "Bank") request that this Court's prior Findings of Fact,
27 Conclusions of Law, and Final Judgment issued on March 8, 2018 apply to third party claimant
28 Harry Hildibrand, LLC ("HH") and that the Court resolve HH's claim of ownership over certain
vehicles that the Bank seeks to levy and execute against to satisfy a judgment against judgment
debtor and defendant James P. Foust, Jr. for approximately \$1,000,000; Mr. Foust having been
represented by Cody S. Munteer and Tom W. Stewart of Marquis Aurbach Coffing; the Bank
having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; HH having
been represented by Joseph West of Holland & Hart LLP; the Court having read and considered
all relevant pleadings and papers on file in the above-captioned case, having reviewed the

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Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

documents admitted into evidence during the trial and briefs and points and authorities filed by the parties, and having heard and carefully considered the testimony of the witnesses called to testify, the Court, with the intention of resolving the evidentiary issues pertaining to this dispute, hereby enters the following facts and states the following conclusions of law:

Introduction

Mr. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his refusal to repay the loan, Baker Bank obtained a judgment in the original amount of \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington in and for Walla Walla County (the "Judgment"). The Bank domesticated the Judgment in the State of Nevada on August 31, 2017.

When he applied for the loan that created the obligation that, when breached, led to the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr. Foust to deliver possession of the cars to satisfy the judgment. This hearing and ruling resolves two main issues.

Res Judicata. In a prior evidentiary hearing, this Court determined that a 1998 Prevost Car, Inc. Marathon motor coach (the "Motorcoach") belonged to Mr. Foust and that the Bank could lawfully seize and sell it to satisfy the Judgment. Thereafter, HH intervened in these proceedings and claimed that it, not Mr. Foust, owned the Motorcoach. Pursuant to *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), HH is bound by the earlier judgment under the doctrine of res judicata, particularly because Mr. Foust and HH are in privity. Privity exists where there is a substantial identity between the parties, as in corporate relationships involving controlling owners. This Court ruled that Mr. Foust owned HH. HH filed bankruptcy after the first evidentiary hearing and claimed repeatedly that a company called StarDust Classic, LLC was its sole member and owner. Mr. Foust owns and/or controls StarDust Classic, so he owns HH. Mr. Foust and HH cooperated with each other in all aspects of the dispute related to the Motorcoach.

Turnover of Other Cars. When Mr. Foust obtained the loan that led to the Judgment, he

1 told the Bank he owned 59 expensive, rare, and exotic vehicles. Mr. Foust bears the burden of
2 proving he no longer owns the cars. HH claims in bankruptcy schedules to own 20 of these cars.
3 Neither Mr. Foust nor HH (sometimes collectively the “defense” or the “defendants”) offered any
4 documentary evidence—such as car titles, contracts for sale, or evidence of payment—showing
5 any legitimate sale of cars by Mr. Foust to HH. Defendants could not even say what the purchase
6 price for these alleged sales was. Additionally, even if some bare transfer of title did occur, it was
7 fraudulent and voidable, *for the reasons discussed herein*. The NRS Chapter 112 “badges of fraud” from the Uniform Fraudulent
8 Transfer Act are on full display here. Typifying the concealment that shows fraud, the defendants
9 lied about the cars’ locations in depositions before this Court, and then told the bankruptcy court
10 the cars were in North Dakota (and other places), where Mr. Foust, not HH, conducts business.
11 This Court concludes that Mr. Foust and HH have attempted to perpetrate a fraud on creditors and
12 that all cars originally identified to the Bank as Mr. Foust’s ought to be made available to satisfy
13 the Judgment.

14 Based upon the testimony and documentary evidence presented during the hearing and for
15 good cause appearing, pursuant to Rules 50 and 52, the Court rules in favor of the Bank and
16 against Mr. Foust and HH and finds, concludes, orders, adjudges, and decrees as follows:

17 **Findings of Fact Related to the Motorcoach and HH’s Claim Thereto**

- 18 1. Mr. Foust has not voluntarily paid the Judgment.
- 19 2. The Bank filed a “Motion for an Order Requiring Judgment Debtor to Deliver
20 Possession of Classic Car Collection to Satisfy Nearly \$1 million Judgment” on December 20,
21 2017. Mr. Foust opposed the motion, claiming he no longer owned any of the cars. This Court
22 ordered discovery, including depositions, and set two separate evidentiary hearings concerning
23 who owns the vehicles in question.
- 24 3. On February 15, 2018, this Court held the first evidentiary hearing concerning just
25 the Motorcoach. (See 3/8/18 Judgment, Introduction, on file herein.)
- 26 4. This Court received extensive documentary and testimonial evidence and issued a
27 detailed ruling. (See generally 3/8/18 Judgment, on file herein (hereinafter the “Prior
28 Judgment”).) The Court ruled for the Bank and against Mr. Foust in every respect, including that

2. Baker Bank proved by clear and convincing evidence that no sale of the Motorcoach occurred and that Mr. Foust continues to own it. Therefore, Baker Bank may keep possession and control of the Motorcoach and sell it to partially satisfy the Judgment.

3. A second, independently sufficient basis for ruling in Baker Bank's favor also exists: even assuming for the sake of argument that a transfer of the Motorcoach did occur, Baker Bank has established by clear and convincing evidence that such a sale is a voidable, fraudulent transfer.

(3/8/18 Prior Judgment, on file herein, Conclusions ¶¶ 2-3.)

5. After the first evidentiary hearing had concluded, HH filed an application pursuant to NRS 31.070, seeking a ruling that it, not Mr. Foust, owned the Motorcoach.

6. Although originally a non-party, by invoking NRS 31.070, HH subjected itself to this Court's jurisdiction as a third-party claimant. *Cooper v. Liebert*, 81 Nev. 341, 344, 402 P.2d 989, 991 (Nev. 1965) ("We hold that N.R.S. 31.070 is a complete and valid remedy to third persons whose property has been attached, that the remedy therein provided is exclusive . . . and that the term 'property' includes both real and personal property."). While the statute's operation typically begins when a levy occurs, NRS 31.070(1), in this case HH voluntarily submitted to this Court's jurisdiction by waiving the levy predicate. (See Transcript of April 18, 2018 hearing; accord 5/22/18 Order Setting Future Hearing Date, on file herein, at ¶ 4 ("This is an Evidentiary Hearing under NRS 31.070. The parties agreed that this Evidentiary Hearing may proceed before the [Bank] has levied upon the subject cars.")).

7. After briefing by the parties, on April 18, 2018, the Court held a hearing pursuant to NRS 31.070 to consider whether HH was bound by the Prior Judgment, which concluded that Mr. Foust owned the Motorcoach. At this hearing, the Court determined that the outcome of the issue preclusion question is governed by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015), which states "the following factors are necessary for application of issue preclusion: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated."

1 8. As to factor (1), the Court finds that the issue of title to the Motorcoach was
2 decided at the prior evidentiary hearing on February 15, 2018 (the “Prior Hearing”) and that
3 issue—ownership of the Motorcoach—is identical to the issue again before the Court based on
4 HH’s continued assertion that it owns the Motorcoach.

5 9. As to factor (2), the initial ruling arising from the Prior Hearing was on the merits
6 and has become final. (*See generally* 3/8/18 Prior Judgment, on file herein.)

7 10. As to factor (4), obviously the issue of ownership was actually and necessarily
8 litigated because the Court received extensive documentary and testimonial evidence at the Prior
9 Hearing and argument and made a binding ruling based on such evidence.

10 11. As to factor (3), whether Mr. Foust and HH are in privity, the Court resolved
11 certain issues and made certain factual findings at the Prior Hearing that are relevant to the
12 question of privity: Mr. Foust was an officer and/or member of HH, in fact he was the sole owner
13 and member of HH; HH, through Mr. Foust, had notice of the Prior Hearing; Mr. Foust
14 represented the interests of HH at the Prior Hearing because he actually tried to prove that HH was
15 the owner of the Motorcoach; Mr. Foust, the sole owner and member of HH, never complained
16 that HH was not a party to the hearing; HH, despite having some notice of the Prior Hearing by
17 Mr. Foust, never sought to intervene in the proceeding in which the Court determined that Mr.
18 Foust owned the Motorcoach; Mr. Foust’s counsel actually notified this Court that HH intended to
19 intervene in the matter on March 7, 2018, so there was obviously some communication between
20 Mr. Foust and HH and their respective counsel—Mr. Foust told the Court what HH intended to do
21 before it happened; at the hearing on March 7, 2018, Mr. Foust’s counsel also asserted due process
22 rights on behalf of HH.

23 12. The Court then ordered the parties to present evidence on *Five Star Capital* factor
24 (3) to see whether HH could develop any additional facts to contravene these findings from the
25 Prior Hearing.

26 13. HH then filed a Chapter 11 bankruptcy case in California, which was dismissed.
27 The Court then scheduled another evidentiary hearing.

28 14. After this second evidentiary hearing, which occurred on November 5, 2018, the

1 Court is further convinced that Mr. Foust and HH¹ are in privity and that the Prior Judgment
2 should apply to HH.

3 15. HH offered no significant evidence on the privity issue, as ordered; rather HH
4 attempted to re-try the factual issues the Prior Judgment resolved. The Bank, on the other hand,
5 did present compelling, clear, and convincing evidence that the HH and Mr. Foust are in privity.

6 16. The cooperation between Mr. Foust and HH is even more pronounced than
7 originally apparent at the Prior Hearing.

8 17. During HH's presentation of evidence, HH's counsel of record, Mr. Joseph Went,
9 actually examined Mr. Foust as a friendly witness, rather than Mr. Foust's own counsel of record,
10 Cody Munteer, handling the examination. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

11 18. Although HH is ostensibly a Montana-based company, HH petitioned for
12 bankruptcy relief in California, where Mr. Foust resides. The bankruptcy occurred after the Prior
13 Hearing and stayed this Court's proceedings for several months; the bankruptcy was ultimately
14 dismissed for HH's subsequent failure to participate. *See In re: Harry Hildibrand, LLC*, 2:18-bk-
15 18727-NB, ECF No. 20 (Bankr. C.D. Cal. Sept. 7, 2018).

16 19. HH's bankruptcy counsel of record, a Los Angeles-based attorney named James
17 Lezie, concurrently represents Mr. Foust in one of the underlying, out of state lawsuits that
18 resulted in the Judgment which has been subsequently domesticated in Nevada. Mr. Lezie, said,
19 in seeking a pro hac vice admission in North Dakota, that he is "a long time [sic] associate of
20 James Paterson Foust" and that he had "served as counsel to Mr. Foust on previous matters."

21 20. This is a striking statement because Mr. Foust has sworn under oath repeatedly
22 before this Court, and in depositions ordered by this Court, that he disassociated from HH in 2008.
23 If that were true, his long-time personal attorney would have no involvement in HH's 2018
24 bankruptcy, which occurred in a court located close to Mr. Foust's home in Los Angeles.

25 21. Similarly, during the Section 341 creditors meeting, Mr. Lezie also testified under
26 oath that Mr. Foust, though supposedly separate from HH since 2008, helped make the decision to
27 put HH into bankruptcy. These two ostensibly separate parties, Mr. Foust and HH, actually work

28 ¹ Mr. Foust and HH are sometimes collectively referred to as the "defendants" or the "defense."

as one under common legal representation coordinated in multiple judicial fora. 

22. ~~The appearance of Mr. Lezie under these circumstances is another example of Mr. Foust's willingness to lie to this Court and to attempt to obscure the truth~~ The Court reaffirms its ruling from the Prior Hearing that Mr. Foust's demeanor is untrustworthy and that he demonstrates a propensity to say whatever seems convenient at the moment, without regard for established or incontrovertible facts.

23. This Court has already ruled that Mr. Foust was an "an officer and/or member of HH [and that] HH, through Mr. Foust, had notice of the Prior Hearing." (5/22/18 Order Setting Future Hearing, on file herein, ¶ 3(d).) Although Mr. Foust has steadfastly denied any involvement in HH since 2008, and although Mr. Edward Detwiler, who testified that he is a manager of HH, claims HH was owned by the heirs of a deceased man named Harry Hildibrand (see 11/5/18 Hr'g Trans., p. 26:9-16),² the bankruptcy pointed up Mr. Foust's direct ownership of HH yet again.

24. In the bankruptcy filings, which papers Mr. Detwiler repeatedly signed under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH repeatedly contended that it is wholly owned by a Wyoming limited liability company called StarDust Classic.

25. The official records of the Wyoming Secretary of State indicate that Mr. Foust and his daughter have been filing the annual reports and paying the annual dues for StarDust Classic since its organization in 2016.

26. In fact, the 2016 articles of organization for StarDust Classic give its office and mailing address as the very same location of Mr. Foust's Las Vegas Motorcoach Resort property where he kept the Motorcoach before the Bank seized it pursuant to this Court's writs.

27. Mr. Foust's daughter, Jocelyn, signed StarDust Classic's annual report in 2017 and

² HH attempted to introduce a document allegedly showing ownership interests in HH. This document was not produced before the hearing and will not be considered. The disclosures end at Bates range HHLLC 000074, and this new documents bears the Bates number HHLLC 000075. The Court excludes this evidence. See, e.g., NRCP 16.1(e)(3)(B) (providing that failure to disclose a document before trial justifies an "order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a)"). In any event, this document does not undo the other, extensive evidence of Mr. Foust's control and ownership over HH.

1 Mr. Foust himself signed the 2019 annual report on March 27, 2018, and paid the registration fee.

2 28. These Wyoming reports are signed under penalty of perjury, and, according to
3 Wyoming law, must be submitted by a company officer or a “fiscal” agent. Wy. St. § 17-29-
4 209(a) (2018).

5 29. Mr. Detwiler, the supposed manager of HH, agreed on cross examination that this
6 Wyoming corporate documentation showed that Mr. Foust “ultimately owned” HH; he said “Boy,
7 I didn’t get an A in deducement, but it’s – I – *yeah*.” (11/5/18 Hr’g Trans., p. 65–66:13 (emphasis
8 supplied).)

9 30. At the Prior Hearing, the Court rejected Mr. Foust’s claim that he divested himself
10 of any interest in HH because, on the hand, he “produced no documentary evidence of this alleged
11 divestment” while, on the other hand, this Court received evidence of official corporate filings and
12 annual reports generated by the Montana Secretary of State showing that Mr. Foust was “the sole
13 member and/or manager for Harry Hildibrand, LLC.” (3/8/18 Prior Judgment, on file herein,
14 Findings ¶¶ 10–11.)

15 31. This Court again rejects Mr. Foust’s naked denials of involvement in StarDust
16 Classic when the official corporate records for Wyoming demonstrate just the opposite, especially
17 because these papers were generated before this dispute started (beginning in 2016) and before
18 Mr. Foust had a motive to change his story.

19 32. Mr. Foust and Mr. Detwiler both gave superficial testimony to the effect that HH
20 purchased the Motorcoach from Mr. Foust. However, the defense produced no actual evidence of
21 a sale, such as evidence of the alleged \$5,000 purchase price changing hands.

22 33. This proceeding began by a motion that the Bank filed on December 20, 2017. In
23 nearly one year’s time, the defendants, with the aid of two able law firms assisting them,
24 responded to a subpoena duces tecum directed to HH, responded to formal document requests
25 ordered by this Court, sat for three separate depositions, and testified in two evidentiary hearings.
26 Each of these circumstances demanded the defense produce actual proof of money changing hands
27 to evidence the alleged sale of the Motorcoach. There is no such evidence, at long last.

28 34. The defendants have belatedly produced what they claim is a contract for the sale

1 of the Motorcoach, which the Court finds unpersuasive given the circumstances of its disclosure
2 and given that it never appears it was performed because no money changed hands.³

3 35. Mr. Foust testified at this second evidentiary hearing that he received a \$5,000
4 “cash” payment. (11/5/18 Hr’g Trans., p.72:2–5.) This contradicts his earlier deposition
5 testimony that he could not “remember” the payment method but that it was “a check, probably.”

6 36. Mr. Detwiler, the supposed manager of HH, conceded it was “very possible” HH
7 never paid Mr. Foust and that he had “no idea as the manager if that money was ever paid.”
8 (11/5/18 Hr’g Trans., p. 38:9–17.)

9 37. Even if HH had actually made a cash payment, HH would still be able to produce a
10 bank record showing such a large withdrawal—after all the alleged transaction closed only about a
11 year ago. This Court is convinced there is no such evidence because the payment never happened.

12 38. HH and Mr. Foust claim that HH also agreed to assume the Motorcoach purchase-
13 money loan, but here again the documentary evidence that HH itself produced—documents from
14 the lienholder’s records custodian responsive to an HH subpoena—show only Mr. Foust’s
15 involvement.

16 39. First, only Mr. Foust, not HH, appears as the debt obligor

17 40. Second, only Mr. Foust or his daughter ~~and frequent collaborator~~, Jocelyn, signed
18 the monthly payment checks produced by the lienholder, including after the supposed transfer of
19 the Motorcoach to HH.

20 41. There is a total failure of any documentary evidence whatsoever showing an actual
21 sale of the Motorcoach. This “sale” is a transparent attempt to defraud the Bank.

22 **Findings of Fact Related to All Other Cars Mr. Foust Claimed to Own Before the Judgment**

23 42. This Court’s order establishing the scope of this evidentiary hearing required the
24 parties to focus on three issues: (1) “whether Mr. Foust is the owner of those certain cars over
25 which HH claims an interest”—*i.e.* the “HH cars”; (2) “whether Mr. Foust is the owner of those

26 ³ The authenticity of this alleged sales contract is suspect. Despite this Court’s February 5, 2018 order for Mr. Foust
27 and HH to produce “a copy of any contract” related to the Motorhome, neither defendant produced this alleged
28 contract until June 25, 2018, after Mr. Foust had been deposed not once but twice and after the Prior Hearing. (*See*
3/1/18 Order Regarding Hearings on Classic Car Collection, on file herein, at ¶ 10(d).) The defense offered no
explanation for this remarkable delay.

1 certain cars that HH contends it purchased from Mr. Foust and then sold to third parties”—*i.e.* the
2 “HH Sold Cars”; and (3) “whether Mr. Foust is the owner of those certain cars that he contends
3 were transferred directly to third parties”—*i.e.* the “Third Party Cars.” (5/22/18 Order Setting
4 Future Hearing, on file herein, ¶¶ 4–6.)

5 43. Neither Mr. Foust nor HH offered evidence on these subjects, other than a cursory
6 statement. It is no exaggeration to say that the evidence these defendants offered focused on the
7 Motorcoach and little else. By contrast, the Bank offered a treasure trove of evidence showing
8 that although Mr. Foust claims he sold certain cars to HH and others, these same cars remain
9 under the control of Mr. Foust.

10 44. Mr. Russ Colombo, the Bank’s Vice President and Senior Credit Administrator,
11 offered extensive testimony concerning Mr. Foust’s written representations to the Bank regarding
12 his car collection.

13 45. Mr. Foust is a rich man. When Mr. Foust applied for the loan in 2013, he claimed
14 to have a net worth of no less than \$9,493,574. His liquid assets alone included \$716,854 in cash
15 and \$129,332 in stocks and bonds, according to documents submitted to the Bank. The loan
16 application stated that Mr. Foust personally owned assets he identified as “Classic Cars – Est.
17 Value using Mkt. [market] Prices” with a value of \$5,120,130.

18 46. There is no doubt that Mr. Foust represented that he owned these vehicles in his
19 personal capacity: the document is entitled a “personal” financial statement and Mr. Foust wrote
20 “Foust”—his name—in the “Name(s) Registered In” field on the form.

21 47. Mr. Foust also provided an inventory of the cars which he entitled “Foust Classic
22 Cars”—again emphasizing his personal ownership of these vehicles—that details each vehicle’s
23 make, model, year, vehicle identification number, and value. Mr. Foust’s collection comprises 59
24 vehicles that he valued at \$5,120,130. These cars are identified in Exhibit A to this judgment.
25 The value of the car collection on the personal financial statement submitted to the Bank is the
26 same as that given on the list of cars.

27 48. After the loan proceeds were disbursed, Mr. Foust continued to represent to the
28 Bank that he owned these valuable automobiles by way of financial statements submitted to the

1 Bank. For example, in a balance sheet prepared by Mr. Foust and submitted to the Bank and dated
2 April 30, 2015—years after the loan was made—Mr. Foust gives the value of his “Automobiles –
3 Classic” as \$3,242,930. In the most recent balance sheet the Bank has, which is dated December
4 31, 2015, Mr. Foust gave the value of his “Automobiles – Classic” as \$1,381,320.

5 49. The vehicles identified by Mr. Foust in these pre-lawsuit bank records (Exhibit A)
6 are the same that HH identified in its bankruptcy petition—except that there are approximately 39
7 fewer cars listed in the bankruptcy schedules. The list of cars that HH identified in is bankruptcy
8 papers is attached hereto as Exhibit B.

9 50. Neither Mr. Foust nor HH produced any documentary evidence or offered any
10 testimony to show that Mr. Foust did not own the “HH cars,” as he told the Bank he did; that Mr.
11 Foust did not in fact own the HH Sold Cars, as he told the Bank he did; or that Mr. Foust did not
12 continue to own the “Third Party Cars” he claims he sold.

13 51. The only actual evidence before this Court conclusively proves that Mr. Foust
14 continues to own and control all the cars mentioned on any list, and certainly those that HH
15 claimed to own in the bankruptcy.

16 52. The defense failed to offer into evidence any contracts for sale of any of the cars in
17 question, the HH cars, the HH Sold Cars, or the Third Party Cars.

18 53. During his deposition, Mr. Foust testified that he sold cars to HH “in a lot all at the
19 same time” and that there was a single contract related to the sale of a group of cars. At the
20 evidentiary hearing, Mr. Foust changed his story, claiming that “there were several contracts at
21 different times” in 2011 and 2012 relating to “a series of cars that were sold to [HH] by me.”
22 (11/5/18 Hr’g Trans., p. 75:12–23.) ~~Ever willing to say what is convenient without regard to the~~
23 ~~record.~~ Mr. Foust claimed that these supposed sales contracts were “retrievable” and perhaps in his
24 file cabinet in California or with HH’s Montana attorneys.

25 54. This testimony ignores this Court’s prior order and a subpoena duces tecum
26 directed to HH, both of which sought these same alleged sales contracts. This Court has allowed
27 three depositions and two evidentiary hearings, and the defense has never produced any contract
28 for the sale of cars between HH and Mr. Foust. The Court is convinced no such contract or

1 contracts exist.

2 55. Similarly, the defense offers no evidence about the price HH allegedly paid Mr.
3 Foust to purchase any of the cars. Mr. Foust allowed at the hearing that he had no recollection of
4 the price received from these alleged sales. (*Id.* at 75:22–76:6.) At his deposition he was flippant
5 about this subject, claiming “I might have got a dollar, I might have got a million dollars. I don’t
6 know.”

7 56. Finally, HH failed to offer into evidence car titles showing transfer of the cars in
8 question to HH or anyone else. The only evidence this Court has is that Mr. Foust, on multiple
9 occasions and in writing, swore to the Bank that he owned at least the 20 cars that HH now claims
10 to own in the bankruptcy, and, in fact, many more. The few car titles the Bank offered, showed
11 Mr. Foust buying a car and then immediately transferring its title to HH without any consideration,
12 as discussed below.

13 57. Mr. Foust, in earlier filings with this Court, admitted that he has possession of four
14 vehicles HH claimed to own. In an affidavit given to this Court as part of an opposition to the
15 original motion that gave rise to this evidentiary hearing, Mr. Foust swore under oath that he has
16 “sold and ha[s] received a leaseback on the following vehicles: (a) 2000 GMC Yukon; (b) a 2007
17 Mercedes S550; (c) a 2007 Mercedes CLK 550; and (d) a 2007 Mercedes M50.” The alleged
18 owner and lessor is HH. During his deposition, Mr. Detwiler agreed that these cars were in the
19 possession of Mr. Foust, his wife, or his daughters and that HH had not received any money from
20 Mr. Foust for them. No lease documents were ever produced or offered into evidence, despite
21 specific requests and orders from this Court.

22 58. Despite Mr. Foust’s claims that HH owns these four cars that he and his family
23 drive through this alleged “leaseback,” the financial statements given to the Bank before this
24 dispute arose show that Mr. Foust personally spent his own money on these four cars, even though
25 he claims they are owned by HH.

26 59. The “Expense” page of Mr. Foust’s 2014 Income Statement provided to the Bank
27 shows \$6,439.50 in expenses for a two-year period for the Mercedes. The Expense page of the
28 April 25, 2015 Income Statement shows \$5,143.13 in expenses for two of the 2007 Mercedes.

1 And the December 31, 2015 Income Statement shows \$8,361.03 in expenses for all four cars for
2 2015 and the first month of 2016. If HH really owned these cars, then HH would be paying these
3 costs, not Mr. Foust.

4 60. Similarly, before this litigation arose and Mr. Foust had a motive to prevaricate, he
5 submitted financial statements to the Bank showing that he was paying the attorney fees to a
6 Montana attorney that acts as the registered agent for HH; HH is a Montana limited liability
7 company. The name of the law firm is the Heggen Law Office, P.C. It is located in Missoula,
8 Montana. This law office is the place of business given for HH in Montana corporate records on
9 file with the secretary of state. ~~This is significant when it comes to the subject of the cars because~~
10 ~~this law firm specializes in vehicle registration, its webpage says~~

11 ~~Form your Limited Liability Company in Montana and our knowledgeable and~~
12 ~~experienced staff can help you to save thousands on automobile, motorhome & RV,~~
13 ~~boat and airplane registration. Montana has no sales or property tax on vehicles~~
14 ~~such as RVs and luxury high-performance cars. By establishing a Montana~~
15 ~~Limited Liability Company (LLC) or Corporation, you may title your vehicle in the~~
16 ~~name of the business and purchase the vehicle free of sales tax even if your~~
17 ~~purchase is outside the state of Montana. In addition to your savings on vehicle~~
18 ~~taxes, you will also be able to take advantage of Montana's low vehicle registration~~
19 ~~fees.~~

20 61. The financial statements given to the Bank show regular payments by Mr. Foust to
21 this law office for fees and vehicle registration. The Income Statement for April 30, 2015 shows
22 \$100 for "Heggen - Autos" and \$250 for "Heggen - Fee's" for the first months of 2015 and \$340
23 for registration fees in 2014 and \$300 in attorney fees for 2014. Similarly, the Income Statement
24 dated December 31, 2015 shows \$1,080 for registration fees and \$1,487.99 for attorney fees in
25 2016 and \$1,714.18 in registration fees and \$340 in attorney fees for 2015. The defense did not
26 even attempt to contradict this evidence. This Court believes that if HH really owned these cars,
27 then HH would be paying the registration costs and attorney fees, not Mr. Foust.

28 62. A second, independently sufficient basis for ruling in the Bank's favor exists: even
assuming for the sake of argument that a transfer of the 20 cars that HH identifies in its bankruptcy
schedules (Exhibit B) did occur, there is clear and convincing evidence that such a sale is a
voidable, fraudulent transfer.

63. Transfers to insiders demonstrate fraud. *See* NRS 112.180(2)(a)). Mr. Foust

1 transferred the 20 cars identified in the HH bankruptcy to himself because Mr. Foust owns and
2 controls HH.

3 64. At the Prior Hearing, this Court rejected Mr. Foust's claim that he divested himself
4 of any interest in HH because, on the one hand, he "produced no documentary evidence of this
5 alleged divestment" while, on the other hand, and this Court received evidence of official
6 corporate filings and annual reports generated by the Montana Secretary of State showing that Mr.
7 Foust was "the sole member and/or manager for Harry Hildibrand, LLC." (3/8/18 Prior Judgment,
8 on file herein, Findings ¶¶ 10–11.) See also NRS 112.150(7)(a) (stating that if the debtor is a
9 natural person, an insider includes a transfer to a corporation in which the debtor is "a director,
10 officer or person in control").

11 65. A like circumstance has occurred at this second hearing: HH claimed in its
12 bankruptcy filings that it is wholly owned by StarDust Classic, an entity that Mr. Foust owns
13 and/or controls according to the Wyoming Secretary of State, as shown above. Mr. Foust did
14 make a bare assertion that he "believe[s]" someone named Ron Vega—a name never mentioned
15 before by the defendants in any of the three depositions or the prior evidentiary hearing—owned
16 StarDust Classic. (See 11/5/18 Hr'g Trans., p. 72:17–21.)

17 66. The Court rejects this *ipse dixit* when the official records of Wyoming, which were
18 generated between 2016 and 2018 before this dispute over the cars came before this Court, show
19 Mr. Foust's role as an officer and owner of StarDust Classic. This is yet another example of what
20 this Court previously found regarding Mr. Foust's demeanor: he appears untrustworthy because he
21 seems to be willing to say whatever appears convenient to him in the moment without regard to
22 established or incontrovertible facts.

23 67. The evidence is uncontroverted and overwhelming that Mr. Foust "retained
24 possession or control of the property transferred after the transfer." See NRS 112.180(2)(b). Mr.
25 Foust and Mr. Detwiler admitted in their depositions that Mr. Foust and his wife and daughters
26 have possession of and use three Mercedes and a GMC Yukon that HH claimed to own in its
27 bankruptcy schedules. As for the balance of the 20 cars HH claims in its bankruptcy, Mr. Foust
28 controls them because he owns HH and StarDust Classic. Someone must control these cars. Mr.

1 Detwiler, the supposed manager of HH, claimed during his deposition that he knew nothing about
2 any cars HH owned except for the four in Mr. Foust's and his family's possession:

3 Q: So other than those four vehicles, Harry Hildibrand doesn't own anything else?
4 Mr. Detwiler: Not that I'm aware of. Not that I have had conversation about or
know about.

5 68. Here, the alleged "transfer or obligation was ~~disclosed or~~ concealed." See NRS
6 112.180(2)(c). Mr. Foust did not inform the Bank of this alleged transfer of the 20 cars HH now
7 claims in its bankruptcy, nor of the transfer of any other cars. Mr. Foust was silent until this
8 dispute arose.

9 69. Even after these preceding began, IIII attempted to cover up the transactions by
10 withholding bills of sale under a bogus claim of attorney-client privilege; this later came to this
11 Court's attention during a motion to compel preceding this hearing.

12 70. The Court finds that HH in particular engaged in gamesmanship and misconduct in
13 attempting to withhold bills of sale related to the cars in question, ultimately introduced into
14 evidence by the Bank, under a facially bogus attorney-client privilege claim. The only motive for
15 such conduct was to attempt to suppress incriminating evidence.

16 71. The only bills of sale in evidence show transfers in 2016 (1966 Ford Thunderbird
17 and Kawasaki motorcycle) and 2014 (2000 GMC Yukon and 2007 Mercedes S550). These
18 alleged transfers took place after the loan was made that gave rise to the Judgment (October, 2013)
19 and around the time Mr. Foust was originally sued (December, 2016). The alleged transfer also
20 occurred after Mr. Foust had received the loan proceeds. See NRS 112.180(2)(d).

21 72. The debtor's absconding or removing or concealing assets indicates fraud. See
22 NRS 112.180(2)(f) and (g). Here, Mr. Foust was purporting to transfer away a substantial
23 percentage of many of his valuable vehicles after he received the loan proceeds in an attempt to
24 move the assets beyond the reach of the Bank.

25 73. For example, with respect to the 2000 GMC Yukon, Mr. Foust purchased it on
26 October 20, 2014 and purported to "sell" it to HH on December 3, 2014. And then ~~the defense~~ ^{Mr. Foust}
27 tried to hide this fact by asserting attorney-client privilege over the bill of sale. Mr. Foust also
28 bought the 2007 Mercedes and "sold" it to HH two months later. The bills of sale were all signed

1 by Mr. Foust as both buyer and seller—even though he tells this Court he’s been disassociated
2 with HH since 2008. ~~The defense attempted to lie to the Court and then attempted to conceal this~~
3 ~~misconduct behind a sham privilege claim.~~ *BS*

4 74. The Court’s prior orders recognize Mr. Foust and HH as capable of dishonesty and
5 gamesmanship. The defense lied repeatedly about the cars’ location in attempt to keep the
6 location secret from this Court and the Bank. During three depositions sessions, Mr. Foust and
7 Mr. Detwiler claimed they did not know where the cars were or even which cars HH owned. For
8 example:

9 Q: So other than those four vehicles, Harry Hildibrand doesn’t own anything else?
10 Mr. Detwiler: Not that I’m aware of. Not that I have had conversation about or
know about.

11 75. The Bank asked Mr. Foust about every car on the original lists submitted to the
12 Bank (Exhibit A). With respect to the 2007 Corvette, Mr. Foust said he once owned it but that HH
13 bought it and subsequently resold it to an unknown person. Mr. Foust said he sold the 1966 Ford
14 Thunderbird to a museum named Kuck in Nebraska and a 1955 Thunderbird to an auction house
15 called Russo Steele. Yet, all these cars appear on HH’s bankruptcy schedules (Exhibit B). Mr.
16 Foust generally testified during his deposition that he had “no idea” where the cars were that he
17 allegedly sold to HH.

18 76. Then during the bankruptcy, HH, through Mr. Foust’s long-time personal attorney,
19 James Lezie, and Mr. Detwiler, matter-of-factly testified at a creditors meeting that HH’s cars
20 were located in a warehouse in Compton, California, and at undisclosed locations in Montana and
21 North Dakota. The North Dakota location, where HH says it has six cars, is significant because
22 Mr. Foust was engaged in business there and sought the loan from the Bank to further his
23 enterprises there. HH, according to Mr. Detwiler, is defunct and has no business at all and,
24 therefore, no operations in North Dakota.

25 77. ~~The point is these defendants do not scruple to lie in depositions conducted under~~
26 ~~this Court’s orders and then totally change their testimony in bankruptcy court when they perceive~~
27 ~~an advantage to be had~~ *Mr. Foust’s* This conduct epitomizes concealing assets associated with fraudulent
28 transfer. Mr. Detwiler, in particular, signed the bankruptcy petition and schedules on behalf of

1 HH, which revealed the cars' locations, but he claimed to know nothing about that subject in
2 depositions before this Court. This is just one example of several points during the hearing, and
3 especially on cross examination, where Mr. Detwiler's demeanor was untrustworthy. Mr.
4 Detwiler appeared to be willing to say whatever seemed convenient at the moment, without regard
5 for established or incontrovertible facts, especially concerning representations he made in
6 bankruptcy court that contradicted his prior deposition testimony before this Court.

7 78. In this case, "the value of the consideration received by the debtor was [not]
8 reasonably equivalent to the value of the asset transferred or the amount of the obligation
9 incurred." See NRS 112.180(2)(h). Neither HH nor Mr. Foust has offered any evidence that any
10 money changed hands for the 20 cars HH lists in its bankruptcy filings (Exhibit B) or any of the 59
11 cars Mr. Foust claimed he owned (Exhibit A).

12 79. As shown above, despite Court orders and a subpoena, ~~the defense has~~ ^{Mr. Foust} failed to
13 produce any contracts for sale. Likewise ~~the defense has~~ ^{Mr. Foust} failed to produce any evidence of
14 payment, such as cancelled checks or evidences of wire transfer.

15 80. The few bills of sale in the record (which HH attempted to suppress through its
16 false claim of attorney-client privilege) show "\$N/A," or not applicable, as the amount HH paid to
17 Mr. Foust to "purchase" the 1966 Ford Thunderbird, the 2000 GMC Yukon, and the 2007
18 Mercedes from Mr. Foust.

19 81. Consistent with the vague answers generally given, with respect to the three
20 Mercedes his wife and daughters drive, that HH allegedly owns and leases back to Mr. Foust and
21 his family, Mr. Foust claimed in deposition to be totally ignorant on the subject of whether any
22 money changed hands with HH:

23 Q. Were they [the three Mercedes] all sold at the same time?

24 Mr. Foust: It appears to be so, yes.

25 Q. Were you involved in the sale?

26 Mr. Foust: No.

27 Q. Do you know the sales price?

28 Mr. Foust: No.

Q. Was money paid for these cars?

Mr. Foust: I have no idea.

Q. Would your daughters know?

Mr. Foust: Harry Hildibrand would know.

Q. And your daughters and your wife continue to own and use these cars?

1 Mr. Foust: I have no idea.

2 82. With respect to the remaining 16 cars HH claims to own, Mr. Foust allowed at the
3 hearing that he had no recollection of the price received from these alleged sales. At his
4 deposition he was flippant about this subject, claiming "I might have got a dollar, I might have got
5 a million dollars. I don't know." Mr. Detwiler, the supposed manager, never testified on this
6 subject at the trial or during his depositions. On the most basic question—purchase price—the
7 ^{Mr. Foust} defense could not produce the most elementary evidence—an amount—let alone proof that money
8 actually changed hands. This whole alleged relationship between Mr. Foust and HH appears to
9 the Court to be a scam for frustrating creditors' claims. Mr. Foust and HH have acted willfully
10 and maliciously with the intent to harm the Bank. ^{The evidence is clear and convincing}
to this Court that

11 **Conclusions of Law and Final Judgment**

12 The Court concludes the following:

- 13 1. The Court has jurisdiction over the parties and venue is proper in this Court.
- 14 2. The Court enters judgment in favor of the Bank and against HH and Mr. Foust,
15 including ~~all persons or entities claiming an ownership interest in HH~~, all entities owned or
16 controlled by Mr. Foust, including HH and StarDust Classic, on all claims.
- 17 3. Mr. Foust, HH, and StarDust Classic are and have been agents of one another with
18 respect to any past action involving the cars at issue in these proceedings (Exhibits A and B) and
19 have been agents of one another regarding notice of these proceedings.

20 ***Conclusions Related to the Motorcoach***

- 21 4. Privity in the res judicata context exists between business entities and their owners.
- 22 *Mendenhall v. Tassinari*, 132 Nev., Adv. Op. ___, 403 P.3d 364, 369 (2017) (acknowledging that
23 "contemporary courts have broadly construed the concept of privity, far beyond its literal and
24 historic meaning, to include any situation in which the relationship between the parties is
25 sufficiently close to supply preclusion," and adopting the Ninth Circuit's concept of privity, which
26 "encompass a relationship in which there is substantial identity between parties, that is, when there
27 is sufficient commonality of interest" (internal quotation marks omitted)); *In re Gottheiner*, 703
28 F.2d 1136, 1139–40 (9th Cir. 1983) (holding that there is sufficient commonality of interest

1 between a corporation and a person who owns or controls the corporation to establish privity);
2 18A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION, § 4460
3 (2d ed. 2018) (“Many of the decisions that extend preclusion through corporate relationships
4 involve controlling owners.”).

5 5. The Bank offered clear and convincing evidence that Mr. Foust owned HH, both
6 directly (as set forth in the Prior Judgment related to the Motorcoach and issued on March 8,
7 2018) and indirectly (*i.e.*, though proof that Mr. Foust owns and/or is an officer of StarDust
8 Classic, the alleged owner of HH according to the bankruptcy filings).

9 6. Under the circumstances apparent in the record, this Court concludes that there is
10 privity for res judicata purposes between Mr. Foust and HH because there is substantial identity
11 between these defendant parties and a commonality of interest, namely attempting to hide cars that
12 Mr. Foust told the Bank he owned when he obtained the loan now that the Bank has a judgment,
13 including the Motorcoach.

14 7. This Court’s Prior Judgment related to the Motorcoach and issued on March 8,
15 2018 applies to and is binding upon HH in every respect.

16 8. HH does not have title to the Motorcoach, and the Court denies HH’s NRS 31.070
17 application and request and resolves the claim in favor of the Bank and against HH.

18 9. The Laughlin Constable, Mr. Jordan Ross, or any other authorized law enforcement
19 officer or person, is hereby empowered and ordered to release or restore possession of the
20 Motorcoach to the Bank, consistent with this order.

21 ***Conclusions of Law Related to Other Cars***

22 10. Nevada law empowers district court judges to order judgment creditors to surrender
23 possession of property to satisfy judgments:

24
25 **NRS 21.320 Judge may order property applied toward satisfaction of**
26 **judgment.** The judge or master may order any property of the judgment debtor
not exempt from execution, in the hands of such debtor *or any other person*, or
due to the judgment debtor, to be applied toward the satisfaction of the judgment.

27 (Emphasis supplied.) This law is known as a turnover statute. The turnover statute is a procedural
28 device to assist judgment creditors in post-judgment collection. *E.g. Davis v. West*, 317 S.W.3d

301, 309 (Tex. App. 2009). A turnover order is a type of post-judgment enforcement order. In Nevada, this remedy is listed under the heading “Proceedings Supplementary to Execution” in NRS Chapter 21, Nevada’s judgment enforcement statute. A “supplementary proceeding” is “held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor’s assets available to satisfy the judgment.” BLACK’S LAW DICTIONARY (8th ed. 2004).

11. A judgment debtor bears the burden of proving it no longer owns assets it previously claimed. “Once a creditor presents evidence that the debtor owns property, a presumption arises that the assets are in the debtor’s possession, and the burden shifts to the debtor to account for the assets.” 33 C.J.S. EXECUTIONS § 589 (2018).

12. Where a party bears the burden of production, that party’s failure to satisfy the burden necessitates a finding against the party. *See, e.g., Ferguson v. LVMPD*, 131 Nev., Adv. Op. 94, 364 P.3d 592, 595 (2015) (“When the party moving for summary judgment fails to bear his burden of production, the opposing party has no duty to respond on the merits and summary judgment may not be entered against him.” (internal quotation marks omitted)); *Morgan v. State*, 134 Nev., Adv. Op. 27, 416 P.3d 212, 224-26 (2018) (affirming the district court’s overruling of defendant’s *Batson* challenge where defendant failed to bear his burden in demonstrating that the State engaged in discriminatory peremptory challenge); *Goodwin v. Jones*, 132 Nev., Adv. Op. 12, 368 P.3d 763, 769 (Nev. Ct. App. 2016) (affirming the denial of unemployment compensation to claimant, who failed to demonstrate, after the burden of production shifted to her, that her conduct was not misconduct in that it was reasonable and justified under the circumstances); *Tom v. Innovative Home Sys., LLC*, 132 Nev., Adv. Op. 15, 368 P.3d 1219 (Nev. Ct. App. 2016) (reversing the district court’s grant of summary judgment in favor of movant where movant “failed to meet its initial burden of production to show the absence of a genuine issue of material fact”).

13. Mr. Foust failed to carry his burden because he offered no evidence of actual sales or transfers of any cars, whether the 59 cars originally identified for the bank (Exhibit A) or the 20 cars HH now claims to own in the bankruptcy (Exhibit B).

14. Mr. Foust also failed to carry his burden because he offered only a few lines of superficial testimony that he sold his cars to HH, though he failed to say which cars, what the

1 purchase price was, or when the transaction occurred. Mr. Foust literally introduced no
2 documentary evidence himself, and what little testimony he offered related primarily to the
3 Motorcoach. (11/5/18 Hr'g Trans., p. 71 *et seq.*)

4 15. Similarly, the documentary evidence HH adduced related solely the Motorcoach

5 16. On the other hand, the Bank gave clear, convincing, and compelling evidence of
6 Mr. Foust's ownership and control of the cars in question: his repeated, written statements
7 concerning his car collection and expenses related thereto given to the Bank over a period of years
8 and bills of sale that Mr. Foust signed transferring some of the cars to HH without consideration
9 right after Mr. Foust purchased the cars.

10 17. The Bank has offered ^{substantial and credible} ~~a treasure trove~~ of evidence showing that Mr. Foust still
11 owns, possesses, and controls the cars in question, including especially the four cars he openly
12 admits he and his family use (the three Mercedes and the 2000 GMC Yukon) and the 20 cars that
13 HH claims to own in the bankruptcy.

14 18. Mr. Foust is the owner of all cars over which HH claims an interest, including those
15 cars identified in the bankruptcy (Exhibit B).

16 19. Mr. Foust is the owner of all cars over which StarDust Classic claims an interest,
17 including those cars identified in the bankruptcy (Exhibit B).

18 20. Mr. Foust is the owner of all of the cars that HH contends or has contended that it
19 obtained from Mr. Foust and transferred to some third parties.

20 21. Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he
21 owned or claimed to own at the time he became indebted to Bank, and/or which he contends or
22 has contended were transferred by him to some third parties or party.

23 22. Mr. Foust is the owner, member, and/or officer of StarDust Classic.

24 23. Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in
25 Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with the actual intent
26 to hinder, delay, and defraud the Bank. The record indicates that many, if not all, of the so-called
27 "badges" that demonstrate actual fraud occurred here. The alleged sale of cars by Mr. Foust to
28 HH is a scam and a fraudulent transfer.

24. Any alleged sale or transfer of the ^(cars) 20 that HH still claims to own (Exhibit B) ^{is} void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. See NRS 112.210(1)(a).

25. Any alleged sale or transfer of the 59 cars that Mr. Foust claimed to own when obtained the loan from the Bank (Exhibit A) is void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. See NRS 112.210(1)(a).

26. Any alleged sale or transfers of any cars to StarDust Classic, including those listed in Exhibits A and B is void ab initio and is of no effect whatsoever so that the Bank may satisfy its claim and enforce its Judgment by levying execution against such cars. See NRS 112.210(1)(a).

27. A certified copy of this order shall constitute conclusive proof, to any person, entity, or governmental agency or other authority, including regulators charged with registering vehicles, that HH has been fully and completely divested of any and all title to any vehicles or automobiles in which it claims an interest, including those identified in Exhibit B, and that such title and interest resides in Mr. Foust, subject to the rights of the Bank set forth herein.

28. Any attachment or garnishment of any cars identified in Exhibits A and B is confirmed as valid, lawful, and regular in every respect. See NRS 112.210(1)(b).

29. Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered, on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH. ^{in a manner that protects the cars from any damage}

~~30. It is further ordered that, in the event it develops that the cars identified in Exhibits A and B are damaged in any way while in defendants' possession or in transit, Mr. Foust and HH shall be liable for any repairs that are required to be made to restore the property to its condition when possession was first taken by Mr. Foust or HH.~~

31. Mr. Foust and HH are and shall be permanently enjoined from any further attempt to dispose, sell, transfer, hypothecate, or pledge any cars identified in Exhibits A and B, or any


1 assets traceable to the sale of such cars, or from interfering with the Bank's right to repossess,
2 keep, and sell said cars. See NRS 112.210(1)(c)(1).

3 32. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if
4 appropriately identified and designated.

5 Dated this 19 day of December, 2018.

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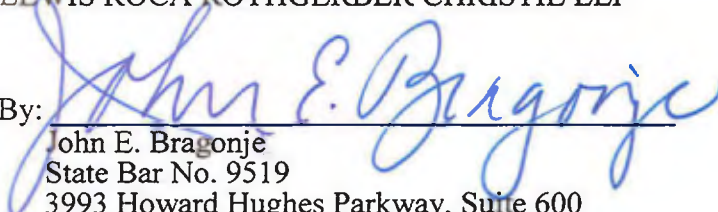
DISTRICT COURT JUDGE

33. LIMITATION. Notwithstanding the foregoing, TM Nothing
contained herein shall have the effect of precluding
any person or entity not referenced herein from
exercising any rights, if any, that may exist under
NRS 31.070 in a new proceeding.


Respectfully submitted by:

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By:


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Exhibit A

Exhibit A

FOUST Classic Cars

Autos.xlsx

Foust Classic Cars

YEAR	MAKE	DESCRIPTION	Buy	COST	Est. Value	VIN	STATE	From
1955	CADILLAC	V-12 COUPE	1996	\$44,000.00	\$100,000.00	4100743	CAL	THOMAS CADILLAC
1989	CHAPARRAL	TRAILER	2000	\$25,000.00	\$25,000.00	1S9SC4532K1090654	ND	Shirley Muldowney
1956	CHEV	CORVETTE	1982	\$10,000.00	\$50,000.00	VE56S003290	NO, DAK	ROBERT HILTON
1957	CHEV	BEL AIR CONV. (FI)	1989	\$50,000.00	\$100,000.00	VC570141640	KENTUCKY	O.B. SMITH
1957	CHEV	CORVETTE	1988	\$45,000.00	\$50,000.00	E57S103094	KENTUCKY	SOUTHLAND INVEST.
1966	CHEV	TURBO CORVAIR	1990	\$5,000.00	\$5,000.00	107376L110678	CAL	R & S
2007	CHEV	Corvette Z06	2007	\$80,000.00	\$50,000.00	1G1YY26E375121069	Montana	Chevrolet
1957	CHRYSLER	300 C CONV.	1988	\$27,000.00	\$150,000.00	3N571810	Montana	Joe Bortz
2002	Crysler	PT Cruiser	2001	\$35,000.00	\$5,000.00	3C 8FY68852T216202	NV	Crysler
2005	Crysler	PT Cruiser	2006	\$20,000.00	\$5,000.00	3C3AY7SS05T701409	Montana	Crysler
2009	Crysler	PT Cruiser	2009	\$13,000.00	\$5,000.00	3A8FY68899T510047	Montana	Crysler
1965	DODGE	SAVOY Acid dip car	1989	\$33,000.00	\$100,000.00	W0512245600	ILL.	JAMES JACKSON
1990	FERRARI	TESTAROSSA	1995	\$104,000.00	\$75,000.00	ZFFSG17AGL0083464	ND	Jerry Buss
1937	FORD	Coupe	2006	\$75,000.00	\$75,000.00	3541190	Montana	R & S
1940	FORD	Coupe	2007	\$40,000.00	\$40,000.00	AZ152801	Montana	Spencer Shakstad
1955	FORD	T-BIRD (96 MILES)	1988	\$45,000.00	\$45,000.00	P5FH166138	CAL	PS Auction
1955	FORD	T-BIRD (CHEV)	1976	\$15,000.00	\$15,000.00	P5FH240647	CAL	DEDE
1957	FORD	T-BIRD (MATTOX)	1990	\$5,000.00	\$5,000.00	D7FH251424 *	CAL	BOB MATTAX
1957	FORD	FAIRLANE 500	1990	\$7,500.00	\$25,000.00	D7LV162233	Montana	DALE VALURE
1963	FORD	427 GALAXY (R-CAR)	1990	\$23,000.00	\$100,000.00	3W66R131679	KANSAS	RICHARD PETTY
1964	FORD	THUNDERBIRD - BLACK	1992	\$17,000.00	\$17,000.00	4Y85Z127518	GEORGIA	WILLIARD CARROLL
1966	FORD	THUNDERBIRD - RED	1990	\$19,000.00	\$19,000.00	6Y85Z104010	S. CAROLINA	TRANSOUTH
1967	FORD	MUSTANG Convertible	1990	\$5,500.00	\$40,000.00	7T03T118534 *	Montana	Barret Jackson
1968	FORD	COBRA JET MUSTANG	1990	\$20,000.00	\$50,000.00	8R02R1688059	MONTANA	ROBERT KWAPY
1970	FORD	BOSS 429 - Drew Alcazar	1990	\$90,000.00	\$200,000.00	0F0Z2137925/KK2459	WISCONSIN	LIEN, MARK
1971	FORD	PANTERIA	1988	\$15,000.00	\$15,000.00	THPNLY01620	Montana	ORAN BERC
1973	FORD	PANTERIA - \$300,000 Rest.	2003	\$63,000.00	\$100,000.00	THPNNU05291	Montana	IRS Auction
1988	FORD	#11 Budweiser NASCAR	2000	\$40,000.00	\$40,000.00	MRE #unknown	None	Bill Elliot
1991	FORD	#9 COORS LITE NASCAR	2000	\$54,060.00	\$54,060.00	MRE #21	BILL OF SALE	RON HUBER
2008	Harley-Davidson	Motor Cycle	2008	\$21,470.00	\$21,470.00	1HD 1KB 4398 Y 652 304	Cal	Golden Gate
2009	Harley-Davidson	Motor Cycle	2010	Trade 2008 H/D	Trade 2008 H/D	1HD1HPH349K810543	Montana	Golden Gate
1987	HONDA	SCOOTER	2000	\$800.00	\$100.00	JH2HF0316HS202130	CAL	Honda
1992	HONDA	SCOOTER	2000	\$800.00	\$100.00	3H1HF031OND700204	CAL	Honda
1991	INTERNATIONAL	4000 SERIES	2000	\$50,000.00	\$25,000.00	1HTSDNHL4MH321753	ND	Shirley Muldowney
1951	JAGUAR	XK 120 RACE CAR	2000	\$45,050.00	\$45,050.00	S671966	Montana	Dana Mecham auctions
1964	JAGUAR	XKE	1999	\$39,000.00	\$39,000.00	881364	CAL	WILLIAM LAZARIS
1985	KAWASAKA	NINJA 900	1985	\$1,500.00	\$1,500.00	JKAZX2A13FB505429/ZX90X	Montana	KAWASAKA
1967	LAMBORGHINI	MUIRA (3571)	1975	\$13,000.00	\$250,000.00	3571	CAL	Private Party ??

MSA00049

FOUST Classic Cars

1988	LAMBORGHINI	COUNTACH	1995	\$64,500.00	\$64,500.00	ZA9CA05A8JLA12269	Montana	Al Bertoni
1998	MARATHON	COACH	2003	\$420,000.00	\$200,000.00	2PCM3349XV1026183	DEALER	MARATHON
1956	Mercedes	300 SL - Scott Resto.	1978	\$50,000.00	\$750,000.00	198 980 650086	CAL	Stock Broker
1968	Mercedes	280 SL	2006	\$60,850.00	\$60,850.00	11304412000874	Virginia	R & S
1977	Mercedes	380 4 DR SEDAN	1977	\$35,000.00	\$35,000.00	10704412035568	ND	Mercedes
1987	Mercedes	450SL	2007	\$37,000.00	\$37,000.00	WDBBA48D5HA059358	Montana	Mercedes
2006	Mercedes	S500	2008	\$43,000.00	\$25,000.00	WDBNG75J76A482303	Montana	Mercedes
2007	Mercedes	M50 SUV	2007	\$65,000.00	\$25,000.00	4JGBB75E07A222537	Montana	Mercedes
1957	OLDSMOBILE	98 ROCKET	1990	\$30,000.00	\$30,000.00	579M27665	Montana	DUFFY SHAMBURGER
1957	PACKARD	CLIPPER	1982	\$8,000.00	\$8,000.00	57L1582	N.D.	Bowman Chev
1962	PLYMOUTH	Savoy w/413 - Ramchargers	1989	\$46,000.00	\$75,000.00	512 216 59 86	MICH.	TOM POLIDAN
1964	PLYMOUTH	HEMI (ALUMINUM BODY)	1990	\$25,000.00	\$50,000.00	RACE CAR - No Title	PLYMOUTH	Jim (Car Covers)
1966	PLYMOUTH	HEMI BELVADIRE	1989	\$45,000.00	\$45,000.00	RP23H67303290	Montana	JOHN KEROLA
2000	PLYMOUTH	PROWLER	2000	\$51,000.00	\$30,000.00	1P3EW65G1YV603597	Montana	Harry Hildibrand
1969	PONTIAC	JUDGE	1988	\$9,000.00	\$40,000.00	Get From Bob Wokel	ND	Bob Wokel
1958	PORSCHE	CABROLET	1990	\$20,000.00	\$20,000.00	NR150801	CAL	R & S
1983	PORSCHE	CARREA	1988	\$35,000.00	\$35,000.00	WP0EA0915DS170119	CAL	Santa Monica dealer
1980	ROLLS ROYCE	SILVER CLOUD II	1990	\$22,500.00	\$22,500.00	SRL41595C	CAL	DUDLEY HAINES
1965	SHELBY	427 Cobra - Org. Comp Car	2000	\$550,000.00	\$1,500,000.00	CSX3012	Not Titled	Original MSO
1968	SHELBY	GT500	1991	\$21,500.00	\$75,000.00	8T02S14955001843	CAL	JIM SHIPLEY
1966	SHELBY	427 COBRA - Ford Cammer	1991	\$50,000.00	\$50,000.00	SP25692LA	CAL	kentucky Lawyer
				\$2,885,030	\$5,120,130			

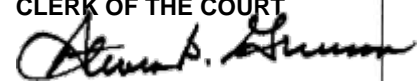
Exhibit B

Exhibit B

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY26E375121069	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ152801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1955	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240647	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNUU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671966	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27665	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW65G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075860	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144085	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46. PAGE 5



1 **APPL**
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6 *Attorneys for Plaintiff/Judgment Creditor*
7 *Baker Boyer National Bank*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **BAKER BOYER NATIONAL BANK, a**
Washington corporation,

11 Plaintiff/Judgment Creditor,

12 vs.

13 **JAMES PATTERSON FOUST, JR., also**
known as James P. Foust, Jr., individually, and
14 his marital community, if any,

15 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**Application for Order to Show Cause
Why Defendants Should Not Be Held in
Civil Contempt**

16 **I.**

17 **INTRODUCTION**

18 Judgment debtor and defendant James P. Foust received a \$1,077,600 loan from Baker
19 Boyer National Bank (the "Bank") in 2013. After his refusal to repay the loan, the Bank obtained
20 a judgment in the original amount of \$933,616.30 against Mr. Foust in Washington. (See Exs. A-
21 B to 8/31/17 Appl. for Foreign Judgment, on file herein, affirmed on appeal). The Bank
22 domesticated the judgment here. (*Id.*) Mr. Foust has refused, though he obviously has means, to
23 voluntarily pay the Judgment. Interest and fees are accruing all the time and the judgment is now
24 well in excess of \$1 million. This Court is now engaged in the enforcement of the Judgment.

25 When applying for the loan, Mr. Foust represented in writing on multiple occasions that he
26 owned a very expensive collection of classic and exotic cars. December 20, 2017, the Bank filed a
27 motion for an order requiring Mr. Foust to turn over the collection to partially satisfy the
28 judgment. In his written opposition, Mr. Foust indicated that he no longer owned a single one of

1 the 59 vehicles that were the subject of the motion and which he pledged to the Bank to secure the
2 loan.

3 Mr. Foust later specifically indicated that he transferred many of these vehicles to a third
4 party named Harry Hildibrand, LLC ("HH"). This allegation triggered an avalanche of
5 proceedings. The Court conducted two evidentiary hearings on February 15, 2018 and November
6 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the parties have
7 submitted approximately 30 papers in support of these activities. In the end, the Court ruled in
8 favor of the Bank and against Mr. Foust and HH in every respect. (*See generally* 1/9/19 Findings
9 of Fact, Conclusions of Law, and Final Judgment, on file herein.) In particular, the Court ordered
10 the defendants¹ to turn over the vehicles to the Bank. (*Id.*)

11 We approach the Court again because, after all this, the defendants now refuse to comply
12 with the Court's turn over order. Defendants refuse to deliver any of the vehicles to the Bank.
13 Instead, defendants behave as if this Court never conducted the hearings and never considered the
14 briefs and never issued its judgments and orders. Therefore, the Bank makes this application for
15 an order to show cause why the defendants, particularly Mr. Foust and Mr. Detwiler (HH's
16 manager), should not be held in contempt for their obstinate refusal to comply with this Court's
17 clear judgment and order. The defendants' chicanery is a part of this Court's record and official
18 findings. For instance, most recently, this Court found that "Mr. Foust's conduct epitomizes
19 concealing assets associated with fraudulent transfer" and that "Mr. Detwiler's demeanor was
20 untrustworthy." (1/9/19 Judgment, Findings of Fact ¶ 77, on file herein.)

21 Defendants are scofflaws. We believe the defendants will not comply with this Court's
22 orders unless this Court imprisons the defendants. Nevada statutes and the laws and practices of
23 this nation clearly empower this Court to imprison the defendants unless and until they perform
24 the acts this Court has ordered. If the Court will not take such steps, justice will miscarry.
25 Persons who have the ability to satisfy a lawful judgment will simply ignore this Court's
26 judgments.

27
28

¹ Mr. Foust and HH are sometimes collectively referred to as the defendants or the defense.

This Court should issue an order to show cause why the defendants should not be held in civil contempt. If the defendants refuse to turn over the vehicles by an outside deadline ordered by this Court, the Court should then issue warrants for the imprisonment of Mr. Foust and Mr. Detwiler, with a purge clause that permits the contemnors' release upon transfer of the vehicles. Specifically, Mr. Foust ought to be imprisoned until the four vehicles he and his family members possess and the 20 vehicles mentioned in the bankruptcy are turned over to the Bank; Mr. Detwiler ought to be imprisoned until the 20 vehicles mentioned in the bankruptcy are turned over.

II.

AFFIDAVIT CONCERNING FACTS CONSTITUTING CONTEMPT

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, John E. Bragonje, hereby swear under penalty of perjury that the following statements are true to the best of my knowledge and belief:

1. I am over the age of eighteen.
2. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP, counsel to the Bank in this action.
3. The facts of defendants' contempt are not in dispute: on January 10, 2019, this Court entered its judgment commanding Mr. Foust and HH, and its agents, including Mr. Detwiler, to turn over the vehicles that have been the subject of this Court's hearings and trials. (See generally 1/9/19 Judgment on file herein.)
4. Among other findings, the judgment concluded that "Mr. Foust is the owner of all cars over which HH claims an interest, including those cars identified in the bankruptcy (Exhibit B)." (1/9/19 Judgment, Conclusions of Law ¶ 18.)
5. The judgment warned that "Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered, **on penalty of contempt**, to deliver up, surrender possession of, and turn over to the Bank promptly in a manner that protects the cars from any damage, all cars identified

1 in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr.
2 Foust and/or HH.” (*Id.* ¶ 29 (emphasis supplied).)

3 6. Mr. Foust, HH, and their agents and affiliates are, therefore, under court order to
4 surrender all vehicles at issue in these proceedings.

5 7. I wrote to the defendants on January 23, 2019—nearly two weeks after the
6 judgment’s entry—to inform the defendants that the Bank was ready to take immediate possession
7 of the vehicles. (*See* Ex. 1 hereto.) In particular, I suggested that we begin with the 20 vehicles
8 identified in the bankruptcy (which the bankruptcy filings indicated were located in Compton,
9 California, and at undisclosed locations in Montana and North Dakota) (Ex. 1 (citing 1/9/19
10 Judgment, Findings of Fact ¶ 76) and those four vehicles in the possession and use of Mr. Foust
11 and his family members, i.e. a 2000 GMC Yukon; a 2007 Mercedes S550; a 2007 Mercedes CLK
12 550; and a 2007 Mercedes M50 (*see* 1/9/19 Judgment, Conclusions of Law ¶ 17).

13 8. The defense has failed to make any effort to surrender the vehicles, as ordered by
14 this Court “*on penalty of contempt.*” (1/9/19 Judgment, Conclusions of Law ¶ 29 ((emphasis
15 supplied).)

16 9. The defendants are well aware of this Court’s order and the Bank’s request for
17 compliance. Mr. Foust continues to be represented by counsel. I have had several discussions
18 with Mr. Foust’s counsel, Cody Mounteer of the Marquis Aurbach Coffing law firm. Mr.
19 Mounteer indicated in an email that he had spoken with his client specifically regarding
20 compliance, including on or about January 15 and 23, 2019. (*See* Ex. 2.)

21 10. I also telephoned Mr. Edward Detwiler, the manager of HH and a witness in the
22 trial before this Court (*see* 1/9/19 Judgment, Findings of Fact ¶ 23), who also received the letter
23 (Exhibit 1) on January 23, 2019. Despite that he signed all the bankruptcy filings identifying the
24 vehicles and testified at a creditors’ meeting about their location (*see id.* ¶¶ 49, 76), Mr. Detwiler
25 claimed to have no knowledge of the vehicles’ current whereabouts.

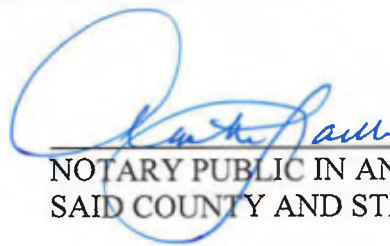
26 11. The defendants and their agents (Mr. Detwiler) have not complied with this Court’s
27 orders.

28 12. Further your affiant saith naught.

1 DATED this 13th day of February, 2019.

2
3
4 
JOHN E. BRAGONJE

5
6 On this 13th day of February, 2019, personally appeared before me, a Notary Public, in
7 and for said County and State, John E. Bragonje, known to me to be the person described in and
8 who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me
9 that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

10
11 
12 NOTARY PUBLIC IN AND FOR
13 SAID COUNTY AND STATE



14 ANNETTE JARAMILLO
Notary Public State of Nevada
My Commission Expires: June 1, 2019
Certificate No: 10-3715-1

15 **III.**

16 **MR. FOUST AND MR. DETWILER STAND IN CONTEMPT OF COURT**

17 This Court ordered Mr. Foust, HH, and their agents and affiliates to turn over all vehicles
18 at issue in these proceedings. Mr. Foust and Mr. Detwiler (the manager of HH) refuse to take any
19 action. They flout this Court's order. They stand in contempt.

20 **A. District Courts Maintain Contempt Power to Address Disobedience of Orders**

21 District courts maintain contempt power to address "[d]isobedience or resistance to any
22 lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3); *see*
23 *also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the
24 proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
25 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect
26 dignity and decency in its proceedings, and to enforce its decrees" and because it has particular
27 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
28 abuse of discretion).

Contempt proceedings may be criminal or civil in nature. *Lewis v. Lewis*, 132 Nev. Adv. Op. 46, 373 P.3d 878, 880 (2016). A civil contempt action is remedial in nature because it is meant to secure compliance with the court order. *Id.*; *see also* NRS 22.110. An order of contempt is reviewed for abuse of discretion. *Lewis*, 373 P.3d at 880.

B. One that Ignores a Clear Order Commits Contempt of Court

A district court may hold a person in contempt when the person has failed to comply with a lawful order or rule. NRS 22.010(3). To be held in contempt for disobeying a court order, the order must clearly put the person on notice of what is required. *Sw. Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983); *see also* *Cunningham v. Dist. Ct.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986) (“An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him.”).

Here, this Court’s January 9, 2019 judgment is unmistakable, it identifies vehicles by make, model, and VIN and directs the defendants to turn over the vehicles to the Bank.

C. Nevada Statutes Specifically Identify Contempt In Supplementary Proceedings Such as this Judgment Enforcement Action

This action is a supplemental proceeding. A “supplementary proceeding” is “held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor’s assets available to satisfy the judgment.” *Black’s Law Dictionary* (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to the original suit” and “is not an independent proceeding or the commencement of a new action.” *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942). This Court is enforcing a Washington state judgment domesticated in Nevada. (*See* Exs. A–B to 8/31/17 Appl. for Foreign Judgment, on file herein, affirmed on appeal). NRS Chapter 21 propounds supplemental procedures. Under this law, disobedience to a court’s order in supplemental proceedings constitutes a contempt: “If any person, party or witness disobey an order of the master, properly made in the proceedings before the master under this chapter, he or she may be punished by the court or judge ordering the

reference, for a contempt.” NRS 21.340. The defendants have violated two separate contempt statutes.

D. Mr. Foust and Mr. Detwiler Are In Contempt of Court

Here, the Court’s order clearly and unambiguously directed Mr. Foust and HH (including its agents, such as its manager Edward Detwiler) to deliver the vehicles identified in the order. The undersigned also wrote insisting on performance of the order and offering a common-sense beginning point: the defendants’ delivery of the cars that Mr. Foust and his family are currently using and the 20 cars that HH—through Mr. Detwiler—identified in the bankruptcy. The defendants refuse to respond. The defendants stand in contempt.

IV.

IF DEFENDANTS CONTINUE TO REFUSE TO TURN OVER THE VEHICLES, THIS COURT SHOULD ARREST AND HOLD MR. FOUST AND MR. DETWILER UNTIL THEY COMPLY WITH THE ORDER

Mr. Foust and Mr. Detwiler require stringent treatment. If they refuse to turn over the vehicles, this Court should use its power of incarceration to detain these two until they comply with the Court’s order. Nevada statutes and the general law of this nation permit courts to indefinitely imprison persons who willfully omit to perform an act ordered by a court. Without this action, the defense will continue to disrespect this Court.

A. Courts Have the Power to Incarcerate Persons to Enforce Orders

Coercive incarceration is within the inherent power of a court, insofar as it depends on the contemnor’s ability to comply, thereby purging himself of contempt, and is designed to coerce, rather than punish and therefore the ordinary requirements of due process do not attach. *Shillitani v. United States*, 384 U.S. 364, 369–70 (1966); *see also S.E.C. v. Solow*, 396 Fed. App’x 635 (11th Cir. 2010) (affirming district court’s adjudication of civil contempt and ordering defendant’s incarceration until he purged his contempt in compliance with the court’s directive). With civil contempt, “the contemnor is able to purge the contempt and obtain his release by committing an affirmative act.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 844 (1994) (internal quotation omitted). This case justifies this extreme remedy.

1 **B. Nevada Statutes Permit a Court to Issue**
2 **a Warrant for the Arrest of Contemnors**

3 Nevada courts may issue a bench warrant for the arrest of a person guilty of contempt:

4 **NRS 22.040 Issuance of warrants of attachment and commitment.** When
5 the contempt is not committed in the immediate view and presence of the court or
6 judge, a warrant of attachment may be issued to bring the person charged to
7 answer, or, without a previous arrest, a warrant of commitment may, upon notice,
8 or upon an order to show cause, be granted; and no warrant of commitment shall
9 be issued without such previous attachment to answer, or such notice or order to
10 show cause.

11 **C. The Penalty for Contempt Includes Arrest and Imprisonment**

12 In addition to this Court's inherent authority, Nevada's statutes explicitly permit
13 imprisonment:

14 **NRS 22.100 Penalty for contempt.**

15 1. Upon the answer and evidence taken, the court or judge or jury, as the
16 case may be, shall determine whether the person proceeded against is guilty of the
17 contempt charged.

18 2. Except as otherwise provided in NRS 22.110, if a person is found guilty
19 of contempt, a fine may be imposed on the person not exceeding \$500 or the
20 person may be imprisoned not exceeding 25 days, or both.

21 3. In addition to the penalties provided in subsection 2, if a person is found
22 guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require
23 the person to pay to the party seeking to enforce the writ, order, rule or process
24 the reasonable expenses, including, without limitation, attorney's fees, incurred
25 by the party as a result of the contempt.

26 Furthermore, in the judgment-enforcement context, Nevada's laws provide a separate basis to
27 arrest persons who hid assets to defraud creditors:

28 **NRS 31.480 Cases in which defendant may be arrested.** The defendant
may be arrested, as hereinafter prescribed, in the following cases:

* * *

3. In an action to recover the possession of personal property unjustly
detained, when the property, or any part thereof, has been concealed, removed, or
disposed of so that it cannot be found or taken by the sheriff.

5. When the defendant has removed or disposed of the defendant's property,
or is about to do so, with intent to defraud the defendant's creditors.

D. A Person May Be Imprisoned Until the Ordered Act Is Performed

Although NRS 22.100(2), sets a default rule prohibiting imprisonment for more than 25 days, subsequent sections in the same statute provide for an indefinite term. Specifically, where, as here, one has refused to perform an affirmative act required by the provisions of an order, no limitation on the term exists:

NRS 22.110 Imprisonment until performance if contempt is omission to perform an act; penalty for failure or refusal to testify before grand jury.

1. Except as otherwise provided in subsection 2, when the contempt consists in the omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it. The required act must be specified in the warrant of commitment.

See also TRACY DiFILLIPPO ET AL. EDS., NEVADA CIVIL PRACTICE MANUAL, Sixth Edition § 31.34 ([updated] 2016) (“The person guilty of contempt may be imprisoned until he or she perform the ordered act, if it is within his or her power to perform.”). Nevada’s statute corresponds with the general jurisprudence:

Imprisonment for civil contempt may be ordered where a defendant has refused to perform an affirmative act required by the provisions of an order that, either in form or substance, is mandatory in character. A contemner who has the ability to comply with the underlying court order *can be imprisoned indefinitely* until the contemner complies with the underlying court order, even if it appears that the contemner is never going to comply.

17 C.J.S. CONTEMPT § 186 (WEST [updated] 2019) (emphasis supplied).

1. An Indefinite Term Is Just Because the Contemnor “Carries the Prison Keys” in His Pocket

Imprisonment for civil contempt usually is not for a definite term, but the party in contempt stands committed unless and until the affirmative act required by the order of the court is performed. See *Lewis*, 373 P.3d at 881 (2016) (“A purge clause [in the contempt order] gives the defendant the opportunity to purge himself of the contempt sentence by complying with the terms of the contempt order.”). Thus contemnors carry the prison keys in their own pockets. *Shillitani v. United States*, 384 U.S. 364, 368 (1966). A defendant has the choice to “pay or stay.” 17 C.J.S. CONTEMPT § 183.

2. *Imprisoning a Judgment Debtor that Willfully Refuses to Turnover Property Is a Common Remedy*

In Nevada, the cases treating the subject of imprisonment for failure to perform an affirmative act typically arise in spousal- and child-support lawsuits. *Foley v. Foley*, 432 P.3d 736 (Nev. 2018) (unpublished) (observing that courts may imprison parents who refuse to pay child support); *Hildahl v. Hildahl*, 95 Nev. 657, 662, 601 P.2d 58, 61 (1979) (“The use of the contempt power to enforce the provisions of a divorce decree has been approved many times in this state.”).

However, in the judgment enforcement context, violating a “turn-over” order, such as the Court’s latest judgment in this case, often prompts imprisonment until the contemnor agrees to turn over the property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459–63 (S.D.N.Y. 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars, 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v. Jenkins*, 760 F.2d 736, 737–38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody of the U.S. Marshall for failing to return confidential documents taken from an employer and failure to disgorge profits made in conducting a forbidden, competing enterprise).

This Court will have to force the defendants to comply this its orders; the defendants will not comply unless and until they face jail time.

V.


CONCLUSION

This Court should issue an order to show cause why the defendants should not be held in civil contempt. If the defendants refuse to turn over the vehicles by an outside deadline ordered by this Court, the Court should then issue warrants for the imprisonment of Mr. Foust and Mr. Detwiler, with a purge clause that permits the contemnors’ release upon transfer of the vehicles. Specifically, Mr. Foust ought to be imprisoned until the four vehicles he and his family members possess and the 20 vehicles mentioned in the bankruptcy are turned over to the Bank; Mr. Detwiler ought to be imprisoned until the 20 vehicles mentioned in the bankruptcy are turned over.

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Dated this 13th day of February, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 
John E. Bragonje (SBN.: 9519)
E-mail: jbragonje@lrrc.com
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Attorneys for Plaintiff Baker Boyer National Bank

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I E-filed and served the foregoing
3 document entitled “**Application For Order To Show Cause Why Defendants Should Not Be**
4 **Held In Civil Contempt and Order to Appear and Show Cause Why Defendants Should Not**
5 **Be Held in Civil Contempt**” through the Court’s electronic filing system on all interested parties
6 on the e-filing service list and mailed the foregoing, via first class postage with the charges
7 prepaid, to the last two named addresses, who have not registered through the Court’s electronic
8 filing system.

9 Cody S. Munteer
10 Tom W. Stewart
11 **MARQUIS AURBACH COFFING**
10001 Park Run Drive
Las Vegas, NV 89145

12 **HARRY HILDIBRAND, LLC**
13 c/o Jared S. Heggen
14 Street Address
3011 American Way
Missoula, MT 59808

15 Edward Detwiler
16 817 Windhook Street
Las Vegas, NV 89144

17 DATED this 21st day of February, 2019.

18
19 /s/ Luz Horvath
20 An employee of Lewis Roca Rothgerber Christie LLP
21
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28

Exhibit 1

Exhibit 1

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy
Suite 600
Las Vegas, NV 89169

702.949.8200 main
702.949.8398 fax
lrrc.com

John Bragonje
Admitted in Nevada
702.474.2625 direct
702.216.6173 fax
jbragonje@lrrc.com

January 23, 2019

Our File Number: 213222-00108

VIA E-MAIL (CMOUNTEER@MACLAW.COM; TSTEWART@MACLAW.COM;
EDETWILER@CBVEGAS.COM)
VIA U.S. MAIL

CONFIDENTIAL

Cody Munteer
Thomas Stewart
Marquis Aurbach Coffing
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Harry Hildibrand, LLC
c/o Jared S. Heggen
Street Address
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Missoula, MT 59808

Edward Detwiler
817 Windhook Street
Las Vegas, NV 89144

Re: **Baker Boyer National Bank v. Foust; Case Number A-17-760779-F**

Dear Cody, Tom, Mr. Detwiler, and Harry Hildibrand, LLC:

As you know, the court entered its judgment commanding Mr. Foust to turn over the vehicles that are the subject of this dispute on January 10, 2019. (You all knew about the order even before that—when it was filed the day before.) Among other findings, the judgment concluded that “Mr. Foust is the owner of all cars over which [Harry Hildibrand, LLC (hereinafter “HH”)] claims an interest, including those cars identified in the bankruptcy (Exhibit B).” (1/9/19 Judgment, Conclusions of Law ¶ 18.) The judgment warned that “Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and StarDust Classic and any of its agents) are ordered, on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly in a manner that protects the cars from any damage, all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH.” (*Id.* ¶ 29.)

Mr. Foust, HH, and their agents and affiliates are, therefore, under court order to surrender all vehicles at issue in these proceedings. The Bank would like to begin with those 20 vehicles identified in the bankruptcy (which we understand from the bankruptcy filings prepared by you all are located in Compton, California and at undisclosed locations in Montana and North Dakota (see id. at Findings of Fact ¶ 76) and those four vehicles in the possession and use of Mr. Foust and his family members, i.e. a 2000 GMC Yukon; a 2007 Mercedes S550; a 2007 Mercedes CLK 550; and a 2007 Mercedes M50. (Id. Conclusions of Law ¶ 17.)

The Bank is ready to take immediate possession of the vehicles. Please contact me at your earliest convenience to make arrangements for the transfers. I want to emphasize that the Bank, following the court's explicit mention of contempt in its order, intends to seek a contempt order against Mr. Foust, Mr. Detwiler, and any other agents of Harry Hildibrand, LLC that refuse to turn over the vehicles mentioned. We will ask that bench warrants issue for the arrest of those persons resisting the order. If I have not heard back from you with positive, concrete details on making these transfers by January 25, 2019, I will assume that the defendants have elected to flout the court's order. The time for delay is over. The defendants have had their days in court. Now it is time to turn over the property to partially satisfy this judgment.

I look forward to hearing from you.

Very truly yours,



John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB

Exhibit 2

Exhibit 2

Bragonje, John

From: Cody Munteer <cmunteer@maclaw.com>
Sent: Tuesday, January 15, 2019 1:43 PM
To: Cody Munteer; Bragonje, John
Cc: Tom W. Stewart
Subject: RE: Foust [IWOV-iManage.FID1007225]

[EXTERNAL]

John,

I spoke to my client briefly, but as discussed he is in ill health and requested to meet with me to address everything next Wednesday. I am not trying to drag this out, that is honestly the first day he said he has available to meet. I will let you know as soon as I have met with the client whether there is any traction on settlement, turning over vehicles, or otherwise.

Thanks,



Cody S. Munteer, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6089
f | 702.856.8915
cmunteer@maclaw.com | [vcard](#)
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From: Cody Munteer
Sent: Tuesday, January 15, 2019 11:18 AM
To: Bragonje, John
Cc: Tom W. Stewart
Subject: Foust

John,

I have not forgot about you and your client, I have reached to my client that last couple days, and hope to talk to him any time now.

Thanks,



Cody S. Mounteer, Esq.

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.207.6089

f | 702.856.8915

cmounteer@maclaw.com | [vcard](#)

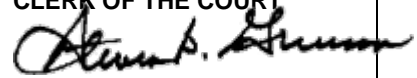
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NEO
John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**NOTICE OF ENTRY OF ORDER TO
APPEAR AND SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE
HELD IN CIVIL CONTEMPT**

PLEASE TAKE NOTICE that an Order to Appear and Show Cause Why Defendants
Should Not Be Held in Civil Contempt was entered on February 21, 2019. A copy of the Order is
attached hereto.

Dated this 25th day of February, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ John E. Bragonje

John E. Bragonje (SBN.: 9519)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Attorneys for Plaintiff Baker Boyer National Bank

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled “**Notice Of Entry Of Order to Appear and Show Cause Why**
4 **Defendants Should Not Be Held in Civil Contempt**” through the Court’s electronic filing
5 system on all interested parties on the e-filing service list and mailed the foregoing, via first class
6 postage prepaid to all parties listed below:

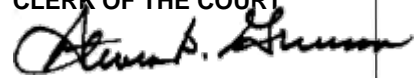
7 Cody S. Mounteer
8 Tom W. Stewart
9 **MARQUIS AURBACH COFFING**
10 10001 Park Run Drive
11 Las Vegas, NV 89145

12 **HARRY HILDIBRAND, LLC**
13 c/o Jared S. Heggen
14 Street Address
15 3011 American Way
16 Missoula, MT 59808

17 Edward Detwiler
18 817 Windhook Street
19 Las Vegas, NV 89144

20 DATED this 25th day of February, 2019.

21 /s/ Luz Horvath
22 An employee of Lewis Roca Rothgerber Christie LLP
23
24
25
26
27
28



ORDR

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
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*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**Order to Appear and Show Cause Why
Defendants Should Not Be Held in Civil
Contempt**

HEARING REQUIRED

DATE: 4/1/19
TIME: 9:00 AM

TO: JAMES P. FOUST, JR.

HARRY HILDIBRAND, LLC

EDWARD DETWILER

The Court having examined the "Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt" filed by the plaintiff and judgment creditor, Baker Boyer National Bank (the "Bank"), on file herein, and finding that the affidavit accompanying it meets the requirements of the Nevada Revised Statutes, and the Court being fully advised in the premises and good cause appearing; therefore,

IT IS HEREBY ORDERED that you are to appear in Department II of the above-entitled Court at the hour of 9:00 A m on the 1st day of April 2019, and show cause why you should not be held in civil contempt for failing to comply with this Court's January 9, 2019 "Findings of Fact, Conclusions of Law, and Judgment," and especially

1 the order therein requiring Mr. Foust Harry Hildibrand, LLC and their agents (including Mr.
2 Detwiler, Harry Hildibrand LLC's manager) to turn over vehicles to the Bank;

3 IT IS FURTHER ORDERED that you may file affidavits on your behalf with the Court
4 and you may appear and present testimony on your behalf at the hearing according to NRS
5 Chapter 22;

6 IT IS FURTHER ORDERED that if you fail to appear, the Bank will apply to the Court,
7 for a ruling of contempt and warrant for your imprisonment, as described in the application;

8 IT IS FURTHER ORDERED that this Order shall be served upon the defendants pursuant
9 to NRCP 4(d) by service of a true copy thereof pursuant to said rule no later than two (2) days
10 prior to the above-mentioned hearing date; however, in the case of Mr. Foust, who is represented
11 by counsel, this order may simply be served upon his counsel of record pursuant to NRCP 5.

12 IT IS SO ORDERED this 15^m day of February, 2019

13
14
15
16 
DISTRICT COURT JUDGE

17 TM

18
19
20 Respectfully submitted,

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22
23 By: 

24 John Bragonje

25 State Bar No. 9519

26 E-mail: jbragonje@lrrc.com

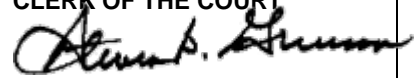
27 3993 Howard Hughes Parkway, Suite 600

28 Las Vegas, NV 89169

Tel: 702-474-2625

Fax: 702-216-6173

Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

BAKER BOYER NATIONAL BANK,)

Plaintiff,)

vs.)

JAMES PATTERSON FOUST, JR.,)

Defendant.)

CASE NO. A-17-760779

DEPT. NO. II

Transcript of Proceedings

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

SHOW CAUSE HEARING

MONDAY, APRIL 1, 2019

APPEARANCES:

For the Plaintiff: JOHN E. BRAGONJE, ESQ.

For the Defendant: MICHAEL MAZUR, ESQ.

RECORDED BY: SANDRA TRUCHNIC, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

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TABLE OF CONTENTS

PAGE

WITNESS:

JAMES FOUST

Direct Examination by Mr. Mazur:

11

1 MONDAY, APRIL 1, 2019 AT 9:07 A.M.

2

3 THE COURT: Most of you are here. Right?

4 MR. BRAGONJE: Good morning, Your Honor. John
5 Bragonje --

6 THE COURT: Well --

7 MR. BRAGONJE: Sorry.

8 THE COURT: I'm sorry. There's still people
9 sitting the back. I thought I only had two matters on
10 today. What matter are you here for?

11 [Colloquy on a separate matter]

12 [Case trailed at 9:08 a.m.]

13 [Hearing recalled at 9:10 a.m.]

14 THE COURT: All right. So, let's go back to where
15 we started, *Baker Boyer versus James Foust*, A760779. Now
16 we can do it.

17 MR. BRAGONJE: Good morning, Your Honor. John
18 Bragonje with the Lewis Roca law firm on behalf of the
19 plaintiff and judgment creditor, Baker Boyer Bank.

20 THE COURT: All right.

21 MR. MAZUR: Good morning, Your Honor. Michael
22 Mazur --

23 THE COURT: Yeah.

24 MR. MAZUR: -- on behalf of the defendant, James
25 Foust. And, Your Honor, we did file a motion this morning.

1 I don't think it's hit your calendar yet. It was about
2 2:30 this morning. We did e-mail a copy over to --

3 THE COURT: Okay. What's your motion?

4 MR. MAZUR: It was a Motion to Discharge the
5 Attachment Pursuant 31.200. The attachment order, I know
6 that the case is pretty convoluted. We were just retained
7 this last week. And it goes way back. It was pretty
8 substantial in the files, about 2,000 pages to review.

9 THE COURT: Yeah.

10 MR. MAZUR: But we did get --

11 THE COURT: I didn't think it was convoluted; it
12 just had a lot of parts. Right?

13 MR. MAZUR: Repetitive. Yeah.

14 THE COURT: I'm pretty up to speed on everything
15 we did and I think we did it in a very organized manner.

16 MR. MAZUR: Yeah. Well, I looked at it going
17 backwards and, then, all the way through.

18 THE COURT: Yeah. How long have you -- are you
19 coming in new on the case?

20 MR. MAZUR: I just came in today. I just filed my
21 first document and appearance today in the matter.

22 THE COURT: Okay.

23 MR. MAZUR: I know that counsel, Cody [phonetic],
24 just recently withdrew about three weeks ago from the
25 matter.

1 THE COURT: Okay.

2 MR. MAZUR: And I was just retained in this.

3 THE COURT: All right. Very good. So, Mr.
4 Bragonje, why are we here today?

5 MR. BRAGONJE: So, we're here today, Your Honor,
6 on a Order to Show Cause. And, as Your Honor is aware,
7 we've been working this case for over a year. We've had
8 two evidentiary hearings with trials. The issues concern,
9 you know, whether or not certain assets belonged to Mr.
10 Foust and therefore could be seized to satisfy a Judgment
11 that's over \$1 million. We had those hearings. The Court
12 has made its ruling. In every respect, the Court has ruled
13 on behalf of the Bank.

14 The problem is that despite this Court's most
15 recent order, which directed Mr. Foust to turn over four of
16 the vehicles that he and his family members use and 20 of
17 the vehicles that pertain to the classic car collection,
18 you know, that hasn't happened.

19 THE COURT: Okay.

20 MR. BRAGONJE: And, I think, instead what we're
21 seeing is an attempt to reargue the merits and that kind of
22 thing. And, so, I'm afraid that unless this Court uses
23 what is admittedly an extreme remedy, incarcerating a
24 person to enforce this Court's orders, it will be as if we
25 never had those hearings and those Judgments were never

1 issued.

2 This Court's most recent order was issued on
3 penalty of contempt. Those words were in the order. The
4 debtor and the alleged transferee, Harry Hildibrand, were
5 ordered to make these vehicles available to the Bank to
6 satisfy the Judgment. I wrote them and I asked them:
7 Please turn them over. My request was ignored, so I filed
8 this Motion. We served the Order to Show Cause and we're
9 here today.

10 So, does the Court have any questions about this -
11 -

12 THE COURT: No. I just wanted you to put on the
13 record --

14 MR. BRAGONJE: Yeah.

15 THE COURT: -- your position of the new appearance
16 of Mr. Mazur and if you know anything about this Motion to
17 Discharge Attachment and whether that would affect the
18 proceedings today. I didn't want to yet get into the
19 substance of the contempt hearing.

20 MR. BRAGONJE: I don't think the motion -- I
21 haven't seen the motion.

22 THE COURT: Okay.

23 MR. BRAGONJE: I mean, it's probably been sent to
24 me. But I haven't seen it. I don't think it could affect
25 the hearings today because we are post-judgment.

1 THE COURT: Right. Mr. Mazur, what was your
2 intent for today? This was properly noticed and Mr. Foust
3 didn't provide any affidavits in Opposition. And I had
4 time to, you know, proceed with an evidentiary hearing
5 today, this morning, before my jury trial starts.

6 MR. MAZUR: Right. I understand. And, Your
7 Honor, --

8 THE COURT: And, by the way, one other thing, I --
9 whatever motion you filed -- I mean, I've already issued an
10 order. It looks like he hasn't complied with the order.
11 So, the proper remedy wouldn't be to just completely
12 disregard the order and disrespect the Court and just file
13 a new motion, whatever this motion is, which is -- would be
14 a collateral attack on the order. The motion that would
15 have been proper is a Motion for Reconsideration, or for a
16 new trial, or a stay pending appeal. Right?

17 MR. MAZUR: Incorrect, Your Honor.

18 THE COURT: So, what's going on here?

19 MR. MAZUR: Well, this motion is separate and
20 distinct, although it does overlap a little bit what what's
21 going on today. And, in the order for the OST, it does
22 state that we could file affidavits or appear and provide
23 testimony and that's why we're here, to provide testimony.

24 THE COURT: Okay. Then --

25 MR. MAZUR: Just didn't want to show up. But,

1 also, on the -- in the motion itself, it is some of the
2 grounds that do overlap, such as the Notice of Execution,
3 which --

4 THE COURT: I don't see --

5 MR. MAZUR: I don't believe a Notice of Execution
6 --

7 THE COURT: All right.

8 MR. MAZUR: -- was ever filed in this matter. We
9 have the attachment order, --

10 THE COURT: Right.

11 MR. MAZUR: -- which is phrased as it's an
12 attachment. It's called a writ of possession, which it's
13 not.

14 THE COURT: Okay.

15 MR. MAZUR: It's called, I believe, a replevin.
16 It's made --

17 THE COURT: Well, let's hold off for a second.

18 MR. MAZUR: Right.

19 THE COURT: So, I guess it's your position that
20 your client has not violated the order.

21 MR. MAZUR: Correct. Because, without the Notice
22 of Execution, it doesn't allow us to file a claim of
23 exemption. And I know we had claims of third parties that
24 were discussed prior that were dismissed. But not for
25 claims of exemption for the actual debtor themselves, which

1 they have a statutory right to file that claim with
2 exemption.

3 THE COURT: All right. So, it looks like we're
4 able to proceed, then, with an evidentiary hearing, Mr.
5 Bragonje. Are you prepared to do that today? We would put
6 Mr. Foust on the stand and examine him. And, then, I'll
7 decide if we need a further hearing where I could announce
8 my decision.

9 MR. BRAGONJE: Right. I think that's fine. I
10 don't know that I necessarily anticipated an evidentiary
11 hearing. I guess I was anticipating an Opposition. I
12 think that's fine. I guess I would say --

13 THE COURT: Usually I get one.

14 MR. BRAGONJE: Yeah. I guess I would say this is
15 an Order to Show Cause so they really bear the burden here.

16 THE COURT: No. I know. And that's why they
17 would go first.

18 MR. BRAGONJE: Yeah. Yeah.

19 THE COURT: Well -- but since they're coming in
20 with not having filed any affidavit and coming in with new
21 counsel, if you wanted to continue this, I would give you
22 that right, especially in light of -- I mean, we have new
23 counsel, we have a new motion, and we have no affidavit
24 being filed by Mr. Foust. So, Mr. Bragonje, if you want to
25 continue this, I would be willing to do that.

1 MR. BRAGONJE: I --

2 THE COURT: I think that would be the only thing
3 that would be fair.

4 MR. BRAGONJE: I appreciate Your Honor's offer. I
5 don't think it's necessary. I mean, this --

6 THE COURT: All right. Well, let's go ahead and
7 put Mr. Foust on the stand, then. Well, Mr. Mazur, it's
8 your time to show cause why the Court should not hold Mr.
9 Foust in contempt.

10 MR. MAZUR: And -- correct, Your Honor. And I
11 believe there's only one item in the order as far as the
12 surrender of the vehicles. There's nothing else that would
13 be available for contempt. Everything else is just that
14 the title would be put into Mr. Foust's name. But there
15 was no other affirmative act that he was required to do
16 except for surrender.

17 THE COURT: Well, he was required to surrender the
18 vehicles that were subject of the order.

19 MR. MAZUR: Right. And he doesn't -- you know --

20 THE COURT: So, let's --

21 MR. MAZUR: And we'll have him up for testimony,
22 Your Honor.

23 THE COURT: Let's go ahead and hear from him, not
24 you.

25 MR. MAZUR: Very good.

1 THE COURT: All right. So, is it your intent to
2 call him to the stand?

3 MR. MAZUR: Yes, Your Honor.

4 THE COURT: All right, then. Mr. Foust? Step
5 forward and you'll be sworn in. Marshal, make sure you can
6 open the door for him. All right. The Court Clerk will
7 provide your oath.

8 **JAMES FOUST**

9 [having been first duly sworn, testifies as follows:]

10 THE CLERK: Okay. You may be seated. Can you
11 please state and spell your first and last name for the
12 record? You can sit.

13 THE WITNESS: James Foust, F-O-U-S-T.

14 THE COURT: All right. Mr. Mazur, you may
15 proceed.

16 MR. MAZUR: Thank you, Your Honor.

17 **DIRECT EXAMINATION OF JAMES FOUST**

18 BY MR. MAZUR:

19 Q Good morning, Mr. Foust.

20 A Good morning.

21 Q In this matter, you recall there was a list of --
22 actually, a few lists of vehicles that relate back to many
23 years in the past. Correct? Are you -- let me restart
24 that. Are you familiar with the list of 59 vehicles that
25 came up in this litigation?

1 A Yes.

2 Q Okay. And how long ago were those 59 vehicles
3 acquired, do you recall?

4 A Going back to maybe 1985, '86, some place in the
5 '80s.

6 Q Okay. And why were you acquiring vehicles? What
7 was the purpose of that?

8 A Well, many of them, going back into that period of
9 time, might have been for, you know, use, personal use.
10 The -- or a collection or something. I don't recall that.
11 That's a lot of years ago.

12 Q Okay. And were some of them for investment
13 purposes as well?

14 A Later on, some of them were. Yes.

15 Q Okay. And do you recall the time period when you
16 -- the loan was made with Baker Boyer National Bank?

17 A I'm sorry?

18 Q Do you recall the time when you took out a loan
19 with Baker Boyer National Bank?

20 A Yes.

21 Q Okay. And what was the purpose of that loan with
22 Baker?

23 A That was to buy 30 units that the Bank owned at
24 that time was in default.

25 Q Okay.

1 A Buy it from the -- that default debtor.

2 Q And, 30 units, was that housing?

3 A Yes.

4 Q Okay. And, at the time you made -- received the
5 loan from Baker, Baker Boyer --

6 MR. BRAGONJE: Your Honor?

7 THE COURT: Yes.

8 MR. BRAGONJE: I'm going to object just as to
9 relevance. We're getting into the underlying transaction
10 that happened years ago. I mean, we're here to talk about
11 --

12 THE COURT: Well, we are. But it's a drastic
13 remedy of incarceration which you're seeking and which I
14 have the authority under the contempt statutes to impose.
15 So, before I would do something drastic like that, I want
16 to make sure that the defendant would have a full
17 opportunity to be heard.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: Okay. Go ahead. Thank you.

20 MR. MAZUR: Thank you, Your Honor.

21 BY MR. MAZUR:

22 Q And, Mr. Foust, at the time you made the loan, did
23 you disclose -- received the loan, did you disclose to the
24 Bank that you had certain vehicles?

25

1 A There was a list prepared that showed the vehicles
2 that I had owned. Yes.

3 Q Okay. And do you recall how many vehicles were on
4 that list that was initially prepared?

5 A I think it was at 59.

6 Q Okay. And, on those vehicles, did you own those
7 free and clear or were they financed?

8 A Many of them were sold and that was noted on that
9 -- the application. The Bank knew that.

10 Q And you disclosed that to the Bank?

11 A Absolutely. They --

12 Q Okay.

13 A They listed one of them as my income, one of them
14 that was sold. Yes.

15 Q And was that on one of the bank reports where they
16 -- that you're recalling?

17 A I'm sorry?

18 Q You said that they listed the income when you sold
19 one of the vehicles?

20 A Yes.

21 Q Do you recall which vehicle that was?

22 A That was a Cobra.

23 Q Okay. And how much did that sell for?

24 A Originally, it was several million dollars and
25 ultimately settled out at about 900,000.

1 Q Okay. And you reported the income on your income
2 taxes?

3 A I did.

4 Q And you disclosed to the Bank the fact that you
5 sold that loan?

6 A Yes.

7 Q Or sold that vehicle?

8 A Yes.

9 Q Okay. And how did you disclose that to the Bank?

10 A The Bank noted on it that in the discussion of
11 that list of things, they noted that many of the cars that
12 were on that list had been sold at, you know, 10 years
13 prior to that. And that was something that they used
14 internally to go to the website and look at things like a
15 Mercedes Gullwing and stuff like that, which sold in like
16 1986 or something.

17 Q Okay. And out of that, the 59 vehicles, how many
18 of those vehicles had been sold?

19 A I think all of them, with the exception of the
20 ones that were owned by the Harry Hildibrand under the Vega
21 [phonetic] financing.

22 Q And what type of financing was in place? What was
23 the agreement?

24 A There was a -- that at some point in time to buy
25 automobiles, there was somebody that posted money in

1 exchange for selling the cars and taking a percentage of
2 the sale.

3 Q Okay. And, out of the 59 vehicles, how many of
4 them use that mechanism of financing?

5 A I'm sorry?

6 Q Out of the 59 vehicles that we're talking about,
7 how many of those use that mechanism of financing with
8 Hildibrand?

9 A Something like about -- there were 29 listed but
10 many of them were erroneous. They were also things like a
11 Prowler that was sold in 2000 that was a -- you know,
12 that's a car that I used personally.

13 Q And it -- that was sold in what year?

14 A That would have been 2000. There were some others
15 that -- again, this was all noted in the deposition that I
16 gave to the Bank.

17 Q Okay. And did you have an opportunity in the past
18 to go over with the Bank or the Bank's counsel the current
19 status of each of those 59 vehicles?

20 A In a deposition, they were all discussed. Yes.

21 Q Okay. And how were they discussed in the
22 deposition? The 59.

23 A This attorney asked me, you know, the condition of
24 them, where they were, and I told them the best I could.

25

1 Q Okay. And, out of those 59 vehicles, how many
2 remain in your possession as of today?

3 A None. Zero.

4 Q Okay. In addition, I believe there were four
5 other vehicles, three Mercedes and a Yukon. Is that
6 correct?

7 A Yes.

8 Q Okay. And can you tell me the status of those
9 four vehicles?

10 A They have been -- they have been -- they're -- at
11 one time, they were -- I think they're sold to the Harry
12 Hildibrand.

13 Q Okay. And what about your personal vehicle? Do
14 you have -- are -- is one of those your personal vehicles?

15 A No.

16 Q Okay. And, those four vehicles, the three
17 Mercedes and the Yukon, were those subject to any financing
18 agreement as well?

19 A No.

20 Q Okay. And let's walk --

21 A Excuse me. No. I don't think so.

22 Q Okay. And do you have a vehicle? Is that --

23 A Yes.

24 Q Okay. And what type of vehicle do you have?

25 A It's a 19-year-old Mercury Cougar.

1 Q Okay. And do you know the value of that vehicle?
2 A I really don't.
3 Q Okay. And that's the only vehicle that you have?
4 A Yes.
5 Q Okay. And is that registered in your name?
6 A No. It's not. Not at this point.
7 Q Okay. Is that vehicle financed?
8 A No.
9 Q Okay. So, going back to those four vehicles, the
10 three Mercedes and the Yukon, are any of those vehicles in
11 your possession?
12 A No.
13 Q Okay. Do you know where any of those vehicles are
14 located?
15 A Yes.
16 Q Okay. Where are they located?
17 A Well, they would be at that -- my wife's house.
18 And that Yukon -- I still drive the Yukon.
19 Q Okay. And where is your wife's house? Is that in
20 Nevada or in California?
21 A That's in California.
22 Q Okay. And what city is that in?
23 A Palos Verdes.
24 Q And does she drive that vehicle?
25 A I'm sorry?

1 Q Does she drive that vehicle?

2 A Does she drive it? Yes.

3 Q Okay.

4 THE COURT: Which -- is it the three Mercedes that
5 are at your wife's house or something else? You said
6 there's something about three Mercedes and a Yukon were at
7 your wife's house. And, then, you said you still drive the
8 Yukon. Will you clarify for me?

9 THE WITNESS: There's three cars, 2007. One is
10 driven by each of my daughters and those were the -- at
11 UCLA or at school.

12 THE COURT: Okay.

13 THE WITNESS: And the other one would be at my
14 wife's house.

15 THE COURT: Okay. Thank you.

16 BY MR. MAZUR:

17 Q And what are the model years of those three
18 Mercedes?

19 A There's a 2007 SUV that's driven by my wife,
20 there's a 2007 CLK that's driven by one of my daughters,
21 and a 2007 550 that's driven by one of my daughters.

22 Q Okay. And, with the 2007 SUV driven by your wife,
23 do you know what the value of that vehicle is, the Blue
24 Book value?

25

1 A I don't know. It's got 200,000 miles on it or
2 something. And, so, I don't really know. But --

3 Q Do you have an estimate of what that value would
4 be?

5 A Just taking a guess on it?

6 Q An estimate if you have it. If you know. But not
7 a guess.

8 A Fifteen thousand.

9 Q Okay. And have you ever received a Notice of
10 Execution regarding the 2007 Mercedes?

11 A No.

12 Q You were never served with a notice of -- that you
13 may have a claim of exemption that you could file on a
14 vehicle?

15 A No.

16 Q Okay. With the -- what about the 2007 CLK? How
17 many miles on that vehicle?

18 A I'm sorry?

19 Q The 2007 CLK?

20 A Yes.

21 Q How many miles on that vehicle?

22 A One hundred and fifty thousand.

23 Q And where's that vehicle located as far as state?

24 A I believe that would be at UCLA, that they're at
25 for school.

1 Q And that's out in Los Angeles, California?

2 A Yes.

3 Q Okay. And is that vehicle, is the title and
4 registration in your name on that vehicle?

5 A No.

6 Q Do you know how the vehicle is registered?

7 A Well, I think that's registered to Harry
8 Hildibrand.

9 Q And have you ever received a Notice of Execution
10 for the 2007 CLK?

11 A No.

12 Q Counsel has never provided you a notice of what
13 your rights may be as far as filing the claim of exemption?

14 A No.

15 Q And do you know what the fair market value is of
16 the 2007 CLK?

17 A Eight thousand. Nine thousand.

18 Q And, then, you also mentioned there was a 2007 550
19 as well?

20 A Yes.

21 Q And is that a Mercedes?

22 A Yes.

23 Q Okay. And where is that vehicle located?

24 A That's at school, at San Diego.

25 Q And which school is that located at?

1 A I'm sorry?

2 Q Which school?

3 A University of San Diego.

4 Q Okay. And who drives that vehicle?

5 A That would be one of my daughters.

6 Q And do you know what the value of that vehicle is?

7 The fair market value?

8 A Nine thousand.

9 Q And have you ever received from plaintiff's
10 counsel a Notice of Execution for the 2007 550?

11 A No.

12 Q Have you ever received any notices regarding your
13 rights that you may have a right to file a claim of
14 exemption on that vehicle?

15 A No.

16 Q And, the 2007 550, is that subject to any type of
17 financing agreement?

18 A No.

19 Q And, with the 2007 550, is that registered in your
20 name individually?

21 A No.

22 Q And whose name is that vehicle registered in?

23 A The 550?

24 Q Correct.

25 A That's Harry Hildibrand.

1 Q And do you know whether or not plaintiff's counsel
2 was provided with the information that the vehicle was in
3 San Diego? Was that provided to counsel prior?

4 A I can't recall. There were -- all 59 cars were
5 discussed at the time that I gave him the deposition. I
6 don't recall what was said on that where they were.

7 Q Okay. And, with the other 59 vehicles, have you
8 ever received a Notice of Execution on any of those
9 vehicles?

10 A No.

11 Q Okay. And have any of the 59 vehicles, had any of
12 those been seized by plaintiff or plaintiff's counsel?

13 A Had been seen?

14 Q Seized. Did they actually go --

15 A Oh, seized.

16 Q -- and try and repossess or seize?

17 A No.

18 THE COURT: That's what they've been trying to do
19 the last two years. All right. Go ahead.

20 BY MR. MAZUR:

21 Q And, with those vehicles, are any of those in your
22 possession, any of the 59 vehicles in our possession?

23 A No.

24 Q Are any of the 59 vehicles registered in your
25 name?

1 A No.

2 Q Is -- do you have a lien on any of the 59
3 vehicles, yourself personally?

4 A Do I personally have a lien?

5 Q Correct.

6 A No.

7 Q Okay. Do you know of any parties that do have a
8 lien on any of those 59 vehicles?

9 A I believe that some of those had -- do have a lien
10 on them placed. I know the coach that was one of those
11 listed is a lien with Santander. And I think that the
12 others, the 29 some, if -- or, not all of them, have a lien
13 against that with the Ronald Vega [phonetic].

14 Q What type of lien is that with Ron -- Ronald Vega?

15 A Mr. Larkin is here to -- who could answer that.
16 But I don't know. It's just financing.

17 Q Okay. Is there a company associated with Ronald
18 Vega?

19 A Yes. I think so.

20 Q Is that Stardust?

21 A I don't think -- I don't think Stardust was part
22 of it. I think it was that the money that -- the loan on
23 it was made by Vega to Harry Hildibrand for acquisition of
24 it.

25

1 Q Okay. And do you know when they -- Vega started
2 making loans to Hildibrand?

3 A I believe it was like 2009, 2010.

4 Q Okay.

5 A So --

6 Q And do you know how many loans were made under
7 that agreement?

8 A Not specific. I don't. I --

9 Q Okay. You just mentioned a motor coach that's
10 financed through Santander. Which -- what's the motor
11 coach we're talking about?

12 A It's a 19 -- I forget what the name of our coach
13 is. But it's a Marathon coach.

14 Q Okay.

15 A And it was financed by me originally. I bought
16 the coach and it was financed by a company called Gannis
17 [phonetic]. And they were sold to a company called
18 Santander. And Santander, at the time it was seized, was
19 owed about 130,000 or something.

20 Q Okay. And did you -- this is -- what is it?
21 Prevost, Provost?

22 A It is. Prevost. Yes.

23 Q Prevost Marathon coach. With the motor coach,
24 what year did you acquire that?

25 A Two thousand -- 2001, 2002.

1 Q Okay. And do you know how much he paid for the
2 motor coach?

3 A I don't recall specifically. But it might have
4 been close to \$1 million.

5 Q And, at the time you took out the loan with Baker
6 Boyer, did you disclose the fact that you owned a Provost
7 or the motorhome?

8 A Yes.

9 Q The motor coach. And were they aware of the lien
10 that was on the motor coach?

11 A Yes. They were.

12 Q And you informed them that the lien was by
13 Santander?

14 A Yes.

15 Q And were they aware of the amount of the monthly
16 payments that were on that vehicle as well?

17 A Yes. They were.

18 Q Okay. Do you know what the current balance due to
19 Santander is, approximately?

20 A Approximately 130,000.

21 Q Okay. And, that \$130,000 loan, whose name was
22 that loan in?

23 A That was in my name.

24 Q Okay. And is that loan with Santander still in
25 your name?

1 A Yes.

2 Q Okay. And do you know whether or not plaintiff's
3 been making the monthly payments on that?

4 A No. I don't think they have.

5 Q Okay. And what's your understanding? Did they
6 seize that vehicle?

7 A I'm sorry?

8 Q Did they seize the motor coach?

9 A Yes.

10 Q Okay. When did they seize the motor coach?

11 A That would have been 2016.

12 Q Would it be 2018, maybe? February 2018. Does
13 that sound --

14 A I'm sorry. Yes.

15 Q -- sound more fair?

16 A Yes, yes.

17 Q Okay.

18 A Yes.

19 Q Okay. And when they seized that, was that taken
20 from a -- let me strike that.

21 Where did they seize that from?

22 A It was a resort park in Las Vegas on property that
23 was and is owned by my wife.

24 Q Okay. And, after they seized that asset, did they
25 provide any Notice of Execution to you?

1 A No.

2 Q They provide any notice that you may be able to
3 file a claim on that?

4 A No.

5 Q Okay. And it's my understanding that the
6 Constable's Office did go through the interior of the motor
7 coach as well. Is that correct?

8 A Yes.

9 Q Okay. And they found, I believe, mail that was
10 addressed to you inside the motor coach?

11 A Yes.

12 Q Okay. And I think they made a determination on
13 that. Did you have an opportunity to file a claim or a
14 homestead on that vehicle as of yet?

15 A No.

16 Q Have you filed a claim that may be exempt from
17 attachment as a residence?

18 A No.

19 Q Okay. And the current balance is \$130,000
20 approximately on the Santander loan. Right?

21 A Correct.

22 Q Okay. And have you been contacted by Santander to
23 make the payments or that you're in default?

24 A Yes.

25

1 Q Okay. And did they say how much is past due on
2 that vehicle?

3 A I don't recall -- that I personally made the
4 payments to keep from another lawsuit. I have been making
5 the payments up until recently. I just can't do it.

6 Q Okay. And do you know whether or not Santander
7 has been paid in full by plaintiff after they seized the
8 vehicle?

9 A I don't know that. No. But I don't think so.

10 Q Okay. Do you know if that vehicle has been sold
11 or is still in plaintiff's possession?

12 A It's still in plaintiff's possession.

13 Q Okay. Have you had any discussions with plaintiff
14 or plaintiff's counsel about when they're going to pay off
15 the mortgage that's due on the vehicle?

16 A No.

17 Q Have they ever informed you that they intend to
18 pay it off?

19 A No.

20 Q And, the fact that they haven't been making
21 payments on it, has that been harming your credit at all?

22 A Yes.

23 Q And how has that been harming your credit?

24 A It's late payments that affects the credit.

25

1 Q Okay. And had Bank offered any explanation to you
2 or anything to help relieve that type of bad credit you're
3 receiving?

4 A None.

5 Q And with -- what type of bad credit marks do you
6 know that are being made on your credit?

7 A At the time this began, I had a credit score of
8 about 800 and 830. And I now have a credit score of about
9 650.

10 Q And that's because of late payments being
11 reported?

12 A Late payments. Yeah.

13 Q Okay. And --

14 A Well, late payments and every month the Bank gets
15 a credit report --

16 Q Okay.

17 A -- and that affects it.

18 Q And do you know why the Bank would want to harm
19 your credit like this?

20 A I -- only speculation. But, no. Not really.

21 Q Okay. And have you applied for any type of
22 financing recently or are you able to apply for any type of
23 financing under the current situation?

24 A No. Financing is nonexistent to me.

25 Q And why is that?

1 A I -- you know, the -- my credit score is, you
2 know, is below par. Late payments. It's -- no. I can't -
3 - the credits -- any loans is unobtainable to me.

4 Q Okay. And has the Bank notified you that they
5 intend to pay you a deficiency once they sell it at a
6 public auction?

7 A No.

8 Q Have they notified you of their plans or if
9 they're going to sell it at all?

10 A No.

11 Q Have they offered to sell it back to you?

12 A No.

13 Q Have you had any contact with the Bank at all ever
14 since they repossessed the vehicle?

15 A There was a motion made by counsel that said that
16 I had to make sure that I have no interference with the
17 coach. I can't attend the coach. If it's for sale, I
18 can't attend.

19 Q All right. And who stated that you cannot attend
20 the public sale?

21 A That was plaintiff that did that.

22 Q From Baker Boyer or plaintiff's counsel?

23 A Counsel.

24 Q Do you know why they say -- said that you wouldn't
25 be able to attend a public sale?

1 A Only speculation. But, no.

2 Q And have you been made aware of any sale date for
3 the motorhome?

4 A No.

5 Q And do you know how many months late you've been
6 reported on the motorhome?

7 A I don't. But I've been making the payments. The
8 -- after the last payments were made by Harry Hildibrand, I
9 -- several months went by and I had notices from Santander.
10 And, then, I made the -- started making the payments again.

11 Q Okay. And, after three missed payments, does
12 Santander consider that as a repossession or a foreclosure?

13 A I don't know. I think that their attorneys are
14 looking at this. I wrote them a letter about the entire
15 thing several months ago and that was -- that went to their
16 legal department. And, so, I don't know what they're doing
17 on it right now.

18 Q Okay. And, the motor coach, that wasn't security
19 that was put up for the loan you took out from Baker Boyer.
20 Was it?

21 A It absolutely was not.

22 Q Okay. And, with the Santander loan itself, when
23 did you disclose that to the Bank?

24 A At the time that this loan was in process.

25 THE COURT: So, hold on.

1 MR. MAZUR: Okay.

2 THE COURT: When did you first notify Santander
3 that Baker Boyer was seeking to seize or attach the motor
4 coach?

5 THE WITNESS: Well, I think, several months ago, I
6 -- it wasn't that they were attempting, it was that they
7 had.

8 THE COURT: Okay. Well, these proceedings here
9 started almost two years ago. Right?

10 MR. BRAGONJE: 2017.

11 THE COURT: And, at the very commencement of these
12 proceedings, that's when I first learned that the Bank was
13 seeking to seize the motor coach. You didn't give
14 Santander notice at that point in time?

15 THE WITNESS: I did not. No.

16 THE COURT: All right. And, so, it was just a few
17 months ago?

18 THE WITNESS: It -- at that time, Harry Hildibrand
19 was making the payments.

20 THE COURT: Okay.

21 THE WITNESS: Or sometimes shortly thereafter.
22 And, at some point, they stopped on that and that's when
23 Santander contacted me --

24 THE COURT: All right. You mean Harry Hildibrand,
25 LLC?

1 THE WITNESS: Yeah.

2 THE COURT: Okay. And, then, Santander contacted
3 you when Harry Hildibrand stopped making those payments.

4 THE WITNESS: They contacted me and said that the
5 payment is in arrears.

6 THE COURT: Who was it? Because I know there's
7 been some discussion here in the past in this proceeding
8 about who were the officers and directors of Harry
9 Hildibrand. You recall all of that?

10 THE WITNESS: I sure do.

11 THE COURT: We spent a lot of time on that.

12 THE WITNESS: I sure do.

13 THE COURT: Who was actually cutting the checks
14 for Santander from Harry Hildibrand all this time, until a
15 few months ago?

16 THE WITNESS: I'm not really sure about that. I
17 don't know.

18 THE COURT: Okay. All right.

19 THE WITNESS: But the check was paid to Santander.

20 THE COURT: But you had nothing to do with it?

21 THE WITNESS: No.

22 THE COURT: You're right.

23 THE WITNESS: And I know that the Bank had
24 subpoenaed all the records from Santander.

25 THE COURT: Okay.

1 THE WITNESS: So, they knew -- you know, they had
2 a list of all the checks and --

3 THE COURT: Okay.

4 THE WITNESS: -- and all of that.

5 THE COURT: All right.

6 THE WITNESS: And, then, --

7 THE COURT: So, they would have known about
8 Santander since the date of the subpoena.

9 THE WITNESS: Yeah.

10 THE COURT: Okay. Thank you for clarifying some
11 of that for me. Appreciate that. What else?

12 MR. MAZUR:

13 Q And the Bank was aware of the Santander loan.
14 They actually put it on one of the reports that they
15 provided to you. Didn't they?

16 A Yes.

17 Q Okay. And do you recall what they put on the
18 report regarding Santander?

19 A They put it as an obligation -- at the time of the
20 loan we're talking about?

21 Q Yes.

22 A That was listed as an asset. And, then, the
23 liability.

24 Q Okay. And did it also list what the monthly
25 payments were or the annual debt service?

1 A Yes. Yes. It did.

2 Q Okay. And do you know why the Bank needed that
3 information from you?

4 A The entire loan was -- I bought it from a -- from
5 one of their clients. I signed a contract with one of
6 their clients to manage it. And I think that there was
7 something under the FDIC about a loan on something called
8 predatory loan that they did that. And they also required
9 that I open a CD savings account and post \$100,000 or
10 something in cash as an asset of the Bank.

11 Q And you did that as one of their requirements?

12 A Yes. That was one of their requirements.

13 Q Okay. And, Mr. Foust, what is your current age?

14 A Pardon me?

15 Q What is your current age?

16 A I'm 79.

17 Q And, at the time the Bank made the loan to you,
18 were they aware of your age?

19 A Yes.

20 Q And where did they make the -- how did you find
21 out about the Bank in order to get the loan from the Bank?

22 A Somebody had -- and I don't recall what the
23 person's name, told me about the units that were in
24 default. And he -- I think he was friends -- a doctor that
25 owned them was in default on the loan with Baker Boyer

1 Bank. And I heard about that and I talked to somebody at
2 the Bank and asked and inquired about that. And that's --
3 the relationship began with that. I -- and I agreed after
4 looking at the -- you know, the thing -- the driving thing
5 about that was that they had mandated a -- one of their
6 companies that they -- that was a Bank customer, give me a
7 contract, a seven year contract, that was for \$45,000 a
8 month for seven years. And that was -- that -- the Bank
9 payment, if I bought the units, would be about 18,000. And
10 I -- in order to get into that, I put a -- like another
11 \$400,000 into the thing to bring down the LTV [[phonetic]].
12 So, for \$400,000 cash investment, I had a contract that
13 basically netted me \$25,000 a month for seven years.

14 Q And, at the time you entered into this investment
15 with the Bank, that investment was in default with the
16 other borrower. Is that correct?

17 A Yes.

18 Q And you -- so, the Bank sold you a defaulting
19 asset that was on their books?

20 A Yes.

21 Q Okay. And, then, they mandated that you deposit
22 \$100,000 in cash with their bank as well?

23 A Yes.

24

25

1 Q Okay. And at the time that they did this, they
2 made the loan to you, what type of cashflow did you have at
3 that point in time?

4 A It was -- I had zero income and I had the \$900,000
5 capital gain from selling a car. And they also made a note
6 on it. They noted the cars and they noted in that that the
7 \$900,000 sale and that Foust could continue to sell the
8 cars for income.

9 Q And is that how you were generating your income
10 from that point forward?

11 A No. The income was coming from the contract.
12 That was just their note on it in their internal report.

13 Q Okay. And -- but you were making personal income
14 by selling -- buying and selling vehicles as well?

15 A Well, the -- and, so, that's how I got the loan on
16 it is to sell that Cobra for \$900,000, the capital gain.
17 There was \$600,000 that was about \$300,000 of net capital
18 gain off of that. And that's what they put on the thing to
19 justify the income.

20 Q And they actually listed that on one of the
21 reports, internal reports, that you have?

22 A They did.

23 Q Okay. And, at a later date in the deposition, did
24 they claim that you own that vehicle still?

25 A Yes.

1 Q Okay. Even though they were well aware that the
2 vehicle had been sold and it was on one of their reports?

3 A Yes.

4 Q Okay. Do you know why they would do such a thing?

5 A I think that all this had to do with the FDIC
6 requirements on this thing. It's that they were concerned
7 about that. And I think that's why I had to deposit the
8 money into that CD.

9 Q Okay. And have you filed the lawsuit for elder
10 abuse or lender liability against the Bank yet?

11 A No.

12 Q Okay. Are you able to get financing on a new
13 vehicle as of right now?

14 A No.

15 Q Okay. And why can't you get financing on -- to
16 get a new vehicle?

17 A It's 650 with no income. It's -- the creditors
18 don't want to talk to you.

19 Q Okay. And that's a result of the Bank failing to
20 make the payments for the financing on the motor coach like
21 they're required to do under NRS. Correct?

22 A Yes.

23 Q And do you know why they would do that to you?

24 A I don't. There was an incident that happened in
25 part of this loan process. I received a letter from the

1 Bank -- from the loan officer that said the loan could not
2 be made. And in that same e-mail they said that there
3 would be a declanation [sic] letter sent. Six days later,
4 I received another e-mail that said that they could make
5 that loan. And I learned two years later what that was all
6 about. The Bank officer took that to the head of the
7 finance and said that he's going to turn the loan down and
8 the guy said: Are you crazy? He said: The Foust balance
9 sheets will cover the bad loan. We don't care if that
10 company's going broke. We don't care. We'll use his
11 balance sheet for that loan. That was six days. And,
12 then, they -- all of a sudden, they could make that loan.

13 Q And when did -- when was there a default on the
14 loan with Baker Boyer -- the Bank?

15 A Twenty -- I think that the last payment that was
16 made on that contract was, like, 2014. And, then, after
17 that, I made personal thing. So, 2015, maybe? Twenty --
18 yeah, 2015, maybe.

19 Q And why did -- why was there a default on that
20 loan?

21 A There was zero money coming from the contract that
22 25 -- the \$45,000 a month contract. Zero. So, the \$18,000
23 a month that was being paid by me personally.

24 Q And why did the revenue stop on that contract?

25 A They were broke. And Bank -- Baker Boyer Bank

1 knew they were broke at the time that they --

2 THE COURT: Who is they when you use the term --
3 the pronoun they?

4 THE WITNESS: I'm not aware that I used it. What
5 did --

6 THE COURT: The word they. You said they. They
7 were broke. Who is they?

8 THE WITNESS: The contract G -- it was called
9 Greenplex Housing was that -- the contract was with them.

10 THE COURT: Okay.

11 THE WITNESS: That was one of the Bank customers.

12 THE COURT: All right. So, we're not going to
13 relitigate, you know, --

14 MR. MAZUR: Yes, Your Honor.

15 THE COURT: -- whether there was a default, when
16 there was a default, or there -- whether there was anything
17 improper with the original loan.

18 MR. MAZUR: I understand. I'm just going to
19 provide a little background on the reason why we cannot get
20 a vehicle financing currently.

21 Now, looking at the -- there was a court order
22 from January of this year --

23 THE COURT: Well, we're not here to determine
24 either any damages, too, --

25 MR. MAZUR: Right.

1 THE COURT: -- that might have been suffered by
2 Mr. Foust. So, I want you to move on from that issue.

3 MR. MAZUR: Yeah. I'm going to go right to the
4 order --

5 THE COURT: All right.

6 MR. MAZUR: -- and what is required to do and seek
7 compliance here.

8 BY MR. MAZUR:

9 Q I'm looking at page 21 of the Findings of Fact and
10 Conclusions of Law that was filed January 10th of 2019. I'm
11 looking at paragraph 18. It says: Mr. Foust is the owner
12 of all cars over which HH, Harry Hildibrand, claims an
13 interest, including those cars identified in bankruptcy.
14 So, that was a court determination stating that -- made by
15 this Court that you are the owner of all cars. Out of
16 those cars that are listed on the bankruptcy or identified
17 by HH -- Hildibrand made a claim, how many of those are
18 still in your possession, other than the four that we
19 discussed?

20 A Those four aren't in my possession either. But
21 none of them.

22 Q Okay.

23 THE COURT: Well, they're in your daughters'
24 possession --

25 THE WITNESS: Yes.

1 THE COURT: -- and your wife's possession. Right?

2 THE WITNESS: Yes.

3 MR. BREGONJE: Are they in the --

4 THE COURT: All right. Let's don't mince words
5 here. All right. How many of those cars remain in the
6 possession of Harry Hildibrand?

7 THE WITNESS: All of them. Like --

8 THE COURT: Okay. And how many are in Harry
9 Hildibrand's -- are titled in Harry Hildibrand's name? Or
10 the LLC's name?

11 THE WITNESS: I'm not really sure --

12 THE COURT: If you know. If you don't know,
13 that's okay.

14 THE WITNESS: Huh?

15 THE COURT: If you don't know, that's okay.

16 THE WITNESS: I don't know the answer to that.

17 THE COURT: Okay. All right. Thank you. Go
18 ahead.

19 BY MR. MAZUR:

20 Q And do you know how many vehicles Harry Hildibrand
21 have titled? Just ballpark that there's titles on.

22 A I would say probably, of the 29, maybe 20, 15-20.

23 Q And when did those vehicles -- when did the title
24 go into Hildebrand's name, Harry Hildibrand, LLC's name?

25 A I think that the first batch of cars that were

1 brought was in 2011.

2 Q Okay. And they were in Hildibrand's name in 2011?

3 A Yes.

4 Q Okay. And prior to the loan actually being made
5 with the --

6 A Way far before the loan has been made. Yes.

7 Q Okay. Paragraph 19 states: Mr. Foust is the
8 owner of all cars over which Stardust Classic claims an
9 interest.

10 Do you know which cars Stardust Classic is
11 claiming an interest?

12 A I don't know that -- I think it's the same cars
13 that were listed, the 29.

14 Q And are those the vehicles that were listed in the
15 bankruptcy?

16 A Yes.

17 Q And, of those vehicles that were listed in the
18 bankruptcy, how many of those cars or vehicles are in your
19 possession?

20 A None.

21 Q And, in the bankruptcy, I believe it stated total
22 value for Harry Hildibrand was ballpark of 380,000 plus the
23 Marathon coach. Is that correct?

24 A Yes.

25 Q Okay. And, also, it was disclosed in the

1 bankruptcy that Stardust was a lender for those vehicles.

2 Is that correct?

3 A I don't know that it was Stardust that was the
4 lender on that bankruptcy. And I can't recall but I think
5 that that was Vega that was probably -- was probably the
6 lender. I'm sure it was.

7 Q Okay. And do you know how many vehicles Stardust
8 Classic owns that are the subject of this lawsuit?

9 A I don't think they own any.

10 Q Okay. Next paragraph, 20: Mr. Foust is the owner
11 of all the cars that HH contends or has contended that it
12 obtained from Mr. Foust and transferred to some third
13 parties. Do you know which vehicles are being referred to
14 in that paragraph?

15 A There was a 1956 Mercedes Gullwing that was sold
16 in an auction in 2006.

17 Q Okay. And --

18 A With a Lamborghini. There's several of them at
19 that time.

20 Q Let's go to the 2006 Gullwing. What auction was
21 that sold to?

22 A Russo and Steele.

23 Q And where are they based out of?

24 A Phoenix.

25 Q Okay. And the vehicle was actually transferred

1 over there and sold by -- at auction?

2 A Yes. And readily obtainable do -- if it -- if
3 somebody went on the Google and did a Foust Cars, it would
4 show all of those cars that were sold at that auction.

5 Q Well, that didn't happen. So, we get to go
6 through them today. So, do you know who the purchaser was
7 for that 2006 Gullwing?

8 A I have no idea.

9 Q And had -- have you received any notices from the
10 purchaser about that vehicle?

11 A No.

12 Q Have you received any notices since 2006 from the
13 auction house regarding that vehicle?

14 A No.

15 Q Okay. So, you do not know where that vehicle is,
16 the 2006 Gullwing?

17 A I have no idea.

18 Q Okay. You said there was another vehicle as well,
19 a Ferrari?

20 A There was a number of them. There was a
21 Lamborghini Miura that was sold that day. There was a
22 California GT 500 -- or, a Shelby GT 500. There was about
23 a half a dozen cars that were sold that day.

24 Q Okay. And --

25 THE COURT: Which day are we talking -- where you

1 said 2006. Some day in 2006.

2 THE WITNESS: Two thousand six.

3 THE COURT: Okay.

4 BY MR. MAZUR:

5 Q And these are part of the vehicles that the Bank
6 still claims that you own. Is that correct?

7 A Yes.

8 Q Okay. And have you provided the Bank with the
9 auction house information?

10 A They looked at -- I looked at it personally with
11 the Bank manager on the website.

12 Q Okay. Do you know what website is? It's --

13 A Yes. It's a -- it's just Foust Cars. And it will
14 show it that -- and that the auction would have been Russo
15 and Steele, Monterrey.

16 Q Russo and Steele, Monterrey?

17 A Yes.

18 Q Okay. And what city are they in?

19 A The auction -- the Russo and Steele is in Phoenix.

20 Q Okay.

21 A And they have different auctions across the
22 country.

23 Q Okay. Any other cars on that 59 list that went to
24 an auction house?

25 A Yes. I think -- yes. I --

1 THE COURT: So, now I'm confused. Because I
2 thought you said all the 59 were in the possession of Harry
3 Hildibrand. And now you're --

4 THE WITNESS: No, no, no. That --

5 THE COURT: -- talking about one after another
6 that's somewhere else.

7 THE WITNESS: No, no, no. I didn't say the 59
8 were Harry. I said the 29.

9 THE COURT: The 29. Because we had divided it up
10 into a couple of groups.

11 THE WITNESS: Yeah.

12 THE COURT: So, there's a group of 29 that are in
13 possession of Harry Hildibrand presently.

14 THE WITNESS: Right.

15 THE COURT: And, then, now you're talking about
16 some other cars that --

17 THE WITNESS: That were sold way before Harry
18 Hildibrand, --

19 THE COURT: Okay.

20 THE WITNESS: -- way before the --

21 THE COURT: All right. I got it.

22 MR. MAZUR: But those remain --

23 THE COURT: I just want to understand your
24 position.

25 THE WITNESS: Pardon me?

1 THE COURT: I just wanted to understand your
2 position.

3 THE WITNESS: Okay.

4 THE COURT: So, all right.

5 BY MR. MAZUR:

6 Q But those -- the Bank still believes you have
7 possession of those vehicles? Is that your understanding?

8 A I don't know what they believe about that. I mean
9 --

10 Q Okay. Next is paragraph 21 --

11 THE COURT: Because I don't remember you bringing
12 up any of this about the auction house in the prior
13 proceedings we've had here.

14 THE WITNESS: I was never asked about it.

15 THE COURT: So, you weren't asked?

16 THE WITNESS: No, sir.

17 THE COURT: That's why you didn't tell us.

18 THE WITNESS: No.

19 THE COURT: Because, the whole time, we've been
20 here for two years, we've been trying to find out where
21 these cars are. Right?

22 THE WITNESS: The car --

23 THE COURT: All right. Now, hold on. All right,
24 guys --

25 THE WITNESS: Well, Your Honor --

1 THE COURT: -- this is what we're going to do.
2 No. Hold on. This is what we're going to do. We're going
3 to suspend this. I want to hear argument for five minutes
4 from each of you on why Mr. Foust should not be held in
5 contempt. And, then, we're going to continue this for
6 further hearings. Mr. Bragonje, five minutes of argument.

7 MR. BRAGONJE: Thank you, Your Honor. And you --

8 THE COURT: I'm not cutting him off, he's still
9 going to have a right. But we're just -- I need to hear
10 some argument on where we are and where we're going to go
11 on this. Because I got a -- I didn't think it was going to
12 take this long and I got a jury trial starting.

13 MR. MAZUR: Understand.

14 THE COURT: That's why I'm --

15 MR. MAZUR: No.

16 THE COURT: That's why I'm trying to rush it. It
17 has nothing to do with, you know, my wanting to cut Mr.
18 Foust off because I don't.

19 MR. MAZUR: No. Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. BRAGONJE: Thank you, Your Honor.

22 We're here today -- you know, I think there's a
23 universe of cars out there that we're still trying to learn
24 about. But we have a few concrete leads. We know about
25 the cars that were identified in the bankruptcy and we know

1 about the cars that Mr. Foust and his family are using.

2 THE COURT: Okay.

3 MR. BRAGONJE: I'm talking about those cars here
4 today. This Court has had years of proceedings and trials
5 and the conclusion was that Harry Hildibrand and Mr. Foust,
6 for purposes of enforcing this Judgment, are one person,
7 they've got control over these cars that --

8 THE COURT: Well, that was the position that we
9 had. That was the position the Court took in the Findings
10 of Fact. But now I'm hearing that there was some -- you
11 know, there was 2006 -- you know, for sale through an
12 auction house of many of these cars. I thought that --

13 MR. BRAGONJE: I don't --

14 THE COURT: -- your client would have known that
15 because you had subpoenaed from Harry Hildibrand and Mr.
16 Foust all of these records. And I -- we've been spending a
17 lot of time on --

18 MR. BRAGONJE: Right.

19 THE COURT: -- where the cars, who owns the cars,
20 and somebody, whether it's the Bank or Mr. Foust, somebody
21 should have brought those facts to my attention.

22 MR. BRAGONJE: Right. And I think the answer to
23 that is here today, the contempt proceedings are focused on
24 the family -- on the cars that his family has and the cars
25 that were identified in the bankruptcy.

1 THE COURT: Well, those were the Harry Hildebrand
2 cars, --

3 MR. BRAGONJE: Right.

4 THE COURT: -- not the other cars.

5 MR. BRAGONJE: Right.

6 THE COURT: Because if he doesn't have possession
7 of all these other cars, I can't hold him in contempt --

8 MR. BRAGONJE: I agree.

9 THE COURT: -- for cars he doesn't have.

10 MR. BRAGONJE: I agree and I'm not asking --

11 THE COURT: Because he can't --

12 MR. BRAGONJE: I'm not asking for that.

13 THE COURT: Okay.

14 MR. BRAGONJE: Yeah. I agree.

15 THE COURT: So, your order was a little bit
16 unclear -- or, your Order to Show Cause didn't say --

17 MR. BRAGONJE: Well, I think it did.

18 THE COURT: Did it?

19 MR. BRAGONJE: I think it said -- I think it said
20 we're after the cars that are in his possession and the 20
21 cars that were identified in the bankruptcy.

22 THE COURT: Okay. And, so, the whole reason why
23 we're here, then, is to find out why he hasn't turned over
24 the cars that are in the possession of Harry Hildibrand
25 where we've previously indicated -- or, the Court's

1 previously indicated that basically they're alter egos.
2 And he controls or has influence over Harry Hildibrand. We
3 heard from Mr. Detwiler, we heard from Mr. Foust, I think
4 we heard from another witness.

5 MR. BRAGONJE: Right.

6 THE COURT: Those are the conclusions.

7 MR. BRAGONJE: Right.

8 THE COURT: I don't want to change those
9 conclusions unless there's been something new that I
10 haven't heard. And, so, I guess, you know, going forward,
11 I want to focus on not what happened to all those other
12 cars.

13 Mr. Mazur, you're probably hearing -- you probably
14 didn't realize coming into today that we're only talking
15 about the 29 at this point, not all the 59.

16 MR. BRAGONJE: I'll just interject --

17 MR. MAZUR: I think it's in the group of the
18 entire universe. And, as we go through it, we -- this --

19 THE COURT: Because I don't want to waste time on
20 all those other -- the non 29, then.

21 MR. MAZUR: Right. But --

22 MR. BRAGONJE: May I interject? I think it's 20.

23 THE COURT: Or, 20.

24 MR. BRAGONJE: I think Mr. Foust said 20. I just
25 --

1 MR. MAZUR: Okay.

2 THE COURT: All right. Twenty.

3 MR. BRAGONJE: I think this is important.

4 THE COURT: All right.

5 MR. BRAGONJE: Twenty were identified in the
6 bankruptcy --

7 THE COURT: Yeah.

8 MR. BRAGONJE: -- four are in the possession of
9 here in his family. So, I guess it's 24 total.

10 THE COURT: Yeah. Twenty. So --

11 MR. MAZUR: That's the universal vehicle -- the 20
12 plus --

13 THE COURT: So, let's hear from Mr. Mazur. The --
14 look, I've made a decision that those cars have to be
15 turned over by Harry Hildibrand and/or Mr. Foust. They
16 haven't been turned over. And it sounds like the defense
17 is not that Harry Hildibrand doesn't have possession, it's
18 because there wasn't a Notice of Execution with an
19 advisement of the rights as to the claims of exemptions
20 that might exist.

21 MR. MAZUR: It's actually two-fold, Your Honor.

22 THE COURT: Okay.

23 MR. MAZUR: And vehicles on the list have been
24 sold and that's where we were going through as far as --

25 THE COURT: The 20.

1 MR. MAZUR: The 20 have been sold and they have
2 been identified. It was actually -- there was --

3 THE COURT: He just said three times -- Mr. Foust
4 said three times that they're in the possession of Harry
5 Hildibrand.

6 MR. MAZUR: Right. But some of them have been
7 sold. There are documents provided in --

8 THE COURT: You mean after that this proceeding
9 started, there was some?

10 MR. MAZUR: No. I believe it was --

11 THE COURT: Before.

12 MR. MAZUR: -- prior. And it was provided in --
13 there was a list provided in one of the depositions of the
14 transferred vehicles, where they went to. And there was
15 testimony on it as well but there wasn't specifics on who
16 the current owner was of that vehicle.

17 THE COURT: But that was another -- there was
18 another set of cars that we know were sold.

19 MR. MAZUR: Right.

20 THE COURT: We had divided this up into three
21 different sets.

22 MR. MAZUR: Okay.

23 THE COURT: Those cars that were sold to third
24 parties and we were trying to determine if there were, you
25 know, fraud on creditors to sell these, those cars --

1 MR. MAZUR: Right.

2 THE COURT: -- which were in the possession of
3 Harry Hildibrand. And, then, those cars that Harry
4 Hildibrand had that perhaps sold to others.

5 MR. MAZUR: Okay.

6 THE COURT: So, that's -- but, then, that left us
7 with 20 that we thought Harry Hildibrand had that hadn't
8 been disposed of.

9 MR. MAZUR: Right. And those are the ones that I
10 was going through as well, we were hitting as we were
11 talking, 2000 Plymouth Prowler that's been sold, it was on
12 the list.

13 THE COURT: Okay.

14 MR. MAZUR: But if the lists -- our universe is
15 just the 20 plus 4. And I think we've addressed the four
16 as far as the location, who has them, and where they're at
17 --

18 THE COURT: Right. You addressed those --

19 MR. MAZUR: -- I'm trying to go through and hit
20 right to the point. And, you know, we're trying to make
21 good faith attempt here and if this is my five minutes --

22 THE COURT: No. You are.

23 MR. MAZUR: -- then I cut you off.

24 THE COURT: No. You are. No. I mean, you're --

25 MR. MAZUR: We're trying to make a good faith

1 attempt to get to the bottom, cut to the chase, and find
2 out, okay, which of the assets are still in possession,
3 where are they at, or who's on title.

4 THE COURT: So, this is what we're going to do
5 going forward. Because I understand what you're doing. I
6 appreciate that. A lot of this that I'm hearing now, after
7 a couple rounds of testimony here in front of me and in the
8 Bankruptcy Court and several affidavits, this is the first
9 I'm hearing that any of those 20 were sold to other
10 parties. So, I think what we need to do in order not to
11 have unfair surprise to the Bank is I need an affidavit
12 before the -- before we come back from Mr. Foust stating as
13 to each of those cars. Number one, does Harry Hildibrand
14 still have possession? And, if so, where they're located.
15 Number two, if Mr. Hildibrand doesn't have the -- if the
16 company doesn't have those cars, --

17 MR. MAZUR: Okay.

18 THE COURT: -- where did they go? And I think you
19 were covering some of that. When were they sold and/or
20 transferred? And to whom to the extent it's known. If
21 it's not known, then who was the broker that was selling
22 them? And you were indicating -- you were describing the
23 cars by -- you know, by make and model. So, do that.

24 MR. MAZUR: What I'll do then is I have the list
25 from the bankruptcy --

1 THE COURT: And --

2 MR. MAZUR: -- if that's the --

3 MR. BRAGONJE: Yeah. That's fine.

4 MR. MAZUR: -- same list? Okay.

5 THE COURT: And, then, we need to know if those

6 sales were conducted by the LLC of the company or Mr. Foust

7 directly.

8 MR. MAZUR: Okay. Very good.

9 THE COURT: So, I think that's what you were going

10 to get at today.

11 MR. MAZUR: Yes.

12 THE COURT: It would probably streamline some of

13 this proceedings if you could get that affidavit, turn it

14 over to Mr. Bragonje, and then we can resume.

15 MR. MAZUR: We can do that.

16 THE COURT: Mr. Bragonje, anything else that you

17 think would be fair under the circumstances? Other than I

18 know you want relief today.

19 MR. BRAGONJE: No, no. Well, I was going say,

20 concerning the four cars that are in the possession of he

21 and his family, I don't think there's any confusion. And,

22 so, --

23 THE COURT: Those are part of the 59 -- or, the 59

24 originally. Is that what you're saying?

25 MR. BRAGONJE: Well, no. It's that those are in

1 his possession and his family's possession. I don't see
2 why those couldn't be turned over immediately.

3 THE COURT: Well, were those part of the original
4 59 in this case?

5 MR. BRAGONJE: I don't know that. I'm not sure.

6 THE COURT: These are new cars that we haven't
7 discussed.

8 MR. BRAGONJE: Well, no. They've been discussed,
9 for sure.

10 MR. MAZUR: Actually, they're on the list of 20, I
11 believe, Your Honor.

12 THE COURT: They're on the list of 20.

13 MR. MAZUR: Yeah. Correct.

14 THE COURT: Which is the -- so, if they're on the
15 list of 20, they're on the broader list of 59. The 20 is a
16 subset of the 59.

17 MR. MAZUR: Okay.

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 MR. BRAGONJE: Yeah.

21 THE COURT: So, they were discussed. They were
22 discovered. They were a subject of these proceedings.

23 MR. BRAGONJE: Right.

24 THE COURT: They're still -- I think if he says
25 that -- Mr. Foust says that they're not titled in his name,

1 I think the -- right? They weren't -- they're not in your
2 name on the title?

3 THE WITNESS: No.

4 THE COURT: Not in your wife's name, not in your
5 daughter's name?

6 THE WITNESS: No.

7 THE COURT: They're in the LLC's name.

8 THE WITNESS: Harry Hildibrand.

9 MR. MAZUR: And, Your Honor, there's a legal
10 separation. They -- I did file for divorce and there is a
11 separation agreement that the court -- from Family Court in
12 Los Angeles, California --

13 THE COURT: Okay.

14 MR. MAZUR: -- and that's been filed with the
15 court over a year ago. But the --

16 THE COURT: Okay.

17 MR. MAZUR: -- divorce was finalized.

18 THE COURT: These -- so, these Mercedes, in whose
19 name are they titled? The three Mercedes.

20 MR. MAZUR: I believe he testified it was Harry
21 Hildibrand, LLC.

22 THE COURT: That's what I thought so, too.

23 MR. MAZUR: But I can verify it with the divorce
24 order as well and see how that handled. Because the
25 vehicle that -- if it's in the ex-wife's possession and we

1 don't have -- and we don't have the right to go grab it
2 from her, I mean -- so, I mean, it does create some issues
3 being in California.

4 THE COURT: The difference between title and
5 possession, of course.

6 MR. MAZUR: Right.

7 THE COURT: But you're saying he doesn't have
8 title and he doesn't have possession of the three Mercedes.

9 MR. MAZUR: Correct -- is that correct? I mean --

10 THE WITNESS: That's correct.

11 MR. MAZUR: Yes.

12 THE COURT: All right. That's -- okay. That -- I
13 understand the position. And, then, as to the Yukon, he
14 does have it in his possession but it's in the title of the
15 LLC. The title.

16 MR. MAZUR: Right. And we do -- can make a claim
17 for up to 15,000 in equity. And one vehicle under the
18 claim of exemption.

19 THE COURT: All right. All right. And, then, as
20 to the motor coach, I guess it's your position from what
21 I'm hearing, it's starting to be developed, is that it's
22 subject to a lien --

23 MR. BRAGONJE: Yeah.

24 THE COURT: -- owned by Santander.

25 MR. MAZUR: Right. And that was --

1 MR. BRAGONJE: And I'll --

2 THE COURT: Is that new information?

3 MR. BRAGONJE: No. No.

4 THE COURT: Okay.

5 MR. BRAGONJE: And it -- there's no problem with
6 them. I mean, we've had possession of the motor coach for
7 over a year a year.

8 THE COURT: Okay. All right.

9 MR. BRAGONJE: We've been talking to Santander.

10 THE COURT: And you're in possession and you're
11 not seeking contempt with respect to the motorhome?

12 MR. BRAGONJE: The motorhome's gone.

13 THE COURT: Okay. All right.

14 MR. BRAGONJE: We gave it back to Santander.

15 THE COURT: So, let's just focus when we come back
16 on those 20, the ones that you haven't covered yet, Mr.
17 Mazur.

18 MR. MAZUR: A question for Your Honor on this --
19 the RV, though. That was given back to -- it should have
20 been done by a public sale or a public auction, rather than
21 given back. Or the lender had to be paid.

22 THE COURT: Well, if there was an improper sale,
23 that's not before me today.

24 MR. MAZUR: Okay. Very good.

25 THE COURT: All right. That's -- I don't like to

1 -- I'm not giving --

2 MR. MAZUR: I understand.

3 THE COURT: -- an advisory opinion --

4 MR. MAZUR: No. I understand.

5 THE COURT: -- on whether something was done right
6 or wrong as to the motor coach.

7 MR. MAZUR: May I inquire as to the date of --
8 ballpark date of --

9 THE COURT: When you come back, I need to know how
10 many witnesses you're going to have, Mr. Mazur. And is Mr.
11 Detwiler back there? I'm trying to -- there you are. I'm
12 sorry. I knew -- my eyes -- sometimes I have trouble
13 seeing that far. You're Mr. Detwiler.

14 MR. DETWILER: Yes, Your Honor.

15 THE COURT: I figured you would be here.

16 MR. DETWILER: Yeah. I do not want to go to jail,
17 sir.

18 THE COURT: Well, I know. I appreciate that.
19 Well, everyone gets a full chance to be heard before I
20 would do anything like that. All right? So, but I have
21 other remedies. You know? Monetary sanctions. So, we'll
22 see.

23 All right. So, how much time -- are you going to
24 put on -- finish with Mr. Foust, then Mr. Detwiler. Any
25 other witnesses after that.

1 MR. MAZUR: We do have Tom Larkin from --

2 THE COURT: Tom Larkin. Okay. Sure.

3 MR. MAZUR: And, I think, in the affidavit we may
4 be able to very short circuit the whole process, whittle it
5 down a little bit. So --

6 THE COURT: I think so. All right.

7 MR. MAZUR: Okay.

8 THE COURT: And, so, how much time, Mr. Bragonje,
9 will you need for cross-examination of Mr. Foust and Mr.
10 Detwiler?

11 MR. BRAGONJE: I doubt it's more than a morning
12 like we were having now.

13 THE COURT: All right. So, you guys think total I
14 should block out two full hours?

15 MR. BRAGONJE: I think --

16 MR. MAZUR: Yes. That should be -- that should be
17 plenty.

18 THE COURT: and that'll give you guys each 10 more
19 minutes to argue.

20 MR. BRAGONJE: Sounds good.

21 MR. MAZUR: Perfect.

22 THE COURT: All right. So, let me see. I don't
23 know when I can do the two hours. I don't know if I can
24 give you a time right now, guys. Who's -- Mr. Foust,
25 you're from L.A. Right? You have to come in here special?

1 MR. FOUST: Well, San Diego. I live there.

2 THE COURT: San Diego. And, Mr. Detwiler, where
3 does he come in from?

4 MR. DETWILER: Local, sir.

5 THE COURT: You're local. Very good. So, it's
6 just Mr. Foust's schedule. And what I'm going to have to
7 do, gentlemen, is look at my schedule and try to find some
8 available dates and have my JEA get in touch with both of
9 you. And, then, we're going to have to coordinate. I'd
10 like to get it done -- I really would like to get this done
11 within the next two or three weeks. We really need to move
12 on this.

13 To the extent it's not crystal clear to everybody,
14 though, whether Mr. Foust owns or possesses any of these
15 vehicles, or Harry Hildibrand, LLC, owns or possesses any
16 of these vehicles, or Mr. Detwiler owns or possesses any of
17 these vehicles, they are absolutely not to be transferred,
18 sold, encumbered, or in any way transferred to anybody
19 else's possession, custody, or control, or title until I've
20 finished resolving the current Order to Show Cause.

21 MR. MAZUR: Okay.

22 THE COURT: Is that clear?

23 MR. MAZUR: Yes, Your Honor.

24 THE COURT: All right. Mr. D -- while you're back
25 there, is that clear to you, sir?

1 MR. DETWILER: Yes.

2 THE COURT: All right. Let's -- how long will it
3 take you, Mr. Mazur, to get in this affidavit?

4 MR. MAZUR: If I could actually -- I still have
5 some --

6 THE COURT: I mean, you were going through it all
7 today. It shouldn't be more than a few business days.
8 Right?

9 MR. MAZUR: If I could have one week that would be
10 perfect until next Monday? That would be --

11 THE COURT: That's fine.

12 MR. MAZUR: -- perfect.

13 THE COURT: Not a problem. So, a week from today
14 would be what date?

15 THE CLERK: April 8th.

16 THE COURT: All right. April 8th is the court-
17 imposed deadline for Mr. Foust to provide this Court with
18 an affidavit regarding the location, possession, and
19 transfer in the past of the 20 vehicles that are the
20 subject of this current contempt proceeding. All right.
21 So, sometime after that receipt of the affidavit, we'll
22 hold a hearing, a continued hearing. Understood?

23 MR. MAZUR: Very good. Thank you, Your Honor.

24 MR. BRAGONJE: Sounds good.

25 THE COURT: All right. My JEA or Law Clerk will

1 get in touch with you about availabilities. All right.

2 MR. MAZUR: Thank you, Your Honor.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You are excused, Mr. Foust. All
5 right. All right. Thank you. We're going to go ahead and
6 take a 15-minute recess. Okay?

7 All right. What are you here for?

8 MR. LARKIN: I'm Mr. Vega -- representing Mr. Vega
9 as the --

10 THE COURT: Okay.

11 MR. LARKIN: -- power of attorney on the vehicles
12 that he has the lien on.

13 THE COURT: Okay. Very good. I understand. All
14 right. All right. So, you're not going to testify, you're
15 just appearing as a possible interested party?

16 MR. LARKIN: I am -- I'm willing to indicate what
17 I have as proof of our lien.

18 THE COURT: Well, some --

19 MR. BRAGONJE: Well, I'd like to see these
20 documents, too.

21 THE COURT: Pardon me? Are some cars in your --
22 or you just have the lien, you don't have possession or
23 title of the cars?

24 MR. LARKIN: I think Mr. Vega has several of the
25 cars. I don't --

1 THE COURT: Why don't you step forward for a
2 second --

3 MR. LARKIN: Certainly.

4 THE COURT: -- and just identify yourself because
5 you're talking and --

6 MR. LARKIN: Okay. Tom --

7 THE MARSHAL: Right here.

8 MR. LARKIN: Tom Larkin. I represent for power of
9 attorney on the vehicles for Mr. Ronald Vega.

10 THE COURT: All right. Why don't you come back at
11 the date that we're going to set in the future, then?
12 Would that be convenient for you, sir?

13 MR. LARKIN: Yes, sir. I come from San Diego.
14 With just notice, I can get here.

15 THE COURT: All right. Very good. I'll tell you
16 what, when we go off the record, why don't you give your
17 contact information to my Law Clerk so we can coordinate
18 with your schedule as well in trying to set the new date?

19 MR. LARKIN: Yes, Your Honor.

20 THE COURT: Does that work for you, sir?

21 MR. LARKIN: Yes, sir.

22 THE COURT: All right.

23 ...

24 ...

25 ...

1 MR. LARKIN: Thank you.

2 THE COURT: Thank you. Appreciate it. All right.
3 Court's adjourned.

4

5 PROCEEDING CONCLUDED AT 10:14 A.M.

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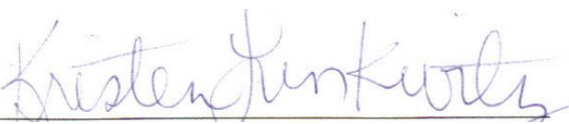
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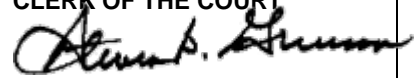
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

BAKER BOYER NATIONAL BANK,)	
)	CASE NO. A-17-760779
Plaintiff,)	
)	
vs.)	DEPT. NO. II
)	
JAMES PATTERSON FOUST, JR.,)	
)	Transcript of Proceedings
Defendant.)	
)	

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
EVIDENTIARY HEARING

WEDNESDAY, APRIL 24, 2019

APPEARANCES:

For the Plaintiff: JOHN E. BRAGONJE, ESQ.

For the Defendant: MICHAEL MAZUR, ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

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WEDNESDAY, APRIL 24, 2019 AT 1:14 P.M.

THE COURT: All right. *Baker Boyer versus James Patterson*, A760779.

MR. MAZUR: Good afternoon, Your Honor. Michael Mazur on behalf of defendant.

MR. BRAGONJE: Good afternoon, Your Honor. John Bragonje from the Lewis Roca law firm on behalf of the plaintiff and judgment creditor, Baker Boyer National Bank.

THE COURT: Very good. I don't see any witnesses so I'm assuming you guys want to continue this.

MR. BRAGONJE: I'd like to.

MR. MAZUR: Yes, please, Your Honor. My client's halfway through Barstow or Baker right now. And he was here at 9 o'clock this morning. I think there was some confusion on the dates. We received an e-mail this morning at 8:30 trying to confirm if the hearing was on for today or not. And I think John Bragonje said, I assume it's going to be held on Friday, and my client saw that and he started driving back. So, we would request a continuance if we could.

THE COURT: What dates are you available? Well, I can tell you the dates that -- the only dates that I have to fit this in.

MR. MAZUR: Perfect.

1 THE COURT: Ready?

2 MR. MAZUR: Yes.

3 THE COURT: All right. So, it's got to be one of
4 these dates. April 26th, that's a Friday, that's this
5 Friday at 8:30 a.m. Now, I'm assuming you guys will need
6 about two hours for this evidentiary hearing.

7 MR. MAZUR: Yeah.

8 MR. BRAGONJE: At the most. Yeah.

9 MR. MAZUR: Maximum.

10 THE COURT: Okay. Then we have May 10th, that's
11 another Friday at 9 a.m. All right. Then we have
12 Thursday, May 16th at 10:30. And, then, Friday, May 17th at
13 9 a.m.

14 MR. BRAGONJE: So, I mean, I would rather proceed
15 today. I think I've got some things I could offer that
16 counsel could deal with. But I guess I don't know if the
17 Court is willing to hear it. So --

18 THE COURT: Well, it's an Order to Show Cause in
19 re Contempt so it's really the burden on the -- on Mr.
20 Foust and --

21 MR. BRAGONJE: Sure.

22 THE COURT: -- and Harry Hildibrand, LLC, and Mr.
23 Detwiler come forward and present their evidence why they
24 shouldn't be held in contempt of court and punished
25 accordingly. So, I want to hear from them.

1 MR. BRAGONJE: Okay.

2 THE COURT: But if there's some information. Mr.
3 Bragonje, that you think would be helpful for the Court
4 and, also, to give notice to the judgment debtors, we could
5 do that.

6 MR. BRAGONJE: Yeah. I think I've got just a --
7 you know, probably 10 minutes worth. I've got the response
8 to a subpoena that I'd like to share with the Court. I've
9 disclosed it, you know, I think three weeks ago. They've
10 seen it before today.

11 THE COURT: All right.

12 MR. BRAGONJE: It's not really anything -- it's --
13 you know, it's from a third party so no one's going to come
14 here to testify about it or anything like that. It's just
15 the documents themselves. So, we could do that --

16 THE COURT: Well --

17 MR. BRAGONJE: -- and it might speed things along.

18 THE COURT: Well -- right. I'm waiting for
19 attorneys in a jury trial where the jury is out right now.
20 And I have a jury question that I need to answer. I don't
21 want to delay that.

22 MR. BRAGONJE: Okay.

23 THE COURT: But I'm waiting for one of the
24 attorneys to show up. Let's see, we have one side here
25 already. We're waiting for the other side. Maybe we can

1 go ahead and begin, then, since I don't know how long it's
2 going to take him to get here.

3 MR. BRAGONJE: Okay. Yeah.

4 THE COURT: So, give me a moment to get my notes
5 out.

6 All right. Mr. Bragonje, I did see that you had
7 proof of service for Mr. Detwiler and Mr. Foust. What
8 would you like to explain to the Court?

9 MR. BRAGONJE: Yeah. If I could approach, Your
10 Honor, and just provide the Court with the copy of what I'd
11 like to discuss?

12 THE COURT: All right. Very well.

13 [Colloquy in the courtroom]

14 THE COURT: While we're waiting, could you hand
15 this to Mr. Doyle so he could at least see what the
16 question is?

17 MR. BRAGONJE: This is a demonstrative evidence,
18 which I've handed to opposing counsel. And this is a copy
19 of my most recent disclosure.

20 THE COURT: Right. I have that disclosure.

21 MR. BRAGONJE: Okay.

22 THE COURT: Thank you.

23 MR. BRAGONJE: So, I want --

24 THE COURT: Let me take a look at what you handed
25 me.

1 MR. BRAGONJE: So --

2 THE COURT: All right. Very good.

3 MR. BRAGONJE: -- maybe if I could start with the
4 demonstrative evidence, the timeline? I think what we've
5 heard from Mr. Foust in the prior hearing and what we'll
6 hear when he ultimately testifies is that he's got no
7 involvement with Harry Hildibrand -- it's really nothing
8 new. He says he's got no involvement with Harry
9 Hildibrand. He disassociated with Harry Hildibrand in 2008
10 and, consequently, he's got no involvement with the cars
11 that Harry Hildibrand identified in the bankruptcy. I
12 think there were approximately -- there were approximately
13 20, I think.

14 I sent a subpoena to an insurance company that
15 specializes in insuring classic cars, expensive cars like
16 that. It's a company called Hagerty. And I got a response
17 back that indicated that while these proceedings were going
18 on -- so, kind of between the first hearing that we had and
19 the second hearing, Mr. Foust reached out to this insurance
20 company to try to get insurance for all the cars identified
21 in the bankruptcy.

22 And if you could refer -- so, the first
23 evidentiary hearing was February 15th. And, you may
24 remember, there was a bankruptcy that happened on July 30th.
25 This was all last year. And, then, on August 22nd, we have

1 a telephone log from this insurance company. And Mr. Foust
2 told a Hagerty representative that he, quote: Has a
3 collection that needs fire and theft insurance. But most
4 of the cars are in Bowman, North Dakota and California and
5 that he will e-mail a list.

6 So, if we could look at the -- it's -- I guess I
7 would -- I guess I'd offer this into evidence if there's no
8 objection. I could go through the name of the Custodian of
9 Record. It's their -- there is a Custodian of Record
10 certificate that's notarized. It is on page 374 of the
11 disclosure. It is a response from a Mr. Mark Cuzma, II
12 [phonetic]. He has the title of senior counsel at Hagerty
13 Insurance Agency. And he --

14 THE COURT: Do you have the original of this
15 certificate of custodian? I have a copy here.

16 MR. BRAGONJE: I don't think I have the original.

17 THE COURT: All right. Well, how did you --

18 MR. BRAGONJE: I -- this was an out of state
19 subpoena. So, we went through a service. I think this was
20 --

21 THE COURT: I see.

22 MR. BRAGONJE: This was served in Delaware,
23 actually. So, I think our company may have the original in
24 its files. I don't know the service that we went through.
25 But it's notarized there. It's dated February 14th, 2019.

1 And by the --

2 THE COURT: Well, let's see what Mr. Mazur says
3 about this.

4 MR. BRAGONJE: Yeah. By the way, I did --

5 THE COURT: But let him have a chance to review
6 it.

7 MR. BRAGONJE: I did have -- I did give this to --
8 notice of the subpoena went out to prior counsel before
9 they withdrew.

10 THE COURT: Right.

11 MR. BRAGONJE: There was no objection.

12 MR. MAZUR: And, Your Honor, if I could request
13 time to review the document before agreeing to
14 admissibility? But I will definitely --

15 THE COURT: That's fine. You can just --

16 MR. MAZUR: -- inquire with the client as -- and
17 hopefully we can speed things along.

18 THE COURT: Right. We don't need to decide that
19 right now. But you're on notice of the request.

20 MR. MAZUR: Okay.

21 THE COURT: Okay.

22 MR. MAZUR: Thank you, Your Honor.

23 MR. BRAGONJE: Yes. So, there on page 374,
24 there's the statements regarding authenticity are -- the
25 document's authentic because this senior attorney said that

1 he was familiar with the documents and he made the
2 response. And, then, in his affidavit as well, there is a
3 statement that indicates that the subpoena response
4 constitutes business records. It says that the original --
5 the records were made at or near the time of the act,
6 event, condition, opinion, or diagnosis recited therein.
7 So, my position is these are authentic business records
8 that ought to be taken into evidence.

9 And, then, if people could direct their attention
10 to page 398 of this proposed exhibit? I'll just call it
11 Proposed Exhibit 1. Page 398. This is a telephone -- I
12 guess I'll let everyone have a chance to get there.

13 MR. MAZUR: And, Your Honor, if I may inquire a
14 question? As far as all the documents attached, were all
15 these produced in the same order or is there --

16 MR. BRAGONJE: Yes.

17 MR. MAZUR: Okay. Because I see in here --

18 MR. BRAGONJE: This is the order --

19 MR. MAZUR: -- there some discovery questions and
20 --

21 MR. BRAGONJE: Yeah. I think it's a copy of the
22 subpoena.

23 MR. MAZUR: Okay.

24 THE COURT: I'm looking at 398.

25 MR. BRAGONJE: So, this is a telephone log. I'm

1 looking at kind of the top half of the page. And this is
2 the language I refereed to earlier that I quote in my
3 demonstrative exhibit. It's an entry from August 22nd,
4 2018, which is, again, right in the middle of our
5 proceedings before this Court. And it says here:

6 Mr. Foust, 80 years old, has a collection that
7 needs fire and theft. Most cars -- most are in Bowman,
8 North Dakota and California. Vehicles all registered
9 in Montana. He will e-mail list and, then, we can
10 review.

11 And, then, in fact, if you go down a few lines
12 further, there's a entry that talks about some of the cars
13 that, in fact, we've been discussing in these proceedings,
14 a 1957 Chevy, for example.

15 And, then, if everyone could flip over a few pages
16 to page 407? Page 407, I would submit, is the list of cars
17 that Mr. Foust submitted to the Hagerty Insurance Company.
18 There would be no other way for this company to acquire a
19 list like this. It is similar to but not identical to the
20 list offered in the bankruptcy, that there's a date at the
21 top of the list that says 8-22-2018. I assume that's the
22 date it was printed. These are the cars that were
23 identified in the bankruptcy. Although, the only
24 difference that I can tell is they're listed in a different
25 order for some reason. But it's the same make and model

1 numbers, the same serial numbers, the same description.

2 And, so, where does all of that lead us? I mean,
3 I think that we've heard -- or -- you know, many points
4 now. And I suspect that whenever Mr. Foust does testify,
5 he's going to say: I've got nothing to do with Harry
6 Hildibrand, I've got nothing to do with these cars. And --

7 THE COURT: I've already made rulings on that in
8 my Findings of Facts and Conclusions of Law in January
9 2019. But I'm certainly willing to entertain more argument
10 and evidence on that since this is a different context --

11 MR. BRAGONJE: Absolutely.

12 THE COURT: -- in Order to Show Cause for
13 Contempt.

14 MR. BRAGONJE: Absolutely. I guess I would just
15 leave the Court with this thought.

16 THE COURT: Okay.

17 MR. BRAGONJE: This Hagerty Insurance has got no
18 dog in this fight. They didn't suspect that any of this
19 would ever show up in a courtroom.

20 THE COURT: Right.

21 MR. BRAGONJE: And I think this is a snapshot of
22 Mr. Foust being candid and he says that he wants insurance
23 for these cars. So, I think that shows that he controls
24 them, despite what he'll undoubtedly testify to.

25 That's all I wanted to offer, Your Honor. Thank

1 you.

2 THE COURT: Give me one moment and, then, we'll
3 hear from Mr. Mazur.

4 MR. MAZUR: And, Your Honor, and not having --

5 THE COURT: Well, why don't you give me just one
6 minute? I wanted to find something.

7 MR. MAZUR: Okay.

8 THE COURT: I just -- I can't, like, listen and
9 look at the same time.

10 [Pause in proceedings]

11 THE COURT: I'm trying to find --

12 [Pause in proceedings]

13 THE COURT: Well, okay, Mr. Mazur.

14 MR. MAZUR: All right. Yes, Your Honor. And, in
15 some of the documents we just looked at, it says the owner
16 is HH. It's another assumption and that would be Harry
17 Hildibrand. And it doesn't state that the insurance for
18 Mr. Foust ownership of the vehicle, it just said he had a
19 telephone call with them. But I think that we could have
20 testimony on that as well and he can explain exactly the
21 conversations and what was sent out to them as well. And,
22 then, we'll review each of them with the client as well.
23 But I think a lot of assumptions have been made reading
24 into these documents of what they actually mean.

25 THE COURT: All right. I mean, I am going to

1 entertain argument and if you want to put Mr. Foust back on
2 the stand. But I -- I'm going to view any argument that's
3 intended to persuade me that my Findings of Fact and
4 Conclusions of Law in January of this year are erroneous,
5 if that's what you're going to try to do, then I'm going to
6 have to construe that as a Motion for Reconsideration or a
7 Motion for a Rule 59 or Rule 60 Relief. And, then, we have
8 the issue as to whether that's timely or untimely and/or
9 clearly erroneous and whatever standard applies there.
10 Because I already did make some findings that -- to Mr.
11 Foust controls Harry Hildibrand, either directly or
12 indirectly.

13 So, yes, I certainly will give you an opportunity
14 to further argue that. And, of course, you're coming in
15 late for, was it Marquis Aurbach? Or, no. Marquis Aurbach
16 --

17 MR. MAZUR: Yeah. They were in prior.

18 THE COURT: Right.

19 MR. MAZUR: Were prior. Yeah.

20 THE COURT: All right. What else did you want to
21 say, then?

22 MR. MAZUR: And that's everything. Some of the
23 notations, I want to say, created in 2011 and closed in
24 2018. But we can take a look at that when he's here to
25 testify.

1 If I may step out? I may inquire with the client
2 and see when they're available in the dates that we have
3 listed so that --

4 THE COURT: So, you're going to call the client,
5 then?

6 MR. MAZUR: Yeah. Can --

7 THE COURT: Yeah. Okay.

8 MR. MAZUR: That way we can set the date and --

9 THE COURT: So, talk to him about when he's
10 available.

11 MR. MAZUR: Okay.

12 THE COURT: Because, Mr. Bragonje, were you
13 available one of those days or all of them?

14 MR. BRAGONJE: Yeah. I think all of those work
15 for me at this point.

16 THE COURT: All right. Given the seriousness of
17 this matter and the extensive delay that has transpired on
18 a collection matter, I'm going to insist that Mr. Foust
19 make himself available one of those four dates.

20 MR. MAZUR: Yeah. And that's why I'd like to --

21 THE COURT: Very good. Thank you.

22 MR. MAZUR: -- provide it to the Court. I'll come
23 back and provide it to the Court and to the firm.

24 THE COURT: So, I'm going to turn to a different
25 matter. And, then, when you guys come back in, I'll recall

1 your case. All right?

2 MR. MAZUR: Great. Thank you, Your Honor.

3 MR. BRAGONJE: Thank you.

4 THE CLERK: Are those exhibits admitted?

5 THE COURT: Not admitted. Yeah. The exhibits are
6 not admitted at this time. I'll just hold on to them and,
7 then, we'll decide what to do at the next hearing. Okay?

8 [Case trailed at 1:29 p.m.]

9 [Hearing resumed at 1:38 p.m.]

10 MR. BRAGONJE: Well, opposing counsel says May 17th
11 at 9 a.m. works. I mean, I'd rather do something sooner
12 but if that's --

13 THE COURT: All right.

14 MR. BRAGONJE: -- that's what it is, that's what
15 it is.

16 THE COURT: All right. Very good. So, our
17 hearing will be May 17th, 2019, 9 a.m. The Court is
18 ordering Mr. Foust's appearance. And we'll proceed with a
19 hearing on the Order to Show Cause. And I will allow, Mr.
20 Mazur, you to present additional argument if you want.
21 And, then, we'll hear from Mr. Foust. Any other witnesses
22 that you want to put on, I'll leave that up to you, with
23 cross-examination by Mr. Bragonje. And, then, Mr.
24 Bragonje, you can put on any witnesses at this evidentiary
25 hearing on the Order to Show Cause. And that will decide

1 where we go from there.

2 MR. MAZUR: Thank you, Your Honor.

3 THE COURT: All right, counsel.

4 MR. BRAGONJE: I assume Mr. Detwiler should
5 appear, also.

6 THE COURT: Well, I'm trying to think if the Order
7 to Show Cause has his name on it.

8 MR. BRAGONJE: It does. It does.

9 THE COURT: All right. Yes. And, so, the Court
10 will also order that Harry -- that Mr. Detwiler appear in
11 this individual capacity and as a representative of Harry
12 Hildibrand also appear. The Court's ordering that. All
13 right?

14 MR. BRAGONJE: Thank you.

15 MR. MAZUR: Very good. Thank you, Your Honor.

16 THE COURT: Thank you, counsel. See you on that
17 date, May 17th at 9 a.m.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: All right.

20

21 PROCEEDING CONCLUDED AT 1:39 P.M.

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1 **CERTIFICATION**

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4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

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8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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20 KRISTEN LUNKWITZ

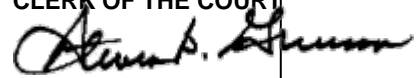
21 INDEPENDENT TRANSCRIBER

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

FRIDAY, MAY 17, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING
VOLUME I**

APPEARANCES:

For the Plaintiff(s):

JOHN E. BRAGONJE, ESQ.

For the Defendant(s), James
Patterson Foust, Jr.:

MICHAEL D. MAZUR, ESQ
(Via Court Call)

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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INDEX

WITNESSES Page #

FOR THE PLAINTIFF:

<u>EDWARD DETWILER</u>	
Examination by the Court	18
Direct Examination	27

EXHIBITS

	<u>Page #</u>
No exhibits offered.	

1 **LAS VEGAS, NEVADA, FRIDAY, MAY 17, 2019**

2 [Proceeding commenced at 9:04 a.m.]

3
4 THE COURT: All right. Please be seated. All right. I think
5 we have somebody on Court Call.

6 Mr. Mazur, are you on Court Call?

7 MR. MAZUR: [Indiscernible.]

8 THE COURT: Good morning. Thanks for being present by
9 Court Call. Appreciate that.

10 Mr. Bragonje, good morning.

11 MR. BRAGONJE: Good morning, Your Honor.

12 THE COURT: And then Mr. Detwiler?

13 MR. DETWILER: Yes, sir.

14 THE COURT: All right. Good morning, to you, sir.

15 MR. DETWILER: Good morning, sir.

16 THE COURT: All right. Mr. Mazur, I forget, do you represent
17 Mr. Detwiler also?

18 MR. MAZUR: I represent, yeah, Mr. Foust only.

19 THE COURT: Mr. Foust. Okay.

20 And Mr. Foust is not present, I understand.

21 MR. MAZUR: Correct. I did receive a communication from
22 him end of last week. A very dear friend of his passed away and the
23 funeral, I believe, was yesterday. We did submit a declaration that he
24 did sign last night, authorized us to sign electronically, did state that the
25 funeral was in Texas. He's booking a flight to come home, but it was a

1 very dear friend and his family's home, and he won't be in attendance
2 today because of that.

3 But he will make himself available as soon as he can
4 beginning on Monday when he returns.

5 THE COURT: I haven't seen that declaration. Was it filed this
6 morning or late last night?

7 MR. MAZUR: It was late last night. I believe that Diana from
8 my office copied the JEA, Melody.

9 THE COURT: Okay.

10 MR. MAZUR: Got a copy of it. But it was late last night when
11 we had received it from him.

12 THE COURT: All right. Let me just see if I can pull it up and
13 read it.

14 MR. MAZUR: And, Your Honor, in that declaration, he does
15 provide facts as it relates to the evidence that was submitted by
16 Plaintiffs' counsel at the last hearing, prior to the last hearing. And also
17 some of the other information, as well.

18 THE COURT: Anybody get a courtesy copy over to
19 Mr. Bragonje, do you know?

20 MR. BRAGONJE: Yeah, I did receive it.

21 MR. MAZUR: We also put it in the mail --

22 THE COURT: You did -- you saw it?

23 MR. MAZUR: -- but it was --

24 MR. BRAGONJE: About 10:00 last night. I didn't look at it
25 closely, because it was --

1 THE COURT: All right. So you got a copy.
2 MR. BRAGONJE: I was going to bed, but, yeah.
3 THE COURT: Okay. Well, I'm the only one who hasn't seen it
4 then. Give me a moment.
5 [Pause in proceedings.]
6 THE COURT: Yeah, my computer's still not working. I
7 mentioned it to somebody, it hasn't been fixed yet. I need somebody to
8 print that declaration off for me.
9 THE CLERK: I'm doing that right now.
10 THE COURT: Okay. Thanks.
11 [Pause in proceedings.]
12 THE COURT: All right. I read the declaration. I haven't had
13 time it look at the attachments thereto.
14 Comment, Mr. Bragonje. Any comments on this?
15 MR. BRAGONJE: Yes, thank you, Your Honor.
16 You know, this is not a deposition or a routine hearing. I --
17 you know, I don't believe a lot of what Mr. Foust says, but I think even if
18 we accept this excuse on its face, I don't think it matters. This is not a
19 immediate relative or anything like that. And I believe the evidence
20 shows that this death occurred some time ago, and I feel like we heard
21 about it 10:00 last night. I really think --
22 THE COURT: I think he said the 11th, right? Which would
23 be --
24 MR. BRAGONJE: Yeah.
25 THE COURT: -- Saturday. Last Saturday. And hear about it

1 on Monday.

2 MR. BRAGONJE: The truth is --

3 THE COURT: Today's Thursday.

4 MR. BRAGONJE: Yeah.

5 THE COURT: Or Friday, the 17th.

6 MR. BRAGONJE: You know, I did have some discussions
7 with Mr. Mazur and I told him I'd be willing to move this hearing, but only
8 move it up, not continue it. If we were to continue it again, that would be
9 the fourth continuance. The fourth continuance.

10 THE COURT: I know.

11 MR. BRAGONJE: This was originally scheduled for April 1st.
12 I think we've got enough record to make the decision. So I really think
13 that this is just another in a series of demonstration to the Court that
14 Mr. Foust doesn't take this proceeding seriously. This is not a
15 deposition. This is a hearing to determine whether or not he's going to
16 jail for contempt.

17 I really think that if they had been serious about this problem,
18 we would have heard about it sooner, and like I said, I don't think it even
19 matters, because it wasn't his child, heaven forbid, that died or
20 something like that. It was an acquaintance.

21 And while that might be an excuse to move a deposition, I
22 don't think it's an excuse to move a contempt hearing. These are
23 extraordinary proceedings.

24 Now, I recognize that we, you know, we need to hear from
25 the -- from Mr. Foust, but I think we have. He's already been on the

1 stand once. And at a minimum, Mr. Detwiler's here, so I think we can go
2 forward with that portion.

3 THE COURT: Mr. Mazur, would you like to respond?

4 MR. MAZUR: Yes, Your Honor.

5 This is not another delay tactic by Mr. Foust. I don't know if
6 the Court was aware, Mr. Foust did state a few months back to me that
7 he was given the diagnosis that left him six months. He had very severe
8 cancer. And they'd given him six months from a couple of months back
9 to live.

10 THE COURT: Who has six months?

11 MR. MAZUR: He didn't -- pardon?

12 THE COURT: Who has six months? This friend who just
13 passed?

14 MR. MAZUR: No, Mr. Foust does. And his friend just passed
15 and he's very close to the family. And it hit him very severely. And I
16 was able to speak to him quite a bit last night, you know, to get the
17 declaration. And he noticed the urgency and he just said, I can't leave
18 the family right now. I have to be with them. I'll be back this weekend.

19 But, you know, his mental state, because of that, because it
20 was his own diagnosis as well, it's not an intent [indiscernible] he said he
21 could make himself available as soon as he gets back, whatever the
22 Court's schedule is, he will be there to answer questions.

23 And, you know, it provides some of the information in the
24 declaration last night as well. But I would request -- my request in this --
25 a continuance, but we will make ourselves available, my client will make

1 himself available as soon as he returns. And it's not an attempt to delay,
2 what I'm trying to say, Your Honor.

3 THE COURT: Why -- I still don't understand why he couldn't
4 have been here. Even if he attended the funeral -- well, knowing that he
5 attended the funeral yesterday, there's tons of flights that go from Dallas,
6 a major international hub, to Las Vegas, also a major international hub.
7 He could have flown in last night or taken a early morning flight to -- he
8 could have been here if he really wanted to. I mean I --

9 MR. MAZUR: I understand --

10 THE COURT: -- you probably don't have any response to
11 that. I understand. I'm just -- I'm thinking out loud why he couldn't be
12 here knowing that, you know, he knew about the passing on Monday.
13 He would have -- sounds like the 13th -- I'm sorry, he attended the
14 visitation on Wednesday. He probably knew about the visitation the day
15 before the Wednesday, which was the Tuesday. He could have made
16 travel plans to be out here. I -- and he didn't explain any of that. Like,
17 why isn't he here?

18 It's just very troubling, given all the prior continuances that
19 we've had in this case. I know it's not your fault, Mr. Mazur. It's just it's
20 very troubling here.

21 And I'm not -- Mr. Bragonje, I'm not sure -- I'm not really sure
22 what to do. Because this is a contempt proceeding to determine
23 whether appropriate punishment, including incarceration --

24 MR. BRAGONJE: Right.

25 THE COURT: -- should be imposed for contempt. And --

1 MR. BRAGONJE: Right.

2 THE COURT: -- and it's a serious matter, basically --

3 MR. BRAGONJE: It is.

4 THE COURT: -- to throw someone in jail without him -- having

5 him present to have an opportunity to be heard.

6 MR. BRAGONJE: I agree.

7 THE COURT: So I --

8 MR. BRAGONJE: He has been on the stand.

9 THE COURT: -- this is a very --

10 MR. BRAGONJE: He's been on the stand an hour and a half

11 already. I mean, we did have one session.

12 THE COURT: Right.

13 MR. BRAGONJE: It's not like -- I understand what Your

14 Honor's saying. But I think that -- my opinion here is I don't believe

15 anything that Mr. Foust says. If he's really so sick from cancer, why is

16 he jetting across the country? I mean, he either traveled from --

17 presumably from California or Nevada.

18 THE COURT: Yeah.

19 MR. BRAGONJE: I really don't believe that. And I think that --

20 I think we're dealing here with a defendant that wants to flout the system

21 and I think at some point, even if they're not willing to show up, justice

22 must happen.

23 THE COURT: Yeah. I'm wondering if -- I can't access -- guys,

24 this is what happens when I try and access my calendar. This is really

25 annoying.

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[Pause in proceedings.]

THE COURT: Monday I have a bench trial, it doesn't start until 10:30. I don't have any summary judgment motions. I have -- let's see, Motions in Limine that are going to take an hour and a half. Let me check Tuesday.

I could do this -- I mean, if I were inclined not to hold him in contempt right now and then add this failure to appear as additional grounds for contempt punishment, if I were not going to do that, then I could have this hearing Tuesday beginning at 8:30.

MR. BRAGONJE: That could work. Although I would say this --

THE COURT: And certainly, he would have to pay costs --

MR. BRAGONJE: That's what I was going to --

THE COURT: -- for you to show up here, because, you know, the funeral and the death of his friend, even -- assuming that did happen and me taking Mr. Foust at his word there, it's still required you to attend through no fault of your own.

MR. BRAGONJE: Right.

THE COURT: So you should have to be compensated for your time to show up here today.

MR. BRAGONJE: I think so.

THE COURT: And I'm sure Mr. Foust would understand that and wouldn't have a problem with that. But we'll deal with that. So I'm thinking Monday at 8:30.

Mr. Mazur --

1 MR. BRAGONJE: I think --
2 THE COURT: I'm sorry, Tuesday at 8:30.
3 Mr. Mazur?
4 MR. MAZUR: Yes, Your Honor.
5 THE COURT: So you're going to have to make that work.
6 He's got to fly out here over the weekend or Monday. We need to
7 proceed with this hearing. You know, I'm giving him a great leniency
8 here in, you know, in moving this to Tuesday at 8:30.
9 MR. MAZUR: I appreciate that, Your Honor. And I'm sure he
10 can be very thankful of that. I will make sure that he is here Tuesday
11 at 8:30 at the courthouse [indiscernible] the State. But he said that he
12 will be returning this weekend, so I will make sure he's here. And I'm
13 sure he's very appreciative and thankful as well.
14 THE COURT: No, I appreciate that. You don't foresee any
15 conflicts in your schedule, do you?
16 MR. MAZUR: Your Honor, I have a mediation at 10:00. But I
17 can reschedule that.
18 THE COURT: Yeah, I think --
19 MR. MAZUR: Foreclosure mediation.
20 THE COURT: Okay. Do you want me to make a call to the
21 mediator or is that something you feel comfortable doing to get your
22 mediation moved on Tuesday?
23 MR. MAZUR: Your Honor, I am the mediator.
24 THE COURT: Oh.
25 MR. MAZUR: So I'll go ahead and make the change

1 [indiscernible].

2 THE COURT: Oh, you are the mediator. Ah, good.

3 MR. MAZUR: Yes, sir.

4 THE COURT: Then that works out.

5 MR. MAZUR: Okay. Makes that easy.

6 THE COURT: Well, thank you. Thank you for
7 accommodating us, Mr. Mazur. I appreciate that.

8 MR. MAZUR: Yes, Your Honor.

9 THE COURT: So I'm wondering if we should not hear from
10 Mr. Detwiler, then, because it -- because what he says might relate to
11 what --

12 MR. BRAGONJE: Well --

13 THE COURT: -- Mr. Foust --

14 MR. BRAGONJE: I've got a couple thoughts on that. I think it
15 would be a witness exclusion rule anyway. I mean, I think these guys
16 would need to be separated anyway. So I would like to proceed with
17 Mr. Detwiler today.

18 THE COURT: Might be kind of difficult with --

19 MR. BRAGONJE: And I'm worried about the timing of it all
20 too. I mean, we've got to finish Tuesday morning also. So, I mean, to
21 the extent we could advance it.

22 THE COURT: Well, I indicated that we get it -- we're doing a
23 total of two hours. Isn't that what I said?

24 MR. BRAGONJE: Oh, yeah.

25 THE COURT: Each side shall have one hour for its --

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MR. BRAGONJE: Okay.

THE COURT: I could give a little bit more time if we need to.
We -- but we've got to get it done Tuesday morning.

MR. BRAGONJE: Yeah. Yeah, I mean, it's --

THE COURT: I --

MR. BRAGONJE: Obviously, we'll defer to the Court, but my
feeling is --

THE COURT: I do agree that the exclusionary rule should
apply. And that's what I'm going to impose, that one witness cannot
be -- well, since it's a separate contempt proceeding, technically, against
each individual. All right. I can require that one witness be out of the
room when the other witness is being exempt. All right. And that's what
I'm going to do.

The only issue here is whether we proceed with Mr. Detwiler --

MR. BRAGONJE: Yeah.

THE COURT: -- this morning.

MR. BRAGONJE: I wonder what he thinks about it.

THE COURT: Well, I -- it doesn't matter what he thinks.

MR. BRAGONJE: Oh, okay.

THE COURT: It's -- because he complied with my order to be
here.

MR. BRAGONJE: He did.

THE COURT: I appreciate that.

MR. BRAGONJE: He did.

THE COURT: The only thing I'm concerned about, Mr. Mazur,

1 you're not available -- you're -- in person, you're on the phone.

2 MR. MAZUR: Correct.

3 THE COURT: How do you -- can you hear me okay? I hear
4 some --

5 MR. MAZUR: I can -- I've got four puppies, Your Honor. I
6 apologize.

7 THE COURT: Okay. So, I mean, I really want to proceed with
8 examination of Mr. Detwiler and to hear his story. He's here and, you
9 know, he took time out of his day. Would you be able to hear sufficiently
10 on the phone for -- I mean, if we have a half an hour of testimony, is that
11 something that you'd be able to hear from the witness? He has a
12 microphone up here.

13 MR. MAZUR: Yes, Your Honor. I believe that'll be okay. And
14 what I request is if we can recall him as well on Tuesday, potentially.
15 But I'm okay proceeding, moving forward today.

16 THE COURT: See, this gets us into the structural problem,
17 Mr. Bragonje. Mr. Detwiler is, of course, entitled to speak on his own
18 behalf --

19 MR. BRAGONJE: Sure.

20 THE COURT: -- in connection with the contempt proceedings
21 against him. But Mr. Foust, in connection with the contempt
22 proceedings against him, is entitled to have Mr. Detwiler be presented
23 as a witness.

24 MR. BRAGONJE: Sure. Yeah.

25 THE COURT: So I don't know if you want to do it all at once --

1 MR. BRAGONJE: Your Honor, I --

2 THE COURT: -- or together.

3 MR. BRAGONJE: Yeah. I mean, I've made my position clear.
4 I defer to the Court. I think there's no reason not to go ahead today, but,
5 you know, I'm a officer of the Court and we're here at your pleasure. So
6 it's --

7 THE COURT: Yeah. But here's the other --

8 MR. BRAGONJE: -- as you wish to proceed.

9 THE COURT: Here's the other logistical structural issue.

10 Mr. Foust would not be entitled to be present in the room
11 when Mr. Detwiler is testifying in connection with Mr. Detwiler's contempt
12 proceedings.

13 MR. BRAGONJE: Right.

14 THE COURT: However, in connection with Mr. Foust's
15 contempt proceedings, he's entitled to call Mr. Detwiler as a witness
16 there and to be present.

17 MR. BRAGONJE: Yeah.

18 THE COURT: Because it's his own contempt proceedings.

19 MR. BRAGONJE: Right.

20 THE COURT: So the way to do this properly would be to have
21 the contempt proceedings with respect to Mr. Detwiler first. All right.
22 And outside the presence of Mr. Foust and then proceed to the next
23 phase.

24 MR. BRAGONJE: Yeah. Yeah.

25 THE COURT: Why don't we do this.

1 Mr. Detwiler, since you're here --

2 MR. DETWILER: Yes, sir.

3 THE COURT: -- why don't you take the stand and we'll see --
4 we may not need a lot out of you. We will see how far we get. Since
5 you are here, you took time out of your day. I appreciate that.

6 MR. DETWILER: Yes, sir.

7 THE COURT: And then whether Mr. Foust subpoenas you to
8 be here on Tuesday or requests your presence on Tuesday, that's
9 between you and him. Okay?

10 MR. DETWILER: Would I be able to know before I leave
11 today if I need to be here on Tuesday so that I can schedule accordingly,
12 as well?

13 THE COURT: Well, I'm not going to require you to be here.

14 But Mr. Mazur, you're on the line. Is this something that you
15 need to talk to Mr. Foust first, whether he wants Mr. Detwiler as a
16 witness.

17 Mr. Mazur, are you still on the line, sir?

18 MR. MAZUR: Yes, Your Honor.

19 THE COURT: Yes. Does Mr. Foust want Mr. Detwiler as a
20 witness? And if so, is Mr. Detwiler, at your request, going to voluntarily
21 appear? Or do you need to get a subpoena on him?

22 MR. MAZUR: I believe Mr. Foust would like him to appear as
23 a witness. And I'm not sure if Mr. Detwiler would be able to voluntarily
24 appear on Tuesday. Maybe we inquire as to if you will? If he states that
25 he'll voluntarily appear, then we don't need a subpoena.

1 MR. DETWILER: I will be here on Tuesday.

2 THE COURT: All right.

3 MR. MAZUR: Great.

4 THE COURT: Very good. Otherwise, Mr. Mazur could jump
5 through hoops to get a subpoena served on you today.

6 MR. DETWILER: Not necessary.

7 THE COURT: And -- all right. Well, I appreciate -- we'll take
8 you at your word that you're going to be here as a witness for
9 Mr. Detwiler Tuesday morning at 8:30.

10 All right. Why don't you come take the stand now, though.

11 MR. DETWILER: Yes, sir.

12 THE COURT: Thank you.

13 One second. So hold on, if you don't mind.

14 So this is the trial on the contempt pursuant to the Court's
15 order to appear and show cause why Defendant Edward Detwiler should
16 not be held in civil contempt of court as indicated in the order filed
17 February 21st, 2019.

18 And we will have Mr. Detwiler sworn in as a witness at this
19 point in time.

20 **EDWARD DETWILER,**

21 [having been called as a witness and first duly sworn, testified as
22 follows:]

23 THE CLERK: Okay. You may be seated. And then can you
24 please state and spell your first and last name for the record.

25 THE WITNESS: Yes. My name is Edward Detwiler,

1 E-D-W-A-R-D D-E-T-W-I-L-E-R.

2 THE CLERK: Thank you.

3 THE COURT: So here's how we technically are supposed to
4 proceed. Since it's an order to show cause hearing, Mr. Mazur, since
5 this is an order to show cause hearing, Mr. Detwiler has the right to
6 proceed first in explaining his position and the facts and reasons why he
7 should not be held in civil contempt.

8 And under the circumstances, I would be willing to either allow
9 you to ask questions of Mr. Detwiler, or I would allow him to express to
10 us initially his position. Or what we could do is, Mr. Detwiler, you have
11 the right to simply defer to Mr. Bragonje, he can go first and ask
12 questions, and then you can have the last word and explain at the end.

13 So which -- so Mr. Mazur, I'll give you the choice here. Do
14 you want to go first? Do you want your client to go first or Mr. Bragonje
15 go first?

16 MR. MAZUR: I would defer to Mr. Detwiler to allow him to
17 testify or provide explanation first, and then we can allow questioning by
18 Mr. Bragonje and then myself.

19 THE COURT: All right. We could do it that way.

20 Why don't you -- you give us your position and then
21 Mr. Bragonje will ask questions. And then we'd have Mr. Mazur proceed
22 to ask questions.

23 So your statement will be, in essence, your direct testimony.
24 Mr. Bragonje is going to then to direct examination, and then Mr. Mazur
25 will ask questions that will be deemed the redirect examination.

1 Does that work for you, Mr. Bragonje?

2 MR. BRAGONJE: That's fine. Thank you, Your Honor.

3 THE COURT: All right.

4 THE WITNESS: Okay.

5 THE COURT: Mr. Detwiler, why don't you tell us why the cars

6 haven't been turned over? That's basically the question. Go ahead and

7 explain it --

8 THE WITNESS: Okay.

9 THE COURT: -- in the way you feel comfortable.

10 THE WITNESS: Yes, sir. Thank you.

11 I have no access to the cars. As I shared with Mr. Bragonje at

12 a deposition in his office some time ago, my role as coming in as being a

13 manager of Harry Hildibrand was to be involved in real estate. That was

14 in 2008. The market spiraled down. Real estate never got off the

15 ground with them. And basically, I've been a figurehead as a manager

16 of that company ever since.

17 I've also shared with Mr. Bragonje that I don't know anything

18 about cars, I don't know about remodeling. Well, I guess it would be

19 restoring cars. I know where the key goes, I know where the gas goes

20 in a car, and that's it.

21 I don't know how they're financed. I don't know how auctions

22 work. It's not anything that I was ever involved in on a basis whatsoever

23 relating to Harry Hildibrand. I have a resort that I'm building on the

24 island of Roatan where the U.S. Government OPIC, O-P-I-C, has agreed

25 to finance \$20 million of it. I've gone through extensive background

1 searches with them and the Honduran government. I've passed all
2 requirements that they have to know about my background.

3 Do have something like a contempt charge would have it all
4 go away. Okay. So I have nothing to hide. I have a lot to lose.
5 Unfortunately, I don't know anything about the cars. I was never
6 involved with the cars. I wasn't involved -- and I don't even know the
7 bank that is suing Mr. Foust. I was never a part of that bank or anything
8 to do with them.

9 I sold Jim Foust houses in the '90s and I was recommended to
10 the Hildibrand family to be a manager so that I could acquire, remodel,
11 and sell assets for a profit that never came to be. My extent as a
12 manager, I have no day-to-day operations knowledge of the company. I
13 don't know the structure outside of the document that was shown that
14 the Hildibrand children own 99 percent of the company. Mr. Foust
15 owned 1 percent of the company that was established the day I was --
16 the last time I was here to testify.

17 Outside of that, I know nothing about the operations of Harry
18 Hildibrand, nor should I as I -- I don't even have a -- I don't have a
19 financial interest in the company either.

20 I'm brought into this because I filed a police report on the
21 motor home.

22 THE COURT: Apparently you filed something in the
23 bankruptcy proceedings, also.

24 THE WITNESS: Yes, I did. Yes, I did.

25 THE COURT: Okay.

1 THE WITNESS: But outside of that --

2 THE COURT: Yeah.

3 THE WITNESS: -- those two instances, I've had nothing to do
4 on an operation standpoint with this company.

5 THE COURT: When was the last time you saw any of
6 those 52 cars that have been the subject of these proceedings?

7 THE WITNESS: Oh, my gosh, 52 cars.

8 THE COURT: Any of them, including the Mercedes that
9 Mr. Foust's family apparently has?

10 THE WITNESS: I haven't, sir. I haven't.

11 THE COURT: Okay.

12 THE WITNESS: I haven't seen any of them.

13 THE COURT: All right.

14 THE WITNESS: And I know that at the -- when I was at the
15 bankruptcy, the gentleman that held the meeting, that chaired the
16 meeting, asked if I knew where the cars were. Before I could answer,
17 the attorney that had prepared the bankruptcy for Harry Hildibrand
18 answered for me. And then the gentleman holding the -- I don't want to
19 call him the judge, because he wasn't, but whoever the --

20 THE COURT: Magistrate?

21 THE WITNESS: I don't even know --

22 THE COURT: Referee?

23 THE WITNESS: -- what the title would be.

24 THE COURT: Okay.

25 THE WITNESS: But the gentleman conducting the hearing

1 said that he asked me that and not the attorney. The attorney that filed
2 the bankruptcy put -- he was sitting next to me. He put his hand on me
3 and he said, Yes, we know where the cars are. And so I answered yes,
4 I know where the cars are.

5 THE COURT: Okay. You must have at least seen the GMC
6 Yukon that -- which I think Mr. Foust himself drives, I think.

7 THE WITNESS: I have seen that car in Nevada within the last
8 two years, yes, sir.

9 THE COURT: Understood. All right.

10 THE WITNESS: But I don't have a relationship with any of the
11 owners or people of Harry Hildibrand. On the converse, I have very little
12 interacting with them.

13 THE COURT: What relationship do you still have with
14 Mr. Foust at this point in time?

15 THE WITNESS: Former -- he was a former client of mine. In
16 fact, I have recently learned that he -- they -- his wife owns a piece of
17 property, and I wasn't even asked to market or list the property. So I
18 guess I've been fired --

19 THE COURT: Okay.

20 THE WITNESS: -- as his realtor.

21 THE COURT: So you don't have any current business
22 partnership, corporate or social interest with him at this point in time?

23 THE WITNESS: No, sir.

24 THE COURT: Okay.

25 THE WITNESS: None whatsoever. Nor do I have -- the only

1 relationship I have is manager of tis company that as far as I know he
2 owns 1 percent of. Outside of that --

3 THE COURT: Right.

4 THE WITNESS: -- I have no business relations with him at all.

5 THE COURT: Anything else currently going on with Harry
6 Hildibrand Company other than -- do you know of any business that's
7 going on that you have a role in?

8 THE WITNESS: Oh, no, sir.

9 THE COURT: Okay.

10 THE WITNESS: And I have no role in any business --

11 THE COURT: Okay.

12 THE WITNESS: -- in that company.

13 THE COURT: So you still consider yourself just a figurehead
14 in that company.

15 THE WITNESS: Yes, sir, I am.

16 THE COURT: Well, why are you continuing to serve as that
17 figurehead?

18 THE WITNESS: When Mr. Bragonje called me I don't know
19 how long ago, I had talked about wanting to resign this position. But it
20 would not absolve me of being here. And I would very much like to
21 resign as the managing member of this company as soon as is practical,
22 because this has been a toll on my time and I was also a little bit
23 intimidated when the call -- when Mr. Bragonje said to me, I've seen
24 crazy things happen in court, and you could be going to jail.

25 THE COURT: All right.

1 THE WITNESS: So it's -- and I don't have any counsel for
2 this. I don't have any representation, because from what I understand,
3 and this is just looking up the word contempt and trying to understand
4 what it is, is that is -- I'm not withholding anything, because I don't have
5 any knowledge. So I can't be a blockade or a roadblock to his client
6 getting these vehicles, because I don't know where they are and I don't
7 have access to them and I don't own them.

8 THE COURT: Okay.

9 THE WITNESS: So --

10 THE COURT: You -- are you comfortable with us turning over
11 the questions to Mr. Bragonje now --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- and we'll see where that leads?

14 THE WITNESS: Yes, sir, I am.

15 THE COURT: Thank you.

16 Mr. Bragonje.

17 MR. BRAGONJE: Yes, Your Honor.

18 If I can approach, I'd like to look at a transcript from the
19 bankruptcy that was referenced earlier. I've got a copy, if I can
20 approach?

21 THE COURT: Sure.

22 He's going to show you a transcript.

23 MR. BRAGONJE: Here's one for Your Honor too.

24 THE COURT: Okay.

25 MR. BRAGONJE: And I know that this is already in evidence.

1 This is something we put into evidence back in our November hearing.
2 And if you'll indulge me just a minute, I can let you know exactly where
3 I'm looking here. So it'll be under Tab 2 of this -- your Tab 2.

4 THE COURT: All right. I'm looking.

5 MR. BRAGONJE: And there's a few things I want to go over
6 in this. And this is just for context, this is not a question, but just by way
7 of explanation.

8 This is just a standard 341(a) hearing that occurred in
9 connection with the bankruptcy. The bankruptcy occurred in the Los
10 Angeles area, it was in the central district of California. So this is the,
11 you know, the United States Trustee is the person conducting this
12 hearing. And it was the chance for creditors to come and ask questions.
13 The IRS came. My client was there. The trustee was there. And they
14 asked Mr. Detwiler a series of questions.

15 THE COURT: So this isn't the actual deposition, these are
16 document -- or these are exhibits to the deposition?

17 MR. BRAGONJE: No, it's a transcript.

18 THE COURT: I -- you know, you must have --

19 MR. BRAGONJE: I'm sorry. I didn't give you --

20 THE COURT: You must --

21 MR. BRAGONJE: -- the right page yet. This starts --

22 THE COURT: You must --

23 MR. BRAGONJE: -- at page 80.

24 THE COURT: You must have given me the wrong thing,
25 because there's no transcript here, right? Or where is it?

1 MR. BRAGONJE: Page -- should be starting at page 2.
2 Sorry, may I approach?
3 THE WITNESS: I -- is it Exhibit 2 or Tab 2?
4 MR. BRAGONJE: Tab 2.
5 THE COURT: Because I'm looking under Exhibit 2 and I don't
6 see any --
7 MR. BRAGONJE: Oh, I apologize. It's Exhibit 3. Apologies.
8 THE COURT: Okay. All right. So Exhibit 3.
9 MR. BRAGONJE: I apologize.
10 THE COURT: Go ahead.
11 MR. BRAGONJE: Tab 3. And we're starting here at page 80.
12 THE COURT: Got it.
13 MR. BRAGONJE: I apologize. Thank you. That was a lot of
14 paperclipping. Okay.
15 So I'd like to direct everyone's attention to page 80. And the
16 question -- AM is the -- are the initials for the trustee. And about halfway
17 through the page -- and ED, of course, is just abbreviation for Ed
18 Detwiler. So we're going to be looking at any statements that Ed
19 Detwiler, abbreviated ED, made.
20 It says here about halfway through the page:
21 Are you -- and you represent the debtor in what capacity?
22 ED, next line: I'm the managing member. I'm the manager.
23 THE WITNESS: What page is this, sir? I'm sorry.
24 MR. BRAGONJE: 80.
25 THE WITNESS: Okay. I'm on 29.

1 THE COURT: It's the bottom right-hand corner.
2 MR. BRAGONJE: Yes. Sorry. The bottom right-hand corner
3 is where you'll see those page numbers.
4 THE COURT: Those are the document identification
5 numbers.
6 Under Tab 3, sir?
7 THE WITNESS: Yes, I'm in Tab 3, but I'm on --
8 THE COURT: Okay. Looks like it's about eight pages in.
9 Looks like this. Are you in Tab 3?
10 THE WITNESS: Oh, it ends in 80.
11 THE COURT: Okay.
12 THE WITNESS: That's 90, 89, now I know where to look.
13 Okay.
14 THE COURT: Okay. Thank you.
15 THE WITNESS: Okay. I'm there, sir.
16 THE COURT: You were looking at the other numbers in the
17 middle, right?
18 THE WITNESS: Yes, sir. Yes. I --
19 THE COURT: Okay. Not a problem.
20 Go ahead, Mr. Bragonje.
21 MR. BRAGONJE: Thank you.

22 **DIRECT EXAMINATION**

23 BY MR. BRAGONJE:

24 Q So do you see the question there?
25 I'm the managing member, I'm the manager.

1 A Yes, sir.

2 Q Okay. And that's accurate, right?

3 A Yes.

4 Q Do you --

5 A As stipulated in that --

6 Q You are the only manager of Harry Hildibrand LLC, correct?

7 A That I'm aware of, yes.

8 Q Okay. All right. Could you please direct your attention to

9 page 92 now.

10 A [Witness complies.] Okay.

11 Q Isn't it true that you know about the insurance for these

12 vehicles?

13 A I was --

14 Q You were involved in insuring the vehicles, weren't you?

15 A No, I wasn't. The company was involved in insuring the

16 vehicles.

17 Q Okay.

18 A Okay? And as -- and I had been assured by counsel, who

19 was JL, and I forget his last name to be honest with you, but he assured

20 the Court that there was insurance on those vehicles and by his saying

21 that, I may have indicated that the vehicles were insured, as well.

22 Q Okay. Let's look at that. It says -- you're -- I'm looking about

23 halfway up the page. AM -- AM is the initials for the trustee, his name is

24 Adam Moore.

25 He says: Yeah, the Jaguar. I understand. Before I appeared

1 for this examination that there's a motion by the U.S. Trustee out
2 there and I assume it's a compliance motion. So let me ask you this,
3 because when I looked at these files, I didn't see what we referred to
4 as the seven-day requirements insurance documents. Do you have
5 insurance documents on these vehicles?

6 Then the next line, JL: Some do and we're getting it on the
7 remainder of them.

8 Next line, ED -- that's you, correct?

9 A Uh-huh.

10 Q And you say: The ones that do not, sir, are not operational as
11 far as being on the street so -- but yes, sir, we're in the process of
12 getting that done.

13 So you were involved in insuring these vehicles; isn't that
14 true?

15 A No. When I say we, that is not -- that is I was referencing we
16 are Harry Hildibrand, not as me.

17 Q Okay. Next page, please.

18 A [Witness complies.]

19 Q You know who uses these vehicles; isn't that correct?

20 A I know of them, but I don't know them, sir. I do not know
21 them.

22 Q Okay. Let's see what you said at the hearing here. I'm about
23 two-thirds of the way down the page.

24 A Okay.

25 Q AM again: Does anyone regularly use these vehicles, any of

1 them, regularly use them?

2 Next line, your statement: Some of them fairly regularly will
3 drive, yes.

4 A And that would be Jim Foust's family. And that's how I
5 referenced that.

6 Q And the next line --

7 A Uh-huh.

8 Q No, does someone regularly drive the vehicle, any of them, on
9 a routine basis?

10 Next line, your statement: Yeah, the ones in Los Angeles will
11 be, you know, alternated just to keep them, you know, operational.

12 That's not talking about Mr. Foust's family's cars, is it? There
13 would be no reason to alternate Mr. Foust's family's cars, they're being
14 used all the time; isn't that correct?

15 A No, sir. The ones that I was referencing in Los Angeles were
16 his family's cars.

17 Q What use would a family have of alternating vehicles or not?
18 If they're in family use, they're being used all the time. Isn't it true that
19 this statement refers to the vehicles that aren't being used all the time,
20 the classic vehicles --

21 A Oh, no, sir.

22 Q -- the --

23 A No, sir. I wouldn't have any knowledge of that, sir.

24 Q Then why did you say it, sir?

25 A I was -- it says the ones in Los Angeles. And those were the

1 ones that Jim's daughters and wife drove or were driving.

2 Q But it makes no sense, does it, that a family would alternate or
3 not alternate the vehicles it's using? A family simply uses vehicles; isn't
4 that right?

5 A Yes. But my wife and I alternate cars quite regularly, I'd say a
6 couple, two, three times a week she'll drive my car and I'll drive her car.
7 So that's what I was referencing, sir. I wasn't trying to be anything other
8 than I know in the past those sisters trade cars, they drive each others'
9 cars. Sometimes they'll be in San Diego, sometimes they'll be in -- at
10 UCLA. So yeah, they do change cars. So I don't know who drives what
11 car.

12 Q Can -- let me put it this way, then: Can you understand why
13 someone would draw the conclusion that you weren't talking about the
14 Foust family cars when I read this statement, when you say:

15 You know, alternate it, just to keep them, you know,
16 operational.

17 You can understand how someone would conclude that that
18 would refer to some kind of a car collection?

19 A Guess I'm not that smart. Because, no, sir, I don't.

20 Q Okay. Page 95, please.

21 A [Witness complies.]

22 Q You have described today your role as that of a figurehead,
23 correct?

24 A Yes, sir.

25 Q On page 95, let's see what you said at the time of the hearing.

1 The very top quarter of the page.

2 AM says: Okay. Why does Junior have a secured debt on the
3 motorcycle? I don't know.

4 And then your response: I don't know. Honestly, like I said,
5 I'm the head guy in charge of getting stuff done. I'm not always privy
6 to what Junior and Ron do. I take direction, not given them.

7 So isn't it true that you're the head guy?

8 A Absolutely not. This -- I'm the head guy on paper to go to file
9 the police report, to go to the bankruptcy hearing. I was the head guy
10 because I was the manager. So that was probably too strong of a word
11 to use. But I'm not the head guy from the extent as I make decisions. I
12 don't.

13 Q If you can go to the bankruptcy hearing, if you can be involved
14 in insurance, if you have knowledge --

15 A But I already said --

16 Q You can answer --

17 A -- I was not involved in insurance.

18 Q -- when I'm done -- I'm done asking my question.

19 A Yes, sir.

20 Q If you're involved in going to the bankruptcy hearing, if you
21 know about the insurance, at the very least, if you know about the status
22 of the cars, isn't it true that you can affect the transfer of the cars to the
23 bank to satisfy this judgment?

24 A No, sir.

25 THE COURT: Well, any cars that are certainly in the name of

1 Harry Hildibrand, you, as being the sole managing member on paper,
2 you have the legal ability to have those transferred.

3 THE WITNESS: I don't know where they are, sir.

4 BY MR. BRAGONJE:

5 Q Have you made it -- have you made any efforts to try and
6 comply with this order? Have you called anyone to say that the Court is
7 ordering these vehicles delivered? I'm the guy who's responding for
8 Harry Hildibrand in court, I need you guys to do something, whoever
9 these guys are, whoever's really running things; have you even tried to
10 do that?

11 A Yes, sir. I have. And I've gotten no response.

12 Q Who did you call?

13 A I called Harry Jr. And here I am here by myself, no counsel, I
14 have no help from them. They're not helping me.

15 Q Why --

16 A I -- but I can't give you what I don't know.

17 Q Why do these people refuse?

18 A I don't know, sir.

19 Q They've never said anything to you?

20 A No, sir.

21 Q So they talked to --

22 A I have not --

23 Q They asked you to represent them in the bankruptcy, correct?

24 A And that's the last I've heard from them.

25 Q And they won't give you the courtesy to say, you know, why

1 we won't comply with the order from a court of the state of Nevada?
2 They just won't say anything on that?

3 A No, sir.

4 Q Does that strike you as odd?

5 A Strikes me as -- I don't know what to make of that, is if it's --

6 THE COURT: Well, they're holding you out to take the fall.

7 THE WITNESS: But how can I take the fall for something that
8 I can't do? I --

9 THE COURT: You kind of got yourself in this position by
10 agreeing to be the member manager of the company.

11 THE WITNESS: To do real estate.

12 THE COURT: Well, no, I understand that. I took notes on
13 that. And I'm trying to put this all together. Don't have any opinions yet,
14 but I'm trying to figure out -- you know -- you understand we're trying to
15 figure out where the cars are, right? And you're saying you have no
16 knowledge of that.

17 THE WITNESS: That's correct.

18 THE COURT: But the people that put you in charge of this
19 company, they certainly know and under the circumstances, it -- from
20 what I've seen so far, it would seem that you would either know that or
21 you know who to contact to find out where they are, right? Or the people
22 that have them are trying to keep things concealed from you and expect
23 you to take the fall for this. I don't know. Anyway, I'm trying to piece all
24 this together.

25 THE WITNESS: Yeah, I'm just asking, is that right? Is that

1 justice? Is that fair?

2 THE COURT: I don't know --

3 THE WITNESS: If things are being concealed --

4 THE COURT: Yeah.

5 THE WITNESS: -- from me? I'm not an attorney.

6 THE COURT: I don't know what's fair -- yeah, I don't know
7 what's fair yet until I hear all the evidence. But I just wanted you to know
8 that some of the inquiry I would like to see explored more. So.

9 Anyway, Mr. Bragonje.

10 MR. BRAGONJE: Thank you, Your Honor.

11 BY MR. BRAGONJE:

12 Q Thank you, Mr. Detwiler, for your answers so far.

13 Page 103, please.

14 A Oh, I closed it. Sorry.

15 Q No problem.

16 A [Witness complies.]

17 Q And this is something I think we talked about before, but I'm
18 looking at the bottom of the page now. Again, a question from MK, and I
19 will tell everyone -- well, let me ask this way:

20 Mr. Detwiler, do you recall that someone from my law firm, not
21 me, but one of my colleagues, was present at this 341 meeting?

22 A I do. He sat to my right facing the gentleman indicated as AM.

23 Q Thank you. And if I tell you that his initials -- his name is
24 Michael and his initials are MK, do you accept that? Does that sound
25 right?

1 A Well, there were four people there. So you've got AM, JL, ED,
2 I would say yes, sir, I'm going to use that as a -- as correct.

3 Q Thank you.

4 Okay. So I'm looking at the bottom, you know, really, the
5 bottom probably quarter of the page, maybe even fifth of the page. I
6 think this is something we've discussed before.

7 It says: And, Mr. Detwiler, were you compensated for your
8 work with the company over the years?

9 Your answer: No.

10 Is that accurate?

11 A That's correct.

12 Q And that's what you said at the time?

13 A Yes, sir, that's correct.

14 Q Is it unusual that you would do so much work for no
15 compensation?

16 A Well, I didn't do any work. If we go down to the bottom.

17 It says: Approximately how much time per week were you
18 spending on month with the company?

19 My response: I would say, except -- since February --

20 Which was when the motor coach was taken, repossessed or
21 what have you.

22 -- since February, prior to that, about 0.0. None.

23 Okay. So, yeah.

24 Q You've been -- who paid for --

25 A I mean, none.

1 Is what I -- okay.

2 I mean, none. And it hasn't been since the theft of the coach I
3 have been involved at all.

4 Q Thank you. And I appreciate your answers. I know these are
5 difficult questions and we're trying to get at the truth. So thank you
6 sincerely.

7 Since this lawsuit started, you've been very active, would you
8 agree?

9 A Yeah, out of a sense of loyalty that I feel is probably very
10 misplaced, where I was doing something for Junior to help him, because
11 I know -- what I do know is those assets I believed were his, not Foust's.
12 So I don't know, sir. I have no idea. So a sense of loyalty, I was on the
13 thing, I've always been someone to live up to my word and do what I say
14 I'm going to do. So I agreed to help him.

15 Q Thank you.
16 You traveled to L.A. for this meeting of creditors; is that
17 correct?

18 A It's correct.

19 Q From here, correct?

20 A Yes.

21 Q Did you fly?

22 A I did.

23 Q Who paid?

24 A I did.

25 Q You didn't ask anyone if they would pay?

1 A I did not.

2 Q Why? How many times have you been to L.A. in connection
3 with this lawsuit?

4 A I think just the one time.

5 Q Okay. You've seen these cars in person, correct?

6 A No, sir.

7 Q Okay. Page 109, please.

8 A Yeah. [Witness complies.] Well, let me take -- when you say
9 cars, the first thing that popped in my head were 52 cars.

10 Q Okay.

11 A Okay. I have seen the Yukon, I have seen a Mercedes sedan,
12 and not having that list of 52 cars in front of me, Mr. Bragonje, I don't
13 want to say yes or no unless they were each asked, have I ever seen
14 this car? Because I do not want to misspeak or say something that isn't
15 correct.

16 Q Thank you. Thank you. We appreciate the -- being accurate.
17 We appreciate that.

18 Are you aware that -- and this was mentioned extensively in
19 the bankruptcy filings and in this meeting of creditors that we're
20 discussing, you're aware, aren't you, that some of the vehicles, I
21 believe 10, that were on the bankruptcy schedule, were in a warehouse
22 in Compton in Los Angeles County; are you aware of that?

23 A Yes.

24 Q Have you been to that warehouse?

25 A I have not. But I did -- I was told by JL, and like I said, I forgot

1 his last name --

2 Q Uh-huh. It's -- that's the attorney, just for the record. That's
3 the --

4 A Yes, sir. That's the attorney --

5 Q -- attorney?

6 A -- that was the attorney for the bankruptcy. I did not speak
7 with that attorney in preparing that bankruptcy. That was all done by the
8 owners of Harry Hildibrand, not the manager. I did not involve myself --
9 zero time spent preparing that bankruptcy, sir.

10 Q Mr. Foust asked you to file that bankruptcy, didn't he?

11 A No. I was --

12 Q Who asked you? Who called you up and said --

13 A Junior. Junior said, Will you sign as manager? I said, yeah,
14 I'll do that.

15 Q Okay. Page 109, please.

16 A [Witness complies.]

17 Q Looking at the top quarter of the page. The question that
18 starts MK again. We agreed earlier that that MK represents Michael,
19 who's an attorney, a colleague of mine at my law firm. So he represents
20 the bank. And he says:

21 And does the --

22 And I will just -- for a little bit of context, you appreciate, don't
23 you, that there is a schedule that was filed in the bankruptcy. We could
24 look at this schedule, but if you --

25 A Yes. Could we --

1 Q -- list it --
2 A Could we look at that?
3 Q Absolutely.
4 A Because I -- like I said, I share --
5 Q Absolutely.
6 A -- I didn't prepare --
7 Q Absolutely.
8 A -- I had nothing to do with the preparation of that. And I don't
9 know if --
10 Q I've got it handy.
11 A Thank you.
12 Q I've got it handy.
13 A Okay. Thank you.
14 Q Just flip over to page 137.
15 A [Witness complies.]
16 Q And you will see the -- one of the many times that a list of
17 vehicles was submitted to the bankruptcy court in California.
18 A Okay.
19 Q All right. You've seen that list before, I take it?
20 A Yeah.
21 Q Yeah.
22 A I believe so.
23 Q Okay.
24 A I think so.
25 Q Okay. All right. So back to 109, and I thank everyone for their

1 gymnastics as we flip around. It's not linear here. This examination
2 wasn't linear, so we've got to flip around.

3 MK there in the top quarter says: And does the value take into
4 account --

5 They're talking about this chart that we've just looked at. I'll --
6 can we agree to that?

7 A Yes, sir.

8 Q Okay.

9 A I believe so.

10 Q Okay.

11 A I --

12 Q We do remember that the chart came up in the -- in this
13 meeting of creditors, right? It was discussed, correct?

14 A Yes.

15 Q Okay. MK says: And does the value take into account any
16 wear or damages issues or not operational issues costs?

17 And then you say: I think it's just purchase value, because
18 most, the vehicles that I've seen require work, you know. I think that
19 the purchase criteria was based on what they thought they could sell
20 for if a certain amount was invested. It's like buying rehab real
21 estate. How much do you put into it and how much can you get out
22 of it so there would be an investment in all of those.

23 Did you say that, sir?

24 A Yes, I did.

25 Q And doesn't that indicate that you saw the vehicles?

1 A Well, I've seen photographs of the vehicles. I have -- I've
2 been told that what they do as a model --

3 Q Who told you that?

4 A -- but I haven't -- JL, Junior shared that with me.

5 Q When did he tell you that?

6 A The -- before the --

7 Q You said you didn't --

8 A Before the bankruptcy hearing.

9 Q Okay. And that's the only time you've talked with JL?

10 A That's correct. It was -- the only time I've talked to JL was the
11 day of the proceeding.

12 Q And by the way, do you --

13 A So he did -- he did give me some background information
14 based on this prior to my being there. So he had been involved with the
15 principles in Harry Hildibrand.

16 Q Thank you.

17 A Yes, sir.

18 Q And his name is James Laissez [phonetic], by the way.

19 A Okay.

20 Q Laissez. James Laissez.

21 A Okay.

22 Q And, by the way, this is kind of an aside, but you agree, don't
23 you, that he was Mr. Foust's personal attorney? Do you have that
24 understanding?

25 A I --

1 Q Okay.

2 A I really --

3 Q I mean, that's established --

4 A -- really don't know.

5 Q That's established in the --

6 A I don't know.

7 Q -- record, but I just didn't know if you knew anything about
8 that. In any event.

9 A I didn't, sir.

10 Q Thank you.

11 I want to ask about something now, because I feel like there's
12 a fundamental inconsistency in the story that you're telling. Because
13 we've heard all morning that you're talking to Harry Hildibrand Jr., right?

14 A Yes.

15 Q But isn't it true that in this meeting of creditors, you said that
16 there is one owner of member of Harry Hildibrand; didn't you say that?

17 A I believe it to be Junior.

18 Q And -- well, in the hearing, didn't you say it was another entity
19 called Stardust Classics?

20 A I believe Junior owns that as well, along with another
21 gentleman by the name of Ron Vega. And I wasn't -- I was unaware of
22 these names, Mr. Bragonje and Judge Scotti, until the day of that
23 bankruptcy filing. I was unfamiliar with who the ownership structure was.
24 Because in the hearing that we had here, there was documentation
25 shown that Harry Hildibrand was owned by four people. Three people,

1 the Hildibrand children, 33 percent each, and Mr. Foust, 1 percent.

2 So up until -- from that hearing until the day of this bankruptcy,
3 that's what I believed to be true.

4 Q But how can that be true? Because isn't it true that you are on
5 records from the state of Wyoming, your name is on a corporate records
6 for Stardust Classics; isn't that true?

7 A I do not know that, sir.

8 Q Okay.

9 A Honestly, I --

10 Q All right.

11 A -- I do not know that.

12 Q Okay. Let's look.

13 MR. BRAGONJE: Everyone's indulgence for just a minute --

14 THE COURT: Uh-huh.

15 MR. BRAGONJE: -- as I look at this precisely.

16 THE WITNESS: Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: Would it be possible to get a glass of water?

19 THE COURT: Of course.

20 Marshal.

21 And, unfortunately, I don't want to go too much further,
22 maybe 15 minutes. Because I am in the middle of a jury trial and we're
23 settling jury instructions, supposed to do that at 10:00. They can wait a
24 little bit. I thought since -- I thought maybe this wouldn't be going
25 forward today.

1 MR. BRAGONJE: Thank you.

2 THE COURT: So -- but I wanted to indulge you and -- in
3 getting some information from Mr. Detwiler and because of his
4 inconvenience in showing up, I wanted to get started on this.

5 MR. BRAGONJE: Okay.

6 THE COURT: You can go a little -- why don't you find a good
7 breaking point --

8 MR. BRAGONJE: Yeah. Thank you.

9 THE COURT: -- for yourself here.

10 MR. BRAGONJE: Thank you.

11 BY MR. BRAGONJE:

12 Q Could you please direct your attention to page 365 in this
13 same -- this is -- we're still in this gigantic Tab 3. It should be a
14 document from the Wyoming Secretary of State.

15 A [Witness complies.]

16 THE COURT: My 365 starts at Tab 4.

17 MR. BRAGONJE: Thank you.

18 THE COURT: Okay.

19 MR. BRAGONJE: It's never --

20 THE COURT: The Tab 4, the first page there.

21 MR. BRAGONJE: Never easy.

22 BY MR. BRAGONJE:

23 Q It's dated October 26, 2016, filed at 12:55 p.m.

24 MR. BRAGONJE: Does everyone have that in front of them?

25 THE COURT: I do.

1 BY MR. BRAGONJE:

2 Q Mr. Detwiler?

3 A Yes, sir. I'm looking at it.

4 Q You're looking at it? Okay. Then take a moment and let me
5 know when you've had a chance to look at it.

6 A [Witness complies.] Okay.

7 Q Do you see Field 4 there, it says -- okay.

8 First of all, do you see there, Field 1, it says, Name of the
9 limited liability Company: Stardust Classic, LLC?

10 A Yes, sir, I do.

11 Q Okay. Then do you see there, Tab -- or Field 4, Mailing
12 address of the limited liability company; do you see that?

13 A Yes, sir, I do.

14 Q And the address that's given is 7854 West Sahara,
15 Number 100?

16 A Yes, sir.

17 Q See that? And that's your office, isn't it?

18 A No, sir.

19 Q Whose office is that?

20 A I have no idea. I have an office on Sahara that's 8290 West
21 Sahara and I have an office at 10120 South Eastern Avenue in
22 Henderson.

23 Q Uh-huh.

24 A Those are the only two addresses that I have outside of my
25 home address.

1 Q Uh-huh. Okay. Would you kindly flip over to page 369, just a
2 few pages back.

3 A [Witness complies.]

4 Q This is, again, a --

5 MR. BRAGONJE: I will represent to you all -- this is, by the
6 way, these are all exhibits from the prior hearing in November. These
7 have all been admitted into evidence. This is a 2018 limited liability
8 company -- annual report from the State of Wyoming.

9 Q You're aware, aren't you, Mr. Detwiler, that all entities have to
10 file annual reports with the states under which they're organized?

11 A Yes, sir.

12 Q Okay. And do you see that this filing, if you look about in the
13 top quarter of the page, it's for Stardust Classic, LLC; do you see that?

14 A I see that.

15 Q And do you see that it's your signature under this report; do
16 you see that?

17 A I see my name typed in there.

18 Q Yes. And do you see it's dated December 18, 2017?

19 A I see that.

20 Q And you're telling this Court you didn't sign this?

21 A I didn't sign this. I've never seen this document in my entire
22 life except for right now.

23 Q And you didn't -- didn't you say in -- when we had depositions,
24 didn't you say that you allow people to use your signature?

25 A I believe that -- no. What I believe I said in the deposition --

1 we can go back and look -- is that I had a -- there were stamps that were
2 put together so that if and when I bought real estate, I could stamp
3 contracts as a manager for the company. But I haven't seen that stamp,
4 sir, in I couldn't tell you how long.

5 Q But at a minimum you're willing to admit that you gave other
6 people the permission to use your signature?

7 A No, sir. I wouldn't do that. No, sir. Absolutely not.

8 Q Well, what was the point of having a stamp of your signature,
9 then, if --

10 A As a contract, as a signature on a contract, on a purchase
11 contract for real estate, representing the company. But I would never
12 give someone carte blanche to go use my name on anything. That's
13 foolish.

14 Q The bankruptcy filings, for example, you signed those,
15 correct?

16 A Yes, sir.

17 Q Did you physically sign them with a pen? Or did you use a
18 stamp?

19 A I don't know, sir. Can I -- can we look at that?

20 Q Okay.

21 A Because I don't know what I -- I signed some documents for
22 JL on the morning of that, and I also -- so I don't know.

23 Q Okay. Well, we can go into that, but I think we're running out
24 of time. What I want to ask is this: Don't you believe that if Mr. Foust
25 wanted to pay this judgment, he could just cause the cars to be

1 delivered to the bank?

2 A What do I believe?

3 Q He's controlling all of this, isn't he?

4 A I don't know that.

5 THE COURT: Yeah, well, that's the thing. Do you have any
6 personal knowledge as to whether he can do that?

7 THE WITNESS: I don't.

8 THE COURT: Okay.

9 THE WITNESS: And -- because, I mean, anything --

10 THE COURT: Don't want you to speculate.

11 THE WITNESS: Yeah, I was just going to use that word.

12 THE COURT: All right.

13 THE WITNESS: What I know and what I think? I don't know
14 that they're necessarily --

15 THE COURT: Got it.

16 THE WITNESS: -- the same thing.

17 THE COURT: If they're --

18 THE WITNESS: What I know is if I had the ability to deliver
19 any of these cars to your office or wherever, I would do so. And the
20 reason is, foremost, I wouldn't go to jail.

21 THE COURT: I understand.

22 THE WITNESS: Two, I don't want the last nine years of my
23 life to have this Hilton Resort project fall apart because of these holdings
24 that -- or these proceedings that I really have nothing to do with.

25 THE COURT: If the Court ordered you to transfer any interest

1 in the cars that might be held by Harry Hildibrand, what would be your
2 response to that?

3 THE WITNESS: I don't know how to go about doing that.

4 THE COURT: All right. Well, if you're the sole manager
5 member of the company, you could sign an instrument assigning all
6 right, title, and interest to the judgment debtor. Wouldn't you have the
7 legal right to -- or if you don't know, that's fine.

8 THE WITNESS: I don't know. I don't know, sir.

9 THE COURT: Do you know who at the company would have
10 that decision-making power?

11 THE WITNESS: That would -- at this point, it would be a
12 gentleman -- I think it would be Ron Vega, to be -- based on what I just
13 looked at and based on the bankruptcy proceedings. Ron Vega's name
14 was mentioned by JL.

15 MR. MAZUR: Your Honor --

16 THE COURT: Yes.

17 MR. MAZUR: -- it's Michael Mazur.

18 THE COURT: Yes, Mr. Mazur.

19 MR. MAZUR: I believe that the Court has previously ordered
20 all the titles to be transferred over by court order from Hildibrand over to
21 the plaintiff, if I'm not mistaken.

22 MR. BRAGONJE: That's right.

23 THE COURT: Yeah. No, I believe we did. I don't think any of
24 that's happened, though. So, all right --

25 MR. MAZUR: Are those --

1 THE COURT: Go ahead.

2 MR. MAZUR: I was just going to state that pursuant to NRS
3 [indiscernible], once that order has been issued, then the transfer any
4 ownership interest in Hildibrand would have had, at that point in time,
5 would automatically transfer legal -- or legal title would transfer over to
6 Plaintiff.

7 THE COURT: You --

8 MR. MAZUR: In that order.

9 THE COURT: You might be correct. Right. Right. There
10 might be -- happen by operation of law. Mr. Bragonje will have to look
11 into that if he believes that's important for me to know.

12 Okay. We're going to have to continue this 8:30 on Tuesday.

13 You will be back, Mr. Detwiler?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 THE WITNESS: If -- please, just tell me that if I'm, like, five or
17 six minutes late, that I'm not going to be in too much trouble.

18 THE COURT: You won't be in any trouble --

19 THE WITNESS: Okay.

20 THE COURT: -- as long as -- I want you to make your best
21 efforts to be here on time. If you're not, because of --

22 THE WITNESS: I was here 20 minutes today, sir.

23 THE COURT: No, I appreciate that, sir. No, you were fine.
24 You were fine. Just make your best efforts. If something happens,
25 sometimes there's traffic, things happen. So thank you.

1 THE WITNESS: One day the line was out the door and down
2 the steps. And so -- and I can't get in that side door. So.

3 THE COURT: And what we'll do is we'll finish with you, these
4 proceedings that would involve you, and then we'll switch over to
5 Mr. Foust.

6 So how many more questions do you think you might have,
7 Mr. Bragonje?

8 MR. BRAGONJE: Oh, I'm done -- practically done.

9 THE COURT: Okay.

10 MR. BRAGONJE: I mean, I'll think about it.

11 THE COURT: Okay. So we'll give you maybe 15, 20 more
12 minutes --

13 MR. BRAGONJE: Fine, yeah.

14 THE COURT: -- 15 minutes, and then --

15 MR. BRAGONJE: I mean, real practically done. Not lawyer
16 practically done.

17 THE COURT: Actually, Mr. Mazur, even though I'm allowing
18 you to participate, you really -- I guess you really don't have standing to
19 ask him in connection with his own proceeding. You would have the
20 right to call him back and ask him questions then on Tuesday in
21 connection with the Foust proceedings. Does that make sense?

22 MR. MAZUR: I understand that. Yes, Your Honor.

23 THE COURT: All right. So when you're done, Mr. Bragonje,
24 then I'll let Mr. Detwiler have the last word in explaining anything you
25 want to do on Tuesday morning. And then we'll be done with your

1 contempt proceedings. And I won't make a decision on what to do, of
2 course, until we hear from Mr. Foust and his witnesses, which might be
3 you again. Okay?

4 THE WITNESS: I -- okay. Sure. Certainly.

5 THE COURT: All right. You're a resident of Nevada?

6 THE WITNESS: Yes, sir. Have been since 1990.

7 THE COURT: Okay. How often are you -- now, you're
8 working on a project in Roatan?

9 THE WITNESS: Yes, sir. I will not be -- I'm not scheduled to
10 go back out of town until June -- I believe it's the weekend of the 9th.

11 THE COURT: June 9th.

12 THE WITNESS: June 9th.

13 THE COURT: Okay. You have social connections here,
14 family here, property here in Las Vegas?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. So even if you're found in contempt of
17 court, you aren't going -- no, I'm just saying, if -- worst case scenario,
18 you're not going to get locked up on Tuesday. Okay? So I don't -- I
19 don't want you to be worried about showing up. Okay?

20 THE WITNESS: May I ask a question?

21 THE COURT: And you're going to get -- look, I have an open
22 mind. I can't make any decisions for anybody's sake till I hear all the
23 evidence. So.

24 THE WITNESS: Yes, sir. But if I could just ask a question?

25 THE COURT: Yes, of course.

1 THE WITNESS: What is the --

2 THE COURT: The procedure is somebody who's in contempt
3 of court can be held until he complies with the order. In this case, the
4 order would be doing whatever you can do to turn over the cars.
5 Obviously, I'm listening to you very carefully to see if you know where
6 the cars are, if you exercise your best efforts to comply with my order to
7 have them turned over.

8 You can't do something, of course, that you're -- that's a
9 physical impossibility. Okay. So if there's something that's a physical
10 impossibility, you can't be held in contempt of court. All right. So that's
11 what we're trying to find out here is have you done all that's in your
12 power to do so satisfy my order. And that's all I'm looking for. Right?

13 THE WITNESS: Okay.

14 THE COURT: And so if there's more you can do over the
15 weekend or Monday, I don't know if there is, maybe you want to talk to
16 Harry Jr., this guy Ron Vega. But understood, sir, you're only
17 responsible for what's in your power to control. Okay?

18 MR. BRAGONJE: May I say just one thing on a --

19 THE COURT: Yes, you may.

20 MR. BRAGONJE: -- housekeeping? I don't anticipate talking
21 to anyone but Mr. Foust. I mean, we have -- this was originally
22 scheduled for April 1st. So I'm going to be really upset if Mr. Mazur
23 brings in new witnesses on Monday after the --

24 THE COURT: Well, no, he -- and he can't, because I required
25 all parties to identify their witnesses --

1 MR. BRAGONJE: Yeah. Okay.

2 THE COURT: -- by a certain deadline. That deadline's

3 passed.

4 MR. BRAGONJE: Yeah, long passed. Okay.

5 THE COURT: So there would have to be -- yeah, some --

6 MR. BRAGONJE: Yeah, okay.

7 THE COURT: -- some change in that prior order.

8 MR. BRAGONJE: Yeah, yeah. And one other --

9 THE COURT: But I just wanted him in case we're doing more

10 examination --

11 MR. BRAGONJE: Yes.

12 THE COURT: -- of Mr. Detwiler on Tuesday, that he be

13 prepared to at least answer questions about what communications he

14 had with Mr. Vega since the very first time I --

15 MR. BRAGONJE: Right.

16 THE COURT: -- I issued the order.

17 MR. BRAGONJE: Right.

18 THE COURT: Because I think that may or may not be

19 relevant.

20 MR. BRAGONJE: Yeah.

21 THE COURT: I'm not saying it is. Just --

22 MR. BRAGONJE: Could -- I just have one other thing to say

23 as we kind of frame this issue.

24 THE COURT: Okay.

25 MR. BRAGONJE: We -- you know, every contempt order has

1 to have a purge clause, right? How do you -- if one does go to jail --
2 THE COURT: Of course.
3 MR. BRAGONJE: -- how does one get out?
4 THE COURT: Of course. Right.
5 MR. BRAGONJE: And we're not necessarily set on having
6 these vehicles. We want either their value of the vehicles of the vehicles
7 themselves. So the bankruptcy --
8 THE COURT: Right.
9 MR. BRAGONJE: -- the bankruptcy order says they're
10 worth -- or, excuse me, the bankruptcy schedule says they're
11 worth 520,000. We'll take either. We'll take the -- we'd rather have the
12 money, obviously.
13 THE COURT: Then that may be more important with
14 Mr. Foust.
15 MR. BRAGONJE: Yeah.
16 THE COURT: Because I don't know anything about --
17 MR. BRAGONJE: Right.
18 THE COURT: -- Mr. Detwiler's control over the assets of
19 Harry Hildibrand --
20 MR. BRAGONJE: Right.
21 THE COURT: -- or what control he has over Mr. Foust, the
22 judgment debtor here, his finances.
23 MR. BRAGONJE: Right.
24 THE COURT: And so that's a relevant inquiry too.
25 MR. BRAGONJE: Yeah. I represent a bank, not a car

1 dealership. So we'd rather have money, obviously.

2 THE COURT: Of course. Well, and Mr. Foust is going to
3 have some things to answer to on Tuesday.

4 MR. BRAGONJE: Yeah.

5 THE COURT: All right. You understand the procedure at
6 least? I tried to help you understand the procedure here.

7 THE WITNESS: Yeah, I just have one four-letter word keep
8 going in and out of my head and that's jail. So I'm trying to pay attention.

9 THE COURT: You're okay Tuesday. All right. And this
10 whole -- we want to be fair here. But I want my orders complied with.
11 You know, it's very -- when I issue an order, I expect it to be complied
12 with if it's at all possible. Right? And a very serious matter here,
13 because we had a judgment here for a million dollars, we have cars that
14 were supposed to be security and nobody knows where the cars are.

15 So I'm trying to get more information to decide how to
16 proceed. All right?

17 THE WITNESS: Yes, sir.

18 THE COURT: So all right. I'm a nice guy, but I'm very serious
19 and expect my orders to be complied with. You understand? Okay.

20 THE WITNESS: Okay. I just don't know what I can do to --

21 THE COURT: Well, we'll find out with more questioning on
22 Tuesday.

23 MR. BRAGONJE: Thank you.

24 THE COURT: So we're going to continue --

25 You may step down, sir.

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THE WITNESS: Thank you.

THE COURT: Mr. Mazur, we'll see you here Tuesday at 8:30,
correct?

MR. MAZUR: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you.

Everyone have a good day.

MR. BRAGONJE: Thank you, Your Honor.

THE COURT: Have a good day.

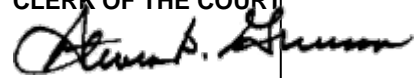
[Proceeding concluded at 10:13 a.m. until May 21, 2019.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed
the audio/video proceedings in the above-entitled case to the best of my
ability.



Shawna Ortega, CET*562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

TUESDAY, MAY 21, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING
VOLUME I**

APPEARANCES:

For the Plaintiff(s):

JOHN E. BRAGONJE, ESQ.

For the Defendant(s), James
Patterson Foust, Jr.:

MICHAEL D. MAZUR, ESQ

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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I N D E X

WITNESSES Page #

FOR THE PLAINTIFF:

<u>EDWARD DETWILER</u>	
Direct Examination (cont.)	5
Examination by the Court	19

E X H I B I T S

	<u>Page #</u>
No exhibits offered.	

1 **LAS VEGAS, NEVADA, TUESDAY, MAY 21, 2019**

2 [Proceeding commenced at 8:44 a.m.]

3
4 THE COURT: All right. Counsel, let's go ahead and identify
5 yourselves before we proceed.

6 MR. MAZUR: Your Honor --

7 MR. BRAGONJE: Good morning, Your Honor. John
8 Bragonje of the Lewis Roca law firm for the plaintiff and judgment
9 creditor, Baker Boyer National Bank.

10 MR. MAZUR: Good morning, Your Honor. Michael Mazur on
11 behalf of defendant James Foust. And Mr. Foust is present at the table
12 as well.

13 THE COURT: All right. Mr. Mazur, are you here today just
14 representing Mr. Foust or any other person or entity?

15 MR. MAZUR: Mr. -- just Mr. Foust.

16 THE COURT: Okay. Very good.

17 Mr. Bragonje, I think we left off with your examination of
18 Mr. Detwiler. That was in connection with the proceedings for
19 Mr. Detwiler to show cause why he should not be held in contempt of
20 court, and that is a separate proceeding from the proceeding that we
21 need to do thereafter, which is to determine whether Mr. Foust should be
22 held in contempt of court.

23 Do you -- are you prepared to continue with your examination?

24 MR. BRAGONJE: Yes, Your Honor.

25 THE COURT: All right. And did you wish to invoke the

1 exclusionary rule that we have discussed last time?

2 MR. BRAGONJE: Yes, please.

3 THE COURT: All right. Mr. Foust, I have to ask you to step
4 outside, because we're still conducting the examination of Mr. Detwiler in
5 connection with his proceeding. When we commence your proceeding,
6 you may call Mr. Detwiler as part of your case if that's what you would
7 like to do. All right.

8 So you can recall him, just you can't be here for the
9 proceeding that we have regarding him at this time.

10 Your counsel is free to remain. All right?

11 MR. FOUST: All right. Thank you.

12 MR. BRAGONJE: There's another gentleman here too I don't
13 know --

14 THE COURT: What's your name, sir?

15 MR. LARKIN: Tom Larkin.

16 THE COURT: And what's -- are you -- Mr. Mazur, is he here
17 in connection with the proceedings regarding Mr. Foust?

18 MR. MAZUR: Yes, he is.

19 THE COURT: Okay. Then I have to ask you to step outside
20 too. I don't think this is going to take too long, but we'll see how long it
21 goes, the proceedings regarding Mr. Detwiler. Okay, sir?

22 MR. MAZUR: Your Honor, some of the testimony may relate
23 to Mr. Detwiler as well.

24 THE COURT: Okay.

25 MR. MAZUR: So -- but we can address that as it --

1 THE COURT: Well, it still -- it's an exclusionary rule.
2 MR. MAZUR: Correct, yes.
3 THE COURT: So if Mr. Detwiler chooses to call him, he has
4 the right to do that.
5 MR. MAZUR: Okay.
6 THE COURT: All right?
7 MR. MAZUR: Very good.
8 THE COURT: Thank you.
9 All right. Mr. Detwiler, please come take the stand again.

10 **EDWARD DETWILER,**
11 [having been recalled as a witness and first duly sworn, testified as
12 follows:]

13 THE CLERK: You may be seated.
14 MR. BRAGONJE: Your Honor, may I approach the witness to
15 give him the courtesy copy of the exhibits?
16 THE COURT: Yes.
17 MR. BRAGONJE: And does Your Honor have that?
18 THE COURT: Yes. So this is a continuation of the trial
19 regarding the contempt charges. Just so everybody understands what
20 we're doing here today.

21 **DIRECT EXAMINATION (CONT.)**

22 BY MR. BRAGONJE:

23 Q All right. Good morning, Mr. Detwiler.

24 A Good morning.

25 THE COURT: Do you have a copy of this for my clerk? Or

1 did it -- did you give a copy to my clerk last time? I don't remember if
2 you did.

3 MR. BRAGONJE: I don't recall either.

4 THE COURT: All right.

5 MR. BRAGONJE: I may have a copy. Should I check?

6 THE COURT: Well, I don't know.

7 How do you want to handle this?

8 THE CLERK: I'll let you know.

9 THE COURT: Okay.

10 MR. BRAGONJE: Okay.

11 THE COURT: Let's just commence.

12 MR. BRAGONJE: Okay. Thank you.

13 THE COURT: Thank you.

14 BY MR. BRAGONJE:

15 Q Mr. Detwiler, do you recall that last time we were here, we
16 were speaking about the conditions at Harry Hildibrand in general?

17 A The conditions as far as what? I don't --

18 Q Its operations and that --

19 A Yes. Yes.

20 Q Could you please refer to page 119 of Exhibit 3.

21 A [Witness complies.]

22 Q This is, again, the -- we spent a lot of time the last time we
23 were together talking about the transcript from the meeting of creditors in
24 the bankruptcy. And this will be our last reference to that exhibit.

25 Page 119.

1 A Uh-huh.

2 MR. MAZUR: Your Honor, if I may, with the exhibit that you're
3 referring to, was that -- I think that was filed at the last -- on Friday or
4 was that one was filed previously?

5 MR. BRAGONJE: This is actually one of the exhibits that was
6 already admitted at the previous trial.

7 MR. MAZUR: Okay. What was the date of the admission?
8 And I'll pull it up.

9 MR. BRAGONJE: Of the what?

10 MR. MAZUR: What was the date it was admitted or filed?

11 MR. BRAGONJE: Would have been the last hearing, which
12 was November 4th, I think.

13 MR. MAZUR: Okay. Thank you. Yeah.

14 MR. BRAGONJE: I think.

15 THE COURT: All right. Thank you.

16 BY MR. BRAGONJE:

17 Q Okay. Referring to the top of the page there, there's a
18 question from an LB; do you recall that there was a representative from
19 the IRS at the meeting of creditors?

20 A There were four people there. So I don't know -- I thought LB
21 was the counsel for Lewis Roca.

22 Q No, that was MK. That was Michael.

23 A MK. Okay.

24 Q So in any event --

25 A So that puts five people, then.

1 Q -- would you accept that there was a representative of the IRS
2 at the meeting? Does that sound familiar?

3 A There was one person that poked his head in at the beginning
4 and -- but did not stay. So there were only four people that stayed. So
5 there was someone that did pop in and asked a couple questions and
6 then left immediately.

7 Q Thank you.

8 And let's refer to these questions, the top of the page,
9 Stardust Classics -- Classic LLC.

10 Do you know who the members are of Stardust? JL, which is
11 the attorney for the bankrupt?

12 Harry Hildibrand: We don't.

13 LB --

14 Which I represent is the representative of the IRS.

15 -- Stardust Classic LLC and Harry Hildibrand LLC, do they
16 have any employees?

17 JL: No.

18 ED --

19 That's you.

20 -- None.

21 LB: No employees. Any payroll?

22 JL: No.

23 ED: Zero.

24 Is it -- it's accurate, isn't it, that neither Harry Hildibrand nor
25 Stardust Classic have any employees; is that correct?

1 A I know that Harry Hildibrand doesn't and it's indicated here by
2 JL and by me that Stardust doesn't either. So I -- I would have to say --

3 Q So you're -- you're the only agent of Harry Hildibrand; isn't that
4 accurate?

5 A I'm a figurehead managing member, yes, sir. That's -- that is
6 all I know.

7 Q Other than owners, Harry Hildibrand has no way to act other
8 than by through you; isn't that accurate?

9 A No. He can act on his own.

10 Q The entity, though. Do you understand that an entity is a
11 fiction, right? It doesn't have a real existence, an entity, it must act
12 through its agents; do you understand that?

13 A Yes.

14 Q And you are its only --

15 MR. MAZUR: Objection, Your Honor. Misstates the law on
16 policies --

17 THE COURT: Well, you're not allowed to object --

18 MR. MAZUR: Right.

19 THE COURT: -- in these proceedings. You are allowed to
20 participate by observing. All right. So any evidence that comes in in
21 these proceedings right now cannot be used against Mr. Foust in the
22 other proceeding, though.

23 MR. MAZUR: Very good. Thank you, Your Honor.

24 THE COURT: Okay? All right.

25 Go ahead.

1 BY MR. BRAGONJE:

2 Q So do you agree, then, that you're the only agent of Harry
3 Hildibrand LLC, the entity?

4 A Then with this coming to light, I'm going to answer I don't
5 know. I don't know if I'm the only entity. I know that I'm a manager on
6 paper, but I haven't done anything on their behalf other than file the
7 police report and attend this bankruptcy hearing. Outside of that, I've
8 done -- I have conducted no business on behalf of the company. So
9 whether they've conducted other business, I wouldn't know, sir.

10 Q But there are no employees, correct?

11 A That is my understanding.

12 Q And you're the sole --

13 A At least to my knowledge.

14 Q -- manager, correct?

15 A I'm -- I am a manager.

16 Q Who are the other managers?

17 A I don't know.

18 Q All right.

19 MR. BRAGONJE: Your Honor, I'd like to introduce a new
20 exhibit that hasn't been tendered before.

21 THE COURT: One second.

22 MR. BRAGONJE: I'd like to provide the Court with a courtesy
23 copy. I've already given a copy to Mr. Detwiler and Mr. Mazur. I'd like
24 to --

25 THE COURT: Was this disclosed before the last hearing in

1 this case?

2 MR. BRAGONJE: It was not. I gave it only this morning. I
3 think that --

4 THE COURT: Is there a document that's come up in any of
5 these last 14 hearings that we've had in this case?

6 MR. BRAGONJE: Yes. Yes, it has.

7 THE COURT: Can you -- do you --

8 MR. BRAGONJE: Some of them have. And I think --

9 THE COURT: In what context?

10 MR. BRAGONJE: I think it will give context, what they are is --

11 THE COURT: No, in what manner was it disclosed in these
12 proceedings prior -- before today?

13 MR. BRAGONJE: Well, I'm going to talk about an order this
14 Court entered previously.

15 THE COURT: All right.

16 MR. BRAGONJE: And then some Nevada Secretary of State
17 reports. And this grows out of our discussion on Friday, where we had
18 some testimony about different offices of different businesses. And so
19 after that discussion, in preparation for today's hearing, I looked at the
20 prior order of this Court and then some Nevada Secretary of State entity
21 filings that --

22 THE COURT: Uh-huh.

23 MR. BRAGONJE: -- Mr. Detwiler and Mr. Foust are involved
24 in. So it's --

25 MR. MAZUR: Excuse me. Mr. Foust is not involved in any of

1 the other three.

2 MR. BRAGONJE: Yeah, we'll get to that.

3 MR. MAZUR: Okay. Well -- but -- but --

4 THE COURT: Just give me a moment, guys.

5 MR. MAZUR: -- to state that is incorrect.

6 THE COURT: All right. Give me a moment here.

7 [Pause in proceedings.]

8 THE COURT: So what I'm trying to do is determine -- I want
9 to strictly follow proper procedures here, given the seriousness of this
10 matter. So I want to make sure that if I gave you a deadline for
11 identifying exhibits, that you complied with that.

12 MR. BRAGONJE: Sure.

13 THE COURT: So I have to -- I'm checking my minutes.
14 Okay?

15 MR. BRAGONJE: Yes.

16 [Pause in proceedings.]

17 THE COURT: I thought I gave a deadline. You don't
18 remember, Mr. Bragonje? Because I don't want to waste time on this,
19 but I'm pretty sure I've -- I gave a deadline, but --

20 MR. BRAGONJE: I don't recall.

21 THE COURT: All right.

22 MR. BRAGONJE: I've been just operating under the local
23 rules that normally things have to be disclosed I think a week in advance
24 of any trial or evidentiary hearing.

25 THE COURT: Right. And this --

1 MR. BRAGONJE: And --

2 THE COURT: -- this actually began, remember, this
3 evidentiary hearing began, what, a couple of weeks ago.

4 MR. BRAGONJE: Yes. Absolutely.

5 THE COURT: And did -- and I don't know if you disclosed it
6 before then.

7 MR. BRAGONJE: I did not. For sure I did not. I think -- why I
8 think --

9 THE COURT: All right. Then I don't think we should use it. I
10 don't think --

11 MR. BRAGONJE: Okay.

12 THE COURT: -- it's comporting with due process not to give
13 Mr. Detwiler a prior notice of this document. Unless you have some
14 proof you can show me that you've given it to him before these
15 proceedings started.

16 MR. BRAGONJE: No. No, I only gave it today.

17 THE COURT: All right.

18 MR. BRAGONJE: I don't --

19 THE COURT: We can't use it then, unfortunately.

20 MR. BRAGONJE: I just -- yes. Thank you.

21 THE COURT: You know, for both sides.

22 MR. BRAGONJE: Thank you.

23 THE COURT: It's not something I can consider here.

24 MR. BRAGONJE: Thank you. I wonder if you even --

25 THE COURT: Whether it's favorable to one side or the other

1 side, it hasn't been disclosed. All right?

2 MR. BRAGONJE: If Mr. Detwiler -- and I'll just -- I'll ask one
3 more thing and then I'll be quiet on this issue.

4 THE COURT: You can ask him questions, you just can't read
5 the document.

6 MR. BRAGONJE: I just wonder if he would even object to
7 these documents or not. If he doesn't object, we can talk about them. If
8 not, I'll just ask the questions.

9 THE WITNESS: I object to them, sir.

10 MR. BRAGONJE: Okay. Thank you.

11 THE COURT: All right.

12 MR. BRAGONJE: Thank you for your ruling.

13 Thank you, Mr. Detwiler.

14 BY MR. BRAGONJE:

15 Q Mr. Detwiler, when we were before the Court last Friday, you
16 spoke about a venture you have in Roatan, Honduras; is that right?

17 A That is correct.

18 Q And the name of one of the entities involved in that venture is
19 Nai'a Resorts LLC; is that accurate?

20 A It is.

21 Your Honor, just to make a point, these are -- and I don't have
22 any counsel here, sir, but these are -- what he's talking about is what he
23 was putting into evidence. And my resort company has absolutely
24 nothing to do with Jim Foust or Baker Boyer Bank. And so I'm kind of
25 wondering why --

1 THE COURT: I don't know what --

2 THE WITNESS: -- you just told him not to have this put into
3 evidence, but now he's asking me questions about it.

4 THE COURT: Well, it's a document and I'm saying the
5 document is not being admitted into evidence. He can ask you
6 questions.

7 THE WITNESS: Okay.

8 THE COURT: So the questions are proper, because at the
9 last hearing you made a big deal about --

10 THE WITNESS: Very big deal.

11 THE COURT: -- if you were held in contempt and depending
12 on what the penalty would be, that would have a grave effect on --

13 THE WITNESS: It could very well have a grave effect on me.

14 THE COURT: -- on your business.

15 THE WITNESS: Yes.

16 THE COURT: Okay. So you brought it into issue, and so I
17 need to let him --

18 THE WITNESS: Very well.

19 THE COURT: -- answer questions -- or ask questions about
20 that.

21 THE WITNESS: Very well.

22 BY MR. BRAGONJE:

23 Q And you're familiar, this is a Nevada LLC, this Nai'a Resorts
24 LLC?

25 A Yes, it is.

1 Q And you're familiar with the fact that when one has a Nevada
2 entity -- you are, by the way, you are the -- a manager of Nai'a Resorts
3 LLC; is that correct?

4 A I am a manager, yes.

5 Q There are other managers?

6 A Yes, there are.

7 THE COURT: How do you spell Nai'a?

8 THE WITNESS: N-A-I-'-A.

9 THE COURT: Okay. Very good.

10 THE WITNESS: It's Polynesian for dolphin.

11 THE COURT: Thank you, sir.

12 BY MR. BRAGONJE:

13 Q Okay. And you're familiar with the convention that in Nevada
14 and in other states, the state has on its records official offices related to
15 entities --

16 A Yes.

17 Q -- do you understand that? And, in fact, you gave an office in
18 connection with your role as manager of Nai'a Resorts LLC; is that right?

19 A That's correct.

20 Q And what is the address of that office, sir?

21 A 10120 South Eastern Avenue, Suite 300, Henderson,
22 Nevada, 89051. It's also my office where my real estate license hangs.

23 Q Okay. And do you agree that Mr. Foust also has used this
24 same office for his entities?

25 A Yes, I see that he did.

1 Q Okay. And you would accept for --

2 MR. BRAGONJE: Your Honor -- does Your Honor have any
3 objection to the prior order coming into court? Your -- it's a prior -- it's a
4 charging order from a November 15th, 2017?

5 THE COURT: I --

6 MR. BRAGONJE: I mean, I don't know, I guess --

7 THE COURT: Well, I don't make objections. I simply enforce
8 the --

9 MR. BRAGONJE: Right, right.

10 THE COURT: -- rules of the Court and my prior orders.

11 MR. BRAGONJE: Okay.

12 THE COURT: My prior order is of record, so you can --

13 MR. BRAGONJE: Yeah.

14 THE COURT: -- you can use it.

15 MR. BRAGONJE: Okay.

16 THE COURT: It's part of the public record.

17 BY MR. BRAGONJE:

18 Q So I'll just tell you for background that this court, a long time
19 ago in November of 2017, entered a charging order against an entity
20 that Mr. Foust owns. The name of the entity is JPF Enterprises LLC.
21 Have you heard of that entity before?

22 A I've heard of it, yes. Yeah.

23 Q And you understand that's an entity associated with
24 Mr. Foust?

25 A That is correct.

1 Q And you agree that this entity, JPF Enterprises, uses the same
2 office address as Nai'a Resorts LLC?

3 A I recognize that he has used that address before and has
4 used other addresses for that entity as well.

5 Q All right. Have you done anything in the time since we were
6 here to convince whoever you say might be in control of Harry Hildibrand
7 to turn over the documents?

8 A Yes I have.

9 Q Or, excuse me, the cars?

10 A The cars. Yes, sir, I have.

11 Q And what was the response?

12 A I did not get a response, I did not get an answer.

13 Q And to whom did you direct your inquiry?

14 A Junior.

15 Q Harry Hildibrand Jr.?

16 A Yes, sir.

17 Q And do you mean that you telephoned him?

18 A Yes, sir.

19 Q Did you e-mail him?

20 A No, sir.

21 Q You telephoned --

22 A I don't have an e-mail for him.

23 Q And did you leave a message, a voice message?

24 A I could not leave a message, it said the mailbox was full.

25 Q How many times did you telephone?

1 A Three times, sir.

2 Q Thank you.

3 MR. BRAGONJE: No further questions.

4 THE COURT: All right. One second.

5 Do you have anything in writing, any document that you can
6 show me to show you've made efforts to try to get these cars back other
7 than your word?

8 THE WITNESS: No, sir. I also called -- if I may follow up to
9 that?

10 THE COURT: Yes. What --

11 THE WITNESS: I also --

12 THE COURT: The way we do this -- hold on.

13 THE WITNESS: Okay.

14 THE COURT: All right. I apologize, I think I interrupted you in
15 part. So now that Mr. Bragonje is done with his examination, we let you
16 go first and then he got to cross-examine you, now it's your turn to go
17 ahead and make any statements or clarify anything or provide us with
18 any additional evidence.

19 So your turn.

20 THE WITNESS: Yeah. I don't know why I can't get through,
21 but I can't get through. My involvement with the cars, I don't -- I've never
22 known anything about the cars and what I shared with the bankruptcy
23 attorney, the information that I did share was provided to me by the
24 attorney who filed the bankruptcy.

25 I did call Jim Foust over the weekend and I said, It would

1 probably be a good idea for you to try to settle this. And that's it. So
2 those were the efforts I made. That was the only person I could get a
3 hold of. So.

4 THE COURT: All right. Thank you.

5 THE WITNESS: And I -- beyond that, sir, I just have no
6 accessibility to the assets that are in the company.

7 THE COURT: Anything else that you want to say?

8 THE WITNESS: No, sir.

9 THE COURT: All right. So you went first. Then Mr. Bragonje,
10 then you.

11 And anything else, Mr. Bragonje?

12 MR. BRAGONJE: No, thank you.

13 THE COURT: All right. You can step down.

14 So I want to reserve hearing any closing argument on this
15 matter until after we complete the proceedings from Mr. Foust. All right.
16 And at that point in time, we can determine how to proceed. Okay.

17 So with the exception of closing arguments by the parties, this
18 concludes the proceedings for the contempt charge against Mr. Detwiler.
19 The evidentiary portion of that proceeding is closed. And the Court will
20 inform the parties when they may proceed with any closing arguments
21 and when the Court will decide what action to take, if any. Okay. All
22 right.

23 Mr. Mazur, you may bring in your client now, please.

24 MR. MAZUR: Yes, sir.

25 THE COURT: You can stay, Mr. Detwiler. You can stay

1 now -- well, stay to see if he's going to call you as a witness.

2 MR. DETWILER: Oh. Okay.

3 THE COURT: Okay?

4 MR. DETWILER: Okay.

5 THE COURT: If he is going to call you as a witness, then I'll
6 have to ask you to step outside while he's testifying as part of the
7 exclusionary rule.

8 MR. DETWILER: Yes, sir.

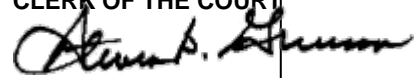
9 [Proceedings concluded at 9:03 a.m.]

10 ///

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed
19 the audio/video proceedings in the above-entitled case to the best of my
20 ability.

21 

22 Shawna Ortega, CET*562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

TUESDAY, MAY 21, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING
VOLUME II**

APPEARANCES:

For the Plaintiff(s):

JOHN E. BRAGONJE, ESQ.

For the Defendant(s), James
Patterson Foust, Jr.:

MICHAEL D. MAZUR, ESQ

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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25

INDEX

Page #

WITNESSES

FOR THE DEFENDANT:

JAMES FOUST

Direct Examination	8
Cross-Examination	43
Redirect Examination	54

EDWARD DETWILER

Direct Examination	56
--------------------	----

THOMAS LARKIN

Direct Examination	63
Cross-Examination	78
Redirect Examination	81
Examination by the Court	82
Further Examination by Mr. Bragonje	84
Examination by the Court	86
Additional Examination by Mr. Bragonje	89

Closing Argument by the Defendant	95
Rebuttal Argument by the Plaintiff	98

EXHIBITS

Page #

Defendant's Exhibit No. 11 marked	11
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1 **LAS VEGAS, NEVADA, TUESDAY, MAY 21, 2019**

2 [Proceeding commenced at 9:03 a.m.]

3
4 THE COURT: All right. The record will reflect that Mr. Foust
5 is now present and he's represented by counsel, Mr. Mazur, who is here.
6 Also present is Mr. Bragonje.

7 This is the time and date set for the trial on the contempt
8 charges against Mr. Foust. This hearing is being conducted pursuant to
9 the document entitled Order to Appear and Show Cause Why Defendant
10 Should Not Be Held in Contempt of Court, which was filed
11 February 21, 2019.

12 And, Mr. Mazur, can you identify which witnesses you plan to
13 call in these proceedings?

14 MR. MAZUR: Yes, Your Honor. First we'd like to call
15 Mr. Foust himself. In addition, Mr. Detwiler. And then Thomas Larkin,
16 as well.

17 MR. BRAGONJE: And I would object to Thomas Larkin as not
18 being disclosed. I have no idea who he is or what relevance he has.

19 THE COURT: Give me a moment to check.

20 MR. MAZUR: Your Honor, Thomas Larkin was disclosed on
21 April 1st. He was in attendance at the hearing on April 1st. And the
22 Court inquired as to his name and put it on the record, I believe that he
23 was here in attendance at that point in time.

24 THE COURT: All right. I don't recall, but I'll accept your
25 representation. If it turns out to be something different than that, we can

1 talk about it. But I accept your representation.

2 MR. MAZUR: Okay.

3 THE COURT: Mr. Bragonje, I accept his representation. If
4 you find the facts to be different than that, then let us know.

5 MR. BRAGONJE: I don't dispute he was here, I just don't
6 think that's a witness disclosure. That's all.

7 THE COURT: Well, did you disclose that he would be
8 testifying?

9 MR. MAZUR: He was -- I believe he was --

10 THE COURT: That's what I thought you said.

11 MR. MAZUR: I believe he was identified at the beginning of
12 the proceeding. And --

13 THE COURT: When you say identified, as present or as a
14 witness? Or --

15 MR. MAZUR: I don't recall that fact specifically. But I do
16 recall at the very end of the proceeding, before we wrapped up, you did
17 call him up, got his name, his position with the company and information
18 like that before we concluded.

19 THE COURT: Let me take a look at my minutes and see what
20 I can find on that. Okay. I don't know if it's in there. That was the last
21 time you were here?

22 MR. MAZUR: April 1st, Your Honor.

23 THE COURT: April 1st?

24 MR. MAZUR: I believe he did come up to the podium, and
25 wasn't sworn in or anything, but you did ask who -- which company he

1 was with and his name, for the record.

2 THE COURT: Checking.

3 [Pause in proceedings.]

4 THE COURT: You guys can sit for a second.

5 [Pause in proceedings.]

6 THE COURT: Guys, I'm having trouble finding any reference
7 to him. And I can listen to JAVS. I don't want to waste any time. I got
8 too much going on this morning. All right. So I'm going to let you call
9 him subject to a Motion to Strike. Okay?

10 MR. MAZUR: Thank you, Your Honor.

11 MR. BRAGONJE: Thank you.

12 THE COURT: All right. Very good.

13 The exclusionary rule is invoked, so the only one present in
14 the courtroom with relation to these proceedings shall be the parties to
15 the Foust proceedings.

16 Mr. Detwiler, I have to ask you to step outside.

17 And Mr. Mazur, you may call your first witness.

18 MR. MAZUR: Thank you, Your Honor.

19 I'd like to call James Foust.

20 THE COURT: Mr. Foust, please come take the stand.

21 **JAMES FOUST,**

22 [having been called as a witness and first duly sworn, testified as
23 follows:]

24 THE CLERK: You may be seated. And then can you please
25 state and spell your first and last name for the record.

1 THE WITNESS: James Foust, F-O-U-S-T.

2 THE CLERK: Thank you.

3 THE COURT: All right. You may proceed.

4 MR. MAZUR: Thank you, Your Honor.

5 And, Your Honor, one point of information is when we did
6 leave on -- April 1st, the Court did request us to submit a declaration of
7 additional facts regarding the list of the contested vehicles. And at the
8 conclusion --

9 THE COURT: I have a copy.

10 MR. MAZUR: At the conclusion of the hearing, it was
11 determined there was only 20 of those vehicles that were at issue and
12 we did submit and file a declaration on April 8th this year,
13 Mr. Patterson -- Patterson-Foust.

14 THE COURT: Yes.

15 MR. MAZUR: Okay. And I'd like to reference that and we'll go
16 through one by one as far as the status of the vehicles for the 20 that are
17 actually are at issue for the hearing here this morning.

18 THE COURT: All right.

19 MR. MAZUR: And the first one was --

20 THE COURT: Mr. Bragonje, do you have that in front of you?

21 MR. BRAGONJE: Well, I've been given -- I'm shuffling
22 through. I'm sure I'll find it.

23 THE COURT: I have a copy here. Do you want to --

24 MR. BRAGONJE: That would be great.

25 THE COURT: -- want the Court -- well, this is my copy. Do

1 you want us to make you a copy?

2 MR. BRAGONJE: That would be great. Thank you.

3 THE COURT: All right.

4 MR. MAZUR: I have a copy as well, Your Honor.

5 THE COURT: Marshal.

6 MR. BRAGONJE: Oh, I've got that one. I thought you were
7 talking about --

8 MR. MAZUR: The bankruptcy --

9 MR. BRAGONJE: -- the declaration.

10 MR. MAZUR: I don't have a copy of the declaration, I do have
11 a copy of this.

12 MR. BRAGONJE: I've got that.

13 THE COURT: Well, I don't have that. I have the declaration,
14 but I don't have the attachment.

15 MR. MAZUR: I'll trade you a copy of this for --

16 THE COURT: Yes.

17 MR. MAZUR: Thank you, Your Honor. May I approach?

18 THE COURT: Yes. Is that an extra?

19 MR. MAZUR: Yes.

20 THE COURT: All right. Thank you. Appreciate it. That would
21 be wonderful.

22 MR. MAZUR: And this is the one from the bankruptcy court.

23 THE COURT: Perfect. Thank you.

24 All right. You may proceed.

25 ///

1 **DIRECT EXAMINATION**

2 BY MR. MAZUR:

3 Q Good morning, Mr. Foust. In looking at the first item we have
4 is the 2007 Mercedes S550 in the declaration. And that is towards the
5 bottom of the list that we have here. In your declaration you provided
6 the location of the vehicle was in Rancho Palos Verdes, California?

7 A Yes, sir.

8 Q And that is correct, it's not in your actual possession, though?

9 A Correct.

10 THE COURT: What -- we're looking at the Mercedes 2007
11 S550; is that what you're talking about?

12 MR. MAZUR: Yes, Your Honor.

13 And for the convenience of the Court, maybe if we number
14 them 1 through -- all the way through, then we can reference and be
15 able to quickly -- this one's fourth one from the bottom?

16 THE COURT: I would prefer that you be consistent and use
17 the numbering system that you have in the declaration of Mr. Foust.

18 MR. MAZUR: Okay.

19 THE COURT: So when you refer to a car, tell us what number
20 it is in that declaration filed April 8th, 2019.

21 MR. MAZUR: Very good.

22 THE COURT: All right? Thank you.

23 BY MR. MAZUR:

24 Q And the 2007 Mercedes S550, last for the VIN, 5860, Item
25 Number 1 in the declaration. And that vehicle is not in your possession;

1 is that correct?

2 A That's correct.

3 Q Okay. And do you know whose possession that's in?

4 A That's in Miriam Foust.

5 Q Okay. And do you have access to that vehicle?

6 A No.

7 Q Do you have control of that vehicle?

8 A No.

9 Q Okay. And is it your understanding that it's subject to the
10 security interests of Mr. Vega or Stardust?

11 A Yes.

12 MR. BRAGONJE: Objection. Leading.

13 THE COURT: It is leading. Sustained. And that's --
14 statement, anyway, in the affidavit already. Which is already of record.
15 So if he's just going to say what's already in here, I think we can save
16 time and just indicate that all these statements are admitted into the
17 record for purposes of the Court's consideration of the contempt
18 charges.

19 MR. MAZUR: Very good, Your Honor.

20 THE COURT: All right. But if -- certainly, elaborate on
21 anything that needs explaining.

22 MR. MAZUR: Okay. What we'll do --

23 THE COURT: And again, Mr. Bragonje, it would be helpful if
24 you have this, so it would expedite any cross-examination you might
25 have.

1 MR. BRAGONJE: Yeah. Are you referring to the declaration?
2 THE COURT: Yes.
3 MR. BRAGONJE: Yeah. I haven't been able to locate it.
4 They did give it to me.
5 THE COURT: Okay.
6 MR. BRAGONJE: If the Court has a copy, that would be
7 great.
8 THE COURT: I do. I'd like my marshal to copy it, if he could.
9 Thank you, Marshal. I appreciate it.
10 MR. BRAGONJE: Thank you, Your Honor. It's a lot of
11 papers.
12 THE COURT: Yeah. If you don't mind.
13 THE MARSHAL: Sure.
14 THE COURT: Or actually, you know what, why don't you stay
15 here. Let's have Liz do it.
16 It's an exhibit. We're going to make an exhibit, so she's in
17 charge of the exhibits.
18 [Pause in proceedings.]
19 MR. MAZUR: Evaluating time, Your Honor, may I jump onto
20 another quick issue --
21 THE COURT: Yes.
22 MR. MAZUR: -- off the page, another --
23 THE COURT: Well --
24 MR. MAZUR: Or I'll --
25 THE COURT: -- we shouldn't, if the clerk's out of the

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume II - Part 1; Pages MSA00251-MSA00375)

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(NV SBN 10282)

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Attorneys for Appellant

TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518-MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445-MSA00447	1/28/2020	Notice of Appearance
I	MSA00071-MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001-MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766-MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384-MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473-MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719-MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

1 courtroom.

2 [Pause in proceedings.]

3 THE COURT: All right. Thank you very much.

4 All right. So I'm going to have this declaration of James
5 Foust -- just -- we're just going to have that marked as we'll call it
6 Defendant's Exhibit 1. Okay?

7 MR. MAZUR: Very good. Thank you, Your Honor.

8 [Defendant's Exhibit No. 1 marked.]

9 BY MR. MAZUR:

10 Q With the address of the property at 7 Avenida de Magnolia,
11 you stated that that's your wife's property; is that correct?

12 A Yes.

13 Q Or your ex-wife's property?

14 MR. BRAGONJE: I'm sorry to interrupt. Was there a copy for
15 me?

16 THE COURT: Oh, I thought someone just gave it to you.
17 Right? No?

18 THE CLERK: I made two copies.

19 THE COURT: Oh, you made two copies. Yes, I'm sorry.
20 Here's --

21 MR. BRAGONJE: May I approach?

22 [Pause in proceedings.]

23 MR. BRAGONJE: Thank you, Your Honor.

24 BY MR. MAZUR:

25 Q Okay. Mr. Foust, looking at 7 Avenida de Magnolia, Ranchos

1 Palos Verde, California, 90275, you testified that's your ex-wife's
2 property?

3 A Yes.

4 Q Okay. And when did you -- when was the divorce filed or
5 petition for divorce filed?

6 A Divorce was filed in 2005-2006.

7 Q Okay. And what state was that filed in?

8 A That would be California.

9 Q Okay. And was there any type of orders that were issued as
10 far as what would be done with the property?

11 A Yes.

12 Q And do you recall when the orders were issued?

13 A I think that the -- 2007 I think was something about the time.

14 Q Okay. And do you recall the nature of the orders that were
15 issued?

16 A Yes, I did.

17 Q And what was the order that was issued?

18 A There were obligations that she had regarding ownership of
19 companies and there was ownership of the -- of contested property,
20 which was Las Vegas and California. And she received that.

21 Q Okay. And did she receive the Avenida -- 7 Avenida de
22 Magnolia as her sole and separate property?

23 A Yes.

24 Q Okay. And you have no interest in that property?

25 A No.

1 Q Okay. Do you reside at that property?

2 A No.

3 Q Okay. Do you have any agreement with your ex-spouse
4 regarding that property?

5 A Yes.

6 Q Okay. And what is that agreement?

7 A There's a court order issued in California.

8 Q Okay. And other than the court order, there's no other
9 agreement regarding that property?

10 A There were agreements that -- what was in 2007. I -- yeah, I
11 mean, the status of conference and all of that.

12 Q Okay. And that would be -- the status of the property would
13 be that of her sole and separate property --

14 A Yes.

15 Q -- through the order? Okay.

16 So you don't control that property in any manner or
17 mechanism?

18 A The property right now I think is still -- she has the quit-claims
19 and all of the documentation to be filed. And I think that right now,
20 technically, it's still in my name because of the loan amount. And she
21 has the quit-claim, she has the other stuff required to be in the file.

22 Q Okay. And with the vehicle that's residing, the 2007, a
23 Mercedes S550 Vehicle Number 1 on the declaration, that -- she
24 maintains control over that vehicle; is that correct?

25 A She has that car.

1 Q She has that car? Okay.

2 And did you inform her that people were seeking or have you
3 spoken to her about that vehicle at all?

4 A Not really, no.

5 Q Okay. And then in addition to that, are there other vehicles
6 that you recall are at that same location, and looking at Item Number 3
7 or Vehicle Number 3 on the list, 2000 GMC Yukon?

8 A Yes. She has that.

9 Q Okay. And she has the control of that vehicle, not you?

10 A Yes.

11 Q In addition, Vehicle Number 6, the 2007 Mercedes CLK 550?

12 A My daughter has that one.

13 Q Okay. And that vehicle is at the location of 7 Avenida de
14 Magnolia as well?

15 A Yes.

16 Q Okay. And in the declaration I think -- I believe the final one
17 was Vehicle Number 7, the 2007 Mercedes M50 SUV?

18 A Yes.

19 Q Okay. And that one is at that location as well?

20 A Yes.

21 Q Okay. Other than those vehicles, are there any --

22 THE COURT: Who drives that car? Number 7, who drives --
23 that's the 2007 Mercedes M50 SUV, is that the one you were talking
24 about, Mr. Mazur?

25 MR. MAZUR: Correct, Your Honor.

1 THE COURT: Do you know who drives that one?
2 THE WITNESS: I'm sorry?
3 THE COURT: Do you know who drives that car?
4 THE WITNESS: I believe that my daughter drives --
5 THE COURT: It's at your --
6 THE WITNESS: -- that one.
7 THE COURT: It's at your ex's house, right?
8 THE WITNESS: Pardon me?
9 THE COURT: It's at your ex's house?
10 THE WITNESS: Yes.
11 THE COURT: Okay. And one of your daughters drives that?
12 THE WITNESS: There's three -- my two daughters and
13 Naomi.
14 THE COURT: Okay.
15 THE WITNESS: At that house.
16 THE COURT: Who's Naomi?
17 THE WITNESS: That's my -
18 THE COURT: Your ex?
19 THE WITNESS: Well, yes.
20 THE COURT: Okay. All right. Thank you.
21 All right. Any follow-up? Oh, you can keep going.
22 MR. MAZUR: Okay.
23 BY MR. MAZUR:
24 Q And Vehicle Number 2 is 1998 Marathon Coach, and it's your
25 understanding, as far as the Marathon Coach, that that's been

1 repossessed and sold; is that correct?

2 A I don't know about the sold. It's been repossessed.

3 Q Okay. And on that loan, are you still on the loan with
4 Santander?

5 A I don't know the answer to that. I think so.

6 Q Okay. And has the loan, the fact that the plaintiffs failed to
7 make the payments on that Santander loan, has that impacted your
8 credit?

9 A Yes.

10 MR. BRAGONJE: Objection. Relevance.

11 THE COURT: I don't see any relevance for that, Mr. Mazur.
12 We're not here to determine what rights other secured creditors might
13 have in the vehicles. We're trying to find out, you know, where are the
14 vehicles? What interests your client has in them, what efforts he's tried
15 to comply with our order, and what defenses he might have to the
16 Court's orders. My court order had nothing to do with security interests
17 of others.

18 MR. MAZUR: Understand.

19 THE COURT: All right.

20 MR. MAZUR: Is -- Your Honor, may I inquire, is that vehicle
21 no longer of interest to the Court? Can that be removed off the list,
22 since that's been --

23 THE COURT: You're talking about Number 2, the --

24 MR. MAZUR: Number 2.

25 THE COURT: -- coach?

1 MR. MAZUR: Correct.

2 THE COURT: It's already been repossessed.

3 MR. MAZUR: Okay.

4 THE COURT: It is in the control and custody now of the

5 judgment creditor. So yes, you don't need to --

6 MR. MAZUR: Okay.

7 THE COURT: You don't need to worry about that one. Thank

8 you.

9 MR. MAZUR: Great.

10 THE COURT: It's not of concern to the Court at this time.

11 MR. MAZUR: Okay.

12 BY MR. MAZUR:

13 Q And Vehicle Number 5, 2016 Kawasaki KR10 motorcycle; you

14 familiar with that one, Mr. Foust?

15 A Yes.

16 Q And in the declarations, his last known address was with Harry

17 Hildibrand Jr., in Missoula, Montana?

18 A Yes.

19 Q Okay. And how do you know that -- what do you base that

20 information on?

21 A He was the original requestor of that, I believe, that was

22 bought for him.

23 Q Okay. And what is your understanding as far as with Harry

24 Hildibrand Jr., as far as his position with Harry Hildibrand LLC; are you

25 aware of what his position -- or -- if any?

1 A He is -- I believe that he owns a third of that company.

2 MR. BRAGONJE: Objection. Speculation.

3 THE COURT: Yeah. So sustained.

4 We need foundation for him to make a statement like that.

5 BY MR. MAZUR:

6 Q Mr. Fouts, are you aware of who the current owners of Harry
7 Hildibrand LLC are?

8 MR. BRAGONJE: And I'm just going to object, because I feel
9 like your prior orders say that Mr. Foust is the owner of Harry Hildibrand
10 LLC.

11 THE COURT: Well, they do. But he's allowed to come
12 forward and state now his current position. I'll give it whatever weight I
13 think is appropriate.

14 MR. BRAGONJE: Thank you, Your Honor.

15 THE COURT: All right.

16 THE WITNESS: Yes. The company was never owned by me.
17 And when the Mr. Harry Hildibrand passed away, I believe that 100
18 percent of that ownership went to his three children. His son and two
19 daughters.

20 BY MR. MAZUR:

21 Q Okay. And are you currently a manager of Harry Hildibrand
22 Inc. or LLC?

23 A No. No.

24 Q Have you ever been a manager of Harry Hildibrand LLC?

25 A Yes.

1 Q And when was that?

2 A That was at the formation of the company and relinquished a
3 year later, perhaps, six months later, some other period of time.

4 Q And you -- do you recall the approximate year of the formation
5 of that company?

6 A I believe that was -- I don't specifically, no.

7 Q Okay. Is it fair to say that it's been more than five years --

8 A Yes.

9 Q -- that you've been a manager?

10 A Yes.

11 Q More than 10 years?

12 A Yes.

13 Q Do you exercise any control over Harry Hildibrand LLC?

14 A No.

15 Q Do you know who has control of Harry Hildibrand LLC?

16 A No.

17 Q Do you know whether or not Harry Hildibrand LLC has any of
18 the vehicles that were on the list, the 20 that were subject to today's
19 hearing?

20 A At this time, I believe that all of the vehicles belong to Harry
21 Hildibrand. The ones that haven't -- that we had just previously talked
22 about.

23 Q And --

24 THE COURT: You're talking about the ones we just talked
25 about were, just for the record, Items 1, 3, 6, 7, 2, and 5. And 2 is the

1 motor coach that was repossessed. Those are the ones that you're
2 referring to?

3 THE WITNESS: I don't have a sheet for that number, but yes.

4 THE COURT: Right. But the ones we discussed --

5 THE WITNESS: Yes.

6 THE COURT: -- this morning.

7 THE WITNESS: Yes. Yes.

8 THE COURT: Okay.

9 BY MR. MAZUR:

10 Q Do you know the dates that Harry Hildibrand LLC acquired the
11 vehicles or acquired title to the vehicles?

12 A I believe that would have been sometime around
13 maybe 2011, 2010.

14 Q And do you receive a Schedule K for your tax returns from
15 Harry Hildibrand LLC?

16 A No.

17 Q Okay. In looking at the other vehicles on the list, let's look at
18 Vehicle Number 4, 1955 Ford T-bird Chevy. States that the vehicle was
19 purchased from Meacham Auto Auctions; do you recall that, when it was
20 purchased?

21 A Not specifically, but kind of.

22 Q Okay. Further, it states in the declaration:

23 I'm informed and believe that this vehicle was registered to
24 Harry Hildibrand LLC in 2011 in the state of Montana and subject to
25 security interest by Stardust Classic LLC and/or Ronald Vega.

1 Do you see that?

2 A Yes.

3 Q Okay. Then why did you believe that it was registered to
4 Harry Hildibrand?

5 A Well, after all of the -- some of this thing, I went back and did
6 as much research as I could. I had been provided the information on
7 the -- on that bankruptcy. And I looked at -- went through that.

8 Q Okay. And it is your belief that in 2011 this was registered to
9 Hildibrand --

10 A Yes.

11 Q -- LLC?

12 A Yes.

13 Q And why is it your belief that it was subject to a security
14 interest by Stardust Classics LLC and/or Ron Vega?

15 MR. BRAGONJE: Objection. Speculation.

16 THE COURT: Well, he's asking him why does he believe it.
17 So personal knowledge.

18 If you know without hearsay, go ahead and tell us.

19 THE WITNESS: Sometime in the period of time after there
20 was a movement of Harry Hildibrand to diverse in real estate, other
21 things, and part of the thing was a venture that was between Ronald
22 Vega and Mr. Hildibrand to finance cars, to restore them, and to share in
23 the profits of the sale.

24 BY MR. MAZUR:

25 Q And the resale of the vehicles, that was disclosed to the bank

1 prior to the loan and after the loan; is that correct?

2 A Oh, yeah. Yes, sir.

3 Q Okay. And the bank even acknowledged that they knew the
4 vehicles would be sold?

5 A Yes.

6 Q How do you know the bank knew that the vehicles would be
7 sold at some point in time?

8 A I saw a exhibit by the bank and I don't recall what the number
9 of it was, but it was something called a commercial loan document.

10 MR. BRAGONJE: I'm going to object on the grounds of
11 hearsay.

12 THE COURT: Sustained. He's got to talk about his own
13 personal knowledge. All right. And you've got to lay foundation.

14 BY MR. MAZUR:

15 Q At some point in time, did you see a report from the actual
16 bank? Commercial loan report?

17 A Yes.

18 Q When did you see a commercial loan report from the bank?

19 A 2017 maybe, 2018.

20 Q And where did you see that at?

21 A That was at a deposition.

22 Q Whose deposition?

23 A It was my deposition by Baker Boyer Bank.

24 Q Okay. And who provided you a copy of that?

25 A The exhibits were distributed to my attorney and

1 subsequently, I read them.

2 Q Okay. And do you know where your attorney received them
3 from?

4 A I'm sorry?

5 Q And do you know where your attorney received the documents
6 from?

7 A Probably from the recorder of the deposition.

8 Q And who, for the bank, who took the deposition? Do you know
9 who took the deposition?

10 A I think Bragonje did.

11 Q Okay. And did he hand you a copy of the loan summary?

12 A I'm sorry?

13 Q The commercial loan report?

14 A No. I think that that -- yes, he did. Yes. That exhibit was
15 produced.

16 MR. BRAGONJE: I'm just going to object, because this is
17 fanciful. I did not take this deposition, so I object to this testimony. It
18 was not me. This all occurred before the judgment was domesticated in
19 this state and I don't understand --

20 THE COURT: All right. Well, why don't you save that for
21 argument, because I don't want to get into --

22 MR. BRAGONJE: All right.

23 THE COURT: -- collateral issue about, you know, whether
24 you were there or not. So. All right. But thank you.

25 BY MR. MAZUR:

1 Q You stated that the bank was aware of the fact that you would
2 be selling the vehicles?

3 A Yes.

4 Q Okay.

5 MR. BRAGONJE: Objection. Same objection on hearsay.
6 The statement's based on a document that's not in evidence.

7 THE COURT: So who -- I don't even know what he's talking
8 about here. That some commercial loan report I don't have and talking
9 about some bank -- what's -- what bank are you talking about?

10 MR. MAZUR: Baker Boyer Bank, Plaintiffs' counsel's --

11 THE COURT: So you're saying this witness is giving
12 testimony that Baker Boyer supposedly knew -- or Baker Boyer wanted
13 to sell the cars? What?

14 MR. MAZUR: Well, in one of the exhibits, Plaintiffs' Exhibit 9
15 in a deposition that Mr. Bragonje took of Mr. Detwiler, included a
16 commercial loan report from the bank that he submitted for questions to
17 Mr. Detwiler. I didn't see it in Mr. Foust's deposition. But the
18 commercial loan report acknowledges inside that document, but it was
19 Plaintiffs' exhibit.

20 And that was filed with a report --

21 THE COURT: Well, who can -- I mean, if this is a relevant
22 document, shouldn't somebody lay foundation and admit it so I can
23 consider it?

24 MR. MAZUR: Yes, Your Honor. And this was a --

25 THE COURT: And I don't know where you're going with this.

1 You're -- he's, you know, Mr. Foust is on the stand giving speculative
2 testimony about some loan report that's not in front of me and I've never
3 heard anyone talk about before. So all of this has absolutely no weight
4 for me so far. So just --

5 MR. MAZUR: All right. I understand. And --

6 THE COURT: -- to let you guys know.

7 MR. MAZUR: It was submitted on November 16th by prior
8 counsel as the --

9 THE COURT: In this case?

10 MR. MAZUR: Yes. In this case. Appendix of exhibits to
11 defendant judgment debtor's post-evidentiary hearing brief. But it was
12 submitted on November 16th.

13 THE COURT: Okay.

14 BY MR. MAZUR:

15 Q But as far as you're concerned, Mr. Foust, did you ever
16 mention to the bank that you would be selling the vehicles?

17 A Did I what?

18 Q Did you mention to the bank that you would be selling any of
19 the vehicles?

20 A Yes.

21 Q And did you mention to the bank that you sold one of the
22 vehicles, a Cobra, for a \$900,000 gain?

23 A Yes.

24 Q Okay. And you disclosed that to them?

25 A Yes.

1 Q Okay. And do you recall when you disclosed that to them?

2 A That --

3 MR. BRAGONJE: Object on the grounds of relevance. The
4 Cobra is not one of the cars that's subject of these proceedings. I feel
5 like --

6 THE COURT: Let's see if the Cobra's on here. Rather than
7 me looking on all these --

8 MR. MAZUR: Your Honor, I'll move on.

9 THE COURT: -- is it on here?

10 MR. MAZUR: I'll withdraw the question regarding the Cobra.

11 THE COURT: All right. So we'll move on.

12 MR. MAZUR: Okay.

13 BY MR. MAZUR:

14 Q In going through the list on your declaration, Item
15 Number 8, 2007 Chevy Corvette, testified that you're informed and
16 believe the vehicle was registered to Harry Hildibrand LLC in 2012 and
17 what do you base that information on?

18 A I think that the document that was filed with the bankruptcy
19 court had the -- that date on it.

20 Q Okay. And the vehicle's not in your possession or control?

21 A It is not.

22 Q Okay. Are there any steps that you could take that you
23 haven't taken in order to turn over that vehicle to the Court?

24 A I don't have the vehicle to turn over.

25 Q Okay. And do you know the location of that vehicle?

1 A I -- Tom Larkin would know, you know, the details more of
2 that. I don't know.

3 Q Okay. Next is Item Number 9, a 1944 Coupe, states the
4 information believe was registered to Harry Hildibrand LLC in 2011 and
5 subject to a security interest. Do you know where that vehicle is at?

6 A No.

7 Q Is there any other steps that you could take to turn over that
8 vehicle to the Court?

9 A I -- no. I have no possession of it.

10 Q Okay. And do you know who has current possession of the
11 vehicle?

12 A I do not.

13 Q Okay. Item Number 10, a 1957 Chevy Bel Air convertible; do
14 you know who currently has possession of that vehicle?

15 A No.

16 Q Do you know when the last time you actually saw that vehicle
17 was?

18 A I don't know.

19 Q Okay. And that vehicle was purchased from Meacham Auto
20 Auctions in Illinois; is that correct?

21 A I think so.

22 Q Okay. Do you recall what year that was?

23 A No.

24 Q Next item is Number 11, 1957 Chevy Chrysler 300C; do you
25 know where that vehicle is located?

1 A No.

2 Q Okay. Do you have personal possession of that vehicle?

3 A No.

4 Q Do you have any control over that vehicle?

5 A No.

6 Q Do you know when the last time you saw that vehicle was?

7 A No.

8 Q And Item Number 12, a 1957 Ford Fairlane 500; you're not in
9 current possession of that vehicle?

10 A No.

11 Q And that -- is that currently with Harry Hildibrand LLC or do
12 you know where that possession is, who has control?

13 A I don't, no.

14 Q Item Number 13, a 1966 Ford Thunderbird, do you currently
15 have possession of that?

16 A No.

17 Q Do you know the location of it?

18 A No.

19 Q Number 14, 1971 Ford Pantera; do you know where that
20 vehicle is located?

21 A No.

22 Q Do you have possession of it?

23 A No.

24 Q Do you have the title -- is the title registered in your name?

25 A No.

1 Q Is the title on any of these vehicles registered in your name?
2 A No.
3 Q Do you have any agreement in place regarding the title of any
4 of these vehicles?
5 A No.
6 Q How about any agreement in place regarding the possession
7 of any of these vehicles?
8 A No.
9 Q Item Number 15, 1973 Ford Pantera; do you have possession
10 of that vehicle?
11 A No.
12 Q 1951 Jaguar XL?
13 A No.
14 Q Okay. Do you recall when you've last seen that vehicle?
15 A No.
16 Q Okay. And that was purchased at Meacham Auto Auctions;
17 do you recall when that was?
18 A No.
19 Q Do you know who purchased that vehicle from Meacham?
20 A No, not really. No.
21 Q Okay. Have you ever been to Meacham Auto Auctions in
22 Illinois?
23 A No.
24 Q Okay. Do you have an account with Meacham Auto Auctions
25 in Illinois?

1 A No.

2 Q Next, Number 17, 1957 Oldsmobile 98 Rocket, do you have

3 possession of that vehicle?

4 A No.

5 Q Do you know the location of that vehicle?

6 A No.

7 Q Number 18, 1966 Plymouth Belvedere, or BELV, racecar

8 [indiscernible]; do you have possession of that vehicle?

9 A No.

10 Q Okay. Do you know where the vehicle is located?

11 A No.

12 Q Do you have any agreement regarding this vehicle?

13 A No.

14 Q Okay. Number 19, 2000 Plymouth Prowler, do you have

15 possession of that vehicle?

16 A No.

17 Q Do you know where the vehicle is located at?

18 A I think that was sold in Nevada some years ago. But I don't

19 remember specific.

20 Q Okay. Last sentence of your declaration says:

21 Registered to Harry Hildibrand LLC in the state of Montana

22 and sold in April 2011 to Mr. Kuck, K-U-C-K, in Iowa.

23 Does that sound familiar?

24 A Vaguely.

25 Q Okay. Same thing for Item Number 18, sold in May 2011 to

1 Mr. Kuck in Iowa as well; does that sound familiar as well?

2 A He's a car collector I know of.

3 Q Number -- Item Number 20, 1963 Chevy 425 409 stop sign, do
4 you know where that vehicle's location is?

5 A No.

6 Q Okay. Last sentence said it was sold through an auction in
7 June 2016 at Russo and Steele; do you recall that?

8 A No.

9 Q Okay. Do you know who sold the vehicle through Russo and
10 Steele in Arizona?

11 A No.

12 Q And is it your understanding that this court has previously
13 ordered that all titles would be transferred over by court order to the
14 plaintiffs; is that your understanding?

15 A Yes.

16 Q Okay. And on any of the vehicles that we've discussed,
17 Item 1 through 20, excluding the Marathon coach, did you transfer any of
18 those vehicles?

19 A No.

20 Q Did you receive any funds during the transfer of the vehicles
21 from whomever to whomever?

22 A No.

23 Q Did you direct anybody to sell the vehicles on your behalf?

24 A No.

25 Q And out of those 20 vehicles, you don't have any of them in

1 your possession; is that correct?

2 A That's correct.

3 Q Okay. And you don't have any of them -- any of those 20
4 vehicles in any of your agents' or employees' possession?

5 A Correct.

6 Q Okay. The only vehicles you're aware of are those four that
7 were identified that were in California at your ex-wife's?

8 A Correct.

9 Q Okay. And --

10 THE COURT: So -- hold on.

11 MR. MAZUR: Okay.

12 THE COURT: Simple question here. Were any of these 20
13 vehicles ever titled in your name?

14 THE WITNESS: No.

15 THE COURT: Okay. Thank you.

16 Go ahead.

17 BY MR. MAZUR:

18 Q And part of today's proceedings, orders to show cause,
19 plaintiffs are claiming noncompliance with the court order, findings of
20 fact, notice of entry, of findings of fact from January 10th, part of it which
21 requires being the vehicles that Hildibrand still owns or void ab initio that
22 you still own, but you don't -- did not own any vehicles as of the time of
23 this order?

24 A No.

25 Q Okay. And were you aware whether or not Hildibrand LLC

1 owned any of the vehicles as of the date of the order?

2 A I think they did, yes.

3 Q Okay. And were you aware of any transfers that Harry
4 Hildibrand made at the time of the order?

5 A No.

6 Q Okay.

7 THE COURT: Well, let's don't limit -- that's a little bit vague at
8 the time of the order.

9 MR. MAZUR: Okay.

10 THE COURT: How about --

11 MR. MAZUR: I'll withdraw that.

12 THE COURT: -- since this action? I'd like to know.

13 Since this action was commenced --

14 MR. MAZUR: Okay.

15 THE COURT: -- do you know if Harry Hildibrand sold or
16 transferred any of the vehicles that were in its name?

17 THE WITNESS: I think they have, yes.

18 THE COURT: If you know? All right.

19 Do you know which cars?

20 THE WITNESS: I don't --

21 THE COURT: And do you know if it's any of these 20?

22 THE WITNESS: Pardon me?

23 THE COURT: Do you know if it's any of these 20 that we're
24 talking about now?

25 THE WITNESS: Not specifically. I just think that they have.

1 THE COURT: All right.

2 THE WITNESS: Certainly, the -- those Mercedes were.

3 THE COURT: All right. That wasn't done with your

4 supervision or direction?

5 THE WITNESS: Not my supervision, no.

6 THE COURT: Okay. How about your direction?

7 THE WITNESS: No.

8 THE COURT: Okay. Thank you.

9 BY MR. MAZUR:

10 Q Also, the hearing that occurred on Friday, it was brought up,

11 evidence was submitted regarding insurance at Hagerty Insurance. Are

12 you familiar with Hagerty Insurance?

13 A Yes.

14 Q Okay. And when was the last time you had communication

15 with Hagerty Insurance?

16 A 2011.

17 Q And why did you have communications with Hagerty

18 Insurance in 2011?

19 A The -- got a quote done on the Cobra.

20 Q Okay. And was there a quote on any of the other vehicles at

21 that point in time --

22 A No.

23 Q -- 2011? Okay.

24 And since 2011, you did not have any communications with

25 Hagerty Insurance?

1 A No.

2 Q And there is a reference in a subpoena for documents that
3 were subpoena and produced --

4 MR. BRAGONJE: Can I just say if we're going to talk about
5 the subpoena, can we just have it in front of us? See what page we're
6 talking about.

7 MR. MAZUR: Sure.

8 THE COURT: That sounds fair.

9 MR. BRAGONJE: This is --

10 MR. MAZUR: Yeah, I was going directly to --

11 MR. BRAGONJE: This is really part of my cross also. I mean,
12 it's not really part of the direct. But.

13 MR. MAZUR: I was going to Bates stamp Baker 398.

14 MR. BRAGONJE: Does the Court have that?

15 THE COURT: Is that in this thing here?

16 MR. BRAGONJE: I've got -- I brought it last time and the
17 Court received it. I have a courtesy copy as well.

18 THE COURT: Is in here?

19 MR. BRAGONJE: No. It's a separate smaller stack.

20 THE COURT: All right. I don't need it. I'll listen to this and if
21 someone wants --

22 MR. MAZUR: It'll be very brief, Your Honor.

23 THE COURT: If somebody wants me to have it, they can get
24 it to me later. All right.

25 Go ahead.

1 MR. BRAGONJE: Thank you.

2 BY MR. MAZUR:

3 Q On page 398 --

4 MR. BRAGONJE: Well, just to be clear, I'm going to want you
5 to have it. And I'll talk about it in my cross. So.

6 THE COURT: Okay.

7 MR. BRAGONJE: If you want it now, I can give it to you now
8 or later.

9 THE COURT: Okay. That's fine. I'll take it now if you have a
10 copy, sure. That's fine. Thank you.

11 Thank you. All right. Great.

12 Oh, that, yes.

13 You can keep going, Mr. Mazur.

14 BY MR. MAZUR:

15 Q On page 398, there's a reference to TT Mr. -- and it's blank.
16 Next line says -- and this is the top right -- 80 years old. And this is in
17 September of 2018.

18 Mr. Foust, what is your current age?

19 A 79.

20 Q And in September 27th or August -- or, actually,
21 August 22nd, 2018, how old were you? 78?

22 A 78.

23 Q Okay. So this is referring to some -- an 80-year-old that was
24 not you that made contact?

25 A No.

1 Q And you said in 2011, they actually did issue an insurance
2 policy against one -- against the Cobra?

3 A The policy wasn't issued, but it was -- they -- I got the quote
4 on it.

5 Q And, Mr. Foust, is there anything else that you could do to
6 have the vehicles possession transferred over to Plaintiffs that you're
7 aware of?

8 A No.

9 Q You've done everything that you possibly can do to the
10 vehicles that -- to have them transferred or to transfer possession over
11 to Plaintiffs?

12 A The four vehicles that I knew where they were, I testified to it
13 in court and also at deposition -- or the statement that I made.

14 Q Okay. And are those available for the bank to retrieve those
15 vehicles?

16 A Pardon?

17 Q Do you -- if you know?

18 A I don't know the answer to that.

19 Q Okay. But you do know the location and that was disclosed to
20 the Court?

21 A Yes.

22 Q Okay. As it relates to Stardust Classics LLC, are you a
23 manager of that entity?

24 A No.

25 Q Have you ever been a manager of that entity?

1 A I don't think so, no.

2 Q Okay. Are you a member of that entity?

3 MR. BRAGONJE: I'm going to object, because this
4 contradicts facts that are already in evidence and facts that are already
5 the subject of the Court's prior orders.

6 THE COURT: I don't understand your objection. You're
7 saying that you're objecting because he's inconsistent with something he
8 said before?

9 MR. BRAGONJE: Yes, essentially. Well, not something he
10 said before, something this Court has already ruled on.

11 THE COURT: All right. Well, but you're asking for a pretty
12 serious sanction here. I think he's entitled to be heard in connection with
13 this proceeding. So I'm overruling your objection. All right?

14 MR. BRAGONJE: Thank you, Your Honor.

15 BY MR. MAZUR:

16 Q Mr. Foust, you're not a member of Stardust LLC?

17 A No.

18 Q And since the proceedings have commenced in 2017 in Clark
19 County, have you been a member of Stardust LLC -- or Stardust Classic
20 LLC?

21 A No.

22 Q And have you -- since 2017, have you been a manager of
23 Stardust Classic LLC?

24 A No, I don't -- I don't think so, no.

25 Q Okay. Do you know who the manager of Stardust Classic LLC

1 is?

2 A No, I don't know.

3 Q Okay. And do you know if Ron Vega is affiliated with Stardust
4 Classic LLC?

5 A I think so, yes.

6 Q And since 2017, you have not tried to sell any of the vehicles;
7 is that correct?

8 A Correct.

9 Q And you have not tried to hypothecate or transfer the vehicles
10 in any manner?

11 A Correct.

12 Q Okay. And you have not pledged the vehicles as
13 consideration or pledged them as collateral for any transaction; is that
14 correct?

15 A That's correct.

16 Q Okay. And you -- do you -- you don't have the ability to
17 actually transfer or hypothecate the vehicles, do you?

18 A That's correct.

19 Q And have you interfered with the bank's attempts to repossess
20 the vehicles in any manner?

21 A No.

22 Q Has the bank contacted you trying to repossess any of the
23 vehicles?

24 A No.

25 Q Okay. Has any agent or reposessor agent contacted you to

1 try and repossess the vehicles from you?

2 A No.

3 MR. MAZUR: And, Your Honor, I --

4 THE COURT: Well, how could they try to repossess them if
5 they don't know where they are?

6 MR. MAZUR: I was asking if they attempted to contact him --

7 THE COURT: Just contact him --

8 MR. MAZUR: -- and repossess them.

9 THE COURT: -- you mean, like, call him or something like --

10 MR. MAZUR: Correct. That --

11 THE COURT: Okay.

12 MR. BRAGONJE: I did talk to his attorney. I can't contact him
13 directly.

14 THE COURT: Well, of course. Okay.

15 MR. MAZUR: Well, this is prior to me, as well, but typically the
16 agents, repossession agents will only contact and -- with the numbers
17 that are provided.

18 THE COURT: All right.

19 MR. MAZUR: Your Honor, I don't have anything further for
20 Mr. Foust.

21 THE COURT: And I don't know if you need to clarify it or
22 Mr. Bragonje needs to -- I had in my notes that Mr. Foust in the past had
23 said that he supposedly sold this -- the 16 cars that -- not of the cars that
24 we're talking about, that his wife or ex-wife or daughters have, those
25 other 16 that -- some or all of them were at one point in his name and he

1 sold them to Harry Hildibrand. That's what I have in my notes. But I'll
2 have to look back when --

3 MR. MAZUR: I believe --

4 THE COURT: -- he said it, and --

5 MR. MAZUR: And I can inquire --

6 THE COURT: -- what context. So.

7 MR. MAZUR: -- as to the testimony. But I believe the
8 testimony was that there was an arrangement where they would buy the
9 vehicles, Harry Hildibrand try and fix them up and sell them for a profit.

10 THE COURT: Why don't you kind of -- why don't you clarify
11 that.

12 BY MR. MAZUR:

13 Q Mr. Foust, what was the arrangement with Hildibrand LLC in
14 regards to the purchase of the vehicles? What was the strategy?

15 A An agreement with the financing on this thing that the cars
16 would be bought by Harry Hildibrand, they would be -- whatever work
17 was done on it and market it and sold it at profit.

18 Q Okay. So they would actually finance the purchase of the
19 vehicles?

20 A Yes.

21 Q Okay. And then what were you bringing to the table? Do you
22 have any type of expertise or background in automobiles?

23 A I have a very extensive knowledge of them, yes. So --

24 Q Okay. Can you elaborate on your background in
25 automobiles?

1 A Say again?

2 Q Could you elaborate on your background and experience with
3 automobiles?

4 A Well, I've been -- I had at one time things like -- it was
5 expressed what the -- when the bank was -- when this loan was given,
6 cars that I had owned previously. And they were very expensive. That
7 Cobra is an example. A very rare car. It was one of six of them that was
8 made called competition. Number 18 made that was competition. Just
9 an example.

10 Q Now, isn't it true that you also have some vehicle types named
11 after you in the drag racing industry as well?

12 A Yes.

13 Q Can you elaborate on that?

14 A I developed the computer that went on all racecars, and part
15 of that was drag racing and one time a car with my name on it was world
16 champion.

17 Q And who was the driver in that vehicle?

18 A Dale Armstrong.

19 Q And the vehicle was named Foust?

20 A Yes.

21 Q And did you develop computers systems for the drag racing
22 analysis as well?

23 A I did.

24 Q And what was that?

25 A That would have been 1985.

1 Q Okay. And what was developed?

2 A I built two of them for Ford Motor Company. One went on
3 Kenny Bernstein's car and the other went on Mario Andretti's car. And
4 there isn't a racecar in the world today that doesn't have one of those
5 computers on board.

6 Q And so in the arrangement, Hildibrand LLC would use your
7 expertise in the vehicles and they were going to finance the vehicles; is
8 that correct?

9 A Yes.

10 Q Okay.

11 MR. MAZUR: Thank you, Your Honor. I don't have anything
12 further.

13 THE COURT: All right. Thank you, Mr. Mazur.

14 All right, Mr. Bragonje, cross-examine.

15 MR. BRAGONJE: Thank you.

16 **CROSS-EXAMINATION**

17 BY MR. BRAGONJE:

18 Q Good morning, Mr. Foust. Quick question about the
19 declaration. Can you look at the last page of the declaration we've been
20 discussing.

21 A I don't have one to look at.

22 MR. BRAGONJE: May I approach the witness, Your Honor.

23 THE COURT: Yes. Do you want -- okay.

24 MR. BRAGONJE: Actually, I want to give the witness
25 everything that Your Honor has in front of him too, courtesy copies.

1 THE COURT: Uh-huh.

2 MR. BRAGONJE: We will refer to these as well.

3 BY MR. BRAGONJE:

4 Q The first question concerns the declaration.

5 Is that your signature at the bottom of the declaration?

6 A Yes.

7 Q And it was signed on April 8th of this year; is that correct?

8 A Yes.

9 Q And it was signed in Los Angeles, California; is that correct?

10 A Yes.

11 Q And isn't it true that you signed this declaration at the Rancho
12 Palos Verdes address we've been discussing this morning?

13 A I don't think so, no.

14 Q And where did you sign?

15 A Probably at my -- where I'm staying now in Orange County.

16 Q Well, that's not Los Angeles County. That's Orange County,
17 correct?

18 A That would be correct. It would not be Los Angeles County.

19 Q So how could you have signed a declaration in Los Angeles
20 County if you were in Orange County?

21 A Probably just -- I don't know, I'm not sure. And again, maybe I
22 didn't sign it in Orange County. I don't remember where I signed it.

23 Q And you frequently visit -- this Rancho Palos Verdes residence
24 we've been talking about, it's a home; is that right?

25 A Yes.

1 Q It's in a gated community; is that correct?

2 A It's what?

3 Q In a gated community; is that correct?

4 A Yes.

5 Q And your ex-wife lives there, you say, correct?

6 A Correct.

7 Q Do any of your daughters live there?

8 A Yes.

9 Q And you visit there frequently, don't you?

10 A I visit them, yes.

11 Q And, in fact, you mentioned earlier, and I want this clear on the

12 record, that you are the owner of that property as far as the real

13 property -- the official real property records are concerned; isn't that

14 what you said earlier?

15 A I don't know. Not the real owner. There is a -- the registration

16 showing that I am the owner, but that was subjugated by the court order

17 in California.

18 Q Uh-huh.

19 A The real owner is what the court order says.

20 Q Uh-huh. But didn't you say the court order had never been

21 recorded?

22 A No, I didn't say that. The court order?

23 Q Yes.

24 A I didn't say that.

25 Q You said something about your wife or ex-wife hadn't recorded

1 anything; isn't that what you said?

2 A The -- my wife has all of the documentation called a quit-claim
3 and all the things necessary for the -- for California to record that as
4 ownership. She has that in her possession as part of that court order.

5 Q And she has not recorded those documents?

6 A I don't know that.

7 Q Okay. So as far as the county recorder is concerned, if we
8 were to look at the title of this house in Rancho Palos Verdes, it would
9 show you as the owner; isn't that accurate?

10 A I don't know. I haven't looked at that.

11 Q But it's certainly possible?

12 A It's possible, yes.

13 MR. MAZUR: Objection. Speculation.

14 THE COURT: Look, do you -- so, sustained. All right. He
15 says he doesn't know. So I guess in the realm of possibility, if I don't
16 know means could be one way or could be the other way.

17 Do you know -- who's getting the tax bills for that property?
18 They coming to you or to somebody -- or to somebody else?

19 THE WITNESS: The tax bill is sent to the home in Palos
20 Verdes. And I have, according to that court order, I have been making
21 those payments for a period of time.

22 THE COURT: Okay. Thank you.

23 BY MR. BRAGONJE:

24 Q Are you officially divorced from this woman you've been
25 calling your ex-wife?

1 A No.

2 Q Thank you.

3 Did you -- would you please refer to the large stack of papers
4 there, the thickest one, and at Tab 3 within that. And specifically
5 page 137.

6 A [Witness complies.]

7 Q This is just the same list of cars that we have been discussing
8 this morning.

9 A Okay. Exhibit 3?

10 Q Yes.

11 A Okay.

12 Q 137. It's the list of cars that was submitted in the bankruptcy
13 court.

14 A I don't see the list of cars here in Exhibit 3.

15 THE COURT: It's under Tab 3, page 137. The page in the
16 bottom right-hand corner.

17 THE WITNESS: Oh, 137. Sorry.

18 THE COURT: Yes, sir. It's the --

19 Mr. Mazur, for your reference, it's the exact same list that you
20 handed us this morning.

21 MR. MAZUR: Okay. Thank you.

22 THE WITNESS: Okay.

23 BY MR. BRAGONJE:

24 Q Did you create -- is that your handwriting on this page?

25 A No. I don't think so. On the -- no.

1 Q Did do you draft this?

2 A Did I draft it?

3 Q Yes. Did you prepare this list?

4 A No, I don't think I did.

5 Q Okay. Would it surprise you if the attorney -- well, you
6 understand that Harry Hildibrand filed bankruptcy?

7 A Yes.

8 Q And you understand that Harry Hildibrand hired or was
9 represented by an attorney in that bankruptcy?

10 A Yes.

11 Q And his name was James Laissez, I don't know how you
12 pronounce it, James Laissez, is that right?

13 A Close enough.

14 Q James Laissez?

15 A Yes.

16 Q And he is your long-time attorney, correct?

17 A No.

18 Q He's not -- you've never worked with him before?

19 A I have worked with him on a number of other things, not as an
20 attorney.

21 Q Do you appreciate that the Court's prior order found that he
22 had worked with you extensively in the past? I'm not understanding if
23 you -- I'm not asking if you agree with that; I'm understanding if you
24 believe that's what the court order says.

25 A I'm not -- not aware -- this court?

1 Q Yes.

2 THE COURT: I have the orders here, and I reviewed them
3 last night, and I know what my prior orders say. So.

4 MR. BRAGONJE: Thank you.

5 THE COURT: Yep.

6 BY MR. BRAGONJE:

7 Q If Mr. Laissez in the context of the bankruptcy, in the creditors
8 hearing, if he would have said that you prepared this list, was that a lie?

9 MR. MAZUR: Objection. Speculation.

10 THE COURT: Well, he doesn't know what Laissez said, but
11 he would know if the fact is true or not. So -- all right. So what's
12 speculation? What's the speculative part?

13 MR. MAZUR: Because he's asking him if he would have said,
14 which turns it into a complete speculation.

15 THE COURT: All right. So take out the if-he-would-have-said
16 part and just ask him the fact directly. Right?

17 MR. BRAGONJE: We can either look at the transcript or --

18 THE COURT: Well, just read -- what was your question?
19 Give me the exact words that you just asked him.

20 MR. BRAGONJE: I'll try to remember.

21 If Mr. --

22 THE COURT: Don't answer it yet.

23 MR. BRAGONJE: If Mr. Laissez would have said at the
24 meeting of creditors in the bankruptcy, that you prepared the list of cars
25 in the bankruptcy, would that have been a lie?

1 THE COURT: All right. He already said that he didn't prepare
2 it. All right. So what Mr. Laissez thought, what Mr. Laissez said, what
3 Mr. Laissez might have said, you know, what he was thinking, none of
4 that's relevant here. All right?

5 MR. BRAGONJE: Thank you.

6 THE COURT: All right. I mean, we have -- I have my findings
7 and I have what he said here on the stand. That's all I need right now
8 on that. Okay?

9 MR. BRAGONJE: Thank you, Your Honor.

10 I assume there's no objection to the subpoena to Hagerty
11 coming into evidence, since you referenced it? I mean, I'll lay the
12 foundation if it's necessary.

13 MR. MAZUR: Yeah, I believe we need a foundation on it. But
14 yes.

15 MR. BRAGONJE: Okay. I think he's waived his opportunity to
16 object, since he --

17 THE COURT: I'm admitting the subpoena over objection.

18 MR. BRAGONJE: Okay. Thank you.

19 THE COURT: All right?

20 BY MR. BRAGONJE:

21 Q Mr. Foust, isn't it true that Hagerty is a car insurance
22 company?

23 A I wouldn't know that. I know that they sell insurance, car
24 insurance.

25 Q Isn't it true that Hagerty specializes in high-end and collectible

1 cars?

2 A I wouldn't know what their business model is, really.

3 Q And isn't it true that you have already admitted this morning
4 that you've had dealings in the past with Hagerty?

5 A Yes.

6 Q And isn't it true that you also had dealings with them as
7 recently as last summer?

8 A No, it's not true.

9 Q Okay. Would you refer to page 397 of the smaller stack of
10 papers that I handed you earlier. This is the Hagerty subpoena.

11 A [Witness complies.] Okay.

12 THE COURT: So for the record, these -- this is a subpoena
13 that's attached as a document attached to the evidentiary hearing
14 disclosure brief that Plaintiff filed April 4, 2019, and subpoena beginning
15 on page Baker 000381.

16 What page in that stick did you want us to look at?

17 MR. BRAGONJE: Page 398, please.

18 THE COURT: All right.

19 THE WITNESS: You said 397. Which one do you mean?

20 MR. BRAGONJE: 398, please.

21 THE WITNESS: Okay.

22 BY MR. BRAGONJE:

23 Q Looking at the top third of the page here. Do you see the field
24 that says: Created 8/22/2018?

25 A Yes.

1 Q So do you agree that that would indicate that someone had a
2 conversation with Hagerty on that date?

3 A I have no idea --

4 MR. MAZUR: Objection.

5 THE WITNESS: -- whether they did or didn't.

6 MR. MAZUR: Lack of personal knowledge, Your Honor.

7 BY MR. BRAGONJE:

8 Q Okay. You've had --

9 THE COURT: Well --

10 BY MR. BRAGONJE:

11 Q -- conversations with Hagerty --

12 THE COURT: -- so it's sustained.

13 BY MR. BRAGONJE:

14 Q You've had conversations with Hagerty in the past?

15 A Yes.

16 Q You agreed to e-mail a list of the cars that was mentioned in
17 the bankruptcy to Hagerty, didn't you?

18 A I did not. I think you sent that, actually.

19 Q Okay. Would you please refer to page 407 of the same
20 document.

21 A Okay.

22 Q You prepared this list, did you not?

23 A I'm not sure I did or not. I don't recall.

24 Q Do you agree that --

25 A And I see, by the way, it says up there, Title. So I think

1 probably Vega or -- you probably -- did you send this to Hagerty?

2 Q I mean, I ask the questions here, but the answer's no, I did
3 not.

4 A Okay.

5 Q I will represent to you that this is a different list. It's got the
6 same cars, but it's not the list. But it was submitted to the bankruptcy. If
7 you compare page -- I want to ask you if you agree. If you look at the
8 page that was submitted at the bankruptcy, that's Baker 137, and you
9 compare it with Baker 407, you'll see that these lists have the same
10 vehicle, but they're not in the same order; do you agree?

11 A I apologize for that. I have no idea of that. But do you want
12 me to do that, to go down through it?

13 Q Yes.

14 A Is that your question?

15 Q Yep. The lists are the same.

16 A Okay. Page -- compare 407 to what?

17 Q 137.

18 A [Witness complies.]

19 THE COURT: We're not going to waste time doing it. The
20 Court looks at these two documents, it's readily apparent to everybody --
21 anybody who can look at these two documents within five seconds, that
22 these are lists in which the cars are listed in different order. All right.
23 We're not going to waste any time fumbling through two pages --

24 MR. BRAGONJE: Okay.

25 THE COURT: -- where it's super apparent to anybody.

1 All right, Mr. Foust?
2 All right, Mr. Bragonje?
3 Let's go.
4 MR. BRAGONJE: Thank you.
5 I really have no further questions, Your Honor.
6 THE COURT: All right. Mr. Mazur, anything else, sir?
7 MR. MAZUR: Very briefly.
8 **REDIRECT EXAMINATION**
9 BY MR. MAZUR:
10 Q Mr. Foust, in looking at Baker 00398, the Hagerty Insurance --
11 A I'm sorry, the -- which bit?
12 Q 00398.
13 A 398?
14 Q Yes.
15 A Yes, sir.
16 Q Okay. And it says: Created date 8/22/2018.
17 A Yes.
18 Q And at that time you were 78 years old not 80, correct?
19 A That's correct.
20 Q Looking at the previous page at 397, second entry from the
21 bottom.
22 A Okay.
23 Q Created 7/28/2011:
24 Hello, Mr. Foust. I apologize for the confusion.
25 That was in 2011; is that correct?

1 A That's 2011, yes, sir.

2 Q And was there --

3 THE COURT: Where are you looking now? I'm not where
4 you are.

5 MR. MAZUR: Second entry from the bottom, start e-out,
6 E-O-U-T.

7 THE COURT: Still on 398?

8 MR. MAZUR: 397, Your Honor.

9 THE COURT: Oh, 397? Yes, I see it.

10 BY MR. MAZUR:

11 Q And that's an e-mail that was sent to you from Matt; is that
12 correct?

13 A Yes.

14 Q Okay. And it doesn't have a close date on it; was there an
15 insurance policy issued in 2011?

16 A No.

17 Q Okay.

18 MR. MAZUR: Thank you, Your Honor. I have nothing further.

19 THE COURT: Mr. Bragonje, anything on recross?

20 MR. BRAGONJE: No, thank you.

21 THE COURT: All right. You may step down, Mr. Foust.

22 Mr. Mazur, cross can call his next witness.

23 MR. MAZUR: Yes, I'd like to call Mr. Detwiler.

24 THE COURT: All right. Will you bring in Mr. Detwiler,
25 Marshal.

1 While we're getting that, my court clerk listened to JAVS and
2 on April 1 -- hearing we had on April 1, Mr. Larkin was present. I asked
3 who he was and I guess it was you, Mr. Mazur, who introduced him or
4 referred to him as the individual having power of attorney for Mr. Vega.

5 MR. MAZUR: Correct.

6 THE COURT: And I told him to come back today.

7 MR. MAZUR: Thank you, Your Honor.

8 THE COURT: Okay. So.

9 Mr. Detwiler, please re-take the stand.

10 MR. DETWILER: Yes, sir.

11 THE COURT: You're going to be sworn in again, sir.

12 MR. DETWILER: Yes, sir.

13 **EDWARD DETWILER,**

14 [having been called as a witness and first duly sworn, testified as
15 follows:]

16 THE CLERK: You may be seated.

17 THE COURT: All right. We have your name already.

18 Mr. Mazur.

19 **DIRECT EXAMINATION**

20 BY MR. MAZUR:

21 Q Good morning, Mr. Detwiler. What's your current position with
22 Harry Hildibrand LLC?

23 A I'm a manager.

24 MR. MAZUR: And, Your Honor, if I may, I know that we had
25 testimony Friday and today.

1 THE COURT: Uh-huh.

2 MR. MAZUR: And I know it's separate without overlapping, do
3 you want me to cover background to go through it or some of the
4 background information --

5 THE COURT: So whatever -- I mean, you've got a choice,
6 either re-ask him the question, introduce the evidence here, or you can,
7 on behalf of Mr. Foust, adopt his testimony that came up in his contempt
8 proceedings for all purposes for Mr. Foust to -- your choice.

9 MR. MAZUR: Okay. And I'd like to adopt the testimony --

10 THE COURT: Okay.

11 MR. MAZUR: -- in order of expediency.

12 THE COURT: So that'll save us some time.

13 The testimony that you've given already, Mr. Foust, is hereby
14 adopted by -- I'm sorry, Mr. Detwiler, the testimony you provided in
15 connection with your case is adopted by Mr. Foust in connection with the
16 contempt trial for Mr. Foust. I think I said that correctly.

17 MR. MAZUR: Thank you, Your Honor.

18 THE COURT: All right. So what you've already said before is
19 incorporated by reference here today.

20 THE WITNESS: Thank you.

21 THE COURT: Is that -- did I say it right then?

22 MR. MAZUR: Perfect.

23 THE COURT: All right. Thank you.

24 BY MR. MAZUR:

25 Q And Mr. Detwiler, in relation to Harry Hildibrand LLC, you

1 testified that you're currently the manager of that LLC?

2 A Yes.

3 Q And to your recollection, is Mr. Foust the manager of that
4 LLC?

5 A No, not to my knowledge.

6 Q Is Mr. Foust a member of that LLC?

7 A Yes.

8 Q Okay. And to what extent is Mr. Foust a member of that LLC?

9 A I believe what I have seen and read and what was presented
10 in a previous hearing, he owns 1 percent of Harry Hildibrand.

11 Q Okay. And do you recall who the other members of the LLC
12 are?

13 A Yes. It's Harry Jr. and his two sisters. They each own 33
14 percent.

15 Q And do you know how long they each own 33 percent of that
16 entity?

17 A No, sir.

18 Q Okay. Does -- to your knowledge, does Mr. Foust have any
19 control of that company?

20 A Not to my knowledge.

21 Q Okay. And to your knowledge, are you aware of -- let me
22 strike that.

23 Are you aware of the 20 vehicles that are at issue in this case
24 as far as there were --

25 A Yes, through the bankruptcy --

1 Q The bankruptcy?

2 A -- proceeding -- yes. That's --

3 Q Okay.

4 A Yes. I'm aware of that.

5 Q And with those 20 vehicles, do you know where those vehicles
6 are located at?

7 A At this point, no, sir. At this time, no.

8 Q And do you have knowledge, is Mr. Foust in possession of
9 those vehicles?

10 A I do not know.

11 Q Okay. To your knowledge, does Harry Hildibrand LLC have
12 any agreement with Mr. Foust as to those vehicles?

13 A I'm unaware of one.

14 Q Okay. Do you know who the current owner of those vehicles
15 are?

16 A No, sir.

17 Q Do you know, on those 20 vehicles, when they were acquired?

18 A No.

19 Q Did you participate in the acquisition of those vehicles?

20 A No.

21 Q Did you participate in the sale of those vehicles?

22 A No.

23 Q Okay. And to your knowledge, did Mr. Foust have -- exercise
24 any control over those vehicles?

25 A Not that I'm aware of.

1 Q Okay. Also, you testified regarding another entity called
2 Stardust Classics LLC?

3 A Yes.

4 Q Okay. And do you have a position with Stardust Classics
5 LLC?

6 A I do not.

7 Q Okay. Do you have membership interest in Stardust --

8 A I do not.

9 Q -- Classics LLC?

10 A I do not.

11 Q Do you know of any transactions between Harry Hildibrand
12 and Stardust Classics?

13 A I am unaware of any deals that those two companies may
14 have made.

15 MR. MAZUR: Your Honor, I have nothing further.

16 THE COURT: All right. Before I turn it over to Mr. Bragonje,
17 let me just finish some notes here.

18 You can go ahead and sit down, Mr. --

19 MR. MAZUR: Okay. Thank you, Your Honor.

20 THE COURT: Mr. Bragonje, you need --

21 MR. BRAGONJE: I have nothing, Your Honor.

22 THE COURT: All right. Thank you, Mr. Detwiler. You are
23 excused. You may step down.

24 And does anybody plan on calling Mr. Detwiler in connection
25 with this proceeding for either rebuttal or any other purpose?

1 MR. MAZUR: No, Your Honor.
2 MR. BRAGONJE: No, thank you.
3 THE COURT: All right. You're free to go.
4 Well, you might want to be present if we have argument. I'm
5 not -- I think what I'm going to do is allow five minutes of closing
6 argument and we're all -- when we're all done, and then I'll allow the
7 parties to submit written closing argument that's more in depth if they
8 want to do that. All right.

9 MR. DETWILER: I'll stay outside, Your Honor.

10 THE COURT: Now, you're -- since you already finished your
11 testimony, you're free to stay for the rest of these proceedings. All right.
12 Or you can step outside, whatever is your pleasure.

13 MR. DETWILER: Okay. Oh, yeah, I thought I was being
14 excused to leave for the day. I apologize.

15 THE COURT: You could if you want, it's -- or you could stay
16 and watch the rest of this to be informed. Okay.

17 MR. DETWILER: I'll just -- okay.

18 THE COURT: All right.

19 MR. DETWILER: Thank you.

20 THE COURT: Mr. Mazur, you may call your next witness.

21 MR. MAZUR: I'd like to call Mr. Larkin, please.

22 THE COURT: Mr. Larkin. We're calling him, Marshal, and it's
23 still subject to Mr. Bragonje's objection on issues that the Court
24 [indiscernible].

25 MR. BRAGONJE: I don't know if it's possible to voir dire the

1 witness. I just have no idea what his connection is or if the Court would
2 just prefer --

3 THE COURT: Well, it's -- we don't need voir dire, because
4 it's -- we don't have a jury. It's not in front of the jury. So I'm going to
5 hear it one way or another, right?

6 So, but go ahead and assert appropriate objections.

7 MR. BRAGONJE: Yeah.

8 THE COURT: At the right time.

9 MR. BRAGONJE: Okay.

10 THE COURT: I can't imagine anything he says is going to
11 be -- I don't know what relevance his testimony is going to have until I
12 hear it.

13 MR. BRAGONJE: Thank you.

14 THE COURT: All right.

15 **THOMAS LARKIN,**

16 [having been called as a witness and first duly sworn, testified as
17 follows:]

18 THE CLERK: You may be seated. And then can you please
19 state and spell your first and last name for the record.

20 THE WITNESS: Thomas, T-H-O-M-A-S, Larkin, L-A-R-K-I-N.

21 THE CLERK: Thank you.

22 THE COURT: All right. You may proceed.

23 MR. MAZUR: Thank you, Your Honor.

24 ///

25 ///

1 **DIRECT EXAMINATION**

2 BY MR. MAZUR:

3 Q Good morning, Mr. Larkin. What is your current position, your
4 title, what you do?

5 A I'm at M&A consultant for industries in healthcare, auto, and
6 technology.

7 Q Okay. And are you currently working with Mr. Ronald Vega?

8 A Yes.

9 Q Okay. And how so?

10 A Mr. Vega's health doesn't allow him to travel and he asked me
11 to represent him in this interest of these vehicles in this case and
12 represent his interest that he has title to these vehicles.

13 THE COURT: Did you say these vehicles? Which vehicles
14 are you talking about? The 20 that are on this list?

15 THE WITNESS: There's -- I have a -- I have seven right now.

16 THE COURT: All right. Well, that's okay. I'll let your counsel
17 clarify now.

18 THE WITNESS: Okay.

19 THE COURT: As we go forward.

20 BY MR. MAZUR:

21 Q Okay. Now, Mr. Larkin, with the list before you, I believe
22 there's a list of 20 vehicles prepared by the bankruptcy court in Harry
23 Hildibrand LLC?

24 A Uh-huh.

25 Q Document Number 137.

1 A Okay.

2 Q Okay. And there's a list of 20 vehicles on there?

3 A Yes. And I can provide --

4 MR. BRAGONJE: It's Exhibit -- Tab 3, page 137. He might
5 be lost without the tab.

6 THE COURT: Do you have the big book of exhibits there?

7 THE WITNESS: I see the big book -

8 MR. MAZUR: Yeah, Tab 3.

9 THE COURT: Yeah, under Tab 3, page 137, there's a list of
10 vehicles that --

11 THE WITNESS: Okay.

12 THE COURT: -- Mr. Mazur is referring to.

13 THE WITNESS: Tab 3.

14 MR. MAZUR: May I approach, Your Honor?

15 THE COURT: Uh-huh.

16 THE WITNESS: Yeah, if you could, that would be wonderful.

17 MR. BRAGONJE: I'm just going to object on the grounds of
18 competency of the witness. I -- you know, I've never heard of one
19 person representing another. He's not saying that he's affiliated with the
20 company. He says he works with Mr. Vega. I mean ---

21 THE COURT: Right.

22 THE WITNESS: Yeah. I'm his --

23 THE COURT: Well, I'm --

24 THE WITNESS: -- I'm his attorney --

25 THE COURT: -- wondering if --

1 THE WITNESS: -- of record.

2 THE COURT: -- if he could shed some light on where these
3 vehicles are and who's currently in possession, custody, or control of
4 these vehicles. I think that's what we need to know. But if he has
5 anything relevant on that issue, I would like to hear it before I --

6 MR. MAZUR: Yeah. And I -- further foundation, I just wanted
7 to have that handy, the list.

8 THE COURT: Otherwise, I'm not sure what relevance he'll
9 have. If he's just going to talk about security interest, I'm not going to be
10 too interested in that. But let's see where this is going.

11 MR. MAZUR: Very good.

12 BY MR. MAZUR:

13 Q Okay, Mr. Larkin. You testified that you're working with Mr.
14 Vega; what's the capacity that you're working with Mr. Vega on?

15 A I have a power of attorney to represent him as the deals with
16 the disposition of these vehicles.

17 Q Okay. And was there a transaction with the -- regarding
18 the 20 vehicles and Mr. Vega?

19 A Mr. Vega had previously invested money into Harry Hildibrand
20 and had first position on the titles of these vehicles.

21 Q And when was that done?

22 A I want to say January 1, 2009. Pull this out in a minute and I'll
23 tell you.

24 Yeah, I would say it was January 1, 2009. I'm looking for the
25 exact note here.

1 Q What type of agreement was it?

2 A It's a promissory note, lump sum payment, from my
3 understanding.

4 Q Okay. And what was the result, though? What's the current
5 status of that agreement?

6 A That agreement has been used to foreclose on the vehicles.
7 Once the bankruptcy was filed, the terms of the agreement allow
8 Mr. Vega to seek remedies on the default.

9 Q And was there a foreclosure that was completed or?

10 A To my understanding, yes.

11 Q Okay.

12 A Foreclose on the vehicles.

13 Q Was that a repossession that was done on the vehicles or
14 what happened? Maybe you can walk us through it.

15 A I believe Mr. Vega had already had the copies of the titles and
16 he repossessed -- he took possession of them. And some of them were
17 wherever the vehicles happened to be, and the other ones were where
18 they were stored. The vehicles are scattered over multi states.

19 Q Okay. With the list of -- Tab 3, page 137, the list of 20
20 vehicles that are at issue for this hearing, can you walk us through which
21 vehicles have been repossessed and the current statuses of those
22 vehicles?

23 A Yes.

24 THE COURT: Can you lay some more foundation to make
25 sure I can give proper weight to his testimony --

1 MR. MAZUR: Sure.

2 THE COURT: -- on what foundation, you know, he has to
3 know whether there was a foreclosure on which cars there were
4 foreclosure on, you know, how he would know that.

5 MR. MAZUR: Yes. Okay.

6 BY MR. MAZUR:

7 Q Mr. Larkin, in your --

8 THE COURT: Separate from hearsay. I don't want hearsay.

9 MR. MAZUR: I understand.

10 THE COURT: Okay.

11 BY MR. MAZUR:

12 Q In your position with the company, are you in control of the
13 books and records for the transaction between Harry Hildibrand and
14 Mr. Vega?

15 A I'm not in control of that. I can --

16 Q Are you in possession of those documents?

17 A I am in possession of the -- I'm not in possession of the
18 foreclosure document or the -- for Mr. Vega on when he grabbed these.

19 Q Now, what documents are you in possession of?

20 A I have my power of attorney for Mr. Vega and I have copies of
21 the certificate of title that have been -- that are clearly stamped to
22 Mr. Vega. And I can tell you where -- I can tell you the status of at least
23 seven of these vehicles.

24 Q Okay. And -- all right. Do you have a copy of the security
25 agreement or promissory note that you mentioned?

1 A I do. I do have a copy of that.

2 THE COURT: So you guys understand that we're not here to
3 resolve, you know, conflicting claims. If there are conflicting claims
4 among different secured creditors, I've already made my order that
5 Baker Boyer's entitled to repossess those vehicles. There's rules under
6 Nevada rules of -- Nevada Revised Statutes that would require a
7 secured creditor to come forward and assert an interest in those
8 vehicles for the Court to adjudicate and that hasn't been done yet by
9 Mr. Vega or any of his companies.

10 But if there's been a change in title, I need to know that.

11 MR. MAZUR: Right. And that's why I was going to jump right
12 to it and then --

13 THE COURT: Okay.

14 MR. MAZUR: -- what was it -- you asked for more foundation,
15 so I --

16 THE COURT: Yes.

17 MR. MAZUR: But I was going to jump into the list of the
18 vehicles. Also --

19 THE COURT: Perfect.

20 MR. MAZUR: -- the claim issue, there is no notice of
21 execution that was ever issued by Plaintiffs' counsel, which would
22 trigger --

23 THE COURT: That's a separate issue.

24 MR. MAZUR: -- right, a separate issue.

25 THE COURT: Right.

1 MR. MAZUR: But if I may jump right into the 20 and --

2 THE COURT: You may.

3 MR. MAZUR: -- go into location or --

4 THE WITNESS: Sure.

5 MR. MAZUR: -- of each vehicle.

6 BY MR. MAZUR:

7 Q With that list in front of you, Mr. Larkin, on Tab 3, page 137.

8 A Uh-huh.

9 Q Can you identify which list -- or which vehicles were
10 repossessed and the location, if you know the current location of such
11 vehicles?

12 A Yeah. I have here copies of the titles, so I'll just go right from
13 them --

14 Q If you want to take the first one and we'll -- let's just walk
15 through whichever one you have.

16 A The Corvette. Uh-huh.

17 THE COURT: So can you give us the year of the vehicle, just
18 to help identify it?

19 THE WITNESS: Sure.

20 2007 Chevy Corvette --

21 THE COURT: All right. Thank you.

22 THE WITNESS: -- has been repossessed and is in
23 Mr. Vega's possession.

24 THE COURT: And you know that how, that it was
25 repossessed? Did you sign any documents regarding that

1 repossession? Did you witness any foreclosure activity --

2 THE WITNESS: No, I didn't --

3 THE COURT: -- or what --

4 THE WITNESS: I didn't witness the physical. I was brought in
5 afterwards for Mr. Vega's health.

6 THE COURT: All right. So how do you know it was
7 repossessed? Did you -- like, did somebody tell you? Or have you seen
8 some documents?

9 THE WITNESS: Mr. Vega.

10 THE COURT: Or were you at the proceedings?

11 THE WITNESS: Yeah. No, Mr. Vega told me that when I --
12 when he asked me to take responsibility and gave me a durable power --

13 THE COURT: Okay. Would that be the same answer for
14 each of the --

15 THE WITNESS: Yeah.

16 THE COURT: -- repossessions you're --

17 THE WITNESS: Yeah.

18 THE COURT: -- going to talk about? Okay.

19 THE WITNESS: Absolutely.

20 THE COURT: All right.

21 THE WITNESS: So --

22 THE COURT: Well, that's how I want it all. Let's let your
23 attorney ask any more questions.

24 THE WITNESS: Okay.

25 MR. MAZUR: I'm not his attorney, though.

1 THE COURT: Oh, I'm sorry.

2 Your -- Mr. Foust's attorney.

3 THE WITNESS: Right. That's fine.

4 BY MR. MAZUR:

5 Q And with that vehicle, you said it was repossessed; is it -- that
6 vehicle in Mr. Vega's control, then?

7 A It's in Mr. Vega's control.

8 Q Okay. And do you know the location of that vehicle?

9 A I don't know the location of the vehicle. I don't know whether
10 it's been moved. It's Mr. Vega's intention to sell these at an auction in
11 August.

12 Q Okay. Do you know the location or the state where the vehicle
13 would be located --

14 A No, I don't.

15 Q -- or any other information?

16 Okay. So that's the 2007 Chevy Corvette, is that the Z06,
17 correct?

18 A Yes.

19 Q Okay. What's the next vehicle?

20 A The next vehicle is a Mercedes M50. I do not -- Mr. Vega
21 does not have those. I have those listed as sold already.

22 Q Okay. Let's go through the vehicles that he does have.

23 A Okay.

24 Q That he possessed --

25 A Let me --

1 Q -- at some point in time.

2 A It would probably be easier if I read them to you.

3 Q Yes, that's fine. Let's do that and --

4 A Okay. So the 1966 Ford Thunderbird Bel Air, which is about
5 middle of the list there, the red Thunderbird.

6 Q Is that ending in VIN number 4010?

7 A 4010, yes.

8 Q Okay.

9 A The --

10 Q And do you know the dates and the times, any other
11 information for any of the vehicles or date of repossession or any of that
12 information? Or is it --

13 A No, I think Mr. Vega acted quickly with his agents and his
14 repossession people to secure the vehicles. I also believe he had the
15 titles already stamped and delivered to him.

16 Q Okay. And these 1966 is still under his control, then,
17 possession?

18 A Yes.

19 Q Okay. What's the next vehicle?

20 A The next vehicle is a 1973 Pantera, which is a Ford Pantera
21 GT4.

22 Q And that's in VIN 5291?

23 A Yes.

24 Q Okay. The next vehicle?

25 A The next vehicle is a 1955 Ford Thunderbird, which is --

1 Q Last four 0647, VIN?

2 A 0647, correct. 0647.

3 The next vehicle is a 1971 Pantera ending in the VIN number
4 of 1620.

5 Q And the next?

6 A The next one is a 1951 Jaguar. I have XK120, so as a model.
7 VIN number is 1966.

8 Q Okay. The next?

9 A The next is a -- the Chevy that we spoke of, the Corvette, VIN
10 number 1069.

11 Q That's the 2007 -- the first one we --

12 A Yeah, that was the very first one we spoke of.

13 Q Okay.

14 A The next one is a 1940 Ford, VIN number 2801.

15 Q What type of vehicle?

16 A It's a Ford coupe 1940.

17 Q 1940?

18 A Yes. And that's the actual -- from -- to the best of my
19 knowledge, those are the cars that Ronald Vega has control over,
20 possession.

21 THE COURT: When did these -- what year were these
22 foreclosures?

23 THE WITNESS: I think it happened in the month right as the
24 bankruptcy was filed.

25 THE COURT: Do you know what year was that? I don't

1 remember the -- or the month that the bankruptcy was filed? That helps.

2 THE WITNESS: The bankruptcy was first -- when he first
3 became aware of the bankruptcy.

4 THE COURT: And who was the one who was foreclosed
5 upon? Was that --

6 THE WITNESS: Harry Hildibrand.

7 THE COURT: Okay.

8 THE WITNESS: Harry Hildibrand filed for bankruptcy, I don't
9 have the date --

10 THE COURT: Okay.

11 THE WITNESS: -- that they filed.

12 BY MR. MAZUR:

13 Q Okay. Was that done after the bankruptcy was dismissed or?

14 A I think -- I can't answer that specifically. I suspect that once
15 the bankruptcy was filed, it violated one of the terms of the promissory
16 note. And at that point, Ronald Vega probably acted with -- you know,
17 as fast and expeditiously [sic] as he could.

18 Q Okay. And is Ronald Vega Stardust Classics LLC? Is that his
19 company or?

20 A He may be an investor in that. I don't -- I didn't ask him if he
21 was a -- he may be an investor in that also.

22 Q Okay. And to your knowledge, does Mr. Foust have an
23 interest in these vehicles with Mr. Vega?

24 A Not at this time, no. You know, Mr. Foust also is an investor in
25 Harry Hildibrand, would have been part of the pool. But he doesn't have

1 an interest in these vehicles.

2 Q Okay. And each of these vehicles, the seven, are currently in
3 the control or possession of Mr. Vega, then?

4 A Yes.

5 Q Okay. Any of the vehicles, do you have a specific location
6 where they're --

7 A I don't have an address or location. I suspect they're in
8 wherever they were located or wherever he consolidated them to,
9 whatever storage facility.

10 Q Okay. And do you know who would have the knowledge of
11 where these vehicles are located?

12 A Mr. Vega or his agent, his repossession agent.

13 Q Okay. And do you know who Mr. Vega's repossession agent
14 is?

15 A I don't. I don't know that.

16 Q And where does Mr. Vega reside or do business now?

17 A He's in a nursing home, I believe, in Los Angeles area.
18 Pomona, Gardena, something of that nature. It -- his -- the titles are
19 stamped Gardena, California. I don't know if that's his residence or
20 whether the nursing home came at a later date.

21 Q Okay. And you have copies of each of the titles as well?

22 A Yes, I do.

23 THE COURT: Do you want to see those, Mr. Bragonje, or
24 wait until your cross or? Well, you don't have to decide now.

25 Go ahead.

1 BY MR. MAZUR:

2 Q And you have each of those titles -- can you make those
3 available for the Court?

4 A Copies.

5 Q The copies of the title?

6 A Yeah, I'll be more --

7 THE COURT: These are titles to the seven cars you just
8 mentioned?

9 THE WITNESS: These are copies of the titles.

10 THE COURT: So I need to know something. When did you
11 personally first learn that Baker Boyer was trying to track down where all
12 these cars are?

13 THE WITNESS: Only probably within the last six months.

14 THE COURT: All right. And how did you learn that?

15 THE WITNESS: Mr. Vega was reaching out looking for
16 somebody to give a power of attorney to to group the cars together and
17 with the intent of selling them or auctioning them. Some of the cars are
18 not auctionable.

19 THE COURT: Well, I mean -- maybe I wasn't clear. The
20 proceedings that were filed, we have these proceedings by Baker Boyer
21 National Bank against Mr. Foust and then Harry Hildibrand was brought
22 in.

23 THE WITNESS: Yeah.

24 THE COURT: And so these proceedings have gone on for the
25 last couple of years trying to find out where these cars are and who

1 owns them. When did you find out -- first find out about this case?

2 THE WITNESS: I -- shortly -- in February of 2019.

3 THE COURT: Okay.

4 THE WITNESS: So that's -- and then on the 28th of February
5 I received --

6 THE COURT: And how did you find out?

7 THE WITNESS: I was talking to Mr. Foust, Mr. Vega --

8 THE COURT: Okay.

9 THE WITNESS: -- and just we -- everyone's known each
10 other for a number of years.

11 THE COURT: Okay.

12 THE WITNESS: And that's --

13 THE COURT: So people were trying -- there were questions
14 being asked about where the cars were.

15 THE WITNESS: Yes. And I -- and Ron -- well, mainly
16 questions on who can go and represent Ronnie's interest --

17 THE COURT: Okay.

18 THE WITNESS: -- in front of the Court, since he's unable to
19 travel.

20 THE COURT: Okay.

21 THE WITNESS: And I volunteered if he gave me a durable
22 power of attorney, I volunteered to come in and say, Here's the copies of
23 the titles and here's our claim, if you will.

24 THE COURT: All right. Okay. Thank you, sir.

25 THE WITNESS: Yes.

1 MR. MAZUR: Thank you. I have nothing further, Your Honor.
2 THE COURT: All right. Mr. Bragonje, any cross-examination?
3 MR. BRAGONJE: Yeah, just a little bit.
4 THE COURT: Yes, you may.

5 **CROSS-EXAMINATION**

6 BY MR. BRAGONJE:

7 Q How many times did you talk with Mr. Foust since you became
8 involved in this matter?

9 A I've talked to Mr. Foust pretty regularly as part of my business,
10 and I've known him for 12 to 15 years.

11 Q How many times did you meet with him in person in
12 connection with this matter?

13 A Maybe -- it came up and I meet with Mr. Foust probably once
14 a month or every three months. So it would have come up in
15 conversation. But I don't specifically go up there to meet with him on
16 this matter particularly.

17 Q And you say you've known Mr. Foust for 15 years?

18 A More or less, yes.

19 Q And what kind of business do you do with Mr. Foust prior to
20 this lawsuit?

21 A With -- I bought one of Mr. Foust's companies, that's how we
22 first met. He had a company here in Las Vegas. And I -- my company
23 that I represented wanted to purchase that, because we wanted the
24 algorithms that he was using. So he had intellectual property.

25 Q Do you receive money in any of these dealings you have with

1 Mr. Foust?

2 A No. No, I have not.

3 Q What is your motivation for them, then?

4 A For?

5 Q What's your motivation for dealing with Mr. Foust if you're not
6 compensated in some way?

7 A Well, if --

8 Q Is he your friend?

9 A Pardon me?

10 Q Is he your friend?

11 A Yes, that's -- I -- he's a business colleague and a friend. I'd
12 like to think he's a friend. But do I receive compensation? In a
13 transaction, yes, I would receive compensation as part of a transaction.
14 When I purchases his original company, that I didn't receive, per se,
15 direct funds from that transaction. But as part of my job as the chief
16 executor of that -- of the purchaser, as -- I would have been
17 compensated as part of my plan. My compensation plan.

18 Q Isn't it true that Mr. Foust made the decision to effect the
19 foreclosure of the vehicles we've been discussing -- that you've been
20 discussing?

21 A I don't know that.

22 Q How could you not know that, if you were involved in helping
23 do this? He directed the foreclosure, didn't he?

24 A Of the car?

25 Q The seven vehicles that you've been discussing, he directed

1 that they be foreclosed upon, isn't that true?

2 A Not to my knowledge. Mr. Vega directed this based on a
3 promissory note that he signed many years ago when he invested in
4 Harry Hildibrand and --

5 Q How do -- you don't know that he signed it many years ago,
6 you've been involved only since February of 2019.

7 A I'm going off of the dates of that. So yeah, I'm going off the
8 dates that appear on the documents.

9 Q So you don't know that for a fact that it was signed many
10 years ago; you're speculating, isn't that right?

11 A I'm not speculating. I'm going off of what -- I deal in financial
12 insurance all the time. So if you want to say that your mortgage is
13 speculation, I don't know you have a mortgage, but I would assume that
14 if you presented mortgage papers to me from a lender or bank, then
15 yeah, we'd both be speculating. You would know for a fact that you owe
16 that mortgage, I'd be speculating.

17 So no, I'm not speculating in the sense of how it's inferred
18 here or how I'm inferring it.

19 Q Mr. Foust is your friend, correct? That's what you've said.

20 A Mr. Foust is -- I like to think of a friend and a colleague and a
21 business --

22 Q You don't want him to go to jail, do you?

23 A I don't want anybody to go to jail.

24 MR. BRAGONJE: No further questions.

25 THE COURT: All right.

1 **REDIRECT EXAMINATION**

2 BY MR. MAZUR:

3 Q Mr. Larkin, you stated that you first met Mr. Foust when there
4 was a purchase of one of his companies?

5 A Yes.

6 Q How long ago was that?

7 A 12 to 15 years ago.

8 Q And which company was purchased?

9 A A company called Source Check.

10 Q Okay. And were you the buyer of the company or were you
11 the broker or?

12 A I was the CEO of the acquirer.

13 Q You come in and actually purchased it?

14 A Yes.

15 Q Okay. And as far as the documents that you've reviewed on
16 behalf of Mr. Vega, do you have any reason to doubt their authenticity?

17 A I don't.

18 Q Have you received any information that they're not true and
19 correct or what the company does?

20 A I have not, no.

21 Q Okay. And have you inquired as to the exact location of the
22 vehicles or do you --

23 A No, I haven't. I expect I will eventually.

24 Q Okay. Are you going to be handling the transaction for the
25 auction or the sale of the vehicles?

1 A If Mr. Vega wishes me to do so, yes.

2 Q Okay. And that hasn't been discussed as of yet?

3 A No.

4 Q Okay.

5 MR. MAZUR: Nothing further, Your Honor.

6 THE COURT: Are there any dates set for the transfer or sale
7 of the seven vehicles that he just mentioned?

8 THE WITNESS: Yeah. These auctions occur, in this
9 particular case, at Monterey. This would be at a -- they're specialty
10 auctions that have to deal with collectible cars.

11 THE COURT: What's -- when do you believe that these cars
12 are going to be auctioned?

13 THE WITNESS: August is the next one.

14 THE COURT: Okay.

15 THE WITNESS: So.

16 THE COURT: So August what? I need a date.

17 THE WITNESS: August of 2019.

18 THE COURT: When in August? Do you have a date in
19 August?

20 THE WITNESS: I don't --

21 THE COURT: If you don't know, that's okay.

22 THE WITNESS: I don't know the exact date.

23 THE COURT: All right.

24 THE WITNESS: But usually it's the second week in August.

25 THE COURT: Do you know the name of the auction house?

1 THE WITNESS: It may be through Manheim, it may be
2 through Barrett-Jackson. It also may be through the people that manage
3 auctions --

4 THE COURT: Okay.

5 THE WITNESS: -- if it were for, say, the [indiscernible] auto
6 show. They could be put on display and, you know, make it known that
7 they're for sale.

8 THE COURT: Right. Are you the one who's involved in
9 arranging for the sale to go forward?

10 THE WITNESS: No, I --

11 THE COURT: Or auction to go forward?

12 THE WITNESS: I probably would be, if Mr. Vega wants to do
13 that. I just told him, you know, I'll show up and make his position clear.

14 THE COURT: You would take direction from Mr. Vega on
15 whether to go forward with this auction or not?

16 THE WITNESS: Yeah.

17 THE COURT: Okay.

18 THE WITNESS: But it's been discussed that they're going to
19 go to Monterey in August and be disposed of.

20 THE COURT: All right. I think that's all I needed to know.

21 Any further follow-up from the attorneys?

22 MR. BRAGONJE: No, thank you.

23 MR. MAZUR: No, Your Honor.

24 THE COURT: All right. You may step down. Thank you for
25 your time.

1 THE WITNESS: Okay.

2 THE COURT: You reside in California?

3 THE WITNESS: I reside in California. It does --

4 THE COURT: All right. Well, safe travels back, sir.

5 THE WITNESS: Thank you. Does the Court need a copy of

6 my power of attorney or anything of that nature?

7 THE COURT: It's up to the parties. I'm not going to direct you

8 to give me a copy, but --

9 THE WITNESS: Okay.

10 MR. BRAGONJE: Could I just have -- ask one question. Just

11 where he lives?

12 THE COURT: Sure.

13 MR. BRAGONJE: In case we need to get a subpoena to him

14 in the future.

15 THE COURT: All right.

16 THE WITNESS: Yeah.

17 **FURTHER EXAMINATION**

18 BY MR. BRAGONJE:

19 Q Mr. Larkin, what is your current address?

20 A 12250 Corte Sabio, C-O-R-T-E S-A-B-I-O, Number 2201, San

21 Diego, California, 92128.

22 THE COURT: In case anybody needs to follow up with

23 Mr. Vega, and if you don't, that's fine, but do you have the authority and

24 power to accept legal documents on his behalf?

25 THE WITNESS: Let me just read quickly through that --

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THE COURT: Okay.

THE WITNESS: -- and see if I do.

I am the attorney in fact in this power of attorney, and litigation to -- so I can maintain, defend, compromise, arbitrate, and dispose of any of all the action suits and other legal proceedings against Mr. Vega.

THE COURT: All right.

THE WITNESS: Includes, not limited to, appear on my behalf, power to settle any claim, and whatever form or my attorney in fact deems prudent, to purchase, sell, and dispose of property.

So if -- does that answer your question?

THE COURT: I think it does.

THE WITNESS: Okay.

THE COURT: All right. Thank you, sir. Appreciate it.

MR. BRAGONJE: If the Court will indulge me, another question suggested itself to me.

THE COURT: Yes.

BY MR. BRAGONJE:

Q Mr. Foust testified earlier that he's been staying in San Diego; does Mr. Foust stay at your home?

MR. MAZUR: Objection. Misstates the evidence. Mr. Foust testified he was in Orange County, which is separate from San Diego.

THE COURT: Well, and then he said -- I thought he says a lot of times he stays in L.A. at some locations.

MR. MAZUR: Yeah, and San Diego, San Diego County, and Orange County and --

1 THE COURT: Well, so -- all right. Then let's just ask the
2 witness if he stays with him.

3 THE WITNESS: I -- no. Mr. Foust does not stay with me.

4 BY MR. BRAGONJE:

5 Q Does he visit your home?

6 A No. Not generally.

7 Q Not generally?

8 A He has. He's visited my home in Dallas over the years. So --

9 Q Has he ever been to your home in San Diego?

10 A I can't recall. Probably.

11 Q What's your -- thank you. What's your telephone number?

12 A It's 469-964-8001.

13 Q Do you know where Mr. Foust lives?

14 A I assume Mr. Foust lives in Las Vegas. That's where I used
15 to -- that's where I mainly visited him is his home in Las Vegas.

16 Q Thank you.

17 A So.

18 THE COURT: So in case somebody asks me -- this
19 proceeding's been going on a long time.

20 THE WITNESS: Yeah.

21 THE COURT: And the parties have been tasking me to make
22 decisions on, you know, who owns the cars, where the cars are, who
23 has interest in the cars, et cetera.

24 Do you know the present whereabouts of these seven
25 vehicles?

1 THE WITNESS: I don't know the specific addresses or
2 whereabouts of them.

3 THE COURT: All right. Are they all -- are they located all in
4 one lot somewhere or different places?

5 THE WITNESS: I don't think so. I think when they were --
6 when Ronnie took over, his agent took over and repossessed them. I
7 think they maybe moved them from where they were, where they
8 originally were bought and stored, and maybe to a yard or a storage
9 vehicle nearby.

10 THE COURT: Okay.

11 THE WITNESS: I don't think he wanted to transport these
12 cars, spend a thousand dollars to transport them and consolidate them.

13 THE COURT: If Mr. Vega asks you to take care of the --
14 getting the cars to this auction facility in -- I believe you said Monterey,
15 you would have to find out where these cars are and make
16 arrangements to get them transported, right?

17 THE WITNESS: I would have to have them inspected and
18 consolidated, shipped to Monterey. And then I'd have to have him, you
19 know, detailed, and be -- given accurate mechanical report on what --

20 THE COURT: Right.

21 THE WITNESS: -- how the cars are operating.

22 THE COURT: If you were tasked to locate where these cars
23 are, what would you do to go about finding out where the cars are?

24 THE WITNESS: I would go ask Ronnie. The simplest thing
25 is --

1 THE COURT: Mr. Vega?

2 THE WITNESS: Yeah.

3 THE COURT: All right. He's in a nursing home. Is he -- does

4 he have his mental faculties? Is he competent to make decisions --

5 THE WITNESS: I believe he's --

6 THE COURT: -- and know what property he has and where

7 his property is?

8 THE WITNESS: Yeah. I believe he's competent. He is -- his

9 physical -- he has to be hand-carried to a truck and he had to be

10 hand-carried --

11 THE COURT: Okay.

12 THE WITNESS: -- to the notary. His physical -- he's

13 deteriorating rapidly.

14 THE COURT: Okay.

15 THE WITNESS: I don't know mentally if he -- he seems

16 cognitive, you know, he's very cognitive.

17 THE COURT: When was the last time you had occasion to

18 talk to him, to assess his competence?

19 THE WITNESS: On the phone February, I want to say.

20 THE COURT: Okay.

21 THE WITNESS: It just -- understood what was going on,

22 understood that he had to sign, you know, the -- with the notary, you

23 know, and just -- he's a nice guy. So.

24 THE COURT: Okay.

25 THE WITNESS: You know.

1 THE COURT: Appreciate that.
2 Anything -- any follow-up by the attorneys, either side?
3 MR. BRAGONJE: Yes. Please. Thank you.
4 THE COURT: All right.

5 **ADDITIONAL EXAMINATION**

6 BY MR. BRAGONJE:

7 Q What's the name of the agent you've been talking about, the
8 repossession agent?

9 A Oh, I don't know who he used as a repossession agent.
10 Agent was -- general repossession agent, kind of people that do that for
11 a living.

12 Q And -- well, who contacted the agent, then?

13 A Well, I imagine Mr. Vega may have contacted them.

14 Q Could it have been Mr. Foust?

15 A I don't think it would have been Mr. Foust.

16 Q It's possible, though?

17 MR. MAZUR: Objection. Speculation, Your Honor.

18 THE COURT: Well, do you have any --

19 THE WITNESS: I have no knowledge that --

20 THE COURT: Yeah, that's speculative.

21 THE WITNESS: -- Mr. Foust contacted an agent to have
22 these --

23 BY MR. BRAGONJE:

24 Q You have no idea who contacted the agent?

25 A I have no idea. I -- the normal -- in the normal course of

1 events, if I had interest in a -- security interest in a car, I would go to
2 somebody and say, Here's my security interest. I'd go through the
3 process of doing that and I repossess it. I have the car taken. And I'd
4 have it moved as little distance as possible while I determine what I
5 wanted to do with it, whether I wanted to ship it or sell it or take it.

6 If it was a car of, you know, normal car, normal DBS value, I'd
7 take it to a public auction. I'd register it and get whatever I could back
8 out of it.

9 Q And you say you haven't spoken with Mr. Vega since February
10 of this year; is that right?

11 A That would be right.

12 Q So when you -- so you've only been meeting with Mr. Foust to
13 make the decisions related to this matter; isn't that correct?

14 A No, the decisions were made. The decisions were clearly
15 made that when I first showed up here, that all I was going to do is say I
16 have the power of attorney, Mr. Vega has the cars, he has the titles, and
17 this is for the information of both parties. So we're first in line.

18 Q Do you ever speak with Mr. Detwiler?

19 A Yeah, I just saw him in the hallway.

20 Q Before that, have you spoken with him?

21 A Yeah. I've known Mr. Detwiler for a number of years and
22 originally, to the best of my knowledge, Eddie was brought into Harry
23 Hildibrand to facilitate real estate trades. And I actually was looking at
24 investing in the REO lists going back to 2006, '07, and '08 on foreclosed
25 properties. It was a robust business.

1 Q Before talking with Mr. Detwiler in the hall today, when is the
2 last time you spoke with him?

3 A He asked me about three weeks ago to help facilitate some
4 investment for his holdings out of the country in the Honduras. He's
5 looking for some millions of dollars.

6 Q So Mr. Detwiler's your business associate as well?

7 A I get a -- I don't do -- I have not done any business with Eddie
8 Detwiler. I've known Eddie Detwiler as a successful broker here in Las
9 Vegas. In my business I get enormous amount of referrals and inquiries
10 from people that are seeking funds to start up a business to turn around
11 a business to inject capital into it. It's primary to how I make my living.

12 Q How many deals or transactions have you done with
13 Mr. Detwiler?

14 A None successfully to my mind.

15 Q None successfully?

16 A Yes.

17 Q So you -- how many inquiries has he made with you?

18 A Over the years, I've watched him develop three or four
19 different portfolios of opportunities, but was never able to sew together
20 the proper investment group.

21 Q And have you ever spoken with Harry Hildibrand Jr., the
22 person?

23 A No, I have not spoken with Harry Hildibrand Jr.

24 Q Have you ever spoken to anyone with the last name
25 Hildibrand?

1 A Many years ago Harry Hildibrand Sr.

2 Q And what was the nature of your communications with Harry
3 Hildibrand Sr.?

4 A I would -- I might have been buying a car. I recall buying from
5 Harry Hildibrand a 2007 C70 Volvo for my daughter. And, you know, it
6 was in their inventory, it happened to be in Las Vegas, and so I bought
7 that car.

8 Q Is Mr. Detwiler currently --

9 MR. MAZUR: Your Honor, object. This goes beyond direct
10 and redirect and --

11 MR. BRAGONJE: This is showing the inside nature of all of
12 this.

13 THE COURT: Yeah, I think this is going beyond the scope of
14 the extra questions that I had.

15 MR. BRAGONJE: Okay.

16 THE COURT: So why don't you ask one last question.

17 MR. MAZUR: Thank you, Your Honor.

18 BY MR. BRAGONJE:

19 Q It's possible you'll do business with Mr. Detwiler in the future in
20 connection with this Honduras venture, isn't it?

21 A Not really.

22 MR. MAZUR: Objection. Speculation.

23 THE WITNESS: It's not possible.

24 THE COURT: Well, it's not speculative to find out what his
25 intent is. All right.

1 So go ahead.

2 THE WITNESS: I've looked at the deal several times. It's a
3 very, very difficult package for me to put together.

4 MR. BRAGONJE: Thank you.

5 THE COURT: All right.

6 THE WITNESS: Yeah.

7 THE COURT: Mr. Mazur, you get re-redirect based upon my
8 question.

9 MR. MAZUR: Your Honor, I don't have any further questions
10 of Mr. Larkin.

11 THE COURT: All right. Then Mr. Larkin, you may step down.
12 Thank you very much for your time. Make sure you gather all your
13 belongings up there.

14 THE WITNESS: Yes, sir. Thank you.

15 THE COURT: And have safe travels back to California.

16 THE WITNESS: I appreciate it. Thank you.

17 THE COURT: All right.

18 THE WITNESS: I'm getting as far as the Venetian for the
19 agent summit. The car business, I'm going to be at.

20 THE COURT: Any further witnesses, Mr. Mazur?

21 MR. MAZUR: No, Your Honor. That's all.

22 THE COURT: All right. So this concludes the evidentiary
23 portion of the contempt proceedings against Mr. Foust.

24 What's the parties' intention with regarding to closing
25 arguments? I would prefer that I get brief closing arguments from both

1 sides, like, five minutes. And then I would entertain more detailed
2 written statements and before I could make a decision on contempt, I
3 would also need an attorney affidavit in support of contempt from Baker
4 Boyer.

5 MR. BRAGONJE: Uh-huh.

6 THE COURT: As a prerequisite to a jurisdiction of the Court
7 to enter any contempt order.

8 MR. BRAGONJE: Would Your Honor not accept -- I think we
9 submitted one with our original motion.

10 THE COURT: Oh, with your original order to show cause?

11 MR. BRAGONJE: Yes. Yes.

12 THE COURT: All right. I'll take a look at it. So that's all that
13 we need there other than closing arguments.

14 MR. BRAGONJE: Yeah.

15 THE COURT: All right?

16 MR. BRAGONJE: Thank you.

17 THE COURT: So you want to take a few minutes now and
18 refresh my memory on --

19 MR. BRAGONJE: Yes.

20 THE COURT: -- whatever facts I need to know?

21 MR. BRAGONJE: Yes, thank you.

22 THE COURT: All right. Let's actually have Mr. Mazur go first.

23 MR. BRAGONJE: Oh, yes. Of course.

24 THE COURT: Since they are the party that --

25 MR. BRAGONJE: Yes. Yes.

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THE COURT: -- has the Order to Show Case verdict.

CLOSING ARGUMENT FOR THE DEFENDANT

MR. MAZUR: Thank you, Your Honor.

And, Your Honor, I'll be extremely brief in majority to the actual written brief that's filed, the supplemental brief.

THE COURT: Yes.

MR. MAZUR: With the Order to Show Cause, it was brought for the purpose that -- in a claim that defendant was not complying with the Court's order of findings of fact, conclusions of law, that Defendant and Harry Hildibrand LLC failed to turn over the vehicles or the assets or identity the vehicles and the assets.

We've gone through, on the list of 20 that were actually identified, and we provided on four of the vehicles, we provided the exact location where they could be picked up in California. There's no reasons why they cannot be retrieved at this point in time or repossessed at this point in time.

The Court has previously ordered that on the 20 vehicles that title is, shall be deemed vested with the plaintiff. So technically it's their vehicles and they can have access to them at any point in time, even behind a gated community.

With the other 16 vehicles, one vehicle is the motor coach which Plaintiffs repossessed in 2018 and subsequently sold in 2018, regardless of the fact there was not proper notice of the execution or notice of attachment that was done. But we'll leave that to a separate day.

1 But the defendant has full -- provided his full cooperation.
2 He's provided locations to the best of his knowledge of what happened
3 to the vehicles, where they went to on each of the 16, the ones that were
4 titled to Harry Hildibrand and then subsequently either sold off at the
5 auction or to the private parties, Mr. Kuck, and a couple of the vehicles.
6 And then the vehicles that actually were repossessed, which is new
7 knowledge that we just learned as far as repossessions, on those seven
8 vehicles, it was identified by Mr. Larkin and Mr. Vega on the security
9 interest.

10 But he's provided his full cooperation. He's shown up --

11 THE COURT: It's concerning that it takes so long to get
12 information that probably should have been provided in earlier
13 proceedings.

14 MR. MAZUR: I understand. And I --

15 THE COURT: We've been -- we meaning I've been listening
16 to a lot of argument and we've all gone through a lot of proceedings to
17 find out, you know, where the cars are and what interest Harry
18 Hildibrand has and what has happened to his interest. And a lot of the
19 stuff I learned today is new, which is information that someone should
20 have been presenting to me earlier.

21 MR. MAZUR: And I understand. The first time I was made
22 aware if it, I appeared April 1st, just six, seven weeks ago --

23 THE COURT: Not blaming you.

24 MR. MAZUR: -- and --

25 THE COURT: Just saying the information's been dripping in

1 slow.

2 MR. MAZUR: Right. We cut to the chase and went straight to
3 the list. And at that first hearing we went through and we said we'd
4 provide declarations on the exact locations and we tried to --

5 THE COURT: All right.

6 MR. MAZUR: -- go as quickly as we possibly could without
7 delay in providing additional information on specifics. And we're still
8 willing to help and participate to the extent that we can at this point in
9 time, Your Honor.

10 But we're not dodging the court order. He's providing his
11 compliance. He simply can't turn over something that he doesn't have
12 possession or control over, doesn't know where's at -- where the
13 vehicle's at. I mean, these are transactions that go back to 2005 on the
14 vehicles and through an entity that he does not have control over.
15 Mr. Foust only has 1 percent interest in the company. And the balance
16 resides by the three children of Mr. Harry Hildibrand, including Junior
17 and the two others that each hold a 33 and 33 percent interest.

18 Mr. Foust does not have any ownership or control or manager
19 of Stardust LLC and any of the other entities, he simply doesn't have
20 control of the vehicles. He's complied with the findings of fact, and
21 complied with the order to the extent that he can.

22 The titles are already transferred over, so those vehicles are
23 legal titled to the plaintiffs now. And we -- my client does not know the
24 location.

25 But with that, we would rest and you've heard the testimony of

1 Mr. Vega's representative and also Mr. Detwiler, as far as there's no
2 ownership, no control, no agreements, no side deals. And that he
3 simply does not own any vehicles.

4 Thank you.

5 THE COURT: Thank you. Appreciate that.

6 MR. MAZUR: And with that, we do request that [indiscernible]
7 as well.

8 THE COURT: Well, I'm not sure what I'm going to do till I hear
9 all sides and you finish the argument and look at my notes further.

10 Thank you.

11 MR. MAZUR: Thank you, Your Honor.

12 THE COURT: Appreciate your argument and position.

13 All right. Mr. Bragonje, your turn.

14 **REBUTTAL ARGUMENT FOR PLAINTIFF**

15 MR. BRAGONJE: Your Honor, the evidence has been
16 dripping in because this is being made up as we go along. Every time
17 we come in here, the road points back to Mr. Foust. We are here today
18 and we're hearing for the first time about this Ron Vega connection. I'm
19 not convinced this is even a real person, because who gets up here and
20 gives a testimony, a 15-year associate of Mr. Foust and Mr. Detwiler.
21 This is not a disinterested party.

22 This -- if this were a legitimate foreclosure, as they claim, they
23 attempt to introduce nothing into evidence, by the way, if it were a
24 legitimate foreclosure, we would have heard about this years ago. I
25 deposed Mr. Foust twice. I deposed Mr. Detwiler once. We had two

1 trials. Never have we heard that.

2 And that's because it's being made up as we go. Every time
3 we dig deeper, we find Mr. Foust's fingers on what's going on. I think
4 the Hagerty subpoena that we talked about in this proceeding, it's almost
5 like cumulative evidence. I almost feel silly talking about it, but I think it's
6 important, because this is what I did. My client is a banker and he said,
7 you know, we've heard that there's this insurance company out there
8 that specializes in classic cars. Why don't we send them a subpoena
9 and see if they've got anything on Mr. Foust?

10 So that's what I did. And I sent it to the state of Delaware. I
11 got a response from an attorney who said, This is Mr. Foust's file. And
12 in that file was a -- the same list that we saw in the bankruptcy and there
13 was, you know, they dispute it and they deny it, I understand that. But I
14 think the Court has to weigh who's telling the truth? A guy who is facing
15 going to jail or a corporate attorney in Delaware who's got no dog in this
16 fight?

17 I agree, the evidence has been dripping in, and that's because
18 they're making it up as we go along.

19 If Mr. Vega really had this interest that is claimed, we would
20 have heard about that years ago. I submit it's all a fraud, it's all false,
21 and I think that we are dealing with people that only want to participate in
22 litigation when they're winning.

23 This is what their attorney said in the bankruptcy proceedings.
24 I think this is telling. This is what their bankruptcy attorney said about
25 this court. If you'll bear with me here.

1 This is James Laissez in the bankruptcy court. This is what --
2 they were talking about their motivation for filing bankruptcy.

3 THE COURT: Uh-huh.

4 MR. BRAGONJE: Because we have a judge --

5 That's you.

6 THE COURT: Uh-huh.

7 MR. BRAGONJE: -- that has indicated he is willing to violate
8 the U.S. Constitution, the contract clause of the U.S. Constitution
9 and retitle abrogate a purchase money contract and so that was the
10 reason for filing it.

11 Now we are exploring other alternatives in Nevada and it may
12 be that we will be able to leave the bankruptcy realm and proceed
13 there.

14 These people --

15 THE COURT: I remember reading that before.

16 MR. BRAGONJE: -- they don't respect what's going on here.
17 If they did, if this were real, we would have heard about it years ago.
18 There's got to be an end, there's got to be an end, and I submit that
19 these are people that won't take it seriously unless they are imprisoned.

20 And so we're asking that they be imprisoned or that they pay
21 the value of the cars listed in the bankruptcy.

22 THE COURT: What's --

23 MR. BRAGONJE: Both.

24 THE COURT: What's concerning to me, and I need to look
25 into this further, is that Harry Hildibrand did appear in this proceeding

1 and for purposes of identifying and explaining what interest it had in the
2 vehicles. And they had attorneys that came and represented Harry
3 Hildibrand. And they didn't have Harry Jr. Appear or provide any
4 evidence or testimony. They didn't have Harry Hildibrand Jr.'s daughters
5 come, the only person they put forward was Mr. Detwiler.

6 And so Mr. Detwiler says he's just a figurehead, but he's the
7 only one that anyone's ever put forward to show who's controlling this
8 company other than Mr. Foust, who has -- claims to have a 1 percent.

9 So, you know, obviously, Harry Hildibrand, somebody's
10 controlling it and I have to assume it's the persons that have come
11 forward to appear on behalf of Harry Hildibrand.

12 So that's my concern so far. And I have to go back and look
13 at my prior orders, but -- on my prior findings. All right?

14 MR. BRAGONJE: Uh-huh. So --

15 THE COURT: I'm going to look at my prior orders, I'm going
16 to look at all the affidavits that have been submitted in this matter. I'm
17 going to look at the statements made by Harry Hildibrand's attorneys,
18 make it -- I'm going to look at the statements, any admissions or
19 statements made by Mr. Foust's attorneys. And then we'll decide where
20 to go in terms of the contempt proceedings. All right.

21 MR. BRAGONJE: Thank you, Your Honor.

22 THE COURT: Last thing is I need to know how quickly -- and I
23 want you guys to do this super quickly -- get in, if you want any further
24 argument to me on these proceedings. I'm not requiring it. I'm giving
25 you an opportunity to do that. But I want this done no later than

1 Monday, unless you both stipulate for further time. But we need to put
2 an end to this.

3 MR. BRAGONJE: Yeah, I don't think we need further
4 argument. Unless Your Honor has something that Your Honor's really
5 curious about.

6 THE COURT: There's nothing that I need to know. There's
7 some legal issues that I still need to consider that were presented by
8 Mr. Mazur in his prior motion. So.

9 MR. MAZUR: And, Your Honor, I think if we do submit the
10 briefs, there's additional questions that need argument or the Court
11 would like to hear argument, then we can come back a --

12 MR. BRAGONJE: Well, what I'm saying is unless Your Honor
13 wants additional briefs, I mean, I have written --

14 THE COURT: You've written a lot, right.

15 MR. BRAGONJE: We've written a lot.

16 THE COURT: I can't imagine what anybody would say that I
17 haven't already heard. But I limited you to five minutes --

18 MR. BRAGONJE: I would rather not do --

19 THE COURT: -- closing argument now. I didn't want to cut
20 you off if you wanted more to say.

21 So Mr. Mazur, if you want the opportunity -- what's today,
22 Wednesday?

23 THE CLERK: No, Tuesday.

24 THE COURT: Today's Tuesday? I can give you until Monday
25 to provide any written closing argument.

1 MR. MAZUR: Is Monday a holiday? Could we do --
2 MR. BRAGONJE: It is.
3 THE COURT: Oh.
4 MR. MAZUR: Could we do Tuesday?
5 MR. BRAGONJE: I've got a --
6 THE COURT: Tuesday.
7 MR. BRAGONJE: You know --
8 THE COURT: It doesn't look like we need to move faster than
9 that as to the seven cars that Mr. Vega has. Appears that nothing's
10 going to happen to them until August.
11 MR. BRAGONJE: And I have to tell the Court, I've got a big --
12 this is why it is so frustrating for me that this has been continued so long.
13 And by the way, Mr. Foust wasn't even supposed to testify today unless
14 he had paid a fine for not showing up on Friday, which was going to be
15 part of these contempt proceedings.
16 THE COURT: It was. And I'll -- I mean, I had made my orders
17 on this case and then the reason why we're having further proceedings
18 is you did an application for to show cause, and I think the Court's been
19 moving as quickly as the Court could in trying to --
20 MR. BRAGONJE: Well, absolutely.
21 THE COURT: -- resolve your matter other than couple of
22 continuances that have been the result of Mr. Foust.
23 MR. BRAGONJE: Well, I've never asked for more time. Of
24 course, the Court needs time to digest things. They have asked for
25 more time. And what I'm driving at is this:

1 THE COURT: Yeah.

2 MR. BRAGONJE: I'm going to be out of the country beginning

3 Tuesday. I really can't -- it would be very difficult for me to bring

4 someone else up to speed in my law firm. I'm the only one who's ever

5 worked on this.

6 THE COURT: Well, you don't need to respond to the closing

7 that --

8 MR. BRAGONJE: Okay.

9 THE COURT: -- Mr. Foust's attorney is going to provide the

10 Court.

11 MR. BRAGONJE: Okay.

12 THE COURT: I have everything that you've written.

13 MR. BRAGONJE: Yes.

14 THE COURT: You've written -- we could probably, you know,

15 publish it in two full books.

16 MR. BRAGONJE: Right. Right.

17 THE COURT: Maybe more than that. So I have enough

18 writing from you.

19 MR. BRAGONJE: Okay.

20 THE COURT: Mr. Mazur hasn't been in this case that long.

21 He might need a few more days to digest everything. The burden is

22 really on Mr. Foust to explain why my orders haven't been complied

23 with. So I'll give the last word to Mr. Foust and his counsel.

24 Anything you want to provide to me? No new evidence, but

25 you can have argument basically summing up everything and whatever

1 you're going to file on Tuesday. Okay?

2 MR. MAZUR: Thank you, Your Honor.

3 THE COURT: And then I'm going to have a quick decision on
4 this by the middle of next week. Okay?

5 MR. MAZUR: Very good, Your Honor.

6 MR. BRAGONJE: Is there any -- well, we were here on
7 Friday. They were supposed to pay my costs for showing up Friday and
8 Mr. Foust not being here. Is there any resolution on that issue?

9 THE COURT: Well, part of what I'm considering is, you know,
10 if there is contempt, the Court has various remedies it can impose. I
11 mean, the Court can always, you know, if it's still a contempt, the Court
12 can order that Mr. Foust to be incarcerated until the cars are turned
13 over. The Court has the right to do a civil penalty of \$500. The Court
14 can do both. The Court can also impose sanctions under EDCR 7.60,
15 which allows the Court to impose sanctions for multiplying or prolonging
16 the proceedings or engaging in proceedings that have been vexatious or
17 harassing.

18 And one of the things the Court can do for violation of
19 EDCR 7.60 is award costs and attorneys' fees to the party that has had
20 to endure, you know, any vexatious or harassing activity. So those are
21 the remedies that would be available to Baker Boyer in the event the
22 Court found that there was any contempt or any harassing, vexatious
23 activity. All right?

24 MR. MAZUR: And, Your Honor --

25 THE COURT: So your request --

1 MR. MAZUR: -- if I may, on --

2 THE COURT: -- I know you requested before attorneys' fees
3 and costs. I can decide that once I receive --

4 MR. BRAGONJE: Okay.

5 THE COURT: -- Mr. Mazur's brief. And then the other
6 matters that I've agreed to review.

7 MR. BRAGONJE: Okay. Thank you.

8 MR. MAZUR: And, Your Honor, as it relates to the attorneys'
9 fees from Friday, we didn't even finish Mr. Detwiler's testimony on
10 Friday, so we wouldn't not even made it to Mr. Foust's testimony on last
11 Friday. We did run out of time. It was about an hour and 20 minutes
12 that we did proceed on, and that's why we're here today as well.

13 THE COURT: That's true. Part of the reason I, you know, I
14 could have shuffled other things around. But part -- one of the reasons
15 why I continued is because -- well, you know this. One of the reasons I
16 continued is because we didn't have Mr. Foust and we weren't going to
17 have him until Tuesday.

18 MR. MAZUR: Right.

19 THE COURT: So the reason we didn't finish isn't based on
20 my schedule. I would have rearranged my schedule if Mr. Foust had
21 been present.

22 MR. MAZUR: Understand.

23 THE COURT: I accommodated him. All right.

24 MR. MAZUR: Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 So this matter is adjourned. And we'll see where it goes on
2 Tuesday night. All right?

3 MR. BRAGONJE: Thank you, Your Honor.

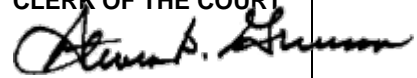
4 [Proceeding concluded at 11:11 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed
19 the audio/video proceedings in the above-entitled case to the best of my
20 ability.

21 

22 Shawna Ortega, CET*562



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,

8 Plaintiff,

9 vs.

10 JAMES FOUST, JR.,

11 Defendant.

) CASE#: A-17-760779-F

) DEPT. II

12
13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
MONDAY, DECEMBER 23, 2019

15 **RECORDER'S TRANSCRIPT OF STATUS CHECK**

16
17 APPEARANCES:

18 For the Plaintiff:

JOHN E. BRAGONJE, ESQ.

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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Monday, December 23, 2019

2

3 [Case called at 9:25 a.m.]

4 THE COURT: Baker Boyer v. James Foust, A-760779.

5 MR. BRAGONJE: Good morning, Your Honor. John
6 Bragonje of Lewis Roca Rothgerber Christie, on behalf of the Plaintiff,
7 and judgment creditor, Baker Boyer National Bank.

8 THE COURT: Good morning.

9 MR. BRAGONJE: Good morning.

10 THE COURT: And I know this case has been going on for a
11 while. It's been difficult for your client to first locate the motorcoach,
12 find out who had an interest in the motorcoach, and get that person
13 served with a writ, and then bring that person before the Court, and then
14 have hearing on that. And then the Court issued an order, and then didn't
15 comply, and there was an order to show cause, and a further hearing,
16 and then some time to draft the findings.

17 And then there were some attempts to attach the motorhome
18 to get secure possession, and finally there was possession secured on
19 the motorhome, and then your client proceeded with the next phase,
20 which is to attach and garnish, serve a writ to obtain a right to possess
21 the classic cars.

22 MR. BRAGONJE: Thank you for all your work, Your Honor.

23 THE COURT: I just --

24 MR. BRAGONJE: There's been a lot of work on the Court's
25 part, and we thank you.

1 THE COURT: No, no, no. You know, it's -- but thank you for
2 saying that.

3 And then there was the -- and then the same kind of effort to
4 get an order on classic cars, and then there was nothing turned over,
5 which led to an order to show cause, and an appearance, and an
6 evidentiary hearing, and a new order. So, roughly, that's the history of
7 this case, and I think it's taken probably a year and three-quarters, or
8 something like that, right?

9 MR. BRAGONJE: It sounds right, yeah.

10 THE COURT: So and just part of my normal review, after a
11 warrant for arrest is issued, I looked at all the paperwork again, it's a
12 pretty serious thing arresting somebody. And I did, obviously, what I
13 thought was a pretty thorough review when I issued the warrant.
14 Usually having the warrant issued is enough to get the person to
15 comply; it didn't happen here.

16 MR. BRAGONJE: Right.

17 THE COURT: And then it was out for service, and I did
18 another review of the paperwork. And I do have a concern, and let me
19 explain why, and as we go through this, if you can tell me if I'm missing
20 something --

21 MR. BRAGONJE: Okay.

22 THE COURT: -- please let me know.

23 MR. BRAGONJE: Okay.

24 THE COURT: Because I want to make sure that, you know,
25 we're crystal clear. All right. So --

1 MR. BRAGONJE: So we're talking about the warrant for Mr.
2 Detweiler, in particular?

3 THE COURT: Let's just talk about Mr. Detweiler.

4 MR. BRAGONJE: Okay.

5 THE COURT: So looking first at the law, NRS 31.100, a writ of
6 attachment has to be served on the person to be bound, and then the
7 Court has jurisdiction over that person, to issue an order that the
8 property -- well, there has to be a subpoena served on that person, and
9 maybe there's other ways to get jurisdiction, we'll go through that.

10 I know the writ was served on Mr. Foust, and the company,
11 and Foust, we certainly had jurisdiction over Mr. Foust, and I don't know
12 the circumstances under which that happened. Then Harry Hildibrand
13 made an appearance into the action, I think as part of motion to
14 intervene, and also pursuant to a claim against the property.

15 MR. BRAGONJE: Right.

16 THE COURT: And there was actually findings of the Court,
17 that the Court not only had jurisdiction over Foust, but Harry Hildibrand,
18 and Harry Hildibrand and Foust were alter egos.

19 MR. BRAGONJE: Right.

20 THE COURT: And I didn't see in my file any indication that
21 either -- well, going back to 31.100, it says that the person whom the
22 creditor believes has control over the property has to be served with a
23 subpoena, and you can also name them in a complaint, and then have a
24 complaint and summons served on the person, but this will require, in
25 the alternative, that you have a subpoena served.

1 I don't think either of those were done. Was a subpoena --

2 MR. BRAGONJE: As to --

3 THE COURT: -- served, personally, on Mr. Detweiler? I know
4 various other things were, and we'll get to that, but --

5 MR. BRAGONJE: I'm thinking about that.

6 THE COURT: I didn't see it in the record, but if it has
7 happened, I need proof, there's a lot of things filed in this case.

8 MR. BRAGONJE: Yeah.

9 THE COURT: And maybe my --

10 MR. BRAGONJE: I don't --

11 THE COURT: -- law clerk is checking this too, if there's ever a
12 subpoena?

13 MR. BRAGONJE: I don't recall -- let's see here.

14 Mr. Detweiler, personally, I don't recall a subpoena being served. I do
15 believe he received an order to show cause.

16 THE COURT: Well, let's get to that.

17 MR. BRAGONJE: Yeah.

18 THE COURT: Okay.

19 MR. BRAGONJE: I don't think -- yeah, I don't, on
20 Mr. Detweiler, personally, I don't believe he was served with a subpoena.

21 THE COURT: All right. So then --

22 MR. BRAGONJE: To my memory I don't recall that.

23 THE COURT: Right.

24 MR. BRAGONJE: I suppose I would have been the one -- I
25 mean, I think Harry Hildibrand, for whom Mr. Foust was a

1 representative --

2 THE COURT: So there are some findings --

3 MR. BRAGONJE: -- was served with a subpoena.

4 THE COURT: There are some findings, March 2018 dealt with
5 a motorcoach, and then there was order on Harry Hildibrand's third party
6 claim, that was in April 2018.

7 All right. Then the main order of that precipitates all of this,
8 is the order of January 9th, 2019. In this order, at the first page, it talks
9 about -- well, first of all this order names the Defendant judgment Debtor
10 is James Patterson Foust, individually and his marital community.

11 And then in the findings of fact, conclusions of law, and final
12 judgment, it references prior findings against Harry Hildibrand, and then
13 indicates, it says, you're asking the Court resolve Harry Hildibrand's
14 claim of ownership over certain vehicles that the bank seeks to levy, and
15 execute against, to satisfy a judgment against judgment Debtor, and
16 Defendant, James Foust, for approximately one million.

17 So at least in the findings, the findings recognize the request
18 to get a judgment against Harry Hildibrand and Foust to turn over the
19 cars. But then on page -- all right. Then we move forward to page 4,
20 paragraph 6, it says: "Although originally a non-party, by invoking
21 31.070, Harry Hildibrand subjected itself to this Court's jurisdiction.

22 I haven't seen anything on Detweiler, yet. And then at the
23 bottom of paragraph 6 it says, "This is an evidentiary hearing under
24 31.070. The parties agree that this evidentiary hearing may proceed
25 before the bank has levied upon the subject cars. So the parties, again,

1 the way this is written up that page, would be Foust and Harry
2 Hildibrand.

3 And then you move forward, it says "Harry Hildibrand and
4 Foust are in privity," that's paragraph 11. On page 18, conclusions of
5 law, paragraph 1, the Court has jurisdiction over the parties. It doesn't
6 specify Mr. Detweiler. And then you see paragraph 2, where it says:
7 "The Court enters judgment in favor of the bank, and against Harry
8 Hildibrand and Mr. Foust, and then it goes on to say, including all
9 persons or entities claiming an ownership in Harry Hildibrand; and then I
10 crossed that part out, and initialed it.

11 So that would be persons claiming ownership. I was saying,
12 no, it wouldn't include debt, because it was just Harry Hildibrand. I know
13 Detweiler, at that point in time, was believed to be and subsequently
14 found to believe, a managing member of Harry Hildibrand.

15 But at this point in time I believe Detweiler had only
16 appeared in this proceeding, and provided an affidavit, up to this point in
17 time, as a witness. And I don't think there's anything up through that
18 point of time that would give notice to Mr. Detweiler, that he's actually a
19 party.

20 MR. BRAGONJE: Yeah. I would agree, I don't know, and I
21 don't think Mr. Detweiler has ever been a named party in this.

22 THE COURT: Well, I'm trying to find out. You do get to
23 referencing Mr. Detweiler, on page 22 of this order; this is under the
24 "conclusions." Page 22, paragraph 29, says:

25 "Mr. Foust and Harry Hildibrand, and then any other

1 respective agents, employees, affiliates (including without
2 limitation, Mr. Detweiler, and Stardust Classic, and any of its
3 agents) are order on penalty of contempt to deliver up,
4 surrender possession of, and turn over to the bank, promptly,
5 all cars identified in Exhibits A and B, with any cost or
6 expense involved in delivery to the bank, to be borne by Mr.
7 Foust, and/or HH."

8 My concern up to this point is that Mr. Detweiler could have
9 reasonably believed that he wasn't named as a party, he had only been a
10 witness. The evidentiary hearing that led to this order on January 9th,
11 was only an evidentiary hearing as to the parties; because that's what I
12 read earlier, and it specifically referenced that HH subjected it to --
13 objected itself to jurisdiction.

14 Nowhere does it say Mr. Detweiler has subjected himself to
15 jurisdiction, and yet, you know, kind of in the middle, this is on page 22,
16 it's ordering him to turn over any cars in his possession. Not only is it
17 kind of, and I hate to use the word, it's not hidden, but it's not hidden at
18 all, it's plainly stated in that paragraph, that just given the context of the
19 rest of this, the beginning of, he might have come to two different
20 conclusions.

21 Either, number 1, he had no obligations under here, or
22 number 2, he had an obligation to turn anything over that he had, or he
23 could have thought, number 3, the duty was on Harry Hildibrand to try
24 get them from him and turn them over, and he didn't have any actual
25 obligation to the Court.

1 I think that one is less likely, and more likely it's an order that
2 says he's got to turn it over. I'm not sure if I had jurisdiction over him to
3 actually issue the order, because at this point in time I don't think -- well,
4 he wasn't named as party to the complaint.

5 MR. BRAGONJE: Correct.

6 THE COURT: I've seen, you know, complaints amended to
7 have claims against a garnishee, or I'm not sure how else it's done, but
8 I've seen that.

9 MR. BRAGONJE: Uh-huh.

10 THE COURT: So he's not a party to the complaint. He hasn't
11 stipulated to jurisdiction; he hasn't filed anything with the Court in which
12 he's making a claim. He provided an affidavit, which was in support of
13 Foust and Harry Hildibrand, but he also wasn't served with a subpoena,
14 as far as I can tell; I think you'll check on that.

15 MR. BRAGONJE: Yeah. I --

16 THE COURT: So I don't -- at this point in time I don't know if
17 I had jurisdiction over him to issue an order.

18 MR. BRAGONJE: Order to show cause, you mean?

19 THE COURT: An order that he -- we're not at the order to
20 show cause yet --

21 MR. BRAGONJE: Yeah.

22 THE COURT: -- we're at the --

23 MR. BRAGONJE: I agree. I think that he -- I think that he's
24 appeared in these proceedings purely in a representative capacity. Our
25 work over the years has produced evidence that I think is uncontroverted

1 that he is really the only -- he and Mr. Foust are really the only people
2 behind Harry Hildibrand. So Mr. Foust was certainly a party, Harry
3 Hildibrand was certainly a party, they stipulated to jurisdiction.

4 THE COURT: Well, Harry Hildibrand, so I --

5 MR. BRAGONJE: LLC, I should say.

6 THE COURT: Right.

7 MR. BRAGONJE: I mean, it's confusing, because it's a
8 person's name, I'm speaking about the entity. So unquestionably those
9 two people are subject to this course of jurisdiction. Mr. Foust, he's the
10 originally named debtor, and Harry Hildibrand, because it invoked the
11 third-party claims statute.

12 It came into this Court and said, you know, we're the ones
13 that own the motorcoach and all the classy cars, and then this Court said,
14 "Well, there's a statutory proceeding where we have an evidentiary
15 hearing and we sort out who this stuff really belongs to."

16 And when Harry Hildibrand invoked that statute, and I
17 apologize I don't have it in front of me, I'm sure it's in all the orders.

18 THE COURT: No, that's good. Because --

19 MR. BRAGONJE: I don't have it --

20 THE COURT: -- you didn't expect me --

21 MR. BRAGONJE: -- on the tip of my tongue.

22 THE COURT: -- to talk about all this.

23 MR. BRAGONJE: Yeah. So when Harry Hildibrand invoked
24 that statute, and we have on record, and I believe we've got the citations
25 and the order, they said, "We accept jurisdiction." At that time they were

1 represented by the Holland & Hart --

2 THE COURT: Harry Hildibrand.

3 MR. BRAGONJE: Harry Hildibrand LLC. They were
4 represented by the Holland & Hart Law Firm. So what I think the Court is
5 saying is, well, how can Mr. Detweiler effectively go to jail for Harry
6 Hildibrand?

7 THE COURT: Well --

8 MR. BRAGONJE: And I think that I addressed that. I think
9 the only --

10 THE COURT: Can I interrupt for one second --

11 MR. BRAGONJE: Of course, of course --

12 THE COURT: -- if you don't mind?

13 MR. BRAGONJE: -- yeah, yeah. Yes. Please, please.

14 THE COURT: So I don't see us -- I don't see either the Court
15 or Baker Boyer accomplishing, or doing the same thing that was done
16 with Mr. Foust. And let me just set forth three things, and then I'll let you
17 get back to your explanation --

18 MR. BRAGONJE: Please. I'm here --

19 THE COURT: -- which is very helpful.

20 MR. BRAGONJE: -- to do your will, yes.

21 THE COURT: Well, Mr. Foust was named as a party,
22 Mr. Detweiler wasn't named as a party. Mr. Foust was found specifically
23 to be the alter ego of Harry Hildibrand, Mr. Detweiler wasn't found to be
24 an alter ego.

25 MR. BRAGONJE: Correct.

1 THE COURT: Harry Hildibrand participated in the litigation
2 such that the Court accepted jurisdiction over him, that's why them filing
3 a claim. The Court never issued anything indicating it accepted
4 jurisdiction over Mr. Detweiler. And finally, Mr. Detweiler never
5 stipulated to jurisdiction. So I think we've dealt with Mr. Foust a lot
6 differently than we dealt with Mr. Detweiler.

7 MR. BRAGONJE: I agree.

8 THE COURT: And that gives me concern, because, yes, I did
9 issue an order commanding him, on page 22, paragraph 29, to turn over
10 the cars. I did certainly command Mr. Detweiler to do that, and he didn't
11 do that. So he violated the Court's order. But was it a lawful order, and
12 if it's not a lawful order, it would be a gross breach of this Court's
13 obligation to have him arrested; so I'm concerned.

14 MR. BRAGONJE: Right. Well, I think the --

15 THE COURT: There's ways to cure it, going forward, but that
16 would --

17 MR. BRAGONJE: Sure.

18 THE COURT: -- probably take another month.

19 MR. BRAGONJE: We are willing to do whatever the Court
20 wishes us to do. I am of the opinion that there is no problem with
21 jurisdiction. The basis for incarcerating Mr. Detweiler is his contempt of
22 Court. Ultimately, we're talking about a limited liability company here.
23 A limited liability company cannot be incarcerated, it's a diacritical
24 person, it's an idea.

25 Corporations, any entity, a corporation, or a limited liability

1 company, when they're found to be in contempt of Court must, by logic
2 be -- those orders must be enforced against the actors who motivate the
3 company. And that's why in our most recent order to the Court, that
4 established the contempt of Mr. Detweiler, personally; and this page 15
5 of the Court's signed order --

6 THE COURT: Right.

7 MR. BRAGONJE: -- we go through that and we provide the
8 Court with authorities for the proposition that companies are punished
9 through their representative.

10 So I think the basis for incarcerating Mr. Detweiler is not that
11 he was ever, or ever will be, ever was, or ever will be a named party in
12 these proceedings. The basis for incarcerating him is he is the
13 representative of a company that has thumbed its nose for years at this
14 Court.

15 THE COURT: Right.

16 MR. BRAGONJE: And if these Court's orders are to be
17 enforced, they have to be enforced against the company's
18 representatives. You can't put an idea in jail, you've got to put a
19 company's representatives in jail, and that's why we -- I was sensitive --

20 THE COURT: Right.

21 MR. BRAGONJE: -- to this issue, as well, and so I spent some
22 time --

23 THE COURT: Okay.

24 MR. BRAGONJE: -- researching it.

25 THE COURT: Okay.

1 MR. BRAGONJE: And that's why I put it in -- so it's page 15,
2 this is -- pardon me, here.

3 THE COURT: Okay.

4 MR. BRAGONJE: This is --

5 THE COURT: The last order issued by the Court.

6 MR. BRAGONJE: Yeah. You signed it on the 16th of
7 December. I don't know when it was filed, but probably the 16th or 17th of
8 December; and this is page 15 of that order. And I'm looking at
9 paragraph 23, and I really think this is the law anywhere in our nation. I
10 think it's the law in Nevada, I think it's the law in Hawaii, the law in
11 Florida --

12 THE COURT: Okay. Okay.

13 MR. BRAGONJE: -- everywhere.

14 THE COURT: Okay.

15 MR. BRAGONJE: "The officers or agents of a company are
16 guilty of a contempt if, and they may be attached and
17 punished therefore. Thus corporate officers, or corporate
18 agents are punishable for contempt, where they have
19 knowledge or notice of an order directed to the company."

20 Which Mr. Detweiler certainly had, "and they are responsible
21 for the company's violation thereof."

22 THE COURT: What's the cite to that?

23 MR. BRAGONJE: So this is -- that is, *In re Waters of Humbolt*
24 *River*, that's 118 Nev. 903.

25 THE COURT: Brandon, can you pull that for me, please, 118

1 Nev. 903. Does it reference a statute?

2 MR. BRAGONJE: No. And I've got some other citations in
3 that same paragraph.

4 THE COURT: What's your position on whether I would --

5 MR. BRAGONJE: And the following --

6 THE COURT: -- need to give notice to Mr. Detweiler, that the
7 purpose of the evidentiary hearing is to find out if he is the alter ego of
8 the company; would he need notice of that? Because I know the main
9 point of the evidentiary hearing is, where are the cars, and who owns the
10 cars? I think that was the --

11 MR. BRAGONJE: Right.

12 THE COURT: -- expressed purpose of the evidentiary
13 hearing.

14 MR. BRAGONJE: Right. No, I don't think --

15 THE COURT: What about an alter ego?

16 MR. BRAGONJE: I don't think that's a necessary -- alter ego
17 is never anything the bank asked for. We're not asking for a ruling, that
18 Mr. Detweiler is the same thing as Harry Hildibrand. I think the basis for
19 the contempt order, and therefore the warrant for his arrest, is that he
20 was the only managing member. He testified to that in two places. He
21 was in front --

22 THE COURT: He did, right.

23 MR. BRAGONJE: He was in front of this Court and he said
24 that, and then in the bankruptcy proceedings he said, in effect, I'm
25 paraphrasing, "I'm the guy, I get stuff done for Harry Hildibrand." So the

1 idea of holding him in contempt, is that we've already got Mr. Foust, he
2 won't turn over the cars. And then we got Harry Hildibrand, and they
3 refused to obey the Court's orders. And then you've got Mr. Detweiler,
4 who says, I'm the guy, I am Harry Hildibrand, I'm the managing member.
5 If the Court's orders are to be enforced there's got to be a force against a
6 representative.

7 THE COURT: That was my thinking --

8 MR. BRAGONJE: Yeah.

9 THE COURT: -- and then I took another look. No, I mean,
10 back to the geniuses of the authority --

11 MR. BRAGONJE: Oh.

12 THE COURT: -- which is NRS 31.100.

13 MR. BRAGONJE: Oh.

14 THE COURT: And that one says, I mean, to summarize, I'm
15 going to give it to you in a second.

16 MR. BRAGONJE: Okay. Thank you.

17 THE COURT: It basically says, if you have a person, and I
18 think you're interpreting "person" to be broad enough to include the LLC
19 and its controlling entities --

20 MR. BRAGONJE: Sure.

21 THE COURT: -- right? But it says, if there is a person that
22 you believe, or have reason to believe, controls the property that you're
23 seeking to obtain. So if you have a person that you reasonably believe
24 has the property, then you may subpoena that person to come forward
25 and be examined; and then, the Court may issue such orders as may be

1 just, with respect to the property.

2 So I think he was a person, if you --

3 MR. BRAGONJE: Right.

4 THE COURT: -- interpret it broadly, consistent with NRS
5 118.903.

6 MR. BRAGONJE: Uh-huh.

7 THE COURT: And it was believed that he had control, all
8 right, and he did attend an evidentiary hearing.

9 MR. BRAGONJE: Right.

10 THE COURT: And the Court issued an order that it thought
11 was just, and he didn't comply with that order.

12 MR. BRAGONJE: Right.

13 THE COURT: The only thing missing, I'm sure as you
14 noticed, is there was no service of the actual subpoena on him --

15 MR. BRAGONJE: Right.

16 THE COURT: -- which I think is the mechanism to officially
17 obtain jurisdiction, where he's -- where he didn't voluntarily appear, and
18 is not named as a party, and wasn't served with a -- and not served with
19 a summons and complaint.

20 MR. BRAGONJE: Yeah.

21 THE COURT: Just look at this, because --

22 MR. BRAGONJE: Yeah. Thank you.

23 THE COURT: And I don't think that interpretation is
24 inconsistent with the authority you just apprised the Court.

25 MR. BRAGONJE: I agree.

1 THE COURT: Believe me --

2 MR. BRAGONJE: I agree.

3 THE COURT: I don't want to have to revisit this issue if I
4 don't have to.

5 MR. BRAGONJE: No, I understand.

6 THE COURT: But I don't want to further delay the
7 proceedings where the Court has found that your client is entitled to the
8 cars.

9 MR. BRAGONJE: Right.

10 THE COURT: That there's been obstruction in you getting the
11 information that you need as to who owns them, and obstruction in you
12 locating the cars, and violation of the Court's orders.

13 MR. BRAGONJE: Right.

14 THE COURT: I agree with you on all of that.

15 MR. BRAGONJE: Thank you. Yes.

16 THE COURT: What I'm not sure, is if my order gave valid
17 notice to Mr. Detweiler, that the Court was entertaining jurisdiction over
18 him, and I'm not sure, under these facts, if this Court ever actually had
19 personal jurisdiction over him, aside from any --

20 MR. BRAGONJE: Yeah.

21 THE COURT: -- jurisdiction I had over Harry Hildibrand.

22 MR. BRAGONJE: I see what you're saying. I see what you're
23 saying.

24 THE COURT: So I --

25 MR. BRAGONJE: I --

1 THE COURT: And I know you respect the Court's analysis
2 here, and --

3 MR. BRAGONJE: Yes.

4 THE COURT: -- you've done such a good job in the various
5 steps you've taken, with this one thing, and I went back and looked
6 through the record, and I don't think I'm misstating the facts, but if I am, I
7 need to know.

8 MR. BRAGONJE: I don't think you are misstating the facts. I
9 don't believe Mr. Detweiler received a subpoena. My position is, I don't
10 think that's necessary. I mean, a subpoena --

11 THE COURT: I know.

12 MR. BRAGONJE: A subpoena is for a third party to a lawsuit.
13 Mr. Detweiler, he appeared in a representative capacity. He
14 was the managing member of Harry Hildibrand. We didn't need to send
15 a subpoena to Harry Hildibrand. Harry Hildibrand was already a party,
16 and we issued an order to show cause. That order to show cause was
17 served on Harry Hildibrand as an entity, and it was served on Mr.
18 Detweiler. It wasn't a subpoena, but it was an order to show cause.

19 THE COURT: Yeah. Can you get me Chapter 31 of the
20 statutes?

21 MR. BRAGONJE: So that's my position. Is, yeah, I think if
22 you had a person who was a third party to a lawsuit that -- you know, say
23 you just had some stranger that for some reason stole property that
24 belonged to the Debtor, then you might have to --

25 THE COURT: Right, right.

1 MR. BRAGONJE: --- send them a subpoena, because they're
2 a third party. In this case Harry Hildibrand was never -- they were never
3 a third -- well --

4 THE COURT: Well, they were, but they came in.

5 MR. BRAGONJE: They came in. They were a party,
6 effectively became a named party in the lawsuit, because they
7 intervened. What they are is intervening.

8 THE COURT: It think it was at one part, Marquis Auerbach --

9 MR. BRAGONJE: Yes.

10 THE COURT: -- and then it was Maysher [phonetic], who
11 stepped in, arguing at one point that there was improper procedure to
12 execute on the cars, supposedly belonging to Harry Hildibrand, and then
13 you did an additional attachment writ --

14 MR. BRAGONJE: Right.

15 THE COURT: -- levy procedure to --

16 MR. BRAGONJE: And then they admitted there was
17 jurisdiction. They, on the record they said, "Yeah, we're properly in the
18 case," so --

19 THE COURT: Give me one more moment to --

20 MR. BRAGONJE: Yes. Thank you.

21 [Pause]

22 THE COURT: I remember Mr. Detweiler was doing some
23 work in the Bahamas, or something like that?

24 MR. BRAGONJE: Yeah. I don't even know if he's still in the
25 country, to be honest with you.

1 THE COURT: Well, I believe --

2 MR. BRAGONJE: Yeah, Honduras.

3 THE COURT: -- there was an effort to serve him with a
4 warrant, right --

5 MR. BRAGONJE: We did.

6 THE COURT: -- at his house?

7 MR. BRAGONJE: Well, I don't -- no, no, no.

8 THE COURT: And I don't know what contact, if any, was
9 made with him.

10 MR. BRAGONJE: I don't believe any contact was made.
11 Certainly as soon as Your Honor signed the warrant, I approached a
12 constable and said, let's try and find if he's still around. But I don't
13 believe they ever got to that point of actually making contact. I think it all
14 stopped in their office. But, yes, we did move expeditiously once Your
15 Honor signed the warrant, for sure, yeah.

16 THE COURT: Give me a moment just to --

17 MR. BRAGONJE: No problem.

18 THE COURT: -- study something --

19 MR. BRAGONJE: No problem, yes.

20 THE COURT: -- in light of -- you can sit down if you want,
21 you've been standing awhile.

22 MR. BRAGONJE: I'm going to look up Chapter 31, too.

23 THE COURT: Yeah. What I'm looking at now, if I were to
24 vacate the warrant --

25 MR. BRAGONJE: Uh-huh.

1 THE COURT: -- and require that you serve a subpoena,
2 pursuant to 31.100, how quickly can you serve it, and then what is the
3 next step, and how quickly would you be able to do the next step?

4 MR. BRAGONJE: Yeah. That means --

5 THE COURT: And I know you don't need any more steps,
6 because your client must be very frustrated, and I --

7 MR. BRAGONJE: Well, we have to do Your Honor's order,
8 we're here to do that, we're here to be cooperative; we want to do the
9 right thing as well, and this is complicated.

10 THE COURT: And I know you think you have done the right
11 thing, and I could see why.

12 MR. BRAGONJE: Uh-huh. I just don't know what a next
13 step would be. I mean, if we were to serve him with a subpoena, what
14 would we do after that? We've already had a contempt trial, in which he
15 appeared twice and gave testimony. It's not as if he didn't have notice.
16 Your Honor warned him many times that he was under threat of going to
17 jail. He expressed concern about that. He was certainly aware; we could
18 look back at the record.

19 So I don't know what else we would do. We could serve him
20 with a subpoena --

21 THE COURT: Yeah.

22 MR. BRAGONJE: -- and have him come in, but then to what
23 effect? I mean, he won't change his testimony, it's already set in stone.

24 THE COURT: I suppose we could ask him, is there any
25 additional information that you would provide to the Court, besides your

1 affidavit --

2 MR. BRAGONJE: We could always do that.

3 THE COURT: -- and what you've already testified to.

4 MR. BRAGONJE: Right.

5 THE COURT: And he would probably say, no.

6 MR. BRAGONJE: Right.

7 THE COURT: And then at that point -- well, let me -- let's
8 read this together.

9 MR. BRAGONJE: Yeah.

10 [Pause]

11 THE COURT: Well, I suppose under 31.100, if a subpoena
12 served and he appeared and had nothing new to say, on the very same
13 day, because it says I could do what is just, under the totality of the
14 circumstances I could issue the order --

15 MR. BRAGONJE: Uh-huh.

16 THE COURT: -- that he immediately turns over the property,
17 as a prior order, and give him a week to do so, and at the end of that
18 week, then I could hold him in contempt.

19 MR. BRAGONJE: Yes.

20 THE COURT: And issue the warrant. So I guess it's all
21 contingent upon how quickly you could get a subpoena served on him.

22 MR. BRAGONJE: And I don't know. I don't know where he
23 is. My --

24 THE COURT: I mean, I suppose if you could serve him with a
25 warrant you could serve him with a subpoena?

1 MR. BRAGONJE: Yeah. I don't have contact with him. I've
2 deposed him once; I've examined him in here Court. Other than that I
3 don't know his whereabouts.

4 THE COURT: Did you have an address you were trying to
5 serve him on?

6 MR. BRAGONJE: I got is address when I deposed him, I
7 asked for that, so we were going to use that address to try to serve him.

8 THE COURT: Once you get him served with a subpoena the
9 Court has personal jurisdiction, and the Court can issue any order that is
10 just, including --

11 MR. BRAGONJE: Uh-huh.

12 THE COURT: -- you know, having him turn over the property
13 within a week, because he's already had notice. And then if he doesn't
14 the Court can immediately issue an order, consistent with the exact same
15 order I've issued --

16 MR. BRAGONJE: Right.

17 THE COURT: Well, not a contempt order -- well, yeah, it
18 would be a contempt order.

19 MR. BRAGONJE: Right.

20 THE COURT: It would be the same exact order --

21 MR. BRAGONJE: Uh-huh.

22 THE COURT: -- that I issued before.

23 MR. BRAGONJE: We thank the Court --

24 THE COURT: I feel comfortable doing that, Mr. Bragonje.

25 MR. BRAGONJE: Yeah.

1 THE COURT: Notwithstanding -- I'm not saying your
2 interpretation is wrong --

3 MR. BRAGONJE: Uh-huh, okay.

4 THE COURT: -- and you can tell your client that the Court
5 said that, that the Court, you know, believes there's a high probability
6 that your interpretation is correct. But the Court has a 20 percent
7 concern that perhaps we need to button this up a little bit more.

8 MR. BRAGONJE: Well, we thank the Court for its concern,
9 and its analysis is not something that we rebuff. I am just looking again
10 at my own order, if Your Honor will bear with me. Your Honor is citing
11 to Section 31, but the contempt powers that we proceeded under, were
12 under Chapter 22.

13 THE COURT: Right. But Chapter 22 allows the Court to issue
14 an order of contempt for violation of a court order.

15 MR. BRAGONJE: Right.

16 THE COURT: And so that gets us back to, when the Court
17 issued that January 9th, 2019 order, did the Court have jurisdiction to do
18 that?

19 MR. BRAGONJE: Right, right, right.

20 THE COURT: So, yes, I could hold him in contempt for
21 violating an invalid order, but he would be able on a motion to quash
22 that contempt.

23 MR. BRAGONJE: Uh-huh.

24 THE COURT: And, frankly, if the court order is invalid
25 because I didn't have jurisdiction, I don't want him to have to go through

1 the trouble of --

2 MR. BRAGONJE: Uh-huh.

3 THE COURT: -- questioning a contempt order, if the
4 contempt order is invalid.

5 MR. BRAGONJE: Uh-huh. Okay.

6 THE COURT: In fact, I don't want him to bring an action
7 against you for, you know, --

8 MR. BRAGONJE: False imprisonment.

9 THE COURT: -- abuse of process --

10 MR. BRAGONJE: Yeah. Yeah. Right.

11 THE COURT: -- or false imprisonment.

12 MR. BRAGONJE: Right.

13 THE COURT: Or attorney's fees. I have to be mindful of that,
14 as well.

15 MR. BRAGONJE: Right. So --

16 THE COURT: So --

17 MR. BRAGONJE: Okay. I think I understand --

18 THE COURT: Yeah. What I'm going to do --

19 MR. BRAGONJE: I think I understand --

20 THE COURT: I hate to do this.

21 MR. BRAGONJE: -- what the Court is saying.

22 THE COURT: After all the time and trouble, and the difficulty
23 that might be attended, tracking him down again, I'm going to vacate the
24 existing warrant, vacate the order of contempt. Grant you leave of Court
25 to serve a subpoena on him --

1 MR. BRAGONJE: To appear here?

2 THE COURT: A subpoena for him to appear before this
3 Court, and to give deposition, or explanation to this Court, under oath,
4 as to why, as to the matters stated within 31.100, which includes whether
5 he possesses the subject property, or the subject property as under his
6 control, and whether he's entitled to any credits as to such property that
7 may belong to the Defendant.

8 MR. BRAGONJE: Okay. I think I understand.

9 THE COURT: Just track the language, you could probably
10 say it better than me.

11 MR. BRAGONJE: Uh-huh.

12 THE COURT: I would include in there, and whether he is the
13 alter ego of Harry Hildibrand.

14 MR. BRAGONJE: Okay.

15 THE COURT: And/or whether he should be bound to the
16 same extent that Harry Hildibrand has provided --

17 MR. BRAGONJE: Right, right, right.

18 THE COURT: -- under 118. I don't know that you need all of
19 that, you probably just need to track the statute. I'll leave that part to
20 your discretion.

21 MR. BRAGONJE: Okay.

22 THE COURT: The Court would be satisfied with you just
23 tracking the beginning sentence --

24 MR. BRAGONJE: Uh-huh, okay.

25 THE COURT: -- of the statute.

1 MR. BRAGONJE: I think I understand.

2 THE COURT: And maybe you want to put in there, that at
3 such hearing the Court will incorporate by reference all other testimony
4 that he has provided to this Court --

5 MR. BRAGONJE: In the past.

6 THE COURT: -- in the past and hear any additional testimony
7 that he would like to give.

8 MR. BRAGONJE: Okay.

9 THE COURT: Something to that effect.

10 MR. BRAGONJE: I think I understand.

11 THE COURT: It incorporates every -- but it gives him notice
12 that we're holding him personally responsible, and I'm giving him an
13 opportunity, just to speak his peace, if there's anything more he wants to
14 say.

15 MR. BRAGONJE: Okay.

16 THE COURT: And put in there, because I can issue such
17 order, as the Court deems just.

18 MR. BRAGONJE: Uh-huh.

19 THE COURT: Put in there that if he fails to appear the Court
20 will hold him in civil contempt of court and issue a warrant for his arrest.
21 Put that in there too.

22 MR. BRAGONJE: Okay.

23 THE COURT: I hope I said that clearly, so that --

24 MR. BRAGONJE: I think I understand.

25 THE COURT: -- you understand what it is.

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume II - Part 2; Pages MSA00376-MSA00500)

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TABLE OF CONTENTS
(*Alphabetically*)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518- MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445- MSA00447	1/28/2020	Notice of Appearance
I	MSA00071- MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001- MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766- MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384- MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473- MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719- MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

1 MR. BRAGONJE: I think I understand.

2 THE COURT: Maybe you want to prepare it for the Court's
3 signature. As soon as I get it, you can call up the law clerk and say, hey,
4 it's there, can we get it signed right away.

5 MR. BRAGONJE: Uh-huh. Uh-huh.

6 THE COURT: You can probably have this to me tomorrow,
7 the day before Christmas and get it to your process server, and get it --

8 MR. BRAGONJE: Yeah. We --

9 THE COURT: -- served on him right away.

10 MR. BRAGONJE: So --

11 THE COURT: Which is what you're trying to do too.

12 MR. BRAGONJE: Right.

13 THE COURT: All this does -- and tell him to come here in ten
14 days. All this does --

15 MR. BRAGONJE: Okay.

16 THE COURT: -- is delay your warrant by ten days.

17 MR. BRAGONJE: Oh, I think I understand Your Honor is
18 making the hard choices, and that's why you wear the robe, and we
19 stand up when you come into the room; so we respect that. We thank
20 Your Honor and we will be glad to do that.

21 THE COURT: To the extent you can simplify this summons
22 too, that would be fine.

23 MR. BRAGONJE: Yeah.

24 THE COURT: Maybe you can call it -- call it maybe an order --
25 I guess I can't do an order. You call it a summons to appear for the

1 purpose -- just summons to appear, and then in the body you'd explain
2 whatever you need to explain.

3 MR. BRAGONJE: Uh-huh.

4 THE COURT: Put to Mr. Detweiler, you're hereby
5 commanded to appear, date and time, in this matter, for the following
6 reasons. And then set it forth, failure to do so, contempt of Court, you
7 know, bench warrant. I think it's probably a 1 to 2-page document, right?

8 MR. BRAGONJE: Oh, yeah, yeah. I think it's pretty simply.
9 Although, probably it ought to contain that language -- it ought to be
10 titled, I think maybe a subpoena and/or summons or something like that,
11 because we probably want to track the NRS 31.100 language about the --

12 THE COURT: 31.100 says --

13 MR. BRAGONJE: -- subpoena. It speaks in terms of the
14 subpoena.

15 THE COURT: Subpoena, right.

16 MR. BRAGONJE: Not a summons.

17 THE COURT: Right, that's what I'm talking about, use
18 "subpoena" --

19 MR. BRAGONJE: Okay.

20 THE COURT: And whatever other additional language that
21 you think --

22 MR. BRAGONJE: Yeah.

23 THE COURT: -- that you might need, based on your analysis.

24 MR. BRAGONJE: Okay.

25 THE COURT: I know you have a different interpretation. I

1 have to, when you're trying to arrest somebody for a million-dollar debt,
2 in a situation like this I want to be extra cautious.

3 MR. BRAGONJE: Thank you, Your Honor, that's fine.

4 THE COURT: So thank you for being understanding.

5 MR. BRAGONJE: That's fine. Does Your Honor wish to have
6 this back, here?

7 THE COURT: Yes, please.

8 MR. BRAGONJE: May I approach?

9 THE COURT: Yes. All right. Thank you very much.

10 MR. BRAGONJE: You're welcome.

11 I have one other unrelated things --

12 THE COURT: Yeah. Have you located Mr. Foust?

13 MR. BRAGONJE: No. That's what I was going to ask about.

14 So I think the Court had set a status conference for the 30th, on Mr.

15 Foust. A warrant --

16 THE COURT: Oh, because I thought he would be arrested by
17 then --

18 MR. BRAGONJE: Right.

19 THE COURT: -- and that was just a notice to the Court that
20 we might need to make sure he's not locked up somewhere.

21 MR. BRAGONJE: Right.

22 THE COURT: So --

23 MR. BRAGONJE: No, we haven't found him. You know,
24 frankly, it looks like he's not in Nevada. I mean, perhaps not surprisingly,
25 he's kind of fled the --

1 THE COURT: There's a way you could perfect this in other
2 States.

3 MR. BRAGONJE: Well, we've looked into that. It's very
4 difficult. I think, unlike a criminal warrant, where States will cooperate
5 and sort of effectively extradite someone, in a civil matter we've talked
6 through, working through our law enforcement here in Nevada, they
7 have reached out too -- we think he's just in Los Angeles, I don't think
8 he's far away, but the California people, and I don't know that it's
9 different anywhere else, they really don't -- they don't cooperate --

10 THE COURT: I think you want civil.

11 MR. BRAGONJE: -- for civil extradition.

12 THE COURT: I think you want to serve civil. You can arrest
13 him and hold him until such time as the property is turned over.

14 MR. BRAGONJE: Oh, certainly, yeah.

15 THE COURT: Criminal it's just a punishment and then he's
16 out.

17 MR. BRAGONJE: Oh, yes. No, no, no. I don't mean to
18 suggest that this is a criminal contempt --

19 THE COURT: Okay.

20 MR. BRAGONJE: But my point --

21 THE COURT: But the procedure is easier?

22 MR. BRAGONJE: My point in mentioning that, is just that we
23 haven't been able to find him. We haven't been able to get him, even
24 though he's in LA, because he's not in within the boundaries of Nevada.
25 So I'd like the warrant and that order to remain outstanding beyond the

1 30th; that's what I'm asking.

2 THE COURT: Absolutely.

3 MR. BRAGONJE: Okay.

4 THE COURT: The warrant remains effective, let's say for
5 another six months.

6 MR. BRAGONJE: Okay.

7 THE COURT: And/or until further order of this Court.

8 MR. BRAGONJE: Okay. And then the --

9 THE COURT: You could put in there, the Court orders that
10 this warrant is effective for any jurisdiction with the United states,
11 provided appropriate compliance is made with respect to the laws of that
12 jurisdiction.

13 MR. BRAGONJE: Uh-huh. Uh-huh.

14 THE COURT: If you want to get a revised warrant, if you
15 think that's necessary at some point, submit it.

16 MR. BRAGONJE: Okay, yeah. Thank you for the offer. I
17 don't know that that would make a difference. So I think what we're
18 going to try and do, is just to keep looking for him. And, you know, I
19 don't think he's going to stay out of Nevada forever. And I think when he
20 comes back --

21 THE COURT: Yeah.

22 MR. BRAGONJE: -- we'll try and find him.

23 THE COURT: Have you made any UCC filings, with respect to
24 these cars, so in the event that they're sold, there's --

25 MR. BRAGONJE: Not --

1 THE COURT: And the reason I ask is not because I'm trying
2 to help you, I'm trying to make sure that we followed, you know, proper
3 attachment procedures to minimize the risk of the individual being
4 arrested.

5 MR. BRAGONJE: Right. No. No, we have not.

6 THE COURT: All right. I'll let you --

7 MR. BRAGONJE: We'll look into that.

8 THE COURT: -- to your own devices.

9 MR. BRAGONJE: Yeah. We'll look into that.

10 So then am I excused from appearing on the 30th?

11 THE COURT: You're excused from appearing on the 30th. All
12 I would ask is if he is arrested, to your knowledge, contact my law clerk
13 and let him know that --

14 MR. BRAGONJE: You bet.

15 THE COURT: -- CCDC is pretty good at letting the department
16 know --

17 MR. BRAGONJE: Okay.

18 THE COURT: -- but I didn't want it to be missed.

19 MR. BRAGONJE: Okay.

20 THE COURT: All right. Off the record.

21 [Court and Clerk confer]

22 THE COURT: Vacating the status check. I had -- and we're
23 vacating the warrant, recalling and vacating the warrant. Let your
24 process server know --

25 MR. BRAGONJE: Yeah.

1 THE COURT: -- that in place of the warrant you're serving the
2 subpoena or summons.

3 MR. BRAGONJE: I mean, if it is a subpoena, does Your
4 Honor even need to sign it? I mean, normally just attorneys sign the
5 subpoenas. I'm happy to have Your Honor sign it. Maybe that's best in
6 this situation, if Your Honor signs it.

7 THE COURT: You want to put me on the hook, huh?

8 MR. BRAGONJE: I'm happy to sign.

9 THE COURT: I'll sign it. Get it to me, and the Court will say,
10 you know, approved, or it is so ordered.

11 MR. BRAGONJE: Uh-huh. Right, right.

12 THE COURT: Whatever.

13 MR. BRAGONJE: Okay.

14 THE COURT: Something like that, okay?

15 MR. BRAGONJE: It may be a few days, just with the holiday
16 and everything like that, I've got to talk with my client, so --

17 THE COURT: Jordan Ross, that's your --

18 MR. BRAGONJE: That's on us, not on the Court.

19 THE COURT: Your process server is Jordan Ross.

20 MR. BRAGONJE: Correct, yeah.

21 THE COURT: And perhaps you want something to him, in
22 writing, indicating that the warrant has been permanently recalled.

23 MR. BRAGONJE: Uh-huh.

24 THE COURT: Okay. Off the record.

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MR. BRAGONJE: Thank you, Your Honor.

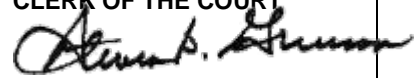
THE COURT: Thank you, Mr. Bragonje.

[Proceedings adjourned at 10:09 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



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12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 BAKER BOYER NATIONAL BANK, a
15 Washington corporation,

16 Plaintiff/Judgment Creditor,

17 vs.

18 JAMES PATTERSON FOUST, JR., also
19 known as James P. Foust, Jr., individually, and
20 his marital community, if any,

21 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**NOTICE OF SERVING SUBPOENA ON
EDWARD NEWLIN DETWILER**

22 Please take notice that on January 16, 2020, Edward Newlin Detwiler was served with a
23 Subpoena. Subpoena and Affidavit of Service is attached herewith.

24 DATED this 22nd day of January, 2020.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26 By: /s/ John E. Bragonje

27 John E. Bragonje
28 State Bar No. 9519
jbragonje@lrrc.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiff/Judgment Creditor Baker
Boyer National Bank*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled “**Notice of Serving Subpoena on Edward Newlin Detwiler**”
4 through the Court’s electronic filing system on all registered parties in this matter.

5 Michael D. Mazur, Esq.
6 **MAZUR & BROOKS**
7 **A PROFESSIONAL CORPORATION**
8 2355 Red Rock Street, Suite 100
9 Las Vegas, NV 89146
10 *Attorneys for Defendant James Patterson Foust, Jr.*

11 Via Email to:

12 Brenoch Wirthlin
13 **KOLESAR & LEATHAM**
14 400 S. Rampart Blvd., Ste. 400
15 Las Vegas, NV 89145
16 bwirthlin@knevada.com

17 DATED this 22nd day of January, 2020.

18 /s/ Luz Horvath

19 An employee of Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 **CC03**

2 John E. Bragonje
3 State Bar No. 9519
4 E-mail: jbragonje@lrrc.com
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6 3993 Howard Hughes Pkwy, Suite 600
7 Las Vegas, NV 89169-5996
8 Tel: 702.949.8200
9 Fax: 702.949.8398

10 *Attorneys for Plaintiff Baker Boyer National Bank*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 BAKER BOYER NATIONAL BANK, a
14 Washington corporation,

15 Plaintiff/Judgment Creditor,

16 vs.

17 JAMES PATTERSON FOUST, JR., also
18 known as James P. Foust, Jr., individually, and
19 his marital community, if any,

20 Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

SUBPOENA – CIVIL

☒ **REGULAR** ☐ **DUCES TECUM**

21 **THE STATE OF NEVADA SENDS GREETINGS TO:**

22 EDWARD N. DETWILER

23 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
24 aside, you appear and attend on the 29th day of January, 2020, at the hour of 9:00 A.M. in
25 Department No. II of the District Court, Clark County, Nevada. The address where you are
26 required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your
27 attendance is required to give testimony and/or to produce and permit inspection and copying of
28 designated books, documents or tangible things in your possession, custody or control, or to
permit inspection of premises.

You are required to appear pursuant to NRS 31.100 and to give testimony and be examined
under oath concerning the following matters: (1) your status as a person owing debts to the
defendant and judgment debtor James Patterson Foust Jr. or having in your possession or under

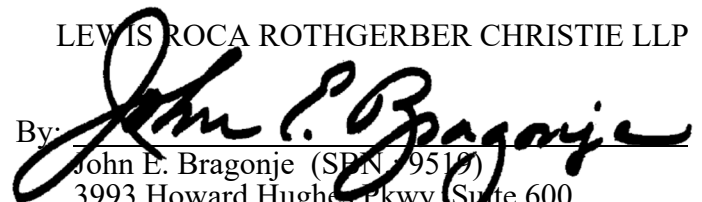
MSA00386

1 your control any credits or other personal property belonging to the defendant and judgment
2 debtor James Patterson Foust Jr.; (2) whether you are an alter ego of Harry Hildibrand, LLC; (3)
3 any updates or additions to the testimony you previously gave before this Court on April 1, April
4 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause
5 Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings
6 of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and (4) any other
7 matter properly within the scope of NRS 31.100.

8 **CONTEMPT:** Your failure to appear will place you at risk of civil contempt. Failure by
9 any person without adequate excuse to obey a subpoena served upon that person may be deemed a
10 contempt of court. NRCP 45(e). If you fail to attend, you may be liable to pay \$100, plus all
11 damages caused by your failure to appear, and may be committed to jail. NRS 50.195, 50.205.
12 Additionally, the court may issue a warrant for your arrest pursuant to its civil contempt powers.
13 NRS 22.010(3); NRS 1.210(2); NRS 21.340. Please see Exhibit "A" attached hereto for
14 information regarding the rights of the person subject to this Subpoena.

15
16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By:


18 John E. Bragonje (SPN 9519)
3993 Howard Hughes Pkwy, Suite 600
19 Las Vegas, NV 89169-5996

20 *Attorneys for Plaintiff Baker Boyer National Bank*
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

107427712_1

1 (1) A person responding to a subpoena to produce documents shall produce them as
2 they are kept in the usual course of business or shall organize and label them to correspond with
3 the categories in the demand.
4 (2) When information subject to a subpoena is withheld on a claim that it is privileged
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents, communications, or things not
7 produced that is sufficient to enable the demanding party to contest the claim.
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1 **AFFT**

2 Lewis, Roca, Rothgerber, Christie LLP

3 John E. Bragonje

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

State Bar No.: 9519

Attorney(s) for: Plaintiff(s)


**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: **A-17-760779-F**Dept. No.: **II**Date: **January 29, 2020**Time: **9:00AM****Baker Boyer National Bank, a Washington corporation****vs*****Plaintiff(s)/Judgment Creditor*****James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any*****Defendant(s)/Judgment Debtor*****AFFIDAVIT OF SERVICE**

I, **Leonard Jay Hirschhorn**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received the **Subpoena - Civil: Check for Witness Fee \$40.00**, on the **16th** day of **January, 2020** and served the same on the **17th** day of **January, 2020** at **11:23am** by: delivering a copy to the witness **Edward N. Detwiler** by leaving copies with **Edward N. Detwiler**, at **Kolesar & Leatham, 400 S. Rampart Blvd. #400, Las Vegas, NV 89145**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and correct.
Executed this 17th day of January 2020


Affiant – **Leonard Jay Hirschhorn** #: **R-2018-03419**
Legal Process Service, License # 604
Work Order # 20023800390



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
Time: 9:00AM

Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Subpoena - Civil; Check for Witness Fee \$40.00 on the 6th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: 817 Windhook St., Las Vegas, NV 89144, as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/06/2020	6:25pm	817 Windhook St.	Address is a 2 story house in community of Sycamore Ridge. There were some interior lights on but no answer and/or any visible activity.
01/08/2020	8:17am	817 Windhook St.	There was no change from previous attempt. Affiant left a delivery notice.
01/09/2020	12:40pm	817 Windhook St.	Delivery notice was still posted. There was no answer and/or any activity.
01/11/2020	11:17am	11268 Rising Ridge	Affiant spoke with male resident who said that subject does not live there.

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and correct.
Executed this 16th day of January 2020

Affiant – Leonard Jay Hirschhorn #: R-2018-03419
Legal Process Service, License # 604
Work Order No 20015A00391





Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255



AFFT
 Lewis, Roca, Rothgerber, Christie LLP
 John E. Bragonje
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas , NV 89169
 State Bar No.: 9519
 Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

Date: January 15, 2020
 Time: 9:00AM

Baker Boyer National Bank, a Washington corporation
vs **Plaintiff(s)/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually, and his marital community, if any
Defendant(s)/Judgment Debtor

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Subpoena - Civil: Check for Witness Fee \$40.00 on the 13th day of January, 2020 and attempted to effect service on Edward N. Detwiler at the following: Coldwell Banker Premier Realy 10120 S. Eastern Ave., #300, Henderson, NV 89052. Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
01/13/2020	11:55am	As above	Affiant spoke with receptionist, Krissy. She advised that subject was not in the office and said to check with Coldwell Banker at 8290 W. Sahara Ave. A subsequent call was made to Coldwell Banker on W. Sahara and subject was not in the office, 702 817 9500.

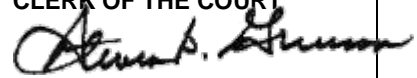
I declare under penalty of perjury under the law of the state of Nevada that the foregoing is true and correct.
 Executed this 15th day of January 2020

Jennifer Lynn Jones #R-2018-02711

Legal Process Service License # 604

WorkOrderNo **MSA00392**





BREF

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**BRIEF IN SUPPORT OF CONTINUING
REQUEST TO HOLD EDWARD N.
DETWILER IN CIVIL CONTEMPT OF
COURT**

Date: January 31, 2020

Time: 8:30 a.m.

Introduction

The plaintiff and judgment creditor Baker Boyer National Bank (the “Bank”) asks that this Court adjudge Edward N. Detwiler in contempt of Court and issue a warrant for his arrest. The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January 31, 2020. This remedy is warranted because Mr. Detwiler is the person that controls Harry Hildibrand, LLC (“HH”), and HH has—for more than one year now—defied this Court’s repeated orders to surrender a collection of vehicles to satisfy the underlying judgment.

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Relevant Background

This matter has been pending since August 31, 2017. More than one year ago—on January 9, 2019—the Court issued its Findings of Fact, Conclusions of Law, and Final Judgment (the “Order”), resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust and third party claimant HH. The Order required “Mr. Foust and HH and any of their respective agents, employees, or affiliates [] *including without limitation Mr. Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage all cars identified in Exhibits A and B, with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH.” (Order, Conclusion of Law ¶ 29 (emphasis supplied), on file herein.)

Mr. Detwiler has refused to obey the Order. As a consequence, this Court conducted an evidentiary hearing pursuant to its contempt powers. Pursuant to an order to show cause, Mr. Detwiler testified during the May 17 and May 21, 2019 contempt trial. (See transcripts of testimony filed herein on 6/12/19, and incorporated by this reference.) After considering the extensive documentary evidence and testimony, this Court issued the following minute order:

The Court GRANTS Plaintiff/Judgment Creditor’s Motion to hold Mr. Detwiler and Harry Hildebrand in Civil Contempt of Court. At the Evidentiary Hearing on this matter Mr. Detwiler and Harry Hildebrand both had the ability to comply with this Court’s prior Order to surrender and turnover the subject cars, but intentionally and knowingly failed to comply, without justification. Mr. Detwiler argued that he was merely a figure-head of Harry Hildebrand, LLC, but that argument was clearly negated by the evidence; at all relevant times Mr. Detwiler was the controlling Manager of Harry Hildebrand, LLC, and as such accepted and possessed the responsibility to control the assets of Harry Hildebrand, LLC, including its classic cars. The Court ORDERS that a Warrant of Commitment (Arrest) be issued as to Mr. Detwiler, commanding his confinement until such time as he surrenders that sub-set of the 20 cars that he swore were in the possession, custody, and/or control of Harry Hildebrand LLC at the time of the Court’s turnover Order. Bond shall be required in the amount of \$100,000.00. Further, pursuant to NRS 22.100, the Court fines Harry Hildebrand LLC \$ 500.00, for its Contempt of Court, and further sanctions Harry Hildebrand and Orders it to pay the total amount of Plaintiff Baker Boyer’s fees and costs incurred in connection with this matter. Baker Boyer shall prepare the Order herein, including appropriate context and authorities, consistent with this Minute Order and the evidence presented at the hearing. Plaintiff shall attach to such Order its Affidavit of Fees and Costs. Plaintiff shall also prepare the Warrant of Commitment against Mr. Detwiler.

(11/19/19 Minute Order, on file herein.)

1 The Bank respectfully reminds the Court of the order it signed on December 16, 2019 to
2 implement this minute entry, a copy of which is attached hereto as Exhibit 1. The Bank asks that
3 the Court consider the order it previously signed (Exhibit 1) as the Bank's continuing argument
4 and summation of the evidence.

5 There is no need for extensive additional testimony or other procedures going forward.
6 This record of Mr. Detwiler's misconduct is extensive. He has given testimony under oath on four
7 occasions: at deposition ordered by this Court (July, 2018); during the Section 341 meeting of
8 creditors during HH's bankruptcy proceeding (August, 2018); at the hearing resolving HH's third
9 party claim under NRS 31.070 (November, 2018); and during the contempt proceedings (May,
10 2019).

11 Given the great volume of testimony that Mr. Detwiler has already offered, the Bank will
12 only examine Mr. Detwiler about a small item of additional information discussed below. It
13 would be inappropriate, moreover, to allow Mr. Detwiler to alter or multiply his prior extensive
14 statements. *See* NRS 50.115(1) ("The judge shall exercise reasonable control over the mode and
15 order of interrogating witnesses and presenting evidence . . . [t]o avoid needless consumption of
16 time."). The Bank has waited too long for justice to be required now, at long last, to revisit Mr.
17 Detwiler's days' worth of previous testimony. *See* NRCP 1 (procedure exists "to secure the just,
18 speedy, and inexpensive determination of every action and proceeding."). As many wise jurists
19 have said, "all things must come to an end, and that includes litigation." *E.g., Lara v. Best Dry*
20 *Cleaners, Inc.*, No. 6:17-CV-99-ORL-28TBS, 2017 WL 11037318, at *3 (M.D. Fla. Aug. 1,
21 2017), report and recommendation adopted, No. 6:17-CV-99-ORL-28TBS, 2017 WL 11037319
22 (M.D. Fla. Sept. 25, 2017). The time for decision is now.

23 **Mr. Detwiler Has Had Repeated Notice and Opportunity to Be Heard**

24 At the hearing on December 23, 2019, this Court expressed an interest that Mr. Detwiler be
25 served a subpoena under NRS 31.100. At the time of the hearing, speaking extemporaneously, the
26 undersigned did not believe Mr. Detwiler had been served with a subpoena. However, with the
27 benefit of the chance to consult the extensive record, we have determined that Mr. Detwiler was
28 indeed served with a subpoena long ago—on June 19, 2018. (*See* Exhibit 2 hereto). Mr. Detwiler

appeared and gave deposition testimony pursuant to this subpoena on July 6, 2018. The subpoena was served through the Court's electronic system upon the law firm then representing Mr. Detwiler, Holland & Hart. (*Id.*) Mr. Detwiler was also served with a *second* subpoena requiring his attendance at the forthcoming hearing. (*See* 1/22/20 Status Report, on file herein.) And most significantly of all, Mr. Detwiler was personally served with an order to appear and show cause why he should not be held in contempt. The service of this Court's order to show cause (Exhibit 3), which identifies Mr. Detwiler by name, was personally served upon him on March 19, 2019 (Exhibit 4). There are no due process defects. Mr. Detwiler has had three separate, independently sufficient instances of notice and an opportunity to be heard.

**Additional Evidence Shows the Close Relationship Between
Messrs. Foust and Detwiler**

Mr. Detwiler has tried to distance himself from Mr. Foust when speaking before this Court. The evidence, as summarized in Exhibit 1, has always been to the contrary. There is more for the Court to consider. Even after all of the hearings and depositions in two states, both men are owners and principals of *active* entities registered with the Nevada Secretary of State that share the same office located at office space 10120 South Eastern Avenue, Henderson:

Entity Name	Officer
JPF ENTERPRISES, LLC	James P Foust, Manager
PSV DEVELOPMENT, LLC	Edward N Detwiler, Managing Member
NAI'A RESORTS LLC	Edward N Detwiler, Manager
DALLAS WEST MANAGEMENT LLC	Edward N Detwiler, Managing Member

The reports from which this table are generated are offered as Exhibit 5.

Conclusion

The Bank respectfully submits that this Court has the authority to commit Mr. Detwiler to prison under NRS Chapter 22, as more particularly described at paragraphs 16 to 25 in the Conclusions of Law of this Court's December 16, 2019 order (Exhibit 1).

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1 The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January
2 31, 2020.

3 DATED this 24th day of January, 2020.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By: /s/ John E. Bragonje

7 John E. Bragonje

8 State Bar No. 9519

9 jbragonje@lrrc.com

10 3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, NV 89169

12 *Attorneys for Plaintiff/Judgment Creditor Baker*
13 *Boyer National Bank*

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Lewis Roca
ROTHGERBER CHRISTIE

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Michael D. Mazur, Esq.
MAZUR & BROOKS
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Attorneys for Defendant James Patterson Foust, Jr.

Brenoch Wirthlin
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 400 S. Rampart Blvd., Ste. 400
 Las Vegas, NV 89145
bwirthlin@klnevada.com

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

ORDR
John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
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Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

ORDER FOR PUNISHMENT OF
CONTEMPT BY HARRY
HILDIBRAND, LLC AND EDWARD N.
DETWILER, ITS MANAGER

This matter having come on for an evidentiary hearing before the Honorable Richard Scotti on April 1, April 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; this Court having previously entered an order of contempt against judgment debtor James P. Foust, Jr.; third party claimant Harry Hildibrand, LLC ("HH") having been represented by Holland & Hart LLP before its withdrawal; Edward Newlin Detwiler, the manager of HH having appeared and offered extensive testimony; defendant and judgement debtor Mr. Foust having been represented by Michael D. Mazur of Mazur & Brooks; plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; the Court having read and considered all relevant pleadings and papers

1 on file in the above-captioned case, having reviewed the documents admitted into evidence and
2 briefs and points of authorities filed by the parties, and having heard and carefully considered the
3 testimony of the witnesses called to testify, the Court hereby enters the following facts and states
4 the following conclusions of law:

5 INTRODUCTION

6 Mr. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his
7 refusal to repay the loan, the Bank obtained a judgment in the original amount of \$933,616.30,
8 including fees and costs, against Mr. Foust in the Superior Court of Washington in and for Walla
9 Walla County (the "Judgment"). The Bank domesticated the Judgment in the State of Nevada on
10 August 31, 2017.

11 When he applied for the loan that created the obligation that, when breached, led to the
12 Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
13 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9,
14 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"),
15 resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust
16 and third party claimant Harry Hildibrand, LLC ("HH"). The Order required "Mr. Foust and HH
17 and any of their respective agents, employees, or affiliates [] *including without limitation Mr.*
18 *Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the
19 Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in
20 [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust
21 and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

22 However, as discussed herein, HH, acting through its manager, Edward Detwiler, has
23 refused to comply with the Order and has failed to deliver a single vehicle to the Bank. As further
24 discussed herein, HH and Mr. Detwiler presented no valid excuse for violating the Court's Order,
25 presented no evidence of any effort to retrieve the subject vehicles from their present locations,
26 and, instead, intentionally and knowingly failed to comply, without justification.

27 Based upon the testimony and documentary evidence presented during the hearing and for
28 good cause appearing, the Court hereby holds HH and its manager, Edward Detwiler in civil

1 contempt of this Court's January 9, 2019, Order and finds, concludes, orders, adjudges, and
2 decrees as follows:

3 **FINDINGS OF FACT**

4 1. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr.
5 Foust to deliver possession of various exotic vehicles to satisfy the Judgment.

6 2. In his written opposition to the motion, Mr. Foust indicated that he no longer
7 owned a single one of the 59 vehicles that were the subject of the motion and which he pledged to
8 the Bank to secure the loan.

9 3. Throughout the proceedings, Mr. Foust claimed to have transferred many of these
10 vehicles to HH.

11 4. Mr. Detwiler, as he has affirmed in a vast array of papers and hearings before this
12 Court, is HH's manager. (*E.g.*, 3/2/18 Application for Hearing, Declaration of E. Detwiler, on file
13 herein ("I am the managing director of Harry Hildibrand, LLC . . .").)

14 5. The Court conducted two evidentiary hearings on February 15, 2018, and
15 November 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the
16 parties have submitted over 30 papers in support of these activities.

17 6. On January 9, 2019, the Court issued the Order, ruling in favor of the Bank and
18 against Mr. Foust and HH in every respect.

19 7. The Order required "Mr. Foust and HH and any of their respective agents,
20 employees, or affiliates *[including without limitation Mr. Detwiler . . . on penalty of contempt,*
21 *to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that*
22 *protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or*
23 *expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH."* (Order,
24 Conclusion of Law ¶ 29 (emphasis supplied).) The list of 20 vehicles identified in Exhibit B to
25 this Court's January 9, 2019, Order, is attached hereto as **Exhibit B** also.

26 8. HH never challenged the Order with any motion for reconsideration, or motion
27 pursuant to NRCP 59 or 60 to alter or amend the Order, nor did HH appeal the order. It is final.

28 9. HH and Mr. Detwiler, as discussed below, were well aware of this Court's Order

1 and the Bank's requests for compliance.

2 10. The Bank gave notice of entry of the Order, which was served on HH's counsel,
3 Holland & Hart. (*See* 1/9/19 Notice of Entry of Order, on file herein.)

4 11. The Bank, through its counsel, also wrote to Mr. Detwiler on January 23, 2019,
5 nearly two weeks after the entry of the Order, to inform Mr. Detwiler that the Bank was ready to
6 take immediate possession of the vehicles identified in the Order. (*See* Exhibit 1 to 2/21/19
7 Application, on file herein.)

8 12. The Bank's counsel further telephoned Mr. Detwiler regarding the same. Despite
9 having signed all the bankruptcy filings identifying the subject vehicles and having testified at a
10 creditors' meeting about their locations (*see id.* ¶¶ 49, 76), Mr. Detwiler claimed to have no
11 knowledge of the vehicles' current whereabouts.

12 13. Despite the Bank's aforementioned attempts, HH and Mr. Detwiler have refused to
13 comply with this Court's Order.

14 14. On February 21, 2019, the Bank filed an Application for Order to Show Cause
15 Why Defendants Should Not Be Held in Civil Contempt ("Application"). (*See* 2/21/2019
16 Application, on file herein.)

17 15. The Court granted the Bank's Application, and held an evidentiary hearing on April
18 1, April 24, May 17, and May 21, 2019 regarding the same. (*See* 2/21/2019 Order to Appear, on
19 file herein.)

20 16. Mr. Detwiler and HH, through Mr. Detwiler, had notice of the contempt
21 proceedings, and at the May 17 and May 21, 2019 evidentiary hearing, Mr. Detwiler appeared and
22 testified on his own behalf and on behalf of HH. Mr. Foust and another associate, Thomas Larkin,
23 also offered testimony.

24 17. As discussed herein, the Court finds that Mr. Detwiler, as representative of HH,
25 presented no valid excuse for violating the Court's Order; he presented no valid excuse for failing
26 to turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt
27 to retrieve the subject vehicles from their present locations. Mr. Detwiler and HH intentionally
28 and knowingly failed to comply, without justification.

1 18. Mr. Detwiler was not a credible witness. He gave self-serving testimony
2 concerning his role with HH: Mr. Detwiler repeatedly claimed he was a mere “figurehead” of HH
3 (5/17/19 Hr’g Trans. p. 19:12-16; 23:13-15; 5/21/19 Vol. I Hr’g Trans., p. 9:3-16) with “no day-
4 to-day operations knowledge” (*id.* at 20:9-16)—a manager in name only without any control over
5 the situation. Additional evidence received by the Court proved, in a clear and convincing
6 manner, just the opposite. Mr. Detwiler exercised completed control over HH.

7 19. Mr. Detwiler testified that HH has no employees and no payroll. (5/21/19 Vol. I
8 Hr’g Trans., p. 8:15-9:3; *see also id.* at p. 10:10-11 (same); 11/5/18 Hr’g Ex. 3, Control No. 119.)

9 20. Mr. Detwiler acted as HH’s manager. (*E.g.*, 5/17/19 Hr’g Trans., p. 19:12
10 (describing his role as “manager of Harry Hildibrand”); *id.* at p. 20: 11-12 (describing himself as a
11 manager); *id.* at p. 23:1 (same); *id.* at p. 26:22 (same); *id.* at p. 27:24-28 (same).)

12 21. In fact, Mr. Detwiler testified that he was the *only* manager of HH:

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

19 (5/21/19 Vol. I Hr’g Trans., p. 10:12-18.)

20 Q: You are the only manager of Harry Hildibrand, LLC, correct?

21 Mr. Detwiler: That I’m aware of, yes.

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

23 22. Mr. Detwiler has acted as the manager since 2008. (11/5/18 Hr’g Ex. 3, Control
24 No. 100.) Mr. Detwiler claims to have contact with HH’s purported owners, the children of the
25 late Harry Hildibrand, Sr., HH’s name sake. (11/5/18 Hr’g Ex. 3, Control Nos. 84, 95, 98-99, 100,
26 108.) Mr. Detwiler claims that he works for free. (11/5/18 Hr’g Ex. 3, Control Nos. 103-04, 105.)

27 23. No one besides Mr. Detwiler claiming a connection with HH or purporting to
28 represent HH has ever appeared before this Court. No one besides Mr. Detwiler claimed to be
speaking with HH’s ownership. Mr. Detwiler was the sole agent and mouthpiece for HH during
the years this Court has presided over this lawsuit. While there were at times claims that others
controlled HH, such as a person named Harry Hildibrand, Jr., none of these alleged owners ever

1 appeared or gave an affidavit. Only Mr. Detwiler did these things.

2 24. During the pendency of the proceedings before this Court, HH petitioned for
3 bankruptcy relief in California. The bankruptcy was ultimately dismissed for HH's subsequent
4 failure to prosecute. *See In re: Harry Hildibrand, LLC*, 2:18-bk-18727-NB, ECF No. 20 (Bankr.
5 C.D. Cal. Sept. 7, 2018).

6 25. Mr. Detwiler signed the bankruptcy petition as HH's manager on June 19, 2018,
7 *See id.* at ECF No. 1, and the same signatures were submitted again for an addendum to the
8 petition filed on August 7, 2018, *see id.* at ECF No. 11. (*See also* Order, Finding of Fact 24
9 (noting that Mr. Detwiler signed the bankruptcy papers).)

10 26. The bankruptcy trustee conducted an 11 U.S.C. § 341 meeting of creditors in Los
11 Angeles on August 27, 2018. Mr. Detwiler flew from Las Vegas (at his own expense, he says) to
12 represent HH and give testimony. (5/17/19 Hr'g Trans. p. 37:16-38:1.)

13 27. During the Court's hearing on November 5, 2018, the Court received into evidence
14 a complete transcript of the Section 341 creditors meeting, where Mr. Detwiler testified under oath
15 after being sworn.

16 28. Mr. Detwiler's testimony in this setting further discredited his characterization of
17 his mere "figurehead" status and, instead, proved that he actively managed HH and that he had
18 specific knowledge of and control over the vehicles in question.

19 29. At the Section 341 hearing, Mr. Detwiler sketched HH's business plan. HH buys
20 cars, restores them, and finally sells them for a profit. (*See* 11/5/18 Hr'g Ex. 3, Control Nos. 91,
21 95, 98.) Mr. Detwiler had intimate knowledge of each step of this process.

22 30. First, Mr. Detwiler identified the location of the vehicles in question. The
23 bankruptcy papers Mr. Detwiler approved included a schedule of assets, which was a list of 20
24 vehicles, which is included herewith as Exhibit B. Mr. Detwiler testified that 10 of the vehicles
25 identified in the bankruptcy schedules, were located at a warehouse in Compton, California.
26 (5/17/19 Hr'g Trans., p. 38:18-23; 11/5/18 Hr'g Ex. 3, Control Nos. 116, 119.) Mr. Detwiler also
27 testified that HH paid rent to lease this warehouse on a month-to-month basis. (11/5/18 Hr'g Ex.
28 3, Control Nos. 83-84, 121.)

1 31. Mr. Detwiler further agreed that HH kept six additional vehicles in North Dakota,
2 one in Montana, and one (the Motorcoach, discussed below) in Nevada. (11/5/18 Hr'g Ex. 3,
3 Control No. 93.)

4 32. Second, Mr. Detwiler gave information concerning how HH maintained the
5 vehicles:

6 Trustee: Does anyone regularly use these vehicles? Any of them? Regularly
7 use them?

8 Mr. Detwiler: Some of them fairly regularly will drive, yeah.

9 Trustee: No, does someone regularly drive the vehicle, any of them, on a
10 routine basis?

11 Mr. Detwiler: Yeah the ones in Los Angeles will be, you know, alternated just to
12 keep them, you know, operational.

13 Trustee: Because the only reason I ask that is other than the comprehensive
14 collision type of insurance, the issue is bodily injury, personal
15 liability that kind of thing.

16 Mr. Detwiler: Sure.

17 (11/5/18 Hr'g Ex. 3, Control No. 93.)

18 33. When the trustee asked about whether the vehicles were drivable, Mr. Detwiler
19 offered that "some definitely are and some definitely are not." (11/5/18 Hr'g Ex. 3, Control No.
20 120.)

21 34. Mr. Detwiler also knew how to value the vehicles for resale because he had seen
22 and inspected them. When asked about how HH arrived at a cumulative value of \$521,575 for the
23 20 vehicles listed in the bankruptcy schedule (Exhibit B), Mr. Detwiler testified:

24 I think it's just purchase value because most – the vehicles that I've seen require
25 work, you know, I think that the purchase criteria was based on what they thought
26 that they could sell for if a certain amount was invested. It's like buying rehab real
27 estate. How much do you put into it and how much can you get out of it so there
28 would need to be an investment in all of those.

(11/5/18 Hr'g Ex. 3, Control No. 109, 111.)

35. Plainly, Mr. Detwiler had repeated access to the vehicles.

36. Caring for the vehicles before resale included, according to Mr. Detwiler, insuring
them all. (11/5/18 Hr'g Ex. 3, Control No. 92.)

37. Finally, when it came time to resell its investment cars, Mr. Detwiler testified that
HH sometimes hired a broker to resell the cars at times and at other times HH itself offers the cars
for sale directly to purchasers. (11/5/18 Hr'g Ex. 3, Control No. 91.)

1 38. All of these activities obviously require money, and Mr. Detwiler indicated in
2 several different ways that he knew about and controlled HH's finances.

3 39. HH's bankruptcy petition listed Mr. Detwiler as the person who "audited,
4 compiled, or reviewed the debtor's books of accounts and records" and as the person in possession
5 of the same. (11/5/18 Hr'g Ex. 3, Control No. 157.)

6 40. At his deposition, Mr. Detwiler affirmed that he had the authority to and in fact had
7 signed check's on HH's behalf. (7/6/18 Dep. E. Detwiler, p. 53-54.)

8 41. Consistent with these declarations, Mr. Detwiler testified during the bankruptcy
9 that HH had \$4,422 in its bank account. (11/5/18 Hr'g Ex. 3, Control Nos. 85-86, 98.)

10 42. In order to purchase the vehicles in the first place, HH received \$521,000 in
11 financing over time, Mr. Detwiler insisted, from StarDust Classic, LLC ("StarDust"). (11/5/18
12 Hr'g Ex. 3, Control Nos. 95, 107.)

13 43. In numerous HH bankruptcy filings, which papers Mr. Detwiler repeatedly signed
14 under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH
15 contended that it is wholly owned by StarDust. (Order, Findings of Fact, ¶ 24.)

16 44. The official records of the Wyoming Secretary of State indicate that Mr. Foust and
17 his daughter have filed some of the annual reports and have paid the annual dues for StarDust
18 since its organization in 2016. (Order, Findings of Fact, ¶ 25.)

19 45. Mr. Detwiler's name also appears on StarDust's 2018 annual report filed with the
20 Montana Secretary of State. (11/5/18 Hr'g Ex. 3, Control No. 369.) Moreover, the address of
21 StarDust's principal office listed on the 2018 report—7854 West Sahara Avenue, #100—is the
22 same address that Mr. Detwiler used for himself in the bankruptcy petition. (*Compare* 11/5/18
23 Hr'g Ex. 3, Control Nos. 129, 157, 159, *with* No. 369.)

24 46. This Court previously found that, at all relevant times herein, Mr. Foust, HH, and
25 StarDust were and are alter egos of each other with respect to all of the subject vehicles listed in
26 Exhibit B. (Order, Finding of Fact ¶ 29.)

27 47. HH produced no evidence, such as a promissory note, of any arms-length dealings
28 between it and StarDust. Instead, the documents received into evidence by this Court reveal

1 StarDust to be *another* entity controlled by Mr. Detwiler and/or Mr. Foust and used to frustrate
2 creditors.

3 48. Mr. Detwiler also directed HH's high-level strategy in this litigation. This Court
4 approved the Bank's levy of a 1998 Prevost motorhome (the "Motorcoach"). (*See generally*
5 3/8/18 Findings of Fact, Conclusions of Law, and Final Judgment, on file herein.) Mr. Detwiler
6 and his associate Mr. Foust spun this lawful seizure as crime committed by the Bank. Mr.
7 Detwiler filed a police report after the levy in which he claimed to be HH's manager. (*See Exhibit*
8 4 to 3/2/18 NRS 31.070 Application, on file herein.)

9 49. Relatedly, at the Section 341 Hearing, Mr. Detwiler testified that he had
10 "tentatively" retained an attorney to assert a claim against the Bank for its levy against the
11 Motorhome, presumably for trespass to chattel. (11/5/18 Hr'g Ex. 3, Control Nos. 91-92.)

12 50. Mr. Detwiler also testified that StarDust was making financing payments on the
13 Motorcoach's purchase money loan, again demonstrating his intimate knowledge of HH's
14 finances. (11/5/18 Hr'g Ex. 3, Control Nos. 98, 112.) This testimony also reveals a false
15 statement from Mr. Detwiler because, based on documentary evidence actually subpoenaed and
16 offered into evidence by HH itself, Mr. Foust, not StarDust, was making these payments. (Order,
17 Findings of Fact ¶¶ 38-40.)

18 51. In a similar circumstance demonstrating his strategic oversight, Mr. Detwiler
19 signed (and presumably drafted) a July 25, 2018 "Minutes of Special Meeting," which authorized
20 and empowered HH "through its manager, Ed Detwiler . . . to prepare and file a Chapter 11
21 petition with the U.S. Bankruptcy Court" (11/5/18 Hr'g Ex. 3, Control Nos. 183-84; 328-29.)

22 52. This extensive testimony and documentary evidence proves that there was no
23 aspect of HH that Mr. Detwiler did not control or know about, especially with respect to the
24 vehicles at issue.

25 53. During the Section 341 Meeting, Mr. Detwiler summarized his duties in an
26 expansive fashion: "I'm head guy in charge of getting stuff done." (11/5/18 Hr'g Ex. 3, Control
27 No. 95.)

28 54. When faced with contempt charge, Mr. Detwiler retreated from this pronouncement

1 and claimed he was a mere “figurehead” with no authority or power generally and no knowledge
2 of the vehicles specifically.

3 55. Mr. Detwiler claimed during the contempt hearing that “I don’t know anything
4 about the cars. I was never involved with the cars.” (5/17/19 Hr’g Trans. p. 20:5-6.) His denials
5 during the contempt hearing came after strikingly specific, contrary testimony given just months
6 earlier during the bankruptcy.

7 56. During bankruptcy, he gave detailed information about the cars’ location; now he
8 claims ignorance on that subject. During bankruptcy he elaborated about the financing for the
9 vehicles, allegedly through StarDust providing \$521,000 to finance purchases over time, but now
10 he claims “I don’t know how they’re financed.” (5/17/19 Hr’g Trans. p. 19:21.) During
11 bankruptcy he described extensive and regular interactions with the purported owners of HH, but
12 now he claims no “relationship with any of the owners or people of [HH]. On the converse, I have
13 very little interacting with them.” (5/17/19 Hr’g Trans. p. 22:10-12.)

14 57. The Court finds persuasive the earlier statements Mr. Detwiler made during the
15 bankruptcy, when he had a motivation to be forthcoming. These earlier statements impeach Mr.
16 Detwiler’s credibility in this proceeding and reveal him as an untruthful witness before this Court.

