

IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, INA AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ADRIANA ESCOBAR,

Respondents,

WLAB INVESTMENT, LLC, TKNR,
INC., a California Corporation, and CHI
ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN,
aka KEN ZHONG LIN aka KENNETH
ZHONG LIN aka WHONG K. LIN aka
CHONG KENNY LIN aka ZHONG
LIN, an individual, and LIWE HELEN
CHEN aka HELEN CHEN, an individual
and YAN QIU ZHANG, an individual
and INVESTPRO LLC dba
INVESTPRO REALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and
JOYCE A. NICKRANDT, an individual,
and INVESTPRO INVESTMENTS
LLC, a Nevada Limited Liability
Company, and INVESTPRO
MANAGER LLC, a Nevada Limited
Liability Company and JOYCE
A.NICKDRANDT, an individual and
does 1through 15 and roe corporation I-
XXX,

Real Party in Interest.

SUPREME COURT CASE NO.: 82967

DC Case No.: A-18-783917-C
Dept. No.: XIV

District Court Judge: Hon. Adriana
Escobar

Electronically Filed
Jun 08 2021 10:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**REAL PARTY IN INTEREST’S OPPOSITION TO PETITIONER’S
MOTION FOR STAY**

Real Parties in Interest, TKNR INC. (“TKNR”), CHI ON WONG (“WONG”), KENNY ZHONG LIN (“LIN”), LIWE HELEN CHEN (“CHEN”), YAN QIU ZHANG (“ZHANG”), INVESTPRO LLC (“INVESTPRO”), MAN CHAU CHENG (“CHENG”), JOYCE A. NICKRANDT (“NICKRANDT”), INVESTPRO INVESTMENTS, LLC (“Investments”), and INVESTPRO MANAGER LLC (hereinafter collectively referred to as the “Interested Parties”), by and through their counsel of record, Michael B. Lee, P.C., hereby files this Opposition (“Opposition”) to Petitioner’s Motion for Stay (“Motion”).

This Opposition is supported by all papers and pleadings on file in the Clark County District Court, the Memorandum of Points and Authorities attached hereto, the Verification of Michael Matthis, Esq., and any oral arguments that may be entertained by the Court. WLAB INVESTMENT, LLC is hereinafter referred to as “WLAB”. Petitioner BENJAMIN B. CHILDS is hereinafter referred to as “Childs” or “Petitioner”.

I. INTRODUCTION

A. Overview

The Motion seeks to stay the execution of the monetary judgment portion of the Order Granting in Part, and Denying in Part, Plaintiff’s Motion to Reconsider and Judgment Against Plaintiff and Previous Counsel file on May 25, 2021, in the

Eighth Judicial District Court, Case No. A-18-7859170 C (hereinafter “Order”) related to the Petition for Writ of Mandamus or Writ of Prohibition (hereinafter “Writ”). See Order attached to Petitioner’s *Motion* at Ex. 1. However, as discussed in this Opposition, Petitioner has failed to comply with necessary procedural requirements in connection with the Motion’s requested relief. Specifically, Petitioner has failed to comply with the Nevada Rule of Appellate Procedure (“NRAP”) 8(a)(1) and 8(a)(2)(A)(i, ii). Additionally, the requested relief would require a supersedes bond of 150% of the judgment, i.e., \$192,000.00. For these reasons, the Motion should be denied.

B. Statement of Facts and Procedure Relevant to Motion

On or about April 7, 2021, the Amended Order granting the Interested Parties’ Motion for Summary Judgment, and for attorneys’ fees and costs pursuant to the Interested Parties’ claim for abuse of process and for Rule 11 Violations was filed (“Amended Order”).

On or about April 9, 2021, Petitioner’s Motion to Withdraw from representation of WLAB was filed. See Minute Order Granting Childs’ Motion to Withdraw (“Minute Order”) attached as **Exhibit A**. The Minute Order advised that the court still had jurisdiction over Petitioner as it relates to the judgment. *Id.*

On or about April 16, 2021, WLAB filed a Motion to Reconsider the Amended Order. Following briefing from WLAB and the Interested Parties, the

district court made an in chambers ruling to grant, in part, and deny, in part, the Motion to Reconsider. See Order attached to Petitioner's *Motion* at Ex. 1. In that Order, the court recognized that there was no challenge to the amount of attorneys' fees and costs incurred by the Interested Parties; therefore, the Order included a judgment against WLAB and Petitioner for **\$128,166.78**. *Id.*

II. DISCUSSION

The Court should deny the Motion related to Petitioner's failure to comply with the necessary procedural requirements of NRAP 8(a)(1-2). First, Petitioner has failed to bring this Motion in district court. See Nev. R. App. Pro. § 8(a)(1)(A).

NRAP 8(a)(1)(A) provides that:

“A party must ordinarily move first in the district court for the following relief: **stay of the judgment or order** of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ[.]”

Id. (emphasis added).

Second, Petitioner has failed to provide sufficient facts / information to establish that the Motion was properly made before the Court despite not being first brought before the district court. NRAP 8(a)(2)(A) states:

“A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals or to one of its justices or judges.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

See *Id.* at § 8(a)(2)(A)(i, ii).

Here, Petitioner did not first bring the Motion in front of the district court. As such, Petitioner was required to provide sufficient facts and information to illustrate that first moving in the district court would have been impracticable. *Id.* However, the Motion is bereft of any competent analysis of why the Motion was not first brought in district court. Rather, the Motion simply states that “Petitioner is not a party to the litigation and cannot seek a stay at the trial level under NRCP 62.” See *Motion* at p. 8. This explanation is wholly deficient and not proffered in good faith as is not supported by any case law, statute, or further argument / analysis to support the contention.

Moreover, Petitioner had express notice that he “is still within the jurisdiction of this Court until this matter is fully resolved [and that he] must be present for remaining Motion practice, if any, on this issue, regardless, of the Court’s granting of [Petitioner’s] Motion [to withdraw].” See **Exhibit A**. The Minute Order clearly states that Petitioner is subject to the district court’s jurisdiction as it relates to the instant case and, more specifically, the judgment,

which would logically include a motion to stay collection of said judgment. *Id.* As such, there is no valid reason why Petitioner did not file the Motion with the district court first.

Finally, Petitioner should be required to post a bond in the amount of 150% of the judgment, i.e., \$192,000. Nevada Rule of Civil Procedure (“NRCP”) 62(d)(1) states:

If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

“The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.” See Nelson v. Heer, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006).

Here, Petitioner attempts to subvert the bond requirement by avoiding any analysis into NRCP 62, which likely explains Petitioner’s decision to bypass the district court without providing any competent analysis as to why Petitioner did not comply with NRAP 8(a). This is not reasonable and would prejudice the Interested Parties in this matter as they have already incurred and paid the attorneys’ fees that the Judgment is designed to compensate. The Motion fails to provide any basis as

to why a bond would not be necessary in this matter to preserve the status quo.

Without that, a supersedes bond must be posted before the stay may be granted. *Id.*

CONCLUSION

Based on the foregoing, the Motion must be denied.

Dated this 7th day of June, 2021.

MICHAEL B. LEE, P.C.

/ s/ Michael Matthis

MICHAEL B. LEE, ESQ. (NSB 10122)

MICHAEL MATTHIS, ESQ. (NSB 14582)

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VERIFICATION

Under penalty of perjury, of the laws of Nevada, the undersigned declares that he is the attorney for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification is made by the undersigned attorney, pursuant to NRS § 15.010, on the ground that the matters stated, and relied upon, in the foregoing petition are all contained in the prior pleadings and other records of this Court and/or the District Court.

Dated this 7th day of June 2021.

/s/ Michael Matthis
MICHAEL MATTHIS, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the formatting requirements of NRAP 32(c)(2) and the type style requirements of NRAP 32(a)(6) because this Opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

DATED this 7th day of June 2021.

MICHAEL B. LEE, P.C.

/s/ Michael Matthis
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CERTIFICATE OF MAILING

I hereby certify, under penalty of perjury, that I am an employee of Michael B. Lee, P.C., and that I caused to be electronically filed on this date, a true and correct copy of the foregoing document with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorneys of record set forth below.

Via Runner

Hon. Adriana Escobar
Department 14, Courtroom 14C
330 S. Third Street
Las Vegas, NV 89101
Respondent Judge

Steven L. Day, Esq. (NSB 3708)
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Petitioner

Dated this 7th day of June, 2021.

/s/ Michael Matthis
An employee of MICHAEL B. LEE, P.C.

EXHIBIT A

A-18-785917-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 09, 2021

A-18-785917-C W L A B Investment LLC, Plaintiff(s)
vs.
TKNR Inc, Defendant(s)

April 09, 2021 3:00 AM Minute Order

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Michaela Tapia

JOURNAL ENTRIES

- Plaintiff's Counsel's Motion to Withdraw as Attorney for Plaintiff (Motion) came on for Chambers Calendar before Department 14 of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on April 7, 2021. Upon thorough review of the pleadings, this Court enters the following order:

Attorney Benjamin B. Childs seeks to withdraw as counsel of record for Plaintiff W L A B Investment, LLC.

On December 15, 2020, Defendants filed their Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment.

On March 4, 2021, Mr. Childs filed a Motion to Withdraw as Counsel for Plaintiff.

On March 10, 2021, Attorney Steven L. Day, Esq. filed a Substitution of Attorneys, substituting himself as counsel of record for Plaintiff in place and stead Mr. Childs.

On March 11, the Court heard Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. Mr. Day appeared on behalf of Plaintiff.

On March 30, 2021, this Court issued an Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment.

On April 7, 2021, this Court issued an Amended Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, disposing of this matter. In this Order,

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Minutes Date: April 09, 2021

the Court awarded Defendants attorney fees and costs pursuant to NRCP 11.

For good cause showing pursuant to EDCR 7.40(b)(2), RPC 1.16(b), and SCR 46, this Court hereby GRANTS the Motion.

This Court notes the following: This matter is closed. However, although this Court awarded Defendants attorney fees and costs under NRCP 11, this Court has not made a final determination regarding the amount of attorney fees and costs Defendants are entitled to. Given that Mr. Childs brought the instant action on behalf of Plaintiff, which was the basis of this Court's award of attorney fees and costs under NRCP 11, Mr. Childs is still within the jurisdiction of this Court until this matter is fully resolved. Mr. Childs must be present for remaining motion practice, if any, on this issue, regardless, of the Court's granting of this Motion.

Counsel for Plaintiff is directed to prepare a proposed order that lists all future deadlines and hearings, and includes Plaintiff's last known physical and/or mailing address, email, and phone number.

Counsel must submit the proposed order within 14 days of the entry of this minute order. EDCR 1.90(a)(4).

All parties must submit orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email - appended as the last page of the proposed order - confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt