

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER GARDNER AND CHRISTIAN
GARDNER, INDIVIDUALLY AND ON
BEHALF OF MINOR CHILD, LELAND
GARDNER,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK; AND
THE HONORABLE JERRY A.
WIESE II, DISTRICT COURT JUDGE

and

BLISS SEQUOIA INSURANCE & RISK
ADVISORS, INC. and HUGGINS
INSURANCE SERVICES, INC.

Real Parties in Interest.

Case No.: 81600

Electronically Filed
Aug 20 2020 01:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF STAY OF PROCEEDINGS

Petitioners Peter and Christian Gardner (the “Gardners”), individually and on behalf of minor child, Leland Gardner, hereby provide notice that on August 20, 2020, the district court entered a complete stay of proceedings pending the resolution of their Petition for Writ of Mandamus (the “Petition”). In addition to finding that the object of the Petition would be defeated in the absence of a stay, the district court held “judicial economy requires the determination of [the issues presented by the Gardners’ Petition] by the Supreme Court” because the counterclaims at issue in the

Petition may result in a significantly expanded trial in this action. A true and correct copy of the district court's order is attached hereto as Exhibit 1.

Dated: August 20, 2020

CAMPBELL & WILLIAMS

By /s/ *Philip R. Erwin*

DONALD J. CAMPBELL, ESQ. (1216)

PHILIP R. ERWIN, ESQ. (11563)

SAMUEL R. MIRKOVICH (11662)

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 20th day of August 2020, I caused true and correct copies of the foregoing Notice of Stay of Proceedings to be delivered to the following counsel and parties:

VIA ELECTRONIC MAIL:

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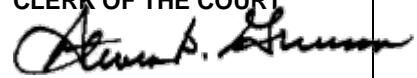
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/s/ **John Y. Chong**
An employee of Campbell & Williams

EXHIBIT 1



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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN
GARDNER, individually and on behalf of
minor child, LELAND GARDNER, as
assignees of Third-Party Plaintiff Henderson
Water Park, LLC dba Cowabunga Bay Water
Park,

Third-Party Plaintiffs,

vs.

BLISS SEQUOIA INSURANCE & RISK
ADVISORS, Inc., an Oregon corporation;
HUGGINS INSURANCE SERVICES, Inc., an
Oregon corporation,

Third-Party Defendants.

AND ALL RELATED CLAIMS

Case No.: A-15-722259-C
Dept. No.: XXX

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' MOTION TO
STAY PROCEEDINGS PENDING
PETITION FOR WRIT OF MANDAMUS**

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion to Stay Proceedings Pending Petition for Writ of Mandamus was entered in the above-captioned matter on August 20, 2020, a true and correct copy of which is attached hereto.

DATED this 20th day of August, 2020.

CAMPBELL & WILLIAMS

/s/ Donald J. Campbell

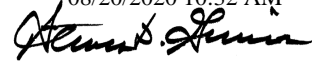
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Campbell & Williams, and that on the 20th day of August, 2020, I caused a true and correct copy of the foregoing document entitled **Notice Of Entry Of Order Granting Plaintiffs' Motion to Stay Proceedings Pending Petition for Writ of Mandamus** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court's electronic filing system in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.:

By: /s/ John Y. Chong
An Employee of Campbell & Williams


CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN
GARDNER, individually and on behalf of
minor child, LELAND GARDNER, as
assignees of Third-Party Plaintiff Henderson
Water Park, LLC dba Cowabunga Bay Water
Park,

Third-Party Plaintiffs,

vs.

BLISS SEQUOIA INSURANCE & RISK
ADVISORS, Inc., an Oregon corporation;
HUGGINS INSURANCE SERVICES, Inc., an
Oregon corporation,

Third-Party Defendants.

AND ALL RELATED CLAIMS

Case No.: A-15-722259-C
Dept. No.: XXX

**ORDER GRANTING PLAINTIFFS'
MOTION TO STAY PROCEEDINGS
PENDING PETITION FOR WRIT OF
MANDAMUS**

Third-Party Plaintiffs' Motion to Stay Proceedings Pending Petition for Writ of Mandamus came before this Court on August 18, 2020. Pursuant to A.O. 20-01 and subsequent Administrative Orders, this matter is deemed "non-essential" and may be decided after a hearing (held by alternative means,) decided on the papers, or continued. The Court has determined that it would be

appropriate to decide this matter on the pleadings, and consequently, decided this matter on the papers and issued a minute Order memorializing its decision on August 18, 2020.

I. FINDINGS

1. Plaintiffs argue that they will suffer “irreparable harm” if the counterclaims of the Brokers were to proceed without a stay because (1) it would force them to defend against counterclaims at trial to prevent a setoff against their own recovery from the brokers; and (2) the Brokers’ counterclaims against Henderson Water Park (“HWP”) greatly expand the scope of discovery in this action and effectively require the parties to relitigate Plaintiffs’ original claims related to the drowning of Leland Gardner.

2. Plaintiffs also argue that without a stay, this matter will proceed to trial in January 2021, before Plaintiffs’ Petition for Writ of Mandamus will likely be decided by the Nevada Supreme Court.

3. Plaintiffs argue that HWP has also been dragged back into this litigation as a party and will be required to defend itself for a second time even though Plaintiffs settled their claims with HWP last year.

4. Plaintiffs claim that they lack an adequate remedy at law absent a stay.

5. Plaintiffs suggest that as positioned, the case will take 5-7 weeks to try instead of 5-7 days, without the counterclaims.

6. Third Party Defendant Bliss Sequoia opposed Plaintiffs’ Motion on the grounds that should the jury award any sum for the counterclaims asserted by the Brokers, the appropriate party could then appeal this Court’s failure to dismiss the counterclaims in the first instance, at that time.

7. Third-Party Defendant Bliss Sequoia asserts that no stay of the proceedings is necessary or warranted since the only “harm” that would befall Plaintiffs absent a stay is the expected burden of defending against claims asserted.

8. A merits-based inquiry should only preclude a stay when the appeal or writ petition “appears to be frivolous or the stay is sought purely for dilatory purposes.” *State v. Robles-Nieves*, 129 Nev. 537, 546, 306 P.3d 399, 406 (2013).

9. A party opposing such a stay request must make a “strong showing that appellate relief is unattainable.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). However, “[j]udicial economy and sound judicial administration militate against the utilization of mandamus petitions to review orders denying motions to dismiss and motions for summary judgment.” *State ex. rel. Dept. of Transp. v. Thompson*, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983).

10. When seeking a stay of the proceedings pending resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ, the Court “will generally consider the following factors: (1) whether the object of the appeal or writ will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” *See* NRAP 8(c); *see also Hansen v. Eighth Judicial Dist. Court ex. rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

11. The Court finds that the object of the appeal or writ would be defeated if the stay was denied, because the parties would be compelled to conduct lots of duplicative discovery, and the case could potentially proceed to trial before the Supreme Court decided this issue.

12. The Court further finds that, if in fact, the counterclaims would result in a 5-7 week trial, instead of a 5-7 day trial, judicial economy requires the determination of this issue by the Supreme Court before the District Court ventures into such an extended trial.

1 13. The Court does not find that the appellant/petitioner would suffer irreparable injury
 2 or serious injury, except for the additional discovery which would be required, and the potential
 3 that the Trial may proceed forward prior to the determination of this issue.

4 14. The Court does not find that the Respondent would suffer irreparable or serious
 5 injury if the stay were granted.

6 15. As far as the likelihood of success on the merits, if this Court felt like the Petitioners
 7 were likely to prevail on the writ, this Court would have decided the issue differently before.
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9 16. While the Court does not believe that the Petitioners have a likelihood of success,
 10 there is a possibility of success, and judicial economy weighs in favor of granting the stay.

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II. ORDER

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that the Plaintiffs' Motion to Stay Proceedings Pending Petition for Writ of Mandamus is hereby GRANTED, and the case shall be STAYED until resolved by the Nevada Supreme Court.

IT IS HEREBY FURTHER ORDERED that a status check re: Resolution of Petition for Writ of Mandamus is hereby set in Department 30, on November 18, 2020.

IT IS HEREBY FURTHER ORDERED that a bond will need to be posted by the Plaintiff, in the amount of \$5,000.00 before the Stay will be effective, but upon posting of the bond, the case will be stayed until resolved by the Nevada Supreme Court.

IT IS SO ORDERED this ____th day of August, 2020. Dated this 20th day of August, 2020

DISTRICT COURT JUDGE

738 E1F 4D16 0E5C
Jerry A. Wiese
District Court Judge

Respectfully submitted by:

CAMPBELL & WILLIAMS

/s/ Philip R. Erwin

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Attorneys for Plaintiffs

1 Approved as to form and content:

2
3 DATED this 19th of August, 2020.

4 HUTCHISON & STEFFEN, PLLC

DATED this 19th of August, 2020.

WOOD, SMITH, HENNING & BERMAN, LLP

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12 *Attorney for Defendant/Third-Party*
13 *Defendant Bliss Sequoia Insurance &*
14 *Risk Advisors, Inc. And Huggins*

Attorneys for Fourth Party Defendant Fred A.
Moreton & Company d/b/a Moreton & Company

15 DATED this 19th of August, 2020.

16 LAXALT & NOMURA, LTD

17 /s/ Steven E. Guinn

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