17 58. In light the substantial and credible evidence of Mr. Detwiler’s pervasive control
18 over HH, the Court rejects Mr. Detwiler’s contempt defense as plainly not credible. On the other
19 hand, the Bank has proved by clear and convincing evidence that HH and Mr. Detwiler had the
20 ability to turn over the vehicles.

21 59. During his testimony, Mr. Detwiler did not claim that HH did not possess or own
22 the 20 vehicles HH claimed to own (Exhibit B) when if petitioned for bankruptcy in 2018.
23 Instead, he only claimed that he did not have the power to deliver the vehicles to the Bank. The
24 Court rejects this testimony.

25 60. The evidence clearly and convincingly demonstrates that Mr. Detwiler was
26 authorized and empowered to comply with this Court’s Order. Mr. Detwiler presented no valid
27 excuse for his and HH’s violating the Court’s Order, presented no evidence of any effort to
28 retrieve the subject vehicles from their present locations, and, instead, intentionally and knowingly

1 failed to comply, without justification.

2 61. This Court further incorporates herein any other evidentiary findings in the January
3 9, 2019 Order and the June 21, 2019 Order for Punishment of Contempt directed against Mr. Foust
4 to support Mr. Detwiler's control of HH and its assets and his cooperation with Mr. Foust to defy
5 the Order.

6 62. In the bankruptcy schedules of HH, HH represented that it owned all 20 of the
7 subject vehicles listed in Exhibit B.

8 **CONCLUSIONS OF LAW**

9 1. The Court has jurisdiction over the parties and venue is proper in this Court.

10 2. Mr. Foust, HH, and StarDust are and have been agents of one another with respect
11 to any past action involving the subject vehicles at issue in these proceedings (Exhibit B) and have
12 been agents of one another regarding notice of these proceedings.

13 3. The Bank offered clear and convincing evidence that Mr. Detwiler was the sole
14 manager of HH and the person in charge of its operations. Mr. Detwiler was the controlling
15 manager of HH, and as such accepted and possessed the responsibility to control the assets of HH,
16 including its classic cars (Exhibit B).

17 4. HH owns and possesses the 20 vehicles identified in Exhibit B, which list HH
18 prepared for its bankruptcy petition.

19 5. The Bank has proved by clear and convincing evidence that Mr. Detwiler and HH
20 had notice of the Order and had the ability to comply with the Order.

21 6. The Court maintains contempt power to address "[d]isobedience or resistance to
22 any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3);
23 *see also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the
24 proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
25 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect
26 dignity and decency in its proceedings, and to enforce its decrees" and because it has particular
27 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
28 abuse of discretion).

1 7. Contempt proceedings may be criminal or civil in nature. *Lewis v. Lewis*, 132
2 Nev., Adv. Op. 46, 373 P.3d 878, 880 (2016). A civil contempt action is remedial in nature
3 because it is meant to secure compliance with the court order. *Id.*; *see also* NRS 22.110.

4 8. As discussed herein, Mr. Detwiler and HH have violated two separate contempt
5 statutes: NRS 22.010 and NRS 21.340.

6 9. First, the Court may hold a person in contempt when the person has failed to
7 comply with a lawful order or rule. NRS 22.010(3). To be held in contempt for disobeying a
8 court order, the order must clearly put the person on notice of what is required. *Sw. Gas Corp. v.*
9 *Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983); *see also Cunningham v. Dist. Ct.*, 102
10 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986) (“An order on which a judgment of contempt is
11 based must be clear and unambiguous, and must spell out the details of compliance in clear,
12 specific and unambiguous terms so that the person will readily know exactly what duties or
13 obligations are imposed on him.”).

14 10. The Court’s January 9, 2019 Order is unmistakable. The Order required “Mr.
15 Foust and HH and any of their respective agents, employees, or affiliates [] including without
16 limitation Mr. Detwiler . . . on penalty of contempt, to deliver up, surrender possession of, and
17 turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty]
18 cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne
19 by Mr. Foust and/or HH.” (Order, Conclusion of Law ¶ 29.) The Order further identifies the
20 subject vehicles by make, model, and VIN.

21 11. Second, this action is a supplemental proceeding. A “supplemental proceeding” is
22 “held in connection with the enforcement of a judgment, for the purpose of identifying and
23 locating the debtor’s assets available to satisfy the judgment.” *Supplemental Proceeding*,
24 BLACK’S LAW DICTIONARY (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to
25 the original suit” and “is not an independent proceeding or the commencement of a new action.”
26 *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942).

27 12. This Court is enforcing a Washington State judgment domesticated in Nevada.
28 NRS Chapter 21 propounds supplemental procedures. Under, this law, disobedience to a court’s

1 order in supplemental proceedings constitutes a contempt: "If any person, party or witness disobey
2 an order of the master, properly made in the proceedings before the master under this chapter, he
3 or she may be punished by the court or judge ordering the reference, for a contempt." NRS
4 21.340.

5 13. The Court's Order clearly and unambiguously directed Mr. Detwiler and HH to
6 deliver the subject vehicles identified in the Order. Counsel for the Bank also wrote to Mr.
7 Detwiler and HH, insisting on compliance with the Order.

8 14. Mr. Detwiler and HH have refused to respond to any communications by the Bank
9 regarding the Order, let alone deliver any of the vehicles that are the subject of the Order; thus,
10 Mr. Detwiler and HH stand in contempt of the Order.

11 15. Mr. Detwiler's and HH's demonstrated intransigence requires stringent treatment:
12 they will clearly refuse to comply with the Order and turn over the subject vehicles to the Bank
13 unless this Court exercises its power of incarceration to detain Mr. Detwiler until he complies.

14 16. Coercive incarceration is within the inherent power of the Court, insofar as it
15 depends on the contemnor's ability to comply, thereby purging himself of contempt, and is
16 designed to coerce, rather than punish and therefore the ordinary requirements of due process do
17 not attach. *Shillitani v. United States*, 384 U.S. 364, 369-70 (1966); *see also S.E.C. v. Solow*, 396
18 Fed. App'x 635 (11th Cir. 2010) (affirming the district court's adjudication of civil contempt and
19 ordering defendant's incarceration until he purged his contempt in compliance with the court's
20 directive). With civil contempt, "the contemnor is able to purge the contempt and obtain his
21 release by committing an affirmative act." *Int'l Union, United Mine Workers of Am. v. Bagwell*,
22 512 U.S. 821, 844 (1994) (internal quotation marks omitted).

23 17. Several Nevada statutes empower district courts to issue a bench warrant for the
24 arrest of a person guilty of contempt:

25 **NRS 22.040 Issuance of warrants of attachment and commitment.** When the
26 contempt is not committed in the immediate view and presence of the court or judge,
27 a warrant of attachment may be issued to bring the person charged to answer, or,
28 without a previous arrest, a warrant of commitment may, upon notice, or upon an
order to show cause, be granted; and no warrant of commitment shall be issued
without such previous attachment to answer, or such notice or order to show cause.

1 18. In addition to this Court's inherent authority, Nevada's statutes explicitly permit
2 imprisonment:

3 **NRS 22.100 Penalty for contempt.**

4 1. Upon the answer and evidence taken, the court or judge or jury, as the
5 case may be, shall determine whether the person proceeded against is guilty of the
6 contempt charged.

7 2. Except as otherwise provided in NRS 22.110, if a person is found guilty
8 of contempt, a fine may be imposed on the person not exceeding \$500 or the person
9 may be imprisoned not exceeding 25 days, or both.

10 3. In addition to the penalties provided in subsection 2, if a person is found
11 guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require
12 the person to pay to the party seeking to enforce the writ, order, rule or process the
13 reasonable expenses, including, without limitation, attorney's fees, incurred by the
14 party as a result of the contempt.

15 19. Although NRS 22.100(2) sets a default rule prohibiting imprisonment for more
16 than 25 days, subsequent sections in the same statute provide for an indefinite term of
17 imprisonment. Specifically, where, as here, one has refused to perform an affirmative act required
18 by the provisions of an order, no limitation on the term exists:

19 **NRS 22.110 Imprisonment until performance if contempt is omission to**
20 **perform an act; penalty for failure or refusal to testify before grand jury.**

21 1. Except as otherwise provided in subsection 2, when the contempt consist
22 in the omission to perform an act which is yet in the power of the person to
23 perform, the person may be imprisoned until the person performs it. The required
24 act must be specified in the warrant of commitment.

25 *See also* TRACY DiFILLIPPO ET AL. EDS., NEVADA CIVIL PRACTICE MANUAL, Sixth Edition § 31.34
26 ([updated] 2016) ("The person guilty of contempt may be imprisoned until he or she perform the
27 ordered act, if it is within his or her power to perform."). Nevada's statute corresponds with the
28 general jurisprudence:

 Imprisonment for civil contempt may be ordered where a defendant has refused to
perform an affirmative act required by the provisions of an order that, either in form
or substance, is mandatory in character. A contemnor who has the ability to comply
with the underlying court order *can be imprisoned indefinitely* until the contemnor
complies with the underlying court order, even if it appears that the contemnor is
never going to comply.

17 C.J.S. CONTEMPT § 186 (West [updated] 2019) (emphasis added).

20. Imprisonment for civil contempt usually is not for a definite term, but the party in

1 contempt stands committed unless and until the affirmative act required by the order of the court is
2 performed. *See Lewis*, 373 P.3d at 881 (2016) (“A purge clause [in the contempt order] gives the
3 defendant the opportunity to purge himself of the contempt sentence by complying with the terms
4 of the contempt order.”). Thus contemnors carry the prison keys in their own pockets. *Shillitani*
5 *v. United States*, 384 U.S. 364, 368 (1966). A defendant has the choice to “pay or stay.” 17 C.J.S.
6 CONTEMPT § 183.

7 21. In Nevada, the cases treating the subject of imprisonment for failure to perform an
8 affirmative act typically arise in spousal- and child-support lawsuits. *Foley v. Foley*, 432 P.2d 736
9 (Nev. 2018) (unpublished) (observing that courts may imprison parents who refuse to pay child
10 support); *Hildahl v. Hildahl*, 95 Nev. 657, 662, 601 P.2d 58, 61 (1979) (“The use of the contempt
11 power to enforce the provisions of a divorce decree has been approved many times in this state.”).

12 22. However, in the judgment enforcement context, violating a “turn-over” order, such
13 as the Court’s Order, often prompts imprisonment until the contemnor agrees to turn over the
14 property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459-63 (S.D.N.Y.
15 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for
16 failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars,
17 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v.*
18 *Jenkins*, 760 F.2d 736, 737-38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody
19 of the U.S. Marshall for failing to return confidential documents taken from an employer and
20 failure to disgorge profits made in conducting a forbidden, competing enterprise).

21 23. If the officers or agents of a company are guilty of a contempt, they may be
22 attached and punished therefore. *See generally* 17 C.J.S. CONTEMPT § 57. Thus, corporate
23 officers or company agents are punishable for contempt where they have knowledge or notice of
24 an order directed to the company and they are responsible for the company’s violation thereof.
25 *C.f. In re Waters of Humboldt River*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that “the
26 district court has the power to sentence a government official to jail for criminal contempt
27 committed in an official capacity”); *see also United States v. Laurins*, 857 F.2d 529, 535 (9th
28 Cir.1988) (“A nonparty may be held liable for contempt if he or she either abets or is legally

1 identified with the named defendant An order to a corporation binds those who are legally
2 responsible for the conduct of its affairs.”); *Nikko Materials USA, Inc. v. R.E. Serv. Co.*, No. C 03-
3 2549 SBA, 2006 WL 1749550, at *4 (N.D. Cal. June 22, 2006) (“When a corporation refuses to
4 abide by an order directing the corporation to perform an act, and the corporation is under the
5 control of a single corporate officer or managing agent, the Ninth Circuit has held that a district
6 court may hold the corporate officer in contempt, as well as the corporation, even when the
7 corporate officer is not a party to the underlying action.”).

8 24. Because companies and corporations can only act through their agents, a contempt
9 order need not explicitly warn agents of potential liability for contumacious conduct. 17 C.J.S.
10 CONTEMPT § 57. More careful practice, however, dictates an explicit warning directed to named
11 agents:

12 It is usual, in an order directed against a corporation, to lay the restraint or
13 command, not only on the corporation itself, but also on its officers, agents, and
14 servants, so that in the case of its violation not only the corporation itself is
15 amenable to punishment, but also its officers, agents, and servants, whether or not
16 parties to the proceeding, provided they have knowledge of the terms of the order
17 and disobey it willfully.

16 Additionally, since a corporation is capable of violating a court order only if its
17 agents act or refrain from acting, it follows that the order directed at the corporation
18 is binding on agents authorized to act on its behalf, whether specifically named in
19 the order or not.

18 *Id.*

19 25. Here, the Court’s order explicitly commanded Mr. Detwiler by name, on penalty of
20 contempt, to turn over the 20 vehicles. (Order, Conclusion of Law ¶ 29.) Mr. Detwiler could have
21 had no reasonable doubt about how he would need to act to avoid punishment.

22 26. Mr. Detwiler’s and HH’s refusal to turn over each of the 20 subject vehicles
23 identified in Exhibit B and which are the subject of the Court’s January 9, 2019, Order, constitutes
24 a separate and distinct act of civil contempt of Court, for a total of 20 separate acts of civil
25 contempt.

26 27. Pursuant to this Court’s authority under NRS 22.100, the Court hereby fines HH
27 the sum of \$500 to be paid to the Bank immediately.

28 28. This Court further hereby orders HH to pay the Bank its reasonable attorney fees

1 and expenses incurred in connection with all of the proceedings to seek enforcement of the Court's
2 Order. The Bank shall submit an affidavit in support of such fees and expenses for the Court to
3 review.

4 29. Pursuant to NRS 22.100, this Court further hereby orders that Mr. Detwiler shall be
5 imprisoned until he complies with the Order and delivers up, surrenders possession of, and turns
6 over to the Bank, in a manner that protects the vehicles from any damage, all 20 vehicles
7 identified in Exhibit B, or pays to the Bank in immediately available funds the value of the
8 vehicles listed in Exhibit B, \$521,575.

9 30. The Bank shall prepare a separate Warrant of Arrest and Commitment accordingly
10 for this Court to review and sign, if appropriate.

11 31. Upon complying with the Order by delivering up, surrendering possession of, and
12 turning over to the Bank all 20 vehicles identified in Exhibit B, or paying to the Bank in
13 immediately available funds the value of the vehicles listed in Exhibit B, \$521,575, Mr. Detwiler
14 will be purged of his contempt sentence and, if imprisoned, shall be released from imprisonment
15 immediately thereafter. Alternatively, Mr. Detwiler may be released upon the posting of a One
16 Hundred Thousand Dollar (\$100,000.00) bond, after which a status check shall be promptly set to
17 establish a payment plan.

18 32. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if
19 appropriately identified and designated.

20 Dated this 16th day of December, 2019

21
22
23 
24 DISTRICT COURT JUDGE
25 

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

6 State Bar No. 9519

7 jbragonje@lrrc.com

8 3993 Howard Hughes Parkway, Suite 600

9 Las Vegas, NV 89169

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11 *Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank*
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EXHIBIT B

EXHIBIT B

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY28E375121089	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ162801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1958	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240847	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671986	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27885	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW85G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075880	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144086	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5

Exhibit 2

Exhibit 2

SUB

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

SUBPOENA

THE STATE OF NEVADA SENDS GREETINGS TO:

ED DETWILER

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set aside, you appear and attend on the 22nd day of JUNE, 2018, at the hour of 10:00 a.m. at the offices of Lewis and Roca LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, Nevada 89169 to give testimony; Plaintiff in the above-named action will take your deposition. The deposition will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths and shall be recorded by stenographic means. Plaintiff reserves the right to record the deposition by videotape and to conduct the deposition using instant visual display.

IF YOU FAIL TO ATTEND, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear. Your attendance is required to give testimony and/or to produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises. You are required to bring with you at the time of your appearance any items set forth below. Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to this Subpoena.

1 Issued at the request of officer of the court licensed to practice in Nevada (NRC 45(a)(3)):

2 Dated this 18th day of June, 2018

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

4
5 By: 

6 John E. Bragonje (SBN 9517)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

7 *Attorneys for Plaintiff/Judgment Creditor*
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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

ITEMS TO BE PRODUCED

Kindly produce all documents you intend to attempt to introduce into evidence at the evidentiary hearing set for June 29, 2018.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT A

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

NOTC
John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**NOTICE OF SERVING
SUBPOENA DUCES TECUM**

Pursuant to Nevada Rule of Civil Procedure 45(b)(1), Plaintiff Baker Boyer National Bank
by and through counsel of record John Bragonje of Lewis Roca Rothgerber Christie LLP, hereby
give notice that they are serving the attached Subpoena Duces Tecum on:

Ed Detwiler
c/o Joseph Went
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Dated this 19th day of June, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ John E. Bragonje
John E. Bragonje (SBN.: 9519)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Attorneys for Plaintiff Baker Boyer National Bank

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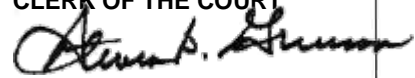
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Exhibit 3

Exhibit 3



ORDR

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**Order to Appear and Show Cause Why
Defendants Should Not Be Held in Civil
Contempt**

HEARING REQUIRED

DATE: 4/1/19
TIME: 9:00 AM

TO: JAMES P. FOUST, JR.

HARRY HILDIBRAND, LLC

EDWARD DETWILER

The Court having examined the "Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt" filed by the plaintiff and judgment creditor, Baker Boyer National Bank (the "Bank"), on file herein, and finding that the affidavit accompanying it meets the requirements of the Nevada Revised Statutes, and the Court being fully advised in the premises and good cause appearing; therefore,

IT IS HEREBY ORDERED that you are to appear in Department II of the above-entitled Court at the hour of 9:00 A m on the 1st day of April 2019, and show cause why you should not be held in civil contempt for failing to comply with this Court's January 9, 2019 "Findings of Fact, Conclusions of Law, and Judgment," and especially

1 the order therein requiring Mr. Foust Harry Hildibrand, LLC and their agents (including Mr.
2 Detwiler, Harry Hildibrand LLC's manager) to turn over vehicles to the Bank;

3 IT IS FURTHER ORDERED that you may file affidavits on your behalf with the Court
4 and you may appear and present testimony on your behalf at the hearing according to NRS
5 Chapter 22;

6 IT IS FURTHER ORDERED that if you fail to appear, the Bank will apply to the Court,
7 for a ruling of contempt and warrant for your imprisonment, as described in the application;

8 IT IS FURTHER ORDERED that this Order shall be served upon the defendants pursuant
9 to NRCP 4(d) by service of a true copy thereof pursuant to said rule no later than two (2) days
10 prior to the above-mentioned hearing date; however, in the case of Mr. Foust, who is represented
11 by counsel, this order may simply be served upon his counsel of record pursuant to NRCP 5.

12 IT IS SO ORDERED this 15th day of February, 2019

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16 
DISTRICT COURT JUDGE

17 TM

18
19
20 Respectfully submitted,

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22
23 By: 
24 John Bragonje
25 State Bar No. 9519
26 E-mail: jbragonje@lrrc.com
27 3993 Howard Hughes Parkway, Suite 600
28 Las Vegas, NV 89169
Tel: 702-474-2625
Fax: 702-216-6173

Attorneys for Plaintiff/Judgment Creditor Baker Boyer National Bank

Exhibit 4

Exhibit 4

1 AFFT

2 Lewis, Roca, Rothgerber, Christie LLP
3 John E. Bragonje
4 3993 Howard Hughes Parkway, Suite 600
5 Las Vegas, NV 89169
6 State Bar No.: 9519
7 Attorney(s) for: Plaintiff/Judgment Creditor Baker Boyer

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Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

Case No.:

A-17-760779-F

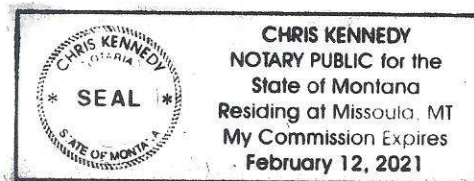
Dept. No.: II

Date: April 1, 2019
Time: 9:00 a.m.

10 Baker Boyer National Bank, a Washington corporation
11 vs Plaintiff/Judgment Creditor
12 James Patterson Foust, Jr., also known as James P. Foust, Jr.,
13 individually and his marital community, if any
14 Defendant/Judgment Debtor

AFFIDAVIT OF SERVICE

15 Donald M. Branda, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made.
17 The affiant received 1 copy(ies) of the Order to Appear and Show Cause Why Defendants Should Not Be
18 Held in Civil Contempt: Application for Order to Show Cause Why Defendants Should Not Be Held in Civil
19 Contempt: Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in
20 Civil Contempt on the 25th day of February, 2019 and served the same on the 26th day of February, 2019 at
21 11:51AM by serving the Respondent(s), Harry Hildibrand, LLC by personally delivering and leaving a copy at
22 the address of the registered agent, Jared S. Heggen, 3011 American Way, Missoula, MT 59808 with Lauren
23 Towsley (Caucasian female, approximately 25 years old and 5'8" and 135lbs., blonde hair) pursuant to NRS
24 14.020 as a person of suitable age and discretion at the above address, which address is the address of the
25 registered agent as shown on the current certificate of designation filed with the Secretary of State.
26 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.



32 State of Montana, County of Missoula

33 SUBSCRIBED AND SWORN to before me on this
34 26th day of February, 2019

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Donald M. Branda
Affiant: Donald M. Branda
Process Server

Notary Public

Chris Kennedy

WorkOrderNo 1901210



Exhibit 5

Exhibit 5

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:
DALLAS WEST MANAGEMENT LLC

Entity Number:
E0008092018-1

Entity Type:
Domestic Limited-Liability Company (86)

Entity Status:
Default

Formation Date:
01/05/2018

NV Business ID:
NV20181013137

Termination Date:
Perpetual

Annual Report Due Date:
1/31/2019

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

PETER J SHOOBRIDGE

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	OLLIE J BORER	3412 GRANADA AVE, #201, DALLAS, TX, 75205, USA	01/22/2018	Active
Managing Member	EDWARD N DETWILER	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, TX, 89052 - 7070, USA	01/22/2018	Active
Managing Member	VASKEN H SETRAKIAN	57 FAWN HILL ROAD, UPPER SADDLE RIVER, TX, 07458, USA	01/22/2018	Active
Managing Member	PETER J SHOOBRIDGE	1313 BAINBERRY RIDGE LANE, LAS VEGAS, TX, 89144 - 4153, USA	01/22/2018	Active
Managing Member	JEFFREY R BORER	3412 GRANADA AVE, #201, DALLAS, TX, 75205, USA	01/22/2018	Active
Page 1 of 1, records 1 to 5 of 5				
Filing History Name History Mergers/Conversions				

[Return to Search](#)[Return to Results](#)

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

JPF ENTERPRISES, LLC

Entity Number:

E0319092013-2

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

06/28/2013

NV Business ID:

NV20131390289

Termination Date:

Perpetual

Annual Report Due Date:

6/30/2020

Series LLC:

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Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

JPF ENTERPRISES, LLC C/O OWNER

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

10821 WOODSTREAM CT, LAS VEGAS, NV, 89135, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	JAMES P FOUST	10120 S EASTERN AVE, HENDERSON, NV, 89052, USA	05/31/2019	Active
Page 1 of 1, records 1 to 1 of 1				
Filing History Name History Mergers/Conversions				

[Return to Search](#) [Return to Results](#)

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

NAI'A RESORTS LLC

Entity Number:

E0397622017-5

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

08/21/2017

NV Business ID:

NV20171528849

Termination Date:

Perpetual

Annual Report Due Date:

8/31/2020

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

PETER J SHOOBRIDGE

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	EDWARD N DETWILER	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, NV, 89052 - 7070, USA	07/17/2018	Active
Manager	PETER J SHOOBRIDGE	1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144 - 4153, USA	07/17/2018	Active
Manager	CHARLES OSWALD	1550 WOODS OF RIVERCHASE DR, STE 100, HOOVER, AL, 35244, USA	07/17/2018	Active
Manager	VASKEN H SETRAKIAN	1313 BAINBERRY RIDGE LANE, LAS VEGAS, NV, 89144 - 4153, USA	07/17/2018	Active
Manager	CARL BAZARIAN	20 DUNES ROW, AMELIA ISLAND, FL, 32024, USA	07/17/2018	Active

Page 1 of 1, records 1 to 5 of 5

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

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ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

PSV DEVELOPMENT, LLC

Entity Number:

E0613832014-0

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

12/05/2014

NV Business ID:

NV20141749107

Termination Date:

Perpetual

Annual Report Due Date:

12/31/2019

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

EDWARD N. DETWILER

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

10120 S. EASTERN AVE., SUITE 300, HENDERSON, NV, 89052, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

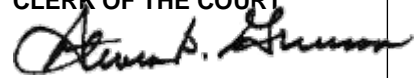
Mailing Address:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	EDWARD N DETWILER	10120 S. EASTERN AVE #300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Managing Member	PETER J SHOOBRIDGE	10120 S EASTERN AVENUE, SUITE 300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Managing Member	KEN D SARNA	10120 S. EASTERN AVE #300, HENDERSON, NV, 89052, USA	12/27/2018	Active
Page 1 of 1, records 1 to 3 of 3				
Filing History Name History Mergers/Conversions				

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1 **NCOA (CIV)**
2 **BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)**
3 **AMANDA K. BAKER, ESQ. (NV SBN 15172)**
4 **KOLESAR & LEATHAM**
5 400 South Rampart Boulevard, Suite 400
6 Las Vegas, Nevada 89145
7 Telephone: (702) 362-7800
8 Facsimile: (702) 362-9472
9 E-Mail: bwirthlin@klnvada

10 *Attorneys for Edward Detwiler*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 ***

14 **BAKER BOYER NATIONAL BANK, a**
15 **Washington corporation,**

16 **Plaintiff,**

17 **vs.**

18 **JAMES PATTERSON FOUST, JR., also**
19 **known as James P. Foust, Jr., individually and**
20 **his martial community, if any,**

21 **Defendant**

22 **CASE NO. A-17-760779-F**

23 **DEPT NO. 2**

24 **NOTICE OF APPEARANCE**

25 **NOTICE OF APPEARANCE**

26 **YOU AND EACH OF YOU PLEASE TAKE NOTICE** that Brenoch Wirthlin, Esq.,
27 **(Nevada Bar No. 10282), Kolesar & Leatham, 400 South Rampart Blvd., Suite 400, Las Vegas,**
28 **Nevada 89145, on behalf of his client, EDWARD DETWILER, hereby submits this NOTICE OF**
29 **APPEARANCE in the above-entitled cause of action and hereby requests that all further papers**

30 //

31 //

1 and pleadings herein, except original process, be served upon Plaintiff Baker Boyer National Bank
2 and Defedant James Pattterson Foust, Jr., through their respective attorneys of record via the
3 Court's electronic filing system

4 DATED this 27th day of January 2020.

5 **KOLESAR & LEATHAM**

6
7 By /s/ **BRENOCH WIRTHLIN**
8 **BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)**
9 **AMANDA K. BAKER, ESQ. (NV SBN 15172)**
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16 *Attorneys for Edward Detwiler*
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1 **CERTIFICATE OF SERVICE**

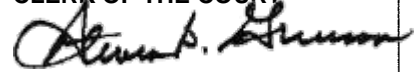
2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 27th day of
3 January 2020, I caused to be served a true and correct copy of foregoing **NOTICE OF**
4 **APPEARANCE** in the following manner:

5 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
6 document was electronically filed on the date hereof and served through the Notice of Electronic
7 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
8 Service List.

9
10 /s/ **S. DIANNE POMONIS**

11 An Employee of KOLESAR & LEATHAM

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KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



1 **MPOR**
2 **KOLESAR & LEATHAM**
3 BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
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9 Email: bwirthlin@klnevada.com
10 Email: abaker@klnevada.com
11 Attorneys for Non-party Edward Detwiler

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 * * *

11 BAKER BOYER NATIONAL BANK,
12 a Washington corporation,

13 Plaintiff,

14 v.

15 JAMES PATTERSON FOUST, JR.,
16 individually,

17 Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**NON-PARTY EDWARD DETWILER'S
MOTION FOR ENTRY OF A
PROTECTIVE ORDER AND
CONTINUANCE OF HEARING
ON ORDER
SHORTENING TIME**

**HEARING REQUESTED ON ORDER
SHORTENING TIME**

19 Pursuant to Rules 26(c) and 45(c) of the Nevada Rules of Civil Procedure, non-party
20 Edward Detwiler ("Mr. Detwiler"), hereby submits his motion ("Motion") requesting the Court
21 issue a protective order relative to the subpoena recently served on Mr. Detwiler commanding he
22 appear before this Honorable Court on January 29, 2020, at 9:00 a.m. ("Subpoena")¹. In addition,
23 as set forth herein, it appears a hearing with respect to the Subpoena and additional matters has
24 been set with this Court for January 31, 2020. Further, because counsel for plaintiff Baker Boyer
25 National Bank (the "Bank" or "Plaintiff"), who issued the subpoena, has agreed to combine the
26 deposition referenced in the Subpoena with the hearing on January 31, 2020 (collectively referred
27 _____

28 ¹ A copy of the Subpoena is attached hereto as **Exhibit 1**.

HEARING REQUIRED
DATE: 1/30/2020
TIME: 1:30 PM

MSA00448

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

to herein as the “Hearing”), Mr. Detwiler hereby submits this Motion to this Court to continue the Hearing to enable Mr. Detwiler and his newly retained undersigned counsel to prepare for the Hearing, particularly given the fact that the Bank is seeking Mr. Detwiler’s **indefinite imprisonment** until he pays a judgment that is not even against him, and cannot properly be so construed.

As set forth more fully herein, the undersigned law firm has only become involved in this case in the last few days and given the very broad scope of the Subpoena, the length of the proceedings that have already transpired in this matter, in addition to what appears to be the attempts by the Bank to hold Mr. Detwiler – a non-party – somehow responsible for a judgment against defendant James Foust, Jr. (“Defendant” or “Mr. Foust”), and the very serious nature of the potential consequences of this matter – including the fact that a bench warrant for Mr. Detwiler’s arrest was issued and then apparently vacated² due to the Bank’s failure to serve Mr. Detwiler (and the order of contempt against Mr. Detwiler was also vacated) – Mr. Detwiler hereby requests time to prepare for this matter.

This Motion and accompanying request for order shortening time are made and based upon the following Memorandum of Points and Authorities, the Declaration of Brenoch R. Wirthlin (“Wirthlin Declaration”), the Declaration of Mr. Detwiler (“Detwiler Declaration”), any argument the Court may entertain at a hearing on this matter, and all papers and pleadings on file herein.

DATED this 27th day of January, 2020.

KOLESAR & LEATHAM

By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

(NV SBN 15172)

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Attorneys for Non-party Edward Detwiler

² The Court’s minutes state the warrant and order of contempt regarding Mr. Detwiler were vacated. The journal entries mention a stay of proceedings. Both have been included herein as Exhibit 4.

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

ORDER SHORTENING TIME

Based upon the Declaration of Brenoch R. Wirthlin, Esq., and good cause appearing therefor,

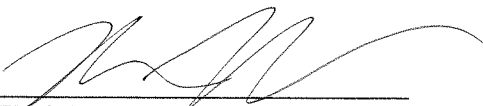
IT IS HEREBY ORDERED that the hearing on **NON-PARTY EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME** shall be shortened and

hearing before the above-entitled Court in front of the this Court, Department II, on the 30th day of January, 2020, at the hour of 1:30 PM, or as soon thereafter as counsel may be heard, at the Regional Justice

Center, 200 Lewis Avenue, Las Vegas, NV 89155. *The 1/31/20 hearing at 8:30 AM is still going forward.*


DISTRICT COURT JUDGE

Respectfully Submitted by:
KOLESAR & LEATHAM

By 
BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)
AMANDA K. BAKER, ESQ.
(NV SBN 15172)
KOLESAR & LEATHAM
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Email: bwirthlin@klnevada.com
Email: abaker@klnevada.com
Attorneys for Non-party Edward Detwiler

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth herein,³ the Bank's request to imprison Mr. Detwiler indefinitely is extremely problematic for multiple reasons, including without limitation, the following:

1. First, in its Brief, the Bank makes clear it is seeking to imprison Mr. Detwiler as a way of extorting him to pay a judgment owed, not by him, but by Mr. Foust. This is wholly improper, violative of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007) – which requires that a separate action be filed to establish any liability for a non-party under an *alter ego* theory. The Bank's improper actions also appear to be a violation of NRS § 207.190 (coercion), and also may give rise to an abuse of process claim by Mr. Detwiler against the Bank.
2. Second, under Nevada's civil contempt statutes, including without limitation NRS § 22.110, the draconian and extreme punishment of indefinite imprisonment may only be imposed on an individual where the contempt "consists in the omission to perform an act which is yet in the power of the person to perform..." Here, Mr. Detwiler's testimony, and the other evidence in this case, has been grossly misrepresented to this Court. The truth is, Mr. Detwiler's testimony has been consistent that he never had involvement with, or ownership of, the vehicles at issue ("Vehicles"). Moreover, Mr. Detwiler resigned as a manager of Harry Hildibrand, LLC (the "Company") effective September 10, 2019. See Declaration of Edward N. Detwiler, attached as **Exhibit 2** hereto, and Mr. Detwiler's letter of resignation, attached hereto as **Exhibit 3**.⁴ There can be

³ In addition to the instant Motion, Mr. Detwiler will file a formal and complete response ("Response") to the Bank's Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court, filed herein on January 24, 2020 (the Bank's "Brief"). Mr. Detwiler incorporates all arguments and assertions from said response herein.

⁴ See also *Montana Code Annotated*, § 35-8-307

35-8-307. Management and voting

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company

no basis to hold Mr. Detwiler in contempt.

3. Finally, the Bank makes multiple inaccurate assertions in its Brief, and its proposed Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager (“Vacated Contempt Order”), which will be fully addressed in Mr. Detwiler’s Response to the Brief. However, one glaring and false representation to this Court is that Mr. Detwiler has been represented by counsel in this case, including by the law firm of Holland & Hart. *See* Brief at p. 4. This is false. Holland & Hart represented the Company, never Mr. Detwiler. The Company’s attorney once accepted service of a subpoena on behalf of Mr. Detwiler, but the entirety of this case since Mr. Detwiler’s appearance has seen Mr. Detwiler without proper representation of any kind. The Bank has clearly taken advantage of this fact, and seeks to continue to do so. For example, despite the Subpoena’s extremely broad command that Mr. Detwiler appear and be required to testify about “[a]ny updates or additions to the testimony” he previously gave on numerous occasions (itself a violation of NRCF 30 since Mr. Detwiler has already been deposed), now that Mr. Detwiler has retained an attorney, suddenly the Bank does not want this Court to permit Mr. Detwiler to testify about these issues. *See* Brief at p. 3.

In other words, the Bank wants to violate Mr. Detwiler’s Constitutional due process rights, ignore binding Nevada Supreme Court case precedent by effectively obtaining a judgment against him without following any of the required procedures, stifle his ability to testify about what the Bank itself subpoenaed him to address, and then throw him in jail indefinitely until he pays a judgment against someone else or surrenders Vehicles purportedly in the control of an entity from which he has resigned all affiliation.

Given the Bank’s egregious behavior, the numerous due process violations that the Bank has committed against Mr. Detwiler, and the voluminous documentary, testimonial and other evidence in this case, as well as the unfounded and egregious – but still existent – attempts by the

may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

Mont. Code Ann. § 35-8-307 (West) (emphasis added); *see also* NRS §47.250 (13) (regarding the presumption that “a letter duly directed and mailed was received in the regular course of mail).

Bank to imprison Mr. Detwiler indefinitely for a debt against someone else, Mr. Detwiler would request 60 days in order to prepare for the Hearing in this matter.⁵

II. DECLARATION OF BRENOCH R. WIRTHLIN, ESQ. IN SUPPORT NON-PARTY EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME

I, Brenoch R. Wirthlin, declare as follows:

1. I am a shareholder at the law firm of Kolesar & Leatham ("K&L").

2. I make this declaration in support of non-party Edward Detwiler's ("Mr. Detwiler")'s Motion for Entry of a Protective Order on Order Shortening Time ("Motion") in the above-captioned matter.

3. K&L was very recently contacted to represent Mr. Detwiler in connection with a deposition and/or evidentiary hearing currently set for January 31, 2020.

4. It is my understanding that Mr. Detwiler was served with the Subpoena only a few days ago, on January 17, 2019.

5. The Subpoena, a copy of which is attached hereto as Exhibit 1, is extremely broad in the scope of the testimony it seeks from Mr. Detwiler, including without limitation:

a. (1) His status as a person owing debts to the defendant and judgment debtor James Patterson Foust Jr. or having in his possession or under his control any credits or other personal property belonging to the defendant and judgment debtor James Patterson Foust Jr.;

b. (2) Whether Mr. Detwiler is an alter ego of Harry Hildebrand, LLC;

c. (3) Any updates or additions to the testimony he previously gave before this Court on April 1, April 24, May 17, and May 21, 2019, and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and

d. (4) any other matter properly within the scope of NRS 31.100

6. In addition, after a review of the Court's docket, it appears an order of contempt

⁵ Should this Court see fit to continue the pending Hearing, Mr. Detwiler would, of course, be amenable to a briefing schedule to respond to the Brief consistent with the Court's schedule.

1 and bench warrant were issued against Mr. Detwiler, after which the Court vacated the warrant
2 and the order of contempt due to the Court's concern that the Bank had never served Mr. Detwiler
3 with a Subpoena. *See* Court Minutes from December 23, 2019, attached hereto as **Exhibit 4** for
4 the Court's convenience.

5 7. Given the very broad scope of the Subpoena – which would be at a minimum the
6 second deposition of Mr. Detwiler and he objects to this as a deposition in violation of NRCP 30(a)
7 – as well as the fact that it appears that the Bank is attempting to hold Mr. Detwiler, a non-party,
8 somehow responsible for a judgment against Defendant Foust, and the very serious nature of the
9 potential consequences of this matter, Mr. Detwiler will need time to prepare for the above
10 deposition and the pending Hearing. Undersigned counsel, who was only contacted within the last
11 few days to represent Mr. Detwiler, will also need time to prepare.

12 8. In addition, it appears the Bank has committed, and asked this Court via its Brief to
13 assist in committing, numerous violations of Nevada law and Mr. Detwiler's Constitutional due
14 process. In its Brief, it is clear the Bank is seeking to imprison Mr. Detwiler as a way of extorting
15 him to pay a judgment owed – not by him – but by Mr. Foust.

16 9. The Bank's brief attaches as Exhibit 1 thereto the Vacated Contempt Order. The
17 Vacated Contempt Order states that Mr. Detwiler can only be released from prison by delivering the
18 Vehicles at issue **"or paying the Bank in immediately available funds the value of the vehicles**
19 **listed in Exhibit B, \$521,575..."** *See* Vacated Contempt Order, Exhibit 1 to the Bank's Brief, at p.
20 17, ¶ 31 (emphasis added).

21 10. This is wholly improper and violative of binding Nevada Supreme Court precedent
22 as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007), in which the Court
23 held as follows:

24 **A party who wishes to assert an alter ego claim must do so in an independent**
25 **action against the alleged alter ego with the requisite notice, service of process,**
26 **and other attributes of due process.** When the judgment creditor employs the
27 proper procedure, the defendant who is subject to the alter ego claim is assured a
28 full opportunity of notice, discovery, and an opportunity to be heard before
potentially being found liable. **The failure to abide by this procedure results in**
a deprivation of due process.

Callie, 123 Nev. at 185, 160 P.3d at 881 (emphasis added).

11. There is no dispute that the judgment at issue is not against Mr. Detwiler. The Bank requests in its Subpoena testimony by Mr. Detwiler as to where he is an “alter ego” of the Company (which is also removed from the actual judgment debtor, Mr. Foust).

12. Yet, as of the date of this Motion the Bank has not so much as initiated the required separate action against Mr. Detwiler, much less obtained the required judgment against him. Despite this gross lack of due process on the Bank’s part, it seeks to have Mr. Detwiler imprisoned to pay a debt he does not owe.

13. In addition, it appears that the Bank’s behavior in threatening indefinite imprisonment against Mr. Detwiler until he pays someone else’s debt may be a violation of not only NRS § 207.190 (coercion), but also may give rise to an abuse of process claim by Mr. Detwiler against the Bank.

14. Moreover, Nevada’s civil contempt statutes, including without limitation NRS § 22.110, provide that the draconian and extreme punishment of *indefinite imprisonment* may only be imposed on an individual where the contempt “consists in the omission to perform **an act which is yet in the power of the person to perform**...”

15. Here, it appears clear that Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to this Court, and that Mr. Detwiler’s testimony has been consistent that he never had control of the Vehicles at issue, and would have turned them over if it was “in his power to perform.”

16. Mr. Detwiler has confirmed that he sent his resignation as a manager of Harry Hildibrand, LLC, effective September 10, 2019. *See* Declaration of Edward N. Detwiler, attached as Exhibit 2 hereto, and Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 3.

17. There can be no basis to hold Mr. Detwiler in contempt.

18. Finally, while prior counsel for the Company (Holland & Hart) may have previously accepted service of a subpoena on Mr. Detwiler’s behalf, he has not been represented by counsel in this case. He has now retained the undersigned law firm, and requests that he and the undersigned firm be given sufficient time to prepare for the upcoming Hearing, given the serious nature of the remedies improperly sought by the Bank.

19. Pursuant to NRCp 26(c), as well as EDCR 2.34, I have reached out to Mr. John

1 Bragonje, counsel for the Bank, via email (on January 21, 2020) and telephone (on January 22,
2 2020), to discuss a continuance of the date set in this matter for Mr. Detwiler's testimony.

3 20. Mr. Bragonje and I were able to speak on January 22, 2020, for approximately ten
4 (10) minutes.

5 21. During that phone call, I asked Mr. Bragonje if the Bank would agree to a continuance
6 of the upcoming deposition of Mr. Detwiler to allow for adequate preparation. Mr. Bragonje said
7 the Bank would not agree to a continuance.

8 22. Later, however, Mr. Bragonje contacted me to say that no hearing was set regarding
9 the Subpoena, and that he had contacted the Court and would agree to have this matter set for January
10 31, 2020.

11 23. During that second phone call, I informed Mr. Bragonje that I would agree to move
12 the hearing and/or date for compliance with the Subpoena from January 29 to January 31, but that I
13 reserved the right to file the instant Motion requesting additional time given the fact that the Bank
14 sought to imprison Mr. Detwiler indefinitely to pay a debt that is not even his. Mr. Bragonje
15 acknowledged that he understood.

16 24. Accordingly, counsel for the movant has in good faith conferred with other affected
17 parties in an effort to resolve the instant matter without Court action, but was unable to do so, as set
18 forth herein.

19 25. Mr. Detwiler therefore requests that the Court grant an extension of 60 days to allow
20 Mr. Detwiler and undersigned counsel to prepare.

21 26. Given the fact that the deposition in front of this Court is set for January 31, 2020, an
22 order shortening time for a hearing on the Motion is respectfully requested as there is not sufficient
23 time to hear this Motion in the ordinary course.

24 27. Mr. Detwiler respectfully requests that this Court hear this Motion on shortened time
25 so it may be heard prior to the scheduled deposition/Hearing.

26 28. I am providing a copy of this Motion to the Bank's counsel at the same time I am
27 submitting it to chambers today, January 27, 2020. In addition, I personally informed the Bank's
28 counsel, Mr. Bragonje, via telephone this morning that the instant Motion would be submitted today.

29. This Motion is brought in good faith and not for purposes of delay.

I declare the following to be true and correct to the best of my knowledge and belief under penalty of perjury of the laws of the State of Nevada.

Dated January 22, 2020.


BRENOCH R. WIRTHLIN

III. CERTIFICATION OF COUNSEL

As set forth in the Wirthlin Declaration, undersigned counsel certifies that, pursuant to NRC 26(c), as well as EDCR 2.34, undersigned counsel has reached out to Mr. John Bragonje, counsel for the Bank, via email and telephone on multiple occasions to discuss a continuance of the date set in this matter for Mr. Detwiler's testimony and the upcoming Hearing, but counsel has not been able to resolve this matter.

IV. CONCLUSION

For all these reasons, non-party Mr. Detwiler respectfully requests this Court set a hearing on the instant Motion on shortened time, as soon as practicable, and grant Mr. Detwiler a 60-day extension of the pending Hearing, to allow sufficient time to respond to the Bank's Brief and prepare for a hearing/deposition in this matter.

DATED this 22nd day of January, 2020.

KOLESAR & LEATHAM

By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

(NV SBN 15172)

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Email: abaker@klnevada.com

Attorneys for Non-party Edward Detwiler

EXHIBIT 1

EXHIBIT 1

1 **CC03**

2 John E. Bragonje

3 State Bar No. 9519

4 E-mail: jbragonje@lrrc.com

5 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, NV 89169-5996

Tel: 702.949.8200

Fax: 702.949.8398

Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

SUBPOENA – CIVIL

☒ **REGULAR** ☐ **DUCES TECUM**

THE STATE OF NEVADA SENDS GREETINGS TO:

EDWARD N. DETWILER

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you appear and attend on the 29th day of January, 2020, at the hour of 9:00 A.M. in Department No. II of the District Court, Clark County, Nevada. The address where you are required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is required to give testimony and/or to produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises.

You are required to appear pursuant to NRS 31.100 and to give testimony and be examined under oath concerning the following matters: (1) your status as a person owing debts to the defendant and judgment debtor James Patterson Foust Jr. or having in your possession or under

1 your control any credits or other personal property belonging to the defendant and judgment
2 debtor James Patterson Foust Jr.; (2) whether you are an alter ego of Harry Hildibrand, LLC; (3)
3 any updates or additions to the testimony you previously gave before this Court on April 1, April
4 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause
5 Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings
6 of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; and (4) any other
7 matter properly within the scope of NRS 31.100.

8 **CONTEMPT:** Your failure to appear will place you at risk of civil contempt. Failure by
9 any person without adequate excuse to obey a subpoena served upon that person may be deemed a
10 contempt of court. NRCP 45(e). If you fail to attend, you may be liable to pay \$100, plus all
11 damages caused by your failure to appear, and may be committed to jail. NRS 50.195, 50.205.
12 Additionally, the court may issue a warrant for your arrest pursuant to its civil contempt powers.
13 NRS 22.010(3); NRS 1.210(2); NRS 21.340. Please see Exhibit "A" attached hereto for
14 information regarding the rights of the person subject to this Subpoena.

15
16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By: 

18 John E. Bragonje (SPN 9519)
19 3993 Howard Hughes Pkwy, Suite 600
20 Las Vegas, NV 89169-5996

21 *Attorneys for Plaintiff Baker Boyer National Bank*
22
23
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

107427712_1

1 (1) A person responding to a subpoena to produce documents shall produce them as
2 they are kept in the usual course of business or shall organize and label them to correspond with
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents, communications, or things not
7 produced that is sufficient to enable the demanding party to contest the claim.
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EXHIBIT 2

EXHIBIT 2

DEC
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
Email: bwirthlin@knevada.com
Email: abaker@knevada.com
Attorneys for Non-party Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK,
a Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**DECLARATION OF NON-PARTY
EDWARD DETWILER IN SUPPORT OF
HIS MOTION FOR ENTRY OF A
PROTECTIVE ORDER AND
CONTINUANCE OF HEARING
ON ORDER
SHORTENING TIME**

I, Edward N. Detwiler, hereby declare as follows:

1. I, Edward N. Detwiler, hereby declare that I am over the age of 18 (eighteen) years of age and I am competent to give the testimony set forth below. Testimony is given from my own personal knowledge. If called as a witness, I could and would competently and truthfully testify as to the facts set forth herein.

2. I am a non-party with respect to the above-captioned action.

3. I make this Declaration in support of my MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME ("Motion").

EXHIBIT 3

EXHIBIT 3

Edward Detwiler
Coldwell Banker Premier Realty

September 10, 2019

Jim Foust
7 Avenida De Magnolia
Ranch Palos Verdes, CA 90275

Ron Vega, c/o Tom Larkin
2201 Corte Sabio #2201
San Diego, CA 92128

Re: Resignation as Manager of Harry Hildebrand, LLC

Gentlemen,

As you are aware, I am a licensed real estate agent in Nevada, and I had agreed to serve as manager of the Harry Hildebrand, LLC in anticipation of performing real property acquisition services here in Nevada. The need for those services has not materialized, and due to Ron Vega's health circumstances, it seems the need for such services are unlikely to materialize.

On the other hand, I have just received and reviewed the Entry of Findings of Fact, Conclusions of Law and Final Judgment dated December 19, 2018 regarding the Baker Boyer National Bank versus Jim Foust matter. - - By the way, I am a bit concerned, to say the least, that I was not provided a copy of this sooner.

In reviewing this ruling, I find the following findings compelling to my circumstance as manager of Harry Hildebrand, LLC (HH).

According to Paragraph 29 I have been ordered to "deliver up, surrender possession of, and turn over to the Bank promptly all cars identified in Exhibits A and B."

However, I have no idea where any of these cars might be currently located. I have only seen a few of these cars, and that was some time ago. I am not in possession of any titles to any of the subject cars, I have no keys to any such cars, I have no access to any location where any of these cars might be located, and again, I do not know where any of these cars are currently located. Additionally, I have no financial means to "deliver up" these cars even if the foregoing issues were resolved, and I have no control over any HH bank account that might exist in order to finance any such "delivering up" process.

Based upon the above, and the fact the court concluded that Jim Foust was the owner, and in possession and control of the cars, I am not sure what role I could play in delivering up any of the identified cars. Especially since on Page 8, Paragraph 29,

MSA00467

Page 9, Paragraph 36, and Page 15, Line 1, I am referred to as a "supposed manager of HH." Furthermore, the ruling also cites and recites my testimony on Page 15, Lines 1 through 5 confirming that I know nothing of any vehicles other than the four vehicles I saw being utilized by Mr. Foust and/or his family.

This reality is further mentioned at Page 16, Paragraph 74, where again my testimony is cited and recited confirming I am unaware of vehicles other than the four being utilized by Mr. Foust and/or members of his family.

Furthermore, Page 10, Lines 8 & 9, and Page 11 Paragraph 51, states that Mr. Foust owns and controls the subject cars.

In fact, Page 14, Paragraph 67 states "that the evidence is uncontroverted and overwhelming that Mr. Foust "retained possession or control of the property transferred after the transfer [to HH]."" Then again, under Conclusions of Law and Final Judgment – relate to Other Cars, on Page 21, Paragraphs 16 through 22, the court concluded, "Mr. Foust still owns, possesses and controls the cars in question..."

Consequently, I am not sure why the court, based upon its own findings and conclusions, would order ME to produce the subject cars; as it is an impossibility.

Accordingly, based upon all of the foregoing, I have no means to comply with the court order, and frankly, if I was somehow provided with the financial resources to "deliver up" said cars, I would not know where to begin.

Consequently, I must, and I hereby do, resign as manager of Harry Hildebrand, LLC, a Montana Limited Liability Company, effective immediately.

Please advise your respective legal counsels and advisors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Detwiler", written over a horizontal line.

Edward Detwiler

EXHIBIT 4

EXHIBIT 4

REGISTER OF ACTIONS**CASE NO. A-17-760779-F****Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)**§
§
§
§
§
§Case Type: **Foreign Judgment**Date Filed: **08/31/2017**Location: **Department 2**Cross-Reference Case Number: **A760779****PARTY INFORMATION**
Defendant  **Foust, James Patterson, Jr. Also Known As Foust, James P, Jr.**
Lead Attorneys
Michael D. Mazur, ESQ
Retained
 702-564-3128(W)

Plaintiff **Baker Boyer National Bank**
John E. Bragonje
Retained
 702-949-8200(W)
EVENTS & ORDERS OF THE COURT
 12/23/2019 **Status Check** (9:00 AM) (Judicial Officer Scotti, Richard F.)
Status Check: Warrant
Minutes

12/23/2019 9:00 AM

- Court expressed concern regarding whether a subpoena was ever served on Mr. Detwiler. Mr. Bragonje stated he did not believe Mr. Detwiler was served with a subpoena, however had been the subject of an Order to Show Cause. Court stated in the Order entered on November 20, 2019, James Foust was named the judgment debtor and reviewed prior findings. Mr. Bragonje reviewed the last Order of the Court. COURT ORDERED, warrant VACATED, and Order of Contempt VACATED. Court directed Mr. Bragonje to serve a subpoena on Mr. Detwiler to appear before the Court and to give deposition or explanation under oath as to the matters stated within NRS 31.100, to inquire whether Mr. Detwiler is the alter ego of Harry Hildibrand, and to possibly include the Court to include by reference all other testimony provided to the Court in the past, and any additional testimony he may want to give, and include if he fails to appear, the Court will hold him in civil contempt of court and issue a warrant. Mr. Bragonje stated he had not been able to locate Mr. Foust in Nevada, believed he was in Los Angeles, and requested the warrant extended beyond December 30. COURT FURTHER ORDERED, the warrant effective within any jurisdiction in the United States, for an additional six months; December 30, 2019 Status Check VACATED.

[Return to Register of Actions](#)**MSA00470**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment

COURT MINUTES

December 19, 2019

A-17-760779-F Baker Boyer National Bank, Plaintiff(s)
vs. James Foust, Jr., Defendant(s)

December 19, 2019 10:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.

PRESENT:

JOURNAL ENTRIES

- The Court, sua sponte, hereby issues a temporary STAY on the execution and enforcement of the Warrant of Arrest and Commitment of Edward N. Detwiler until December 30, 2019 at 5PM (PST). This Stay is effective immediately. Further, a Status Check Hearing on the Warrant is hereby set for Monday, December 23, 2019 at 9AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 12/19/19

1 **CERTIFICATE OF SERVICE**

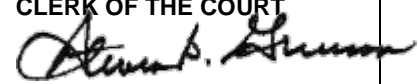
2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 29th day of
3 January, 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY**
4 **EDWARD DETWILER'S MOTION FOR ENTRY OF A PROTECTIVE ORDER AND**
5 **CONTINUANCE OF HEARING ON ORDER SHORTENING TIME** in the following
6 manner:

7 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
8 document was electronically filed on the date hereof and **served through the Notice of Electronic**
9 **Filing automatically generated by the Court's facilities to those parties listed on the Court's**
10 **Master Service List.**

11
12 /s/ **S. DIANNE POMONIS**

13 An Employee of KOLESAR & LEATHAM
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KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472



OPPS

John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
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Tel: 702.949.8200
Fax: 702.949.8398

*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**OPPOSITION TO NON-PARTY
EDWARD DETWILER'S MOTION
FOR ENTRY OF A PROTECTIVE
ORDER AND CONTINUANCE OF
HEARING ON ORDER SHORTENING
TIME**

and

**ERRATUM PROVIDING CORRECT
AFFIDAVIT OF SERVICE UPON
EDWARD DETWILER**

Date: January 30, 2020

Time: 1:30 p.m.

INTRODUCTION

The plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") opposes the referenced motion and asks the Court to deny the requested 60-day continuance. This paper also provides the Court with the correct exhibit to the brief filed on January 24, 2020. Exhibit 4 to that brief was to have been an affidavit of service upon Edward Detwiler commanding him to appear for the contempt trial. We accidentally provided the affidavit for Harry Hildebrand, LLC not Mr. Detwiler. Exhibit 1 to this paper is the correct affidavit.

I.

NON-PARTIES CAN BE HELD IN CONTEMPT, AND THE BANK IS ONLY ASKING THIS.

Mr. Detwiler’s new counsel repeatedly argue that the Bank is attempting “to hold Mr. Detwiler—a non-party—somehow responsible for the judgment.” (Opp’n 2:9.) This is false. The underlying judgment exceeds \$1.25 million. The Bank has never requested this from Mr. Detwiler. The repeated citations to *Callie v. Bowling*, 123 Nev. 118, 160 P.3d 878 (2007) are inapposite because, unlike that case, the Bank has never attempted to amend this foreign judgment to add Mr. Detwiler as a party. Rather, Mr. Detwiler is being called before the Court on contempt charges because he is the officer of the company that flouts this Court’s orders for more than one year running. Non-parties can obviously be held in contempt under Nevada law (and we are sure the law of every other jurisdiction). The law of supplemental proceeding, proceedings in aid of execution in, is set forth in NRS Chapter 21. This statute explicitly contemplates contempt for non-parties and witnesses:

NRS 21.340 Disobedience of master’s orders; contempts. If any *person, party or witness disobey* an order of the master, properly made in the proceedings before the master under this chapter, he or she may be punished by the court or judge ordering the reference, for a contempt.

(Emphasis supplied.) The contempt statutes themselves likewise obviously empower a court to enforce its orders against non-parties. *See* NRS 22.040.

II.

IF THE OFFICERS OR AGENTS OF A COMPANY ARE GUILTY OF A CONTEMPT

THEY MAY BE ATTACHED AND PUNISHED THEREFORE.

If the officers or agents of a company are guilty of a contempt, they may be attached and punished therefore. *See generally* 17 C.J.S. CONTEMPT § 57. Thus, corporate officers or company agents are punishable for contempt where they have knowledge or notice of an order directed to the company and they are responsible for the company’s violation thereof. *C.f. In re Waters of Humboldt River*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that “the district court has the power to sentence a government official to jail for criminal contempt committed in an official capacity”); *see also N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 634

(9th Cir. 1977) (quotation marks omitted) (collecting cases) (“A command to a corporation is in effect a command to those who are officially responsible for the conduct of its affairs.”); *United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) (“A nonparty may be held liable for contempt if he or she either abets or is legally identified with the named defendant An order to a corporation binds those who are legally responsible for the conduct of its affairs.”); *Nikko Materials USA, Inc. v. R.E. Serv. Co.*, No. C 03-2549 SBA, 2006 WL 1749550, at *4 (N.D. Cal. June 22, 2006) (“When a corporation refuses to abide by an order directing the corporation to perform an act, and the corporation is under the control of a single corporate officer or managing agent, the Ninth Circuit has held that a district court may hold the corporate officer in contempt, as well as the corporation, even when the corporate officer is not a party to the underlying action.”).

Because companies and corporations can only act through their agents, a contempt order need not explicitly warn agents of potential liability for contumacious conduct. 17 C.J.S. CONTEMPT § 57. More careful practice, however, dictates an explicit warning directed to named agents:

It is usual, in an order directed against a corporation, to lay the restraint or command, not only on the corporation itself, but also on its officers, agents, and servants, so that in the case of its violation not only the corporation itself is amenable to punishment, but also its officers, agents, and servants, whether or not parties to the proceeding, provided they have knowledge of the terms of the order and disobey it willfully.

Additionally, since a corporation is capable of violating a court order only if its agents act or refrain from acting, it follows that the order directed at the corporation is binding on agents authorized to act on its behalf, whether specifically named in the order or not.

Id.

Here, the Court’s order explicitly commanded Mr. Detwiler by name, on penalty of contempt, to turn over the 20 vehicles. (*See* 1/19/10, Order, Conclusion of Law ¶ 29, on file herein.) Mr. Detwiler could have had no reasonable doubt about how he would need to act to avoid punishment. Harry Hildibrand, LLC (“HH”) is a foreign limited liability company. It cannot be incarcerated. When a company acts in contempt of court, the agents that direct such actions must be punished. If the law were otherwise, business organizations would be free to disobey orders. That is absurd. The Bank is simply asking Mr. Detwiler in his capacity as

1 manager of HH to comply with this Court's orders to turn over the vehicles—or pay their value as
2 listed in the bankruptcy schedules that Mr. Detwiler himself prepared.

3 **III.**

4 **MR. DETWILER HAD AND HAS THE ABILITY TO COMPLY.**

5 Mr. Detwiler again claims he had no ability to company. This is prevarication. The Court
6 need not take our word for it; consider instead to Mr. Detwiler's own testimony he has given in his
7 deposition, at the bankruptcy proceedings, and in other documents filed with regulators, all of
8 which show his personal control over HH ability to comply. We respectfully refer the Court to
9 Exhibit 1 to our January 24, 2020 brief, the order previously signed by this Court which collects
10 this varied evidence that spans years.

11 One new point merits brief comment. Mr. Detwiler now argues that he cannot comply
12 because he has resigned as a manager. The timing of this resignation allows this argument to be
13 dismissed out of hand. Here is the timeline:

- 14 • **January 10, 2019:** The Court enters the order requiring HH and all its agents, including
15 specifically Mr. Detwiler, to turn over the vehicles. Notice of judgment is given to
16 Holland & Hart, which represented Mr. Detwiler. (1/10/19 Notice of Entry of Judgment,
17 on file herein.)
- 18 • **January 23, 2019:** Counsel writes to Mr. Detwiler by email and regular mail demanding
19 turnover of vehicles. (See Exhibit 1 to 2/21/19 Application, on file herein.)
- 20 • **February 21, 2019:** Mr. Detwiler is served with the Application for Order to Show Cause
21 Why Defendants Should Not Be Held in Civil Contempt. (On file herein.)
- 22 • **March 19, 2019:** Mr. Detwiler is personally served with Order to Show Cause. (See
23 Exhibit 3 to 1/24/20 Brief, on file herein.) ***NB:** the brief we filed on January 24, 2019*
24 *accidentally included the affidavit of service for HH, not for Mr. Detwiler personally. Mr.*
25 *Detwiler was personally and separately served with the order to show cause on March 19,*
26 *2019, as stated in the brief. We are including this affidavit of service as Exhibit 2 hereto*
27 *by way of this erratum.*
28

- **May 17 and 21, 2019:** Mr. Detwiler appears and testifies in his own behalf and in behalf of HH during the contempt proceedings.

Mr. Detwiler claims that he resigned from HH on September 10, 2019. This was of course months after the contempt trial had concluded and nine months after this Court gave its order.

An company officer cannot escape contempt charges simply by resigning after the fact. The Ninth Circuit, for instance, teaches that an officer's "resignation does not immunize him from liability for contempt [for his conduct when he was director]." *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 956 (9th Cir. 2014).

The Sixth Circuit reached a similar conclusion when it affirmed an order of contempt against a director who had resigned because the contemptuous conduct occurred prior to the director's resignation: "We affirm as to Director Turner because the district court's contempt award was based in part on conduct that occurred after entry of the Consent Order in July *399 2006 but before Cullman resigned on November 28, 2006." *Williamson v. Recovery Ltd. P'ship*, 467 F. App'x 382, 398–99 (6th Cir. 2012). *See also Hoffman Beverage Co. v. Forrest Mart Tid Bit Shop*, 135 N.Y.S.2d 795, 797 (City Ct. 1954) ("It is the Court's opinion that under the circumstances disclosed here the officer of the corporate judgment-debtor may not hide . . . on the ground that he had resigned as a director and vicepresident."); 55 C.J.S. MANDAMUS § 445 ("A resignation by a public officer for the purpose of evading the performance of a mandamus writ compelling an official duty is not of itself a contempt if the official resigns before it becomes his or her duty to obey the writ. However, if the mandate is served and the officer fails to obey it, the later resignation from office will not exempt the officer from punishment for the disobedience prior to the resignation.").

CONCLUSION

The Bank respectfully submits that this Court has the authority to commit Mr. Detwiler to prison under NRS Chapter 22, as more particularly described at paragraphs 16 to 25 in the Conclusions of Law of this Court's December 16, 2019 order.

...

...

1 The Bank asks that Mr. Detwiler be taken into custody when he is scheduled to appear on January
2 31, 2020.

3 DATED this 29th day of January, 2020.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By: /s/ John E. Bragonje

7 John E. Bragonje

8 State Bar No. 9519

9 jbragonje@lrrc.com

10 3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, NV 89169

12 *Attorneys for Plaintiff/Judgment Creditor Baker*
13 *Boyer National Bank*

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled ***“OPPOSITION TO NON-PARTY EDWARD DETWILER’S***
4 ***MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING***
5 ***ON ORDER SHORTENING TIME and ERRATUM PROVIDING CORRECT AFFIDAVIT***
6 ***OF SERVICE UPON EDWARD DETWILER”*** through the Court’s electronic filing system on
7 all parties on the Court’s e-service list.

8
9 Michael D. Mazur, Esq.
10 **MAZUR & BROOKS**
11 **A PROFESSIONAL CORPORATION**
12 2355 Red Rock Street, Suite 100
13 Las Vegas, NV 89146
14 *Attorneys for Defendant James Patterson Foust, Jr.*

15 Brenoch Wirthlin
16 **KOLESAR & LEATHAM**
17 400 S. Rampart Blvd., Ste. 400
18 Las Vegas, NV 89145
19 bwirthlin@klnevada.com

20 DATED this 29th day of January, 2020.

21 /s/ Luz Horvath
22 An employee of Lewis Roca Rothgerber Christie LLP
23
24
25
26
27
28

Exhibit 1

Exhibit 1

Steven D. Grierson

AFFT
Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

Date: April 1, 2019

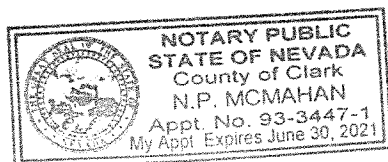
Time: 9:00 a.m.

Baker Boyer National Bank, a Washington corporation
vs *Plaintiff/Judgment Creditor*
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Defendant/Judgment Debtor

AFFIDAVIT OF SERVICE

I, Lisa Anne Wharton, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 19th day of March, 2019 and served the same on the 19th day of March, 2019 at 10:40am by delivering and leaving a copy with the Defendant, Edward Detwiler at Arranged pick-up at office of Legal Process Service, 724 S. 8th St., Las Vegas, NV 89101.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

19th day of March 2019

Notary Public N.P. McMahan

Lisa Anne Wharton
Affiant - Lisa Anne Wharton # R-2019-01148

Legal Process Service License # 604

WorkOrderNo 1901208



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

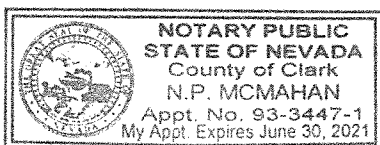
Baker Boyer National Bank, a Washington corporation
vs **Plaintiff/Judgment Creditor**
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Defendant/Judgment Debtor

Date: April 1, 2019
Time: 9:00 a.m.

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Bradford Nielsen, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt : Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 15th day of March, 2019 and attempted to effect service on Edward Detwiler at the following address(es): 845 Rusty Anchor Way, Henderson, NV 89002, as follows:

Date	Time	Address	Outcome
3/15/2019	8:00 am	As above	Address corresponds to a 1 story house. There was an Inco Utility Construction truck, white Toyota truck and grey Jeep in the driveway. There was no answer at the door and a delivery notice was left.
3/16/2019	10:00 am	As above	Delivery notice left on prior try was still in place. Affiant called 702-493-7801 and left a message for subject. A call back was received and Mr. Detwiler said he was coming to the office of Legal Process Service on Tuesday, 3/19/2019, to pick up the document. Affiant later received a call from 858 -267-2880 and male identified himself as the resident at above address. He said that Edward Detwiler used to date his sister but that the does not live there.



State of Nevada, County of Clark
SUBSCRIBED AND SWORN to before me on this
19th day of March 2019

Notary Public N.P. McMahan

Affiant – Bradford Nielsen #: R-065985
Legal Process Service - License # 604

WorkOrderNo 1901208



AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: A-17-760779-F

Dept. No.: II

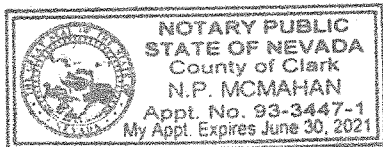
Date: April 1, 2019
Time: 9:00 a.m.

Baker Boyer National Bank, a Washington corporation
vs
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Plaintiff/Judgment Creditor
Defendant/Judgment Debtor

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 13th day of March, 2019 and attempted to effect service on Edward Detwiler at the following address (es): 20 Tapadero Lane, Las Vegas, NV 89135. Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
3/13/2019	8:02 pm	As above	Address corresponds to a two story house in the gated and guarded community known as The Ridges. Per male occupant, Patrick (white 30's, 5'9", 155 lbs, brown hair and beard), defendant does not live here and is unknown.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this
15th day of March, 2019

Notary Public N.P. McMahan

[Signature of Leonard Jay Hirschhorn]

Affiant - Leonard Jay Hirschhorn #R-2018-03419
Legal Process Service License # 604

WorkOrderNo 1901208



1 AFFT

2 Lewis, Roca, Rothgerber, Christie LLP
3 John E. Bragonje
4 3993 Howard Hughes Parkway, Suite 600
5 Las Vegas, NV 89169
6 State Bar No.: 9519
7 Attorney(s) for: Plaintiff/Judgment Creditor

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DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

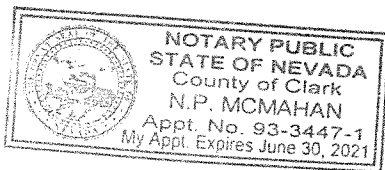
Baker Boyer National Bank, a Washington corporation
vs
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Plaintiff/Judgment Creditor
Defendant/Judgment Debtor

Date: April 1, 2019
Time: 9:00 a.m.

**AFFIDAVIT OF
ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt : Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt : Notice of Entry of Order to Appear and Show Cause why Defendants Should Not Be Held in Civil Contempt on the 27th day of February, 2019 and attempted to effect service on Edward Detwiler at the following address(es): Coldwell Banker, 10120 S Eastern Ave., #300, Henderson, NV 89052, as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
2/27/2019	10:48 am	As above	Per Cosette at front desk, subject is not in the office and that Affiant could check back later with one the "team members" to see if they know when subject will be in the office.
2/27/2019	2:36 pm	As above	Affiant spoke with Marie who said subject was not in the office and that they were not sure if he would be in that day.
2/28/2019	11:09 am	As above	Affiant spoke with Cosette again who said that subject is randomly in the office. Affiant left a message asking subject to call regarding a delivery.
3/1/2019	9:51 am	As above	Affiant spoke with Cosette who said that subject was not there. She said would call when he is in the office. She said he lives here and Texas and goes back and forth.



State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this
19th day of March 2019

Notary Public N.P. McMahan

Jennifer Lynn Jones
Affiant - Jennifer Lynn Jones #: R-2018-02711
Legal Process Service - License # 604

WorkOrderNo 1901208



Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

AFFT

Lewis, Roca, Rothgerber, Christie LLP
John E. Bragonje
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
State Bar No.: 9519
Attorney(s) for: Plaintiff/Judgment Creditor

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: A-17-760779-F

Dept. No.: II

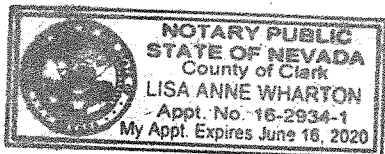
Baker Boyer National Bank, a Washington corporation
vs
James Patterson Foust, Jr., also known as James P. Foust, Jr.,
individually and his marital community, if any
Plaintiff/Judgment Creditor
Defendant/Judgment Debtor

Date: April 1, 2019
Time: 9:00 a.m.

AFFIDAVIT OF
ATTEMPTED SERVICE

I, Leonard Jay Hirschhorn, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt ; Application for Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt on the 22nd day of February, 2019 and attempted to effect service on Edward Detwiler at the following address(es): 817 Windhook St., Las Vegas, NV 89144. Below are listed the date(s) and time(s) of attempted service:

Date	Time	Address	Outcome
2/22/2019	6:30 pm	As above	Address corresponds to a one story house. The house was completely dark and there were flyers and cards stuck into the door. Affiant was able to see into the house and it is vacant.



State of Nevada, County of Clark

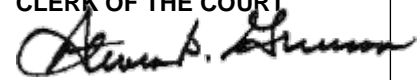
SUBSCRIBED AND SWORN to before me on this
25th day of February, 2019

Notary Public Lisa Anne Wharton

Affiant - Leonard Jay Hirschhorn #R-2018-03419
Legal Process Service License # 604

WorkOrderNo 1901208





NTC
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
KOLESAR & LEATHAM
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Facsimile: (702) 362-9472
E-Mail: bwirthlin@klnevada.com
Attorneys for Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually and
his martial community, if any,

Defendant

CASE NO. A-17-760779-F

DEPT NO. 2

**NON-PARTY EDWARD DETWILER'S
NOTICE OF OBJECTION PURSUANT
TO NRS § 22.030**

COMES NOW non-party Edward Detwiler ("Mr. Detwiler"), by and through counsel, and hereby submits his objection pursuant to NRS § 22.030 to the Honorable Judge Richard Scotti presiding at any further proceedings regarding a issues related to a determination of whether Mr. Detwiler has committed any acts constituting contempt of Court.

DATED this 30th day of January, 2020.

KOLESAR & LEATHAM

By /s/ BRENOCH WIRTHLIN
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Attorneys for non-party Edward Detwiler

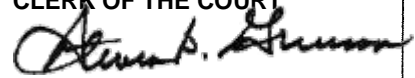
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 30th day of
3 January 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY EDWARD**
4 **DETWILER'S NOTICE OF OBJECTION PURSUANT TO NRS § 22.030** in the following
5 manner:

6 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
7 document was electronically filed on the date hereof and served through the Notice of Electronic
8 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
9 Service List.

10
11 /s/ **S. DIANNE POMONIS**
12 An Employee of KOLESAR & LEATHAM
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KOLESAR & LEATHAM
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Las Vegas, Nevada 89145
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RPLY
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
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Email: bwirthlin@klnevada.com
Email: abaker@klnevada.com
Attorneys for Non-party Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK,
a Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**NON-PARTY EDWARD DETWILER'S
REPLY IN SUPPORT OF MOTION FOR
ENTRY OF A PROTECTIVE ORDER
AND CONTINUANCE OF HEARING**

Hearing date: January 30, 2020

Hearing time: 1:30 p.m.

Non-party Edward Detwiler ("Mr. Detwiler"), hereby submits his reply in support of his MOTION FOR ENTRY OF A PROTECTIVE ORDER AND CONTINUANCE OF HEARING ON ORDER SHORTENING TIME ("Motion") as follows:

I. NOTICE OF OBJECTION PURSUANT TO NRS § 22.030

Pursuant to NRS § 22.030, Mr. Detwiler has filed his objection ("Objection")¹ to this Honorable Court presiding over any further proceedings regarding a issues related to a determination of whether Mr. Detwiler has committed any acts constituting contempt of Court. Undersigned counsel informed counsel for the Bank² that Mr. Detwiler would be submitting his

¹ Counsel for Mr. Detwiler has endeavored to submit courtesy copies of both the Objection and this Reply to the Court's chambers at the earliest possible opportunity.

² Unless otherwise stated, all capitalized terms have the meaning ascribed to them in the Motion.

1 Objection during a phone call that took place at approximately 4:30 p.m. on January 29, 2020. As
2 set forth in the Bank's opposition to the Motion ("Opposition"), the Bank seeks to hold Mr.
3 Detwiler in contempt for a purported refusal to comply with an order of this Court directing the
4 Company and Mr. Foust to turn over the Vehicles. *See* Opposition at p. 2. While Mr. Detwiler
5 has no objection to this Honorable Court generally – and undersigned counsel has great respect for
6 His Honor, having practiced in front of him many times including when he was a Judge for the
7 State Contractors' Board – given the nature of the Bank's request Mr. Detwiler feels compelled to
8 exercise his rights under NRS 22.030.³ This decision is based on the fact that the prior Vacated
9 Contempt Order was vacated by this Court at its December 23, 2019 hearing⁴ (and does not appear
10 to have ever been filed or entered on the docket), and due to the new and additional evidence that
11 is and will be submitted regarding the Bank's numerous inaccurate and factually incorrect
12 statements regarding Mr. Detwiler.⁵

13 II. ARGUMENT

14 In its ("Opposition") to the Motion, the Bank makes several misstatements of fact and law.
15 Glaringly, the Bank now asserts that that it only seeks to hold Mr. Detwiler in contempt until he
16 turns over the Vehicles he purportedly has the ability to turn over. This is inaccurate. In the
17 Vacated Contempt Order, the Bank clearly attempted to effectively hold Mr. Detwiler in prison
18 until he turned over the Vehicles **"or pa[id] the Bank in immediately available funds the value**
19 **of the vehicles listed in Exhibit B, \$521,575..."** *See* Vacated Contempt Order, Exhibit 1 to the
20 Bank's Brief, at p. 17, ¶ 31 (emphasis added). The Bank knows that Mr. Detwiler has no access
21 to the Vehicles, so its requested order would – as the Bank is very well aware – be a judgment
22 against Mr. Detwiler for the money owed by Mr. Foust, from which Mr. Detwiler could only be
23 relieved by paying the judgment against Mr. Foust. Contrary to the Bank's assertion, it also seeks
24

25
26 ³ The Bank's citation to NRS § 22.040 clearly evinces the fact that the Bank seeks to hold Mr. Detwiler in contempt
for acts "not committed in the immediate view and presence of the court or judge", making NRS § 22.030(3) directly
applicable.

27 ⁴ *See* Transcript of the December 23, 2019, hearing, on file herein.

28 ⁵ Further, while Mr. Detwiler addresses the Bank's Opposition to the Motion given today's hearing, he reserves all
rights and privileges, including those under NRS § 22.030.

1 to question him about whether he is an “alter ego” of the Company. *See* Subpoena at Exhibit 1 to
2 the Motion. Without a proper claim asserted against Mr. Detwiler as required by the Supreme
3 Court of Nevada in *Callie*, no such inquiry is proper or relevant. Yet, undoubtedly, the Bank
4 intends to continue its campaign against Mr. Detwiler’s due process and attempt to hold Mr.
5 Detwiler liable under the judgment against Mr. Foust as an “alter ego” of the Company, which
6 attempt has numerous due process and statutory violations inherent therein.

7 Moreover, the Bank suggests that NRS § 21.340 – mentioned by the Bank for what appears
8 to be the first time in this entire proceeding – can somehow overcome the requirement of Nevada
9 law that the Bank demonstrate clearly and convincingly that contempt, and especially
10 imprisonment, is warranted against Mr. Detwiler due to his ability to comply. Tellingly, while the
11 Bank alleges that this Court can hold Mr. Detwiler in contempt and “commit Mr. Detwiler to prison
12 under NRS Chapter 22”, the Bank ignores entirely the fact that under Nevada’s civil contempt
13 statutes, including without limitation NRS § 22.110, the draconian and extreme punishment of
14 indefinite imprisonment may only be imposed on an individual where the contempt “consists in
15 the omission to perform an act which is yet in the power of the person to perform...” Here,
16 Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to
17 this Court. The truth is, Mr. Detwiler’s testimony has been consistent that he never had
18 involvement with, or ownership of, Vehicles. Moreover, Mr. Detwiler resigned as a manager of
19 the Company effective September 10, 2019. *See* Declaration of Edward N. Detwiler, attached as
20 Exhibit 2 to the Motion, and Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 3 to
21 the Motion.

22 Not only that, but common sense belies the Bank’s abusive accusations – there is no doubt
23 that Mr. Detwiler never had any ownership interest in the Company or the Vehicles. Why would
24 he not have turned them over long ago? He has nothing to gain by refusing to turn over the
25 Vehicles – and as set forth in Mr. Detwiler’s forthcoming brief, the Bank has not even shown, nor
26 can it, that the Vehicles were ever in control of Mr. Detwiler’s authority to turn them over.⁶ There
27

28 ⁶ In addition, as set forth more fully in his forthcoming response to the Brief, Mr. Detwiler has absolutely no business
dealings with Mr. Foust, and the records of the entities the Bank cites to in its Brief make that clear by showing that

1 can be no basis to hold Mr. Detwiler in contempt, and even if there was, a proceeding to make that
2 determination would have to take place in a separate department as set forth above.

3 The Bank's citations to CJS generally and other non-Nevada authorities – while
4 misconstrued by the Bank as set forth below – do not change the binding Nevada statutory and
5 case law precedent cited by Mr. Detwiler which demonstrates that there is no grounds to hold Mr.
6 Detwiler in contempt. Moreover, the Bank's assertions that Mr. Detwiler "has the ability to
7 comply" to turn over the Vehicles, which can only properly be heard before a separate department
8 based on Mr. Detwiler's objections as noted above, are also inaccurate:

- 9 1. The Bank falsely asserts – again – that Mr. Detwiler was "represented" by Holland
10 & Hart. This is not true. Holland & Hart only represented the Company, not Mr.
11 Detwiler. Therefore, notice of the order requiring the Company to turn over the
12 Vehicles was not notice to Mr. Detwiler.
- 13 2. Counsel for the Bank asserts he wrote to Mr. Detwiler by "regular mail" and email
14 demanding turnover of the Vehicles. Absent is any return receipt showing Mr.
15 Detwiler received counsel's communications, and Mr. Detwiler will testify he did
16 not, in fact, receive them.
- 17 3. The Bank asserts that Mr. Detwiler was served with an application for order to show
18 cause, and he was served with the Order to Show Cause. But the question remains
19 – so what? Service of these documents in no way proves, or even suggests, that
20 Mr. Detwiler could turn over the Vehicles!
- 21 4. In fact, numerous facts demonstrate unequivocally that Mr. Detwiler could not, in
22 fact, turn over the Vehicles, including without limitation the following:
 - 23 a. Mr. Detwiler testified, and the (unauthenticated) transcript of the
24 Bankruptcy Hearing confirmed, that whatever knowledge he had of vehicles
25 at all came from the Bank's attorney Mr. Lezei;
 - 26 b. Mr. Detwiler saw some vehicles at a warehouse in Compton ***the day before***
27 ***the bankruptcy hearings***, but the Bank has **never** shown or even provided
28 any evidence that those vehicles were the same Vehicles the Bank now
seeks;
 - c. Mr. Detwiler will testify that, contrary to the Bank's false assertions, Mr.
Detwiler never inspected any vehicles, and only knew that some did not run
because some of the vehicles at the warehouse (again, no evidence that those
are the Vehicles the Bank seeks) had their engines next to the vehicles,
which is a fair indication the vehicle is inoperable;

they are not the managers or members of any of the same entities! The assertion they share office space is also false.

- 1 d. Mr. Detwiler will testify that only other vehicles he ever saw were a Yukon
2 and Mercedes driven by Foust. But again, no indication or evidence from
3 the Bank that those are even part of the list of Vehicles the Bank seeks, and
4 Mr. Detwiler will testify they were always in Mr. Foust's possession and he
5 never inspected them or had reason to do so;
- 6 e. The Bank has never even disputed that Mr. Detwiler ever had any ownership
7 interest in the Company, or the Vehicles, or anything else that would enable
8 him to turn over the Vehicles;
- 9 f. Mr. Detwiler will testify he was never made aware of the Vacated Contempt
10 Order until after he had obtained counsel and the order itself had been
11 vacated;
- 12 g. There are numerous material inconsistencies between the various orders the
13 Bank has submitted to this Court, themselves extremely problematic to the
14 Bank's position regarding Mr. Detwiler, but also evincing a clear intent by
15 the Bank to attempt to extort from Mr. Detwiler payment of some or all of
16 the judgment against Mr. Foust, **under threat of indefinite imprisonment**,
17 giving rise to serious due process concerns, violation of Nevada's anti-
18 coercion laws, and very likely constituting abuse of process by the Bank
19 against Mr. Detwiler.

20 While the Bank's evidence will be properly before another department, it is very clear the
21 Bank has been extremely fast and loose with the facts, to put it mildly, in its attempt to attack the
22 easier target, Mr. Detwiler, simply because he has shown up. As necessary, Mr. Detwiler will
23 provide an affidavit and/or testimony confirming the above, as well as additional bases
24 demonstrating the Bank's request that he be held in contempt is improper.

25 Finally, the case law cited by the Bank is inapposite at best. The only Nevada Supreme
26 Court case cited by the Bank is misrepresented. In fact, that case, *In re Determination of Relative
27 Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118
28 Nev. 901, 903, 59 P.3d 1226, 1227 (2002), involved **criminal contempt, not civil**, and the Court
that the contempt finding at issue was "an abuse of discretion":

The district court may order that, if a contemnor continues in its contempt, it must
post a bond as security to cover costs incurred as a result of the contempt.
Additionally, the district court has the power to sentence a government official to
jail for **criminal contempt committed in an official capacity, but, under the
facts here, it was an abuse of discretion to do so.**⁷

⁷ Unless otherwise stated, all emphases are added to case citations.

Moreover, the holding involved the National Labor Relations Board and agents thereof actually on the board, who had direct knowledge of the order at issue and the ability to comply (which Mr. Detwiler did not). *See N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 634 (9th Cir. 1977) (“Null and Horn concede they knew the order had issued.”). Tellingly, *Sequoia District* did **not** involve indefinite imprisonment, was not decided under Nevada law, and therefore provides no support for the Bank’s position. The holding in *United States v. Laurins*, 857 F.2d 529 (9th Cir. 1988), is likewise inapplicable as the individual there indisputably maintained complete control of the company and the ability to comply with the order. Conversely, Mr. Detwiler repeatedly testified he had no control to turn over the Vehicles (and would have if he did), and has resigned from the Company well before he knew anything about the Vacated Contempt Order. The holding in *Nikko Materials USA, Inc. v. R.E. Serv. Co., No. C 03-2549 SBA*, 2006 WL 1749550, at *1 (N.D. Cal. June 22, 2006) is facially inapplicable as it involved a “corporation [] under the control of a single corporate officer”. *See* Opposition at p. 3. The orders in this case submitted by the Bank have found expressly that **“Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole member; he is a manager also.”** *See* Findings of Fact, Conclusions of Law, and Final Judgment entered on March 8, 2018, on file herein. Yet now the Bank wants to assert that this was incorrect and Mr. Detwiler, the resigned former manager (never a member), somehow controls the Company. The Bank’s willingness to state whatever fits its current purpose is disturbing, to say the least.

Finally, the Bank cites a few cases regarding whether resignation effectively purges any possible contempt. None of these cases are Nevada law, and the Bank misstates the holdings, which support Mr. Detwiler’s position. For example, in *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 956 (9th Cir. 2014), the court did hold that a resignation was not effective to shield an individual from contempt. But the Bank leaves out the pertinent facts. In that case, the board member resigned, **but only after he had taken specific action to directly and deliberately disobey the court order at issue:** “It is true that Rieman lacked control over Sea Shepherd US after he resigned in February 2013. But by that time, he had already voted to ratify and implement the separation strategy, and an OZT vessel had already

1 breached the safety perimeter imposed by our injunction.” Conversely, the Bank has not – and
2 cannot – produce any evidence that Mr. Detwiler did anything whatsoever to deliberately violate
3 any order by this Court regarding the Vehicles, and the uncontroverted evidence, including Mr.
4 Detwiler’s own undisputed testimony, shows exactly the opposite.

5 The holding in the unreported Sixth Circuit decision in *Williamson v. Recovery Ltd. P’ship*,
6 467 F. App’x 382, 398–99 (6th Cir. 2012) is similarly inapposite as it based on conduct occurring
7 **after** the entry of the court’s order. (“We affirm as to Director Turner because the district court’s
8 contempt award was based in part on conduct that occurred after entry of the Consent Order in
9 July 9 2006 but before Cullman resigned on November 28, 2006”). Finally, to the extent the New
10 York “city court” opinion in *Hoffman Beverage Co. v. Forrest Mart Tid Bit Shop*, 135 N.Y.S.2d
11 795, 797–98 (City Ct. 1954) is applicable at all, it serves as the nail in the coffin of the Bank’s
12 argument, so to speak, as it proves that even if it there were some evidence that Mr. Detwiler’s
13 resignation was in bad faith – which there is not because it was not – such a finding would have to
14 be determined at a **separate hearing** which, based on Mr. Detwiler’s objection, would have to
15 take place in a different department:

16 It is the Court’s opinion that under the circumstances disclosed here the officer of
17 the corporate judgment-debtor may not hide behind a special notice of appearance
18 on the ground either that he individually was not mentioned in the order on the
19 application, but as Joseph Belson, vicepresident, or on the ground that he had
20 resigned as a director and vicepresident. In may be possible that facts may be
21 elicited tending to show that the alleged resignation of the vice-president and
22 director was made in had [*sic*] faith or for an improper and illegal purpose. *Zeltner*
23 *v. Henry Zeltner Brewing Co.*, 85 App.Div. 387, at page 389, 83 N.Y.S. 366, at
24 page 368. This may only be done on a hearing or application to punish, not by a
25 special notice of appearance.

26 Accordingly, the Bank’s Opposition provides no basis for the improper relief it seeks against Mr.
27 Detwiler, and the Motion should be granted to permit this matter to be assigned to a different
28 department.

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1 **III. CONCLUSION**

2 For all these reasons, non-party Mr. Detwiler respectfully requests this Court grant the
3 Motion in its entirety and allow this matter to be transferred to a separate department pursuant to
4 NRS § 22.030, and grant such other relief as appropriate.

5 DATED this 30th day of January, 2020.

6 **KOLESAR & LEATHAM**

7
8 By 

9 BRENOCH WIRTHLIN, ESQ.

10 (NV SBN 10282)

11 AMANDA K. BAKER, ESQ.

12 (NV SBN 15172)

13 **KOLESAR & LEATHAM**

14 400 South Rampart Boulevard, Suite 400

15 Las Vegas, Nevada 89145

16 Telephone: (702) 362-7800

17 Facsimile: (702) 362-9472

18 Email: bwirthlin@klnevada.com

19 Email: abaker@klnevada.com

20 *Attorneys for Non-party Edward Detwiler*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 30th day of
3 January 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY EDWARD**
4 **DETWILER'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF A PROTECTIVE**
5 **ORDER AND CONTINUANCE OF HEARING** in the following manner:

6 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
7 document was electronically filed on the date hereof and **served through the Notice of Electronic**
8 **Filing automatically generated by the Court's facilities to those parties listed on the Court's**
9 **Master Service List.**

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11 /s/ **S. DIANNE POMONIS**

12 An Employee of KOLESAR & LEATHAM
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Foreign Judgment

COURT MINUTES

January 30, 2020

A-17-760779-F Baker Boyer National Bank, Plaintiff(s)
vs. James Foust, Jr., Defendant(s)

January 30, 2020 01:30 PM Non-Party Edward Detwiler's Motion for Entry of a Protective
Order and Continuance of Hearing on Order Shortening Time

HEARD BY: Scotti, Richard F. COURTROOM: RJC Courtroom 03B

COURT CLERK:

RECORDER: Amoroso, Brittany

REPORTER:

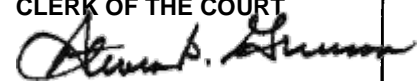
PARTIES PRESENT:

John E. Bragonje Attorney for Plaintiff

JOURNAL ENTRIES

Brenoch Wirthlin, Esq. present on behalf of Mr. Detwiler. Erik Foley, Esq. also present. Court reviewed the history of the case. Mr. Bragonje gave a quick summary of events. Mr. Wirthlin advised Mr. Detwiler was local, was willing to appear, and present evidence. Arguments by counsel regarding the Motion for Entry of a Protective Order. Upon the Court's inquiry, Mr. Bragonje stated he believed Mr. Foust was in Los Angeles and law enforcement there would not extradite him on a civil contempt warrant; stated he believed Mr. Foust and Mr. Detwiler were working together. Mr. Wirthlin argued regarding the Motion, and requested a week or two to conduct a trial. Court noted the trial was broken up into the Detwiler portion and the Foust portion. Mr. Bragonje argued regarding the resignation letter of Mr. Detwiler. COURT ORDERED, prior Contempt Order could be refiled and reissued by the Court and directed Mr. Bragonje to prepare and resubmit the Order. Court stated any motion Mr. Detwiler wished to file would not be precluded. COURT FURTHER ORDERED, hearing date SET. COURT ORDERED, Mr. Detwiler to surrender his passport to Mr. Wirthlin within 24 hours, and matter STAYED through the next hearing date.

2/12/20 9:00 AM HEARING



ORDR

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*Attorneys for Plaintiff/Judgment Creditor
Baker Boyer National Bank*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER FOR PUNISHMENT OF
CONTEMPT BY HARRY
HILDIBRAND, LLC AND EDWARD N.
DETWILER, ITS MANAGER**

This matter having come on for an evidentiary hearing before the Honorable Richard Scotti on April 1, April 24, May 17, and May 21, 2019 and pertaining to this Court's Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt for violating this Court's prior Findings of Fact, Conclusions of Law, and Final Judgment issued on January 9, 2019; this Court having previously entered an order of contempt against judgment debtor James P. Foust, Jr.; third party claimant Harry Hildibrand, LLC ("HH") having been represented by Holland & Hart LLP before its withdrawal; Edward Newlin Detwiler, the manager of HH having appeared and offered extensive testimony; defendant and judgement debtor Mr. Foust having been represented by Michael D. Mazur of Mazur & Brooks; plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") having been represented by John E. Bragonje of Lewis Roca Rothgerber Christie LLP; the Court having read and considered all relevant pleadings and papers

1 on file in the above-captioned case, having reviewed the documents admitted into evidence and
2 briefs and points of authorities filed by the parties, and having heard and carefully considered the
3 testimony of the witnesses called to testify, the Court hereby enters the following facts and states
4 the following conclusions of law:

5 **INTRODUCTION**

6 Mr. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his
7 refusal to repay the loan, the Bank obtained a judgment in the original amount of \$933,616.30,
8 including fees and costs, against Mr. Foust in the Superior Court of Washington in and for Walla
9 Walla County (the "Judgment"). The Bank domesticated the Judgment in the State of Nevada on
10 August 31, 2017.

11 When he applied for the loan that created the obligation that, when breached, led to the
12 Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
13 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis. On January 9,
14 2019, the Court issued a Findings of Fact, Conclusions of Law, and Final Judgment (the "Order"),
15 resolving a series of prior supplemental proceedings in favor of the Bank and against Mr. Foust
16 and third party claimant Harry Hildibrand, LLC ("HH"). The Order required "Mr. Foust and HH
17 and any of their respective agents, employees, or affiliates [] *including without limitation Mr.*
18 *Detwiler* . . . on penalty of contempt, to deliver up, surrender possession of, and turn over to the
19 Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in
20 [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust
21 and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

22 However, as discussed herein, HH, acting through its manager, Edward Detwiler, has
23 refused to comply with the Order and has failed to deliver a single vehicle to the Bank. As further
24 discussed herein, HH and Mr. Detwiler presented no valid excuse for violating the Court's Order,
25 presented no evidence of any effort to retrieve the subject vehicles from their present locations,
26 and, instead, intentionally and knowingly failed to comply, without justification.

27 Based upon the testimony and documentary evidence presented during the hearing and for
28 good cause appearing, the Court hereby holds HH and its manager, Edward Detwiler in civil

1 contempt of this Court's January 9, 2019, Order and finds, concludes, orders, adjudges, and
2 decrees as follows:

3 **FINDINGS OF FACT**

4 1. On December 20, 2017, the Bank filed a motion seeking an order requiring Mr.
5 Foust to deliver possession of various exotic vehicles to satisfy the Judgment.

6 2. In his written opposition to the motion, Mr. Foust indicated that he no longer
7 owned a single one of the 59 vehicles that were the subject of the motion and which he pledged to
8 the Bank to secure the loan.

9 3. Throughout the proceedings, Mr. Foust claimed to have transferred many of these
10 vehicles to HH.

11 4. Mr. Detwiler, as he has affirmed in a vast array of papers and hearings before this
12 Court, is HH's manager. (*E.g.*, 3/2/18 Application for Hearing, Declaration of E. Detwiler, on file
13 herein ("I am the managing director of Harry Hildibrand, LLC . . .").)

14 5. The Court conducted two evidentiary hearings on February 15, 2018, and
15 November 5, 2018; the Court conducted standard hearings on about a dozen occasions; and the
16 parties have submitted over 30 papers in support of these activities.

17 6. On January 9, 2019, the Court issued the Order, ruling in favor of the Bank and
18 against Mr. Foust and HH in every respect.

19 7. The Order required "Mr. Foust and HH and any of their respective agents,
20 employees, or affiliates *[including without limitation Mr. Detwiler . . . on penalty of contempt,*
21 *to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that*
22 *protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or*
23 *expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH."* (Order,
24 Conclusion of Law ¶ 29 (emphasis supplied).) The list of 20 vehicles identified in Exhibit B to
25 this Court's January 9, 2019, Order, is attached hereto as **Exhibit B** also.

26 8. HH never challenged the Order with any motion for reconsideration, or motion
27 pursuant to NRCP 59 or 60 to alter or amend the Order, nor did HH appeal the order. It is final.

28 9. HH and Mr. Detwiler, as discussed below, were well aware of this Court's Order

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume III - Part 1; Pages MSA00501-MSA00625)

BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)

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Attorneys for Appellant

TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518-MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445-MSA00447	1/28/2020	Notice of Appearance
I	MSA00071-MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001-MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766-MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384-MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473-MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719-MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

1 and the Bank's requests for compliance.

2 10. The Bank gave notice of entry of the Order, which was served on HH's counsel,
3 Holland & Hart. (*See* 1/9/19 Notice of Entry of Order, on file herein.)

4 11. The Bank, through its counsel, also wrote to Mr. Detwiler on January 23, 2019,
5 nearly two weeks after the entry of the Order, to inform Mr. Detwiler that the Bank was ready to
6 take immediate possession of the vehicles identified in the Order. (*See* Exhibit 1 to 2/21/19
7 Application, on file herein.)

8 12. The Bank's counsel further telephoned Mr. Detwiler regarding the same. Despite
9 having signed all the bankruptcy filings identifying the subject vehicles and having testified at a
10 creditors' meeting about their locations (*see id.* ¶¶ 49, 76), Mr. Detwiler claimed to have no
11 knowledge of the vehicles' current whereabouts.

12 13. Despite the Bank's aforementioned attempts, HH and Mr. Detwiler have refused to
13 comply with this Court's Order.

14 14. On February 21, 2019, the Bank filed an Application for Order to Show Cause
15 Why Defendants Should Not Be Held in Civil Contempt ("Application"). (*See* 2/21/2019
16 Application, on file herein.)

17 15. The Court granted the Bank's Application, and held an evidentiary hearing on April
18 1, April 24, May 17, and May 21, 2019 regarding the same. (*See* 2/21/2019 Order to Appear, on
19 file herein.)

20 16. Mr. Detwiler and HH, through Mr. Detwiler, had notice of the contempt
21 proceedings, and at the May 17 and May 21, 2019 evidentiary hearing, Mr. Detwiler appeared and
22 testified on his own behalf and on behalf of HH. Mr. Foust and another associate, Thomas Larkin,
23 also offered testimony.

24 17. As discussed herein, the Court finds that Mr. Detwiler, as representative of HH,
25 presented no valid excuse for violating the Court's Order; he presented no valid excuse for failing
26 to turn over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt
27 to retrieve the subject vehicles from their present locations. Mr. Detwiler and HH intentionally
28 and knowingly failed to comply, without justification.

1 18. Mr. Detwiler was not a credible witness. He gave self-serving testimony
2 concerning his role with HH: Mr. Detwiler repeatedly claimed he was a mere “figurehead” of HH
3 (5/17/19 Hr’g Trans. p. 19:12-16; 23:13-15; 5/21/19 Vol. I Hr’g Trans., p. 9:3-16) with “no day-
4 to-day operations knowledge” (*id.* at 20:9-16)—a manager in name only without any control over
5 the situation. Additional evidence received by the Court proved, in a clear and convincing
6 manner, just the opposite. Mr. Detwiler exercised completed control over HH.

7 19. Mr. Detwiler testified that HH has no employees and no payroll. (5/21/19 Vol. I
8 Hr’g Trans., p. 8:15-9:3; *see also id.* at p. 10:10-11 (same); 11/5/18 Hr’g Ex. 3, Control No. 119.)

9 20. Mr. Detwiler acted as HH’s manager. (*E.g.*, 5/17/19 Hr’g Trans., p. 19:12
10 (describing his role as “manager of Harry Hildibrand”); *id.* at p. 20: 11-12 (describing himself as a
11 manager); *id.* at p. 23:1 (same); *id.* at p. 26:22 (same); *id.* at p. 27:24-28 (same).)

12 21. In fact, Mr. Detwiler testified that he was the *only* manager of HH:

13 Q: And you’re the sole—

14 Mr. Detwiler: At least to my knowledge.

15 Q: —manager, correct?

16 Mr. Detwiler: I’m—I’m a manager.

17 Q: Who are the other managers?

18 Mr. Detwiler: I don’t know.

19 (5/21/19 Vol. I Hr’g Trans., p. 10:12-18.)

20 Q: You are the only manager of Harry Hildibrand, LLC, correct?

21 Mr. Detwiler: That I’m aware of, yes.

22 (5/17/19 Hr’g Trans., p. 28:6-7.)

23 22. Mr. Detwiler has acted as the manager since 2008. (11/5/18 Hr’g Ex. 3, Control
24 No. 100.) Mr. Detwiler claims to have contact with HH’s purported owners, the children of the
25 late Harry Hildibrand, Sr., HH’s name sake. (11/5/18 Hr’g Ex. 3, Control Nos. 84, 95, 98-99, 100,
26 108.) Mr. Detwiler claims that he works for free. (11/5/18 Hr’g Ex. 3, Control Nos. 103-04, 105.)

27 23. No one besides Mr. Detwiler claiming a connection with HH or purporting to
28 represent HH has ever appeared before this Court. No one besides Mr. Detwiler claimed to be
speaking with HH’s ownership. Mr. Detwiler was the sole agent and mouthpiece for HH during
the years this Court has presided over this lawsuit. While there were at times claims that others
controlled HH, such as a person named Harry Hildibrand, Jr., none of these alleged owners ever

1 appeared or gave an affidavit. Only Mr. Detwiler did these things.

2 24. During the pendency of the proceedings before this Court, HH petitioned for
3 bankruptcy relief in California. The bankruptcy was ultimately dismissed for HH's subsequent
4 failure to prosecute. *See In re: Harry Hildibrand, LLC*, 2:18-bk-18727-NB, ECF No. 20 (Bankr.
5 C.D. Cal. Sept. 7, 2018).

6 25. Mr. Detwiler signed the bankruptcy petition as HH's manager on June 19, 2018,
7 *See id.* at ECF No. 1, and the same signatures were submitted again for an addendum to the
8 petition filed on August 7, 2018, *see id.* at ECF No. 11. (*See also* Order, Finding of Fact 24
9 (noting that Mr. Detwiler signed the bankruptcy papers).)

10 26. The bankruptcy trustee conducted an 11 U.S.C. § 341 meeting of creditors in Los
11 Angeles on August 27, 2018. Mr. Detwiler flew from Las Vegas (at his own expense, he says) to
12 represent HH and give testimony. (5/17/19 Hr'g Trans. p. 37:16-38:1.)

13 27. During the Court's hearing on November 5, 2018, the Court received into evidence
14 a complete transcript of the Section 341 creditors meeting, where Mr. Detwiler testified under oath
15 after being sworn.

16 28. Mr. Detwiler's testimony in this setting further discredited his characterization of
17 his mere "figurehead" status and, instead, proved that he actively managed HH and that he had
18 specific knowledge of and control over the vehicles in question.

19 29. At the Section 341 hearing, Mr. Detwiler sketched HH's business plan. HH buys
20 cars, restores them, and finally sells them for a profit. (*See* 11/5/18 Hr'g Ex. 3, Control Nos. 91,
21 95, 98.) Mr. Detwiler had intimate knowledge of each step of this process.

22 30. First, Mr. Detwiler identified the location of the vehicles in question. The
23 bankruptcy papers Mr. Detwiler approved included a schedule of assets, which was a list of 20
24 vehicles, which is included herewith as Exhibit B. Mr. Detwiler testified that 10 of the vehicles
25 identified in the bankruptcy schedules, were located at a warehouse in Compton, California.
26 (5/17/19 Hr'g Trans., p. 38:18-23; 11/5/18 Hr'g Ex. 3, Control Nos. 116, 119.) Mr. Detwiler also
27 testified that HH paid rent to lease this warehouse on a month-to-month basis. (11/5/18 Hr'g Ex.
28 3, Control Nos. 83-84, 121.)

1 31. Mr. Detwiler further agreed that HH kept six additional vehicles in North Dakota,
2 one in Montana, and one (the Motorcoach, discussed below) in Nevada. (11/5/18 Hr'g Ex. 3,
3 Control No. 93.)

4 32. Second, Mr. Detwiler gave information concerning how HH maintained the
5 vehicles:

6 Trustee: Does anyone regularly use these vehicles? Any of them? Regularly
7 use them?

8 Mr. Detwiler: Some of them fairly regularly will drive, yeah.

9 Trustee: No, does someone regularly drive the vehicle, any of them, on a
10 routine basis?

11 Mr. Detwiler: Yeah the ones in Los Angeles will be, you know, alternated just to
12 keep them, you know, operational.

13 Trustee: Because the only reason I ask that is other than the comprehensive
14 collision type of insurance, the issue is bodily injury, personal
15 liability that kind of thing.

16 Mr. Detwiler: Sure.

17 (11/5/18 Hr'g Ex. 3, Control No. 93.)

18 33. When the trustee asked about whether the vehicles were drivable, Mr. Detwiler
19 offered that "some definitely are and some definitely are not." (11/5/18 Hr'g Ex. 3, Control No.
20 120.)

21 34. Mr. Detwiler also knew how to value the vehicles for resale because he had seen
22 and inspected them. When asked about how HH arrived at a cumulative value of \$521,575 for the
23 20 vehicles listed in the bankruptcy schedule (Exhibit B), Mr. Detwiler testified:

24 I think it's just purchase value because most – the vehicles that I've seen require
25 work, you know, I think that the purchase criteria was based on what they thought
26 that they could sell for if a certain amount was invested. It's like buying rehab real
27 estate. How much do you put into it and how much can you get out of it so there
28 would need to be an investment in all of those.

(11/5/18 Hr'g Ex. 3, Control No. 109, 111.)

35. Plainly, Mr. Detwiler had repeated access to the vehicles.

36. Caring for the vehicles before resale included, according to Mr. Detwiler, insuring
them all. (11/5/18 Hr'g Ex. 3, Control No. 92.)

37. Finally, when it came time to resell its investment cars, Mr. Detwiler testified that
HH sometimes hired a broker to resell the cars at times and at other times HH itself offers the cars
for sale directly to purchasers. (11/5/18 Hr'g Ex. 3, Control No. 91.)

1 38. All of these activities obviously require money, and Mr. Detwiler indicated in
2 several different ways that he knew about and controlled HH's finances.

3 39. HH's bankruptcy petition listed Mr. Detwiler as the person who "audited,
4 compiled, or reviewed the debtor's books of accounts and records" and as the person in possession
5 of the same. (11/5/18 Hr'g Ex. 3, Control No. 157.)

6 40. At his deposition, Mr. Detwiler affirmed that he had the authority to and in fact had
7 signed check's on HH's behalf. (7/6/18 Dep. E. Detwiler, p. 53-54.)

8 41. Consistent with these declarations, Mr. Detwiler testified during the bankruptcy
9 that HH had \$4,422 in its bank account. (11/5/18 Hr'g Ex. 3, Control Nos. 85-86, 98.)

10 42. In order to purchase the vehicles in the first place, HH received \$521,000 in
11 financing over time, Mr. Detwiler insisted, from StarDust Classic, LLC ("StarDust"). (11/5/18
12 Hr'g Ex. 3, Control Nos. 95, 107.)

13 43. In numerous HH bankruptcy filings, which papers Mr. Detwiler repeatedly signed
14 under penalty of perjury, and the testimony given during the 341 meeting of creditors, HH
15 contended that it is wholly owned by StarDust. (Order, Findings of Fact, ¶ 24.)

16 44. The official records of the Wyoming Secretary of State indicate that Mr. Foust and
17 his daughter have filed some of the annual reports and have paid the annual dues for StarDust
18 since its organization in 2016. (Order, Findings of Fact, ¶ 25.)

19 45. Mr. Detwiler's name also appears on StarDust's 2018 annual report filed with the
20 Montana Secretary of State. (11/5/18 Hr'g Ex. 3, Control No. 369.) Moreover, the address of
21 StarDust's principal office listed on the 2018 report—7854 West Sahara Avenue, #100—is the
22 same address that Mr. Detwiler used for himself in the bankruptcy petition. (*Compare* 11/5/18
23 Hr'g Ex. 3, Control Nos. 129, 157, 159, *with* No. 369.)

24 46. This Court previously found that, at all relevant times herein, Mr. Foust, HH, and
25 StarDust were and are alter egos of each other with respect to all of the subject vehicles listed in
26 Exhibit B. (Order, Finding of Fact ¶ 29.)

27 47. HH produced no evidence, such as a promissory note, of any arms-length dealings
28 between it and StarDust. Instead, the documents received into evidence by this Court reveal

1 StarDust to be *another* entity controlled by Mr. Detwiler and/or Mr. Foust and used to frustrate
2 creditors.

3 48. Mr. Detwiler also directed HH's high-level strategy in this litigation. This Court
4 approved the Bank's levy of a 1998 Prevost motorhome (the "Motorcoach"). (*See generally*
5 3/8/18 Findings of Fact, Conclusions of Law, and Final Judgment, on file herein.) Mr. Detwiler
6 and his associate Mr. Foust spun this lawful seizure as crime committed by the Bank. Mr.
7 Detwiler filed a police report after the levy in which he claimed to be HH's manager. (*See Exhibit*
8 4 to 3/2/18 NRS 31.070 Application, on file herein.)

9 49. Relatedly, at the Section 341 Hearing, Mr. Detwiler testified that he had
10 "tentatively" retained an attorney to assert a claim against the Bank for its levy against the
11 Motorhome, presumably for trespass to chattel. (11/5/18 Hr'g Ex. 3, Control Nos. 91-92.)

12 50. Mr. Detwiler also testified that StarDust was making financing payments on the
13 Motorcoach's purchase money loan, again demonstrating his intimate knowledge of HH's
14 finances. (11/5/18 Hr'g Ex. 3, Control Nos. 98, 112.) This testimony also reveals a false
15 statement from Mr. Detwiler because, based on documentary evidence actually subpoenaed and
16 offered into evidence by HH itself, Mr. Foust, not StarDust, was making these payments. (Order,
17 Findings of Fact ¶¶ 38-40.)

18 51. In a similar circumstance demonstrating his strategic oversight, Mr. Detwiler
19 signed (and presumably drafted) a July 25, 2018 "Minutes of Special Meeting," which authorized
20 and empowered HH "through its manager, Ed Detwiler . . . to prepare and file a Chapter 11
21 petition with the U.S. Bankruptcy Court" (11/5/18 Hr'g Ex. 3, Control Nos. 183-84; 328-29.)

22 52. This extensive testimony and documentary evidence proves that there was no
23 aspect of HH that Mr. Detwiler did not control or know about, especially with respect to the
24 vehicles at issue.

25 53. During the Section 341 Meeting, Mr. Detwiler summarized his duties in an
26 expansive fashion: "I'm head guy in charge of getting stuff done." (11/5/18 Hr'g Ex. 3, Control
27 No. 95.)

28 54. When faced with contempt charge, Mr. Detwiler retreated from this pronouncement

1 and claimed he was a mere “figurehead” with no authority or power generally and no knowledge
2 of the vehicles specifically.

3 55. Mr. Detwiler claimed during the contempt hearing that “I don’t know anything
4 about the cars. I was never involved with the cars.” (5/17/19 Hr’g Trans. p. 20:5-6.) His denials
5 during the contempt hearing came after strikingly specific, contrary testimony given just months
6 earlier during the bankruptcy.

7 56. During bankruptcy, he gave detailed information about the cars’ location; now he
8 claims ignorance on that subject. During bankruptcy he elaborated about the financing for the
9 vehicles, allegedly through StarDust providing \$521,000 to finance purchases over time, but now
10 he claims “I don’t know how they’re financed.” (5/17/19 Hr’g Trans. p. 19:21.) During
11 bankruptcy he described extensive and regular interactions with the purported owners of HH, but
12 now he claims no “relationship with any of the owners or people of [HH]. On the converse, I have
13 very little interacting with them.” (5/17/19 Hr’g Trans. p. 22:10-12.)

14 57. The Court finds persuasive the earlier statements Mr. Detwiler made during the
15 bankruptcy, when he had a motivation to be forthcoming. These earlier statements impeach Mr.
16 Detwiler’s credibility in this proceeding and reveal him as an untruthful witness before this Court.

17 58. In light the substantial and credible evidence of Mr. Detwiler’s pervasive control
18 over HH, the Court rejects Mr. Detwiler’s contempt defense as plainly not credible. On the other
19 hand, the Bank has proved by clear and convincing evidence that HH and Mr. Detwiler had the
20 ability to turn over the vehicles.

21 59. During his testimony, Mr. Detwiler did not claim that HH did not possess or own
22 the 20 vehicles HH claimed to own (Exhibit B) when if petitioned for bankruptcy in 2018.
23 Instead, he only claimed that he did not have the power to deliver the vehicles to the Bank. The
24 Court rejects this testimony.

25 60. The evidence clearly and convincingly demonstrates that Mr. Detwiler was
26 authorized and empowered to comply with this Court’s Order. Mr. Detwiler presented no valid
27 excuse for his and HH’s violating the Court’s Order, presented no evidence of any effort to
28 retrieve the subject vehicles from their present locations, and, instead, intentionally and knowingly

1 failed to comply, without justification.

2 61. This Court further incorporates herein any other evidentiary findings in the January
3 9, 2019 Order and the June 21, 2019 Order for Punishment of Contempt directed against Mr. Foust
4 to support Mr. Detwiler's control of HH and its assets and his cooperation with Mr. Foust to defy
5 the Order.

6 62. In the bankruptcy schedules of HH, HH represented that it owned all 20 of the
7 subject vehicles listed in Exhibit B.

8 **CONCLUSIONS OF LAW**

9 1. The Court has jurisdiction over the parties and venue is proper in this Court.

10 2. Mr. Foust, HH, and StarDust are and have been agents of one another with respect
11 to any past action involving the subject vehicles at issue in these proceedings (Exhibit B) and have
12 been agents of one another regarding notice of these proceedings.

13 3. The Bank offered clear and convincing evidence that Mr. Detwiler was the sole
14 manager of HH and the person in charge of its operations. Mr. Detwiler was the controlling
15 manager of HH, and as such accepted and possessed the responsibility to control the assets of HH,
16 including its classic cars (Exhibit B).

17 4. HH owns and possesses the 20 vehicles identified in Exhibit B, which list HH
18 prepared for its bankruptcy petition.

19 5. The Bank has proved by clear and convincing evidence that Mr. Detwiler and HH
20 had notice of the Order and had the ability to comply with the Order.

21 6. The Court maintains contempt power to address "[d]isobedience or resistance to
22 any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3);
23 *see also* NRS 1.210(2) (providing that the district court has the power to "enforce order in the
24 proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07,
25 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to protect
26 dignity and decency in its proceedings, and to enforce its decrees" and because it has particular
27 knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an
28 abuse of discretion).

1 7. Contempt proceedings may be criminal or civil in nature. *Lewis v. Lewis*, 132
2 Nev., Adv. Op. 46, 373 P.3d 878, 880 (2016). A civil contempt action is remedial in nature
3 because it is meant to secure compliance with the court order. *Id.*; *see also* NRS 22.110.

4 8. As discussed herein, Mr. Detwiler and HH have violated two separate contempt
5 statutes: NRS 22.010 and NRS 21.340.

6 9. First, the Court may hold a person in contempt when the person has failed to
7 comply with a lawful order or rule. NRS 22.010(3). To be held in contempt for disobeying a
8 court order, the order must clearly put the person on notice of what is required. *Sw. Gas Corp. v.*
9 *Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983); *see also Cunningham v. Dist. Ct.*, 102
10 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986) (“An order on which a judgment of contempt is
11 based must be clear and unambiguous, and must spell out the details of compliance in clear,
12 specific and unambiguous terms so that the person will readily know exactly what duties or
13 obligations are imposed on him.”).

14 10. The Court’s January 9, 2019 Order is unmistakable. The Order required “Mr.
15 Foust and HH and any of their respective agents, employees, or affiliates [] including without
16 limitation Mr. Detwiler . . . on penalty of contempt, to deliver up, surrender possession of, and
17 turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty]
18 cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne
19 by Mr. Foust and/or HH.” (Order, Conclusion of Law ¶ 29.) The Order further identifies the
20 subject vehicles by make, model, and VIN.

21 11. Second, this action is a supplemental proceeding. A “supplemental proceeding” is
22 “held in connection with the enforcement of a judgment, for the purpose of identifying and
23 locating the debtor’s assets available to satisfy the judgment.” *Supplemental Proceeding*,
24 BLACK’S LAW DICTIONARY (8th ed. 2004). In Nevada, a supplementary proceeding is “incident to
25 the original suit” and “is not an independent proceeding or the commencement of a new action.”
26 *See State ex rel. Groves v. Dist. Ct.*, 61 Nev. 269, 276, 125 P.2d 723, 726 (1942).

27 12. This Court is enforcing a Washington State judgment domesticated in Nevada.
28 NRS Chapter 21 propounds supplemental procedures. Under, this law, disobedience to a court’s

1 order in supplemental proceedings constitutes a contempt: "If any person, party or witness disobey
2 an order of the master, properly made in the proceedings before the master under this chapter, he
3 or she may be punished by the court or judge ordering the reference, for a contempt." NRS
4 21.340.

5 13. The Court's Order clearly and unambiguously directed Mr. Detwiler and HH to
6 deliver the subject vehicles identified in the Order. Counsel for the Bank also wrote to Mr.
7 Detwiler and HH, insisting on compliance with the Order.

8 14. Mr. Detwiler and HH have refused to respond to any communications by the Bank
9 regarding the Order, let alone deliver any of the vehicles that are the subject of the Order; thus,
10 Mr. Detwiler and HH stand in contempt of the Order.

11 15. Mr. Detwiler's and HH's demonstrated intransigence requires stringent treatment:
12 they will clearly refuse to comply with the Order and turn over the subject vehicles to the Bank
13 unless this Court exercises its power of incarceration to detain Mr. Detwiler until he complies.

14 16. Coercive incarceration is within the inherent power of the Court, insofar as it
15 depends on the contemnor's ability to comply, thereby purging himself of contempt, and is
16 designed to coerce, rather than punish and therefore the ordinary requirements of due process do
17 not attach. *Shillitani v. United States*, 384 U.S. 364, 369-70 (1966); *see also S.E.C. v. Solow*, 396
18 Fed. App'x 635 (11th Cir. 2010) (affirming the district court's adjudication of civil contempt and
19 ordering defendant's incarceration until he purged his contempt in compliance with the court's
20 directive). With civil contempt, "the contemnor is able to purge the contempt and obtain his
21 release by committing an affirmative act." *Int'l Union, United Mine Workers of Am. v. Bagwell*,
22 512 U.S. 821, 844 (1994) (internal quotation marks omitted).

23 17. Several Nevada statutes empower district courts to issue a bench warrant for the
24 arrest of a person guilty of contempt:

25 **NRS 22.040 Issuance of warrants of attachment and commitment.** When the
26 contempt is not committed in the immediate view and presence of the court or judge,
27 a warrant of attachment may be issued to bring the person charged to answer, or,
28 without a previous arrest, a warrant of commitment may, upon notice, or upon an
order to show cause, be granted; and no warrant of commitment shall be issued
without such previous attachment to answer, or such notice or order to show cause.

1 18. In addition to this Court's inherent authority, Nevada's statutes explicitly permit
2 imprisonment:

3 **NRS 22.100 Penalty for contempt.**

4 1. Upon the answer and evidence taken, the court or judge or jury, as the
5 case may be, shall determine whether the person proceeded against is guilty of the
6 contempt charged.

7 2. Except as otherwise provided in NRS 22.110, if a person is found guilty
8 of contempt, a fine may be imposed on the person not exceeding \$500 or the person
9 may be imprisoned not exceeding 25 days, or both.

10 3. In addition to the penalties provided in subsection 2, if a person is found
11 guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require
12 the person to pay to the party seeking to enforce the writ, order, rule or process the
13 reasonable expenses, including, without limitation, attorney's fees, incurred by the
14 party as a result of the contempt.

15 19. Although NRS 22.100(2) sets a default rule prohibiting imprisonment for more
16 than 25 days, subsequent sections in the same statute provide for an indefinite term of
17 imprisonment. Specifically, where, as here, one has refused to perform an affirmative act required
18 by the provisions of an order, no limitation on the term exists:

19 **NRS 22.110 Imprisonment until performance if contempt is omission to**
20 **perform an act; penalty for failure or refusal to testify before grand jury.**

21 1. Except as otherwise provided in subsection 2, when the contempt consist
22 in the omission to perform an act which is yet in the power of the person to
23 perform, the person may be imprisoned until the person performs it. The required
24 act must be specified in the warrant of commitment.

25 *See also* TRACY DiFILLIPPO ET AL. EDS., NEVADA CIVIL PRACTICE MANUAL, Sixth Edition § 31.34
26 ([updated] 2016) ("The person guilty of contempt may be imprisoned until he or she perform the
27 ordered act, if it is within his or her power to perform."). Nevada's statute corresponds with the
28 general jurisprudence:

 Imprisonment for civil contempt may be ordered where a defendant has refused to
perform an affirmative act required by the provisions of an order that, either in form
or substance, is mandatory in character. A contemnor who has the ability to comply
with the underlying court order *can be imprisoned indefinitely* until the contemnor
complies with the underlying court order, even if it appears that the contemnor is
never going to comply.

17 C.J.S. CONTEMPT § 186 (West [updated] 2019) (emphasis added).

20. Imprisonment for civil contempt usually is not for a definite term, but the party in

1 contempt stands committed unless and until the affirmative act required by the order of the court is
2 performed. *See Lewis*, 373 P.3d at 881 (2016) (“A purge clause [in the contempt order] gives the
3 defendant the opportunity to purge himself of the contempt sentence by complying with the terms
4 of the contempt order.”). Thus contemnors carry the prison keys in their own pockets. *Shillitani*
5 *v. United States*, 384 U.S. 364, 368 (1966). A defendant has the choice to “pay or stay.” 17 C.J.S.
6 CONTEMPT § 183.

7 21. In Nevada, the cases treating the subject of imprisonment for failure to perform an
8 affirmative act typically arise in spousal- and child-support lawsuits. *Foley v. Foley*, 432 P.2d 736
9 (Nev. 2018) (unpublished) (observing that courts may imprison parents who refuse to pay child
10 support); *Hildahl v. Hildahl*, 95 Nev. 657, 662, 601 P.2d 58, 61 (1979) (“The use of the contempt
11 power to enforce the provisions of a divorce decree has been approved many times in this state.”).

12 22. However, in the judgment enforcement context, violating a “turn-over” order, such
13 as the Court’s Order, often prompts imprisonment until the contemnor agrees to turn over the
14 property. *See, e.g., S.E.C. v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 459-63 (S.D.N.Y.
15 2001) (committing the principal of a fraudulent investment scheme to jail for at least one year for
16 failing to honor the court’s orders to turn over \$14.9 million in assets, including 102 gold bars,
17 699 gold bullion coins, ancient coins, and a \$750,000 bust of Julius Caesar); *U.S. ex rel. Thom v.*
18 *Jenkins*, 760 F.2d 736, 737-38 (7th Cir. 1985) (committing a judgment debtor to indefinite custody
19 of the U.S. Marshall for failing to return confidential documents taken from an employer and
20 failure to disgorge profits made in conducting a forbidden, competing enterprise).

21 23. If the officers or agents of a company are guilty of a contempt, they may be
22 attached and punished therefore. *See generally* 17 C.J.S. CONTEMPT § 57. Thus, corporate
23 officers or company agents are punishable for contempt where they have knowledge or notice of
24 an order directed to the company and they are responsible for the company’s violation thereof.
25 *C.f. In re Waters of Humboldt River*, 118 Nev. at 903, 59 P.3d at 1227 (concluding that “the
26 district court has the power to sentence a government official to jail for criminal contempt
27 committed in an official capacity”); *see also United States v. Laurins*, 857 F.2d 529, 535 (9th
28 Cir.1988) (“A nonparty may be held liable for contempt if he or she either abets or is legally

1 identified with the named defendant An order to a corporation binds those who are legally
2 responsible for the conduct of its affairs.”); *Nikko Materials USA, Inc. v. R.E. Serv. Co.*, No. C 03-
3 2549 SBA, 2006 WL 1749550, at *4 (N.D. Cal. June 22, 2006) (“When a corporation refuses to
4 abide by an order directing the corporation to perform an act, and the corporation is under the
5 control of a single corporate officer or managing agent, the Ninth Circuit has held that a district
6 court may hold the corporate officer in contempt, as well as the corporation, even when the
7 corporate officer is not a party to the underlying action.”).

8 24. Because companies and corporations can only act through their agents, a contempt
9 order need not explicitly warn agents of potential liability for contumacious conduct. 17 C.J.S.
10 CONTEMPT § 57. More careful practice, however, dictates an explicit warning directed to named
11 agents:

12 It is usual, in an order directed against a corporation, to lay the restraint or
13 command, not only on the corporation itself, but also on its officers, agents, and
14 servants, so that in the case of its violation not only the corporation itself is
15 amenable to punishment, but also its officers, agents, and servants, whether or not
16 parties to the proceeding, provided they have knowledge of the terms of the order
17 and disobey it willfully.

16 Additionally, since a corporation is capable of violating a court order only if its
17 agents act or refrain from acting, it follows that the order directed at the corporation
18 is binding on agents authorized to act on its behalf, whether specifically named in
19 the order or not.

18 *Id.*

19 25. Here, the Court’s order explicitly commanded Mr. Detwiler by name, on penalty of
20 contempt, to turn over the 20 vehicles. (Order, Conclusion of Law ¶ 29.) Mr. Detwiler could have
21 had no reasonable doubt about how he would need to act to avoid punishment.

22 26. Mr. Detwiler’s and HH’s refusal to turn over each of the 20 subject vehicles
23 identified in Exhibit B and which are the subject of the Court’s January 9, 2019, Order, constitutes
24 a separate and distinct act of civil contempt of Court, for a total of 20 separate acts of civil
25 contempt.

26 27. Pursuant to this Court’s authority under NRS 22.100, the Court hereby fines HH
27 the sum of \$500 to be paid to the Bank immediately.

28 28. This Court further hereby orders HH to pay the Bank its reasonable attorney fees

1 and expenses incurred in connection with all of the proceedings to seek enforcement of the Court's
2 Order. The Bank shall submit an affidavit in support of such fees and expenses for the Court to
3 review.

4 29. Pursuant to NRS 22.100, this Court further hereby orders that Mr. Detwiler shall be
5 imprisoned until he complies with the Order and delivers up, surrenders possession of, and turns
6 over to the Bank, in a manner that protects the vehicles from any damage, all 20 vehicles
7 identified in Exhibit B, or pays to the Bank in immediately available funds the value of the
8 vehicles listed in Exhibit B, \$521,575.

9 30. The Bank shall prepare a separate Warrant of Arrest and Commitment accordingly
10 for this Court to review and sign, if appropriate.

11 31. Upon complying with the Order by delivering up, surrendering possession of, and
12 turning over to the Bank all 20 vehicles identified in Exhibit B, or paying to the Bank in
13 immediately available funds the value of the vehicles listed in Exhibit B, \$521,575, Mr. Detwiler
14 will be purged of his contempt sentence and, if imprisoned, shall be released from imprisonment
15 immediately thereafter. Alternatively, Mr. Detwiler may be released upon the posting of a One
16 Hundred Thousand Dollar (\$100,000.00) bond, after which a status check shall be promptly set to
17 establish a payment plan.

18 32. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if
19 appropriately identified and designated.

20 Dated this 16th day of December, 2019

21
22
23 
24 DISTRICT COURT JUDGE
25 

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

5 John E. Bragonje

6 State Bar No. 9519

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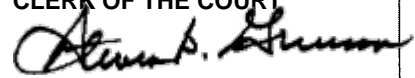
EXHIBIT B

EXHIBIT B

HARRY HILDBRAND

Titles as on BBB		7/26/2018 0:15			
YEAR	MAKE	Model	Value	VIN	
2007	CHEV	Corvette Z06	\$ 35,000	1G1YY28E375121089	
2007	Mercedes	M50 SUV	\$ 11,000	4JGBB75E07A222537	
1940	FORD	Coupe	\$ 35,000	AZ162801	
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	VC570141640	
1957	CHRYSLER	300 C CONV.	\$ 35,000	3N571810	
1958	FORD	T-BIRD (CHEV)	\$ 5,000	P5FH240847	
1957	FORD	FAIRLANE 500	\$ 15,000	D7LV162233	
1966	FORD	THUNDERBIRD - red	\$ 15,000	6Y85Z104010	
1971	FORD	PANTERIA	\$ 25,000	THPNLY01620	
1973	FORD	PANTERIA -GT4	\$ 35,000	THPNU05291	
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	S671986	
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	579M27885	
1966	PLYMOUTH	BELVADIRE	\$ 15,000	RACE CAR BODY & SHELL - N	
2000	PLYMOUTH	PROWLER	\$ 21,000	1P3EW85G1YV603597	
2007	Mercedes	CLK 550	\$ 12,000	WDBTK72F27T081009	
2000	GMC	Yukon	\$ 8,000	1GKEK13T9YJ1740142	
2007	Mecedes	S550	\$ 25,000	WDDNG71X57A075880	
1963	CHEV	425/409 S/S	\$ 25,000	31847L144086	
1998	MARATHON	COACH	\$ 129,875	2PCM3349XV1026183	
2016	KAWASAKA	kr10	\$ 11,700	JKAZX2A13FB505	
Total			\$ 521,575		

SUPPORT FOR 206 A/B #46, PAGE 5



MOT
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

NON-PARTY EDWARD DETWILER'S:
(1) MOTION FOR RELIEF FROM
CONTEMPT ORDER PURSUANT TO
NRCP 60(b);
(2) MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59;
(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 52
AND 59;
(4) MOTION FOR RECONSIDERATION
OF THE COURT'S CONTEMPT ORDER;
AND
(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT

Hearing Date: February 12, 2020

Hearing Time: 8:30 a.m.

COMES NOW non-party Edward N. Detwiler ("Mr. Detwiler"), by and through counsel,
Kolesar & Leatham, and hereby submits to this Honorable Court his (1) MOTION FOR RELIEF

1 FROM CONTEMPT ORDER PURSUAN TO NRCP 60(b); (2) MOTION FOR NEW TRIAL
2 PURSUANT TO NRCP 59; (3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT
3 TO NRCP 52 AND 59; (4) MOTION FOR RECONSIDERATION OF THE COURT'S
4 CONTEMPT ORDER; AND (5) OPPOSITION TO PLAINTIFF'S BRIEF IN SUPPORT OF
5 REQUEST TO HOLD MR. DETWILER IN CIVIL CONTEMPT OF COURT ("Motion").

6 This Motion is made and based upon the following Memorandum of Points and
7 Authorities, the Declaration of Mr. Detwiler, attached hereto as **Exhibit 1** ("Detwiler
8 Declaration"), any argument the Court may entertain at a hearing on this matter, and all papers and
9 pleadings on file herein.

10 DATED this 5th day of February, 2020.

11 **KOLESAR & LEATHAM**

12
13 By 

14 BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

15 AMANDA K. BAKER, ESQ.

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21 ///

22 ///

23 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Contempt Order must be vacated permanently for several reasons, including without limitation, the following:

A. Mr. Detwiler cannot turn over the Vehicles that this Court found are owned, controlled and possessed by Mr. Foust.

- This Court found, expressly, unequivocally and repeatedly in its January 2019 Order that Mr. Foust – not HH¹ and certainly not Mr. Detwiler – owned, controlled and possessed all the Vehicles² at issue.
- The Court further found that there was no contract for sale of the Vehicles from Mr. Foust to HH. Therefore, according to this Court's finding, no transfer of the Vehicles to HH ever even occurred.
- In its June 2019 Order, after all consideration of all the evidence and after Mr. Detwiler's testimony was entirely concluded, this Court reiterated and repeated, including through express incorporation, all evidentiary findings in the January 2019 Order to support Mr. Foust's ownership and control of the Vehicles. The Court further expressly found in the June 2019 Order that Mr. Foust "remains in control" of all of the Vehicles.

B. The Contempt Order is based on improper determinations of alter ego relationships between Mr. Foust and HH, in violation of binding Nevada Supreme Court case law.

- The Contempt Order is based on improper findings that Foust, HH and even StarDust are alter egos of one another. This is wholly improper, violative of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 878 (2007) – which requires that a separate action be filed to establish any liability for a non-party under an alter ego theory.

C. Based on new evidence only now before the Court, Mr. Detwiler has resigned as manager of HH effective September 2019.

- Under Nevada's civil contempt statutes, including without limitation NRS

¹ Defined as "Harry Hildibrand, LLC".

² The term Vehicles is defined as those 10 vehicles referenced in the chart attached as Exhibit B to the Contempt Order.

§ 22.110, the draconian and extreme punishment of indefinite imprisonment may only be imposed on an individual where the contempt “consists in the omission to perform an act which is yet in the power of the person to perform...” Here, Mr. Detwiler’s testimony, and the other evidence in this case, has been grossly misrepresented to this Court. The truth is, Mr. Detwiler’s testimony has been consistent that he never had involvement with, or ownership of, the vehicles at issue (“Vehicles”). Moreover, Mr. Detwiler resigned as a manager of Harry Hildibrand, LLC (the “Company”) effective September 10, 2019. See Declaration of Edward N. Detwiler (“Detwiler Declaration”), attached as **Exhibit 1** hereto, and Mr. Detwiler’s letter of resignation, attached hereto as **Exhibit 2**.³ There can be no basis to hold Mr. Detwiler in contempt.

II. PROCEDURAL HISTORY AND PRIOR COURT ORDERS AND EVIDENCE

A. Findings of Fact, Conclusions of Law and Final Judgment dated 1/9/2019

In its Findings of Fact, Conclusions of Law and Final Judgment dated January 9, 2019, attached hereto as **Exhibit 3**, (“January 2019 Order”), the Court made multiple findings that Mr. Foust, not HH and certainly not Mr. Detwiler, owned, controlled and possessed all of the Vehicles:

³ See also *Montana Code Annotated*, § 35-8-307

35-8-307. Management and voting

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company’s business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company’s business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

Mont. Code Ann. § 35-8-307 (West) (emphasis added); see also NRS §47.250 (13) (regarding the presumption that “a letter duly directed and mailed was received in the regular course of mail”).

- 1 • Neither Mr. Foust nor HH offered evidence on these subjects, other than a cursory
2 statement. It is no exaggeration to say that the evidence these defendants offered
3 focused on the Motorcoach and little else. By contrast, the Bank offered a
4 treasure trove of evidence showing that although Mr. Foust claims he sold
5 certain cars to HH and others, these same cars remain under the control of
6 Mr. Foust. (p. 10).
- 7 • There is no doubt that Mr. Foust represented that he owned these vehicles in his
8 **personal capacity**: the document is entitled a "personal" financial statement and
9 Mr. Foust wrote "Foust"- his name- in the "Name(s) Registered In" field on the
10 form. (p. 10).
- 11 • Neither Mr. Foust nor HH produced any documentary evidence or offered any
12 testimony to show that Mr. Foust did not own the "HH cars," as he told the Bank
13 he did; that Mr. Foust did not in fact own the HH Sold Cars, as he told the Bank he
14 did; or that Mr. Foust did not continue to own the "Third Party Cars" he claims be
15 sold. (p. 11).
- 16 • The only actual evidence before this Court conclusively proves that Mr. Foust
17 continues to own and control all the cars mentioned on any list, and certainly
18 those that HH claimed to own in the bankruptcy. (p. 11).
- 19 • This testimony ignores this Court's prior order and a subpoena duces tecum directed
20 to HH, both of which sought these same alleged sales contracts. This Court has
21 allowed three depositions and two evidentiary hearings, and **the defense has never**
22 **produced any contract for the sale of cars between HH and Mr. Foust.** The
23 Court is convinced no such contract or contracts exist. (pp. 11-12)
- 24 • Finally, HH failed to offer into evidence car titles showing transfer of the cars
25 in question to HH or anyone else. The only evidence this Court has is that Mr.
26 Foust, on multiple occasions and in writing, swore to the Bank that he owned
27 at least the 20 cars that HH now claims to own in the bankruptcy, and, in fact,
28 many more. (p. 12).
- Transfers to insiders demonstrate fraud. *See* NRS 112.180(2)(a)). Mr. Foust
transferred the 20 cars identified in the HH bankruptcy to himself **because Mr.**
Foust owns and controls HH. (pp. 13-14).
- The evidence is uncontroverted and overwhelming that Mr. Foust "retained
possession or control of the property transferred after the transfer." *See* NRS
112.180(2)(b). Mr. Foust and Mr. Detwiler admitted in their depositions that Mr.
Foust and his wife and daughters have possession of and use three Mercedes and a
GMC Yukon that HH claimed to own in its bankruptcy schedules. **As for the**
balance of the 20 cars HH claims in its bankruptcy, Mr. Foust controls them
because he owns HH and StarDust Classic. Someone must control these cars.
(p. 14).

- 1 • Similarly, the documentary evidence HH adduced related solely the Motorcoach.
2 (p. 21).
- 3 • On the other hand, the Bank gave clear, convincing, and compelling evidence of
4 Mr. Foust's ownership and control of the cars in question: his repeated, written
5 statements concerning his car collection and expenses related thereto given to the
6 Bank over a period of years and bills of sale that Mr. Foust signed transferring some
7 of the cars to HH without consideration right after Mr. Foust purchased the cars. (p.
8 21).⁴
- 9 • The Bank has offered substantial and credible evidence showing that Mr. Foust
10 still owns, possesses, and controls the cars in question, including especially the
11 four cars he openly admits he and his family use (the three Mercedes and the
12 2000 GMC Yukon) and the 20 cars that HH claims to own in the bankruptcy. (p.
13 21).
- 14 • Mr. Foust is the owner of all cars over which HH claims an interest, including
15 those cars identified in the bankruptcy (Exhibit B). (p. 21).
- 16 • Mr. Foust is the owner of all cars over which StarDust Classic claims an
17 interest, including those cars identified in the bankruptcy (Exhibit B). (p. 21).
- 18 • Mr. Foust is the owner of all of the cars that HH contends or has contended
19 that it obtained from Mr. Foust and transferred to some third parties. (p. 21).
- 20 • Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which
21 he owned or claimed to own at the time he became indebted to Bank, and/or
22 which he contends or has contended were transferred by him to some third parties
23 or party. (p. 21).
- 24 • Mr. Foust is the owner, member, and/or officer of StarDust Classic. (p. 21).
- 25 • Pursuant to NRS 112.180(1)(a), even if any sale or transfer of the cars listed in 25
26 Exhibits B from Mr. Foust to HH or StarDust Classic did occur, it was made with
27 the actual intent to hinder, delay, and defraud the Bank. The record indicates that
28 many, if not all, of the so-called "badges" that demonstrate actual fraud occurred
here. The alleged sale of cars by Mr. Foust to HH is a scam and a fraudulent transfer.
(p. 21).
- Any alleged sale or transfer of the 20 cars that HH still claims to own (Exhibit B)
void ab initio and is of no effect whatsoever... (p. 22).

⁴ Unless otherwise stated, all emphasis is added.

- Any alleged sale or transfer of the 59 cars that Mr. Foust claimed to own when obtained the loan from the Bank (Exhibit A) is void ab initio and is of no effect... (p. 22).

B. Order for Punishment of Contempt, Dated June 21, 2019

On June 21, 2019, after all of the evidentiary hearings involving Mr. Detwiler had taken place, the Court issued its "Order for Punishment of Contempt", attached hereto as **Exhibit 4**, ("June 2019 Order"). In the June 2019 Order the Court again reiterated its findings that Mr. Foust, not the Company, owned and controlled the Vehicles, and owned and controlled HH and Stardust. In fact, the Court specifically and expressly incorporated "**any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.**" See June 2019 Order at p. 6, ¶ 28. So, even after all the evidentiary hearings had been completed, all the evidence received, and all testimony by Mr. Detwiler concluded, the Court again reiterated its prior findings of Mr. Foust's "ownership and control" of the Vehicles from the January 2019 Order. The pertinent findings and conclusions from the June 2019 Order are as follows:

- As discussed herein, the Court finds that **Mr. Foust fraudulently testified to this Court that he no longer had any ownership interests in the subject vehicles.** (p. 4).
- The evidence presented in these proceedings to date has proved that, **at all times pertinent hereto, Mr. Foust directly and/or indirectly controlled HH.** (p. 4).
- Mr. Foust was designated as the "managing initial director" through at least 2008, and filings with the Montana Secretary of State shows that **Mr. Foust was the sole member and/or manager of HH.** (p. 5).
- **Mr. Foust has failed to provide into evidence car titles showing transfer of the subject vehicles to HH or anyone else.** (p. 6).
- **This Court further incorporates herein any other evidentiary findings in the January 9, 20 19, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust.** (p. 6)

- 1 • The Court finds that, at all relevant times herein, Mr. Foust, HH, and StarDust were
2 and are alter egos of each other with respect to all of the subject vehicles listed in
3 Exhibit A. (p. 6 29)
- 4 • Thus, Mr. Foust owns the Mercedes Vehicles and the Yukon either directly or
5 indirectly through HH. Mr. Foust and HH know where the Mercedes Vehicles and
6 the Yukon are located, and Mr. Foust has the right, ability, and duty , under the
7 Order to locate, surrender, and deliver these four (4) vehicles to the Bank. As a
8 result of Mr. Foust's violation of the Order regarding each of the Mercedes Vehicles
9 and the Yukon, Mr. Foust is in civil contempt of Court. (p. 6).
- 10 • A 2016 Kawasaki KRI O ("Kawasaki") is also listed in Exhibit A, and is the subject
11 of the Court's Order for Mr. Foust to surrender and deliver to the Bank. Mr. Foust
12 represents to this Court by sworn declaration on April 8, 2019, that the Kawasaki
13 was in the possession of HH. (4/8/2019 Foust Decl., p. 3:10-12.) Mr. Foust has
14 offered no valid reason, and indeed has no valid reason, to fail to surrender the
15 Kawasaki, which he owns either directly or indirectly through HH. (p. 7).
- 16 • Whether Mr. Foust claimed to own the subject vehicles in his name, or whether
17 they were held indirectly by HH-the entity that Mr. Foust "ultimately owned"-Mr.
18 Foust has no valid excuse for not surrendering all twenty (20) subject vehicles over
19 to the Bank. (p. 7).
- 20 • Furthermore, as noted above, StarDust is an alter ego of Mr. Foust, and thus, Mr.
21 Foust has no valid reason for failing to surrender the aforementioned eleven (11)
22 vehicles in Paragraph 34, which he either owns directly, or indirectly through
23 StarDust. (p. 8).
- 24 • While it is perfectly clear, and supported by clear and convincing evidence, that as
25 of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A
26 hereto, were in the possession, custody, control of, and owned by, either Mr. Foust
27 directly, or by Mr. Foust indirectly through HH, **and remain in the control of Mr. Foust**, this Court will give Mr. Foust the benefit of the doubt and hereby finds that
28 the four (4) remaining subject vehicles are possibly not held by Mr. Foust, HH, or
StarDust. These four vehicles only are not the proper subject of a contempt citation.
(pp. 8-9)
- Mr. Foust is the owner of all vehicles identified in Exhibit A over which Star Dust
claims an interest. (p. 9)
- Mr. Foust is the owner of all vehicles identified in Exhibit A over which HH claims
an interest. (p. 9)
- **Mr. Foust fraudulently testified to this Court that he no longer had any
ownership interests in the vehicles identified in Exhibit A;** he presented no valid
excuse for violating the Court's Order; he presented no valid excuse for failing to

tum over the subject vehicles; and he presented no evidence of any effort whatsoever to attempt to retrieve the subject vehicles from their present locations. (p. 6).

C. **The Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, its Manager, entered January 30, 2020 ("Contempt Order")**

The Contempt Order, attached hereto as **Exhibit 5**, alleges that Mr. Detwiler refused to comply with the January 2019 Order. This is not accurate. First, as noted above, the January 2019 Order, and the June 2019 Order, both make clear that this Court made dozens of findings of fact and conclusions of law that Mr. Foust owns, possesses and controls the Vehicles. How can Mr. Detwiler comply with orders that found neither he nor HH own, control or possess the Vehicles?

Further, the Contempt Order contains many materially misleading statements by the Bank, including but not limited to the following:

1. **Misleading statement number one:**

The Order required "Mr. Foust and HH and any of their respective agents, employees, or affiliates [] ***including without limitation Mr. Detwiler*** ... on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, in a manner that protects the cars from any damage, all [twenty] cars identified in [Exhibit B] with any cost or expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH." (Order, Conclusion of Law ¶ 29 (emphasis supplied).)

See Contempt Order at p. 2.

This is not accurate, and it is telling that the Bank removes from the quotation the parentheticals that make clear the January 2019 Order was against Foust and HH, not Mr. Detwiler.

The full quotation from the January 2019 Order reads as follows:

29. Mr. Foust and HH and any of their respective agents, employees, or affiliates (including without limitation Mr. Detwiler and Stardust Classic and any of its agents) are ordered on penalty of contempt, to deliver up, surrender possession of, and turn over to the Bank promptly, all cars identified in Exhibits A and B..."

See January 2019 Order at p. ¶ 29. The problem with the Bank's position, though, is that the January 2019 Order **also** found that Mr. Foust – **not HH and certainly not Mr. Detwiler** – was

the owner of the Vehicles:

- *The Bank has offered substantial and credible evidence showing that Mr. Foust still owns, possesses, and controls the cars in question, including especially the four cars he openly admits he and his family use (the three Mercedes and the 2000 GMC Yukon) and the 20 cars that HH claims to own in the bankruptcy. (p. 21).*
- **Mr. Foust is the owner of all cars over which HH claims an interest,** including those cars identified in the bankruptcy (Exhibit B). (p. 21).
- **Mr. Foust is the owner of all cars over which StarDust Classic claims an interest,** including those cars identified in the bankruptcy (Exhibit B). (p. 21).
- **Mr. Foust is the owner of all of the cars that HH contends or has contended that it obtained from Mr. Foust and transferred to some third parties.** (p. 21).
- **Mr. Foust is the owner of all cars, believed to number 59 (Exhibit A), which he owned or claimed to own at the time he became indebted to Bank, and/or which he contends or has contended were transferred by him to some third parties or party.** (p. 21).

See January 2019 Order, page citations included.

Further, in case the Bank tries to get around these clear and undeniable findings by this Court – which completely contradict the Contempt Order – by arguing that they were made prior to the evidentiary hearings through 2019, it must be noted that the Court reiterated all of these findings expressly in the June 2019 Order, which was after all of the hearings and testimony by Mr. Detwiler:

- *This Court further incorporates herein any other evidentiary findings in the January 9, 2019, Order, which is not discussed herein to support Mr. Foust's ownership and control of the subject vehicles directly or indirectly through HH and/or StarDust. (p. 6).*
- While it is perfectly clear, and supported by clear and convincing evidence, that as of April 1, 2009, the twenty (20) subject vehicles that are identified in Exhibit A hereto, were in the possession, custody, control of, and owned by, either Mr. Foust directly, or by Mr. Foust indirectly through HH, **and remain in the control of Mr. Foust**, this Court will give Mr. Foust the benefit of the doubt and hereby finds that the four (4) remaining subject vehicles are possibly not held by Mr. Foust, HH, or

StarDust. These four vehicles only are not the proper subject of a contempt citation. (pp. 8-9).

See June 2019 Order, page citations included.

It is hornbook law that a non-party cannot be forced, by punishment of contempt, to turn over property which it neither owns nor is in its possession. See NRS § 22.110. Yet, despite these clear findings in the January 2019 Order – which clearly negate any inaccurate and baseless assertion by the Bank that Mr. Detwiler (who is not even a manager of HH any longer) can somehow produce the Vehicles out of thin air – the Bank insists on asking this Court to imprison Mr. Detwiler indefinitely, until he magically conjures the Vehicles or, even better for the Bank, pays someone else’s judgment. Of course, the Bank does not wish to afford Mr. Detwiler his constitutionally guaranteed due process by filing a complaint alleging alter ego as required by the Nevada Supreme Court’s holding in *Callie*, because it knows it has no basis to do so. So, instead, the Bank attempts to bully and intimidate Mr. Detwiler – and even threaten indefinite imprisonment – to force him to come up with money he does not owe and Vehicles he never owned. All this despite the fact that the Bank has not produced a single shred of evidence showing Mr. Detwiler ever owned or controlled any of the Vehicles, nor could it. Both the January 2019 Order and the June 2019 Order (the latter entered after all evidentiary hearings) held clearly and unequivocally that Mr. Foust was in possession, custody and control of all Vehicles. Mr. Detwiler cannot turn over what this Court has found is owned, possessed and controlled by Mr. Foust.

2. Misleading statement number two.

HH never challenged the Order with any motion for reconsideration, or motion pursuant to NRCP 59 or 60 to alter or amend the Order, nor did HH appeal the order. It is final.

Contempt Order at p. 3, ¶ 8. While this statement is true, it is also misleading. The fact is, the Bank cannot now challenge or controvert the findings from the January 2019 Order, or the June 2019 Order, finding that Foust “owns, possesses and controls” the Vehicles.

1 3. Misleading statement number three:⁵

2 In fact, Mr. Detwiler testified that he was the *only* manager of HH:

3 Q: And you're the sole-

4 Mr. Detwiler: At least to my knowledge.

5 Q: -manager, correct?

6 Mr. Detwiler: I'm-I'm a manager.

7 Q: Who are the other managers?

8 Mr. Detwiler: I don't know.

9 (5/21/19 Vol. I Hr'g Trans., p. 10:12-18.)

10 Q: You are the only manager of Harry Hildibrand, LLC, correct?

11 Mr. Detwiler: That I'm aware of, yes.

12 (5/17/19 Hr'g Trans., p. 28:6-7.)

13 See Contempt Order at p. 5, ¶ 21.

14 In reality, the Bank is misrepresenting Mr. Detwiler's testimony. He never testified he was
15 the only manager of HH, he only testified he was the only one of which he was aware. In fact, the
16 Bank goes so far as to egregiously misrepresent Mr. Detwilers' testimony. The truth is that Mr.
17 Detwiler testified in his Declaration attached to the 3/2/18 Application for Hearing that: "**I am a**
18 **managing director** of Harry Hildibrand, LLC..." See **Exhibit 6** hereto (emphasis added). This
19 is important because one of the primary issues in this case as it relates to non-party Mr. Detwiler
20 is his status with respect to HH. In fact, the Bank has falsely asserted on multiple occasions that
21 Mr. Detwiler is the only manager of HH. This is demonstrably false and contrary to this Court's
22 findings – which were drafted by the Bank's counsel. The truth is that in its Findings of Fact,
23 Conclusions of Law and Final Judgment entered on March 8, 2018 ("March 2018 Order"), attached
24 hereto as **Exhibit 7**, this Court expressly found as follows:

25 12. Mr. Foust owns and controls Harry Hildibrand, LLC. He is the sole
26 member; **he is a manager also.**

27 See March 2018 Order, at p. 4, ¶ 12.

28 ///

⁵ Emphasis in original.

1 4. **Misleading statement number four.**

2 In the Contempt Order, the Bank grossly misrepresents Mr. Detwiler's purported testimony
3 from the Bankruptcy Hearing. *See* Contempt Order at pp. 6-7, ¶¶ 27 – 43. In fact, The Bank's
4 assertions in the Contempt Order on this issue are demonstrably false. First, the Bank asserts that
5 there is some issue with Mr. Detwiler's credibility in claiming that **on January 23, 2019 – nearly**
6 **five (5) months after the Bankruptcy Hearing**, Mr. Detwiler asserted that he had no knowledge
7 of the Vehicles then current whereabouts. But the Bank has no proof, or even evidence, that Mr.
8 Detwiler could have known where the Vehicles were located, other than what HH's lawyer James
9 Lezie, testified at the Bankruptcy Hearing. In fact, a truthful analysis of the Bankruptcy Transcript
10 makes clear that it was James Lezie, the attorney for HH (and not for Mr. Detwiler) who answered
11 the vast majority of the questions about the locations of the Vehicles (and who, according to the
12 Bank's counsel, is represented in the Bankruptcy Transcript as "JL"):⁶

13 MK The company is located in Montana. Why is the bankruptcy being filed in
14 California?

15 JL One of the jurisdictional requirements is the assets, substantial assets.

16 MK So do you mean that because a number of cars are located in California?

17 JL That's correct.⁷

18 ...

19 MK Page 15 of the original petition lists a number of vehicles we have discussed
20 these. There's 20 vehicles. I'll show it to you so you can see it. It list a
21 value. How was that value determined?

22 JL It was book value. To the best of my knowledge. Yeah, this is the stuff that
23 I – where I spoke with Jim Foust who is much more knowledgeable on
24 vehicles than I was.⁸

25 ...

26 In fact, it was clear from Mr. Detwiler's testimony just how much he did not know about

27

⁶ Again, to the extent the Bankruptcy Transcript is accurate, as it is undoubtedly incomplete.

28 ⁷ *See* Bankruptcy Transcript, **Exhibit 8** hereto, at p. 21, Bates BAKER000100.

⁸ *Id.* at p. 29, Bates no. BAKER000108.

1 the Vehicles or HH's related business dealings:

2
3 MK And does Harry Hildibrand LLC have records indicating the purchase of
each of these vehicles?

4 JL I know they have titles but I don't know, I haven't seen anything other than.

5 **ED I don't know if there's contacts [sic], Mr. Kaplow, I don't know.**

6 MK So you don't know if there's a bill of sale for any of the vehicles?

7 **ED I don't know.**

8 MK Were you involved with the purchase of any of the vehicles?

9 **ED No, sir.**

10 MK Do you know who was involved with the purchase of vehicles?

11 **ED No, sir.**

12 MK Was Mr. Foust involved with the purchase of the vehicles?

13 **ED I have no idea.**

14 MK Do you know if Mr. Foust was involved with the purchase of the vehicles
on behalf of Harry Hildibrand for any of these vehicles?

15 **ED I do not know.⁹**

16 Mr. Detwiler further testified that he had never even driven any of the Vehicles, and was
17 not involved in the purchase of any of the Vehicles (only the Motorcoach which the Bank has
18 already taken):

19
20 MK Thank you. Have you ever driven any of the vehicles that are owned by
Harry Hildibrand LLC?

21 **ED No sir.**

22 MK None of them?

23 **ED None of them.**

24 MK And when the company was operating and buying and selling vehicles,
25

26
27 ⁹ *Id.* at p. 32, Bates no. BAKER000111.
28

1 when was the last vehicle sold other than the airplane?

2 ED I believe and **I wasn't in directly involved in it**, it would have either been
3 the Plymouth Belvedere or the Plymouth Prowler.

4 MK So it would have been either in 2010 or 2012?

5 ED Yes, whichever one sold when, whichever one sold in 2012. **That would**
6 **have been the last one that I would have been aware of but once again,**
7 **I did not participate in any of the profits so I didn't really pay that**
8 **much attention. I've just learned this from sitting here.**¹⁰

9 To the extent that Mr. Detwiler did answer any questions with respect to the Vehicles, it
10 was clear he was merely parroting back what Mr. Lezie had said:

11 MK So the value that's listed for these vehicles is not the present value? This is
12 the value if the vehicles were fixed up to a certain condition?

13 JL No.

14 ED No, sir.

15 JL No, what they were purchased for.

16 MK So this is, the value that's listed is the value of the price that the vehicles
17 were purchased for?

18 JL **Right, they were the old book value, that's right.**

19 AM As opposed to fair market value?

20 ED Correct.

21 JL **Yeah some of them have, you know, are probably worse than what they**
22 **were purchased. Some of them that are maybe rare if you would call it**
23 **that, although I've looked up, I've done a little bit of research when I**
24 **did it and there seems to be a lot of these cars out there so I don't know.**

25 MK Just to clarify my understanding, the value that's listed is the purchase price
26 of the vehicles?

27 JL **That's correct.**

28 MK And is not necessary the blue book value of what the vehicle's worth?

JL **That's correct. That's correct and the other thing is I cannot attest for**
the condition in most cases to be able to establish blue book value
because they have a lot of questions in blue book.¹¹

...

MK Which vehicle's in Montana?

¹⁰ *Id.* at p. 34, Bates no. BAKER000113.

¹¹ *Id.* at p. 30, Bates no. BAKER000109.

1 ED Gosh,
 2 JL I think Gary had that on
 3 AM No he just – the number of vehicles.
 4 JL Ah, you know, just a second I may have that in my notes.
 5 ...
 6 JL Yes, I do. Okay you ready?
 7 MK Yes.
 8 JL Let's just go down the list from top to bottom.
 9 MK Sure.
 10 JL Corvette – LA. Next one, LA. Couple – LA. Bellaire – Montana. 300C
 11 convertible – North Dakota. Tbird Chev – LA. Fairlane 500 – North
 12 Dakota. Thunderbird red – North Dakota. Pantera misspelled – North
 13 Dakota. Pantera DT4 – LA. XK race car – North Dakota. Oldsmobile
 14 Rocket – North Dakota. The next two have – were sold in 2010 and 2012
 15 respectively. Next one, CK or CLK 500 – LA. Yukon – LA. 550 – LA.
 16 Chevy 409 – LA. Marathon coach – Las Vegas. Kawasaki the
 17 motorcycle – LA.¹²

18 In fact, Mr. Detwiler confirmed that he had nothing to do with the Vehicles, and received
 19 no compensation from that aspect of HH's business:

20 ...
 21 MK And then when it comes to the cars, when cars were bought and sold over
 22 time, did you get any commission or compensation with respect to them?
 23 ED Absolutely not. None, I didn't get anything. But I wasn't doing anything
 24 either so I didn't expect, I don't expect to get paid for something I don't
 25 work for.¹³

26 The truth is, as Mr. Detwiler has testified on multiple occasions and consistently, he never
 27 did have the ability to turn over the Vehicles, as he never had access to them or the ability to
 28 control their disposal, and he certainly does not now. *See* Detwiler Declaration, Exhibit 1 hereto,
 at ¶ 10. Regardless, he is no longer the manager of HH and has not been for several months, and
 therefore cannot produce the Vehicles. Plaintiff's bald, unsupported assertions that Mr. Detwiler
 – not HH – failed to comply with any order of this Court without actually proving Mr. Detwiler

¹² *Id.* at p. 31 Bates no. BAKER000110.

¹³ *Id.* at p. 26, Bates no. BAKER000105.

could comply, which the Bank has not come anywhere close to doing, demonstrates the facial invalidity and gross overreach of the Bank's proffered Contempt Order.

5. Misleading statement number five.

This Court previously found that, at all relevant times herein, Mr. Foust, HH, and Star Dust were and are alter egos of each other with respect to all of the subject vehicles listed in Exhibit B. (Order, Finding of Fact ¶ 29.)

See Contempt Order at p. 8, ¶ 46. While the January 2019 Order does purport to make such a finding, as set forth herein, under *Callie* such a finding is improper as an alter ego determination requires a separate complaint and appropriate due process, which the Bank has not done. Such a finding – which forms the basis for the Contempt Order – is unlawful and a violation of Mr. Detwiler's due process. If HH is not an alter ego of Foust, how can Mr. Detwiler be required to turn over Vehicles that the Court has found on numerous occasions are in the possession, custody and control of Mr. Foust? Clearly the Bank would like to forego this due process requirement, but binding Nevada case law does not permit it to do so.

6. Misleading statement number six.

HH produced no evidence, such as a promissory note, of any arms-length dealings between it and StarDust. Instead, the documents received into evidence by this Court reveal StarDust to be *another* entity controlled by Mr. Detwiler and/or Mr. Foust and used to frustrate creditors.

See Contempt Order at pp. 8-9, ¶ 47. Here again the Contempt Order has inconsistent findings – does Detwiler control StarDust or Mr. Foust? Clearly Mr. Detwiler has testified he never had any ownership, control, managerial or other interest in StarDust. *See* [Detwiler Testimony]; *see also* Detwiler Declaration, Exhibit 1 hereto, at ¶ 11.

7. Misleading statement number seven.

In a similar circumstance demonstrating his strategic oversight, Mr. Detwiler signed (and presumably drafted) a July 25, 2018 "Minutes of Special Meeting," which authorized and empowered HH "through its manager, Ed Detwiler ... to prepare and file a Chapter 11 petition with the U.S. Bankruptcy Court" (11/5/18 Hr' g Ex. 3, Control Nos. 183-84; 328-29.)

See Contempt Order at pp. 9, ¶ 51. Here again the Bank makes false and misleading statements regarding Mr. Detwiler's involvement with HH. In fact, Mr. Detwiler did not draft the said meeting minutes. See Detwiler Declaration, Exhibit 1 hereto, at ¶ 12.

8. Misleading statement number eight.

During the Section 341 Meeting, Mr. Detwiler summarized his duties in an expansive fashion: "I'm head guy in charge of getting stuff done." (11/5/18 Hr'g Ex. 3, Control 27 No. 95.)

See Contempt Order at pp. 9, ¶ 53. That completed answer makes clear how little control Mr. Detwiler had with respect to HH. "I'm not always privy to what junior and Ronnie do. **I take directions not give them.**" See Bankruptcy Transcript, Exhibit 8 hereto, at bates no. BAKER000095.

9. Misleading statement number nine.

During bankruptcy, he gave detailed information about the cars' location; now he claims ignorance on that subject. During bankruptcy he elaborated about the financing for the vehicles, allegedly through StarDust providing \$521,000 to finance purchases over time, but now he claims "I don't know how they're financed." (5/17/19 Hr'g Trans. p. 19:21.) During bankruptcy he described extensive and regular interactions with the purported owners of HH, but now he claims no "relationship with any of the owners or people of [HH]. On the converse, I have very little interacting with them." (5/17/19 Hr'g Trans. p. 22:10-12.)

See Contempt Order at p. 10, ¶ 56. As noted above, the Bank is misrepresenting Mr. Detwiler's testimony in the Bankruptcy Hearing. He never testified gave detailed information about the Vehicles' location, and confirmed he did not know whether any of the cars in the warehouse were the same Vehicles the Bank seeks, never testified about knowing about the Vehicles' financing, and did not testify about "regular" interactions with the purported owners of HH. See referenced testimony; see also Detwiler Declaration, Exhibit 1 hereto, at 13. Further, the Bank's Brief falsely asserts Mr. Detwiler shares office space with one of Mr. Foust's entities. This is false.

In fact, Mr. Detwiler's testimony regarding his extremely limited role with the Company, lack of knowledge of or interest in the Vehicles, and inability to turn them over has been consistent throughout these proceedings:

1 THE WITNESS: Yes, sir. Thank you.
2 I have no access to the cars. As I shared with Mr. Bragonje at
3 a deposition in his office some time ago, my role as coming in as being a
4 manager of Harry Hildibrand was to be involved in real estate. That was
5 in 2008. The market spiraled down. Real estate never got off the
6 ground with them. And basically, I've been a figurehead as a manager
7 of that company ever since.
8 I've also shared with Mr. Bragonje that I don't know anything
9 about cars, I don't know about remodeling. Well, I guess it would be
10 restoring cars. I know where the key goes, I know where the gas goes
11 in a car, and that's it.
12 I don't know how they're financed. I don't know how auctions
13 work. It's not anything that I was ever involved in on a basis whatsoever
14 relating to Harry Hildibrand.

15 See May 17, 2019, Transcript, at p. 19.

16 My extent as a
17 manager, I have no day-to-day operations knowledge of the company.
18 I don't know the structure outside of the document that was shown that
19 the Hildibrand children own 99 percent of the company. Mr. Foust
20 owned 1 percent of the company that was established the day I was --
21 the last time I was here to testify.
22 Outside of that, I know nothing about the operations of Harry
23 Hildibrand, nor should I as I -- I don't even have a -- I don't have a
24 financial interest in the company either.

25 *Id.* at p. 20.

26 THE WITNESS: Yeah. I don't know why I can't get through,
27 but I can't get through. My involvement with the cars, I don't -- I've never
28 known anything about the cars and what I shared with the bankruptcy
attorney, the information that I did share was provided to me by the
attorney who filed the bankruptcy.

See Transcript of May 21, 2019 Proceedings, Volume 1, at p. 19.

5 Q And with those 20 vehicles, do you know where those vehicles
6 are located at?
7 A At this point, no, sir. At this time, no.
8 Q And do you have knowledge, is Mr. Foust in possession of
9 those vehicles?
10 A I do not know.

11 Q Okay. To your knowledge, does Harry Hildibrand LLC have
12 any agreement with Mr. Foust as to those vehicles?
13 A I'm unaware of one.
14 Q Okay. Do you know who the current owner of those vehicles
15 are?
16 A No, sir.
17 Q Do you know, on those 20 vehicles, when they were acquired?
18 A No.
19 Q Did you participate in the acquisition of those vehicles?
20 A No.
21 Q Did you participate in the sale of those vehicles?
22 A No.

See Transcript of May 21, 2019 hearing, Volume 2, at p. 59.

10. Misleading statement number ten.

During his testimony, Mr. Detwiler did not claim that HH did not possess or own the 20 vehicles HH claimed to own (Exhibit B) when if petitioned for bankruptcy in 2018. Instead, he only claimed that he did not have the power to deliver the vehicles to the Bank. The Court rejects this testimony.

See Contempt Order at p. 10, ¶ 59. Again, the Bank falsely misconstrues Mr. Detwiler's testimony when it is convenient. The truth is that Mr. Detwiler has always maintained that **he never knew the whereabouts of the Vehicles**, or whether they were the same vehicles the Bank now seeks.

See Transcripts of evidentiary hearings from April 1, 2019, April 24, 2019, May 17, 2019, May 21, 2019 (Volume 1), and May 21, 2019 (Volume 2), attached hereto as **Exhibits 9, 10, 11, 12 and 13, respectively**; *see also* Detwiler Declaration, Exhibit 1, at 13. The fact is, the Bank has never proven that any of the Vehicles it seeks were ever in the possession, custody or control of HH, much less Mr. Detwiler; rather, this Court has found over and over that the Vehicles are owned, possessed and controlled by Mr. Foust. Mr. Detwiler cannot turn over what Mr. Foust owns, possesses and controls.

11. Misleading statement number eleven.

HH owns and possesses the 20 vehicles identified in Exhibit B, which list HH prepared for its bankruptcy petition.

1 See Contempt Order at p. 11, ¶ 4. This holding is the entire basis for the Contempt Order. Of
2 course, if Mr. Foust owns and controls the Vehicles – as the Court finds dozens of times both
3 before and after Mr. Detwiler’s testimony during the evidentiary hearings in the matter – Mr.
4 Detwiler cannot possibly be held in contempt for not turning them over. That is very inconvenient
5 for the Bank, who is attempting to force Mr. Detwiler to pay over \$500,000 of a judgment that is
6 not against him. So, the Bank now submits an order in which the Court finds exactly the opposite
7 of what it found in January, 2019 and June, 2019. The Bank cannot have it both ways. The January
8 2019 Order and the June 2019 Order are final. They both found dozens of times that Mr. Foust,
9 owns, possesses and controls the Vehicles. Mr. Detwiler cannot turn over what the Court already
10 found was owned, possessed and controlled by Foust.

11 **12. Misleading statement number twelve.**

12 The Court's January 9, 2019 Order is unmistakable. The Order required "Mr. Foust
13 and HH and any of their respective agents, employees, or affiliates[] including
14 without limitation Mr. Detwiler ... on penalty of contempt, to deliver up, surrender
15 possession of, and turn over to the Bank promptly, in a manner that protects the cars
16 from any damage, all [twenty] cars identified in [Exhibit B] with any cost or
expense involved in delivery to the Bank to be borne by Mr. Foust and/or HH."
(Order, Conclusion of Law, ¶ 29.) The Order further identifies the subject vehicles
by make, model, and VIN.

17 See Contempt Order at p. 11, ¶ 4. Inaccuracies in this statement by the Bank are legion. Who
18 owns, controls and possess the Vehicles? In the January 2019 Order, this Court found Mr. Foust
19 did. In the June 2019 Order, this Court found Mr. Foust did. Now the Bank suggests that the
20 Vehicles can be turned over by “Mr. Foust, and HH and [Mr. Detwiler]”. Which is it? Can Mr.
21 Detwiler be held in contempt for not turning over what is in Mr. Foust’s possession? The Bank
22 would like this Court to think so, but that defies logic. The Bank cannot even make up its mind as
23 to who owns any of these Vehicles, let alone who possess or controls them. Instead, it is picking
24 the easiest target in an attempt to coerce Mr. Detwiler to pay \$525,000 of a judgment that is not
25 against him, under the threat of indefinite imprisonment if he does not do so.

26 ///

The Court's [January 2019] Order clearly and unambiguously directed Mr. Detwiler and HH to deliver the subject vehicles identified in the Order.

14. Misleading statement number fourteen.

See Contempt Order at p. 11, ¶ 4. Another clearly false and inconsistent statement by the Bank, for the reasons noted in the immediately preceding paragraph.

Mr. Detwiler's and HH's refusal to turn over each of the 20 subject vehicles identified in Exhibit Band which are the subject of the Court's January 9, 2019, Order, constitutes a separate and distinct act of civil contempt of Court, for a total of 20 separate acts of civil contempt.

MSA00539

1 Vehicles, their status and location as represented by the testimony in this case, only four (4) of said
2 20 Vehicles have not been sold to third parties, repossessed by Mr. Vega and/or StarDust, or are
3 or were in the possession of Mr. Foust's family members pursuant to his own testimony and that
4 of Mr. Larkin. A summary of the chart, including the locations of the Vehicles as outlined by Mr.
5 Foust's own testimony or affidavit, or Mr. Larkin – both of whom testified under oath at the
6 hearings in May, 2019 – are as follows:

7 ///

8 ///

9 ///

YEAR	MAKE	MODEL	VALUE	VIN	LOCATION PURSUANT TO FOUST/LARKIN TESTIMONY
2007	CHEVY	Corvette Z06	\$ 35,000	1069	Repossessed by Vega/Stardust as testified to by Larkin
2007	MERCEDES	M50 SUV	\$ 11,000	2537	With Foust family or subject to lien by Vegas/StarDust
1940	FORD	Coupe	\$ 35,000	2801	Repossessed by Vega/Stardust as testified to by Larkin
1957	CHEV	BEL AIR CONV. (FI)	\$ 25,000	1640	Subject to lien by Vega/StarDust as testified to by Foust
1957	CHRYSLER	300 C CONV.	\$ 35,000	1810	Subject to lien by Vega/StarDust as testified to by Foust
1955	FORD	T-BIRD (CHEV)	\$ 5,000	0647	Repossessed by Vega/Stardust as testified to by Larkin
1957	FORD	FAIRLANE 500	\$ 15,000	2233	Subject to lien by Vega/StarDust as testified to by Foust
1966	FORD	THUNDERBIRD-red	\$ 15,000	4010	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
1971	FORD	PANTERIA	\$ 25,000	1620	Repossessed by Vega/Stardust as testified to by Larkin
1973	FORD	PANTERIA-GT4	\$ 35,000	5291	Repossessed by Vega/Stardust as testified to by Larkin
1951	JAGUAR	XK 120 RACE CAR	\$ 20,000	1966	Repossessed by Vega/Stardust as testified to by Larkin
1957	OLDSMOBILE	98 ROCKET	\$ 18,000	7665	Subject to lien by Vega/StarDust as testified to by Foust
1966	PLYMOUTH	BELVADIRE	\$ 15,000	Shell	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
2000	PLYMOUTH	PROWLER	\$ 21,000	3597	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
2007	MERCEDES	CLK 550	\$ 12,000	1009	With Foust family or subject to lien by Vega/StarDust
2000	GMC	Yukon	\$ 8,000	0142	With Foust family or subject to lien by Vega/StarDust
2007	MERCEDES	S550	\$ 25,000	5860	With Foust family or subject to lien by Vega/StarDust
1963	CHEV	425/409 S/S	\$ 25,000	4085	Sold and/or repossessed by Vega/Stardust as testified to by Larkin
1998	MARATHON	COACH	\$ 129,875	6183	Already taken by Bank
2016	KAWASAKI	KR10	\$ 11,700	B505	Possessed by Harry Hildebrand, Jr.
		Total	\$521,575		

Yet, despite this uncontroverted evidence elicited by the Bank, it seeks to hold Mr. Detwiler in contempt for not turning over Vehicles that are owned, possessed and controlled by Faust.

16. Misleading statement number sixteen.

Pursuant to NRS 22.100, this Court further hereby orders that Mr. Detwiler shall be imprisoned until he complies with the Order and delivers up, surrenders

1 possession of, and turns over to the Bank, in a manner that protects the vehicles
2 from any damage, all 20 vehicles identified in Exhibit B, or pays to the Bank in
immediately available funds the value of the vehicles listed in Exhibit B, \$521,575.

3 See Contempt Order at p. 17, ¶ 29. This misrepresentation by the Bank is equally disturbing.
4 Despite the testimony of Mr. Foust – who this Court found owns, possesses and controls the
5 Vehicles –and Mr. Larkin, who testified that all but four (4) of the Vehicles are either confirmed
6 to be sold to third parties, in the custody and control of Foust’s family, repossessed by
7 Vega/StarDust, or already possessed by the Bank, the Bank seeks to coerce Mr. Detwiler into
8 paying \$521,575 of the judgment owed by Foust. The Bank makes no deduction for the Vehicles
9 it knows for a fact Mr. Detwiler cannot turn over, including the Marathon Coach which it already
10 possesses.

11 III. STANDARD OF REVIEW

12 NRCP 60(b) provides as follows:

13 **(b) Grounds for Relief From a Final Judgment, Order, or Proceeding.** On
14 motion and just terms, the court may relieve a party or its legal representative from
a final judgment, order, or proceeding for the following reasons:

- 15 (1) mistake, inadvertence, surprise, or excusable neglect;
- 16 (2) newly discovered evidence that, with reasonable diligence, could not have been
discovered in time to move for a new trial under Rule 59(b);
- 17 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
misconduct by an opposing party;
- 18 (4) the judgment is void;
- 19 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier
judgment that has been reversed or vacated; or applying it prospectively is no longer
equitable; or
- 20 (6) any other reason that justifies relief.

21 Nev. R. Civ. P. 60. As set forth herein, subsections (1), (2), (3), (4) and (6) all justify relief. There
22 have clearly been numerous mistakes by the Bank; newly discovered evidence – including without
23 limitation Mr. Detwiler’s resignation – justifies vacating the Contempt Order; the Bank has
24 misrepresented the facts to this Court; the Contempt Order is void as it entirely contradicts the
25 January 2019 and June 2019 Orders (purported violation of which forms the basis for the Contempt
26 Order), and other reasons justify relief, including without limitation, due process and fairness

1 considerations. Further, the relief requested by Mr. Detwiler is well within this Court's jurisdiction
2 to grant. *See A-Mark Coin Co. v. Redfield's Estate*, 94 Nev. 495, 498, 582 P.2d 359, 361 (1978)
3 (recognizing, in the probate context, that a court "has jurisdiction to vacate a prior order upon
4 learning that it was entered through mistake" and further confirms that "[o]ur remedial rule, NRCP
5 60(b), contemplates such action.") (citation omitted). The instant Motion is timely filed within six
6 (6) months from service of the notice of entry of the Contempt Order.

7 Additionally, pursuant NRCP 52(a)(6), findings of fact must be set aside when they are
8 "clearly erroneous." Nev. R. Civ. P. 52. As set forth herein, given that the Court's January 2019
9 and June 2019 Orders found the Vehicles to be in the possession, custody and control of Mr. Foust,
10 the Contempt Order is clearly erroneous and must be set aside. *See also* NRCP 59(e) (providing
11 for the alteration or amendment of a judgment); *see Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.
12 Supp. 2d 1112, 1117 (D. Nev. 2013) (holding that Rule 59 may be employed to prevent "manifest
13 injustice").

14 NRCP 59(a) provides that a new trial may be ordered under certain circumstances, many
15 of which have been shown to exist here:

16 **(a) In General.**

17 (1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or
18 some of the issues--and to any party--for any of the following causes or grounds
19 materially affecting the substantial rights of the moving party:

20 (A) irregularity in the proceedings of the court, jury, master, or adverse party or in
21 any order of the court or master, or any abuse of discretion by which either party
22 was prevented from having a fair trial;

23 (B) misconduct of the jury or prevailing party;

24 (C) accident or surprise that ordinary prudence could not have guarded against;

25 (D) newly discovered evidence material for the party making the motion that the
26 party could not, with reasonable diligence, have discovered and produced at the
27 trial;

28 (E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion
or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the
motion.

1 Nev. R. Civ. P. 59. As noted above, Mr. Detwiler substantial misconduct by the Bank exists in
2 this matter; newly discovered evidence which could not have been brought before the Court has
3 come to light; errors in law occurred at the proceedings in this matter, including the request of the
4 Bank and inclusion in the January 2019 and June 2019 orders of “findings” of alter ego
5 relationships without appropriate due process requirements having been met; and it would be an
6 abuse of discretion to permit the Contempt Order to stand when it purports to hold Mr. Detwiler
7 in contempt for not doing something this Court found he cannot do. *See e.g., Whise v. Whise*, 36
8 Nev. 16, 131 P. 967, 968 (1913) (holding that material new evidence warrants a new trial).

9 **IV. ARGUMENT**

10 **A. The Court cannot hold Mr. Detwiler in contempt for not doing what it has**
11 **found he cannot do. The January 2019 and June 2019 Orders make clear Mr.**
12 **Foust owns, controls and possesses the Vehicles. Accordingly, Mr. Detwiler**
13 **cannot be held in contempt for not turning them over to the Bank.**

14 As set forth above, under Nevada’s civil contempt statutes, including without limitation
15 NRS § 22.110, the draconian and extreme punishment of *indefinite imprisonment* may only be
16 imposed on an individual where the contempt “**consists in the omission to perform an act which**
17 **is yet in the power of the person to perform...**”. As the Court in *Alper v. Eighth Jud. Dist. Ct.*
18 recognized:

19 Civil sanctions, on the other hand, are remedial in nature, as the sanctions
20 are intended to benefit a party by coercing or compelling the contemnor's future
21 compliance, not punishing them for past bad acts. Moreover, a civil contempt order
22 is indeterminate or conditional; the contemnor's compliance is all that is sought and
23 with that compliance comes the termination of any sanctions imposed.

24 *See Alper*, 131 Nev. 430, 434, 352 P.3d 28, 31 (2015) (*citing Rodriguez v. Eighth Judicial Dist.*
25 *Court ex rel. Cty. of Clark*, 120 Nev. 798, 805, 102 P.3d 41, 46 (2004) (footnote omitted); *Int'l*
26 *Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.Ed.2d
27 642 (1994) (explaining that civil contempt sanctions “are considered to be coercive and avoidable
28 through obedience”)). Further, it is binding United States Supreme Court precedent that

1 "punishment may not be imposed in a civil contempt proceeding when it is clearly established
2 that the alleged contemnor is unable to comply with the terms of the order." Hicks on Behalf of
3 Feiock v. Feiock, 485 U.S. 624, 638, 108 S. Ct. 1423, 1433, 99 L. Ed. 2d 721 (1988) (citing United
4 States v. Rylander, 460 U.S. 752, 757, 103 S.Ct. 1548, 1552, 75 L.Ed.2d 521 (1983); Shillitani,
5 supra, 384 U.S., at 371, 86 S.Ct., at 1536; Oriel, 278 U.S., at 366, 49 S.Ct., at 175.) (emphasis
6 added); see also State ex rel. Foster v. McKenzie, 683 S.W.2d 270, 270 (Mo. Ct. App. 1984 (citing
7 Huber v. Huber, 649 S.W.2d 955, 958 (Mo.App.1983); Mechanic v. Gruensfelder, 461 S.W.2d
8 298, 304 (Mo.App.1970)) ("The contemnor must have the ability to purge himself of his
9 contempt to justify imprisonment for civil contempt."); Shell Offshore Inc. v. Greenpeace, Inc.,
10 815 F.3d 623, 629 (9th Cir. 2016) (citing Int'l Union, United Mine Workers of Am. v. Bagwell, 512
11 U.S. 821, 829, 114 S. Ct. 2552, 2558, 129 L. Ed. 2d 642 (1994); Lasar v. Ford Motor Co., 399
12 F.3d 1101, 1110 (9th Cir. 2005)) ("Thus, the ability to purge is perhaps the most definitive
13 characteristic of coercive civil contempt.").

14 At the May, 2019 hearing, this Court confirmed this principle to Mr. Detwiler:

15 8 You can't do something, of course, that you're -- that's a
16 9 physical impossibility. Okay. So if there's something that's a physical
17 10 impossibility, you can't be held in contempt of court. All right. So that's
18 11 what we're trying to find out here is have you done all that's in your
19 12 power to do so satisfy my order. And that's all I'm looking for. Right?
20 13 THE WITNESS: Okay.
21 14 THE COURT: And so if there's more you can do over the
22 15 weekend or Monday, I don't know if there is, maybe you want to talk to
23 16 Harry Jr., this guy Ron Vega. **But understood, sir, you're only**
24 17 **responsible for what's in your power to control. Okay?**

25 See May 2019 Transcript, at p. 54.

26 Here, Mr. Detwiler's testimony, and the other evidence in this case, has been grossly
27 misrepresented to this Court. The truth is, this Court found that Mr. Foust owns, possesses and
controls the Vehicles. It is the height of unfairness and manifestly unjust to imprison Mr. Detwiler
indefinitely until he turns over Vehicles this Court has found he cannot turn over. The Contempt
Order must be vacated.

1 B. Under binding Nevada Supreme Court precedent, “alter ego” claims must be
2 asserted in an independent action with the requisite notice, service of process,
3 and opportunity to defend. The Contempt Order is based on multiple findings
4 of alter ego relationships purportedly justifying the Bank’s attempt to
 imprison Mr. Detwiler indefinitely, and therefore the Contempt Order must
 be vacated.

5 The Contempt Order states that Mr. Detwiler can only be released from prison by delivering
6 the Vehicles at issue “**or paying the Bank in immediately available funds the value of the**
7 **vehicles listed in Exhibit B, \$521,575...**” See Contempt Order, at p. 17, ¶ 31 (emphasis added).
8 In addition, as set forth above, the Contempt Order is based on this Court’s finding that Mr. Foust,
9 HH and StarDust are purportedly alter egos of each other. This is wholly improper and violative
10 of binding Nevada Supreme Court precedent as set forth in *Callie v. Bowling*, 123 Nev. 181, 182,
11 160 P.3d 878, 878 (2007), in which the Court held as follows:

12 A party who wishes to assert an alter ego claim must do so in an independent
13 action against the alleged alter ego with the requisite notice, service of process,
14 and other attributes of due process. When the judgment creditor employs the
15 proper procedure, the defendant who is subject to the alter ego claim is assured a
16 full opportunity of notice, discovery, and an opportunity to be heard before
 potentially being found liable. The failure to abide by this procedure results in
 a deprivation of due process.

17 *Callie*, 123 Nev. at 185, 160 P.3d at 881 (emphasis added).

18 There is no dispute that the judgment at issue is not against Mr. Detwiler, or HH, or StarDust.
19 There is also no dispute that the Bank has not so much as filed a complaint regarding the purported
20 alter ego nature of Mr. Detwiler, HH, or StarDust. Despite this lack of due process on the Bank’s
21 part, it seeks to have Mr. Detwiler imprisoned to pay a debt he does not owe, based on a finding of
22 an alter ego relationship between Foust, HH and StarDust in violation of *Callie*. This is improper
23 and the Contempt Order must be vacated on this ground alone.¹⁴

24 _____
25 ¹⁴ In addition, it appears that the Bank’s behavior in threatening indefinite imprisonment against Mr. Detwiler until he
26 pays someone else’s debt may be a violation of not only NRS § 207.190 (coercion), but also may give rise to an abuse
27 of process claim by Mr. Detwiler against the Bank.
28

There can be no legitimate dispute that Mr. Detwiler has resigned as manager of HH. *See* Exhibits 1 and 2 herein. Mr. Detwiler did everything he could to reach out to anyone who might have been able to turn over the Vehicles, would be willing to execute whatever he was authorized to execute, or do anything else within the bounds of the law to do whatever this Court wanted done with respect to the Vehicles, and used his best efforts to contact whomever he could to get the Vehicles delivered to the Bank. *See* Detwiler Declaration at ¶ 14. He has never had an ownership interest in the Vehicles or HH. *Id.* Mr. Detwiler resigned as a manager of HH effective September 10, 2019, which could not have been provided to the Court during prior proceedings. *Id.* at ¶ 15; *see also* Mr. Detwiler’s letter of resignation, attached hereto as Exhibit 2. There can be no basis to hold Mr. Detwiler in contempt. Were this Court to allow the Contempt Order to stand, Mr. Detwiler clearly would lack the “prison keys” to get out of jail except to pay over half a million dollars of a judgment that is not against him, providing the Bank an egregious end run around due process by effectively obtaining a judgment in that amount against Mr. Detwiler for a debt that is not his. *See Shillitani v. United States*, 384 U.S. 364, 368 (1966).

For all these reasons, Mr. Detwiler respectfully requests that this Court grant this Motion in its entirety, including without limitation for relief from the Contempt Order pursuant to NRCp 60(b); for a new trial pursuant to NRCp 59; for alteration and/or amendment of the Contempt Order to remove any imprisonment or judgment with respect to Mr. Detwiler and to determine that he has complied with this Court's order to the extent he is able to do so; for reconsideration of the Contempt Order; and for denial of the request sought in the Bank's Brief; and for such other and

///

1 further relief as the Court deems appropriate.

2 DATED this 5th day of February, 2020.

3 **KOLESAR & LEATHAM**

4
5 By


BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

AMANDA K. BAKER, ESQ.

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Attorneys for Non-party Edward Detwiler

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 5th day of February 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY**

EDWARD DETWILER'S:

(1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUANT TO NRCP 60(b);

(2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59;

(3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59;

(4) MOTION FOR RECONSIDERATION OF THE COURT'S CONTEMPT ORDER;

AND

(5) OPPOSITION TO PLAINTIFF'S

BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL

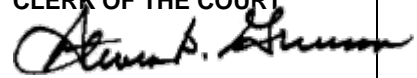
CONTEMPT OF COURT

in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.



An Employee of KOLESAR & LEATHAM



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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**PLAINTIFF'S OPPOSITION TO NON-
PARTY EDWARD DETWILER'S:
(1) MOTION FOR RELIEF FROM
CONTEMPT ORDER PURSUANT TO
NRCPC 60(B); (2) MOTION FOR NEW
TRIAL PURSUANT TO NRCPC 59;
(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCPC 52
AND 59; (4) MOTION FOR
RECONSIDERATION OF THE
COURT'S CONTEMPT ORDER; AND
(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT**

Hearing Date: February 12, 2020

Hearing Time: 8:30 a.m.

INTRODUCTION

The plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") opposes the referenced motions and requests that they be denied in their entirety.

This opposition paper will make 28 filings that the Bank has made in support of its years-long effort to force Mr. Foust and Harry Hildibrand, LLC ("HH") to surrender the vehicles to satisfy the judgment. This latest motion from Mr. Detwiler, by and large, presents no new argument and no new evidence. The Bank respectfully rests on its prior. One item of new

evidence—the so-called resignation letter—bears a brief response. Far from exonerating Mr. Detwiler, the emergence of this document further proves Mr. Detwiler’s culpability and the appropriateness of this Court’s contempt order against him.

I. MR. DETWILER TESTIFIED FOR YEARS THAT HE TOOK DIRECTION FROM HARRY HILDIBRAND, JR., BUT HE SENT THE ALLEGED RESIGNATION LETTER TO MR. FOUST.

In the past, Mr. Detwiler attempted to distance himself from Mr. Foust. Mr. Detwiler testified in his deposition and during multiple evidentiary hearings that he took direction in his role as HH’s manager from Harry Hildibrand, Jr. only—not Mr. Foust.

A. Mr. Detwiler First Gave this Testimony at His July, 2018 Deposition.

Mr. Detwiler first gave such testimony at his July, 2018 deposition:

Q: So in your opinion, who makes the ultimate decisions for Harry Hildibrand?

Mr. Detwiler: Harry Jr., the person. He's the top shareholder, and I don't know if he has a proxy for 11 the other two or not. It's like I said, it's -- I'm not really involved in the day-to-day business of what they do, and they have so little, you know.

* * *

Q: Do you -- in your opinion does Jim Foust run Harry Hildibrand? Does he make all the decisions for Harry Hildibrand?

Mr. Detwiler: No, sir. No.

Q: That would be Harry Hildibrand Jr. that makes the decisions?

Mr. Detwiler: Yes, sir. To the best of my knowledge when -- if Harry were to call me, like he has, and had me do -- and I go do things when Harry asks me to.

(7/6/18 Dep. E. Detwiler, Ex. 1 hereto, 18:7-14; 18:21-19:4.)

Similarly, Mr. Detwiler claimed that three of the children of the late Harry Hildibrand, Sr. owned roughly equal shares in HH since their father’s passing in 2010. (*Id.* at 28:1-10; 9:12-19.)

B. Mr. Detwiler Gave the Same Testimony When Examined by His Own Attorney in November, 2018.

Mr. Detwiler reaffirmed that Harry Hildibrand, Jr. leads HH during the second evidentiary hearing before this Court, in November, 2018. HH’s own attorney, Mr. Joseph Went of the Holland & Hart law firm, adduced this evidence:

1 Q: So when you became a manager of Harry Hildibrand LLC, who was
2 responsible for issuing instructions to you about Harry Hildibrand LLC business?

3 Mr. Detwiler: Well, originally it was Senior, and then after his passing it was
4 Junior. But there was a long, long lapse in between communications.
5 Because there wasn't anything that I was doing on their behalf. It wasn't
6 until the coach was missing that -- that I had any involvement in HH for --
7 for a very long time.

8 Q: At any point in time after you became a manager of Harry
9 Hildibrand LLC, did you take instructions from Jim Foust about the
10 business of Harry Hildibrand LLC?

11 Mr. Detwiler: No, sir.

12 (11/5/18 Hr'g Trans., Ex. 2 hereto, 22:1-12.) Mr. Detwiler again repeated his deposition
13 testimony to the effect that the children Harry Hildibrand owned roughly one third of the
14 company, with Mr. Foust owning a one percent interest. (*Id.* at 23:9-16.)

15 C. **Mr. Detwiler Gave the Same Testimony Again at His Contempt Trial in May,**
16 **2019.**

17 At the contempt trial, Mr. Detwiler also testified that he had been trying to telephone Harry
18 Hildibrand, Jr. to convince him to comply with this Court's order to turn over the vehicles. (*See*
19 5/17/19 Hr'g Trans., Ex. 3 hereto, 33:5-24.) Mr. Detwiler claimed he felt a sense of "loyalty" to
20 Harry Hildibrand, Jr. (*id.* at 37:7-14)—even to the point that he was paying his own expenses to
21 fly from Las Vegas to Los Angeles for HH's bankruptcy proceedings (*id.* at 37:16-25).

22 D. **In a Revealing About-Face Mr. Detwiler Allegedly Tendered His Resignation**
23 **to Mr. Foust.**

24 After all this, Mr. Detwiler sent the purported resignation letter to James Foust! (*See*
25 Exhibit 2 Motion.) We submit this constitutes a new and glaring demonstration of Mr. Detwiler's
26 untruthfulness to the Court. We are convinced that Harry Hildibrand, Jr. is either not a real person
27 or that he was uninvolved. If he were, Mr. Detwiler would have tendered his alleged resignation
28 to the person he repeatedly testified controlled HH—Harry Hildibrand, Jr.

Furthermore, in his supporting declaration, Mr. Detwiler states that he sent the resignation
letter to HH's attorney "Jim Lizzei at the address the forth on the Letter of Resignation." (Exhibit
1 to Motion, ¶ 4.) This statement makes no sense because the letter is not addressed to Mr. Lezzei.

1 The letter does not include the name Jim Lezzei anywhere. The letter was supposedly sent to
2 James Foust at his home address in the Los Angeles area. (*See* Exhibit 2 to Motion.) Even if the
3 resignation letter were addressed to Jim Lezzie, that would only further point up Mr. Detwiler's
4 connection to Mr. Foust. This Court found that Jim Lezzie represented HH in the bankruptcy and
5 that he had submitted a pro hac vice application in which he described himself as "a long time
6 [sic] associate of James Paterson Foust" who had "served as counsel to Mr. Foust on previous
7 matters." (1/9/19 Findings of Fact, Conclusions of Law, and Final Judgment, at Finding of Fact ¶
8 19, on file herein.)

9 **II. MR. DETWILER PORTRAYS MR. FOUST AS A STRANGER, BUT THE**
10 **RECORD SHOWS OTHERWISE.**

11 Every time Mr. Detwiler has the chance to submit arguments to the Court, he reveals
12 additional inconsistencies in his testimony. These men are not, as Mr. Detwiler insists, strangers.
13 The more time that passes the more it appears that Mr. Foust and Mr. Detwiler are working
14 together—perhaps even to move assets outside the country to evade this Court's orders.

15 **A. Mr. Detwiler Apparently Now Argues that Mr. Foust, not HH, Had Possession**
16 **of the Vehicles.**

17 At the last hearing Mr. Detwiler's new counsel argued that Mr. Detwiler believed that Mr.
18 Foust owned a warehouse holding the vehicles. This statement contradicts Mr. Detwiler's
19 bankruptcy hearing testimony; there he testified that HH or StarDust Classic rented a warehouse
20 located at 901 West Allondra in Compton, California, and that the vehicles were stored there.
21 (Exhibit 3 to 11/5/18 Hr'g, at control numbers Baker 83-85.) Mr. Detwiler's new counsel's
22 argument underscores a further inconsistency in Mr. Detwiler's testimony.

23 **B. Nevada Secretary of State Filings Show that Messrs. Foust and Detwiler Use**
24 **the Same Office Space.**

25 Mr. Detwiler has testified that he spends his time developing a luxury resort in Roatan,
26 Honduras. He has stated his intention to live in Honduras either permanently or for an extended
27 period. At his deposition Mr. Detwiler adamantly denied that Mr. Foust had any interest in this
28 venture—"absolutely not" were his exact words. (7/6/18 Dep. E. Detwiler, Ex. 1 hereto, 19:17-

24.) But Mr. Foust claimed a \$721,905.62 interest in “Roatan West bay” as an asset on a balance sheet submitted to the Bank in January, 2016, before this judgment was domesticated in Nevada. (Exhibit 5 to 11/5/18 Hr’g, at control numbers Baker 28.) Mr. Detwiler is a manager for Nai’a Resorts, LLC, the entity he testified owns the Roatan venture. Mr. Foust is the manager for JPF Enterprises, LLC. Both men give the same address, 10120 South Eastern Avenue, Suite 300, Henderson, as their official addresses. (See Exhibit 5 to 1/24/20 Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court, on file herein.) The two seem to be sharing operating resources.

III. CONCLUSION

This Court previously found that “Mr. Foust, HH, and StarDust Classic have been agents of one another with respect to any past action involving the cars at issue in these proceedings” (*Id.* at Conclusion ¶ 3.) HH is a real entity, organized under Montana law. Mr. Detwiler is the manager of the entity—and was at all relevant times even if we assume the seemingly bogus resignation letter is legitimate. He has and has had the ability to comply for the reasons already argued. Mr. Detwiler refuses because, as it is increasingly clear, he conspires with Mr. Foust rather than taking direction from Harry Hildibrand, Jr. For these reasons, we request that the court deny this motion in its entirety.

Dated this 10th day of February, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ John E. Bragonje
John E. Bragonje (SBN.: 9519)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Attorneys for Plaintiff Baker Boyer National Bank

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served the
3 foregoing document entitled ***“PLAINTIFF’S OPPOSITION TO NON-PARTY EDWARD***
4 ***DETWILER’S: (1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUANT TO***
5 ***NRCP 60(B); (2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59; (3) MOTION TO***
6 ***ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59; (4) MOTION FOR***
7 ***RECONSIDERATION of the COURT’S CONTEMPT ORDER; AND (5) OPPOSITION TO***
8 ***PLAINTIFF’S BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL***
9 ***CONTEMPT OF COURT”*** through the Court’s electronic filing system on all parties on the
10 Court’s e-service list.

11 Michael D. Mazur, Esq.
12 **MAZUR & BROOKS**
13 **A PROFESSIONAL CORPORATION**
14 2355 Red Rock Street, Suite 100
15 Las Vegas, NV 89146
16 *Attorneys for Defendant James Patterson Foust, Jr.*

17 Brenoch Wirthlin
18 **KOLESAR & LEATHAM**
19 400 S. Rampart Blvd., Ste. 400
20 Las Vegas, NV 89145

21 **The Following Served via U.S. Mail:**

22 **HARRY HILDIBRAND, LLC**
23 c/o Registered Agent
24 Jared S. Heggen
25 3011 American Way
26 Missoula, MT 59808

27 **HARRY HILDIBRAND, LLC**
28 c/o Registered Agent
Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 10th day of February, 2020.

/s/ Luz Horvath

An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

Baker Boyer National Bank v. Foust, Jr.

Deposition of:
Edward Detwiler

July 6, 2018



**WESTERN REPORTING
SERVICES, INC.**

801 South Rancho Drive • Suite E3B • Las Vegas, NV 89106
702/474-6255 • fax 702/474-6257

www.westernreportingservices.com

1 came into town, and I sold them 1300 homes in 11
2 months.

3 And so I'm very good at what I do, and
4 that was the whole idea behind transitioning
5 Hildibrand from automobiles into real estate. And
6 with the market turning like it did in '8 and going
7 like this, never got off the ground. Never did any
8 real estate transactions. I would have liked to have
9 done for Hildibrand and Harry what I did for Colony.
10 Just never got around to being able to get it off the
11 ground.

12 Q. So you knew Mr. Hildibrand, the name sake,
13 of Harry Hildibrand, LLC?

14 A. I spoke with him. I've never met him.

15 Q. Is he dead now?

16 A. He is.

17 Q. When did he --

18 A. He passed in 2010, I believe.

19 Q. I want to follow up on some of the things
20 that you said. You gave me the impression that the
21 business of Harry Hildibrand was cars, and it was
22 intended that that business transition into real
23 estate.

24 So beginning with what you said first, can
25 you give me your understanding of what the nature of

1 Q. Thank you. I know that's a little bit
2 tedious but...

3 A. Yes. Yes.

4 Q. When did you ask Harry Hildibrand Jr. for
5 the contracts?

6 A. I have not.

7 Q. So in your opinion, who makes the ultimate
8 decisions for Harry Hildibrand?

9 A. Harry Jr., the person. He's the top
10 shareholder, and I don't know if he has a proxy for
11 the other two or not. It's like I said, it's -- I'm
12 not really involved in the day-to-day business of what
13 they do, and they have so little, you know.

14 In retrospect in 2009 or '10 when we
15 weren't going to move towards real estate
16 acquisitions, it would have been in my best interest
17 to resign because there isn't anything for me to do.
18 And because I didn't, now I'm here today because of a
19 motor coach that I thought we could make a quick buck
20 on. It's turned into a nightmare so...

21 Q. Do you -- in your opinion does Jim Foust
22 run Harry Hildibrand? Does he make all the decisions
23 for Harry Hildibrand?

24 A. No, sir. No.

25 Q. That would be Harry Hildibrand Jr. that

1 makes the decisions?

2 A. Yes, sir. To the best of my knowledge
3 when -- if Harry were to call me, like he has, and had
4 me do -- and I go do things when Harry asks me to.
5 But the only thing he's ever asked me to do is, hey,
6 go get my coach back. So I did, and I'm sitting here
7 now.

8 Q. So did you hire the counsel that's here
9 with you today, or did Harry Hildibrand, the entity,
10 hire the counsel?

11 A. Harry Hildibrand hired the counsel. Their
12 office is about four minutes from my house at 817
13 Windhook Street.

14 Q. So you personally haven't been paying any
15 of the legal fees for this?

16 A. I have not.

17 Q. Now, when I talked with Jim Foust I talked
18 to him at some length on two different occasions. He
19 has mentioned a development project in Roatan. Does
20 that have anything to do with Harry Hildibrand?

21 A. Absolutely not.

22 Q. Is Mr. Foust involved in this Roatan
23 project?

24 A. Absolutely not.

25 Q. What is the project?

1 So who owns Harry Hildibrand now, the
2 entity?

3 A. Three members. Three members. I recall
4 seeing back in '08 there was a list of ownership, and
5 at that time 99.5 percent of that ownership was Harry
6 Hildibrand Sr., and .5 percent of it was Jim Foust.
7 When Harry passed, his 99-and-a-half percent went to
8 his heirs, okay, in this company. What they held and
9 what they had outside of Harry Hildibrand, sir, I
10 don't know. I don't know.

11 Q. You have never owned any interest in Harry
12 Hildibrand?

13 A. No, none. The understanding was that for
14 my role in acquiring real estate, obviously I would be
15 obtaining a commission outside of the scope of
16 manager. But I would also be able to upon the resale
17 of the property receive a commission.

18 And there was a to-be determined
19 percentage of profits based on the profitability and
20 the viability of the transaction. But we never got to
21 that, because nothing was ever done.

22 Q. Are you being paid for the time you're
23 spending in this lawsuit?

24 A. No, I'm not.

25 Q. Why are you doing it then? Why are you

1 Q. And you never heard what happened to the
2 really nice cars?

3 A. No, sir.

4 Q. Okay. Page 52, please. Similar car here,
5 but actually a different year, 1973 De Tomaso Pantera.
6 Do you know anything about this vehicle?

7 A. No, sir, I do not.

8 Q. Would you direct your attention to
9 Page 55, please?

10 A. Yes.

11 Q. Do you recognize this document? Take a
12 moment to look at it. It's the next three pages.
13 I'll tell you it's a Declaration that you signed.

14 (Pause.)

15 THE WITNESS: Yes, sir, I do.

16 BY MR. BRAGONJE:

17 Q. Did you sign this document?

18 A. Yes, sir, I did.

19 Q. Okay. I have a question about
20 Paragraph 3. That's on Page 55. Do you see that?

21 It says "On or about November 12th, 2008,
22 Defendant/Judgment Debtor James Patterson Foust Jr.
23 resigned as managing director of HH."

24 A. I see that.

25 Q. Why do you say that?

1 A. Well, going back to the document, his
2 resigning or his -- my becoming the managing director
3 was in fact the same as his resignation or his
4 removal.

5 So I don't know that that was necessarily
6 the best word to be used. But he was no longer as of
7 November 12th, 2008, the managing director of HH.

8 Q. So it's your position that after that
9 date, you were the managing director?

10 A. Yes. But as we've already realized, I
11 haven't done a whole lot.

12 Q. And were there any other managers or
13 managing directors?

14 A. No.

15 Q. So is it your opinion or position then
16 that after November 12th, 2008, Jim Foust had no
17 authority to act on behalf of Harry Hildibrand?

18 A. To my knowledge Jim didn't not act on
19 behalf of Harry Hildibrand at all. It would have been
20 Harry up until his passing, and then it would have
21 been Harry Jr. from that point forward.

22 Q. I understand what you're saying, but
23 that's not exactly my question, though.

24 My question is, is it your understanding
25 that Mr. Foust had no authority to act on behalf of

1 Harry Hildibrand after this date November 12th, 2008?

2 A. That would be my understanding, yes, sir.

3 Q. Thank you. All right. Next page or
4 Page 58, a couple pages down, I guess.

5 Take a moment to look at this. This is a
6 document entitled "Harry Hildibrand Dates." Let me
7 know when you've had a chance to familiarize yourself
8 with it.

9 A. Okay. I'm familiar. I have familiarized
10 myself with this document.

11 Q. Have you ever seen this before?

12 A. The first time I saw this document was in
13 my counsel's office.

14 Q. Who drafted this?

15 A. I do not know.

16 Q. When was it drafted?

17 A. I do not know.

18 Q. Why was it drafted?

19 A. Once again, I don't know.

20 Q. Okay. I have a few questions about the
21 contents of this. Do you see there the second line,
22 it says "2006-12-30 Ownership of HH." Do you see
23 that?

24 A. Yes, sir.

25 Q. Do you know what this means?

CERTIFICATE OF REPORTER


I, Gayle Szelinski, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:

That I reported the deposition of the witness,
Edward Detwiler, commencing on Friday, July 6, 2018, at
9:32 a.m.;

That prior to being examined, the witness was by
me first duly sworn to testify to the truth, the whole
truth, and nothing but the truth; that I thereafter
transcribed my related shorthand notes into typewriting
and that the typewritten transcript of said deposition
is a complete, true and accurate record of testimony
provided by the witness at said time.

I further certify that (1) I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person
financially interested in the action, and (2) that
pursuant to Rule 30(e), transcript review by the
witness was requested.

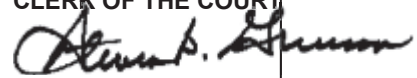
IN WITNESS WHEREOF, I have hereunto set my hand in
my office in the County of Clark, State of Nevada,
this 16th day of July, 2018.



GAYLE SZELINSKI, CCR NO. 585

Exhibit 2

Exhibit 2



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

MONDAY, NOVEMBER 5, 2018

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING**

(Appearances on page 2.)

RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 Q So when you became a manager of Harry Hildibrand LLC,
2 who was responsible for issuing instructions to you about Harry
3 Hildibrand LLC business?

4 A Well, originally it was Senior, and then after his passing it was
5 Junior. But there was a long, long lapse in between communications.
6 Because there wasn't anything that I was doing on their behalf. It wasn't
7 until the coach was missing that -- that I had any involvement in HH for --
8 for a very long time.

9 Q At any point in time after you became a manager of Harry
10 Hildibrand LLC, did you take instructions from Jim Foust about the
11 business of Harry Hildibrand LLC?

12 A No, sir.

13 Q Let me direct your attention to Exhibit 24 in the book, Bates
14 stamped HHLLC33.

15 THE COURT: I'm sorry, I missed that. Which exhibit?

16 MR. WENT: Exhibit 24 in the book.

17 THE COURT: 24. Okay. Thank you.

18 MR. WENT: Bates stamped HHLLC33.

19 BY MR. WENT:

20 Q Okay. Showing you the document Bates stamped HHLLC33;
21 do you recognize this document?

22 A I do.

23 Q What is it?

24 A It's an e-mail that I sent to Jim.

25 Q What was the purpose of this e-mail?

1 THE WITNESS: Just because of my relationship with HH.
2 And that was a -- a pronoun that was not -- that was not correct. It
3 should have been our. It should have been the coach that belongs to
4 HH, Harry Hildibrand LLC.

5 THE COURT: Thank you, sir.

6 THE WITNESS: You're very welcome.

7 THE COURT: All right.

8 BY MR. WENT:

9 Q As you sit here today, do you have an understanding as to the
10 equity ownership of Harry Hildibrand LLC?

11 A I do.

12 Q Do you know who owns the equity of Harry Hildibrand LLC?

13 A The last document that I saw that was provided to me showed
14 that Harry's three children each owned 33 percent of the LLC and 1
15 percent was owned by Jim Foust. And outside of that document, I have
16 not seen any other document that specifies otherwise.

17 THE COURT: What document are you referring to?

18 THE WITNESS: I don't know if it's in exhibit or not. But there
19 was a -- upon Harry's -- Senior's passing there was a disposition of the
20 ownership of the Harry Hildibrand LLC. And one-third was to -- given to
21 each one of his children, and then I believe that 1 percent was retained
22 by Mr. Foust.

23 THE COURT: Have you reviewed that document in preparing
24 for your testimony today?

25 THE WITNESS: Have I reviewed it? No.

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MR. WENT: Thank you.

MR. MOUNTEER: Thank you, Your Honor.

THE COURT: If there are any binders that you have up at the witness chair, please retrieve those.

[Proceedings concluded at 10:26 a.m.]

///

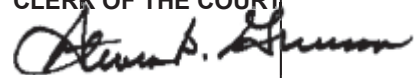
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562

Exhibit 3

Exhibit 3



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff(s),

vs.

JAMES FOUST, JR.,

Defendant(s).

Case No. A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,
DISTRICT COURT JUDGE

FRIDAY, MAY 17, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING
VOLUME I**

APPEARANCES:

For the Plaintiff(s):

JOHN E. BRAGONJE, ESQ.

For the Defendant(s), James
Patterson Foust, Jr.:

MICHAEL D. MAZUR, ESQ
(Via Court Call)

RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 searches with them and the Honduran government. I've passed all
2 requirements that they have to know about my background.

3 Do have something like a contempt charge would have it all
4 go away. Okay. So I have nothing to hide. I have a lot to lose.
5 Unfortunately, I don't know anything about the cars. I was never
6 involved with the cars. I wasn't involved -- and I don't even know the
7 bank that is suing Mr. Foust. I was never a part of that bank or anything
8 to do with them.

9 I sold Jim Foust houses in the '90s and I was recommended to
10 the Hildibrand family to be a manager so that I could acquire, remodel,
11 and sell assets for a profit that never came to be. My extent as a
12 manager, I have no day-to-day operations knowledge of the company. I
13 don't know the structure outside of the document that was shown that
14 the Hildibrand children own 99 percent of the company. Mr. Foust
15 owned 1 percent of the company that was established the day I was --
16 the last time I was here to testify.

17 Outside of that, I know nothing about the operations of Harry
18 Hildibrand, nor should I as I -- I don't even have a -- I don't have a
19 financial interest in the company either.

20 I'm brought into this because I filed a police report on the
21 motor home.

22 THE COURT: Apparently you filed something in the
23 bankruptcy proceedings, also.

24 THE WITNESS: Yes, I did. Yes, I did.

25 THE COURT: Okay.

1 Harry Hildibrand, you, as being the sole managing member on paper,
2 you have the legal ability to have those transferred.

3 THE WITNESS: I don't know where they are, sir.

4 BY MR. BRAGONJE:

5 Q Have you made it -- have you made any efforts to try and
6 comply with this order? Have you called anyone to say that the Court is
7 ordering these vehicles delivered? I'm the guy who's responding for
8 Harry Hildibrand in court, I need you guys to do something, whoever
9 these guys are, whoever's really running things; have you even tried to
10 do that?

11 A Yes, sir. I have. And I've gotten no response.

12 Q Who did you call?

13 A I called Harry Jr. And here I am here by myself, no counsel, I
14 have no help from them. They're not helping me.

15 Q Why --

16 A I -- but I can't give you what I don't know.

17 Q Why do these people refuse?

18 A I don't know, sir.

19 Q They've never said anything to you?

20 A No, sir.

21 Q So they talked to --

22 A I have not --

23 Q They asked you to represent them in the bankruptcy, correct?

24 A And that's the last I've heard from them.

25 Q And they won't give you the courtesy to say, you know, why

1 Is what I -- okay.

2 I mean, none. And it hasn't been since the theft of the coach I
3 have been involved at all.

4 Q Thank you. And I appreciate your answers. I know these are
5 difficult questions and we're trying to get at the truth. So thank you
6 sincerely.

7 Since this lawsuit started, you've been very active, would you
8 agree?

9 A Yeah, out of a sense of loyalty that I feel is probably very
10 misplaced, where I was doing something for Junior to help him, because
11 I know -- what I do know is those assets I believed were his, not Foust's.
12 So I don't know, sir. I have no idea. So a sense of loyalty, I was on the
13 thing, I've always been someone to live up to my word and do what I say
14 I'm going to do. So I agreed to help him.

15 Q Thank you.
16 You traveled to L.A. for this meeting of creditors; is that
17 correct?

18 A It's correct.

19 Q From here, correct?

20 A Yes.

21 Q Did you fly?

22 A I did.

23 Q Who paid?

24 A I did.

25 Q You didn't ask anyone if they would pay?

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THE WITNESS: Thank you.

THE COURT: Mr. Mazur, we'll see you here Tuesday at 8:30,
correct?

MR. MAZUR: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you.

Everyone have a good day.

MR. BRAGONJE: Thank you, Your Honor.

THE COURT: Have a good day.

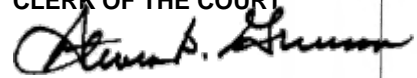
[Proceeding concluded at 10:13 a.m. until May 21, 2019.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed
the audio/video proceedings in the above-entitled case to the best of my
ability.



Shawna Ortega, CET*562



RPLY
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
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Attorneys for Non-party Edward Detwiler

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**NON-PARTY EDWARD DETWILER'S
REPLY IN SUPPORT OF:**

**(1) MOTION FOR RELIEF FROM
CONTEMPT ORDER PURSUANT TO
NRCP 60(b);**

**(2) MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59;**

**(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 52
AND 59;**

**(4) MOTION FOR RECONSIDERATION
OF THE COURT'S CONTEMPT ORDER;
AND**

**(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT**

Hearing Date: February 12, 2020

Hearing Time: 8:30 a.m.

COMES NOW non-party Edward N. Detwiler ("Mr. Detwiler"), by and through counsel,
Kolesar & Leatham, and hereby submits to this Honorable Court his reply ("Reply") in support of
Page 1 of 5

MSA00577

his (1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUAN TO NRCP 60(b); (2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59; (3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59; (4) MOTION FOR RECONSIDERATION OF THE COURT'S CONTEMPT ORDER; AND (5) OPPOSITION TO PLAINTIFF'S BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL CONTEMPT OF COURT ("Motion") as follows:¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. The Bank does not dispute the findings of this Court in the January 2019 and June 2019 Orders because the Bank's position is barred by the doctrine of estoppel.

The Bank's opposition ("Opposition") to the Motion completely ignores the arguments set forth in the Motion because the Bank has no argument to make. Nor can it do so legally or ethically. The Bank is judicially and equitably estopped from claiming Mr. Detwiler has the ability to turn over the Vehicles which this Court found on multiple occasions were owned, possessed and controlled by Mr. Foust. Judicial estoppel applies "when " '(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.' " *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004). Here, the Bank successfully took the position in both the January 2019 and June 2019 Orders that Foust, not Mr. Detwiler or HH, owned, controlled and possessed the Vehicles. Now the Bank changes its position for purposes of the Contempt Order because it cannot find Mr. Foust and Mr. Detwiler is an easier target. This is clearly to obtain an unfair advantage over Mr. Detwiler and coerce him to pay a judgment that is not against him. This is

¹ To the extent the Court finds Mr. Detwiler needs additional pages to complete the briefing on the Motion, Mr. Detwiler respectfully requests the Court grant Mr. Detwiler the additional pages necessary for this Reply.

1 Out of an abundance of caution, Mr. Detwiler also sent his letter of resignation to HH's
2 registered agent and business mailing address of its principal office in Montana, addressed to Harry
3 Hildibrand, LLC, c/o Jared S. Heggen, 3011 American Way, Missoula, Montana 59808 and PO
4 Box 16270, Missoula, Montana, 59808. *Id.* at ¶ 4; *see also* Exhibit 17 hereto.

5 The Bank also makes false suggestions and offers bare speculation in an attempt to support
6 the Contempt Order. For example, the Bank asserts that "Mr. Detwiler portrays Mr. Foust as a
7 stranger." *See* Opposition at p. 4. This is false. Mr. Detwiler has never said they are strangers,
8 merely that they do not have any business dealings together as Mr. Detwiler has resigned from
9 HH, and never was involved with the Vehicles, including sale, purchase or otherwise. Further, the
10 Bank speculates that Mr. Foust and Mr. Detwiler "seem to be sharing operating resources." *See*
11 Opposition at p. 5. The deliberate vagueness and speculative nature of this assertion underscores
12 the weakness of the Bank's case. As set forth in the Motion, and here again for the Court's
13 convenience, Mr. Detwiler has absolutely no interest in Mr. Foust's entity, JPF Enterprises, LLC,
14 nor do I have any affiliation with Mr. Foust in Dallas West Management, LLC, Na'ia Resorts,
15 LLC, or PSV Development, LLC, or any other entity. *See* Supplemental Declaration at ¶ 5.

16 The Bank also falsely suggests – careful not to actually say – that Mr. Foust's purported
17 interest in "Roatan West bay" is the same as Mr. Detwiler's interest in a resort in Roatan,
18 Honduras. *See* Opposition at p. 4. This is also false. Mr. Detwiler's business endeavor is not
19 affiliated with whatever project or interest Mr. Foust purportedly referenced on some balance sheet
20 the Bank speculatively mentions in violation of Nevada's hearsay rules, and Mr. Detwiler objects
21 to the same.

22 II. CONCLUSION

23 The Bank's intent is clear: it is seeking to coerce Mr. Detwiler to either pay a large
24 judgment to the Bank that is not against Mr. Detwiler, or force him to coerce Mr. Foust to pay the
25 judgment that is against him. *See* Supplemental Declaration, at ¶ 6. The Bank is attempting to do
26 that through the Contempt Order which requires Mr. Detwiler to turn over Vehicles this Court has
27 found are owned, possessed and controlled by Mr. Foust, and is based on the improper finding of

1 an "alter ego" relationship between Mr. Foust, HH and StarDust. The Contempt Order must be
2 vacated and/or a new trial granted. The Court has authority to grant the requested relief pursuant
3 to NRCP 60(b), NRCP 59, NRCP 52 and EDCR 2.24. For all the reasons set forth in the Motion
4 and this Reply, as well as any argument or evidence the Court permits at a hearing on this matter,
5 Mr. Detwiler requests that this Court vacate the Contempt Order and grant such other and further
6 relief as the Court deems appropriate.

7 DATED this 11th day of February, 2020.

8 **KOLESAR & LEATHAM**

9
10 By 

11 BRENOCH WIRTHLIN, ESQ.

12 (NV SBN 10282)

13 AMANDA K. BAKER, ESQ.

14 (NV SBN 15172)

15 *Attorneys for Non-party Edward Detwiler*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 11th day of February, 2020, I caused to be served a true and correct copy of foregoing **NON-PARTY EDWARD DETWILER'S REPLY IN SUPPORT OF: (1) MOTION FOR RELIEF FROM CONTEMPT ORDER PURSUANT TO NRCP 60(b); (2) MOTION FOR NEW TRIAL PURSUANT TO NRCP 59; (3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59; (4) MOTION FOR RECONSIDERATION OF THE COURT'S CONTEMPT ORDER; AND (5) OPPOSITION TO PLAINTIFF'S BRIEF IN SUPPORT OF REQUEST TO HOLD MR. DETWILER IN CIVIL CONTEMPT OF COURT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Baker Boyer National Bank:

John Bragonje (JBragonje@lrrc.com)
Luz Horvath (LHorvath@lrrc.com)

Other Service Contacts not associated with a party on the case:
Michael Mazur Esq. (complaint@mazurbrooks.com)


An Employee of KOLESAR & LEATHAM

Exhibit “16”

(Detwiler’s Supplemental Declaration)

DEC
KOLESAR & LEATHAM
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
AMANDA K. BAKER, ESQ. (NV SBN 15172)
400 South Rampart Boulevard, Suite 400
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Email: abaker@klnevada.com
Attorneys for Non-party Edward Detwiler

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK,
a Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

**SUPPLEMENTAL DECLARATION OF
NON-PARTY EDWARD DETWILER IN
SUPPORT OF HIS (1) MOTION FOR
RELIEF FROM CONTEMPT ORDER
PURSUANT TO NRCP 60(b);
(2) MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59;
(3) MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 52
AND 59;
(4) MOTION FOR RECONSIDERATION
OF THE COURT'S CONTEMPT ORDER;
AND
(5) OPPOSITION TO PLAINTIFF'S
BRIEF IN SUPPORT OF REQUEST TO
HOLD MR. DETWILER IN CIVIL
CONTEMPT OF COURT**

I, Edward N. Detwiler, hereby declare as follows:

1. I, Edward N. Detwiler, hereby declare that I am over the age of 18 (eighteen) years of age and I am competent to give the testimony set forth below. Testimony is given from my own personal knowledge. If called as a witness, I could and would competently and truthfully testify

1 as to the facts set forth herein.

2 2. I am a non-party with respect to the above-captioned action. I make this
3 Supplemental Declaration in support of my (1) MOTION FOR RELIEF FROM CONTEMPT
4 ORDER PURSUANT TO NRCP 60(b); (2) MOTION FOR NEW TRIAL PURSUANT TO NRCP
5 59; (3) MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52 AND 59;
6 (4) MOTION FOR RECONSIDERATION OF THE COURT'S CONTEMPT ORDER; AND (5)
7 OPPOSITION TO PLAINTIFF'S BRIEF IN SUPPORT OF REQUEST TO HOLD MR.
8 DETWILER IN CIVIL CONTEMPT OF COURT ("Motion").

9 3. I sent the resignation letter attached as Exhibit 2 to the Motion to both Mr. Foust,
10 Ron Vega c/o Tom Larkin, and to Jim Lezzie. I sent the resignation letter to Mr. Foust because I
11 understood he was or may be involved with Harry Hildibrand, LLC ("HH"). I sent the resignation
12 to Jim Lezzie subsequently because I believed that Mr. Lezzei was the attorney for HH and because
13 I had no mailing or other address for Harry Hildibrand, Jr.

14 4. Out of an abundance of caution, on February 11, 2020, I also sent the letter of
15 resignation attached as Exhibit 2 to the Motion to HH's registered agent and business mailing
16 address of its principal office in Montana, addressed to Harry Hildibrand, LLC, c/o Jared S.
17 Heggen, 3011 American Way, Missoula, Montana 59808 and PO Box 16270, Missoula, Montana,
18 59808.

19 5. I have absolutely no interest in Mr. Foust's entity, JPF Enterprises, LLC, nor do I
20 have any affiliation with Mr. Foust in Dallas West Management, LLC, Na'ia Resorts, LLC, or
21 PSV Development, LLC. The address listed for JPF Enterprises, LLC, is for a mail drop only. I
22 have never shared expenses or resources with Mr. Foust and have no business dealings with him
23 whatsoever.

24 6. After one of the hearings in this matter in 2019, the Bank's counsel told me that I
25 needed to get Mr. Foust to pay the judgment he owes the Bank if I did not want to be involved
26 further in these proceedings. I understood that to be an attempt to threaten me with jail time or
27 with the requirement to pay a large portion of the Bank's judgment against Mr. Foust in order to
28 get me to coerce Mr. Foust to pay the judgment he owes the Bank.

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I declare the following to be true and correct to the best of my knowledge and belief under penalty of perjury of the laws of the State of Nevada.

Dated February 11, 2020.



EDWARD N. DETWILER

Exhibit “17”

**(Detwiler’s Letter of Resignation sent out
on 2/11/2020)**

Edward Detwiler
Coldwell Banker Premier Realty

September 10, 2019

Jim Foust
7 Avenida De Magnolia
Ranch Palos Verdes, CA 90275

Ron Vega, c/o Tom Larkin
2201 Corte Sabio #2201
San Diego, CA 92128

Re: Resignation as Manager of Harry Hildebrand, LLC

Gentlemen,

As you are aware, I am a licensed real estate agent in Nevada, and I had agreed to serve as manager of the Harry Hildebrand, LLC in anticipation of performing real property acquisition services here in Nevada. The need for those services has not materialized, and due to Ron Vega's health circumstances, it seems the need for such services are unlikely to materialize.

On the other hand, I have just received and reviewed the Entry of Findings of Fact, Conclusions of Law and Final Judgment dated December 19, 2018 regarding the Baker Boyer National Bank versus Jim Foust matter. - - By the way, I am a bit concerned, to say the least, that I was not provided a copy of this sooner.

In reviewing this ruling, I find the following findings compelling to my circumstance as manager of Harry Hildebrand, LLC (HH).

According to Paragraph 29 I have been ordered to "deliver up, surrender possession of, and turn over to the Bank promptly all cars identified in Exhibits A and B."

However, I have no idea where any of these cars might be currently located. I have only seen a few of these cars, and that was some time ago. I am not in possession of any titles to any of the subject cars, I have no keys to any such cars, I have no access to any location where any of these cars might be located, and again, I do not know where any of these cars are currently located. Additionally, I have no financial means to "deliver up" these cars even if the foregoing issues were resolved, and I have no control over any HH bank account that might exist in order to finance any such "delivering up" process.

Based upon the above, and the fact the court concluded that Jim Foust was the owner, and in possession and control of the cars, I am not sure what role I could play in delivering up any of the identified cars. Especially since on Page 8, Paragraph 29,

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Page 9, Paragraph 36, and Page 15, Line 1, I am referred to as a "supposed manager of HH." Furthermore, the ruling also cites and recites my testimony on Page 15, Lines 1 through 5 confirming that I know nothing of any vehicles other than the four vehicles I saw being utilized by Mr. Foust and/or his family.

This reality is further mentioned at Page 16, Paragraph 74, where again my testimony is cited and recited confirming I am unaware of vehicles other than the four being utilized by Mr. Foust and/or members of his family.

Furthermore, Page 10, Lines 8 & 9, and Page 11 Paragraph 51, states that Mr. Foust owns and controls the subject cars.

In fact, Page 14, Paragraph 67 states "that the evidence is uncontroverted and overwhelming that Mr. Foust "retained possession or control of the property transferred after the transfer [to HH]."" Then again, under Conclusions of Law and Final Judgment – relate to Other Cars, on Page 21, Paragraphs 16 through 22, the court concluded, "Mr. Foust still owns, possesses and controls the cars in question..."

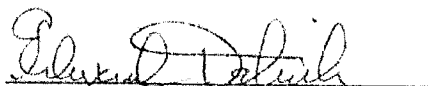
Consequently, I am not sure why the court, based upon its own findings and conclusions, would order ME to produce the subject cars; as it is an impossibility.

Accordingly, based upon all of the foregoing, I have no means to comply with the court order, and frankly, if I was somehow provided with the financial resources to "deliver up" said cars, I would not know where to begin.

Consequently, I must, and I hereby do, resign as manager of Harry Hildebrand, LLC, a Montana Limited Liability Company, effective immediately.

Please advise your respective legal counsels and advisors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Detwiler", written over a horizontal line.

Edward Detwiler



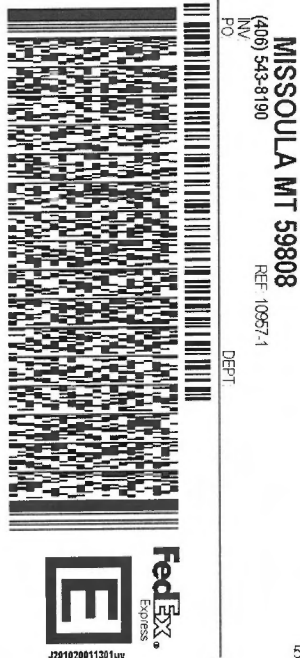
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UNITED STATES US

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C/O JARED S. HEGGEN, ESQ.
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3011 AMERICAN WAY

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KOLESAR & LEATHAM

ATTORNEYS AT LAW

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LAS VEGAS, NEVADA 89145

Harry Hildibrand, LLC
c/o Jared S. Heggen, Esq.
P. O. Box 16270
Missoula, MT 59808



MSA00591

TX Result Report

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COMPANY: HEGGEN LAW OFFICE, P.C. **EMAIL:** bwirthlin@klinevada.com
FAX: (406) 543-8190 **PHONE:**
FOR QUESTIONS CALL: MARY

CLIENT: EDWARD DETWILER
MATTER: HARRY HILDBRAND, LLC
FILE NO 10957-1

DOCUMENTS ATTACHED:

Letter of Resignation from Edward Detwiler

MESSAGE:

With respect to Harry Hildibrand, LLC, attached is a letter of resignation from Edward Detwiler.

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3326858 (10957-1)

MSA00592

Mary A. Barnes

From: Mary A. Barnes
Sent: Tuesday, February 11, 2020 1:14 PM
To: 'lauren@heggenlawoffice.com'
Cc: Brenoch Wirthlin
Subject: Harry Hildibrand LLC - letter of resignation
Attachments: Detwiler letter of resignation - Harry Hildibrand LLC.PDF

Attached for your records and information is a letter of resignation by Edward Detwiler with respect to Harry Hildibrand LLC.

