IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND SJC VENTURES HOLDING COMPANY, LLC, D/B/A SJC VENTURES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, Appellants vs. CBC PARTNERS I, LLC, A FOREIGN LIMITED LIABILITY COMPANY; AND 5148 SPANISH HEIGHTS, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Supreme Court Case No. 83407

APPEAL
from a decision in favor of Respondents
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Elizabeth Gonzalez, District Court Judge
District Court Case No. A-20-813439-B

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities, as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Spanish Heights Acquisition Company, LLC ("SHAC") is a private, single member Nevada limited liability company which is 100% owned by SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC. No publicly held corporation owns a 10% or greater stock interest in SHAC.
2. SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC ("SJC Ventures") is a private, Delaware limited liability company which is 100% owned by a family trust which benefits Jay Bloom and other beneficiary family members. No publicly held corporation owns a 10% or greater stock interest in SHAC.

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3. Attorneys who have appeared or are expected to appear for Appellants: Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq. of Maier Gutierrez & Associates;

DATED this 9th day of February 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
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JURISDICTIONAL STATEMENT

This appeal is from an Eighth Judicial District Court ruling/order appointing a receiver over appellant SJC Ventures, LLC, with notice of entry of order entered on August 11, 2021. PA0694-701.[1] On August 18, 2021, Appellants filed their notice of appeal. PA1019-1161.

Under NRAP 3A(b)(4), an "order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver," is an appealable determination in a civil action. Thus, this appeal is timely pursuant to NRAP 4(a)(1), and this Court has jurisdiction to hear this appeal under NRAP 3A(b)(4).

[1] "PA" refers to Plaintiffs/Appellants independent appendix.

ROUTING STATEMENT

This case should be retained by the Supreme Court, as the Supreme Court shall hear and decide "cases originating in business court. NRAP 17(a)(9).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the district court abuse its discretion in granting the motion to appoint a receiver over SJC Ventures where the evidence showed that no receiver was warranted, and the basis for the district court granting the motion includes findings that are void because they resulted from a violation of the bankruptcy stay of litigation, and misrepresentations made by real parties in interest CBC Partners I, LLC and 5148 Spanish Heights, LLC?

STATEMENT OF THE CASE

This dispute involves the district court granting a receiver over corporate entity SJC Ventures on August 10, 2022. Over Appellants' objections, the district court appointed non-neutral Larry Bertsch (hand-picked by the defendant CBC Partners I, LLC and 5148 Spanish Heights, LLC parties) as a receiver over SJC Ventures – even though Mr. Bertsch has previously been found to have violated ethical rules in another matter involving an entity managed by Jay Bloom, and was personally sued by Mr. Bloom for breaching his ethical duties.

The order appointing a receiver was based on void portions of the district court's April 6, 2021 Findings of Fact and Conclusions of Law which were the result

of a "trial" that violated the Bankruptcy stay of litigation since it took place after all parties had been put on notice that SHAC had filed for bankruptcy.

The order appointing a receiver was also based on misrepresentations set forth by Defendants regarding a separate matter that did not involve SJC Ventures.

Accordingly, this appeal of the order appointing a receiver over SJC Ventures follows.

FACTUAL AND PROCEDURAL BACKGROUND

This action involves the residential property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property"). The original owners of the Property were Kenneth and Sheila Antos, with the deed recorded in April 2007. PA0001-4.

On October 14, 2010, a Grant, Bargain, Sale Deed was recorded, transferring the Property to the Kenneth and Sheila Antos Living Trust. PA0005-8.

SHAC purchased the Property in 2017, as evidenced by a recorded deed. PA0049. SHAC then leased the Property to SJC Ventures pursuant to a valid lease agreement. PA0017-48. SJC Ventures has already made rent payments to SHAC in advance through December 2024. PA0049. Jay Bloom, who serves as a manager for SHAC and SJC Ventures, uses the Property as his primary residence where he lives with his family, including his elderly octogenarian in-laws.

Defendants/ real parties in interest CBC Partners I, LLC and 5148 Spanish

Heights, LLC ("Defendants") claim to hold an interest in the Property purportedly secured by a contested third-position Deed of Trust.

After Defendants continued attempting to wrongfully foreclose on the Property in the middle of litigation, SHAC and SJC Ventures sought, and were granted, a temporary restraining order, issued on January 5, 2021, which precluded Defendants from moving forward with any foreclosure sale, pending the district court's evidentiary hearing on the preliminary injunction and "trial" on related legal issues. PA0117-145; PA0146-169; PA0170-172; PA0173-178; PA0179-207; PA0216-220.

The preliminary injunction evidentiary hearing and bench "trial" commenced on February 1, 2021. On February 3, 2021, before completion of the trial, SHAC filed for bankruptcy in the United States District Court for the District of Nevada. PA0223-228.

On the morning of February 3, 2021, SHAC's counsel informed the district court of SHAC's bankruptcy filing before any trial proceedings began for the day. Nevertheless, the trial was allowed to continue despite Appellants' objections, and in violation of the automatic stay of litigation, continuing on February 3, 2021 and on March 15, 2021.

On the final day of trial, Defendants' counsel argued that any injunctive relief should be denied, because "the bankruptcy stay is in place . . . [t]he estate has a stay.

They're protected." And, "I am trying to get a straight line to foreclose. As soon as I get the relief that I need from the bankruptcy court, then I'll have that ability to go forward." PA0310.

On April 6, 2021, the district court issued Findings of Fact and Conclusions of Law stemming from that trial. PA0327-347. The district court specifically ordered that its "temporary restraining order, filed January 5, 2021, will remain in place pending further order of the Bankruptcy Court." PA0346.

Thereafter, the Bankruptcy Court determined that CBC Partners I, LLC and 5148 Spanish Heights, LLC violated the bankruptcy stay by moving forward with the trial on February 3, 2021 and March 15, 2021 despite the fact that SHAC had filed bankruptcy by that time. *See* PA0410-413, finding that the Defendants "violated the automatic stay" with respect to issues (a), (b), and (c) of the 4/6/2021 FFCL. Those issues are:

(a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;

(b) Interpretation and/or validity of the claimed third-person Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and

(c) Contractual interpretation and/or validity of the Forbearance Agreement,

Amended Forbearance Agreement and all associated documents/contracts. *See* PA0328 at fn. 1. It has long been established that "violations of the automatic stay are void, not voidable." *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). This means that the district court's rulings on contractual interpretation of the aforementioned agreements, as well as its ruling on injunctive relief, are void.

CBC Partners I, LLC and 5148 Spanish Heights LLC tried to circumvent the bankruptcy stay again by filing a motion seeking the appointment of a receiver over only SJC Ventures (not the bankruptcy debtor SHAC). PA0414-605. That motion was based on portions of the Court's 4/6/2021 FFCL which are void (not voidable) as a matter of law. *Id.*

That motion for a receiver was also based on misrepresentations that Defendants made claiming that Judge Denton had found Jay Bloom to be the alter ego of SJC Ventures in the case styled as *TGC/Farkas Funding, LLC v. First 100, LLC et al*, Case No. A-20-822273-C (the "TGC/Farkas Matter"). PA0421. Judge Denton made no such finding. PA0386-409. CBC Partners I, LLC and 5148 Spanish Heights LLC's motion also claimed that Jay Bloom was "in contempt" in the TGC/Farkas Matter for not producing certain First 100 books and records. In reality, that contempt order was deemed resolved at a hearing conducted on August 9, 2021 after Mr. Bloom submitted a declaration certifying that he had no further documents in his possession, and after SJC Ventures (the company that the district court has

determined needs a receiver over it) posted the $151,535.81 sanctions bond on behalf of First 100. PA0657-688.

