

**In the Supreme Court of Nevada**

FIRST STREET FOR BOOMERS & BEYOND, INC. &  
BEYOND, INC.; AITHR DEALER, INC.,

Petitioner,

*vs.*

THE EIGHTH JUDICIAL DISTRICT COURT of the State  
of Nevada, in and for the County of Clark; and THE  
HONORABLE CRYSTAL ELLER, District Judge,

Respondents,

and

ROBERT ANSARA, as special administrator of the  
ESTATE OF SHERRY LYNN CUNNISON, deceased;  
ROBERT ANSARA, as special administrator of the  
ESTATE OF MICHAEL SMITH, deceased heir to the  
ESTATE OF SHERRY LYNN CUNNISON, deceased;  
and DEBORAH TAMANTINI, individually and heir  
to the Estate of SHERRY LYNN CUNNISON,  
deceased; HALE BENTON, individually;  
HOMECLICK, LLC; JACUZZI INC., doing business as  
JACUZZI LUXURY BATH; BESTWAY BUILDING &  
REMODELING INC.; WILLIAM BUDD, individually  
and as BUDDS PLUMBING; DOES 1 through 20;  
ROE CORPORATIONS 1 through 20; DOE  
EMPLOYEES 1 through 20; DOE MANUFACTURERS 1  
through 20; DOE 20 INSTALLERS 1 through 20;  
DOE CONTRACTORS 1 through 20; and DOE 21  
SUBCONTRACTORS 1 through 20, inclusive,

Real Parties in Interest.

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Elizabeth A. Brown  
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**REPLY IN SUPPORT OF JACUZZI'S  
JOINDER TO MOTION FOR STAY**

Real party in interest, co-defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath will not belabor points made in petitioner's "Reply in Support of Motion for Stay of Trial Court Proceedings Under NRAP 8," filed November 19, 2021. Nor will Jacuzzi quibble over plaintiffs' speculation that this Court would reject the position advanced by Jacuzzi in its writ petition (in case 83379).<sup>1</sup>

Jacuzzi must address, however, the unfair notion that this request to stay the trial is "an emergency of [petitioners'] own making." (*See* Plaintiffs' Opposition at 2.) Jacuzzi filed its petition within days of the issue presented becoming ripe. The district court entered its order providing critical definition to the sanction by establishing its parameters and operation for trial on September 29, 2021, which clarification Jacuzzi had sought persistently ever since the district court issued its minute order striking elements of Jacuzzi's answer in concept. Petitioners understand this Court routinely looks to the

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<sup>1</sup> As usual, the petitioner disagrees with the conclusion of the trial court below and with the adverse real party in interest regarding the merits of its petition. Nevertheless, at very least, Jacuzzi's petition "present[s] a substantial case on the merits" regarding "a serious legal question." *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

parameters of a sanction’s practical application to gauge its propriety.

*See Hamlett v. Reynolds*, 114 Nev. 863, 866–67, 963 P.2d 457, 458

(1998) (the trial court has discretion to tailor the procedure of a hearing or trial after striking an answer in whole or part).<sup>2</sup> Indeed, plaintiffs themselves now rely on the September 29, 2021, order to contend the severity of the sanction does not warrant a stay. (*See Opp.* at 2 (“Petitioners will only be precluded from presenting certain evidence in the liability phase<sup>3</sup> but will be allowed to mount a full defense in the remaining phases.”).) Importantly, the September 29, 2021, order also enabled Jacuzzi to narrow the scope of its petition to one streamlined legal issue.

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<sup>2</sup> For example, in *Goodyear v. Bahena*, the majority opinion affirming the district court’s sanction discusses at length the extent to which Goodyear was allowed an unfettered defense against punitive damages. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 255–56, 235 P.3d 592, 600 (2010). For all intents and purposes, a sanction is defined both by its technical effect and the manner of its application.

<sup>3</sup> Jacuzzi assumes plaintiffs’ reference to a “liability phase” is mistaken. The sanction precludes Jacuzzi from contesting liability for compensatory damages altogether. Pursuant to the district court’s September 29, 2021 order, virtually all evidence relating to liability should now be irrelevant in the first phase of trial dealing solely with the amount of compensatory damages. And Jacuzzi will not be hindered from contesting liability in the second phase of trial where punitive damages are at stake.