Mary A. Barnes

Legal Assistant



ATTORNEYS AT LAW

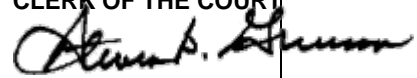
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff,

vs.

JAMES FOUST, JR.

Defendant.

CASE#: A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
WEDNESDAY, FEBRUARY 12, 2020

**RECORDER'S TRANSCRIPT OF HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

JOHN E. BRAGONJE, ESQ.

For the Defendant:

BRENOCH R. WIRTHLIN, ESQ.

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, February 12, 2020

2
3 [Case called at 8:35 a.m.]

4 THE MARSHAL: Remain seated. Department 2 now in
5 session, the Honorable Richard Scotti presiding.

6 THE COURT: Baker Boyer versus Jim Foust regarding the
7 hearing on the contempt charge against Mr. Detwiler. Let's have
8 appearances, please.

9 MR. BRAGONJE: Good morning, Your Honor, John Bragonje
10 of the Lewis Roca Law firm on behalf of the Plaintiff and judgment creditor
11 Baker Boyer Bank.

12 MR. WIRTHLIN: Good morning, Your Honor, Brenoch Wirthlin,
13 Kolesar & Leatham. Also with me is Mr. Edward Detwiler.

14 THE COURT: Okay, all right, so this is set today on -- I'm going
15 to read this long title of the subject of today's hearing, right? In fact, I'll
16 give that to you, so you can look at it.

17 This is the hearing on nonparty Edward Detwiler's #1 Motion for
18 Relief from Contempt Order Pursuant to NRCP 60B, #2, Motion for New
19 Trial Pursuant to NRCP 59, #3 Motion to Alter or Amend Judgment
20 Pursuant to NRCP 52 and 59.

21 #4 Motion for Reconsideration of The Court's Contempt Order.
22 And #5 Opposition to Plaintiff's Brief in Support Of Request to Hold Mr.
23 Detwiler in Civil Contempt of Court. Is that everything that's on the
24 calendar for today?

25 MR. WIRTHLIN: Yes, Your Honor.

1 MR. BRAGONJE: Yes.

2 THE COURT: Okay, Mr. Wirthlin, I guess you get to go first, sir.

3 MR. WIRTHLIN: Thank you, appreciate that, Your Honor.

4 THE COURT: And I have read the materials and I reviewed
5 the -- I do have the binder that you provided. I've re-read the transcripts,
6 not all, but several of the broader hearings.

7 MR. WIRTHLIN: Sure.

8 THE COURT: And I've reviewed a couple of the prior orders.
9 All right, you have the floor, sir.

10 MR. WIRTHLIN: Thank you, Your Honor. And I'll go through
11 my argument. I don't want to belabor the points. Obviously, we felt like
12 we kind of had one shot to put everything in there. So we put it all in
13 there, but I'll just kind of over the highlights.

14 Of course, if the Court has any questions at any time, please
15 feel free to stop me of course and I'll address whatever the Court would
16 like me to.

17 I think what this case boils down to in terms of why we're here
18 today, really, is that there are three orders, I think, that are at issue here.

19 There's the January -- what we define as the January 2019
20 order, the June 2019 order, and then of course, what we call the contempt
21 order which is against Mr. Detwiler. And that was entered, I believe,
22 January of this year.

23 So I just kind of want to hit a few of the highlights. We quoted
24 extensively from the orders in our motion. I won't do all of that, but I just
25 want to hit a few of those points that I think are important for the argument

1 today.

2 THE COURT: Could -- and I'm going to stop you this early
3 just --

4 MR. WIRTHLIN: Sure. Of course.

5 THE COURT: -- just so you could help focus on this. One of
6 your primary points was that this Court had previously found that Mr.
7 Foust owned, possessed, and controlled the 19 cars that were the subject
8 of this proceeding and that were identified in the bankruptcy petition.

9 I didn't mean to suggest by those prior orders, the language in
10 those prior orders that another person might share control.

11 MR. WIRTHLIN: Uh-huh.

12 THE COURT: So that was my intent. I didn't mean to exclude
13 whether others have control. And I did -- I think I did find that there was
14 some alter ego and/or agency relationship between several of the parties,
15 such as there's Harry Hildibrand.

16 There's testimony from Mr. Detwiler that Harry Hildibrand was
17 owned by Stardust, I believe, and then Stardust was owned by Mr. Foust.
18 And I saw other testimony that says Ron Vega [phonetic]. So that was the
19 framework by which I made those prior statements.

20 But again, there's a lot in the record. And so, I will certainly
21 allow you to have the floor now in explaining that --

22 MR. WIRTHLIN: Sure.

23 THE COURT: -- from your perspective.

24 MR. WIRTHLIN: Well, let me, Judge --

25 THE COURT: Thank you.

1 MR. WIRTHLIN: No, absolutely, Your Honor. And that's what I
2 want to do is focus on what the Court wants to hear about and you
3 know --

4 THE COURT: Well, plus where are the cars, okay? And here's
5 the other thing on my mind. I would appreciate your patience.
6 Sometimes my mind, I get a thought, I just have to express it so I don't --

7 MR. WIRTHLIN: That's fine.

8 THE COURT: -- forget it. Sworn testimony by Mr. Detwiler at
9 one point was that the title to these cars was in the name of Harry
10 Hildibrand, that he had actually seen the titles. And then, he didn't know
11 what happened to the cars.

12 He believes that they were sold or disposed of by Harry
13 Hildibrand, yet he was the only managing member of the company and he
14 had actually provided sworn testimony to Mr. Bragonje that he understood
15 that as being the manager of Harry Hildibrand, that he was the only
16 authorized person to act on behalf of Harry Hildibrand.

17 So I'm wondering how could the titles -- how could the cars
18 have been sold without signature from Mr. Detwiler if he was the only
19 manager? That was something that seemed befuddling to me.

20 Anyway, I've interrupted you too much. Please proceed.

21 MR. WIRTHLIN: No, at any time, Your Honor, at any time.

22 So let me try and address that in -- let me frame, I guess, the
23 answer to that, if I can.

24 THE COURT: Go in your own order.

25 MR. WIRTHLIN: Okay.

1 THE COURT: Whatever you had prepared upon, please.

2 MR. WIRTHLIN: I appreciate that. Really what I think we're
3 talking about here is imprisonment, right? I mean, we're talking
4 about -- and I don't say this lightly, maybe not life, but certainly liberty and
5 the pursuit of happiness of, right? I mean, we're talking about putting
6 somebody in jail possibly indefinitely. So when it comes to that, I
7 think -- oh, go ahead.

8 THE COURT: Oh, no, I was just shaking my head.

9 MR. WIRTHLIN: Okay.

10 THE COURT: It wouldn't be indefinite whatever, but go ahead.

11 MR. WIRTHLIN: Right, well, and that kind of gets to where we
12 end up, because as I went through those orders, and of course, you know,
13 I understand the Court's point. Maybe particularly and I apologize I have
14 to take drinks my mouth is dry.

15 THE COURT: It's okay.

16 MR. WIRTHLIN: But maybe we're talking about a situation
17 where particularly if you're talking about entities, right? Maybe more than
18 one entity could at least assert a claim of ownership to these vehicles?
19 Maybe a person -- there was maybe a dispute. I think Mr. Larkin
20 [phonetic] came in and testified that Stardust had taken back seven of the
21 vehicles.

22 Mr. Foust in his declaration said that -- and I believe he just put
23 the one on file, but I can get the date for you right here. 4/08/2019.

24 So he goes through and he talks about where he believes each
25 one of those vehicles was. Then the Court, as the Court's well aware, had

1 Mr. Foust up on the stand and asked -- you know, he talked -- he went
2 through with his counsel every one of those cars.

3 And we put together a chart there as Exhibit 15, which kind of
4 goes through the testimony. And if you look at that, because that's really
5 the question here, right? I mean, from a practical standpoint is where are
6 these cars?

7 If Mr. Detwiler could turn them over, he's testified and put his
8 declaration, he certainly would have. He's got no interested in H -- I'll just
9 refer to him as H.H. if I can. Stardust, he has no affiliation with. I don't
10 think that's -- and never did. I don't think that's in dispute.

11 If you look at the testimony, as set forth in Exhibit 15, we kind of
12 cite to the provisions, Mr. Foust got up and testified that four of the
13 vehicles were owned, possessed, and/or controlled by his -- I believe it
14 was ex-wife and/or daughter.

15 THE COURT: No, he said owned by Harry Hildibrand and he
16 had the right to use them is what --

17 MR. WIRTHLIN: Well, there --

18 THE COURT: But --

19 MR. WIRTHLIN: Sure.

20 THE COURT: -- let me get this on the record, too. I don't
21 believe a single word that Mr. Foust said. So his affidavit and testimony
22 means nothing to me.

23 MR. WIRTHLIN: Understood.

24 THE COURT: In the analysis of this, I'm more interested in the
25 record of what Mr. Detwiler has said.

1 MR. WIRTHLIN: Understood.

2 THE COURT: But please.

3 MR. WIRTHLIN: Well, and let me talk about one thing since
4 Your Honor's pointing that out. The bank has kind of, I think, a little bit
5 misconstrued some of the testimony of Mr. Detwiler.

6 What he testified to was that he was a manager. And that's why
7 we attached his -- it's Exhibit -- let's see. I believe it's Exhibit 6, right?
8 There was the Application for Hearing on Third-Party's Claim of Interest
9 and Property. And that was entered 3/2/2018. I think it's Exhibit 6 to our
10 motion.

11 Now that was not Mr. Detwiler, but it was H.H. trying to come in.
12 And they were talking -- it really related only to the motor coach. But I
13 think what's important there is there's an exhibit to that application, Exhibit
14 1, which is Mr. Detwiler's --

15 THE COURT: You say 1 to 6, Exhibit 1 to Exhibit 6?

16 MR. WIRTHLIN: Yes, Your Honor.

17 THE COURT: Okay, I'm with you.

18 MR. WIRTHLIN: I think we included that in there. So he says
19 in paragraph 2, I'll give you a moment to get there. This is Mr. Detwiler on
20 or around November 12th, 2008, I became a managing director, okay?

21 And we talk about this in our motion as well. Now the bank puts
22 in there that he testified -- Mr. Detwiler testified he was the only manager
23 of H.H. He never testified to that.

24 He testified he was one. He testified he was the only one he
25 knew of, but he also testified on multiple occasions he didn't have any

1 direct involvement in H.H. He was coming in to do real estate. And Mr.
2 Larkin confirmed that.

3 So he may have been the only manager. He didn't know. Mr.
4 Foust at one point was a manager. I think there's clear testimony in the
5 record on that fact. I understand the Court doesn't put a lot of weight to
6 Mr. Foust's testimony.

7 THE COURT: That's back in 2004 when H.H. was first formed
8 and for some period of time after that, I believe.

9 MR. WIRTHLIN: That's right. Mr. Detwiler did testify multiple
10 times and we've cited to this in our motion.

11 THE COURT: Right.

12 MR. WIRTHLIN: We didn't go through the specific test.

13 THE COURT: No, you did really good in citing to the facts here.

14 MR. WIRTHLIN: Sure, thank you. But the point is what control
15 did he actually have over the vehicles? And I think that, you know,
16 regardless of what, you know -- well, let me back up.

17 I don't think the bank ever approved that Mr. Detwiler ever
18 would have had that authority to transport -- to turn over the vehicles, that
19 he ever knew where they were.

20 Now did he testify that he had seen some vehicles in a
21 warehouse in Compton? He did, that's true. The bank has that address.
22 If they were -- if those were the vehicles, and by the vehicles I mean,
23 those that are listed in that Exhibit B to the contempt order.

24 THE COURT: Right, that's all we've been talking about.

25 MR. WIRTHLIN: Understood.

1 THE COURT: Right.

2 MR. WIRTHLIN: But Mr. Detwiler makes clear, and he -- we
3 kind of clarified it or tried to in his declarations, he did not know whether
4 the vehicles he saw in a warehouse in Compton were the same vehicles
5 that are on that list. He did not know that. He does not know that. He
6 never inspected vehicles. He never compared VIN numbers.

7 He saw a Yukon and a Mercedes driven by Mr. Foust's family
8 members or former family members. But again, didn't even know if those
9 were the same ones.

10 Now was he in the dark on all this? Yes. Mr. Foust, though, I
11 think, it's pretty clear from the Court's findings in both January and June
12 exercised an enormous degree of control over the vehicles, over H.H.,
13 potentially over Stardust.

14 And Mr. Detwiler has no interest in Stardust at all. He was a
15 manager for a time of H.H., but Mr. Larkin's testimony confirms he came
16 in to do real estate. That's all he was there to do. He never drove the
17 cars. He never bought or sold the cars.

18 He testified in some of the bankruptcy proceedings, but he also
19 clarified that that was just what he was told by Jim Lezay, who he
20 understood to be H.H.'s attorney.

21 Now one thing I do want to note, too, is that the Court had and
22 references in that January 2019 order those bankruptcy transcripts and
23 still found that Mr. Foust owned, possessed, and controlled the vehicles.

24 Now I don't want to be nitpicky about it, but when we're talking
25 about imprisonment, I think that the bank has more of a responsibility to

1 prove and answer the ultimate question that the Court just asked a few
2 minutes ago. Where are the vehicles? Because if you look at the
3 January 2019 order, again, it states Mr. Foust owns, possesses, and
4 controls clearly.

5 Now the Court had some evidentiary hearings. Mr. Detwiler
6 testified and the Court issued an order in June. But in that order, the
7 Court reiterates the findings that Mr. Foust owns, controls, and
8 possesses.

9 Now the bank hedges a little bit --

10 THE COURT: Just because he supposedly had sold them to
11 Harry Hildibrand without consideration. So it seemed like that was a fraud
12 on creditors.

13 But let's -- I just -- as we go along, because I've been involved
14 in this for two years, I want to make sure that I tell you what my
15 understanding is and for you to correct me if I'm incorrect.

16 MR. WIRTHLIN: Absolutely.

17 THE COURT: Okay.

18 MR. WIRTHLIN: And I appreciate that. I appreciate that.

19 And here's where I'm getting with this because if you go to that
20 June 2019 order, again, completely after all the findings, all the
21 evidentiary hearing, all the evidence, aside from a resignation letter, which
22 we would like to have stipulated to admit or however today, but the Court
23 goes through and this is -- and I apologize again for quoting. I know the
24 Court's read it a million times, but page 6, paragraph 28 of that June 2019
25 order.

1 THE COURT: Which paragraph?

2 MR. WIRTHLIN: It's paragraph 28 on page 6.

3 THE COURT: So the June 21, 2019 order. I'm there.

4 MR. WIRTHLIN: Okay. And I'm quoting here. "This Court
5 further incorporates here in any other evidentiary findings in the January
6 9, 2019 order, which is not discussed herein, to support Mr. Foust's
7 ownership and control of the subject vehicles directly or indirectly through
8 H.H. and/or Stardust."

9 Now I understand -- let me back up where I'm going with this,
10 because I understand what the Court's saying. Well, maybe there are
11 other entities or persons that could control those.

12 What we're talking about, putting someone in prison here. I
13 think the bank has a higher burden than to say, well, it's one of these
14 three options, all of which lead back to Mr. Foust. Because if it's Mr.
15 Foust individually that owns, controls, and possesses, Mr. Detwiler
16 certainly can't be ordered to turn them over.

17 If it's Stardust, he has no affiliation with that whatsoever. And
18 even if it's H.H., Your Honor, I think the problem with that is that this Court
19 found in the January 2019 order and reiterated in June 2019 any transfer
20 of those vehicles by Mr. Foust to H.H. was fraudulent.

21 And I think the words that the Court uses was void, ab initio,
22 and is of no effect whatsoever. So even if they were transferred to H.H.,
23 that was a void transfer as the Court found and they are still in
24 possession, custody, and control of Mr. Foust.

25 So that's the problem, I think, that the bank has in trying to hold

1 Mr. Detwiler to account and to be imprisoned or even to pay a debt that
2 relates to vehicles that the bank doesn't really know where they are.

3 And because it's the bank that is seeking to hold Mr. Detwiler in
4 contempt, they have the obligation and responsibility and burden to prove
5 which of those multiple options are actually the one that owns and
6 controls and possesses the vehicles.

7 So my point would be and our argument is even if it was H.H.,
8 which is only one of several possibilities, those are fraudulent transfers
9 and H.H. really doesn't have the ability to do that anyway, even if Mr.
10 Detwiler was still the manager, which he's not.

11 So that's kind of where --

12 THE COURT: Effective like October is --

13 MR. WIRTHLIN: Yeah, September 29.

14 THE COURT: September --

15 MR. WIRTHLIN: Yeah, that's fine, exactly.

16 THE COURT: All right.

17 MR. WIRTHLIN: So that's true, but I think what we're getting
18 back to here is the kind of the inconsistency there with the contempt order
19 as the bank drafted it, which says -- and there's one particular paragraph,
20 it's page 13, paragraph 13. It's easy to remember, so I memorized it.

21 Where the bank says the Court's 20 -- January 2019 order
22 unequivocally, I think is what it said, unambiguously I'm sorry that's the
23 word, ordered Mr. Detwiler and H.H. to turn over the vehicles.

24 Well, actually, what the Court found in both the January 19
25 order and June 19 order is that the cars are owned, possessed, and

1 controlled by again one of these options, right, all of which lead back to
2 Mr. Foust, but some of which including Stardust, Mr. Detwiler has zero
3 affiliation with.

4 And so, if we're talking about holding someone in contempt, the
5 statute, I think I -- we cited it. Well, let me see if I have it here. 22.110,
6 right? It has to be something that is in the person's ability to comply with
7 and they refuse.

8 And Mr. Detwiler doesn't have it in his ability. It's our position
9 he never did. He certainly doesn't now, but it's the bank's obligation and
10 the bank's burden of proof to prove -- to prove to this Court not just that
11 the cars -- vehicles are owned, possessed, and controlled by one of these
12 multiple possibilities, but that Mr. Detwiler specifically has that ability to
13 turn over those vehicles, because if they're with Foust, he can't do that.

14 If they're with Stardust, he has no affiliation or authority there at
15 all. And even if they're with H.H., it's a fraudulent transfer, so there's
16 no -- technically no legal ability for him to do that anyway.

17 Aside from the fact that of course if he could have turned them
18 over, he certainly would have. And he did go through. And we laid out a
19 little bit more in detail in our pleadings the steps that he went through,
20 contacting folks, leaving messages, because nobody would respond to try
21 and get these vehicles turned over, but he really -- he had no involvement
22 with them before and certainly doesn't now.

23 So that's kind of the, you know, we lay out a couple of
24 arguments. I mean, one of them, I think, is judicial estoppel that says,
25 look, if the bank is successful taking the position that Mr. Foust owns

1 them, possesses them, they can't then turn around and say, well, Mr.
2 Detwiler has that ability to turn them over.

3 Now I understand the Court's finding maybe didn't intend to
4 exclude, but we're talking about a physical, you know, vehicle here. And I
5 think our position would be if Mr. Foust has them and possesses them
6 and controls them, or has sold them to third parties, or Stardust has taken
7 them over, which Mr. Larkin can testify to, Mr. Detwiler can't possibly turn
8 those over.

9 So that's -- far as the orders themselves, an argument with
10 respect to judicial estoppel, Your Honor, I think that pretty much puts that
11 into where we're at.

12 I think there's a couple more points just in -- to finish up here
13 that I think are important. One of them is this idea of, as the Court is
14 correct, an alter ego finding -- the finding of an alter ego relationship
15 between Foust, H.H., and Stardust.

16 Now as far as Stardust goes, I don't know that Mr. Detwiler
17 cares about that, because he has no interest in Stardust, never has, it's
18 not in dispute.

19 But I think with respect to H.H., there are some due process
20 concerns there because I think the way that the bank got to Mr. Detwiler in
21 terms of the contempt order was to say, hey, Mr. Foust is the alter ego of
22 H.H., Mr. Detwiler is the manager of H.H. Therefore, let's put Mr. Detwiler
23 in jail until those cars are turned over.

24 The problem there obviously is Callie versus Bowling. That first
25 step, an alter ego finding between Foust and H.H. would require under

1 Callie versus Bowling, a separate complaint filed on -- filed and served on
2 H.H. and the ability for them to answer and respond. I -- it's my
3 understanding that was not done.

4 Now, I understand this may be some issues in terms of, you
5 know, Mr. Foust's involvement and those types of things, but I think as it
6 relates to Mr. Detwiler, it does put him in a position where, you know,
7 again, if a complaint had been served on H.H., they don't respond, they
8 get a -- you know, bank gets default, different story, but I believe H.H.
9 tried to intervene with respect to that motor coach. And I think their
10 motion to intervene was denied.

11 And that doesn't preclude the Court from making certain
12 findings in terms of, you know, ordering nonparties to take certain activity,
13 you know, take certain actions. That's fair.

14 But I think in this case, the bank kind of used that to side step
15 that alter ego relationship with H.H. and then get to Mr. Detwiler that way.
16 That's why I think that's a problem.

17 THE COURT: Okay.

18 MR. WIRTHLIN: Okay, and then I guess the last thing I would
19 say, Your Honor -- well, two quick things. The resignation of Mr. Detwiler,
20 yeah, that was the formal resignation.

21 Did he have any authority beforehand to actually turn over
22 those cars? I don't think the bank has ever shown that. I don't think they
23 should produce the operating agreement that would show any type of
24 managerial authority.

25 And I think they have a responsibility to do that, particularly

1 given the grave actions and consequences that they're trying to impose
2 upon Mr. Detwiler.

3 But on top of that, Your Honor, he has resigned. We would
4 request that the Court admit that resignation letter we attached as Exhibit
5 2.

6 And Mr. Detwiler's here to answer questions if the Court wants
7 him to. I think he's put what he needs to put in there into his declarations,
8 but we're willing to do whatever the Court would have us do.

9 And then just one final point. And I understand that the Court
10 doesn't give much credence to Mr. Foust's testimony.

11 THE COURT: Well, there might be some parts where his
12 testimony was consistent with the facts or there's no reason to dispute
13 because it's consistent with other circumstances, but for the most part, he
14 didn't persuade me on a lot of things that he was saying at least with
15 respect to him trying to escape --

16 MR. WIRTHLIN: Sure.

17 THE COURT: -- responsibility. But please, what else were you
18 saying on that?

19 MR. WIRTHLIN: The only thing I was going to say about that is
20 this. He testified that 4 of those 20 people -- well, the coach is out, right?
21 4 of the 20 vehicles are gone in with his family's possession. I don't think
22 there's any dispute or at least evidence to dispute that.

23 Seven, Mr. Larkin testified, were repossessed by Stardust. Mr.
24 Detwiler has absolutely no control over that.

25 So it really leaves the four vehicles that we noted that

1 are -- well, Mr. Foust testified about those, too. He just said he didn't
2 know. He thought they were also subject to a security interest.

3 He thought that Stardust may have taken them over already.
4 We don't know, but the point I guess I'm getting at is certainly Mr. Detwiler
5 has no knowledge of those vehicles' whereabouts and never did.

6 I guess that's where I would end, Your Honor, unless the Court
7 has questions and reserve a little bit of time for reply.

8 THE COURT: Thank you. So one of the things you said near
9 the beginning of your argument is that there's no evidence, that Mr.
10 Detwiler never testified that he was the only manager. And last night in
11 reviewing this, I found the evidence that is contrary to that.

12 MR. WIRTHLIN: Okay.

13 THE COURT: If you look at his sworn testimony at his
14 deposition that was taken by Mr. Bragonje, I believe, on July 6, 2018, I
15 think this was attached as Exhibit 1 to Mr. Bragonje's opposition.

16 MR. WIRTHLIN: Okay.

17 THE COURT: If you could follow along with me.

18 MR. WIRTHLIN: Yes.

19 THE COURT: Exhibit 1 on page 47, line 12, because I knew
20 this issue was going to come up, so I was --

21 MR. WIRTHLIN: Sure.

22 THE COURT: -- trying -- I was trying hard to familiarize myself
23 with the facts because we have a lot of history in this case, but page 47
24 you know, line 12.

25 And were there any other managers or managing directors?

1 Answer: No.

2 And then, just follow me for a second.

3 MR. WIRTHLIN: Sure, sure.

4 THE COURT: And then, regarding title -- by the way, there also
5 some indication that Mr. Detwiler was involved or at least certainly
6 knowledgeable about the efforts to get insurance for those cars, but let me
7 find the thing about title. All right, on page -- this is your exhibits. Exhibit
8 8?

9 MR. WIRTHLIN: Yes.

10 THE COURT: The -- I think this is the --

11 MR. WIRTHLIN: Bankruptcy?

12 THE COURT: -- the Rule 341 --

13 MR. WIRTHLIN: Yes.

14 THE COURT: -- creditors meeting testimony if you go to that on
15 page 32. Let's add some context then. Let's go out to about eight lines
16 down.

17 M.K.: Do you know if Mr. Foust was the previous owner of any
18 of the vehicles?

19 E.D.: I don't.

20 M.K.: And the prices paid for the vehicles are the values that
21 are listed in this table?

22 E.D.: That is what I understand.

23 M.K.: And does Harry Hildibrand have records indicating the
24 purchase of each of these vehicles?

25 This is J.L., so it's not, you know, I guess Mr. D. It's I know they

1 have titles, but I don't -- no, I haven't seen anything other than.

2 So there's evidence that Harry Hildibrand had titles to the
3 subject cars and Mr. Detwiler was the sole manager. And isn't the law
4 that the only person that can act on behalf of the LLC irrespective of what
5 an operating agreement says is the manager? And so, how could the
6 titles -- how could cars be transferred without Mr. Detwiler's knowledge
7 and consent?

8 The evidence seems to -- seems to be -- seems pretty clear that
9 he did know that the vehicles were in the possession and ownership of
10 Mr. Hildibrand and he was the one who was designated as the manager
11 and the sole manager.

12 Is there -- are there any facts inconsistent with that other than
13 Mr. Detwiler saying later several times I don't know anything about the
14 cars?

15 How do I -- how do I reconcile that with everything else in this
16 case?

17 MR. WIRTHLIN: Yeah, I understand. And, frankly, Your Honor,
18 I think that's the ultimate question in the case. Here would be my answer
19 to your questions directly if I can kind of piece at a time?

20 THE COURT: Please.

21 MR. WIRTHLIN: So first off --

22 THE COURT: I have all the time you guys need.

23 MR. WIRTHLIN: I understand and I appreciate that and I
24 appreciate the Court's setting a hearing on shortened time.

25 Let me take kind of one step at a time here. As far as the 341

1 meeting, I think that testimony that Your Honor read is exactly the point
2 because the testimony about the titles came from J.L.

3 Now I believe, right, that's Jim Lezay. And I say because we
4 don't have the names. This is kind of -- 340 -- as the Court knows 341
5 transcripts are not exactly like you get from a court reporter, right?

6 Those are much better. 341's like here's a disk, you know, type
7 it out if you want to. We don't have the disk, as far as I know, but I believe
8 that's Jim Lezay.

9 What I know is it's not Ed Detwiler. He didn't testify about those
10 because he -- and as he put in his declaration, we put in our pleadings, all
11 the information that he had that he purportedly gave at this 341 meeting,
12 he's trying to be helpful. You know, it's a trustee and the attorneys sitting
13 around a table. I mean, I'm sure the Court's seen those before.

14 THE COURT: I've been to some.

15 MR. WIRTHLIN: Been -- yeah, exactly. So it's kind of an
16 informal setting. And while you're under oath, he's trying to be helpful
17 repeating what J.L. has told him. And that's where the information came
18 from. And, in fact, about the titles that's where it came from.

19 As far as the authority of Mr. Detwiler, even if he could, even if
20 he did know where those vehicles were, which he didn't, and he's testified
21 to that and the bank hasn't proved otherwise, I don't know the answer to
22 your question, Your Honor, to be totality candid because it's a Montana
23 LLC. I don't know what the authority is or isn't for someone else to act.

24 Now my understanding was that Mr. Foust was a member for a
25 long time, even if he wasn't a manager. And not only that, but if we're

1 talking about the H.H. transfers, if they did occur, which I think the order
2 even says that if they did occur, of course, none of those fraudulent. Void,
3 ab initio, of no force and effect.

4 So even if -- go ahead.

5 THE COURT: No, you finish that thought.

6 MR. WIRTHLIN: Okay, so even if they did -- those transfers
7 did -- transfers did purportedly occur, whether they were valid, whether
8 they were intended -- whether they were done without Mr. Detwiler's
9 knowledge, which I think he's testified to, and I certainly wouldn't put it
10 past Mr. Foust to go do some inappropriate transfer of these vehicles
11 which he owned, possessed, and controlled, I don't know the answer to
12 that under Montana law.

13 But what I do know is what Mr. Detwiler's testified that the bank
14 hadn't rebutted, which is that he did not know where those vehicles were,
15 has never known.

16 He's told the Court everything he knows about the warehouse,
17 the address of the warehouse. Seeing a couple -- although he didn't know
18 those were the specific vehicles that we reference and seeing the family
19 members of Mr. Foust driving a Yukon and Mercedes. That's the extent of
20 his knowledge and control.

21 And H.H. had no authority it's my position based on the June
22 and January orders to turn over anything because those were fraudulent
23 transfers void, ab initio.

24 The last thing I guess I would say, Your Honor, is this testimony
25 that Your Honor pointed to in Mr. Detwiler's deposition. And he wasn't

1 unrepresented. And I understand, you know, that technically, he's still
2 held to the same standard.

3 But I would point to -- and I don't know if I had -- I think we cited
4 it in our pleadings and I can certainly find it for Your Honor, but there's a
5 point where the bank puts into the -- I believe it's the January order where
6 they say that Mr. -- no, I'm sorry, maybe it's the contemporary. I find the
7 citation for Your Honor.

8 THE COURT: Take your time.

9 MR. WIRTHLIN: If that's okay. Okay.

10 THE COURT: Of course.

11 MR. WIRTHLIN: I can find it right now.

12 [Pause]

13 MR. WIRTHLIN: I apologize, appreciate the Court's indulgence
14 here.

15 MR. BRAGONJE: Sorry, counsel, what are you looking for?

16 MR. WIRTHLIN: It's that portion where portion of the testimony
17 where you ask Mr. Detwiler -- it's in one of the orders and I can find it
18 really quickly here, but Mr. Bragonje asks Mr. Detwiler, are you the only
19 manager of H.H. and Mr. Detwiler says that I know of. And I think that
20 kind of elucidates and kind of clarifies his testimony that you point to.

21 THE COURT: No, I remember that.

22 MR. WIRTHLIN: Okay.

23 THE COURT: And there's --

24 MR. WIRTHLIN: Yeah.

25 THE COURT: There's massive inconsistencies by Foust and

1 there's I would say several to numerous, not massive, but let's say some
2 to significant inconsistencies in Mr. Detwiler's testimony.

3 MR. WIRTHLIN: Uh-huh.

4 THE COURT: One being you said that he didn't know where
5 the cars were. Then he thought somewhere in L.A.

6 At one point, he said, well, I've seen the cars. A lot of them
7 needed a lot of work. It was our plan, company's plan, that they get them
8 and fix them up, and resell them. And on the accounting, they used the
9 purchase price, but he had said he had seen them.

10 Then later on his questioning, he said, well, I see photographs
11 maybe because he realized whatever. I think that's a change.

12 And then he was asked -- then he said that the cars are driven
13 alternately in order to make sure they were made operable. And then
14 later on he said, well, what I meant by that is I was referring to the cars
15 that the family drives.

16 MR. WIRTHLIN: Right.

17 THE COURT: And, well, you don't -- and those are driven all
18 the time. So that seems to be inconsistent with his position that they have
19 to be driven alternately to keep them operable, particularly when you
20 consider Mr. Foust's testimony that says his daughters drove them all the
21 time.

22 MR. WIRTHLIN: Sure.

23 THE COURT: So that's -- that seemed to be inconsistent. And
24 then, well, then, there was reference to Mr. Detwiler knowing that there
25 were cars in L.A.

1 But then he went back and said, well, I was referring to the cars
2 that Foust family has. Those are some of the pieces of testimony that
3 raised belief of inconsistency by Mr. Detwiler.

4 So I think he did have knowledge of the cars, had seen the cars
5 at least at some point in time, knew where many of the cars were. That
6 was what I concluded from what I had read. --

7 MR. WIRTHLIN: Sure.

8 THE COURT: And also considering the fact that counsel for
9 H.H., J.L., as well as Mr. Foust both said the cars were owned by H.H.
10 and title was in H.H.'s name.

11 So putting all this together, you know, it seems like Mr. Detwiler
12 again, either -- well, he knew that H.H. had the cars and owned the cars
13 and was the one who would have the authority to transfer them.

14 One more point to that.

15 MR. WIRTHLIN: Sure.

16 THE COURT: And I'm raising this all not as an advocate, but I
17 want you to understand my --

18 MR. WIRTHLIN: Understood.

19 THE COURT: -- my frame of mind, my thought process. You
20 were saying that, well, if the Court found it was a fraud on creditors for Mr.
21 Foust to transfer the cars.

22 MR. WIRTHLIN: Uh-huh.

23 THE COURT: With that being said, you know, they were still
24 transferred and held by Harry Hildibrand and the Court ordered
25 them -- Harry Hildibrand to turn him over. Even if Harry Hildibrand had a

1 duty to surrender them back to Mr. Foust, you know, it still happened
2 nevertheless.

3 MR. WIRTHLIN: Sure.

4 THE COURT: Those are my thoughts.

5 MR. WIRTHLIN: Understood, Your Honor.

6 THE COURT: Do you have any responses to those, help you to
7 synthesize the information that you have?

8 MR. WIRTHLIN: I do, yeah. And I'll do -- I'll do my best to
9 address some of these, you know, way back when. I mean, look, to be
10 candid with you, if I had been Mr. Detwiler's attorney, I think with some of
11 those questions, I probably would have objected on, you know, vague,
12 ambiguous, that type of thing.

13 I'm sure the Court's done a thousand depositions. You see how
14 people get turned around particularly when they don't have counsel. But I
15 do think that Mr. Detwiler has for me, I think he synthesized where he's at
16 with this. Did he see some cars? Yes. Did he assume that those were
17 the vehicles? Yes.

18 But when pressed on it, did you actually know? Well, no. I
19 didn't see VINs. I don't know. I don't know where these cars are. A lot of
20 assumption were -- assumptions were at play in what he was doing.

21 Now at the time, he did the 341 hearing, which by the way, the
22 Court did have that prior to the January 2019 order, and the bank had that
23 as well, he --

24 THE COURT: All right.

25 MR. WIRTHLIN: He's trying to be help -- he doesn't know -- he

1 doesn't know what's going to happen here. He doesn't know that
2 somehow these vehicles are going to be transferred or not transferred or
3 sold by Foust or whatever Foust did with them. He has no clue that's
4 going to become a problem later on.

5 So he has no problem parroting back what Mr. Lezay told him.
6 And in fact as Your Honor pointed out, Jim Lezay did much of that
7 testimony.

8 As far as the actual authority to transfer, once, again, I mean,
9 Mr. Detwiler is -- certainly was willing at the time. He has resigned as
10 manager to execute whatever could be executed.

11 But I think in other words, a transfer document or something to
12 that effect. He's obviously resigned, but if he had the power to do that, he
13 would have executed whatever he could have. I think the problem --

14 THE COURT: Okay.

15 MR. WIRTHLIN: -- that still exists is that even in the June 2019
16 order, even after all the evidence and everything else, that order says one
17 of basically four entities owns, and possesses, and controls these
18 vehicles.

19 And I think that's a problem for the bank. I mean, look, I've
20 done collections. I'm sure Your Honor has. You got to go finance that
21 and you have to know where they are certainly if you're going to put
22 someone in jail for not turning them over.

23 And as of right now, I'm not sure and I'm not saying it's the
24 bank's fault, because I think Mr. Foust has done whatever he's done. I
25 don't know what he's done. I don't think anybody here knows what he's

1 done.

2 But the point is the bank can't say we got to throw this guy in jail
3 because one of those four entities or people, most of which he has
4 absolutely no affiliation with, owns, possesses, and controls these
5 vehicles.

6 You know there's one line in one of the orders that the bank put
7 in someone has to possess these vehicles. And that's true, but until the
8 bank can definitively prove which of those entities it is, and that it be H.H.
9 and the other due process issues we mentioned, Mr. Detwiler can't be
10 thrown in jail for not turning over what he -- the bank hasn't proven. And
11 in fact, I would suggest the Court has held he can't turn over. So unless
12 the Court has any questions?

13 THE COURT: No, thank you. I appreciate you answering all of
14 my questions. I appreciate your patience with it.

15 MR. WIRTHLIN: Thank you, Your Honor. Appreciate yours.

16 THE COURT: Mr. Bragonje, let me begin a question for you,
17 sir.

18 MR. BRAGONJE: Yes, thank you.

19 THE COURT: Let's suppose that the Court were to disregard
20 many of the statements by Mr. Detwiler as untruthful. Let's just assume
21 for the sake of argument I believe that he was untruthful because of
22 massive or several inconsistencies, right?

23 Let's assume that at one point in time, he did have the ability to
24 turn over the cars, all right? And he didn't. Now that he has purportedly
25 resigned, he would no longer, if you accept the resignation, have that

1 ability to turn over the cars.

2 He's, by his own conduct, has surrendered that so that he
3 wouldn't have the ability to actually comply with the order. Does that
4 convert this from a civil contempt to criminal contempt?

5 I'm not saying there was, but I mean, at least does it vitiate the
6 ability for the Court now to put him in jail for civil contempt if, you know,
7 the Court were to find everything that he did was wrong, but now he can't
8 comply. How do you deal with that, right? And I think you understand?

9 MR. BRAGONJE: Yes, I do.

10 THE COURT: I can't put a person in jail indefinitely.

11 MR. BRAGONJE: I do.

12 THE COURT: The purpose of civil contempt is, hey, you're
13 going to be locked up until you do what I ordered you to do.

14 MR. BRAGONJE: Right, because you have the ability -- the --

15 THE COURT: Do you believe now that he has still the ability to
16 turn over these cars?

17 MR. BRAGONJE: I do believe that. And the answer to your
18 question is I'm not sure. I don't know that much about criminal contempt.
19 We've gone all the way down this path on civil contempt. I've done the
20 research on that.

21 THE COURT: Right.

22 MR. BRAGONJE: To -- off the top of my head, I am not sure,
23 but I think what I -- my bare bones understanding of criminal contempt is it
24 can just punish past conduct. It's unrelated to an ability to perform or
25 anything like that.

1 So I think what -- I think what I would request is I would say
2 even assuming all is true, I still think Your Honor can put Mr. Detwiler in
3 jail.

4 And, by the way, I want to just address this idea of indefinite
5 imprisonment. That was never -- I mean, that's certainly something that is
6 the theory of civil contempt, but I don't think anyone thinks that this is
7 some kind of a life sentence.

8 I think the point of that legal principle is that it is -- it lies within
9 the discretion of the Court. I'm not asking for life imprisonment.

10 What I am saying is I think you're dealing with two people, Mr.
11 Foust and Mr. Detwiler, that do not scruple to lie. Every time they come in
12 front of this Court, their testimony changes.

13 I've got other examples that arise just today, just from what the
14 arguments of counsel, I'm going to go through and expose some other
15 mistruths that have been perpetrated on the Court.

16 So I think what would be appropriate is I think you're dealing
17 with two people who are scofflaws. I don't think they will act unless
18 they're put in jail.

19 And I think, you know, a 90-day imprisonment would be
20 appropriate. Now whether that's a civil or criminal, I don't think that
21 matters. I understand --

22 THE COURT: Well, if it's no longer civil, it's criminal --

23 MR. BRAGONJE: Right.

24 THE COURT: -- due process requires --

25 MR. BRAGONJE: Right.

1 THE COURT: -- a new evidentiary hearing.

2 MR. BRAGONJE: And fees and fees. I mean, this isn't a
3 game. It's -- there's got to be consequences when we engage in a year's
4 long process and it's proven that people are lying to the Court and
5 engaging in mistruths.

6 So I think it's -- these proceedings are very relevant --

7 THE COURT: Yeah.

8 MR. BRAGONJE: -- even if you consider the resignation, which
9 I think is bogus and only points to further collaboration between the two,
10 because as I pointed out in my opposition --

11 THE COURT: I read it.

12 MR. BRAGONJE: -- three times under oath, he says I take
13 direction. I take my orders from Harry Hildibrand, Junior. And then
14 he -- then at the end of the day, he sends the resignation letter to Jim
15 Foust. It only shows that they're conspiring. That's all it shows.

16 THE COURT: It went to others.

17 MR. BRAGONJE: It did go to others.

18 THE COURT: Okay.

19 MR. BRAGONJE: It did go to others. And I want to say
20 something about Stardust because Stardust keeps coming up.

21 THE COURT: Before you do that --

22 MR. BRAGONJE: Yeah.

23 THE COURT: -- what about Mr. Vega? What about Harry
24 Hildibrand, Senior's children? I mean, is it possible that they misused Mr.
25 Detwiler's name to transfer title to the cars?

1 Because I've never heard from them. I don't think we had
2 testimony from them.

3 MR. BRAGONJE: I don't think they --

4 THE COURT: But I thought at some point, Mr. Vega was really,
5 really ill. And I don't know if he's still alive even, but --

6 MR. BRAGONJE: I don't know.

7 THE COURT: -- presumably he is, but Mr. Detwiler did say at
8 one point in time he did have a stamp with his name and he said -- if
9 you're to believe this --

10 MR. BRAGONJE: Yeah.

11 THE COURT: -- that other people used his stamp. How would
12 I deal with those pieces of information?

13 MR. BRAGONJE: I just don't think there's any evidence. I think
14 the only evidence that we've ever received is from Mr. Detwiler. He's
15 never said I, you know, I was used by Harry Hildibrand, Junior or anyone
16 else. I mean, I honestly don't think these people really exist. Or if they do
17 exist, I think they're totally uninvolved.

18 THE COURT: All right, who doesn't exist?

19 MR. BRAGONJE: Harry Hildibrand, Junior and Ron Vega. I
20 don't think they're real people. They've never given an affidavit. They've
21 never appeared in these proceedings.

22 If they really stand to lose all of these assets valued at
23 hundreds of thousands of dollars, they can't be bothered to ever come
24 here or to submit an affidavit.

25 I think they either are invented people or are people that are

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume III - Part 2; Pages MSA00626-MSA00672)

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TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518-MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445-MSA00447	1/28/2020	Notice of Appearance
I	MSA00071-MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001-MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766-MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384-MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473-MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719-MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT’S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

1 totally uninvolved in this process. That's what I think.

2 THE COURT: You could have done a people search, right?

3 MR. BRAGONJE: We could have.

4 THE COURT: But I don't know if that was your burden. I mean,
5 maybe --

6 MR. BRAGONJE: I don't think that was our --

7 THE COURT: -- it should have if you're asking to throw
8 someone in jail.

9 MR. BRAGONJE: You know, I'm being criticized for not
10 producing the operating agreement.

11 THE COURT: No, I'm not criticizing.

12 MR. BRAGONJE: No, no, counsel's criticizing the bank for not
13 producing an operating agreement for Harry Hildibrand. That's their
14 burden. I mean, the corporate record, there's really two categories of
15 corporate records that have been introduced into evidence in this case.

16 THE COURT: Uh-huh.

17 MR. BRAGONJE: You've got Secretary of State filings from
18 three states from Nevada, Montana, Wyoming.

19 THE COURT: Uh-huh.

20 MR. BRAGONJE: All of those have Mr. Detwiler's name on
21 them or Mr. Foust's name on them.

22 THE COURT: Uh-huh.

23 MR. BRAGONJE: The other category of documents that have
24 been produced are meeting minutes that Mr. Detwiler and Mr. Foust
25 signed. They don't dispute that they signed that. And they don't dispute

1 these corporate filings.

2 So could there have been some kind of abuse? I guess so, but
3 no one's even suggested that. Even the witnesses haven't even
4 suggested that. All roads lead back to these two men.

5 And on the Stardust, you know, counsel I think is
6 misrepresenting the bank's point. He says, you know, Stardust is not in
7 dispute, that Mr. Detwiler doesn't, you know, have any involvement with
8 Stardust, but that is in dispute.

9 This Court received into evidence a annual report signed by Mr.
10 Detwiler for Stardust Classics, which was filed in Wyoming. Under
11 Wyoming law, this is -- we admitted this document into evidence and the
12 fact of it made it into this Court's official findings as part of Mr. Detwiler's
13 contempt order.

14 So I don't accept that he has no control over Stardust. What I
15 think is going on here is you've got two people, Mr. Foust and Mr.
16 Detwiler, working together to try and evade the Court's orders.

17 And I think they changed their strategy when we got to the
18 contempt orders and they brought in this guy, Mr. Larkin, who was
19 apparently an agent from Ron Vega.

20 Again, Ron Vega never shows up. Ron Vega never gets an
21 affidavit. And they don't produce any written agency agreement. They
22 don't produce any documents to, you know, show that corporate
23 formalities are followed.

24 The only thing we have in evidence about Stardust Classics is
25 the annual reports that I got. I went to the Secretary of State and I got

1 them and I put them into evidence. They're not hearsay. They're
2 accepted into evidence. Their counsel stipulated to this.

3 And this idea that Mr. -- that Mr. Detwiler's been unrepresented
4 all the time, you know, that's not true. I grant that during the contempt
5 proceedings, he didn't have an attorney, but he had an attorney at the
6 bankruptcy. He had an attorney when he took his deposition.

7 I mean, that attorney I suppose represented Harry Hildibrand,
8 but an entity doesn't sit for a deposition. Its agents do. When we as
9 attorneys defend a deposition, we represent the entity and we represent
10 the witness.

11 So this idea that he's been strong armed all along the way is
12 laughable. It's laughable. He had a Holland & Hart partner defend him in
13 a deposition, a Holland & Hart partner, one of the best law firms in this
14 town.

15 And now he's saying, oh, you know, I was railroaded into all
16 this. I just think it's outrageous. It's really outrageous.

17 So I think that he's controlling Stardust Classics. I think that
18 he's controlling Harry Hildibrand. And I think the two of them have worked
19 together to evade the Court's orders to stymie the bank at every turn. And
20 I think it's crazy. I think it's crazy.

21 And, you know, I had to laugh when counsel brought up -- this
22 is a small point, but I literally, every time we come in front of the Court,
23 they say something that's contradicted.

24 And so, they brought up this very old declaration that Mr.
25 Detwiler -- I think it's the first testimony he gave in this Court because I

1 believe it was the first effort after the motor coach seizure --

2 THE COURT: Uh-huh.

3 MR. BRAGONJE: -- for Harry Hildibrand to intervene. They did
4 a statutory intervention. Harry Hildibrand came into this case. Mr.
5 Detwiler's the one who gave a declaration to support that effort. And as
6 counsel pointed out, he said he was a managing director at that time.

7 And he says in connection with the seizure of the motor coach,
8 my personal items including a safe, were in the motor coach at the time it
9 was taken.

10 Well, that's totally contrary to about two years ago we had the
11 first evidentiary hearing in this case. And we had the police officer that
12 was involved in the seizure of the motor coach come. And he sat and he
13 gave testimony.

14 And this is what he said. This -- I'm just reading from the
15 Court's order. He said Sergeant Smith [phonetic] was his name.
16 Sergeant -- he said he spent one hour at the motor coach lot, trying to
17 gain access at which time he "met with a member of the resorts
18 homeowner association board, met Mr. Foust's neighbors, all of whom
19 indicated that Mr. Foust and no one else stayed in the motor coach.

20 And then, this is paragraph 19 in the Court's prior findings,
21 Sergeant Smith testified that there was only set of mens clothings [sic]
22 and one set of grooming materials in the motor coach.

23 So it's like we got a police officer. Who are you going to
24 believe, a police officer or Mr. Detwiler who changes his story every time
25 he comes in front of him?

1 And that's really just a footnote, but -- whether Stardust has
2 them, there's -- these are apparently entities with no corporate
3 documentation.

4 They've never produced any operating agreements. They've
5 never produced anything other than what I got from the Secretary of State
6 websites and the meeting minutes that they've produced. And all of them
7 have Mr. Detwiler's name on them.

8 So I do think he controls Stardust. So I don't care -- I don't think
9 these entities exist, except on paper. And I think they've got two people
10 moving and controlling them, Mr. Faust and Mr. Detwiler.

11 So that's why we're asking for imprisonment. I just think that
12 these people are abusing the corporate forum. I don't think that you can,
13 you know, take the benefits of being a manager of an entity without taking
14 on the responsibilities.

15 So that's our request is that I think a 90-day imprisonment,
16 whether it be -- I think that he still has the ability. I still think that he can
17 cause the turnover to happen.

18 But even if the Court doesn't read that -- reach that conclusion, I
19 think that they need to be punished for the web of lies that they've spun
20 over a period of years in front of this court.

21 THE COURT: What about the argument that Stardust
22 repossessed seven of the vehicles in which case Mr. Detwiler's
23 management role of Harry Hildibrand would not be relevant and once the
24 cars are owned by Stardust, then the manager of Stardust would be able
25 to further transfer title to the cars?

1 MR. BRAGONJE: I think that he's involved in Stardust. I mean,
2 his name appears on the annual report.

3 THE COURT: Right.

4 MR. BRAGONJE: I mean, that was from December of 2018.
5 That was before he became highly involved in these proceedings. I think
6 we -- I think we started asking this Court, I think, I'm trying to remember all
7 the timeline now.

8 THE COURT: Yeah.

9 MR. BRAGONJE: I think it was August of 2017, we enrolled
10 this foreign judgment. So anyway, I'm confident that he filed this annual
11 report where he appears connected as a manager for Stardust before he
12 was giving testimony, before the motor coach was seized and that kind of
13 thing.

14 It's like who are you going to believe? Are you going to believe
15 someone when they don't think there's a problem and they're doing things
16 without their guard up? Or are you going to believe them when they get
17 into Court and they start changing their story?

18 You know, I think it's compelling evidence, compelling evidence
19 that he is involved in Stardust. I mean, that's my point is, you know, the
20 Harry Hildibrand, Junior, Ron Vega, they've never come into Court.
21 They've never given an affidavit.

22 They just -- the only people they've sent are Faust and Detwiler.
23 So I think that the only conclusion we can reach on the evidence is that
24 they're controlling everything behind the scenes.

25 And I don't think there's a lot of corporate formalities with these

1 entities. I think that they exist and these people do what they want with
2 them. And I don't think that's fair.

3 I don't want there to be no liability when people don't pay back
4 their loans. That's not fair, so.

5 THE COURT: No, you're right. That's not fair. One moment.
6 Has the bank tried to use the Court's order to enlist the aid of California
7 authorities to repossess the cars held by the Foust family, those four
8 vehicles, the two Mercedes, the Yukon, and whatever the third and fourth
9 car was?

10 MR. BRAGONJE: We have tried at least in the sense that we
11 are trying to arrest Mr. Foust. And I think I mentioned last time I've been
12 working with the constable here.

13 He had talks -- I wasn't a party to the talks, but he reported to
14 me on many occasions. I'm dealing with -- is it Jordan Ross [phonetic] I
15 think is the constable --

16 THE COURT: Yeah.

17 MR. BRAGONJE: -- I've been dealing with.

18 THE COURT: Well, I thought you were using him for Mr.
19 Detwiler, but Mr. Foust as well?

20 MR. BRAGONJE: As well, yes.

21 THE COURT: Okay.

22 MR. BRAGONJE: And I have -- I probably had a dozen
23 conversations with him and we're trying to get the California attorneys to
24 enforce the contempt order. I think Mr. Foust is just in Los Angeles.

25 THE COURT: Spent a lot of time to do that, but yeah.

1 MR. BRAGONJE: Yeah. But they won't -- they just basically
2 say, you know, if it's a criminal arrest warrant and we've got some violent
3 criminal, yeah, we'll extradite them and all the law enforcement agencies
4 cooperate.

5 But for a civil contempt, they're just not willing to devote their
6 resources to, you know, seizing Mr. Foust in L.A. and extraditing him here,
7 so.

8 THE COURT: Seize the cars. They have to give full faith and
9 credit to an order of a court in Nevada.

10 MR. BRAGONJE: I -- that is true. We could do that. We could
11 enroll the judgment in California. And, in theory, if these cars are -- I don't
12 know where they really are. I suspect they're not at this warehouse in Los
13 Angeles as they were at the time of the bankruptcy a year and a half ago.

14 THE COURT: You don't have to check the warehouse?

15 MR. BRAGONJE: No.

16 THE COURT: No? Okay.

17 MR. BRAGONJE: No, we would not.

18 THE COURT: Because some might be in the warehouse and
19 some might be in the possession of Foust family's.

20 MR. BRAGONJE: Right, right.

21 THE COURT: Which doesn't mean they're not in control of Mr.
22 Detwiler if they're still in the title of Harry Hildibrand. So, okay, anything
23 else? I appreciate all that.

24 MR. BRAGONJE: I don't think so, Your Honor. Thank you.

25 THE COURT: All right, reply?

1 MR. WIRTHLIN: Yes, Your Honor. So just a few brief points in
2 reply. I think you heard the -- I think you heard what I think is the key
3 issue in the case as it relates to Mr. Detwiler and contempt against Mr.
4 Detwiler.

5 Counsel says we're dealing with two people and that means Mr.
6 Foust. We don't dispute any of the findings against Mr. Foust, that he
7 owns, possesses, and controls the cars, that he made have fraudulently
8 transferred, sold, disposed, any of that, but that has nothing to do with Mr.
9 Detwiler.

10 They try and they brought it up, these entities, I think they
11 attached to their opposition or their prior brief suggesting that they share
12 office space.

13 They do not. This is -- they don't share expenses. They don't
14 share operating capital, anything like that. And I think that's really the
15 concern that has arisen in this case is the bank's really trying to build a
16 case to throw Mr. Detwiler into prison based on speculation, maybe
17 Stardust.

18 You know, he did testify that his signature was used, as the
19 Court pointed out, without his knowledge. He has never been affiliated
20 with Stardust.

21 If his name shows up on something, that's news to him. So
22 those are issues that the bank really has to chase down.

23 THE COURT: At some point, you have to take some
24 responsibility for signing multiple documents for Stardust and H.H. as the
25 manager and holding yourself out as the manager and then giving

1 somebody control of your signature. You know, at some point, you have
2 to accept responsibility.

3 MR. WIRTHLIN: Yeah, fair enough. And I agree with Your
4 Honor. I think, though, that -- well, first of all, a couple different issues
5 there. Stardust is very different. I don't think Mr. Detwiler -- well, I know
6 he never testified he was manager or related with -- to Stardust.

7 With respect to H.H., I agree. I would say, though, that again,
8 he did testify and I can dig it up, I guess, if I have my little, you know,
9 search function, but that his signature was used on some documents
10 without his knowledge and that he, you know, again, he was set up to take
11 the fall. He was set up to take the fall. He went to the BK hearing based
12 on what Jim Lezay told him and then he was hung out to dry.

13 Mr. Foust was here when it looked like he wasn't going to get
14 out of things. He disappeared. The bank --

15 THE COURT: I mean, he knows more than he's saying about
16 all of that. He had a longstanding relationship with Mr. Foust. He did
17 work for Mr. Foust. He agreed when Mr. Foust and Mr. Hildibrand
18 that -- to be the manager.

19 He was going to be involved in real estate transactions. He
20 appeared at several hearings on his own expense is what he said
21 representing Harry Hildibrand.

22 There are other things. He has a close relationship with all the
23 parties here it seems. And he knows more than he's telling us.

24 MR. WIRTHLIN: Well, I guess I can't speak --

25 THE COURT: But go ahead.

1 MR. WIRTHLIN: No.

2 THE COURT: Yeah, I mean, sure, you must understand.

3 MR. WIRTHLIN: Yeah.

4 THE COURT: You know, going through all this, you must
5 understand that it's very troubling here?

6 MR. WIRTHLIN: And I do get that, I do. And, look, if it were up
7 to me, those cars would have been turned over years ago. They'd be
8 turned over today.

9 Again, that's another part that I think this goes back to, just from
10 a practical standpoint. Why would Mr. Detwiler do anything that would be
11 in violation of this Court's order? He has nothing to gain.

12 No one has ever even suggested that he had an ownership
13 interest in Harry Hildibrand. And the opposite was true. He never did. No
14 one has ever suggested he had an interest in these vehicles.

15 THE COURT: Well, he might have something to gain. He
16 might be protecting Mr. Foust. And he doesn't really think the Court's
17 going to throw him in jail. And so, that's his --

18 MR. WIRTHLIN: Well --

19 THE COURT: -- that's his interest.

20 MR. WIRTHLIN: He does -- I will just say --

21 THE COURT: Yes, sir.

22 MR. WIRTHLIN: -- without revealing attorney-client privilege --

23 THE COURT: Yeah, don't.

24 MR. WIRTHLIN: -- he's very, very taking this extremely
25 seriously.

1 THE COURT: Okay.

2 MR. WIRTHLIN: He is very, very aware of the Court's ability to
3 imprison him.

4 THE COURT: Okay.

5 MR. WIRTHLIN: And that is extremely scary prospect to him.
6 So that -- at least I can speak to that.

7 As far as protecting Mr. Foust, I can tell you -- it's, again, I think
8 we're in a position where we kind of have to prove the negative a little bit.

9 We can prove -- they say that we're, you know, we're working
10 together in these entities. No, we're not. It's in the affidavit. They say
11 that we're work -- you know, they try and drag us in with Mr. Foust. And I
12 get why.

13 It's got to be frustrating to the bank to go years into this
14 litigation. I feel bad for them, because they're just trying to find these
15 assets.

16 The problem is, and I think you heard a little bit of that
17 testimony, not testimony, but argument, I guess, from the bank's counsel
18 today, they knew where those vehicle -- well, maybe those vehicles were,
19 some vehicles in that address at Compton. I don't think they ever went to
20 go get them, doesn't sound like.

21 Mr. Foust testified that at least four of those vehicles were with
22 his ex-wife and children. Doesn't sound like they've gone and gotten
23 those.

24 Instead, what it seems to me like is the bank is doing what may
25 be in their financial interest, but is not -- does not comport with due

1 process, and that's going after low hanging fruit.

2 They know Mr. Detwiler's going to show up, because the Court
3 tells them to show up, so he shows up. The Court asks him will you come
4 back for the hearing, you know, continued hearings that you did in May
5 and June? He said yes.

6 He's here today, but I don't think that should be held against
7 him, just because he's willing to do what the Court tells him to do. The
8 point is he is trying to do what the Court's telling him to do. And if he
9 could turn over those vehicles, he would.

10 What I heard from counsel was that he may personally believe
11 that Mr. Detwiler can turn over the vehicles frankly. I don't know how
12 much I believe that.

13 I understand you got to take a position and I get that for a client.
14 I don't think the evidence, particularly with the resignation, is anywhere
15 near Mr. Detwiler being able to comply currently.

16 So if the -- counsel's request was 90 days in prison, I would 100
17 percent agree with Your Honor. I haven't briefed the issue fully, obviously,
18 or at all really, but researched it a bit.

19 That is criminal contempt. And that does require, as the Court
20 mentioned, a separate evidentiary hearing for, you know, to find out
21 whether or not he actually failed, you know, to comply with a court order
22 that he can no longer comply with.

23 I think the purpose of today is can Mr. Detwiler comply? And he
24 clearly cannot. I don't think there's any contrary evidence to that. We
25 disagree with the other assertions, but I think those are the main points

1 unless the Court has any questions?

2 MR. BRAGONJE: May I just have one?

3 THE COURT: Yeah, he's going to get the last word, though.

4 MR. BRAGONJE: Okay.

5 THE COURT: I hope both of you appreciate why I'm delving
6 very carefully into the details here. The Nevada Supreme Court has
7 actually found a district court judge in violation of the Rules of Ethics for
8 putting in an individual in jail for civil contempt, where they said it should
9 have been apparent to the judge that there was not an ability to comply.

10 MR. WIRTHLIN: I was not aware of that.

11 THE COURT: But I think the context of that decision was that it
12 should have been aware to the judge that there was no ability to comply.
13 That's why I'm treading carefully here.

14 MR. WIRTHLIN: Understood.

15 THE COURT: All right, and I hope you both understand that.

16 MR. WIRTHLIN: I appreciate that, Your Honor.

17 THE COURT: Thank you. All right, so you'll get the last word.

18 MR. BRAGONJE: Very brief.

19 THE COURT: Very, very brief.

20 MR. BRAGONJE: I promise I just one point about this signature
21 being used.

22 THE COURT: Uh-huh.

23 MR. BRAGONJE: Counsel said that his signature was
24 misused. I don't think there's any testimony of that. I think the testimony
25 from Mr. Detwiler, and I think this came up in his deposition, was that he

1 had granted permission for his signature to be used.

2 I don't think anyone ever said until today until counsel that his
3 signature was used without his permission. I think there's a big difference.

4 THE COURT: I remember that testimony. Mr. Detwiler what
5 was suggesting that as a possibility. Last word?

6 MR. WIRTHLIN: I think that's pretty much it --

7 THE COURT: All right.

8 MR. WIRTHLIN: -- unless the Court has any questions.

9 THE COURT: So, obviously, given the magnitude of this,
10 what's today, Wednesday?

11 MR. WIRTHLIN: Could I ask one question, Your Honor?

12 THE COURT: I'm thinking Friday, I need to -- I'm going to
13 announce my decision. Maybe Monday I'm thinking here.

14 MR. WIRTHLIN: I think Monday's a holiday, Your Honor.

15 THE COURT: Okay. I want more than two days to write up my
16 final decision, Tuesday then. Are you -- hate to have you come back
17 again and prolong this further, but --

18 MR. BRAGONJE: You want us to come in?

19 THE COURT: Not in -- and I want the minutes to reflect no
20 further argument when the parties come back. It's just the Court
21 announcing its decision.

22 MR. BRAGONJE: Thank you. I think so.

23 THE COURT: And then entertaining if there's any motion for
24 stay.

25 MR. BRAGONJE: Thank you. Just checking, Your Honor.

1 That should be okay with me.

2 THE COURT: All right, we don't need Mr. Detwiler here for the
3 Court to announce its decision.

4 MR. BRAGONJE: That'll work for me. Thank you.

5 THE COURT: Let's just -- its -- I want to do it as quickly as
6 possible. Friday's just a little bit too soon for me. Today's Wednesday.

7 MR. WIRTHLIN: Your Honor, I do have a hearing --

8 THE COURT: I mean, maybe Friday. I -- let me think for a
9 moment. How many matters do I have on calendar for Thursday, Liz,
10 tomorrow?

11 THE CLERK: We have 11, 12 -- 12, other than --

12 THE COURT: I've got 12 matters. Yeah, Tuesday, please.

13 MR. BRAGONJE: At 9 o'clock, Your Honor?

14 THE COURT: 9 o'clock next Tuesday, will that work?

15 THE CLERK: I don't think we have anything.

16 THE COURT: Okay, the trial that we're in, we're in this three
17 week trial supposedly, but there's a 95 percent probability it's going to
18 settle today.

19 All right, anything else, counsel?

20 MR. BRAGONJE: No.

21 THE COURT: Tuesday, does that work for everybody then?

22 MR. BRAGONJE: Yes.

23 THE COURT: Mr. Wirthlin?

24 MR. WIRTHLIN: Yes, it does, Your Honor. Could I ask one
25 question?

1 THE COURT: Please.

2 MR. WIRTHLIN: Do we need to move to admit this resignation
3 letter?

4 THE COURT: The Court's going to consider it.

5 MR. WIRTHLIN: Okay.

6 THE COURT: The Court accepts it as some evidence for the
7 Court's consideration.

8 MR. WIRTHLIN: Thank you, Your Honor.

9 THE COURT: I don't think there's any issue as to genuineness,
10 that it is a document actually signed by Mr. Detwiler and actually sent to
11 somebody, right?

12 MR. WIRTHLIN: Understood, thank you, Your Honor.

13 THE COURT: Okay.

14 MR. BRAGONJE: Just one housekeeping thing?

15 THE COURT: All right.

16 MR. BRAGONJE: Last time we were here, we talked about Mr.
17 Detwiler as a potential flight risk and he was ordered to surrender his
18 passport to Mr. Wirthlin.

19 THE COURT: He was.

20 MR. BRAGONJE: I just wanted to make sure that that had
21 occurred?

22 MR. WIRTHLIN: Yes, Your Honor, he did. He surrendered it to
23 me Friday morning, the day immediately after the hearing.

24 THE COURT: Appreciate that.

25 MR. WIRTHLIN: I would assume, just as another final

1 housekeeping matter --

2 THE COURT: Of course.

3 MR. WIRTHLIN: -- the stay is in effect through the hearing we
4 had on Tuesday?

5 THE COURT: It is.

6 MR. WIRTHLIN: Okay.

7 THE COURT: The stay is in effect through the announcement
8 of it, my decision on Tuesday.

9 MR. BRAGONJE: Understood, thanks.

10 MR. WIRTHLIN: Thank you, Your Honor.

11 MR. BRAGONJE: Absolutely.

12 THE COURT: And I know Mr. Detwiler's involved in some
13 Rotun [phonetic] project. Is that completed or is that still ongoing?

14 MR. BRAGONJE: Ongoing.

15 MR. WIRTHLIN: It's ongoing, Your Honor.

16 THE COURT: All right.

17 MR. WIRTHLIN: Between now and next Tuesday, that wouldn't
18 be a problem, but --

19 THE COURT: Yeah, no, I -- okay. Anything else, counsel?

20 MR. BRAGONJE: No, Your Honor, thank you.

21 THE COURT: Thank you. I know this has been going on a
22 long time. There's been a lot of different parts to this, as you all know.
23 There's been, you know, of course, the motor coach first and then there's
24 the issue of bringing in Harry Hildibrand.

25 And then, there was the issue whether the proper procedure

1 was a writ of attachment or a levy. And then, we had, you know, further
2 proceedings with Harry Hildibrand.

3 And there was the effort to secure compliance by Mr. Foust.
4 And then, it was extended to Mr. Detwiler. So there's -- I wish that this
5 had all gone a little bit quicker.

6 MR. WIRTHLIN: Understood.

7 THE COURT: But --

8 MR. WIRTHLIN: Understood.

9 THE COURT: Thank you, counsel, all right.

10 MR. BRAGONJE: Thank you, Your Honor.

11 MR. WIRTHLIN: Thank you, Your Honor.

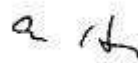
12 THE COURT: Everyone have a good day. Tuesday at 9.

13 MR. BRAGONJE: Thank you.

14 [Proceedings concluded at 9:46 a.m.]

15 * * * * *

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17
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video proceedings in the above-entitled case to the best of my ability.

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21 _____
22 Chris Hwang
23 Transcriber
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,
8

9 Plaintiff,

10 vs.

11 JAMES FOUST, JR.,

12 Defendant.

) CASE#: A-17-760779-F
)
)

) DEPT. II
)
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)
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)

13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 18, 2020

15 **RECORDER'S TRANSCRIPT OF DECISION ON 2/12/20 HEARING**
16

17 APPEARANCES:

18 For the Plaintiff: JOHN E. BRAGONJE, ESQ.

19 For Edward Detwiler: BRENOCH WIRTHLIN, ESQ.
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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 18, 2020

2

3 [Case called at 9:30 a.m.]

4 THE MARSHAL: Remain seated. Department 2 now in
5 session. The Honorable Judge Richard F. Scotti presiding.

6 THE COURT: All right, folks. Appearances, please. Baker
7 Boyer.

8 MR. WIRTHLIN: Yes, Your Honor. Brenoch Wirthlin on
9 behalf of Ed Detwiler.

10 THE COURT: Okay.

11 MR. BRAGONJE: Good morning, Your Honor. John
12 Bragonje of the Lewis Roca Law Firm on behalf of the Plaintiff Baker
13 Boyer.

14 THE COURT: Very good. You can both be seated. So here's
15 the way I see it. At least up through the date that Mr. Detwiler resigned,
16 the Court finds and has found that he had the ability to actually comply
17 with the Court order. And the Court had made that determination,
18 although it may not be stated in the rule. The Court went back and
19 reviewed everything, and the Court believes that that is accurate based
20 upon a clear and convincing evidence standard. Not a preponderance -- I
21 mean, higher than a preponderance of the evidence, but it doesn't rise to
22 a level of beyond a reasonable doubt, but a clear and convincing
23 evidence standard.

24 As for after the date of the resignation, I just can't find that
25 on a clear and convincing evidence standard that he still has the ability

1 to comply. I think at this point in time, I'm not convinced by the clear
2 and convincing evidence standard that he has possession, custody or
3 control over the cars.

4 I do find that there was failure to comply with this Court's
5 order up through the point in time when he did resign. An appropriate
6 sanction for violating the Court's order and all of the time and effort that
7 the Court had to deal with this, and the Bank had to deal with this, I'm
8 ordering that Mr. Detwiler pay the attorney's fees of Baker Boyer from
9 the date he was officially a party in this action through today's date.

10 I will give Baker Boyer three days to submit an affidavit
11 attesting to those attorney's fees, unless you need more time. Three
12 business days sufficient?

13 MR. BRAGONJE: I'm thinking. Thank you. If we could have
14 a week that would be all right.

15 THE COURT: All right. One full week from today's date. The
16 Clerk will give you that date. And while she's doing that, I'll ask Mr.
17 Detwiler's counsel to tell us how long he would need to respond to the
18 affidavit. In particular, I need an analysis from both of you as to the
19 *Brenzel* factors, of course.

20 MR. WIRTHLIN: Yes, Your Honor. We would like two weeks,
21 but we could do it in a week if the Court requires that.

22 THE COURT: I'll give you two weeks unless -- I don't see --

23 MR. WIRTHLIN: Thank you.

24 THE COURT: -- that there's any urgency as to the monetary
25 issue --

1 MR. WIRTHLIN: Okay.

2 THE COURT: -- Mr. Bragonje.

3 MR. BRAGONJE: No. No.

4 THE COURT: I mean -- I mean, I would like to get this
5 resolved, counsel, actually.

6 MR. WIRTHLIN: Sure.

7 THE COURT: Can you do it --

8 MR. WIRTHLIN: We'll do it in a week.

9 MR. BRAGONJE: -- in a week?

10 MR. WIRTHLIN: We'll do it in a week.

11 THE COURT: Okay.

12 MR. WIRTHLIN: Definitely.

13 THE COURT: So one week, and then I'll make a decision two
14 days after that.

15 THE CLERK: Okay. So one week from today is February
16 25th. And then one week from that, for the response, is March 3rd. And
17 a couple days after that, is a Tuesday, so -- do we need a hearing or is it
18 in chambers?

19 THE COURT: Pardon.

20 THE CLERK: Is your decision in chambers?

21 THE COURT: Yes, chambers.

22 THE CLERK: Okay.

23 THE COURT: Not another hearing. Now on top of that, I find
24 it very serious that Mr. Detwiler didn't comply with my order. I think he
25 did -- I know he did have the capability of doing it. He was controlling

1 the company based upon everything up to that date and there was
2 ample evidence that the company had control or possession of the cars.
3 But you're standing up, I'll let you --

4 MR. WIRTHLIN: No, just in case the Court wanted me to
5 respond is all. I apologize.

6 THE COURT: I don't need a response, but if you would like to
7 make a record, you can.

8 MR. WIRTHLIN: Your Honor, I think we probably put it in our
9 motion everything that I've got left. I do think that -- just to clarify --

10 THE COURT: Yes, sir.

11 MR. WIRTHLIN: -- the Court's order if I can today. Is that Mr.
12 Detwiler doesn't have to be worried about getting picked up and --

13 THE COURT: I was going to -- I was going to state that.

14 MR. WIRTHLIN: Okay.

15 THE COURT: The Court is expunging and recalling the
16 warrant, returning his passport. But the Court, under the circumstances,
17 is also going to impose a fine of \$100,000. That is less than one-fifth of
18 the total value of the cars. At least those values at the time Mr. Detwiler
19 was ordered to turn them over. I know he had control from everything
20 I've seen.

21 Now, someone might disagree with me, but I believe, based
22 upon the standard I've indicated that he had control from his own
23 admissions as to the title he held and some other comments that he
24 made in various pleadings. And that sanction is pursuant 7.60(b)(5),
25 which allows this Court in a civil context to impose a fine for violation of

1 a court order. It's not pursuant to the criminal contempt because there
2 hasn't been a motion for criminal contempt, right?

3 MR. WIRTHLIN: That's correct, Your Honor. And --

4 THE COURT: And it's not a conditional amount, but -- you
5 know, the 100,000 is not conditional, but, of course, if the cars were to be
6 turned over, I wouldn't be adverse to a motion for reconsideration.

7 MR. WIRTHLIN: And just to clarify, Your Honor, is that
8 included in the attorney's fees award or is that --

9 THE COURT: It's separate and apart from the --

10 MR. WIRTHLIN: Separate.

11 THE COURT: -- attorney's fees.

12 MR. WIRTHLIN: Okay. Okay.

13 THE COURT: Right. Because -- for the reasons I indicated.

14 MR. BRAGONJE: Would Your Honor like me to prepare an
15 order or will Your Honor --

16 THE COURT: Could you prepare the order?

17 MR. BRAGONJE: Yes.

18 THE COURT: And given that he's not being imprisoned, I
19 don't know that we need a stay of the order. I know you had said last
20 time you wanted a stay, but I think you were worried about him being
21 imprisoned?

22 MR. BRAGONJE: Well, if I may. I mean, I think Rule 62
23 there's an automatic stay built into the Civil Rules. The rule says --

24 THE COURT: If you were to appeal, right?

25 MR. BRAGONJE: Yeah. Right.

1 THE COURT: And I'm assuming he'll appeal this.

2 MR. WIRTHLIN: I do believe so, Your Honor.

3 THE COURT: Okay.

4 MR. WIRTHLIN: I haven't spoken with him, obviously, about
5 the specifics, but I guess I would just -- maybe I can take a look at what
6 the Bank submits, but my initial thought is --

7 THE COURT: You may.

8 MR. WIRTHLIN: -- I would like to reserve the right to move
9 for a stay if necessary, but I agree with Your Honor. At this point, I don't
10 see the need for that, other than potentially a supersedeas bond, but we
11 can talk about that down the road.

12 THE COURT: Now I don't know how quickly the Bank would
13 intend to try to collect on this.

14 MR. BRAGONJE: Well, we still have to prepare the order and
15 Your Honor has to sign it. I mean, it's not something that's
16 instantaneous. And I do think --

17 THE COURT: I mean, you know, the three year -- two-and-a-
18 half-year history on this case.

19 MR. BRAGONJE: Right. Right. I mean --

20 THE COURT: And I don't know that another week matters.

21 MR. BRAGONJE: Well, right.

22 THE COURT: I mean, you could prepare the documents. I
23 think you need to do writ of -- another writ. I don't know if the existing
24 writ applies. You're going to have to do the research on that.

25 MR. BRAGONJE: Yeah.

1 THE COURT: I'm not vacating the prior writ and the prior
2 attachment, but you'll have to look and see if that was issued as to Mr.
3 Detwiler or only, you know, Hildibrand.

4 MR. BRAGONJE: Right. We'll move with all deliberate speed
5 according to the rules. I mean, I'll have to look at it all.

6 THE COURT: All right. And, of course, once the Court
7 receives it, the Court will need time to --

8 MR. BRAGONJE: Right.

9 THE COURT: I think what the Court will do is have my law
10 clerk -- once I sign it and put it in the outbox, I'll have my court clerk
11 contact both of you to let you both know it's there. It will take me, you
12 know, a few days to -- probably a couple days for you to get it to me, a
13 few days for me to review it.

14 MR. BRAGONJE: Sure.

15 THE COURT: Then we'll call, so then you'll both know if you
16 need to move for a stay and how quickly you need to move for a stay.

17 MR. WIRTHLIN: Understood. Appreciate that, Your Honor.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. BRAGONJE: I don't think so.

21 MR. WIRTHLIN: I don't think so.

22 THE COURT: All right. Then that's the order. Thank you.
23 Court's adjourned.

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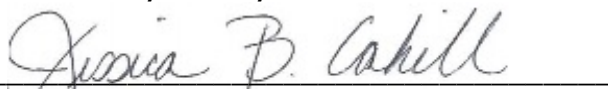
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MR. WIRTHLIN: Thank you.

MR. BRAGONJE: Thank you.

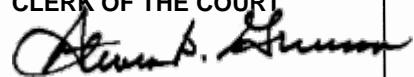
[Proceedings concluded at 9:39 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708



AFFT
John E. Bragonje
State Bar No. 9519
E-mail: jbragonje@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
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Attorney for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: 2

**AFFIDAVIT OF JOHN E. BRAGONJE
IN SUPPORT OF LEWIS AND ROCA
ATTORNEY FEES AND COSTS
INCURRED IN CONNECTION WITH
MR. DETWILER AND HARRY
HILDIBRAND, LLC**

STATE OF NEVADA)
COUNTY OF CLARK) SS:

John E. Bragonje, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP (hereinafter "Lewis and Roca"). I am counsel to plaintiff/judgment creditor Baker Boyer National Bank (the "Bank") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this affidavit based upon personal knowledge (except where stated to be upon information and belief, and as to that information, I believe it to be true). If called upon to testify as to the contents of this affidavit, I am legally competent to testify thereto in a court of law. I base this affidavit upon my review of the time records of Lewis and Roca, all of which are records kept in the ordinary course of business.

1 2. This Affidavit is made in connection with this Court holding Harry Hildibrand,
2 LLC and Edward N. Detwiler in civil contempt of this Court's January 9, 2019, Findings of Fact,
3 Conclusions of Law, and Final Judgment ("Order"), and awarding the Bank its reasonable attorney
4 fees and costs incurred in connection with all of the proceedings seeking to enforce the Order
5 since the time that Harry Hildibrand, LLC intervened in this case.

6 3. Thus, the purpose of this Affidavit is to support Lewis and Roca's total fee
7 request—specifically \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,441.52 in
8 costs advanced and \$525.00 for a cost bond.

9 **LEWIS AND ROCA'S BILLING PRACTICES**

10 4. Lewis and Roca attorneys and paraprofessionals have kept accurate,
11 contemporaneous records of time expended using the firm's computerized legal billing system in
12 this matter. The information Lewis and Roca attorneys and paraprofessionals input into the
13 system was used to generate time entries and cost summaries and back-up to support the amounts
14 of fees and costs requested in this Affidavit ("Supporting Documents"). Contemporaneous with
15 the filing of this Affidavit, the undersigned will promptly submit the Supporting Documents to the
16 Court's chambers for *in camera* review.

17 5. Lewis and Roca attorneys enter time regularly. In addition, it is Lewis and Roca's
18 custom and practice when preparing its monthly time records for the responsible attorneys to
19 review the draft time records to insure that the time listed was reasonably and necessarily incurred.

20 6. Based on my review of Lewis and Roca's time records, the firm has rendered no
21 fewer than 487.7 hours of work in this matter in connection with all of the proceedings seeking to
22 enforce the Order since the time Harry Hildibrand, LLC intervened in this lawsuit. Harry
23 Hildibrand, LLC first appeared in this action and intervened pursuant to NRS 31.070 on March 2,
24 2018, which request was supported by a declaration from Mr. Detwiler. As a result of the work
25 of Lewis and Roca, the Bank has incurred no less than \$208,889.00 in attorney fees.

26 7. The Bank has been paying its attorney fee invoices on a monthly basis since this
27 matter began. There are no amounts that have been billed but not paid—other than work in
28 progress.

1 8. As with time entries, Lewis and Roca paraprofessionals have kept accurate,
2 contemporaneous records of cost advances using the firm's computerized legal billing system.
3 The information Lewis and Roca professionals have input into the system was used to generate the
4 accounting of the costs itemized by amount and the date the cost was incurred or paid, which is
5 part of the Supporting Documents that will be submitted to the Court's chambers for *in camera*
6 review.

7 9. The costs sought are supported by receipts from, and proof of payments to, vendors
8 and will also be included in the Supporting Documents. As in the case of fees, costs advanced
9 have actually been paid to the various vendors by Lewis and Roca, and the Bank has reimbursed
10 Lewis and Roca for these expenses.

11 10. "If the [Court] determines that attorney fees are warranted, it must [] consider the
12 *Brunzell* factors in determining whether the requested fee amount is reasonable and justified."
13 *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P. 249, 258
14 (2018).

15 11. The *Brunell* factors include: "(1) *the qualities of the advocate*: his ability, his
16 training, education, experience, professional standing and skill; (2) *the character of the work to be*
17 *done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
18 and the prominence and character of the parties where they affect the importance of the litigation;
19 (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work; (4)
20 *the result*: whether the attorney was successful and what benefits were derived. *Gunderson v.*
21 *D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615-16 (2014) (quoting *Brunzell v. Golden Gate*
22 *Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 12. The Court need not make explicit findings with respect to the above factors;
24 "[i]nstead, the [Court] need only demonstrate that it considered the required factors, and the award
25 must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139,
26 1143 (2015); *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994)
27 (providing that the district court "need not . . . make explicit findings as to all of the factors where
28 support for an implicit ruling regarding one or more of the facts is clear on the record"); *see also*

1 *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998) (providing
2 that “no one factor . . . is determinative”).

3 13. Regarding the first *Brunzell* factor, Lewis and Roca’s rates are reasonable and
4 accurately reflect the prevailing market rates in Las Vegas for attorneys and paraprofessionals of
5 similar skill, experience, and reputation.

6 14. The rates reported herein are the rates that Lewis and Roca clients are actually
7 charged and which they actually pay—including the Bank. The attorneys’ hourly rates were set by
8 the firm’s executive committee after considering each attorney’s experience, skill, and reputation
9 in the community, as well as the rates charged by attorneys at other major law firms in Las Vegas
10 and the Southwest.

11 **LEWIS AND ROCA ATTORNEYS’ QUALIFICATIONS**

12 15. Lewis and Roca used a number of attorneys on this case in order to maximize
13 efficiency wherever possible. For instance, we used associates instead of partners for discrete
14 research tasks. We also used associates to edit draft papers and “shepardize” legal citations. The
15 number of attorneys on this case reflects our practice of using whichever associate is available at
16 the time of need, assuming the task required does not demand extensive background knowledge of
17 the case.

18 16. The Lewis and Roca lawyers and paraprofessional who worked on this matter are
19 as follows:

- 20 a. **John E. Bragonje**, partner at the firm, who billed 221.8 hours at the rate of
21 \$465.00; 128.8 hours at the rate of \$485; and 31.6 hours at the rate of \$495;
22 b. **Jason Furedy**, a partner at the firm, who billed .2 hours at the rate of \$530;
23 c. **Justin Henderson**, partner at the firm, who billed 7.1 hours at the rate of \$470;
24 d. **G. Warren Bleeker**, a partner at the firm ,who billed 3.2 hours at the rate of \$600;
25 e. **Mike Koplow**, an associate at the firm, who billed 5.1 hours at the rate of \$410;
26 f. **Abraham G. Smith**, an associate at the firm who billed .2 hours at the rate of
27 \$350;
28 g. **Brian D. Blakley**, associate at the firm, who billed 2.2 hours at the rate of \$375.00;

- h. **Matthew Tsai**, associate at the firm, who billed 10 hours at the rate of \$250; and 32.9 hours at the rate of \$275;
- i. **Erik J. Foley**, an associate at the firm, who billed 4.1 hours at the rate of \$335;
- j. **Adrienne Brantley-Lomeli**, an associate at the firm, who billed 6.7 hours at the rate of \$250;
- k. **Jessica Helm**, paralegal at the firm, who billed 8.4 hours at the rate of \$140; and 6.5 hours at the rate of \$150;
- l. **Emily Baxter**, paralegal at the firm, who billed .5 hours at the rate of \$135;
- m. **Ricky McCann**, paralegal at the firm, who billed .4 hours at the rate of \$140; and 2.1 hours at the rate of \$175;
- n. **Chris Wilhelm**, paralegal at the firm, who billed 6.5 hours at the rate of \$210;
- o. **Monica Switzer**, paralegal at the firm, who billed 2.4 hours at the rate of \$245;
- p. **Patti Miller**, private investigator/paralegal at the firm, who billed .4 hours at the rate of \$255.

17. I am informed, believe, and thereon allege that the qualifications of my attorney and paraprofessional colleagues set forth in the motion and this affidavit are accurate. I have based them on publicly available information displayed on Lewis and Roca's website and other official sources and documentation.

18. I did not set my hourly rate. I am informed and believe that my final hourly rate of \$495.00 reflects my partners' judgment that my skill, expertise, and reputation distinguish me as a leading litigator in Las Vegas. I graduated *cum laude* from Brigham Young University's J. Reuben Clark Law School in 2005. My practice has particular emphasis on complex corporate business litigation, arbitration, and mediation—including the representation of individual and corporate clients in the areas of commercial, construction, real estate, and fiduciary litigation. I am the author of several publications, including the chapter on Construction Defect Statutes in the *Nevada Civil Practice Manual* and the section on "Lateral and Subjacent Support; Party Walls" in a forthcoming Nevada Bar publication. I was named to *Nevada Business*' 2013 Legal Elite in the "Southern Nevada Best" category, and in the "Top 100" category in 2018-2019. I

1 have also been featured in *Mountain States Super Lawyers* for about the past ten years, including
2 2020. My final hourly rate of \$495.00 is within industry norms for someone of my caliber,
3 expertise, and experience.

4 19. **G. Warren Bleeker** is a partner at Lewis Roca. He is a summa cum laude graduate
5 of Emporia State University (1996) and a graduate of the University of California, Berkley,
6 School of Law (2000). Mr. Bleeker's final hourly rate of \$600 is within industry norms for
7 someone of his caliber, expertise, and experience.

8 20. **Justin Henderson** is a partner at Lewis Roca. He focuses his practice on
9 bankruptcy and assisted after HH petitioned for relief under the bankruptcy laws. He holds these
10 degrees: J.D., *summa cum laude*, Order of the Coif, Arizona State University - Sandra Day
11 O'Connor College of Law, 2008 and B.S., University of Arizona, 1998. He is a former clerk to a
12 justice on the Arizona Supreme Court. He has been featured in SuperLawyers for nearly a decade.
13 He is admitted to practice in Nevada and Arizona. Mr. Henderson's final hourly rate of \$470 is
14 within industry norms for someone of his caliber, expertise, and experience.

15 21. **Mike Koplow**, an associate at the firm, holds a J.D. from the New York University
16 School of Law and a Ph.D. in mechanical engineering from the University of California, Berkeley.
17 Mr. Koplow's final hourly rate of \$410 is within industry norms for someone of his caliber,
18 expertise, and experience.

19 22. **Abraham G. Smith** is a senior associate at Lewis Roca. He focuses his practice
20 on appellate work and works directly with Daniel F. Polsenberg, this state's preeminent appellate
21 lawyer. Mr. Smith holds these degrees: J.D., Duke University School of Law, 2013, *magna cum*
22 *laude*, *Order of the Coif*; LL.M., Duke University School of Law, 2013, *magna cum laude*, *Order*
23 *of the Coif*; B.M., Indiana University Jacobs School of Music, 2010, *with High Distinction*, *with*
24 *Honors*. Mr. Smith's final hourly rate of \$350 in within industry norms for someone of his
25 caliber, expertise, and experience.

26 23. **Brian Blakley** is a senior associate in Lewis Roca's litigation practice group,
27 where he focuses his practice on complex disputes, class actions, and multidistrict litigation. He
28 graduated in the top 10% of his class from Brigham Young University's J. Reuben Clark Law

1 School in 2013 and served as a law clerk to U.S. District Judge Robert C. Jones in the United
2 States District Court for the District of Nevada. He obtained his Nevada law license in 2013 and
3 has litigated numerous Nevada cases and complex discovery disputes since then. Additionally, he
4 regularly represents defendants in class actions in U.S. District Courts around the country. Mr.
5 Blakley is consistently named as one of “Southern Nevada’s Top Attorneys” and one of the “Best
6 Up and Coming Attorneys” in Nevada Business Magazine’s annual list of “Legal Elite.” Mr.
7 Blakley’s final hourly rate of \$375 is within industry norms for someone of his caliber, expertise,
8 and experience.

9 24. **Matthew Tsai** is a second-year associate in Lewis Roca’s litigation practice group.
10 Matthew Tsai graduated *cum laude* from the William S. Boyd School of Law. Mr. Tsai previously
11 served for two years as law clerk for the Honorable Ron Parraguirre at the Supreme Court of
12 Nevada. Mr. Tsai was named as one of “Southern Nevada’s Top Attorneys” in Nevada Business
13 Magazine’s annual list of “Legal Elite” for 2019. Mr. Tsai’s final hourly rate of \$275 is within
14 industry norms for someone of his caliber, expertise, and experience.

15 25. **Adrienne Brantley-Lomeli** is a third-year associate in Lewis Roca’s litigation
16 practice group. Ms. Brantley-Lomeli graduated *suma cum laude* from the William S. Boyd School
17 of Law. She previously served as an extern to the Honorable Ron Israel at the Eighth Judicial
18 District Court. Ms. Brantley-Lomeli’s final hourly rate of \$250 is within industry norms for
19 someone of his caliber, expertise, and experience.

20 26. **Erik J. Foley** is a four-year associate in Lewis Roca’s litigation practice group.
21 Mr. Foley graduated *suma cum laude* from the William S. Boyd School of Law. Mr. Foley was
22 recognized by the State Bar of Arizona for “the outstanding accomplishment of achieving the
23 highest score on the February 2018 Arizona Bar Examination.” Mr. Foley’s final hourly rate of
24 \$335 is within industry norms for someone of his caliber, expertise, and experience.

25 27. **Jessica Helm** is a Paralegal – Litigation Support Project Manager at Lewis Roca
26 who has worked in the legal services industry for over 10 years. She joined Lewis and Roca in
27 2012 and has worked on an array of matters, including bad faith insurance defense cases, medical
28 malpractice suits, and securities litigation. Jessica routinely provides support on high-profile cases

1 and matters with complex legal and discovery issues. She has specialized training and work
2 experience in appeals and eDiscovery. Jessica has a Bachelor of Science in Finance from the
3 University of Nevada, Las Vegas and is pursuing a Masters of Legal Studies from the University
4 of Illinois, Springfield. Ms. Helm's final hourly rate of \$150.00 is within industry norms for
5 someone of her caliber, expertise, and experience.

6 28. **Emily Baxter** is a paralegal at the firm with about five years' worth of experience.
7 Her rate of \$135 is within industry norms for someone of her caliber, expertise, and experience.

8 29. **Ricky McCann** is a paralegal at the firm with over 13 years of law firm
9 experience. His final rate of \$175 is within industry norms for someone of his caliber, expertise,
10 and experience.

11 30. **Chris Wilhelm** is a paralegal at the firm with over 10 years of experience in the
12 legal industry. His final rate of \$210 is within industry norms for someone of his caliber,
13 expertise, and experience.

14 31. **Monica Switzer** is a 34-year paralegal at the firm with vast legal experience. Her
15 rate of \$245 is within industry norms for someone of her caliber, expertise, and experience.

16 32. **Patti Miller** is a 23-year private investigator/paralegal at the firm and is a member
17 of the National Association of Legal Investigators. Her rate of \$255 is within industry norms for
18 someone of her caliber, expertise, and experience.

19 **THE OTHER BRUNZELL FACTORS**

20 33. The other three *Brunzell* factors to be considered by this Court in determining
21 whether Lewis and Roca's requested fee amount is reasonable and justified are as follows: (1) the
22 character of the work to be done: its difficulty, its intricacy, its importance, time and skill required,
23 the responsibility imposed; (2) the work actually performed by the lawyer: the skill, time and
24 attention given to the work; and (3) the result: whether the attorney was successful and what
25 benefits were derived.

26 34. The underlying matter entails the Bank obtaining a judgment in the original amount
27 of \$933,616.30, including fees and costs, against Mr. Foust in the Superior Court of Washington
28 in and for Walla Walla County (the "Judgment"), and the Bank, through the representation of

1 Lewis and Roca, domesticating the Judgment in the State of Nevada and enforcing it against Mr.
2 Foust. The Judgement now exceeds \$1.3 million as costs and interest continue to accrue.

3 35. When he applied for the loan that created the obligation that, when breached, led to
4 the Judgment, Mr. Foust represented that he owned a collection of 59 expensive, rare, and exotic
5 vehicles, including Corvettes, a Cadillac, Mercedes, Porsches, and Lamborghinis.

6 36. Almost immediately after this lawsuit began, Mr. Foust and Harry Hildibrand, LLC
7 (“HH”) insisted that the vehicles had been transferred to HH. Mr. Detwiler introduced himself as
8 a “managing director of HH.” (Decl. E. Detwiler, ¶ 2, attached to 3/2/18 Application for Hearing
9 within 10 Days on Third Party’s Claim of Interest in Property Levied Upon, on file herein.)

10 37. This declaration inaugurated a broad range of procedures during which Mr.
11 Detwiler testified extensively under oath concerning his role as HH’s manager and his dealings
12 with the vehicles. Specifically, Mr. Detwiler has given testimony under oath on four occasions: at
13 deposition ordered by this Court (July, 2018); during the Section 341 meeting of creditors during
14 HH’s bankruptcy (August, 2018); at the hearing resolving HH’s third party claim under NRS
15 31.070 (November, 2018); and during the contempt proceedings (April and May, 2019). He has
16 submitted many additional sworn statements.

17 38. This Court has previously found that Mr. Detwiler’s testimony is untrustworthy.
18 This made this lawsuit more expensive than was necessary. Mr. Detwiler’s multi-year campaign
19 to withhold information and hide the truth about the assets has greatly multiplied this case’s
20 difficulty, intricacy, time and skill required. *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
21 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33).

22 39. Furthermore, Mr. Detwiler’s actions and conduct “raised the stakes,” *see id.*,
23 because he single handedly represented an entity, HH, that claimed to own property that could be
24 used to satisfy the Judgment. Mr. Detwiler’s activities mutated this lawsuit from a debt collection
25 action into a fight over who controlled assets that then spawned into an obvious conspiracy to hide
26 assets, including through filing a spurious bankruptcy. Because of Mr. Detwiler’s involvement,
27 the lawsuit now had two defendants, Mr. Foust and HH (after the time it intervened under NRS
28 31.070). Mr. Detwiler’s participation effectively doubled the complexity of this case.

1 40. The “the work actually performed by the lawyer,” *Gunderson*, 130 Nev. at 81, 319
2 P.3d at 615-16 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33) has covered the full range of
3 civil practice from pleadings to discovery to trial.

4 41. The Bank conducted extensive discovery of HH’s involvement, which included
5 directing a subpoena duces tecum to HH. This was notable because HH withheld obviously
6 relevant documents (car titles) under a bogus claim of attorney-client privilege. Mr. Detwiler also
7 had to be compelled to sit for his deposition. The Court ordered Mr. Detwiler to appear for his
8 deposition by a date certain after which a fine of \$1,000 per day was to be imposed. The Court
9 observed that “there has been gamesmanship on the part of HH.” (7/27/18 Order Resolving
10 Motion to Compel and Order Setting Future Hearing, on file herein.) This episode typified the
11 discovery process with HH, a constant battle of issues that should not have been complicated or
12 controversial. Mr. Detwiler appeared for a deposition thereafter. The Bank also deposed Mr.
13 Foust twice. Because the testimony of the two men conflicted, the depositions raised more
14 questions than they answered, and again spun the complexity of the case up beyond what should
15 have been necessary.

16 42. To resolve the issue of ownership, the Court conducted evidentiary hearings on six
17 different days (February 5, 15, 2018; March 7, 2018; April 18, 2018; July 31, 2018; and
18 November 5, 2018). The court conducted a contempt trial, in which Mr. Detwiler featured
19 prominently, over four days (April 1, 24, 2019; May 17, 21, 2019). Just since HH intervened
20 through Mr. Detwiler, the Court has conducted no fewer than 10 hearings with parties present—
21 and many, many more chambers hearings. The parties have filed over 90 papers, with the Bank
22 alone having submitted approximately 30 briefs or proposed orders and factual findings. While
23 the Bank has had just one law firm, three other fine firms or attorneys have represented Foust and
24 HH: Holland & Hart, Marquis Aurbach Coffing, Michael Mazur, and now Kolesar Leatham.
25 Newly appearing counsel have always requested extensions and continuances to come up to speed
26 and have sought reconsideration of prior decisions, which itself has significantly increased the
27 Court’s time and the parties’ costs. When summarizing this case, we are talking about thousands
28 of pages written and reviewed, many weeks in deposition and evidentiary hearings, and many days

1 in argument before the court. This lawsuit has been more procedurally complex than most and has
2 required the constant attention of Lewis Roca attorneys, and especially the undersigned.

3 43. The “results” or answering Brunzell’s call to report on whether “the attorney was
4 successful and what benefits were derived,” *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16
5 (quoting *Brunzell*, 85 Nev. at 349, 455 P.2d at 33), have been totally one-sided in favor of the
6 Bank and against Mr. Detwiler and HH. Both decisions resolving the ultimate questions in the
7 case (ownership and control of the vehicles and Mr. Detwiler’s and HH’s contempt) and
8 incremental decisions along the way (e.g., motion to compel, motions for reconsideration) have
9 uniformly favored the Bank. We do not believe that HH or Mr. Detwiler have won a single
10 motion or prevailed on a single issue for the duration of this action. The most they have ever
11 succeeded in doing is securing continuances or reconsiderations of decisions that have, in the final
12 analysis, resolved in favor of the Bank. In the end, the Bank has succeeded in proving that HH,
13 acting through Mr. Detwiler, had the ability to deliver vehicles that could have partially satisfied
14 the Judgment, but that they committed contempt for failing to do so. This Court has imposed a
15 \$100,000 sanction against Mr. Detwiler personally. This is an unmitigated victory for the Bank.

16 44. In addition to the aforementioned work performed by Lewis and Roca, part of the
17 Supporting Documents that will be submitted to the Court’s chambers for *in camera* review entails
18 Lewis and Roca invoices that provide a complete itemization and description of all work
19 performed by Lewis and Roca attorneys and paraprofessional in connection with all of the
20 proceedings seeking to enforce the Order. Rather than burdening the Court by repeating the
21 details of those invoices here, the same are incorporated herein by reference. This matter is
22 ongoing: neither Mr. Detwiler, Foust, nor HH, has yet complied with this Court’s orders. In light
23 of the continuing nature of these proceedings, we will submit the Supporting Documents in
24 underacted form for *in camera* review only. Neither Mr. Foust nor Mr. Detwiler should be able to
25 obtain the Bank’s strategy notes so that he can further evade the consequences of the Judgment
26 and this Court’s turn over and contempt orders.

27 45. Finally, the Court is familiar with the quality of work performed by the attorneys
28 and paraprofessionals of Lewis and Roca, including the skill, time, and attention given to the

work. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P.3d 249, 259 n. 7 (2018) (“[T]he district court’s familiarity with the work quality of the parties’ attorneys and the submitted invoices permitted the district court to properly consider the *Brunzell* factors.”).

46. The Court, it bears emphasis, need not engage in a detailed, line-by-line analysis of time entries:

We emphasize, as we have before, that the determination of fees “should not result in a second major litigation.” The fee applicant . . . must, of course, submit appropriate documentation to meet “the burden of establishing entitlement to an award.” But trial courts need not, and indeed should not, become green-eyeshade accountants. *The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney’s time.* And appellate courts must give substantial deference to these determinations, in light of “the district court’s superior understanding of the litigation.” *We can hardly think of a sphere of judicial decision making in which appellate micromanagement has less to recommend it.*

Fox v. Vice, 131 S. Ct. 2205, 2216 (2011) (Kagan, J.) (emphasis added) (internal citations omitted). Indeed, if the number of hours worked is consistent the court’s “overall sense of [the] suit,” it should award fees accordingly. *See id.*

47. Accordingly, the *Brunzell* factors weigh in favor of this Court finding that Lewis and Roca’s requested fee amount is reasonable and justified.

LEWIS AND ROCA COST ADVANCES

48. Since this Court entered its Order on January 9, 2019, Lewis and Roca has advanced costs for the total amount of \$2,632.06, which are itemized with back-up for these costs and will be included in the Supporting Documents.

TOTAL AMOUNT SOUGHT BY LEWIS AND ROCA

49. Based on the foregoing, Lewis and Roca seeks a total of \$218,855.52, consisting of \$208,889.00 in attorney fees and \$9,966.52 in costs advanced.¹

¹ The Bank reserves the right to add all collection costs, including attorney fees, to the Judgment, in accordance with applicable law and the fee-shifting provision of the underlying contract giving rise to the Judgment. *See* 8/31/17 Notice of Filing of Foreign Judgment, on file herein (the original judgment stating that the “court retains jurisdiction to add attorneys’ fees and costs to the judgment amount beyond what are ordered as part of the motion, if any are incurred and sought by Baker Boyer in collecting on its judgment”).

50. Further your affiant saith naught.

Dated this 25th day of February, 2020.

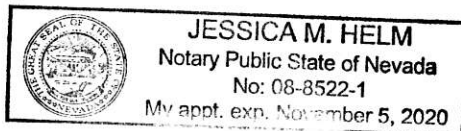

John E. Bragonje

STATE OF NEVADA)
COUNTY OF CLARK) ss:

On this 25th day of February, 2020, personally appeared before me, a Notary Public, in and for said County and State, John E. Bragonje, known to me to be the person described, and executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

SUBSCRIBED and SWORN to before me
this 25th day of February, 2020.

Notary Public in and for said
County and State



1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and served
3 the foregoing document entitled "*Affidavit of John E. Bragonje In Support of Lewis and Roca*
4 *Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand,*
5 *LLC*" through the court's electronic filing system on all registered parties in this case.

6 Michael D. Mazur, Esq.
7 **MAZUR & BROOKS**
8 **A PROFESSIONAL CORPORATION**
9 2355 Red Rock Street, Suite 100
10 Las Vegas, NV 89146

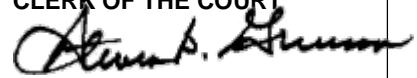
Attorneys for Defendant James Patterson Foust, Jr.

11 Brenoch Wirthlin, Esq.
12 Amanda K. Baker, Esq.
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14 400 South Rampart Boulevard, Suite 400
15 Las Vegas, NV 89145
16 *Attorneys for Edward Detwiler*

17 DATED this 25th day of February, 2020.

18 /s/ Luz Horvath

19 An employee of Lewis Roca Rothgerber Christie LLP
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RESP
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

Defendants.

CASE NO.: A-17-760779-F

DEPT NO.: II

Hearing Date: March 30, 2020

Hearing Time: In Chambers

**NON-PARTY EDWARD DETWILER'S RESPONSE TO AFFIDAVIT OF JOHN
E. BRAGONJE IN SUPPORT OF LEWIS AND ROCA ATTORNEY FEES AND
COSTS INCURRED IN CONNECTION WITH MR. DETWILER AND HARRY
HILDIBRAND, LLC**

- AND -

**RESERVATION OF RIGHT TO FILE A MOTION TO REQUEST STAY OF
EXECUTION AND WAIVE SUPERSEDEAS BOND**

COMES NOW non-party Edward N. Detwiler ("Mr. Detwiler"), by and through counsel,
Brenoch Wirthlin, Esq. of Hutchison & Steffen, and hereby submits to this Honorable Court his:
(1) Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees
and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC; and (2)
Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond
as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT RELATED TO RESPONSE TO ATTORNEYS' FEES AFFIDAVIT

A. Baker Boyer National Bank does not exist

While the underlying Judgment was originally entered in a Superior Court in Washington, it was entered in favor of Baker Boyer National Bank, an alleged Washington corporation. Baker Boyer National Bank is non-existent through the Washington Secretary of State and, instead, the true name of the entity appears to be: **Baker Boyer Bancorp.** See Washington Secretary of State screenshot below.

The screenshot shows the 'Business Information' page for Baker Boyer Bancorp. The page header includes the Washington Secretary of State logo and the text 'Corporations and Charities Filing System'. Below the header, the 'Business Information' section is displayed with the following details:

Business Name:	BAKER BOYER BANCORP	UBI Number:	601 431 013
Business Type:	WA PROFIT CORPORATION	Business Status:	ACTIVE
Principal Office Street Address:	7 W MAIN ST, WALLA WALLA, WA, 99362-2815, UNITED STATES	Principal Office Mailing Address:	PO BOX 1796, WALLA WALLA, WA, 99362-0353, UNITED STATES
Expiration Date:	04/30/2020	Jurisdiction:	UNITED STATES, WASHINGTON
Formation/ Registration Date:	04/02/1986	Period of Duration:	PERPETUAL
Inactive Date:			
Nature of Business:	OTHER SERVICES		

As such, the Judgment entered in the Washington court is not valid or enforceable, making the domesticated Judgment here before this Court equally invalid and unenforceable. Any and all efforts taken in this Court against Mr. Detwiler should cease immediately and be completely undone. Should the Plaintiff wish to correct the original, underlying Judgment, it should be done through the Washington court consistent with Washington rules and procedures.

B. Mr. Detwiler is not now, and has not been, a party

On February 18, 2020, this Court instructed Plaintiff Baker Boyer National Bank (the "Plaintiff") to file an attorneys' fees affidavit with fees incurred the date Mr. Detwiler officially was a party in this action through February 18, 2020. See Transcript, attached at **Exhibit A**, at pg. 3, lines 5-11. Regardless of the Court's instruction, Mr. Detwiler is not and has never been a party to this case. The Nevada Supreme Court defines Parties as "persons who are named as such in the

1 record of an action and who are properly served with process or enter their appearance in the
2 action. A person not served or improperly served is not a party.” See State ex rel. Pac. States Sec.
3 Co. v. Second Jud. Dist. Ct., 48 Nev. 53, 60, 226 P. 1106, 1008 (1924).

4 Further, this Court has improperly imposed a \$100,000 sanction against Mr. Detwiler
5 pursuant to EDCR 7.60(b)(5). Such sanction is a violation of the criminal contempt statute which
6 requires separate notice and a hearing. Additionally, EDCR 7.60(b) specifically provides that
7 “[t]he court may, after notice and an opportunity to be heard, **impose upon an attorney or a party**
8 any and all sanctions which may, under the facts of the case, be reasonable, including the
9 imposition of fines....” *See* EDCR 7.60(b). Mr. Detwiler is neither a party nor an attorney.
10 Regardless of whether or not Mr. Detwiler is a party (which he is not), a monetary sanction against
11 any person found to be guilty of contempt is **capped at \$500.00** pursuant Chapter 22 of the Nevada
12 Revised Statutes. Clearly, a sanction at 200 times the capped amount is an extreme and unjust
13 result, especially since it is improperly assessed against a non-party, i.e. Mr. Detwiler.

14 The Nevada Supreme Court previously held that sanctions can only be issued for acts
15 which violate “the clear, unambiguous terms” of the order. See State, Dep’t of Indus. Relations,
16 Div. of Indus. Ins. Regulation v. Albanese, 112 Nev. 851, 857, 919 P.2d 1067, 1071 (1996). As a
17 result, the Albanese court concluded that: (1) “appellants were sanctioned for actions which did
18 not constitute disobedience of the clear, specific and unambiguous terms of preliminary
19 injunction”; and (2) “the district court abused its discretion in imposing the sanctions at issue.” Id.,
20 at 856; see also Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983)
21 (quoting Ex Parte Slavin, 412 S.W.2d 43, 44 (Tex. 1967)).

22 In the instant case, this Court has not definitively found who has possession of the cars.
23 Further, the Albanese court indicated that an “award to an opposing party is limited to that party's
24 actual loss.” Id. The Plaintiff has not established or provided any evidence of its “actual loss” and,
25 more importantly, the Plaintiff confirmed it did not attempt to go to the warehouse where the cars
26 were purportedly located to get the cars, and admitted it did not try to get the ones that were with
27 allegedly with Foust’s family. This is an absolute failure to mitigate damages and seek alleged
28 damages from a non-Party (Mr. Detwiler). On another note, seven (7) of the cars were apparently

1 repossessed by a third-party entity according to testimony received by the Court.

2 **B. Mr. Detwiler was not ordered to do anything until the January 2019 Order**

3 The first time that Mr. Detwiler was ordered to do anything was in the January 9, 2019
4 Order, which has yet to be properly served upon Mr. Detwiler. Further, the Order specifically
5 indicated that “[a] certified copy of this order shall constitute conclusive proof, to any person...that
6 HH has been fully and completely divested of any and all title to any vehicles or automobiles in
7 which it claims an interest...and that such title and interest resides in Mr. Foust, subject to the
8 rights of the Bank set forth herein.” See January 9, 2019 Order, at pg. 22. While Mr. Detwiler
9 never had possession, custody or control over the subject vehicles (and therefore could not take
10 action sought by the Order), even by the plain language of the Court’s Order, a certified copy
11 would be necessary to constitute conclusive proof to Mr. Detwiler of the complete divestiture. There
12 has been no evidence presented by the Plaintiff that Mr. Detwiler was served with a certified copy
13 of the Court’s Order.

14 Regardless, Plaintiff attempts to seek attorneys’ fees, paralegal fees and costs dating back
15 to March 2018, yet the first time Mr. Detwiler would allegedly be ordered to do anything pursuant
16 to a Court Order is January 9, 2019. The fees and costs allegedly incurred by Plaintiff prior to
17 January 9, 2019 are as follows:

18

Attorneys’ and Paralegal Fees	\$113,814.00
Costs	\$4,222.72
Total	\$118,036.72

20

21

22 This Court should not consider any fees and costs allegedly incurred prior to January 9,
23 2019 (totaling **\$118,036.72**) and such amount reduced from the total sought by Plaintiff
24 (\$218,855.52 - \$118,036.72 = \$100,818.80). Further and for the reasons mentioned within this
25 Response, Mr. Detwiler disagrees with Plaintiff being awarded any fees and costs.

26 **C. Apportionment of Fees and Costs**

27 “[T]he district court must make a good faith effort to apportion the costs.” See Mayfield v.
28 Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008). This Court cannot just lump costs incurred

1 into a barrel and merely say Mr. Detwiler is liable. Further, this should apply to the attorneys' fees
2 as well. Clearly, NRS 22.100(c) supports this position as fees are to be awarded that are incurred
3 as a direct result of the contempt. Any attempt to punish Mr. Detwiler for alleged past contempt
4 would require notice and a hearing under Nevada's criminal contempt statutes.

5 **D. Attorneys' Rates and Fees are egregious and not reasonable**

6 Plaintiff attempts to claim all fees and costs incurred from March 2018 through the present.
7 As previously indicated, fees and costs incurred prior to the January 9, 2019 should be disregarded
8 and not awarded to Plaintiff. Additionally, NRS 22.100(c) provides that "the court may require
9 the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable
10 expenses, including, without limitation, attorney's fees, **incurred by the party as a result of the**
11 **contempt.**" See NRS 21.100(c). Further, the Nevada Supreme Court, following the Ninth Circuit
12 opinions, previously concluded that an award of attorneys' fees as a sanction is "limited to those
13 incurred because of the alleged failure to obey the particular order in question." See Nevada Power
14 Co. v. Fluor Illinois, 108 Nev. 638, 647 837 P.2d 1354 (1992); Toth v. Trans World Airlines, Inc.,
15 862 F.2d 1381, 1385-86 (9th Cir.1988) (holding that to the extent that an award of fees includes
16 fees not incurred pursuant to the disobedience of a court order, it is an abuse of discretion); United
17 States v. National Medical Enterprises, Inc., 792 F.2d 906, 910 (9th Cir.1986) (holding that
18 sanction must be just and must "specifically relate to the particular claim at issue in the order").

19 Here, when reviewing the time entries, more than 90% of the billings are associated with
20 the Plaintiff's execution and collection efforts on its Judgment **against Mr. Foust**. Even Mr.
21 Bragonje's own affidavit makes clear that Plaintiff is trying to collect for time spent chasing Mr.
22 Foust. See Bragonje Affidavit at paragraphs 34, 41, etc. Moreover, any finding of an alter ego
23 relationship between Mr. Foust, HH and/or Mr. Detwiler violates Callie v. Bowling, 123 Nev. 181,
24 160 P.3d 878 (2007).

25 While Mr. Foust is the Judgment Debtor, the Plaintiff has shifted its prime focus to a non-
26 party (Mr. Detwiler) and is attempting to collect all of its fees and costs from Mr. Detwiler because
27 he lives in Las Vegas. Mr. Detwiler should not have to pay for the Plaintiff's attorneys' fees and
28 costs incurred in collection of the Judgment against Mr. Foust. For these reasons alone, the

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume III - Part 3; Pages MSA00673-MSA00718)

BRENOCH WIRTHLIN, ESQ.
(NV SBN 10282)

HUTCHISON & STEFFEN
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145

Attorneys for Appellant

TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518-MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445-MSA00447	1/28/2020	Notice of Appearance
I	MSA00071-MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001-MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766-MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384-MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473-MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719-MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen

1 Plaintiff's request fees and costs should be reduced to **\$10,081.88** (or 10% of the amount the
2 amount requested, less fees/costs incurred prior to January 9, 2019).

3 Plaintiff attempts to say the attorneys' fees and rates are reasonable. Plaintiff has utilized
4 a total of 16 attorneys and paralegals in its collection efforts and is attempting to pin all 16
5 timekeepers' billings on Mr. Detwiler. The amount of attorneys and paralegals, as well as
6 Plaintiff's counsel billing a total of 487.7 hours, is quite egregious and flies in the face of the
7 *Brunzell* factors.

8 When you take the 487.7 hours and divide that into the total fees sought by Plaintiff, you
9 arrive at an average billing rate of \$428.31. While there is no doubt that the attorneys and
10 paralegals are more than competent to handle a simple collections case, Plaintiff appears to be
11 allowing its attorneys to bill endlessly and without regard to what is actually recovered.