The district court relied on Defendants' misrepresentations, along with void portions of the April 2021 FFCL that stemmed from the trial that was conducted in violation of the bankruptcy litigation stay, in granting the motion for receiver without a hearing. PA0689-693. The district court explicitly held in its order that it was doing so given "the evidence presented during the trial of this matter," as well as "Judge Denton's findings in the *TGC/Farkas Funding, LLC v. First 100, LLC* matter before the Eighth Judicial District Court (Case No. A-20-822273-C)." PA0690.

To be clear, SJC Ventures was not a party to the TGC/Farkas Matter before Judge Denton, and more importantly, Judge Denton never made any finding that Jay Bloom was the alter ego of SJC Ventures. PA0348-385. Judge Denton never found that SJC Ventures "had no continued operations, no employees, no bank accounts, no records being maintained . . . and no active governance of any kind" as Defendants claimed in their motion for a receiver. PA0425. The TGC/Farkas Matter relates only to First 100, LLC – not SJC Ventures. No analysis whatsoever was made as to SJC Ventures' financial status in the TGC/Farkas Matter. The TGC/Farkas Matter does not even involve the appointment of a receiver. PA0327-347.

The TGC/Farkas Matter merely involved a books and records request as to First 100, LLC, and subsequent fees and costs. No alter ego findings whatsoever were made as to SJC Ventures. No findings were made as to SJC Ventures' financial status. The TGC/Farkas matter involved First 100, LLC – not SJC Ventures. *Id.*

Due to the errors, which occurred because Defendants made material misrepresentations about the TGC/Farkas Matter and failed to disclose the fact that they were found to have violated the stay of litigation by the Bankruptcy Court, Appellants are respectfully requesting that the district court's order appointing a receiver over SJC Ventures be reversed.

SJC Ventures' manager Jay Bloom fears that the appointment of a receiver will cause irreparable harm to the company. This fear is well-founded, as the appointment will potentially interfere with SJC Ventures' bank accounts and financial information; business deals and prospective deals, and transactions. Tellingly, the receiver has already demanded bank statements and tax returns on one day's notice, despite the lack of any actual urgency and the impossibility of providing such documents on such short notice. PA0704-707. The likelihood of SJC Ventures' business being wrongfully interfered with and obstructed by the already adjudicated non-neutral receiver Larry Bertsch is high, and damages can toll into the billions of dollars. PA0702-703.

/ / /

SUMMARY OF ARGUMENT

This is an appeal of the district court's order appointing a receiver over SJC Ventures.

The district abused its discretion in issuing a receiver over SJC Ventures, as it made a clear error in basing its decision upon (1) April 2021 findings from the district court's "trial on legal issues surrounding the claims and counterclaims" that took place in violation of the bankruptcy stay of litigation following SHAC filing for bankruptcy; and (2) misrepresentations that CBC Partners I, LLC and 5148 Spanish Heights, LLC made about SJC Ventures' purported involvement in a separate matter adjudicated by the Honorable Mark Denton in which SJC Ventures was not a party.

The district court also appointed a non-neutral receiver (Larry Bertsch) over SJC Ventures. Mr. Bertsch has already been found to have violated his ethical duties in a prior case in which he was appointed as a receiver over a company that Jay Bloom manages. SJC Ventures Manager Jay Bloom has also previously personally sued Mr. Bertsch for gross negligence, fraudulent concealment, willful misconduct, and defamation, which makes it highly unlikely that Mr. Bertsch will now serve as an unbiased receiver over SJC Ventures. *See Jay Bloom v. Larry L. Bertsch*, Eighth Judicial District Court, Case No. A-15-714007-C.

This is not a standard receiver case, as SJC Ventures oversees ostensibly billions of dollars in property, and the harm that will be done by Mr. Bertsch's mismanagement of SJC Ventures cannot be simply remedied.

ARGUMENT

A. Standard of Review

The appointment of a receiver is an action within the trial court's sound discretion and will not be disturbed absent a clear abuse. *Peri-Gil Corp. v. Sutton*, 84 Nev. 406, 442 P.2d 35 (1968); *Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954).

B. There is No Basis for a Receivership Over SJC Ventures

A receivership is not appropriate unless there is actual evidence of the subject property being lost, injured, destroyed, or subject to waste. *See* NRS 107.100 and NRS 32.010.

Customarily, a receiver is a neutral party appointed by the court to take possession of property and preserve its value for the benefit of the person or entity subsequently determined to be entitled to the property. *Anes v. Crown P'ship, Inc.*, 113 Nev. 195, 199, 932 P.2d 1067, 1069 (1997). Pursuant to NRS 32.010:

> **NRS 32.010 Cases in which receiver may be appointed.** A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
>
> 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or

interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, **and where it is shown that the property or fund is in danger of being lost, removed or materially injured**.

2. In an action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property, **where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt**.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

See NRS 32.010 (emphasis added). Additionally, NRS 107.100 states:

NRS 107.100 Receiver: Appointment after filing notice of breach and election to sell.

1. At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property.

2. A receiver shall be appointed **where it appears that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, that real property subject to the deed of trust is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures**.

NRS 107.100 (emphasis added). Crucially, a "[r]eceivership is generally regarded as a remedy of last resort" and it is not proper if an adequate remedy at law already exists. *Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954). (citing to 75 C.J.S., Receivers, § 9, p. 668; 45 Am.Jur. 28, Receivers, § 26).

Here, SJC Ventures has not been deemed insolvent or subject to a plan or motion to have its affairs wound up; nor is it in a position where dissolution would be appropriate, or is even contemplated. To the contrary, the renter entity SJC Ventures has already made rent payments to SHAC, paying rent in advance all the way through December 2022. PA0050-54.

Defendants' only argument in their motion was that a receiver should be appointed because Defendants believe the Appellants have defaulted on disputed loan obligations as claimed are owed to Defendants. But even if that were the case (it is not), much more than a mere monetary default is needed to justify the Court issuing the extraordinary relief of appointing a receivership. Courts of equity exercise the receivership power "with great caution and only as exigencies of the case appear by proper proof. . . ." *Thoroughgood v. Georgetown Water Co*., 9 Del. Ch. 84, 90, 77 A. 720, 723 (1910). This is particularly the case where the entity continues to function actively.

> A receiver pendente lite for a corporation actively functioning is never to be justified except under circumstances that show an urgent need for immediate protection against injury either in the course of actual infliction or reasonably to be apprehended. As the remedy is

> a stringent one and fraught often times when asked for with the possibilities of as much if not more harm than that which it seeks to avoid, it should be applied with scrupulous care. Only emergent situations can evoke its application.

Salnita Corp. v. Walter Holding Corp., 19 Del. Ch. 426, 434, 168 A. 74, 76 (1933).

Defendants failed to cite any legal authority supporting the notion that a receivership is appropriate in a situation like this where there is no evidence of fraudulent conduct or funds being displaced by SJC Ventures with respect to payments that go toward SHAC for purposes of the Property, and there is no evidence that SJC Ventures is in doubtful fraudulent standing.

The entire motion for receiver was based on Defendants' conjecture (not supported by actual evidence even in the form of an affidavit) that a receiver should be appointed because Defendants believe Appellants breached certain loan agreements. This did not satisfy Defendants' burden under NRS 107.100 and NRS 32.010.

The scope of the district court's order also needs to be addressed. Defendants only sought a receiver over SJC Ventures, carefully doing so because they knew that SHAC was still in bankruptcy. Yet the district court's order appoints a receivership over not just SJC Ventures, but over SHAC and non-party First 100, LLC as well. PA0689-693 ("The Receiver shall collect the business records of SJCV and any subsidiary and affiliated entities in which SJCV has an ownership interest, specifically First 100, LLC and Spanish Heights Acquisition Company, LLC."). No

findings were made supporting this order.

