

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

EDWARD N. DETWILER, an  
individual,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR CLARK  
COUNTY; THE HONORABLE  
RICHARD SCOTTI, DISTRICT  
JUDGE, DEPT. 2,

Respondent,

and

BAKER BOYER NATIONAL  
BANK, a Washington corporation,

Real Party in Interest.

Supreme Court Case No.: 81220

District Court Case No.: A-17-76079-1  
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**PETITIONER'S RESPONSE TO RESPONDENT'S SECOND MOTION  
FOR EXTENSION TO FILE ANSWER AND  
COUNTERMOTION FOR STAY**

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Pursuant to pursuant NRAP 8 and 27(e), Petitioner, Edward N. Detwiler (“Detwiler”), files this response to Respondent Baker Boyer National Bank, a Washington Corporation’s (“BBNB”) second Motion for Extension to File Answer (“Second Motion”) and renewed countermotion motion for stay. This response is supported by the following Memorandum of Points and Authorities and the documents previously filed in this proceeding.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. Underlying Contempt Judgments and Basis for Writ Petition**

The Bank sought to hold Detwiler in civil contempt of court based upon an ambiguous, unclear order issued in January 2019 by Trial Court Judge Richard Scotti (the “Trial Court”). During the contempt trial, the Trial Court violated Detwiler’s constitutional and due process violations, including not allowing Detwiler (who, at the time, was not represented by counsel) to confront and cross-examine adverse witnesses. After committing these constitutional and due process violations, the Trial Court entered a civil order of contempt against Detwiler (“Detwiler Contempt Order”).

After obtaining counsel, Detwiler filed a Rule 60(b) motion, arguing that he had resigned as manager of HH in September, 2019. The Trial Court vacated the civil contempt findings and recalled the warrant against Detwiler. However, the Trial Court made additional findings (over the objection of Detwiler) that Detwiler

should be sanctioned an unconditional amount of \$100,000.00 as punishment for his allegedly contemptuous violation of the Trial Court's January 2019 Order, as well as an additional \$218,855.52 in fees and costs ("Sanctions Order"). The Sanctions Order was unconditional and did not contain a purge clause, thereby constituting a criminal sanction. A subsequent judgment ("Judgment") was entered against Detwiler based on the Sanctions Order. Detwiler was provided no proper notice or opportunity to be heard on any criminal charge, nor even given notice that criminal sanctions were possible.

The Writ Petition addresses the Trial Court's violations of Detwiler's constitutional and due process rights, afforded to him under the U.S. Constitution - 5th, 6th and 14th Amendments and the Nevada Constitution - Article 1, §§ 3, 8(1) and 8(2), as well as specifically provided for under NRS 50.155(2)(a) & (d), NRS 171.204(1)(g), *Awad v. Wright*, 794 P.2d 713, 106 Nev. 407 (1990), *Lewis v. Lewis*, 132 Nev. 453, 373 P.3d 878 (2016) and *Warner v. District Court*, 906 P.2d 707, 111 Nev. 1379 (1995). Further, the Trial Court issuance of the Contempt Judgments against Detwiler was also in violation of NRS 22.030(3), NRS 22.100(2) & (3) and EDCR 7.60(b).

The above synopsis of the basis for Writ Petition is not intended to limit or waive any arguments Detwiler asserted in his Writ Petition, but rather is to provide this Court background regarding the severe, grave miscarriage of justice that has

occurred before the Trial Court and continues so long as the Judgment remains in place, absent issuance of a stay.

## **II. Prior Motions to Stay**

After entry of the Judgment, on March 24, 2020, Detwiler filed a Motion to Stay Execution and Waive Supersedeas Bond, where Detwiler addressed the factors enumerated in *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). Despite the *Nelson* factors strongly weighing in favor of Detwiler, the Trial Court denied the Motion.

Immediately upon filing his Writ Petition, on May 22, 2020 Detwiler also filed with this Court a Motion to Stay based upon the specific factors enumerated under NRAP 8(c) and supported by the Nevada case law. The motion was denied.

## **III. Bank ordered to Answer and extensions sought by BBNB**

This Court ordered BBNB to Answer Detwiler's Writ Petition by June 25, 2020. On the deadline to file its Answer, BBNB filed its first Motion for Extension, requesting an additional 30 days. Understanding the COVID-19 situation, Detwiler filed his notice of non-opposition to BBNB's first extension request. This Court granted BBNB until July 27, 2020 to file its Answer.

During the time granted for an extension, BBNB continued collection efforts, including obtaining a Charging Order, which included language not authorized by NRCP 45 or Administrative Order #20-17 (*i.e.*, seeking records from third-party

businesses associated with Detwiler).<sup>1</sup> In addition, BBNB has sought to enforce the Charging Order in the interim.

BBNB has now come, again on the last day, and asked for yet another 30 day extension to Answer the Writ Petition. While Detwiler is sympathetic to BBNB's counsel's situation, BBNB is currently seeking to hold an improperly obtained Judgment over Detwiler's head, and is aggressively moving forward with collection related activities. BBNB has failed to address how BBNB's counsel can still somehow continue with collection efforts but cannot respond to the Petition.

#### **IV. Further granting of extensions should result in this Court issuing a stay**

Fundamentally, Detwiler does not oppose BBNB's current extension request. Detwiler's concern is that BBNB is using the COVID-19 pandemic as a tactical advantage to continue to delay the filing of its Answer in order to get additional time to collect on its unconstitutional judgment, which is impacting Detwiler's livelihood and employment. The Bank's strategy is clear in this regard: delay answering as long as possible, continue collection efforts and force Detwiler into bankruptcy, resulting in potential dismissal of Detwiler's the Writ Petition.

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<sup>1</sup> The Bank's inclusion with the Charging Order violates NRCP 45 on several grounds (*i.e.*, not providing advance notice of intent to seek records and not issuing/serving Subpoenas). With COVID-19, A.O. #20-17 was issued which requires "advance approval of the discovery commissioner to issue subpoenas under NRCP 45." The Bank should not be allowed to use COVID-19 as both a sword and a shield, while also disregarding NRCP 45 and A.O. #20-17.

This Court has previously held that:

The timeliness provisions written into the rules will, as a general proposition, be enforced by the courts in order to promote the timely and efficient processing of cases. In effect, these provisions recognize judicial commitment to the proposition that “**justice delayed is justice denied.**”

*See Dougan v. Gustaveson*, 835 P.2d 795, 799, 108 Nev. 517, 522 (1992) (emphasis added), *abrogated on other grounds by Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007). Each extension requested by BBNB delays Detwiler’s ability to obtain justice.

While this Court will likely grant BBNB its extension requested, Detwiler asserts that a stay is warranted in this case so that BBNB cannot obtain an unfair advantage over Detwiler, while both sides are impacted by the COVID-19 pandemic. *See* A.O. #20-17, at p. 9 (“This is not the time to press for unwarranted tactical advantages...or otherwise take advantage of the challenges presented due to the current pandemic”); *see also Koerschner v. State*, 116 Nev. 1111, 1122, 13 P.3d 451, 459 (2000) (holding that this Court “should not stray from this Court's overriding judicial concern of procedural fairness”).

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Further, the *Nelson* factors weigh in favor of granting a stay.<sup>2</sup> The collection process is not complex in this instance, as there is no dispute that Detwiler is an individual residing locally. The second *Nelson* factor weighs in favor of a stay as it is also undisputed that BBNB already has obtained a judgment against Detwiler. As the Trial Court based its decision to deny a stay primarily on perceived prejudice to BBNB, the third factor is inapposite. Further, while the fourth factor is also inapposite, the fifth *Nelson* factor weighs in favor of granting a stay as a bond for the entire amount of the Judgment would potentially put any potential other creditors of Detwiler in an unsecure position.

More fundamentally, procedural fairness requires this Court to issue a stay so that BBNB uses the extended time to prepare and file its Answer, rather than to collect upon its unconstitutional judgment and improperly force Detwiler into

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<sup>2</sup> In *Nelson* the Court set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

(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.

*See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006)

bankruptcy. Procedural fairness is especially applicable here, when Detwiler took just 51 days to prepare and file his Writ Petition, whereas, based upon the recent extension request, BBNB is looking at a total of 90 days to prepare and file its Answer to the Writ Petition.<sup>3</sup> This does not take into account any future extension requests by BBNB. Procedural and substantive fairness require this Court to issue a stay while providing BBNB with its requested extension.

### **III. CONCLUSION**

For all these reasons, Detwiler respectfully requests this Court grant a stay of execution on the Judgment during the pendency of these writ proceedings.

DATED: August 3, 2020.

**HUTCHISON & STEFFEN**

By /s/ Brenoch Wirthlin, Esq.

Mark A. Hutchison, Esq. (No. 4639)

Michael K. Wall, Esq. (NV Bar 10282)

Brenoch Wirthlin, Esq. (NV Bar 10282)

*Attorneys for Petitioner*

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<sup>3</sup> From the time the Trial Court entered its final Judgment (on April 1, 2020) to the date that Detwiler filed his Writ Petition (on May 22, 2020), there were 51 days.



## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served the foregoing **PETITIONER'S RESPONSE TO RESPONDENT'S SECOND MOTION FOR EXTENSION TO FILE ANSWER AND RENEWED MOTION FOR STAY** on the following parties, via the manner of service indicated below, on August 3, 2020:

***Via Electronic Service through E-Flex System:***

John Bragonje, Esq.  
Daniel Polsenberg, Esq.  
Abraham Smith, Esq.  
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*Attorney for Real Party-in-Interest*

***Via US Mail:***

The Honorable Richard Scotti  
District Court, Dept. 2  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, Nevada 89155  
Phone No.: (702) 671-4318  
*Respondent*

James Foust or his Estate  
8175 Arville St.  
Las Vegas, Nevada 89139  
*Defendant*

Harry Hildibrand, LLC  
3011 American Way  
Missoula, Montana 59808  
*Third Party*

Dated: August 3, 2020.

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