12 A majority of the time entries are by Mr. Bragonje, where he spent over 380 hours on this
13 case, at an hourly rate between \$465.00 to \$495.00. Other attorneys were billed at hourly rates
14 between \$250.00 and \$600.00, while paralegals were billed at hourly rates between \$135.00 and
15 \$255.00. These rates and the resulting attorneys' fees amount are egregious, not reasonable and
16 should not be borne by Mr. Detwiler.

17 Finally, the *Brunzell* factors specifically contemplate fees incurred by an attorney and ***work***
18 ***actually performed by the lawyer*** - - not a paralegal. *See Brunzell* factor #3. Therefore, any
19 paralegal fees should not be included in the award of attorneys' fees.

20 **II. RESERVATION OF RIGHT TO FILE A MOTION TO STAY AND REQUEST**
21 **WAIVER**

22 As discussed at the February 18, 2020 hearing, non-party Mr. Detwiler respectfully
23 reserves the right to file a motion to request: (1) stay execution of any Judgment/order for payment
24 of monies/sanctions; and (2) waiver of posting a supersedeas bond.

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1 **III. CONCLUSION**

2 For the reasons mentioned herein, non-party Edward Detwiler respectfully requests this
3 Court not award any attorneys' fees and costs to Plaintiff. Additionally, Mr. Detwiler respectfully
4 reserves the right to file a motion to stay execution of any Judgment/order for payment of
5 monies/sanctions and waiver of posting a supersedeas bond.

6 DATED this 3rd day of March, 2020.

7 **HUTCHISON & STEFFEN**

8
9 By /s/ Brenoch Wirthlin, Esq.
10 BRENOCH WIRTHLIN, ESQ.
11 (NV SBN 10282)
12 10080 W. Alta Dr., Suite 200
13 Las Vegas, Nevada 89145
14 *Attorneys for Non-party Edward Detwiler*
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EXHIBIT A

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,

8 Plaintiff,

9 vs.

10 JAMES FOUST, JR.,

11 Defendant.

CASE#: A-17-760779-F

DEPT. II

12
13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 18, 2020

15 **RECORDER'S TRANSCRIPT OF DECISION ON 2/12/20 HEARING**

16
17 APPEARANCES:

18 For the Plaintiff: JOHN E. BRAGONJE, ESQ.

19 For Edward Detwiler: BRENOCH WIRTHLIN, ESQ.

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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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Las Vegas, Nevada, Tuesday, February 18, 2020

[Case called at 9:30 a.m.]

THE MARSHAL: Remain seated. Department 2 now in session. The Honorable Judge Richard F. Scotti presiding.

THE COURT: All right, folks. Appearances, please. Baker Boyer.

MR. WIRTHLIN: Yes, Your Honor. Brenoch Wirthlin on behalf of Ed Detwiler.

THE COURT: Okay.

MR. BRAGONJE: Good morning, Your Honor. John Bragonje of the Lewis Roca Law Firm on behalf of the Plaintiff Baker Boyer.

THE COURT: Very good. You can both be seated. So here's the way I see it. At least up through the date that Mr. Detwiler resigned, the Court finds and has found that he had the ability to actually comply with the Court order. And the Court had made that determination, although it may not be stated in the rule. The Court went back and reviewed everything, and the Court believes that that is accurate based upon a clear and convincing evidence standard. Not a preponderance -- I mean, higher than a preponderance of the evidence, but it doesn't rise to a level of beyond a reasonable doubt, but a clear and convincing evidence standard.

As for after the date of the resignation, I just can't find that on a clear and convincing evidence standard that he still has the ability

1 to comply. I think at this point in time, I'm not convinced by the clear
2 and convincing evidence standard that he has possession, custody or
3 control over the cars.

4 I do find that there was failure to comply with this Court's
5 order up through the point in time when he did resign. An appropriate
6 sanction for violating the Court's order and all of the time and effort that
7 the Court had to deal with this, and the Bank had to deal with this, I'm
8 ordering that Mr. Detwiler pay the attorney's fees of Baker Boyer from
9 the date he was officially a party in this action through today's date.

10 I will give Baker Boyer three days to submit an affidavit
11 attesting to those attorney's fees, unless you need more time. Three
12 business days sufficient?

13 MR. BRAGONJE: I'm thinking. Thank you. If we could have
14 a week that would be all right.

15 THE COURT: All right. One full week from today's date. The
16 Clerk will give you that date. And while she's doing that, I'll ask Mr.
17 Detwiler's counsel to tell us how long he would need to respond to the
18 affidavit. In particular, I need an analysis from both of you as to the
19 *Brenzel* factors, of course.

20 MR. WIRTHLIN: Yes, Your Honor. We would like two weeks,
21 but we could do it in a week if the Court requires that.

22 THE COURT: I'll give you two weeks unless -- I don't see --

23 MR. WIRTHLIN: Thank you.

24 THE COURT: -- that there's any urgency as to the monetary
25 issue --

1 MR. WIRTHLIN: Okay.

2 THE COURT: -- Mr. Bragonje.

3 MR. BRAGONJE: No. No.

4 THE COURT: I mean -- I mean, I would like to get this
5 resolved, counsel, actually.

6 MR. WIRTHLIN: Sure.

7 THE COURT: Can you do it --

8 MR. WIRTHLIN: We'll do it in a week.

9 MR. BRAGONJE: -- in a week?

10 MR. WIRTHLIN: We'll do it in a week.

11 THE COURT: Okay.

12 MR. WIRTHLIN: Definitely.

13 THE COURT: So one week, and then I'll make a decision two
14 days after that.

15 THE CLERK: Okay. So one week from today is February
16 25th. And then one week from that, for the response, is March 3rd. And
17 a couple days after that, is a Tuesday, so -- do we need a hearing or is it
18 in chambers?

19 THE COURT: Pardon.

20 THE CLERK: Is your decision in chambers?

21 THE COURT: Yes, chambers.

22 THE CLERK: Okay.

23 THE COURT: Not another hearing. Now on top of that, I find
24 it very serious that Mr. Detwiler didn't comply with my order. I think he
25 did -- I know he did have the capability of doing it. He was controlling

1 the company based upon everything up to that date and there was
2 ample evidence that the company had control or possession of the cars.
3 But you're standing up, I'll let you --

4 MR. WIRTHLIN: No, just in case the Court wanted me to
5 respond is all. I apologize.

6 THE COURT: I don't need a response, but if you would like to
7 make a record, you can.

8 MR. WIRTHLIN: Your Honor, I think we probably put it in our
9 motion everything that I've got left. I do think that -- just to clarify --

10 THE COURT: Yes, sir.

11 MR. WIRTHLIN: -- the Court's order if I can today. Is that Mr.
12 Detwiler doesn't have to be worried about getting picked up and --

13 THE COURT: I was going to -- I was going to state that.

14 MR. WIRTHLIN: Okay.

15 THE COURT: The Court is expunging and recalling the
16 warrant, returning his passport. But the Court, under the circumstances,
17 is also going to impose a fine of \$100,000. That is less than one-fifth of
18 the total value of the cars. At least those values at the time Mr. Detwiler
19 was ordered to turn them over. I know he had control from everything
20 I've seen.

21 Now, someone might disagree with me, but I believe, based
22 upon the standard I've indicated that he had control from his own
23 admissions as to the title he held and some other comments that he
24 made in various pleadings. And that sanction is pursuant 7.60(b)(5),
25 which allows this Court in a civil context to impose a fine for violation of

1 a court order. It's not pursuant to the criminal contempt because there
2 hasn't been a motion for criminal contempt, right?

3 MR. WIRTHLIN: That's correct, Your Honor. And --

4 THE COURT: And it's not a conditional amount, but -- you
5 know, the 100,000 is not conditional, but, of course, if the cars were to be
6 turned over, I wouldn't be adverse to a motion for reconsideration.

7 MR. WIRTHLIN: And just to clarify, Your Honor, is that
8 included in the attorney's fees award or is that --

9 THE COURT: It's separate and apart from the --

10 MR. WIRTHLIN: Separate.

11 THE COURT: -- attorney's fees.

12 MR. WIRTHLIN: Okay. Okay.

13 THE COURT: Right. Because -- for the reasons I indicated.

14 MR. BRAGONJE: Would Your Honor like me to prepare an
15 order or will Your Honor --

16 THE COURT: Could you prepare the order?

17 MR. BRAGONJE: Yes.

18 THE COURT: And given that he's not being imprisoned, I
19 don't know that we need a stay of the order. I know you had said last
20 time you wanted a stay, but I think you were worried about him being
21 imprisoned?

22 MR. BRAGONJE: Well, if I may. I mean, I think Rule 62
23 there's an automatic stay built into the Civil Rules. The rule says --

24 THE COURT: If you were to appeal, right?

25 MR. BRAGONJE: Yeah. Right.

1 THE COURT: And I'm assuming he'll appeal this.

2 MR. WIRTHLIN: I do believe so, Your Honor.

3 THE COURT: Okay.

4 MR. WIRTHLIN: I haven't spoken with him, obviously, about
5 the specifics, but I guess I would just -- maybe I can take a look at what
6 the Bank submits, but my initial thought is --

7 THE COURT: You may.

8 MR. WIRTHLIN: -- I would like to reserve the right to move
9 for a stay if necessary, but I agree with Your Honor. At this point, I don't
10 see the need for that, other than potentially a supersedeas bond, but we
11 can talk about that down the road.

12 THE COURT: Now I don't know how quickly the Bank would
13 intend to try to collect on this.

14 MR. BRAGONJE: Well, we still have to prepare the order and
15 Your Honor has to sign it. I mean, it's not something that's
16 instantaneous. And I do think --

17 THE COURT: I mean, you know, the three year -- two-and-a-
18 half-year history on this case.

19 MR. BRAGONJE: Right. Right. I mean --

20 THE COURT: And I don't know that another week matters.

21 MR. BRAGONJE: Well, right.

22 THE COURT: I mean, you could prepare the documents. I
23 think you need to do writ of -- another writ. I don't know if the existing
24 writ applies. You're going to have to do the research on that.

25 MR. BRAGONJE: Yeah.

1 THE COURT: I'm not vacating the prior writ and the prior
2 attachment, but you'll have to look and see if that was issued as to Mr.
3 Detwiler or only, you know, Hildibrand.

4 MR. BRAGONJE: Right. We'll move with all deliberate speed
5 according to the rules. I mean, I'll have to look at it all.

6 THE COURT: All right. And, of course, once the Court
7 receives it, the Court will need time to --

8 MR. BRAGONJE: Right.

9 THE COURT: I think what the Court will do is have my law
10 clerk -- once I sign it and put it in the outbox, I'll have my court clerk
11 contact both of you to let you both know it's there. It will take me, you
12 know, a few days to -- probably a couple days for you to get it to me, a
13 few days for me to review it.

14 MR. BRAGONJE: Sure.

15 THE COURT: Then we'll call, so then you'll both know if you
16 need to move for a stay and how quickly you need to move for a stay.

17 MR. WIRTHLIN: Understood. Appreciate that, Your Honor.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. BRAGONJE: I don't think so.

21 MR. WIRTHLIN: I don't think so.

22 THE COURT: All right. Then that's the order. Thank you.
23 Court's adjourned.

24 /////

25 /////


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MR. WIRTHLIN: Thank you.

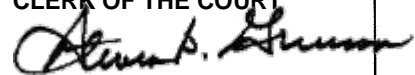
MR. BRAGONJE: Thank you.

[Proceedings concluded at 9:39 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



ORDR

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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually, and
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER AWARDING SANCTIONS
AGAINST EDWARD N. DETWILER
AND HARRY HILDBRAND, LLC**

Date: February 18, 2020

Time: 9:00 a.m.

Introduction

This Court held a contempt trial and found Harry Hildibrand, LLC ("HH"), an intervener and party to this lawsuit pursuant to NRS Chapter 31, and its manager, Edward N. Detwiler, in contempt of court. (See generally 1/30/20 Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager (hereinafter the "Contempt Order"), on file herein.) After that, Mr. Detwiler (but not HH) retained new counsel, Brenoch R. Wirthlin of Kolesar & Leatham, who filed a series of motions seeking to undo the Contempt Order as to Mr. Detwiler.

First, on January 29, 2020, Mr. Detwiler filed a Motion for Protective Order and Continuance of Hearing; plaintiff and judgment debtor Baker Boyer National Bank (the "Bank") filed an opposition on the same day; Mr. Detwiler filed a reply on January 30, 2020. This Court held a hearing on January 30, 2020.

1 Second, on February 5, 2020, Mr. Detwiler filed his “(1) Motion for Relief from Contempt
2 Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to
3 Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the
4 Court’s Contempt Order; and (5) Opposition to Plaintiff’s Brief in Support of Request to Hold
5 MR. Detwiler in Civil Contempt of Court.” The Bank filed its opposition on February 10, 2020,
6 Mr. Detwiler filed his reply on February 11, 2020, and this Court held a hearing on February 12,
7 2020. At all points, Mr. Brenoch represented Mr. Detwiler, and John Bragonje of Lewis Roca
8 Rothgerber Christie LLP represented the Bank.

9 After considering the extensive pleadings and lengthy arguments of counsel, after
10 reviewing again the record, including re-reading transcripts of Mr. Detwiler’s testimony, the Court
11 denies both motions in their entirety. The Contempt Order stands, except that instead of ordering
12 the imprisonment of Mr. Detwiler, the Court sanctions him \$100,000 in his personal capacity and
13 orders him in his personal capacity to pay costs and fees incurred by the Bank since the time HH
14 intervened in this action. The Court imposes this same sanction upon HH. Both Mr. Detwiler and
15 HH are jointly and severally responsible to pay the sanction. The Court makes the following
16 findings and rulings.

17 **Additional Findings of Fact**

18 1. The Court rejects the new arguments in these two post-Contempt Order motions
19 brought by Mr. Detwiler. By in large, Mr. Detwiler offered no new evidence and no new
20 arguments. Mr. Detwiler did claim that he resigned his post as manager from HH by a letter dated
21 September 10, 2019, thus divesting himself of the ability to comply with this Court’s orders. Even
22 if the Court were to accept this resignation as valid when given, the resignation came long after the
23 events (explained in detail in the Contempt Order), that led to that ruling. The asserted resignation
24 letter even came long after the contempt trial concluded in May, 2019. If a company officer has
25 notice of a court order and fails to obey it, a resignation will not exempt the officer from
26 punishment for disobedience. The reported cases bear out the common sense of this conclusion:
27 “resignation does not immunize [the contemnor] from liability for contempt [for his conduct when
28

1 he was director].” *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935,
2 956 (9th Cir. 2014).

3 2. Mr. Detwiler had notice of this Court’s rulings, which he disregarded, and which
4 ultimately justified this Court’s entry of the Contempt Order against him.

5 3. The resignation letter, furthermore, reinforces an aspect of the Court’s earlier
6 findings. This Court previously found that “Mr. Foust, HH, and StarDust Classic have been
7 agents of one another with respect to any past action involving the cars at issue in these
8 proceedings” (1/9/19 Findings of Fact, Conclusions of Law, and Final Judgment at
9 Conclusion ¶ 3.)

10 4. Mr. Detwiler testified three times under oath over a period of years that he took
11 direction in his role as HH’s manager from Harry Hildibrand, Jr. only—not Mr. Foust. (7/6/18
12 Dep. E. Detwiler, 18:7-14; 18:21-19:4; 11/5/18 Hr’g Trans., 22:1-12; 5/17/19 Hr’g Trans., 33:5-
13 24.) And yet, Mr. Detwiler directed the alleged resignation letter to Mr. Foust, Mr. Foust’s long-
14 time personal attorney, James Lezie,¹ and to StarDust Classic, an entity that was supposedly a
15 creditor to HH (as discussed *infra*)—not to Mr. Harry Hildibrand, Jr.

16 5. After the Bank pointed out this fact, Mr. Detwiler sent the resignation letter to
17 HH’s registered agent in Montana, but that was when the motions this order resolves were already
18 pending.

19 6. Mr. Detwiler’s sending the letter to Mr. Foust, his personal attorney, and an entity
20 that was supposedly an adversarial creditor of HH (StarDust Classic) tends to show a further
21 collaboration between Mr. Foust and Mr. Detwiler, who acted for HH, even though Mr. Foust and
22 HH were supposedly dealing at arm’s length.

23 7. Mr. Detwiler’s directing the letter to Mr. Foust and his lawyer also further indicates
24 Mr. Detwiler’s lack of candor, which has already been the subject of this Court’s prior orders,
25 including the Contempt Order. It is no small thing for Mr. Detwiler to have repeatedly sworn
26 under oath that HH’s affairs were conducted in one manner, only to take a totally contrary action

27 _____
28 ¹ In a supporting declaration, Mr. Detwiler states that he sent the resignation letter to HH’s attorney “Jim Lizzei at the
address set forth on the Letter of Resignation.” (Exhibit 1 to 2/6/20 App’x of Exs. to Mot. for Relief of Contempt, at ¶
4, on file herein.)

1 when the critical question of his resignation arose. The Court believes Mr. Detwiler is hiding the
2 truth, and this is just one more circumstance in a significant accumulation of similar instances.

3 8. Mr. Detwiler has argued in these new motions that he could not comply with the
4 Court's order to turn over the vehicles because either Mr. Foust had them or an entity called
5 StarDust Classic, had already repossessed them. The Court rejects these arguments.

6 9. First, as to Mr. Foust, while the collaboration and conspiracy between Mr. Foust
7 and HH has been discussed in prior orders, the Court never meant to suggest that Mr. Foust had
8 sole, physical possession of the vehicles or the exclusive power to turn them over, as Mr. Detwiler
9 now argues. HH has possession of the vehicles; it said so in its bankruptcy filings. Mr. Detwiler
10 signed those bankruptcy filings under penalty of perjury. Mr. Detwiler gave detailed testimony
11 about his involvement with the vehicles and his general powers as manager of HH, which are the
12 subject of this Court's previous orders, including the Contempt Order. HH also held the titles to
13 the vehicles. HH, which acted through Mr. Detwiler as its manager, clearly has the ability to
14 surrender the vehicles to the Bank.

15 10. As for StarDust Classic, no credible evidence has ever been tendered to the effect
16 that this entity has possession of the vehicles or any involvement at all with the vehicles. An
17 alleged representative of StarDust Classic, Tom Larkin, did appear at the contempt trial, but he too
18 admitted on cross examination that he was a 15-year friend and business associate of James Foust
19 (5/21/29 Hr'g Trans., Vol. 2, 78-80.) and a long-time acquaintance and business associate of Mr.
20 Detwiler (*id.* at 90:18-91:23), not a person dealing at arm's length.

21 11. Mr. Larkin admitted he knew nothing of the vehicles' locations:

22 The Court: Okay. And each of these vehicles, the seven, are currently in the
23 control or possession of Mr. Vega, then?

24 Mr. Larkin: Yes.

25 The Court: Okay. Any of the vehicles, do you have a specific location where
26 they're --

27 Mr. Larkin: I don't have an address or location. I suspect they're in wherever
28 they were located or wherever he consolidated them to, whatever
storage facility.

The Court: Okay. And do you know who would have the knowledge of where
these vehicles are located?

Mr. Larkin: Mr. Vega or his agent, his repossession agent.

The Court: Okay. And do you know who Mr. Vega's repossession agent is?

Mr. Larkin: I don't. I don't know that.

1 (5/21/29 Hr'g Trans., Vol. 2, 71:5-14; *see also id.* at 86:24-87:2.)

2 12. Mr. Larkin introduced no documentary evidence at all. Were he a credible witness
3 he would have adduced evidence showing that he was the attorney-in-fact for StarDust Classic, as
4 he claimed; showing that StarDust Classic had a security interest in the vehicles; showing that the
5 vehicles had been repossessed through lawful process arising from a security interest; or showing
6 that he had the vehicle titles.

7 13. In fact, Mr. Larkin not only failed to bring documents to the trial, he further
8 admitted when questioned by the Court that he personally had seen no documentation regarding
9 repossession, nor had he personally observed the supposed repossessions. (*Id.* 69:17-70:23;
10 72:10-15) Most critically, this Court informed Mr. Larkin that StarDust Classic, if it had an
11 alleged interest in the vehicles, had declined to intervene in these proceedings and assert that
12 interest. (*Id.* 68:2-9.) Mr. Larkin was not a convincing witness. He seemed to simply be
13 cooperating with Mr. Foust and Mr. Detwiler to frustrate the Court's efforts to locate the vehicles.

14 14. The only credible evidence this Court has concerning StarDust Classic are official
15 corporate filings from the Wyoming Secretary of State, which this Court received into evidence
16 when Mr. Detwiler's former counsel and Mr. Foust's attorney stipulated to their admission. (*See*
17 11/5/18 Hr'g Trans., 64:1-16.)

18 15. These corporate annual reports were signed by Mr. Foust and Mr. Detwiler before
19 these proceedings began (*see* 11/5/18 Hr'g Ex. 3, control numbers 365-70) and before Mr.
20 Detwiler had a motivation to change his testimony. Therefore, the only credible evidence this
21 Court has received concerning StarDust Classic further reveals the involvement of Mr. Detwiler
22 and Mr. Foust in that entity, which in turn further suggests HH's and Mr. Detwiler's ability to
23 comply with this Court's orders.

24 16. Mr. Detwiler's arguments in these two motions are not even minimally persuasive
25 in light of the extensive evidence this Court has received contrary to his arguments.

26 17. The Court, therefore, rejects the contention that HH lacked the ability to comply
27 with the Court's orders. HH clearly did, and Mr. Detwiler is the only HH agent who has ever
28 appeared or given testimony that he acted on behalf of HH. As a consequence, he personally had

1 the duty, responsibility, and power to carry out the Court's orders. For the reasons given in the
2 Contempt Order and further discussed in this order, there is clear and convincing evidence of Mr.
3 Detwiler's and HH's ability to perform this Court's orders, their notice of the Court's orders, and
4 their willful refusal to comply.

5 18. The Court, however, will give Mr. Detwiler the maximum benefit of the doubt.
6 The Court will regard the resignation letter as effective to terminate his service as HH's manager.
7 The Court will consider Mr. Detwiler's agency for HH terminated for purposes of the Contempt
8 Order from the time he tendered the letter to HH's registered agent on February 11, 2020.² The
9 Court cannot regard the original transmission of the letter as effective because it was sent to
10 persons (Mr. Foust, for example) that Mr. Detwiler previously said had no say whatsoever in HH's
11 ownership or management.

12 19. As a former manager, Mr. Detwiler lacks the current ability to comply with the
13 rulings that led to the Contempt Order, so the Court declines to incarcerate him. *See* NRS
14 22.110(1) (permitting imprisonment for contempt where "the omission to perform an act which is
15 yet in the power of the person to perform").

16 20. The Court cannot and will not, nevertheless, simply absolve Mr. Detwiler on the
17 extensive record of his personal misconduct and contempt, which the Court finds beyond a
18 reasonable doubt. For the reasons given in the Contempt Order and the further findings in this
19 order, the Court levies a sanction against Mr. Detwiler and HH, on a joint and several liability
20 basis, in the amount of \$100,000, to be paid to the Bank in immediately available funds upon
21 notice of entry of this order. The Court imposes this sanction pursuant to EDCR Rule 7.60 and its
22 inherent powers, *see* NRS 1.210(2) (providing that the district court has the power to "enforce
23 order in the proceedings before it"); *see also In re Water Rights of the Humboldt River*, 118 Nev.
24 901, 906-07, 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power
25 to protect dignity and decency in its proceedings, and to enforce its decrees" and because it has
26 particular knowledge of whether contemptible conduct occurred, its contempt decisions are
27 reviewed for an abuse of discretion).

28 _____
² (Exhibit 17 to 2/11/20 Reply Brief, on file herein.)

21. The Court also orders Mr. Detwiler and HH to pay the Bank's reasonable expenses, including attorney fees and costs, from the time that HH intervened as a party in this action pursuant to NRS Chapter 31, and the Court further orders that both Mr. Detwiler and HH be jointly and severally responsible for such. NRS 22.100(3) ("In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt."); EDCR 7.6(b) (allowing for the imposition of sanctions, including costs and attorney fees for multiplying proceedings in a case as to increase costs unreasonably and vexatiously and for failing or refusing to comply with any order).

Conclusions of Law

22. There is clear and convincing evidence of HH's Mr. Detwiler's contempt.

23. The Court hereby ORDERS that any aspect of the Contempt Order relating to imprisonment of Mr. Detwiler be and is vacated, but otherwise the Contempt Order remains in full force and effect.

24. The Court FURTHER ORDERS that Mr. Detwiler and HH be fined and sanctioned in the amount of \$100,000.00 and that both be jointly and severally liable for the same.

25. The Court FURTHER ORDERS that Mr. Detwiler and HH be assessed the Bank's costs, including attorney fees, from the time HH intervened as a party in this action, and that both Mr. Detwiler and HH be jointly and severally liable for the same.

26. HH's and Mr. Detwiler's actions in disobeying this Court's orders and withholding the vehicles were clearly calculated to harm the Bank; were done with the intent to harm the Bank's and the Court's integrity; and were committed without just cause or excuse.

27. If any Conclusions of Law are properly Findings of Fact, they shall be treated as if appropriately identified and designated.

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IT IS SO ORDERED.

Dated this 6th day of March, 2020


DISTRICT COURT JUDGE

Bm

A-17-760779-F

ORDER AWARDED SANCTIONS AGAINST
EDWARD "DETWILER AND HARRY
WILDERSON, LLC.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

Respectfully submitted,

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 

John E. Bragonje
State Bar No. 9519

jbragonje@lrrc.com

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Plaintiff Baker Boyer National Bank

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment

COURT MINUTES

March 17, 2020

A-17-760779-F	Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)
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March 17, 2020	10:00 AM	All Pending Motions
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HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
PRESENT:

JOURNAL ENTRIES

- STATUS CHECK: ORDER RE SANCTIONS MOTION TO SEAL SUPPORTING DOUCMENTS TO AFFIDAVIT OF JOHN E. BRAGONJE IN SUPPORT OF LEWIS AND ROCA ATTORNEYS FEES AND COSTS INCURRED IN CONNECTION WITH MR. DETWILER AND HARRY HILDIBRAND, LLC

The Court GRANTS Plaintiff's Attorney's Fees and Costs in the amount of \$208,889 in fees, and \$9,966.52 in costs. The Court has considered the Brunzell factors as discussed in Plaintiff's brief. Mr. Detwiler had the actual ability to comply with this Court's Order of January 9, 2019. From that point forward, he certainly was a party.

The Court GRANTS Plaintiff's Motion to Seal Supporting Documents.

The Court also reviewed Mr. Detwiler's competing Order regarding the January 30, 2020 and February 18, 2020 hearings. The Court finds Plaintiff's proposed Order to more accurately reflect the referenced proceedings. According, the Court declines to strike, or otherwise invalidate, the signed Order filed on March 12, 2020 and VACATES the March 20, 2020 Status Check. Plaintiff to prepare the Order.

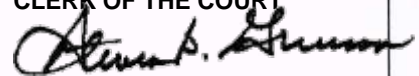
CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 3/17/20

PRINT DATE: 03/17/2020

Page 1 of 1

Minutes Date: March 17, 2020

MSA00693



MOT
BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)
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Attorneys for Non-party Edward Detwiler

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

HEARING REQUIRED

DATE: 3/30/2020
TIME: 9:00 AM

BAKER BOYER NATIONAL BANK, a
Washington corporation,

CASE NO.: A-17-760779-F

DEPT NO.: II

MH

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,
individually,

**NON-PARTY EDWARD DETWILER'S
MOTION TO STAY EXECUTION OF
ORDER FOR SANCTIONS PENDING
APPEAL AND TO WAIVE SUPERSEDEAS
BOND; AND ORDER SHORTENING TIME**

Defendants.

Non-party Edward N. Detwiler ("Mr. Detwiler"), by and through counsel, Brenoch Wirthlin, Esq. of Hutchison & Steffen, hereby moves this Court for an Order to Stay Execution of Order for Sanctions pending Appeal and to Waive Supersedeas Bond, on an Order Shortening Time pursuant to EDCR 2.26.

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1 This motion is based on all documents on file with the Court, the Declaration of Mr.
2 Detwiler's counsel and other exhibits attached hereto, and the Memorandum of Points and
3 Authorities which follows, all of which demonstrate that a stay of execution of Judgment pending
4 appeal should be issued without any supersedeas bond being posted by Mr. Detwiler.

5 DATED: March 23, 2020.

6 **HUTCHISON & STEFFEN**

7 By /s/ Brenoch Wirthlin, Esq.

8 BRENOCH WIRTHLIN, ESQ.

9 (NV SBN 10282)

10 10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Attorneys for Non-party Edward Detwiler

11 **DECLARATION OF BRENOCH WIRTHLIN, ESQ. IN SUPPORT OF**
12 **REQUEST FOR AN ORDER SHORTENING TIME ON MOTION TO STAY**
13 **EXECUTION OF ORDER FOR SANCTIONS PENDING APPEAL AND TO WAIVE**
14 **SUPERSEDEAS BOND**

15 I, BRENOCH WIRTHLIN, ESQ., declare under the penalty of perjury the following:

16 1. I am a partner at the law firm of Hutchison & Steffen, counsel for non-party Edward
17 N. Detwiler ("Mr. Detwiler"), in the above-referenced action.

18 2. I am aware of and have personal knowledge of the matters contained herein.

19 3. On March 12, 2020, after a hearing held on February 18, 2020, this Court entered
20 an Order awarding sanctions (pursuant to EDCR 7.60(b)(5)) against Mr. Detwiler in the amount
21 of \$100,000.00, plus attorneys' fees ("Order for Sanctions").

22 4. On March 17, 2020, the Court awarded Plaintiff's attorneys' fees and costs in the
23 total amount of \$218,888.52 via minute order entered March 17, 2020 ("Minute Order"). A copy
24 of the Minute Order is attached hereto as **Exhibit 1**.

25 5. Mr. Detwiler intends to appeal this Order for Sanctions, along with the Order
26 awarding attorneys' fees and costs.

27 6. While an appeal is pending, Mr. Detwiler would request that this Court stay of
28 execution without requiring a supersedeas bond.

7. A stay of execution will preserve the status quo and will make sure that Mr.
Detwiler does not suffer irreparable harm.

8. Further, without a stay, there is a legitimate possibility that Plaintiff could “double-dip” on its recovery by collecting the vehicles at issue (*i.e.* the “Vehicles” as referenced in prior moving papers) or other assets from Mr. Foust and/or Harry Hildibrand, LLC (“HH”) **and** collecting monies from Mr. Detwiler.

9. Currently, the date for Plaintiff to commence execution efforts against Mr. Detwiler is April 13, 2020.

10. As such, this instant motion should be heard on shortened time, so Mr. Detwiler can be heard before execution efforts are commenced.

11. Upon this Court entering an Order Shortening Time, Mr. Detwiler will immediately serve this motion on the Plaintiff's counsel.

12. Setting the hearing on shortened time will not prejudice the Plaintiff.

13. Mr. Detwiler respectfully requests that the hearing on this Motion be set **any time during the weeks of March 23, or March 30, 2020 to permit Mr. Detwiler to file a motion for stay with the Supreme Court of Nevada if necessary.**

I declare under the penalty of perjury that the foregoing statements are true and correct.

DATED: March 23, 2020.

/s/ Brenoch Wirthlin, Esq.
BRENOCH WIRTHLIN, ESQ.

ORDER SHORTENING TIME

IT IS HEREBY ORDERED that the hearing on **NON-PARTY EDWARD DETWILER'S MOTION TO STAY EXECUTION OF ORDER FOR SANCTIONS PENDING APPEAL AND TO WAIVE SUPERSEDEAS BOND** will be heard on the 30th day of March 2020, at the hour of 9:00 a.m., in Department II, or as soon thereafter as counsel may be heard. via Court Call or Blue Teams

IT IS HEREBY FURTHER ORDERED that the deadline for Plaintiff to file and serve its opposition to the Motion is the 27th day of March, 2020, noon Service of the opposition must be made to Mr. Detwiler's counsel by the noon ~~close of business~~ on such date.

~~IT IS HEREBY FURTHER ORDERED that the deadline for Mr. Detwiler to file and serve his reply brief in support of his motion is the _____ day of _____, 2020. Service of the reply brief must be made to Plaintiff's counsel by the close of business on such date.~~

DATED: 3/24/2020.


DISTRICT JUDGE

MH

Submitted by:

HUTCHISON & STEFFEN

By /s/ Brenoch Wirthlin, Esq.

BRENOCH WIRTHLIN, ESQ.

(NV SBN 10282)

10080 W. Alta Dr., Suite 200

Las Vegas, Nevada 89145

Attorneys for Non-party Edward Detwiler

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 On February 18, 2020, the Court held a hearing wherein it ordered EDCR 7.60(b)(5)
5 sanctions of \$100,000.00 against non-party Mr. Detwiler, along with attorneys' fees and costs
6 "from the date he was officially a party in this action" through February 18, 2020. *See* Transcript
7 of hearing on February 18, 2020 ("February 2020 Hearing"), attached hereto as **Exhibit 2**, at page
8 3. During this hearing, the Court indicated that if the Vehicles were turned over, it would entertain
9 a Motion for Reconsideration by Mr. Detwiler. Additionally, the Court found that the \$100,000.00
10 sanctions amount was at 1/5 of the value of the Vehicles. At a prior hearing, the Court had inquired
11 with Plaintiff about its efforts to collect the Vehicles from the warehouse and Mr. Foust's ex-wife
12 in California, but, as of the date of that hearing, Plaintiff had not yet made any attempts. The Order
13 awarding the \$100,000.00 sanctions was entered on March 12, 2020 ("Order for Sanctions").¹ On
14 March 17, 2020, the Court awarded Plaintiff's attorneys' fees and costs in the total amount of
15 \$218,888.52, which was same as the amount requested by Plaintiff.

16 Mr. Detwiler intends to appeal the Order for Sanctions, along with the Order awarding
17 attorneys' fees and costs and, while an appeal is pending, Mr. Detwiler requests a stay of execution
18 without requiring a supersedeas bond. Mr. Detwiler does not have the ability to pay the judgment
19 or bond associated with it, and has had multiple real estate transactions cancelled recently due to
20 the current pandemic related to the coronavirus. Further, a stay of execution will preserve the
21 status quo and will make sure that Mr. Detwiler does not suffer irreparable harm. Further, without
22 a stay, there is a legitimate possibility that Plaintiff could "double-dip" on its recovery by collecting
23 the Vehicles from Mr. Foust **and** collecting monies from Mr. Detwiler. Currently, the date for
24 Plaintiff to commence execution efforts against Mr. Detwiler is April 13, 2020.

25
26 _____
27 ¹ It appears the Order for Sanctions was intended as punishment for an alleged failure to comply with the
28 court's previously contempt order, and does not comply with Nevada criminal contempt statutes which require a
separate notice and hearing to determine whether contempt for alleged prior violations merit a punishment. *See* NRS
Chapter 22 generally; *see also* NRS Chapter 199, generally.

1 II.

2 LEGAL ARGUMENT

3 A. *The Court should exercise its discretion to stay execution without requiring a*
4 *Supersedeas Bond.*

5 Mr. Detwiler files this Motion in order to request that the Court grant a stay of execution of
6 the Order for Sanctions dated March 12, 2020, along with the attorneys' fees and costs award, without
7 posting a supersedeas bond, or, in the alternative, in the amount of \$500.00. NRCP 62(d) allows an
8 appellant to obtain a stay by posting a supersedeas bond or other security.

9 In McCulloch v. Jenkins, the Nevada Supreme Court stated:

10 The purpose of a supersedeas bond is to protect the prevailing party from loss resulting
11 from a stay of execution of the judgment. Thus, a supersedeas bond posted under
12 NRCP 62 should usually be set in an amount that will permit full satisfaction of the
13 judgment. A district court, in its discretion, may provide for a bond in a lesser amount,
14 or may permit security other than a bond, when unusual circumstances exist and so
warrant. 11 Wright Miller, Federal Practice and Procedure § 2905, at 328 (1973). See
also Fed. Presc. Serv. v. Am. Pharm. Ass'n, 636 F.2d 755 (D.C. Cir. 1980); Poplar
Grove, Etc. v. Bache Halsey Stuart, Inc., 600 F.2d 1189 (5th Cir. 1979).²

15 In that case, the Nevada Supreme Court held that the District Court “shall promptly conduct a
16 hearing to determine whether the appellants are financially able to post a supersedeas bond pending
17 appeal.” Mr. Detwiler is not financially able to pay the money for a supersedeas bond at this time and
18 does not anticipate being able to do so in the future. The Nevada Supreme Court further modified their
19 holding in McCulloch with its emphasis on “unusual circumstances” in Nelson v. Heer.³ In Nelson,
20 the Nevada Supreme Court adopted the Seventh Circuit’s five factor test from Dillon v City of
21 Chicago.⁴

22 In reflecting on the purposes of security for a stay, the Seventh Circuit, in Dillon v.
23 City of Chicago, set forth five factors to consider in determining when a full
supersedeas bond may be waived and/or alternate security substituted:

24 (1) the complexity of the collection process; (2) the amount of time required to obtain

26 ² McCulloch v. Jenkins, 99 Nev. 122,123, 659 P.2d 302, 303 (1983).

27 ³ Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252 (2006).

28 ⁴ Dillon v. City of Chicago, 866 F.2d 902 (7th Cir. 1988).

1 a judgment after it is affirmed on appeal; (3) the degree of confidence that the district
2 court has in the availability of funds to pay the judgment; (4) whether the defendant's
3 ability to pay the judgment is so plain that the cost of a bond would be a waste of
4 money; and (5) whether the defendant is in such a precarious financial situation that
the requirement to post a bond would place other creditors of the defendant in an
insecure position.⁵

5 “When a money judgment is involved, one gets a stay by posting a bond” or by satisfying the
6 Dillon analysis adopted in Nelson which Mr. Detwiler does below. NRCP 62(d) *does not* preclude
7 the court from issuing a stay without bond, upon the posting a partial bond or upon such conditions as
8 the court deems appropriate.⁶ Under Nelson and similar cases, the Courts have held that a decision to
9 waive bond need not be supported by all five factors.⁷

10 **1. Complexity of the collection process**

11 The Plaintiff has admitted to not taking any efforts to collect the Vehicles from the warehouse
12 in which they were allegedly housed, or from Mr. Foust’s ex-wife or other family in California
13 despite Foust testifying several of the Vehicles were maintained there. Any complexity in the
14 collection process is as a result of the Plaintiff’s failure to enforce its Judgment appropriately
15 against Mr. Foust. As this Court previously indicated, if the Vehicles were turned over, it would
16 entertain a Motion for Reconsideration by Mr. Detwiler.

17 It has long been recognized that district courts have the authority to waive, or allow for
18 alternative security, while still issuing a stay, when circumstances so warrant.⁸ For example, the
19 Nevada Supreme Court has expressly recognized that where adequate collateral already exists to
20 protect a Judgment, a stay may issue without the need for the party protected by the stay to issue a
21 bond.⁹

23 ⁵ Nelson v. Heer, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2006).

24 ⁶ Wunschel & Small, Inc. v. United States, 554 F.Supp. 444,445, 1 Cl.Ct. 101, 102 (U.S.Cl.Ct. 1983) (emphasis
25 added).

26 ⁷ Ground Improvement Techniques, Inc. v. Morrison Knudsen Corp., 2007 U.S. Dist. WL 1232090, at *3 (D.
Colo. Apr. 26, 2007 (waiving bond based on factors 1, 2, and 4).

27 ⁸ McCullough, 99 Nev. 122, 659 P.2d 302 (1983).

28 ⁹ Ries v. Olympian, Inc., 103 Nev. 709, 747 P.2d 910 (1987).

1 In the present case, according to the Bank, alternative collateral does exist. The Court found
2 that the \$100,000.00 sanctions amount was at 1/5 of the value of Mr. Foust's Vehicles. Mr.
3 Detwiler would submit that under the Bank's theory and the Court's orders these Vehicles provide
4 the alternative security allowed under NRCp 62(d)(2) - - the Plaintiff just needs to take the
5 necessary efforts to collect the Vehicles. With this security which exists according to the Bank
6 (despite Mr. Detwiler confirming he has no knowledge of their whereabouts), Mr. Detwiler is
7 entitled to stay execution pending appeal.

8 **2. Amount of time to obtain judgment**

9 The amount of time to obtain a judgment, if the Order for Sanctions and Order for Attorneys'
10 Fees are affirmed on appeal, would be negligible as such Orders are treated as judgment for execution
11 purposes. See NRS 15.040 (Whenever an order for the payment of a sum of money is made by a
12 court, it may be enforced by execution in the same manner as if it were a judgment.)

13 **3. Confidence in the availability of funds**

14 This Court previously found that Mr. Detwiler does not have possession of the Vehicles.
15 Additionally, while there are allegedly some of the Vehicles in Mr. Foust's warehouse or with his ex-
16 wife or other family in California, the Plaintiff has not taken any efforts to collect from such warehouse
17 or person. Instead, the Plaintiff has concentrated on going after Mr. Detwiler, a non-party, to collect
18 a judgment against Mr. Foust. With over \$300,000.00 in sanctions, attorneys' fees and costs, Mr.
19 Detwiler has no ability to pay this now or even any foreseeable ability to pay in the future.

20 **4. Ability of Mr. Detwiler to pay**

21 As mentioned above, Mr. Detwiler does not have the ability to pay the sanctions and attorneys'
22 fees, nor does he have the ability to pay for a supersedeas bond. Some circuit courts apply the test
23 promulgated for staying injunctive orders under Rule 62(c), which stems from the Supreme Court's
24 decision in Hilton v. Baunskill and balances: the likelihood of success on appeal; whether the
25 judgment debtor will suffer irreparable injury absent a stay; whether the judgment creditor will be
26 substantially harmed by a stay; and whether the stay serves the public interest.¹⁰

27
28 ¹⁰ Hilton v. Baunskill, 481 U.S. 770, 776 (1987).

1 ***a. Mr. Detwiler's likelihood of success on appeal***

2 With all due respect to the Bank's arguments, Mr. Detwiler believes he has a good likelihood
3 of success in his appeal for the reasons mentioned in his prior Briefs and, by this reference, specifically
4 incorporates the statements and arguments asserted in his Briefs as if fully restated in this instant
5 Motion.¹¹ Moreover, Mr. Detwiler feels it is necessary to emphasize the following (all of which
6 support granting of this instant motion and shows the likelihood of him being successful on appeal):

- 7 • **The Court awarded Plaintiff fees and costs for the 10 months preceding the time the**
8 **Court found Mr. Detwiler was a "party."**

9 While Mr. Detwiler asserts he is not a party and never has been a party to this action, this
10 Court found that Mr. Detwiler became a "party" on January 9, 2019. Although this Court previously
11 ordered that fees and costs would only be awarded from when Mr. Detwiler "was officially a party in
12 this action", in the minutes dated March 17, 2020, this Court awarded Plaintiff all of its requested fees
13 and costs (incurred from March of 2018 through February 18, 2020). The fees and costs incurred by
14 Plaintiff prior to January 9, 2019 are as follows:

15

Attorneys' and Paralegal Fees	\$113,814.00
Costs	\$4,222.72
Total	\$118,036.72

16
17
18

19 Based off the Court's findings in its Minute Order, this Court should have excluded all fees
20 and costs allegedly incurred prior to January 9, 2019 (totaling **\$118,036.72**). Instead of awarding,
21 at most, fees and costs totaling **\$100,848.80** (\$218,885.52 - \$118,036.72 = \$100,848.80), this Court
22 granted Plaintiff all of its requested fees and costs in the total amount of \$218,885.52 from March
23

24

25 ¹¹ The term "Briefs" shall include the following: (1) Non-Party Edward Detwiler's Motion for Entry of a
26 Protective Order and Continuance of Hearing on Order Shortening Time (filed on January 29, 2010); (2) Non-Party
27 Edward Detwiler's Notice of Objection Pursuant to NRS 22.030 filed on January 30, 2020; (3) Non-Party Edward
28 Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing filed on January
30, 2020; (4) Non-Party Edward Detwiler's Motion for Relief from Contempt Order Pursuant to NRCP 60(b) filed on
February 5, 2020; (5) Non-Party Edward Detwiler's Reply filed on February 11, 2020; and (6) Non-Party Edward
Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs
incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to
Request Stay of Execution and Waive Supersedeas Bond.

1 of 2018. Of this amount, **\$118,036.72** was incurred prior to the date this Court determined Mr.
2 Detwiler became a “party” by the Court’s own determination. Further, additional fees and costs
3 were included for in the award for amounts incurred after Mr. Detwiler resigned.

4 • **The Brunzell factors.**

5 In determining reasonable amount of attorneys’ fees, the district court must consider and
6 weigh the Brunzell factors and the Nevada Supreme Court has repeatedly identified the requirement
7 to weigh these factors as mandatory.¹² The Bank was awarded, all fees and costs incurred from
8 March 2018 through the date of February 18, 2020. NRS 22.100(c) provides that “the court may
9 require the person to pay to the party seeking to enforce the writ, order, rule or process the
10 reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result
11 of the contempt.”¹³ This requirement was met in this case.

12 Plaintiff alleged the attorneys’ fees and rates are reasonable, however, it utilized a total of
13 16 attorneys and paralegals in its collection efforts and pinned all 16 timekeepers’ billings on Mr.
14 Detwiler. The amount of attorneys and paralegals, as well as Plaintiff’s counsel billing a total of
15 487.7 hours, is quite egregious and flies in the face of the Brunzell factors.

16 When one takes the 487.7 hours and divide that into the total fees sought and awarded by
17 Plaintiff, you arrive at an average billing rate of \$428.31. While the attorneys and paralegals are
18 competent to handle a simple collections case, Plaintiff is allowing its attorneys to bill endlessly
19 and without regard to what is actually recovered.

20 A majority of the time entries are by Mr. Bragonje, where he spent over 380 hours on this
21 case, at an hourly rate between \$465.00 to \$495.00. Other attorneys were billed at hourly rates

23 ¹² See Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837,864–865, 124 P.3d 530, 548–549 (2005) (citing
24 Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 350, 455 P.2d 31, 33(1969)); see also Haley v. Dist. Ct., 273 P.3d
25 855, 860 (Nev. 2012).

26 ¹³ See NRS 21.100(c). Further, the Nevada Supreme Court, following the Ninth Circuit opinions, previously
27 concluded that an award of attorneys’ fees as a sanction is “limited to those incurred because of the alleged failure to
28 obey the particular order in question.” See Nevada Power Co. v. Fluor Illinois, 108 Nev. 638, 647 837 P.2d 1354
(1992); Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1385–86 (9th Cir.1988) (holding that to the extent that an
award of fees includes fees not incurred pursuant to the disobedience of a court order, it is an abuse of discretion);
United States v. National Medical Enterprises, Inc., 792 F.2d 906, 910 (9th Cir.1986) (holding that sanction must be
just and must “specifically relate to the particular claim at issue in the order”).

1 between \$250.00 and \$600.00, while paralegals were billed at hourly rates between \$135.00 and
2 \$255.00. These rates and the resulting attorneys' fees amount are egregious, not reasonable and
3 should not be borne by Mr. Detwiler.

4 Finally, the Brunzell factors (#3) specifically contemplate fees incurred by an attorney and
5 ***work actually performed by the lawyer*** - - not a paralegal. Therefore, any paralegal fees should
6 not have been included in the award of attorneys' fees.

7 **• The fees and costs were not apportioned.**

8 The vast majority of the fees incurred were as a result of collecting on the Judgment against
9 Mr. Foust. A district court must make a good faith effort to apportion fees and costs.¹⁴ The Bank
10 cannot merely lump fees and costs together and say Mr. Detwiler is liable. *See also* NRS 22.100(c)
11 (holding that fees are to be awarded that are incurred *as a direct result* of the contempt.)

12 When reviewing the time entries, more than 90% of the billings are associated with the
13 Plaintiff's execution and collection efforts on its Judgment against Mr. Foust. Even Mr. Bragonje's
14 own affidavit makes clear that Plaintiff is trying to collect for time spent chasing Mr. Foust. See
15 Bragonje Affidavit at paragraphs 34, 41, etc. Mr. Detwiler should not have to pay for the Plaintiff's
16 attorneys' fees and costs incurred in collection of the Judgment against Mr. Foust. No
17 apportionment of fees and costs was made.

18 **• Mr. Detwiler's due process rights were violated.**

19 Any finding of an alter ego relationship between Mr. Foust, HH and/or Mr. Detwiler
20 violates Callie v. Bowling, 123 Nev. 181, 160 P.3d 878 (2007) and further violates Mr. Detwiler's
21 due process rights. Mr. Detwiler is not and has never been a party to this case.¹⁵ This Court
22 improperly imposed a \$100,000 sanction against non-party Mr. Detwiler pursuant to EDCR
23 7.60(b)(5), when a monetary sanction against any party – which Mr. Detwiler is not – found to be
24 guilty of contempt is capped at \$500.00 pursuant Chapter 22 of the Nevada Revised Statutes.

25
26 ¹⁴ See Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008).

27 ¹⁵ The Nevada Supreme Court defines Parties as "persons who are named as such in the record of an action and
28 who are properly served with process or enter their appearance in the action. A person not served or improperly served
is not a party." See State ex rel. Pac. States Sec. Co. v. Second Jud. Dist. Ct., 48 Nev. 53, 60, 226 P. 1106, 1008 (1924).

1 The January 9, 2019 Order specifically indicated that “[a] certified copy of this order shall
2 constitute conclusive proof, to any person...that HH has been fully and completely divested of any
3 and all title to any vehicles or automobiles in which it claims an interest...and that such title and
4 interest resides in Mr. Foust, subject to the rights of the Bank set forth herein.” See January 9,
5 2019 Order, at pg. 22. While Mr. Detwiler never had possession, custody or control over the subject
6 Vehicles (and therefore could not take action sought by the Order), even by the plain language of
7 the Court’s Order, a certified copy would be necessary to constitute conclusive proof to Mr.
8 Detwiler of the complete divestiture.¹⁶ There has been no evidence presented by the Plaintiff that
9 Mr. Detwiler was served with a certified copy of the Court’s Order.

10 Further, the Albanese court indicated that an “award to an opposing party is limited to that
11 party’s actual loss.”¹⁷ The Plaintiff has not established or provided any evidence of its “actual
12 loss” and, more importantly, the Plaintiff confirmed it did not attempt to go to the warehouse where
13 the Vehicles were purportedly located to get the Vehicles, and admitted it did not try to get the
14 ones that were purportedly with Foust’s family. This is an absolute failure to mitigate damages
15 and seek alleged damages from a non-Party (Mr. Detwiler). On another note, seven (7) of the
16 Vehicles were apparently repossessed by a third-party entity according to testimony received by
17 the Court.

18 ***b. Mr. Detwiler will suffer irreparable injury absent a stay***

19 Paying for a supersedeas bond in the full amount would irreparably harm Mr. Detwiler’s
20 ability to prosecute his appeal. Further, without a stay, there is a legitimate possibility that Plaintiff
21 could “double-dip” on its recovery by collecting the Vehicles from Mr. Foust **and** collecting
22 monies from Mr. Detwiler.

24 ¹⁶ The Nevada Supreme Court previously held that sanctions can only be issued for acts which violate “the
25 clear, unambiguous terms” of the order. See State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v.
26 Albanese, 112 Nev. 851, 857, 919 P.2d 1067, 1071 (1996). As a result, the Albanese court concluded that: (1)
27 “appellants were sanctioned for actions which did not constitute disobedience of the clear, specific and unambiguous
28 terms of preliminary injunction”; and (2) “the district court abused its discretion in imposing the sanctions at issue.”
Id., at 856; see also Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983) (quoting Ex
Parte Slavin, 412 S.W.2d 43, 44 (Tex. 1967)).

¹⁷ Id.

1 *c. Plaintiff will not be substantially harmed by a stay*

2 A stay without a bond will not substantially harm the Plaintiff as it still has the ability to
3 collect against Mr. Foust and, more specifically, on the Vehicles it strongly asserts are in California.

4 *d. A stay will serve the public interest*

5 Finally, the Court should preserve the status quo until the appeal has concluded as it best
6 serves the public interest in that a non-party was sanctioned at 200 times the statutory capped amount
7 under NRS 22. The award of fees and costs from March 2018 is inappropriate and includes an
8 additional \$118,036.72 of attorneys' fees and costs against Mr. Detwiler incurred during the time
9 he indisputably could not have been in violation of any order, since the Contempt Order was not
10 issued until January 2019.

11 **5. Impact on other creditors by having to post a bond**

12 Forcing Mr. Detwiler to post a supersedeas bond will impair his ability to pay other creditors
13 and debts, if any. Accordingly, Mr. Detwiler has clearly met the factors set forth in Nelson and a stay
14 should be granted without requiring him to post a supersedeas bond. If the Court requires a bond, it
15 should be in a nominal amount, such as \$500.00.

16 **III.**

17 **CONCLUSION**

18 For the reasons stated herein, Mr. Detwiler respectfully requests that this Court grant his
19 Motion to Stay Execution of Order for Sanctions pending Appeal and to Waive Supersedeas Bond.

20 DATED: March 23, 2020.

21 **HUTCHISON & STEFFEN**

22
23 By /s/ Brenoch Wirthlin, Esq.
24 BRENOCH WIRTHLIN, ESQ.
25 (NV SBN 10282)
26 10080 W. Alta Dr., Suite 200
27 Las Vegas, Nevada 89145
28 Attorneys for Non-party Edward Detwiler

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

MSA00707

A-17-760779-F

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Foreign Judgment**COURT MINUTES****March 17, 2020**

A-17-760779-F Baker Boyer National Bank, Plaintiff(s)
vs. James Foust, Jr., Defendant(s)

March 17, 2020 10:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
PRESENT:

JOURNAL ENTRIES

- STATUS CHECK: ORDER RE SANCTIONS MOTION TO SEAL SUPPORTING DOUCMENTS TO AFFIDAVIT OF JOHN E. BRAGONJE IN SUPPORT OF LEWIS AND ROCA ATTORNEYS FEES AND COSTS INCURRED IN CONNECTION WITH MR. DETWILER AND HARRY HILDIBRAND, LLC

The Court GRANTS Plaintiff's Attorney's Fees and Costs in the amount of \$208,889 in fees, and \$9,966.52 in costs. The Court has considered the Brunzell factors as discussed in Plaintiff's brief. Mr. Detwiler had the actual ability to comply with this Court's Order of January 9, 2019. From that point forward, he certainly was a party.

The Court GRANTS Plaintiff's Motion to Seal Supporting Documents.

The Court also reviewed Mr. Detwiler's competing Order regarding the January 30, 2020 and February 18, 2020 hearings. The Court finds Plaintiff's proposed Order to more accurately reflect the referenced proceedings. According, the Court declines to strike, or otherwise invalidate, the signed Order filed on March 12, 2020 and VACATES the March 20, 2020 Status Check. Plaintiff to prepare the Order.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 3/17/20

PRINT DATE: 03/17/2020

Page 1 of 1

Minutes Date: March 17, 2020

MSA00708

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

MSA00709

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 BAKER BOYER NATIONAL BANK,

8 Plaintiff,

9 vs.

10 JAMES FOUST, JR.,

11 Defendant.
12

CASE#: A-17-760779-F

DEPT. II

13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 18, 2020

15 **RECORDER'S TRANSCRIPT OF DECISION ON 2/12/20 HEARING**

16
17 APPEARANCES:

18 For the Plaintiff:

JOHN E. BRAGONJE, ESQ.

19 For Edward Detwiler:

BRENOCH WIRTHLIN, ESQ.

20
21
22
23
24
25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 18, 2020

2

3 [Case called at 9:30 a.m.]

4 THE MARSHAL: Remain seated. Department 2 now in
5 session. The Honorable Judge Richard F. Scotti presiding.

6 THE COURT: All right, folks. Appearances, please. Baker
7 Boyer.

8 MR. WIRTHLIN: Yes, Your Honor. Brenoch Wirthlin on
9 behalf of Ed Detwiler.

10 THE COURT: Okay.

11 MR. BRAGONJE: Good morning, Your Honor. John
12 Bragonje of the Lewis Roca Law Firm on behalf of the Plaintiff Baker
13 Boyer.

14 THE COURT: Very good. You can both be seated. So here's
15 the way I see it. At least up through the date that Mr. Detwiler resigned,
16 the Court finds and has found that he had the ability to actually comply
17 with the Court order. And the Court had made that determination,
18 although it may not be stated in the rule. The Court went back and
19 reviewed everything, and the Court believes that that is accurate based
20 upon a clear and convincing evidence standard. Not a preponderance -- I
21 mean, higher than a preponderance of the evidence, but it doesn't rise to
22 a level of beyond a reasonable doubt, but a clear and convincing
23 evidence standard.

24 As for after the date of the resignation, I just can't find that
25 on a clear and convincing evidence standard that he still has the ability

1 to comply. I think at this point in time, I'm not convinced by the clear
2 and convincing evidence standard that he has possession, custody or
3 control over the cars.

4 I do find that there was failure to comply with this Court's
5 order up through the point in time when he did resign. An appropriate
6 sanction for violating the Court's order and all of the time and effort that
7 the Court had to deal with this, and the Bank had to deal with this, I'm
8 ordering that Mr. Detwiler pay the attorney's fees of Baker Boyer from
9 the date he was officially a party in this action through today's date.

10 I will give Baker Boyer three days to submit an affidavit
11 attesting to those attorney's fees, unless you need more time. Three
12 business days sufficient?

13 MR. BRAGONJE: I'm thinking. Thank you. If we could have
14 a week that would be all right.

15 THE COURT: All right. One full week from today's date. The
16 Clerk will give you that date. And while she's doing that, I'll ask Mr.
17 Detwiler's counsel to tell us how long he would need to respond to the
18 affidavit. In particular, I need an analysis from both of you as to the
19 *Brenzel* factors, of course.

20 MR. WIRTHLIN: Yes, Your Honor. We would like two weeks,
21 but we could do it in a week if the Court requires that.

22 THE COURT: I'll give you two weeks unless -- I don't see --

23 MR. WIRTHLIN: Thank you.

24 THE COURT: -- that there's any urgency as to the monetary
25 issue --

1 MR. WIRTHLIN: Okay.

2 THE COURT: -- Mr. Bragonje.

3 MR. BRAGONJE: No. No.

4 THE COURT: I mean -- I mean, I would like to get this
5 resolved, counsel, actually.

6 MR. WIRTHLIN: Sure.

7 THE COURT: Can you do it --

8 MR. WIRTHLIN: We'll do it in a week.

9 MR. BRAGONJE: -- in a week?

10 MR. WIRTHLIN: We'll do it in a week.

11 THE COURT: Okay.

12 MR. WIRTHLIN: Definitely.

13 THE COURT: So one week, and then I'll make a decision two
14 days after that.

15 THE CLERK: Okay. So one week from today is February
16 25th. And then one week from that, for the response, is March 3rd. And
17 a couple days after that, is a Tuesday, so -- do we need a hearing or is it
18 in chambers?

19 THE COURT: Pardon.

20 THE CLERK: Is your decision in chambers?

21 THE COURT: Yes, chambers.

22 THE CLERK: Okay.

23 THE COURT: Not another hearing. Now on top of that, I find
24 it very serious that Mr. Detwiler didn't comply with my order. I think he
25 did -- I know he did have the capability of doing it. He was controlling

1 the company based upon everything up to that date and there was
2 ample evidence that the company had control or possession of the cars.
3 But you're standing up, I'll let you --

4 MR. WIRTHLIN: No, just in case the Court wanted me to
5 respond is all. I apologize.

6 THE COURT: I don't need a response, but if you would like to
7 make a record, you can.

8 MR. WIRTHLIN: Your Honor, I think we probably put it in our
9 motion everything that I've got left. I do think that -- just to clarify --

10 THE COURT: Yes, sir.

11 MR. WIRTHLIN: -- the Court's order if I can today. Is that Mr.
12 Detwiler doesn't have to be worried about getting picked up and --

13 THE COURT: I was going to -- I was going to state that.

14 MR. WIRTHLIN: Okay.

15 THE COURT: The Court is expunging and recalling the
16 warrant, returning his passport. But the Court, under the circumstances,
17 is also going to impose a fine of \$100,000. That is less than one-fifth of
18 the total value of the cars. At least those values at the time Mr. Detwiler
19 was ordered to turn them over. I know he had control from everything
20 I've seen.

21 Now, someone might disagree with me, but I believe, based
22 upon the standard I've indicated that he had control from his own
23 admissions as to the title he held and some other comments that he
24 made in various pleadings. And that sanction is pursuant 7.60(b)(5),
25 which allows this Court in a civil context to impose a fine for violation of

1 a court order. It's not pursuant to the criminal contempt because there
2 hasn't been a motion for criminal contempt, right?

3 MR. WIRTHLIN: That's correct, Your Honor. And --

4 THE COURT: And it's not a conditional amount, but -- you
5 know, the 100,000 is not conditional, but, of course, if the cars were to be
6 turned over, I wouldn't be adverse to a motion for reconsideration.

7 MR. WIRTHLIN: And just to clarify, Your Honor, is that
8 included in the attorney's fees award or is that --

9 THE COURT: It's separate and apart from the --

10 MR. WIRTHLIN: Separate.

11 THE COURT: -- attorney's fees.

12 MR. WIRTHLIN: Okay. Okay.

13 THE COURT: Right. Because -- for the reasons I indicated.

14 MR. BRAGONJE: Would Your Honor like me to prepare an
15 order or will Your Honor --

16 THE COURT: Could you prepare the order?

17 MR. BRAGONJE: Yes.

18 THE COURT: And given that he's not being imprisoned, I
19 don't know that we need a stay of the order. I know you had said last
20 time you wanted a stay, but I think you were worried about him being
21 imprisoned?

22 MR. BRAGONJE: Well, if I may. I mean, I think Rule 62
23 there's an automatic stay built into the Civil Rules. The rule says --

24 THE COURT: If you were to appeal, right?

25 MR. BRAGONJE: Yeah. Right.

1 THE COURT: And I'm assuming he'll appeal this.

2 MR. WIRTHLIN: I do believe so, Your Honor.

3 THE COURT: Okay.

4 MR. WIRTHLIN: I haven't spoken with him, obviously, about
5 the specifics, but I guess I would just -- maybe I can take a look at what
6 the Bank submits, but my initial thought is --

7 THE COURT: You may.

8 MR. WIRTHLIN: -- I would like to reserve the right to move
9 for a stay if necessary, but I agree with Your Honor. At this point, I don't
10 see the need for that, other than potentially a supersedeas bond, but we
11 can talk about that down the road.

12 THE COURT: Now I don't know how quickly the Bank would
13 intend to try to collect on this.

14 MR. BRAGONJE: Well, we still have to prepare the order and
15 Your Honor has to sign it. I mean, it's not something that's
16 instantaneous. And I do think --

17 THE COURT: I mean, you know, the three year -- two-and-a-
18 half-year history on this case.

19 MR. BRAGONJE: Right. Right. I mean --

20 THE COURT: And I don't know that another week matters.

21 MR. BRAGONJE: Well, right.

22 THE COURT: I mean, you could prepare the documents. I
23 think you need to do writ of -- another writ. I don't know if the existing
24 writ applies. You're going to have to do the research on that.

25 MR. BRAGONJE: Yeah.

1 THE COURT: I'm not vacating the prior writ and the prior
2 attachment, but you'll have to look and see if that was issued as to Mr.
3 Detwiler or only, you know, Hildibrand.

4 MR. BRAGONJE: Right. We'll move with all deliberate speed
5 according to the rules. I mean, I'll have to look at it all.

6 THE COURT: All right. And, of course, once the Court
7 receives it, the Court will need time to --

8 MR. BRAGONJE: Right.

9 THE COURT: I think what the Court will do is have my law
10 clerk -- once I sign it and put it in the outbox, I'll have my court clerk
11 contact both of you to let you both know it's there. It will take me, you
12 know, a few days to -- probably a couple days for you to get it to me, a
13 few days for me to review it.

14 MR. BRAGONJE: Sure.

15 THE COURT: Then we'll call, so then you'll both know if you
16 need to move for a stay and how quickly you need to move for a stay.

17 MR. WIRTHLIN: Understood. Appreciate that, Your Honor.

18 MR. BRAGONJE: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. BRAGONJE: I don't think so.

21 MR. WIRTHLIN: I don't think so.

22 THE COURT: All right. Then that's the order. Thank you.
23 Court's adjourned.

24 /////

25 /////

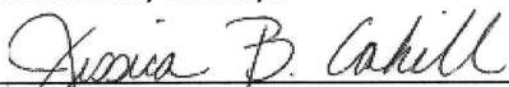
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MR. WIRTHLIN: Thank you.

MR. BRAGONJE: Thank you.

[Proceedings concluded at 9:39 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER, an
individual,

Appellant,

v.

BAKER BOYER NATIONAL
BANK, a Washington corporation,

Respondent.

Supreme Court Case No.: 81017

District Court Case No.: A-17-760779-F

**APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY
MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION
OF ORDER FOR SANCTIONS/JUDGMENT PENDING
APPEAL**

(Volume III - Part 4; Pages MSA00719-MSA00750)

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Attorneys for Appellant

TABLE OF CONTENTS
(Alphabetically)

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00654- MSA00667	2/25/2020	Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs Incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC
I	MSA000053- MSA00070	2/21/2019	Application for Order to Show Cause Why Defendants Should Not be Held in Civil Contempt
II	MSA00393- MSA00444	1/24/2020	Brief in Support of Continuing Request to Hold Edward N. Detwiler in Civil Contempt of Court
III	MSA00693	3/17/2020	Court Minutes: All Pending Motions
II	MSA00497	1/30/2020	Court Minutes: Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
I	MSA00025- MSA00052	1/9/2019	Findings of Fact, Conclusions of Law, and Final Judgment
IV	MSA00777- MSA00801	4/8/2020	Non-Party Edward Detwiler s Response to Notice of Response to Mr. Detwiler's Arguments
II	MSA00448- MSA00472	1/29/2020	Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on Order Shortening Time
III	MSA00694- MSA00718	3/24/2020	Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond; and Order Shortening Time

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
II	MSA00486-MSA00487	1/30/2020	Non-Party Edward Detwiler's Notice of Objection Pursuant to NRS 22.030
II	MSA00488-MSA00496	1/30/2020	Non-Party Edward Detwiler's Reply in Support of Motion for Entry of a Protective Order and Continuance of Hearing
III	MSA00577-MSA00593	2/11/2020	Non-Party Edward Detwiler's Reply in Support of: (1) Motion for Relief from Contempt Order Pursuant to NRCP 60(b); (2) Motion for New Trial Pursuant to NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59; (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00668-MSA00684	3/3/2020	Non-Party Edward Detwiler's Response to the Affidavit of John E. Bragonje in Support of Lewis and Roca Attorney Fees and Costs incurred in Connection with Mr. Detwiler and Harry Hildibrand, LLC and Reservation of Right to File a Motion to Request Stay of Execution and Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III	MSA00518-MSA00549	2/5/2020	Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(b); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of the Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
II	MSA00445-MSA00447	1/28/2020	Notice of Appearance
I	MSA00071-MSA0074	2/25/2019	Notice of Entry of Order to Appear and Show Cause Why Defendants Should Not Be Held in Civil Contempt
I	MSA00001-MSA000024	8/31/2017	Notice of Filing of Foreign Judgment and Affidavit Pursuant to NRS 17.360(2)
IV	MSA00766-MSA00776	4/3/2020	Notice of Response to Mr. Detwiler's Arguments
II	MSA00384-MSA00392	1/22/2020	Notice of Serving Subpoena on Edward Newlin Detwiler
II	MSA00473-MSA00485	1/29/2020	Opposition to Non-Party Edward Detwiler's Motion for Entry of a Protective Order and Continuance of Hearing on OST and Erratum Providing Correct Affidavit of Service Upon Edward Detwiler
III	MSA00719-MSA00739	3/27/2020	Opposition to Non-Party Edward Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
IV	MSA00760-MSA00762	3/30/2020	Order and Judgment
IV	MSA00763-MSA00765	4/1/2020	Order and Judgment
III	MSA00685-MSA00692	3/12/2020	Order awarding sanctions against Edward N. Detwiler and Harry Hildibrand, LLC
IV	MSA00802-MSA00804	4/13/2020	Order Denying Edward N. Detwiler's Motion to Stay Execution of Order for Sanctions Pending Appeal and to Waive Supersedeas Bond
IV	MSA00805-MSA00821	6/21/2019	Order for Punishment of Contempt
II/III	MSA00498-MSA00517	1/30/2020	Order for Punishment of Contempt by Harry Hildibrand, LLC and Edward N. Detwiler, Its Manager
III	MSA00550-MSA00576	2/10/2020	Plaintiff's Opposition to Non-Party Edward Detwiler's: (1) Motion for Relief From Contempt Order Pursuant To NRCP 60(B); (2) Motion for New Trial Pursuant To NRCP 59; (3) Motion to Alter or Amend Judgment Pursuant to NRCP 52 and 59 (4) Motion for Reconsideration of The Court's Contempt Order; and (5) Opposition to Plaintiff's Brief in Support of Request to Hold Mr. Detwiler in Civil Contempt of Court
III	MSA00645-MSA00653	2/18/2020	Recorder's Transcript of Decision on 2/12/20 Hearing
III	MSA00594-MSA00644	2/12/2020	Recorder's Transcript of Hearing: All Pending Motions
II	MSA00348-MSA00383	12/23/2019	Recorder's Transcript of Status Check

<u>Volume No.</u>	<u>Bates</u>	<u>Date</u>	<u>Document Description</u>
III/IV	MSA00740-MSA00759	3/30/2020	Recorders Transcript of Telephonic Hearing: All Pending Motions
I	MSA00075-MSA00144	4/1/2019	Transcript of Proceedings (Show Cause Hearing)
I	MSA00162-MSA00219	5/17/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume 1; 5.17.19
I	MSA00220-MSA00240	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume I
I/II	MSA00241-MSA00347	5/21/2019	Transcript of Proceedings Re: Evidentiary Hearing Volume II
I	MSA00145-MSA00161	4/24/2019	Transcript of Proceedings: Evidentiary Hearing

PROOF OF SERVICE

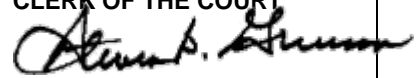
I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **APPELLANT'S APPENDIX IN SUPPORT OF EMERGENCY MOTION UNDER NRAP RULE 27(e) TO STAY EXECUTION OF ORDER FOR SANCTIONS/JUDGMENT PENDING APPEAL** on the following parties, via the manner of service indicated below, on April 23, 2020:

Via Electronic Service through E-Flex System:

John Bragonje (JBragonje@lrrc.com)
Attorney for Respondent

Dated: April 23, 2020.

By: /s/ Danielle Kelley
An Employee of
Hutchison & Steffen



OPPM

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Attorneys for Plaintiff Baker Boyer National Bank

DISTRICT COURT

CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL BANK, a
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also
known as James P. Foust, Jr., individually,
and his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**OPPOSITION TO NON-PARTY
EDWARD DETWILER'S MOTION
TO STAY EXECUTION OF ORDER
FOR SANCTIONS PENDING
APPEAL AND TO WAIVE
SUPERSEDEAS BOND**

Date: March 30, 2020

Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion presents three principal issues, each of which, when considered, resolves in Baker Boyer National Bank's (the "Bank") favor. This Court should deny this motion for the following reasons.

First, granting a stay without bond is exceptionally rare and should occur only where a district court has absolute confidence that the judgment debtor will be able to promptly pay the full judgment, with interest, after an unsuccessful appeal. Here, Mr. Detwiler freely admits he lacks the funds to procure a bond or pay the judgment. This is fatal. Inability to pay a judgment due to a party's financial condition weighs in favor of *requiring* a bond, not waiving that requirement.

1 Second, the five *Nelson v. Heer* factors, which this Court must consider determining
2 whether to reduce the amount of the bond or allow alternate security, essentially ask
3 whether a judgment creditor can anticipate an easy route to collect its judgment. Here, Mr.
4 Detwiler has engaged in studied and protracted disregard of this Court's orders, which led
5 to his being held in contempt. Contumacious litigants merit no leniency. We have new
6 evidence of this even since our last appearance that we will present in this paper.

7 Finally, to secure a stay of execution under *Hansen v. District Court*, a debtor must
8 show that an appeal would be pointless without it. A debtor cannot simply argue that she
9 will lose money if the judgment is enforced. Enforcing the judgment is the whole point of
10 a civil action. Though a party can choose to appeal, the appeal does not stop enforcement
11 of the judgment. Despite this, Mr. Detwiler complains that he will be "irreparably
12 harmed" simply because he claims he cannot afford a bond premium and because he
13 claims he could never pay a judgment anyway. Once again, such talk militates against, not
14 in favor of, a stay.

15 **II. STANDARD**

16 Generally, a stay of the judgment lasts just 30 days; after that, the prevailing party
17 may execute on the judgment. NRCP 62(a).

18 Pursuant to NRCP 62(d), when an appeal is taken the appellant, by giving a
19 supersedeas bond, may obtain a stay. NRCP 62(d). Bond and stay applications are
20 normally initiated in the district court. NRAP 8(a).

21 **III. MR. DETWILER IS NOT ENTITLED TO A TOTAL SUPERSEDEAS BOND** 22 **WAIVER**

23 The normal way to stay a money judgment is to post a supersedeas bond in an
24 amount that fully secures the judgment, plus any post-judgment interest, through the
25 duration of the appeal. NRCP 62(d). Such a bond protects the judgment creditor pending
26 an appeal, while maintaining the status quo for the judgment debtor. Allowing a party to
27 stay execution of the judgment without posting any bond whatsoever usually violates those
28 principles because it leaves the judgment creditor without protection. So a stay without

1 bond is exceptionally rare and should occur only where a district court has absolute
2 confidence that the judgment debtor will be able to promptly pay the full judgment, with
3 interest, after an unsuccessful appeal. Mr. Detwiler cannot demonstrate any of these
4 factors. A total waiver of the bond would not protect the Bank's right to its judgment.

5 **A. Mr. Detwiler Has Totally Failed to Demonstrate His Ability to Pay in**
6 **the Event of an Unsuccessful Appeal**

7 The purpose of security for a stay pending appeal is to protect the judgment
8 creditor's ability to collect the judgment if it is affirmed by preserving the status quo and
9 preventing prejudice to the creditor arising from the stay. *Nelson v. Heer*, 121 Nev. 832,
10 835, 122 P.3d 1252, 1254 (2005). Inability to pay a judgment due to a party's financial
11 condition weighs in favor of *requiring* a bond, not waiving that requirement. *Avirgan v.*
12 *Hull*, 125 F.R.D. 185, 187 (S.D. Fla. 1989) (requiring a supersedeas bond because
13 uncertain financial condition defeats the contention that a bond is unnecessary or
14 alternative collateral properly could be posted); *see also In re Carlson*, 224 F.3d 716, 719
15 (7th Cir. 2000) (denying total waiver of bond and holding lack of confidence that party will
16 eventually pay required bond). Total waiver of the bond requirement should be permitted
17 only where the appellant has a clearly demonstrated ability to satisfy the judgment in the
18 event the appeal is unsuccessful and there is no other concern that the other party's rights
19 will be compromised by a failure to adequately secure the judgment. *In re Carlson*, 224
20 F.3d 716, 719 (7th Cir. 2000); *see also Fowler ex rel. Fowler v. Unified Sch. Dist. No. 259*,
21 907 F. Supp. 348, 351 (D. Kan. 1995) (waiving bond because the party had a well-funded
22 risk management fund which could be easily accessed if the judgment was affirmed and
23 had an effective procedure for paying the judgment within thirty days following
24 completion of appellate proceedings), *rev'd on other grounds*, 107 F.3d 797 (10th Cir.
1997).

25 **B. Mr. Detwiler's Candid Admission that He Cannot Pay the Judgment**
26 **Dooms His Request**

27 Mr. Detwiler has not demonstrated his ability to satisfy the judgment in the event of
28 an unsuccessful appeal. In fact, his attorney argues the total opposite. Mr. Detwiler, we

are frankly told, “does not have the ability to pay the judgment or the bond associated with it.” (Mot. to Stay, 5:18-19.) Mr. Detwiler repeats this confession again and again in his papers. Mr. Detwiler’s insistence that he is financially insecure negates his argument that a total waiver of a bond is warranted. His admission, in fact, ends the analysis.

Accordingly, this Court should deny a stay of execution without the posting of a supersedeas bond in the full amount of the judgment.

IV. MR. DETWILER IS NOT ENTITLED TO A REDUCED BOND AMOUNT

Mr. Detwiler also requests the amount of his supersedeas bond be reduced to just \$500. (Mot. to Stay, 6:5-7.) Nevada’s *Nelson* decision forbids this.

A. The *Nelson* Factors Do Not Weigh in Favor of Reducing Mr. Detwiler’s Bond Amount

To determine whether to reduce or require an alternative to a bond a district court considers five factors: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). *Nelson* gives the district court to discretion to allow “reliable alternative” for security. 121 Nev. at 835, 122 P.3d at 1254. The ultimate goal is to provide security that will maintain the status quo and protect the judgment creditor pending an appeal. 121 Nev. at 835-26, 122 P.3d at 1254. Mr. Detwiler cannot show that the factors weigh in favor of allowing a stay of execution of judgment with a reduced bond amount. Accordingly, the Court should deny this motion.

1. *Complexity of the Collection Process*

A Court may waive or provide an alternative for the security if the collection process for the alternative is simple. *See Dillon v. City of Chicago*, 866 F.2d 902, 905 (7th

1 Cir. 1988) (waiving bond requirement where City submitted affidavits to the district court,
2 which the plaintiff did not dispute, outlining the mode of payment of employment
3 discrimination judgments). The order Mr. Detwiler claims he will appeal arose after more
4 than one full year of contempt proceedings. The entire record and history of this case
5 compel the conclusion that future collection will be—as it has been in the past—
6 surpassingly difficult.

7 Indeed, just since the last time we were before this Court, the Bank has learned of
8 additional malfeasance. Harry Hildibrand, LLC (“HH”) (necessarily with the cooperation
9 or authorization of its only agents, Mr. Foust and/or Mr. Detwiler) auctioned two of the
10 cars that are the subject of this Court’s orders, a 1951 Jaguar XK120 and a 1971
11 DeTomaso Pantera, which collectively fetched \$132,000 in August, 2019. (*See* email from
12 Mr. D. Alcazar, CEO of Russo & Steel, Ex. 1 hereto.) The auction house indicated the cars
13 came from HH. (*Id.*) This auction occurred, of course, well after this Court’s turnover
14 order (January, 2019), after the contempt trial (April and May, 2019), and even after the
15 final contempt order had issued against Mr. Foust (June, 2019). Critically, the auction
16 occurred before Mr. Detwiler claims he resigned as HH’s manager on or about September
17 20, 2019.¹ The Bank expects to develop more evidence like this as it continues its efforts
18 to locate and seize the vehicles.

19 The Bank should just collect its judgment against Mr. Foust, Mr. Detwiler urges,
20 making collection simple. (Mot. to Stay, 7:11-16.) This is a false choice. The Bank now
21 has two independent orders or judgments to collect, one against Mr. Detwiler and HH
22 (\$318,855.52), on the one hand, and one against Mr. Foust and his marital community
23 (almost \$1.4 million), on the other hand. Mr. Detwiler seeks a bond reduction, not Mr.
24 Foust, so Mr. Detwiler must speak to the collectability of his separate, unique judgment.
25 His motion does not even attempt that analysis. Further, Mr. Detwiler fails to articulate
26 how a reduced bond amount would allow for a more simple collection process. Therefore,

27 ¹ While Mr. Detwiler claimed he resigned as HH’s manager on September 10, 2019, this
28 Court ruled that the resignation was effective no earlier than February 11, 2020. (*See*
3/12/20 Order Awarding Sanctions, ¶ 18, on file herein.) Either way, Mr. Detwiler was in
charge of HH at the time of this order-flouting auction.

1 this factor weighs in favor of denying a stay of execution with a reduced bond.

2 **2. *The Amount of Time Required to Obtain the Judgment***

3 A Court may waive or reduce a bond where the judgment will still be obtained
4 promptly. *Dillon*, 866 F.2d at 905 (holding a bond was not required where the entire
5 process of payment of the judgment and fees and costs would take less than thirty days,
6 and was guaranteed to be paid from a dedicated fund). Mr. Detwiler fails to demonstrate
7 how a reduced bond amount would allow the Bank to recover its judgment promptly.
8 Conversely, a reduced bond amount (the \$500 requested) would permit the Bank to recover
9 only a fraction—far less than one percent—of the judgment in a timely manner. The Bank
10 would then have to spend a considerable amount of time attempting to collect the
11 additional 99.99 percent of the judgment. Given that Mr. Detwiler personally contributed
12 to this unnecessarily long collection process, as this Court has recorded in its two orders
13 holding him in contempt, this factor weighs in favor of denying a stay of execution without
14 a bond or with a reduced bond.

15 **3. *There is a lack of confidence in Mr. Detwiler's ability to pay***

16 Where a court lacks confidence in a party's ability to pay, the party should post a
17 bond for the full value of the judgment. *In re Carlson*, 224 F.3d 716, 719 (7th Cir. 2000).
18 Mr. Detwiler's motion generally, and his argument on for this *Nelson* factor specifically
19 (see Mot. to Stay, 8:13-28), freely admit that he "has no ability to pay this now or even any
20 foreseeable ability to pay in the future." (*Id.*) In other words, Mr. Detwiler explicitly
21 concedes that he has no grounds to reduce or eliminate the bond requirement under *Nelson*.
22 This factor weighs in favor of denying a stay of execution without a bond or with a
23 reduced bond.

24 **4. *Mr. Detwiler's ability to pay the judgment is not plain***

25 Parties who demonstrate a clear ability to satisfy the judgment in the event the
26 appeal is unsuccessful are entitled to reliable alternative to a full bond. *In re Carlson*, 224
27 F.3d at 719; see also *Fowler*, 907 F. Supp. at 351. For instance, the court in *Avirgan v.*
28 *Hull*, noted that where a party would have difficulty maintaining the same state of

1 solvency through the appellate process, the court must require the movant to post a
2 supersedeas bond. 125 F.R.D. at 187. Further, the *Dillon* court, the inspiration for our
3 *Nelson* decision, allowed a waiver of the bond where a dedicated fund existed that
4 guaranteed payment. 866 F.2d 902 at 905.

5 Here again, Mr. Detwiler writes this opposition for us. He says of this *Nelson* factor
6 that, “[a]s mentioned above,” he “does not have the ability to pay the sanctions and
7 attorneys’ fees, nor does he have the ability to pay for a supersedeas bond.” (Mot. to Stay,
8 8:21-22.) This factor, too, weighs in favor of denying a stay of execution without a bond
9 or with a reduced bond.

10 **5. *Mr. Detwiler has not proven a precarious financial***
11 ***situation affecting other creditors***

12 A precarious financial situation includes the inability to remain in the same state of
13 solvency throughout the appeal. *Avirgan*, 125 F.R.D. at 187. Mr. Detwiler admits to no
14 other creditors. His counsel makes the naked claim that posting a supersedeas bond “will
15 impair his ability to pay other creditors and debts, *if any*.” (Mot. to Stay, 13:12-13
16 (emphasis supplied).) Counsel’s argument is not competent evidence of solvency or risk to
17 other creditors. *See* EDCR 2.21 (requiring “factual contentions involved in any pretrial or
18 post-trial motion” to be supported by declaration, affidavit, deposition answer, and written
19 discovery responses); *Nevada Ass’n Servs., Inc. v. Dist. Ct.*, 130 Nev. 949, 957, 338 P.3d
20 1250, 1255 (2014) (“Arguments of counsel, however, are not evidence and do not establish
21 the facts of the case.”).

22 This is especially so when the counsel’s argument on its face establishes that there
23 *are* no other creditors for whom a bond might be destabilizing. Our rules of civil
24 procedure do not permit the waiving of even something as trifling as filing fees without a
25 sworn affidavit to proceed in forma pauperis. NRS 12.015. This Court must forbid Mr.
26 Detwiler’s gambit to breeze by this *Nelson* prong with one sentence of counsel argument.

27 **V. MR. DETWILER IS NOT ENTITLED TO A STAY**

28 In deciding whether to issue a stay, a court generally considers (1) whether the

1 object of the appeal or writ petition will be defeated if the stay is denied; (2) whether
2 appellant will suffer irreparable or serious injury if the stay is denied; (3) whether
3 respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether
4 appellant is likely to prevail on the merits in the appeal or writ petition. *Hansen v. Dist.*
5 *Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

6 **A. The Object of Mr. Detwiler's Appeal Will Not be Defeated**

7 The object of Mr. Detwiler's appeal will not be defeated if a stay is denied. *C.f.*
8 NRAP 8(c)(1). For this factor to apply, the denial of a stay would have to make "any
9 victory on appeal . . . hollow." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252,
10 89 P.3d 36, 39 (2004); *Hansen*, 116 Nev. at 658, 6 P.3d at 986. Here, however, no
11 appellate issues depend on a stay; if they were preserved at trial, they can be raised on
12 appeal, even if the Bank in the meantime executes on the judgment. The judgment against
13 Mr. Detwiler involves an award of money. If a stay is denied Mr. Detwiler will merely be
14 required to comply with the judgment. Accordingly, the object of the appeal will still be
15 intact.

16 **B. Mr. Detwiler Will Not Suffer Irreparable Harm**

17 Mr. Detwiler would not suffer irreparable or serious injury if the stay is denied.
18 "Mere injuries, however substantial, in terms of money . . . necessarily expended in the
19 absence of a stay are not enough" to show irreparable harm. *Hansen*, 116 Nev. at 658, 6
20 P.3d at 987 (quoting *Wisconsin Gas Co. v F.E.R.C.*, 758, F.2d 699, 674 (D.C. Cir 1985)).

21 Despite this universally recognized standard, Mr. Detwiler casts his supposed harm
22 exclusively in financial terms. "Paying for a supersedeas bond in the full amount," Mr.
23 Detwiler contends, would interfere with his "ability to prosecute the appeal." (Mot. to
24 Stay, 12:19-19.) Alleged financial hardship is simply not a recognized "irreparable harm"
25 under Nevada law (or the decisions of other jurisdictions for that matter).

26 Mr. Detwiler also again conjures the false narrative of a double recovery. The Bank
27 cannot "double-dip" by collecting the judgment against Mr. Foust and Mr. Detwiler, he
28 complains. The Bank has two judgments now; it can lawfully collect both. That is not

double recovery. There is no irreparable harm on this score, either.

C. In Contrast, the Bank Will Suffer Irreparable Harm

There will be a serious risk of injury to the Bank if Mr. Detwiler's stay is granted. Mr. Detwiler stands in contempt of this Court. He actively frustrated the Bank's efforts to collect the underlying debt for years. This Court ultimately concluded that Mr. Detwiler and HH followed a contumacious, conscious, willful, and deliberate policy throughout this litigation of cynical disregard and disdain of this Court's orders, particularly the order to turnover and surrender certain vehicles to the Bank, as detailed in the Court's order and judgment of January 9, 2019, all of which this Court memorialized in two lengthy orders issued on January 30, 2020, and March 12, 2020. To stay the execution now would exonerate Mr. Detwiler when he has repeatedly demonstrated his refusal to be forthcoming and honest. A stay would only embolden a known bad actor. Thus, this factor weighs in favor of denying a stay of execution.

D. Mr. Detwiler Has Failed to Show That He Is Likely to Prevail on the Merits

When moving for a stay pending an appeal or writ proceedings, the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. *Hansen*, 116 Nev. at 659, 6 P.3d at 987.

Mr. Detwiler presents no new argument on this critical point. Instead, Mr. Detwiler merely recycles the issues he claims he will present on appeal from his prior briefs. Contempt orders are reviewed under the difficult abuse of discretion standard. *See In re Water Rights of the Humboldt River*, 118 Nev. 901, 906–07, 59 P.3d 1226, 1229–30 (2002) (explaining that the district court has “inherent power to protect dignity and decency in its proceedings, and to enforce its decrees” and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion). Mr. Detwiler fails to discuss how he will overcome the years-long evidentiary record against him under the applicable standard. Accordingly, this factor

1 weighs in favor of denying a stay of execution without any bond.

2 Mr. Detwiler has not been candid with the Court, none of the *Hansen* factors weigh
3 in his favor, and, accordingly, he is not entitled to a stay of execution without a bond.

4 **VI. CONCLUSION**

5 Mr. Detwiler presents no compelling reasons to grant a stay of execution or a total
6 waiver of the normal bond requirement. This Court should deny a stay pending appeal and
7 require Mr. Detwiler to post a bond or, failing that, to be subject to execution.

8 DATED this 27th day of March, 2020.

9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 By: /s/ John E. Bragonje

11 John E. Bragonje

12 State Bar No. 9519

13 jbragonje@lrrc.com

14 3993 Howard Hughes Parkway, Suite 600

15 Las Vegas, NV 89169

16 *Attorneys for Plaintiff Baker Boyer National Bank*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed and
3 served the foregoing document entitled “**OPPOSITION TO NON-PARTY EDWARD**
4 **DETWILER’S MOTION TO STAY EXECUTION OF ORDER FOR SANCTIONS**
5 **PENDING APPEAL AND TO WAIVE SUPERSEDEAS BOND**” through the Court’s
6 electronic filing system on all parties on the Court’s e-service list.

7
8 Michael D. Mazur, Esq.
9 **MAZUR & BROOKS**
10 **A PROFESSIONAL CORPORATION**
11 2355 Red Rock Street, Suite 100
12 Las Vegas, NV 89146
13 *Attorneys for Defendant James Patterson Foust, Jr.*

14 Brenoch Wirthlin, Esq.
15 **HUTCHISON & STEFFEN, PLLC**
16 Peccole Professional Park
17 10080 W. Alta Drive, Suite 200
18 Las Vegas, NV 89145
19 *Attorneys for Edward Detwiler*

20 **The following served via U.S. Mail:**

21 **HARRY HILDIBRAND, LLC**
22 c/o Registered Agent
23 Jared S. Heggen
24 3011 American Way
25 Missoula, MT 59808

26 **HARRY HILDIBRAND, LLC**
27 c/o Registered Agent
28 Jared S. Heggen
P.O. Box 16270
Missoula, MT 59808

DATED this 27th day of March, 2020.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

Exhibit 1

Exhibit 1

DECLARATION OF JOHN E. BRAGONJE

I, John E. Bragonje, hereby swear under penalty of perjury of the laws of the State of Nevada that the following statements are true to the best of my knowledge and belief:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner of the law firm of LEWIS ROCA ROTHGERBER CHRISTIE LLP. I am counsel to the plaintiff and judgment creditor Baker Boyer National Bank (the "Bank") in the lawsuit styled *Baker Boyer National Bank v. Foust*, Clark County, Nevada, district court case number A-17-760779-F.

2. As part of the Bank's continuing efforts to repossess the vehicles at issue in this lawsuit, I sent, on or about March 13, 2020, notice to certain auction houses that the Bank has recently learned were potentially doing business with Mr. Foust, Harry Hildibrand, LLC, and/or Mr. Detwiler. A true and correct copy of the correspondence is attached hereto as Exhibit "B."

3. One of the addressees, Russo & Steele, responded through an email sent by its CEO and owner, Drew Alcazar. A true and correct copy of this correspondence is attached hereto as Exhibit "A."

4. The letter and email attached to this declaration and true and correct copies of the originals.

5. Further your declarant saith naught.

DATED this 27th day of March, 2020.


JOHN E. BRAGONJE

Exhibit A

Exhibit A

Bragonje, John

From: Drew Alcazar <Drew@russoandsteele.com>
Sent: Tuesday, March 17, 2020 2:11 PM
To: Bragonje, John
Cc: 'golexa@jsslaw.com'
Subject: FW: Notice Letter re: James P. Foust
Attachments: 20200316145902247.pdf

[EXTERNAL]

Dear Mr. Bragonge,

Our Law Firm forwarded your correspondence attached.

Please be kindly advised – of the vehicles listed the Exhibits, this is the past disposition relating to Russo and Steele:

6438 - Monterey Auction, August 2006 (Show No sale)

6438		1957	Chevrolet	Bel Air	Convertible
------	--	------	-----------	---------	-------------

8098 - Monterey Auction, August 2019 (Showing sold)

8098	TH263	1971	DeTomaso	Pantera	Coupe
------	-------	------	----------	---------	-------

6444 - Monterey Auction, August -2006 (Showing No Sale) - RECONSINGED 8097 – Monterey Auction, August – 2019 (Showing Sold)

6444		1951	Jaguar	XK 120	Roadster
------	--	------	--------	--------	----------

Consignment Number 8098 – 1971 DeTomaso Pantera Coupe, Sold for \$65,000.00 and 8097 – 1951 Jaguar XK120, Sold for \$67,000.00.

Both vehicles were Titled to Harry Hildibrand LLC. Provided State of Montana Titles were free of any liens or recorded encumbrances.

Should you require any further information, please contact me directly.

Sincerely,
Drew

Andrew M. Alcazar
CEO/Owner
Russo and Steele, LLC

Collector Automobile Auctions
7722 East Gray Road, Suite C
Scottsdale, AZ 85260

www.russoandsteele.com

O: 602-252-2697 ext. 321

F: 602-252-6260



Confidential Statement:

This e-mail and any files transmitted with it are the property of the Russo and Steele, LLC. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this e-mail in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

From: Olexa, Garrett <GOlexa@jsslaw.com>

Sent: Monday, March 16, 2020 2:08 PM

To: Drew Alcazar <Drew@russoandsteele.com>

Subject: Notice Letter re: James P. Foust

Drew,

Please review the attached letter and the enclosures accompanying the same which was received in our office today.

Garrett J. Olexa

golexa@jsslaw.com

[vCard](#) | [bio](#)

P 602.262.5863 | **F** 602.495.2683

Jennings, Strouss & Salmon, P.L.C.

16150 North Arrowhead Fountains Center Drive, Suite 250

Peoria, AZ 85382-4754

jsslaw.com | [map](#)



This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

Exhibit B

Exhibit B

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

702.949.8200 main
702.949.8398 fax
lrrc.com

John Bragonje
Partner
Admitted in Nevada
(702) 474-2625 direct
(702) 216-6173 fax
JBragonje@lrrc.com

March 13, 2020

Our File Number: 21322-00108

VIA U.S. MAIL
VIA E-MAIL (JIMLEZIE@GMAIL.COM; TOMLARKIN28@GMAIL.COM)

CONFIDENTIAL

James Philip Lezie
2512 Artesia Blvd., Ste. 210
Redondo Beach, CA 90278-3280

Tom Larkin
12250 Corte Sabio, Number 2201
San Diego, CA 92128

Barrett-Jackson Auction Company, L.L.C.
Attn: Legal Department
c/o Capitol Corporate Services, Inc.
8825 N. 23rd Ave., Suite 100
Phoenix, AZ 85021

Russo and Steele, LLC
Attn: Legal Department
c/o Jennings Strouss & Salmon PLC 16150
N. Arrowhead Fountains Center Dr., Ste 250
Peoria, AZ 85382

Attn: Legal Department
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

**RE: FRAUD ALERT AS TO VEHICLES PURPORTEDLY OWNED BY JAMES P. FOUST;
NAOMI FOUST; HARRY HILDIBRAND, LLC; STARDUST CLASSIC, LLC; OR RON
VEGA**

To Whom It May Concern:

The purpose of this letter is to warn you about a case of fraud that may affect your businesses. We respectfully request that you refuse any dealings with respect to vehicles listed in Exhibit 1 to this letter because they are stolen. We provide additional details below and welcome any inquiries you may have.

We Are Attorneys Representing a Bank that Now Owns the Vehicles.

We represent Baker Boyer National Bank (the "Bank"). James P. Foust received a loan in the original amount of \$1,077,600 from the Bank. After his refusal to repay the loan, the Bank obtained a judgment in Washington State on July 20, 2017. The judgment is against both Mr. James P. Foust and his marital community and is presently valued at approximately \$1.4 million. The judgment was later registered or enrolled in the courts of the States of Nevada and California on August 31, 2017, and April 12, 2018, respectively.

The Vehicles Were Ordered to Be Surrendered to the Bank to Satisfy a Judgment.

When he applied for the loan, Mr. Foust represented to the Bank that he owned a collection of 59 expensive, rare, and exotic vehicles, including Corvettes, Shelby Cobras, a Cadillac, Mercedes, Porsches, and Lamborghinis. In response to court orders to turn over the vehicle collection to satisfy the judgment, Mr. Foust claimed he had sold all vehicles to an entity called Harry Hildibrand, LLC and other third parties or that a company called StarDust Classic, LLC or a person called Ron Vega possessed the cars. The Nevada court conducted multiple trials over the next two years to resolve these issues and the competing claims to the cars. Ultimately, the Nevada court ruled that Mr. Foust had lied repeatedly under oath and had engaged in fraudulent dealings designed to frustrate the Bank's lawful collection efforts. The court ruled that Mr. Foust still possessed and controlled all the vehicles and ordered him and his agents—Harry Hildibrand and its manager Mr. Edward Detwiler, StarDust, and Ron Vega—to surrender all vehicles to the Bank.

When these defendants refused to obey the court's orders, they were held in contempt: Mr. Foust was ordered to be incarcerated until he complied, and Mr. Detwiler was personally fined \$100,000. These persons are the worst kinds of scofflaws and frauds; activities such as theirs make lending more expensive for everyone. A list of the vehicles ordered to be surrendered is included as Exhibit 1 to this letter. We collect the surrender order and the contempt orders in Exhibit 2.

Mr. Foust and His Associates Continue to Defy Court Orders.

We are given to understand that despite the court's repeated orders over many years, Mr. Foust's wife, Naomi Foust, and potentially certain other of Mr. Foust's associates involved in the proceedings, intend to sell the vehicles that are the subject of the court's turn over and contempt orders. We understand that Mr. Foust has previously done business with Russo and Steele and The Hagerty Group, LLC. We believe these persons may intend to use other auction houses such as Barret Jackson. Given the extensive campaign of fraud waged by Mr. Foust, Mr. Detwiler, and their associates, we are writing to ask that you refuse to do any business with respect to these vehicles, including insuring them or offering them for sale or auction at any time. We ask that you cooperate, as responsible corporate citizens, so that the Bank may continue the lawful repossession of this collateral. The Bank intends to sue any alleged transferee of these cars to quiet title in its name, to recover damages for fraudulent transfer, and any other appropriate remedy.

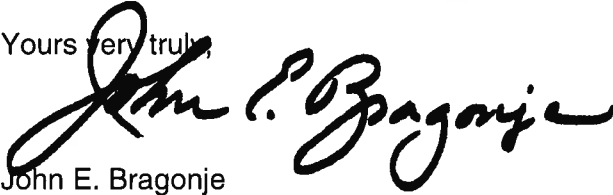
The Bank Issues a Separate Warning for Mr. Foust's Associates.

Quite separately, we warn the other individual persons addressed in this letter—not the businesses. We know from the Nevada court proceedings that you, Mr. Lezie and Mr. Larkin, have assisted Mr. Foust and Mr. Detwiler in their multi-year campaign of deception. The Bank will exercise all lawful means to hold you personally accountable for any continued cooperation in this conspiracy, including any continuing attempt to sell or abscond with the vehicles. We think by now you understand the Bank's resolve, so you know this is no idle comment.

Conclusion.

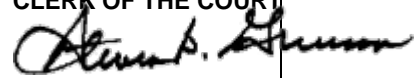
We thank you businesses for your attention and anticipated cooperation. I can be reached at the contact information indicated in this letter. We would be pleased to address any concerns or questions you may have. Thank you for your anticipated cooperation.

Yours very truly,

A handwritten signature in black ink, reading "John E. Bragonje". The signature is fluid and cursive, with a large initial "J" and a stylized "B".

John E. Bragonje
Lewis Roca Rothgerber Christie LLP

JB



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BAKER BOYER NATIONAL
BANK,

Plaintiff,

vs.

JAMES FOUST, JR.,

Defendant.

CASE#: A-17-760779-F

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
MONDAY, MARCH 30, 2020

**RECORDER'S TRANSCRIPT OF TELEPHONIC HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

JOHN E. BRAGONJE, ESQ.

For the Defendant:

BRENOCH R. WIRTHLIN, ESQ.

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Monday, March 20, 2020

2
3 [Case called at 9:15 a.m.]

4 THE COURT: -- 60779. And who do we have on the line for
5 this?

6 MR. WIRTHLIN: Good morning, Your Honor, this is Brenoch
7 Wirthlin at Hutchison Steffen on behalf of Mr. Detwiler.

8 MR. BRAGONJE: Good morning, Your Honor, John Bragonje
9 at Lewis Roca on behalf of the Plaintiff Baker Boyer National Bank.

10 THE COURT: All right, very well. This is Mr. Detwiler's Motion
11 for a Stay of Execution and for Waiver of Supersedeas Bond.

12 Mr. Wirthlin, you may be heard.

13 MR. WIRTHLIN: Thank you, Your Honor. Excuse me, I'll be
14 brief. I think that -- I know the Court's read all the briefings, but just a few
15 points to highlight.

16 I don't think there's any dispute that a waiver or of the
17 supersedeas bond and stay of execution is certainly within the Court's
18 discretion. I don't think anybody disputes that.

19 And I think that, you know, just the factors in this case really
20 kind of support a waiver in this instance. I mean, obviously, Mr. Detwiler's
21 not the primary debtor. This all rises out of a judgment collection against
22 Mr. Foust as the Court's well aware.

23 But I think, you know, in addition to that, you got the situation
24 here where the bank really has kind of admitted, and we looked back
25 through the hearing on February 12th, where the Court questioned the

1 bank about efforts taken to collect what apparently vehicles that are at
2 issue here.

3 And, really, the bank hasn't really done anything to do that. And
4 it's really kind of unfair to put that burden. And I understand it's a
5 separate judgment, but to put that burden on Mr. Detwiler arising out of
6 these vehicles.

7 THE COURT: Could I --

8 MR. WIRTHLIN: The other aspect --

9 THE COURT: Mr. Wirthlin?

10 MR. WIRTHLIN: Go ahead, I'm sorry.

11 THE COURT: Yes, sir. Yeah, no, I remember that discussion
12 at the hearing. I appreciate you reminding me of that.

13 And I think another concern of mine at the time is that there had
14 been an order for Mr. Detwiler to affirmatively, you know, turn over the
15 property. And I believe that -- well, I'm positive that order was in effect
16 before the effective date of his resignation.

17 And so, in my mind, the thinking was, well, even if the bank
18 could have done more to find out where the cars were being stored, or
19 hidden, or concealed, or used, whatever, that there was still an affirmative
20 obligation with Mr. Detwiler to obtain them and turn them over.

21 So that's a point that in my mind carried the day more than the
22 bank's perhaps incomplete efforts. But anyway, go ahead.

23 MR. WIRTHLIN: Sure, thank you, Your Honor. In addition to
24 that, I think you've got a couple of situations. I mean, I'm in the difficult
25 position of basically arguing to Your Honor that we're going to -- we've got

1 a chance of prevailing on appeal, which is not a great position for us to be
2 arguing, but nevertheless I think the statutes require --

3 THE COURT: That's a fine argument. It's a fine argument.

4 MR. WIRTHLIN: Sorry?

5 THE COURT: And I could have made a mistake. I don't think
6 so, but I respect the system and your ability to ask for that.

7 MR. WIRTHLIN: Sure, no, I appreciate that, Your Honor. I
8 think that there are some issues with the bank's pursuit of Mr. Detwiler. I
9 think, first of all, and I don't think the bank has responded to this, Baker
10 Boyer National Bank, a Washington corporation, does not exist.

11 Now that's the name that the judgment, and by judgment, I
12 mean the 318,000 against Mr. Detwiler is -- that's the name of the entities
13 that that is in.

14 And that's not a -- that's not a legally recognized entity. There
15 may be some additional issues there that the bank can address, but that's
16 one that they're going to have to address on appeal.

17 The other part of it, Your Honor, is we're talking about a
18 situation here where, you know, this all kind of comes out of the purported
19 vehicles.

20 I noticed the bank attached something to their opposition with
21 respect to a couple of the vehicles being sold or auctioned. We have
22 absolutely no knowledge of that.

23 It sounds like the bank has a lot more knowledge of this than
24 they're letting on. And that's kind of what I was getting to in terms of my
25 current comments about the bank purportedly knowing where these

1 vehicles were and doing literally nothing to go collect on them, then
2 pursuing Mr. Detwiler simply because he shows up at the hearing
3 particularly in this time.

4 I mean, we've got serious, you know, recession that we're
5 headed for or in potentially. And, you know, the bank's sitting here saying,
6 well, let us pursue Mr. Detwiler for this \$318,000 on top of whatever
7 they've got against Mr. Foust, which they may or may not be pursuing.

8 But I think not giving the stay to Mr. Detwiler really incentivizes
9 the bank to continue its efforts of pursuing, you know, the individual who
10 shows up at the hearing rather than the person who's actually responsible
11 for the judgment.

12 If you go through the factors from Nelson -- Heer versus Heer
13 as well as the Hilton [phonetic] case, I think we've got factors that strongly
14 weigh in favor of the stay.

15 You know, the bank talked about the fact that Mr. Detwiler
16 doesn't have the ability to pay and somehow that weighs in favor of him
17 having to pay.

18 I think that that's kind of logically, you know, inconsistent. It's
19 the whole point is he doesn't have the ability to post a bond. I don't think
20 that that weighs then in favor of him being required to post bond.

21 The other part of it is just from a standpoint of preserving the
22 status quo and public policy, I mean, you've got really kind of three
23 part -- two parts to this \$318,000, right? There's the \$100,000 sanction
24 and then there's the \$218,000 in fees and costs, you know, banks fees,
25 attorneys' fees.

1 If you talk to -- and I know we've raised these arguments and I
2 hope the Court will permit me raise them again, but just to put them out
3 there and discuss in case the Court has any questions, when it comes to
4 that \$100,000 sanction, Your Honor, we believe that's really -- that's
5 punitive.

6 It's in terms of, you know, awarding -- let me back up. It's
7 based on the Court's determination that Mr. Detwiler did not comply with
8 the January 2019 order with the order of contempt as I understand it.

9 The difficulty with respect to that \$100,000, you know, a couple
10 of main points. Number one, the statute, as we point out, I think it's
11 22.050, limits the -- if you're going to talk about civil contempt sanctions,
12 limited to \$500.

13 And if there is a proceeding to punish someone for having failed
14 to comply with a contempt order, that's in a criminal contempt realm,
15 requires a separate notice, hearing, all those kinds of things.

16 With respect to the \$218,000, I mean, it's our position, Your
17 Honor, I'm sure the Court has made a determination and we understand
18 that. We respect that.

19 But we up on appeal, our argument's going to be that Mr.
20 Detwiler never was a party to this action. He was simply brought in as a
21 nonparty and has remained a nonparty as that term is defined by Nevada
22 statutes and the Nevada Supreme Court. That would eradicate the
23 entirety of that attorneys' fee order, we believe.

24 But even if you just took -- even if we went with the position that
25 he was a party at some point, as the Court pointed out in its minute order,

1 the -- you know, there was no order compelling Mr. Detwiler to do
2 anything until January 2019, but the attorneys' fee award includes fees
3 and costs from March of 2018 nearly -- what is that eight months before,
4 nine months before, which totaled about 118,000.

5 So, in our opinion, you've got, you know, really that \$100,000 --
6 118,000 in the attorney fee award that should be eradicated as well. And
7 if you look at the remaining 100-, there's really no apportionment among
8 the various Defendants.

9 I mean, I think that the entirety of the -- of what the bank was
10 spending at the time was collecting on its judgment against Mr. Foust.

11 We raised the issues about this, you know, Callie v. Bowling
12 and Harry Hildibrand being brought in as well. And I won't rehash those
13 issues, but my point is just as far as apportionment goes, there really is no
14 apportionment among that remaining 100,000.

15 So I think the other, you know, just a couple of points in
16 conclusion here. The bank says that there are no other creditors than Mr.
17 Detwiler. That's simply incorrect.

18 And that weighs strongly in favor of a bond being waived and
19 stay of execution, particularly with this time as we put in our motion with
20 the current economic climate that has directly impacted Mr. Detwiler
21 negatively and will continue to do so. I'm sure the Court's aware that the
22 stay order has been, or not the stay order, the -- I guess lockdown has
23 been increased.

24 We've got a moratorium on evictions. And yet, the bank seeks
25 to continue pursuing Mr. Detwiler because they know where he is as

1 opposed to where Mr. Foust is. And that's patently unfair.

2 A lot of the other -- the exhibits that they attach, you know, with
3 respect to the vehicle, being sold and provided by Harry Hildibrand has,
4 you know, Mr. Detwiler may not have actually submitted his resignation till
5 September, but he's testified multiple times that he was out of the
6 company and it had nothing to do with it for several months, if not a year
7 prior to that. So in addition to it being hearsay, I think that that evidence
8 really doesn't cut in favor of a denial of the motion in any way.

9 The other part, Your Honor, is there's -- we disagree completely
10 with the bank's assertion, which is unsupported, that this Court does not
11 have the authority to either prohibit, or excuse me, try to reduce the stay
12 or the bond or provide something effective, for example, a six-month stay,
13 which would allow us to then go through the appeal process, do the
14 mandatory settlement conference.

15 And if we can't resolve it, then we could go to the Nevada
16 Supreme Court and ask that the stay be extended beyond that. So I think
17 really what it comes down to is this Court has discretion to do what it feels
18 is appropriate.

19 And I understand the Court's position. I understand the bank's
20 position. Mr. Detwiler is simply in a position where he -- you know, the
21 policy I think, public policy in terms of preserving the status quo really
22 warrants either some type of significant reduction in the bond, or like I
23 said, complete stay, or at least something to the extent of maybe six
24 months to allow the process to go forward, particularly in the time that
25 we're at. So unless the Court has any questions, that's what I have for my

1 argument.

2 THE COURT: No, thank you, Mr. Wirthlin. I appreciate your
3 great explanation of your position.

4 All right, Mr. Bragonje?

5 MR. BRAGONJE: Good morning, Your Honor. Good morning
6 to all. Just a couple of quick points in response.

7 Of course, I'm always happy to answer any questions the Court
8 might have. I'd like to talk a little bit more about the -- you know, what
9 we're actually dealing with here, which is a request for a stay.

10 You know, we've gone through in our opposition papers the
11 case law that governs here in Nevada. And, you know, the first point is
12 that a stay without a bond is something that is exceptionally rare.

13 And that only has to occur where a district court has absolute
14 confidence that the judgment debtor will be able to promptly pay the full
15 judgment with interest after an unsuccessful appeal. You know, there's
16 been some talk about a six-month stay and that kind of thing.

17 Well, you know, appeals in this state don't take six months.
18 They take two to three years. And if a debtor wants to stay execution
19 during that time, they have to post a bond.

20 And, you know, I have to say this is really one of the more
21 extraordinary motions I've seen in recent times because I feel like the
22 opposition was written for us.

23 The standards in Nevada, and they're really no different around
24 the country, indicate to us as practitioners that if someone doesn't have
25 the ability to satisfy a judgment, that is not a reason to [indiscernible].

1 That's a reason to enforce the bonding requirement.

2 So to grant a stay where Mr. Detwiler has explicitly and
3 repeatedly said that he has no ability to pay the judgment or to pay a bond
4 premium would just throw all the precedent on his head.

5 The -- you know, we've gone through the Nelson Heer -- versus
6 Heer factors. A lot of those, you know, normally with respect to opposing
7 counsel weren't even addressed.

8 There's a lot of talk about Mr. Foust's judgment on the -- you
9 know, this is a judgment and an order against Mr. Detwiler and he has to
10 evaluate the ability to collect his own judgment and the collectability of his
11 own judgment.

12 The essence of that Nelson versus Heer case is that a
13 judgment creditor has an easy path to execute the judgment.

14 And the bank doesn't have an easy path to execute the
15 judgment. It's dealing with people, including Mr. Detwiler, that don't want
16 to participate in this process in an honored -- in an honest and
17 straightforward way. That makes it difficult. So these -- all of this weighs
18 against a stay and against the granting of a bond.

19 And then finally, when we examine everything under the
20 Hampton [phonetic] versus District Court case, you know, that case that
21 has sort of a lot of factors.

22 You know, I think we've gone through nine factors in my papers,
23 but the essence of that test is, you know, that an appeal would be
24 pointless without a stay.

25 And, you know, I think it's just like the case law that deals with

1 injunctions. Our laws in Nevada and everywhere else don't recognize
2 monetary harm as irreparable harm. It's got to be something else.

3 And despite this, Mr. Detwiler cast his alleged harm exclusively
4 in financial terms. The entire point of a civil action is to enforce a
5 judgment.

6 And somebody can certainly choose to appeal [indiscernible]
7 stay the judgment. So I think under these precedents, it's not even close.
8 No stay is permitted under these circumstances.

9 There's been a lot of talk about the bank's, you know, efforts to
10 collect the cars. And I want to just say this. The bank has been and
11 continues to try to collect the cars.

12 They apparently are not here in Nevada. The bank has
13 [indiscernible] a judgment in California. And I'd rather not get into the
14 particulars, because I feel like it would be giving our playbook to the
15 enemy here, because I'm convinced that Mr. Detwiler is actively involved
16 in flouting the efforts to collect the vehicles, but I'll only just say this.

17 Perhaps the Court hasn't heard a great deal about that
18 because, you know, there's a separate action in California. We've taken a
19 judgment on the road. It's in California and we're in the process of trying
20 to seize whatever vehicles might be left.

21 So with that, Your Honor, of course, I can answer any
22 questions, but this issue under the relevant standards is not even close. I
23 believe that this motion is really frivolous under the -- under the relevant
24 standards. Thank you.

25 THE COURT: What about the issue of the --