Further, the receiver that Defendants hand-selected, Larry Bertsch, has already been found to have acted unethically with respect to another company in which Jay Bloom is involved. In *Vion Operations LLC v. Jay Bloom, et al*., before the Eighth Judicial District Court (Case No. A-11-646131-C), the Honorable Gloria Sturman found that Mr. Bertsch's failed to disclose a prior attorney-client relationship with the law firm (Lionel Sawyer & Collins) representing the plaintiff company that was suing Mr. Bloom's principals, which constituted a violation of NCJC 2.11(C), and resulted in Mr. Bertsch's findings of fact and conclusions of law, along with his Final Report of Special Master, not being adopted by the Court in that case. PA0009-16. As a result of Mr. Bertsch's misconduct in the *Vion* case, Jay Bloom has previously sued Mr. Bertsch for gross negligence, fraudulent concealment, willful misconduct, and defamation. *See Jay Bloom v. Larry L. Bertsch, et al, Eighth Judicial District Court* (Case No. A-15-714007-C).

It should therefore be more than apparent that Mr. Bertsch would not be a neutral figure in acting as a receiver over another entity that Mr. Bloom manages, given his prior unethical misconduct and the prior litigation he was subjected to by Mr. Bloom.

Nonetheless, the district court still appointed Mr. Bertsch as the receiver, holding that "the Court's experience with Larry Bertsch has not been similar to that

outlined by Jay Bloom." PA0690. Respectfully, Mr. Bertsch *already* acted inappropriately in this action by making demands upon SJC Ventures for business records before a Notice of Posting Bond was filed making the receiver order effective. PA0704-707. Mr. Bertsch continued to demanded that SJC Ventures produce documents "immediately," and refuses to ask for clarification on any alleged "discrepancies" he finds, choosing instead to speculate on the same. PA0704-707. It is concerning, but not surprising, that Mr. Bertsch is making demands for records instead of waiting for the judicial process to determine if the motion appointing receiver was made in error.

This also goes to the emergency nature of this situation, as SJC Ventures oversees ostensibly billions of dollars in property, and the harm that will be done cannot be simply fixed, in light of the inadequate bond that Defendants were required to post in only the amount of $500, to secure billions of dollars in property that have now been put in harm's way by the district court's order. PA0702-703.

C. The District Court's Orders Are the Result of a Trial That Violated the Bankruptcy Stay

The district court moved forward with its preliminary injunction evidentiary hearing and "trial" despite SHAC filing for bankruptcy, which resulted in the April 2021 FFCL finding that the temporary restraining order preventing Defendants from foreclosing on the Property would only remain in effect pending further order from

the Bankruptcy Court.

Similarly, the district court held that its order appointing a receiver over SJC Ventures was appropriate "given the evidence presented during the trial of this matter." PA0690. To be clear, the Bankruptcy Court has found that Defendants violated the bankruptcy stay with respect to the portion of the trial that focused on interpretation of the contractual documents. Those portions are:

(d) Contractual interpretation and/or validity of the underlying "Secured Promissory Note between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;

(e) Interpretation and/or validity of the claimed third-person Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and

(f) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts.

PA0328 at fn. 1. The Ninth Circuit has held that "violations of the automatic stay are void, not voidable." *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). This means that the district court's rulings on contractual interpretation of the documents, as well as the request for injunctive relief which was not fully granted, are all void.

As such, this order appointing a receiver, because it is based on void portions of the district court's April 2021 FFCL (which includes the injunctive relief portion),

should be vacated.

D. The Order Granting Receiver Was Based on Misrepresentations Regarding a Separate Matter

The district court also held that its order appointing a receiver over SJC Ventures was based on "Judge Denton's findings in the *TGC/Farkas Funding, LLC v. First 100, LLC* matter before the Eighth Judicial District Court (Case No. A-20-8222730C)." Defendants made numerous misrepresentations about the TGC/Farkas Matter, including claiming that Judge Denton "found [Jay] Bloom to be the alter-ego of SJCV [SJC Ventures]." PA0421.

Respectfully, this finding does not exist anywhere in Judge Denton's FFCL in the TGC/Farkas Matter. PA0386-409. SJC Ventures was not a party to the TGC/Farkas Matter. Nor were any findings made by Judge Denton in that matter about SJC Ventures' financial status or ability to control its assets. The TGC/Farkas Matter involved First 100, LLC – not SJC Ventures. The TGC/Farkas Matter did not involve a receiver being appointed over any entity.

It is therefore an abuse of discretion for the district court to rely on Judge Denton's findings in the TGC/Farkas Matter, as that matter involved First 100 being ordered to make books and records production to a claimed member of the LLC pursuant to NRS 82.241. The TGC/Farkas Matter had nothing to do with a receiver being appointed, nor did it involve Judge Denton making any findings as to SJC

Ventures' financial status. Most importantly, Defendants' allegation that Judge Denton found Jay Bloom to be the alter ego of SJC Ventures is completely false.

The district court abused its discretion in relying upon Defendants' misrepresentations as to the scope of Judge Denton's order in the TGC/Farkas Matter, thus justifying reversal of the order appointing receiver.

E. The District Court Conducted a Trial and Made "Findings of Fact," Despite the Parties Requesting a Jury Trial

The parties specifically and explicitly requested a jury trial. PA0079-80. There is no dispute that no jury trial has ever been conducted. Instead, the district court *sua sponte* ordered the parties to submit a stipulation on the "legal issues" that the district court would decide on its own, prior to the jury trial. PA0221-222. The parties followed the district court's orders, and the stipulation specifically indicates that it is being submitted, "as requested by the Court." *Id.*

This was an unprecedented proceeding, found nowhere in the rules of procedure, and it was allowed to continue even after the Bankruptcy Court's automatic stay of litigation was in place. The district court then used that interrupted and unauthorized proceeding, originally styled as limited only to legal questions, to nonetheless resolve *factual* disputes, apparently in lieu of and depriving the parties of the actual jury that they had requested.

In ruling upon a request for a jury trial, the court's discretion is not unlimited.

Walton v. Eighth Judicial Dist. Court ex rel. County of Clark, 94 Nev. 690, 586 P.2d 309 (1978). Yet here, the district court *sua sponte* – there was no motion pending at the time – notified the parties that it intended to conduct a bench trial not on the equitable claims but "on the legal issues." This Court has held that "Nevada's jury trial right. .. does not require the district court always to proceed first with any legal issues." *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 621 (2007).

Juries (or judges sitting as finders of fact in bench trials) resolve factual disputes. If there are no factual disputes, then the case ought to be resolved on summary judgment without trial, because legal issues are for the court, not the jury, to resolve. *See* NRCP 56. At a trial, the "legal issues" are resolved and given to the jury through jury instructions written by the court, In no trial – indeed, at no time during the life of a lawsuit – does a "finder of fact" resolve "questions of law."

Nonetheless, at the "trial," Plaintiffs' counsel immediately objected to the nature of the proceedings on February 3, 2021, noting that the proceedings were subject to the bankruptcy court stay. The district court proceeded over this objection. The district court then permitted Defendants to present factual evidence, including witness testimony, on a number of factual disputes and then proceeded to issue its "findings of fact" resolving those issues, expressly stating that it had conducted a "trial" without a jury. This rogue hearing and the findings stemming from it clearly violated Plaintiffs' right to a jury trial.

CONCLUSION

Therefore, Appellants request that this Court reverse the Eighth Judicial District Court's order appointing non-neutral individual Larry Bertsch as a receiver over SJC Ventures.

DATED this 9th day of February 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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CERTIFICATE OF COMPLAINCE PURSUANT TO NRAP 28.2

I hereby certify that I have read this opening brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Rules of Appellate Procedure, and in particular, NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman. I certify that this brief complies with the page limitations of NRAP 32(a)(7), as this brief contains 5,388 words.

I understand I may be subject to sanctions in the event the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of February 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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CERTIFICATE OF SERVICE

I certify that on the 9th day of February 2022, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – V** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

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