When the petitions were filed, there was no rush as this Court typically reviews writ petitions preliminarily within several weeks to determine whether to direct the real party in interest to file an answering brief. *C.f.*, NRAP 21(a)(6) (“*Emergency petitions*. A petition that requests the court to grant relief less than 14 days shall also comply with the requirements of Rule 27(e).”) Once it became clear the Court was processing writ petitions at a different pace and the trial setting neared, First Street moved the district court to stay the trial on order shortening time.<sup>4</sup> *See* NRAP 8(a)(1)(A) (“A party must ordinarily move first in the district court for ... a 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

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<sup>4</sup> When parties petition this Court for a writ of mandamus or prohibition, and no deadline looms closely enough to create an emergency, it is reasonable to watch for this Court’s initial response before burdening the courts with requests to stay a trial. For instance, if this Court were to deny a petition summarily, any concern for staying the trial would be moot. *See* NRAP 21(b)(1) (“The court may deny the petition without an answer.”). Conversely, where this Court “order[s] the respondent or real party in interest to answer within a fixed time” (*id.*), that order presents both a concrete scheduling issue to resolve and at least *some* indication to the district court “whether movant is likely to prevail on the merits of the appeal,” which is a consideration in determining whether to grant a stay. NRAP 8(d).

writ”). Jacuzzi quickly joined. And petitioner filed its present motion immediately after the district court denied the stay. Plaintiff’s implication of delay is misplaced.

### CONCLUSION

For the above reasons, as well as those set out in petitioner’s motion for stay and its reply in support of that motion, and in Jacuzzi’s joinder, this Court should stay the trial in this matter pending resolution of petitioner’s writ petition and Jacuzzi’s petition in case 83379.

Dated this 19th day of November, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Joel D. Henriod

D. LEE ROBERTS (SBN 8877)  
BRITTANY M. LLEWELLYN (SBN 13,527)  
JOHNATHAN T. KRAWCHECK (*pro hac vice*)  
WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC  
6385 South Rainbow Boulevard  
Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
ABRAHAM G. SMITH (SBN 13,250)  
3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200

*Attorneys for Real Party in Interest Jacuzzi, Inc.  
d/b/a Jacuzzi Luxury Bath*

## CERTIFICATE OF SERVICE

I certify that on November 19, 2021, I submitted the foregoing  
REPLY IN SUPPORT OF JOINDER TO MOTION FOR STAY for filing *via* the  
Court's eFlex electronic filing system. Electronic notification will be sent  
to the following:

Benjamin P. Cloward  
RICHARD HARRIS LAW FIRM  
801 S. Fourth Street  
Las Vegas, NV 89101  
(702) 444-4444  
[Benjamin@RichardHarrisLaw.com](mailto:Benjamin@RichardHarrisLaw.com)  
[catherine@Richardharrislaw.com](mailto:catherine@Richardharrislaw.com)

*Attorneys for Petitioner*

Philip Goodhart  
Meghan M. Goodwin  
THORNDAL ARMSTRONG DELK  
BALKENBUSH & ESIGINER  
1100 East Bridger Avenue  
Las Vegas, NV 89101-5315  
(702)366-0622  
[png@thorndal.com](mailto:png@thorndal.com)  
[mmg@thorndal.com](mailto:mmg@thorndal.com)

*Attorneys for Hale Benton*

Graham Reese Scofield  
CHARLES ALLEN LAW FIRM  
3575 Piedmont Road NE  
Building 15, Suite L-130  
Atlanta, GA 30305  
(404) 419-6674  
[graham@charlesallenlawfirm.com](mailto:graham@charlesallenlawfirm.com)

*Attorneys for Robert Ansara*

I further certify that I served a copy of this document by mailing a  
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,  
addressed as follows:

The Honorable Crystal Eller  
DISTRICT COURT JUDGE – DEPT. 19  
200 Lewis Avenue  
Las Vegas, Nevada 89155

*Respondent*

/s/ Emily D. Kapolnai  
An Employee of Lewis Roca Rothgerber Christie LLP