

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST
AGREEMENT, 23 PARTNERS TRUST
I, AN IRREVOCABLE TRUST.

MICHAEL T. NEDDER; AND
DOUGLAS DELUCA,

Appellants/Cross-Respondents,

v.

JOANNE S. BRIGGS, AS PARENT
AND GUARDIAN OF JULIA ANN
DELUCA AND ALEXANDER IAN
DELUCA, PRIMARY BENEFICIARIES
OF THE 23 PARTNERS TRUST I,

Respondents/Cross-Appellants.

Supreme Court No: 82991

District Court Case No: P-20-104279-T

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**APPELLANTS' REPLY IN SUPPORT
OF MOTION FOR STAY PENDING
APPEAL**

1. Introduction

Respondents' opposition to the motion for stay focuses on two legally and factually unsupportable contentions. First, Respondents contend that this appeal lacks any merit at all by re-writing the district court's order and inflating the provisions of a single provision of the Nevada statutes governing trusts to the extent that it contradicts and subverts the rest of the statutory structure. Without limiting the scope of the appeal as a whole, this appeal at least seeks this Court's review of two essential issues: (1) whether the district court's order (hereinafter, the "Appeal Order") requiring the 23 Partners Trust 1, an Irrevocable Trust (hereinafter, the

“Trust”) to disclose certain information directly contradicts the Court’s own findings about the requirements of the Trust documents; and (2) whether the Appeal Order provided enough information to allow Appellants as trustees to know what it is they are supposed to do to comply without providing an accounting and disclosing the entire trust document — something that district court ruled was not required.

Second, Respondents ignore the clear and irreparable harm that denying the stay would impose on Appellants and fail to recognize that Respondents will experience absolutely no harm if a stay is granted. Respondents never address the fact that if a stay is not granted, the entire purpose of the appeal is rendered moot. If Appellants are required to disclose the information the district court ordered disclosed — to the extent they can ascertain exactly what the district court wanted disclosed — and this Court reverses the district court’s order, the harm has been done and cannot be undone. On the flip side, Respondents cannot demonstrate that they have any vested interest in obtaining any specific benefit from the trust that would be denied if the stay is granted. Even if there were some doubt as to the merits of this appeal, the clear and significant irreparable harm to the Trust far outweighs any doubt that might exist concerning the merits of the appeal.

2. The irreparable harm to the trust cannot be refuted.

Respondents have no response to Appellants argument that the Trust, which expressly states that the information Respondents seek should not be disclosed to

these beneficiaries, will be irreparably harmed if they are required to comply with the Appeal Order. The Trust's language provides that distributions to the beneficiaries are completely discretionary and provide the beneficiaries with no recourse to challenge the discretion of the trustees. *See* Trust § 3.2.1 of the Trust, cited in Motion for Stay, at p. 3, Ex. 3. One of the specific purpose this language ensure that a beneficiary's creditors cannot obtain access to the trust or information about the trust. Any information provided to a beneficiary would generally also be available to the creditors of a beneficiary. If the trust is required to make disclosures like those ordered by the district court those disclosures immediately frustrate the very purpose of the trust because that information would generally be available to creditors.

Respondents, on the other hand must acknowledge that the Court expressly found that they are not vested beneficiaries of the trust and have no vested interest in receiving any specific benefit from the trust. *See* Appeal Order, ¶ 16. As such, a stay of the Court's order cannot and will not deny them of any benefit they are entitled to under the trust. Respondents are not harmed at all by a stay.

3. The appeal has merit on the face of the Appeal Order and is likely to succeed.

Respondents' argument acknowledges that the Appeal Order has legitimate appealable issues on its face. Respondents acknowledge that the Appeal Order found that Respondents are not vested beneficiaries and have no right to an accounting or

other similar rights under the terms set forth in the Trust documents. *See* Appeal Order, ¶ 16. Yet, Respondents claim that the Court can, essentially, order a trustee to disclose whatever the Court believes necessary under NRS 165.180, without regard to the terms of the Trust or other provisions of Nevada law.

Respondents' focus on NRS 165.180 inflates the importance of one statute to the point that it requires the Court to ignore other equally important statutes that require a Court to adhere to the terms of the trust documents. *See, e.g.*, NRS 165.120 (providing trustee duties to beneficiaries "to the extent the trust instrument does not provide otherwise"); NRS 165.1214 (setting forth other disclosure requirements "except as may otherwise be required pursuant to the terms of the trust instrument"). Indeed, the record before the district court is replete with statutory provisions that limit beneficiary rights, especially where their rights are discretionary. *See* Exhibit 1 to Respondents' Opposition, at pp. 7-8. The district court recognized this law and found that Respondents were not entitled to a copy of the Trust documents nor were they entitled to an accounting. *See* Appeal Order, ¶¶ 12, 14, and 16. Despite finding this, the Court ordered that Appellants turn over nearly everything that would be required for an accounting and then ordered that the Appellants must turn over all sections of the trust that affect beneficiaries' rights, without any direction as to which sections those are. *See* Appeal Order, pp. 4-5. Although the Appeal Order purports to only require a "baseline," rather than a full accounting, the language of the order

comes very close to requiring a yearly accounting. Further, the Court's order requiring disclosures of those portions of the trust that outline Respondents' rights provides no criteria for determining which provisions those would be making it impossible for the trustees to be certain they have disclosed the necessary provisions without disclosing the entire document.

Respondent's suggest that NRS 165.180 makes it impossible to question a Court's order for a trustee to make disclosures or provide information even where the trust documents directly forbid such action. Respondents have no authority to support this implausible position. The appeal not only has merit, there is strong likelihood that the Court will, at the very least, require the district court to be more clear in its order or reverse the order outright.

4. Conclusion

For these reasons, Appellants respectfully request that a stay of the Appeal Order be granted without a bond.

DATED this 15th day of October 2021.

HUTCHISON & STEFFEN, PLLC

/s/ Russel J. Geist

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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPELLANTS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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A copy was served via U.S. Mail to the below:

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Settlement Judge

DATED this 15th day of October, 2021.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC