IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC,

Petitioners,

v.

CBC PARTNERS I, LLC; CBC PARTNERS, LLC; 5148 SPANISH HEIGHTS, LLC; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS; DACIA, LLC,

Respondents.

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Supreme Court No. 82868
District Court Case No. A-20-813439-B

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

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.

Michael R. Mushkin & Associates d/b/a Mushkin & Coppedge states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

Michael R. Mushkin and L. Joe Coppedge are the attorneys who have appeared for Appellant in this case.

Michael R. Mushkin is the attorney who has appeared for Appellant in this case.

Respondent, CBC Partners I, LLC states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

Respondent, 5148 Spanish Heights, LLC states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

DATED this 25th day of April 2022.

MUSHKIN & COPPEDGE

/s/Michael R. Mushin
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I. Statement of the Case

This action involves a Secured Commercial Promissory Note, that through several modifications and forbearances (the "Documents"), is now fully matured and secured by real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148 (the "Property"). As part of an offer to purchase the Property, Jay Bloom, Manager of SJC Ventures, LLC ("SJCV"), proposed that a limited liability company (Spanish Heights Acquisition Company, LLC "SHAC") would be created to take title of the Property and satisfy the debt secured by the Property in two years. In addition to the certain requirements of the Forbearance Agreement, SJCV granted a security interest in a Judgment in the amount of $2,221,039,718.46 in Case No, A17-753459-C (the "Judgment"). Plaintiffs defaulted on the Documents. Plaintiffs are attempting to evade payment of a fully matured debt by misrepresenting the contents of the Documents and are advocating an interpretation of the Documents that is entirely contrary to law. The district court found the documents clear, unambiguous, and binding upon the parties as a matter of law. The Judge further found that Plaintiffs and SJCV presented no evidence to support their claims.

II. Issue on Appeal

Whether the district court properly exercised its discretion in granting a Motion for Receiver of SJCV, to examine SJCV's business records to determine the efforts made to collect upon the Judgment that was pledged as collateral as the collateral is in jeopardy of being lost.

III. Statement of Facts

1. This action involves a Promissory Note and associated Deed of Trust

together with the related Forbearance Agreements (the "Documents").

2. The repayment of the Promissory Note was secured by Real Property, Membership Pledge Agreement in SHAC[1] and a Security Agreement for the Judgment.[2]

3. On January 4, 2021, the district court ordered that a trial on the merits would be advanced, "so all the factual issues raised can be put to bed."[3]

4. On January 12, 2021, a Stipulation and Order was entered, wherein the parties stipulated to five issues to be adjudicated by the State Court at the bifurcated trial on the merits.[4] The issues were:

a. Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC and KCI Investments, LLC, and all modifications thereto; See Debtor's Second Cause of Action;

b. Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; See Debtor's Second Cause of Action;

c. Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement, and all associated documents/contracts; See Debtor's Second Cause of Action;

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[1] Respondents' Appendix ("RA") RA0022-RA 030.
[2] RA 031-RA 037
[3] RA 038-RA039
[4] RA 040-RA041

d. Whether the Doctrine of Merger applies to the claims at issue; See Debtor's Fourth Cause of Action; and

e. Whether the One Action Rule applies to the claims at issue, See Debtor's Third Cause of Action.

5. On February 1, 2021, the Court began the bifurcated trial on the stipulated issues.

6. On the morning of February 3, 2021, just as the bifurcated trial was resuming, Debtor filed its Chapter 11 Bankruptcy Petition, and the State Court stayed the matter for thirty (30) days.[5]

7. On March 15, 2021, the bifurcated trial resumed.

8. On April 6, 2021, the Honorable Elizabeth Gonzalez issued the Court's Findings of Fact and Conclusions of Law ("FFCL").[6]

9. The Court made specific findings of:

> In addition to the requirements of the 2017 Forbearance Agreement, there was additional security to be provided by Spanish Heights, SJCV, and others.
>
> Among the additional security was a Pledge Agreement, through which the members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.[7]

10. The Membership Interest of Defendant in SHAC is at risk by the actions of SJCV.

11. The Court made further findings:

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[5] The Bankruptcy Stay has since been lifted. See RA 101-RA 107
[6] RA 042-RA 062
[7] RA 052-RA 053 ¶¶ 57-56 2

> As additional required security, SJCV agreed to a Security Agreement to grant CBCI a Security Interest in a Judgment described as:
>
> > SJCV represents that First 100, LLC, and 1st One Hundred Holdings, LLC, obtained a Judgment in the amount of $2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s),* Case No, A-17-753459-C in the 8th Judicial District Court for Clark County, Nevada (the "Judgment"), SJCV represents it holds a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. SJCV represents and warrants that no party, other than the Collection Professionals engaged to collect the Judgment, have a priority to receive net Judgment proceeds attributable to SJCV before SJCV; and that SJCV shall receive Its interest at a minimum in pari passu with other parties who hold interests in the Judgment. 1st One Hundred Holdings, LLC, represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings, have a priority to receive net Judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCV shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment.[8]

12. This Security Interest is now in jeopardy.

13. While the instant dispute was ongoing, Jay Bloom and SCJV were litigating a similar case pending before the Eighth Judicial District Court, Clark County, Nevada, Case No. A-20-822273-C, filed by TGC/Farkas Funding LLC (the "Plaintiff LLC") which is an entity owned half by Bloom's brother-in-law (who contributed "sweat equity") ("Farkas") and half by a third-party investor, TGC 100 Investor ("Investor Member") who acted through Adam Flatto as its manager

[8] RA 053-RA 054 ¶61

("Flatto").[9]

14. The Investor Member brought suit against First 100, LLC, First One Hundred Holdings LLC, two companies both managed by SJCV and in turn majority owned and controlled by Jay Bloom (the "Denton Contempt Litigation").

15. In connection with the Denton Contempt Litigation, the Honorable Mark Denton held an evidentiary hearing on why the named Defendants and Jay Bloom "should not be found in contempt of court... for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered on November 17, 2020..." and further issued Findings of Fact and Conclusions of Law & Order on April 7, 2021 (the "Denton FFCLO") that, among other things, found Bloom to be the alter-ego of SJCV (the "Alter-Ego Finding").

16. As background to the Denton Contempt Litigation, in 2013, The Investor Member contributed $1,000,000 to the Plaintiff LLC which was formed to facilitate investments in a group of LLCs managed by Jay Bloom, the alter ego of SCJV (the "LLCs" or the "Defendants").[10]

17. The litigation began when the Investor Member, after the LLCs business wound down, requested an accounting from the LLCs to show what happened to the business or its assets and had related questions and made a written demand for the books and records pursuant to the operating agreements of the LLCs and NRS 86.241.[11]

18. Bloom/SJCV did not provide any information to the Investor Member.

[9] RA 064 at ¶1
[10] RA 064
[11] RA 065 ¶¶1-4

The Investor Member filed an arbitration demand under the operating agreements. Three years later, a three-arbitrator panel ("Arbitrator") entered a Decision and Award wholly in favor of the Investor Member, compelling production of the Company records and ordering reimbursement of the Plaintiff's attorney's fees and costs (the "Arb. Award") finding that Bloom/SJCV's response to the May 2, 2017, demand was the "first in a long and bad faith effort by [Defendants] to avoid their statutory and contractual duties to a member to produce requested records" (the "Arbitrator Bad Faith Finding").[12]

19. Following the Arb. Award, Farkas was no longer involved in the Plaintiff LLC. Shortly after the Arb. Award was entered, Farkas had consented in writing to an amendment of the Plaintiff LLC operating agreement and gave the Investor Member through Flatto complete discretion to manage and operate the Plaintiff LLC.

20. Jay Bloom, on behalf of the LLCs, argued for the enforcement of the Farkas Documents, representing that Farkas was the manager of the Plaintiff LLC. One of the documents was a purported "redemption agreement" which declared Bloom released from any responsibility to make company records available to the Investor Member.[13]

21. Jay Bloom, as manager of the LLCs, did not comply with the Arb. Award and did not turn over any books and records to the Investor Member. The Arb. Award was entered November 1, 2020, and it was not appealed. In order to

[12] RA 065 ¶4
[13] RA 066 ¶6

enforce the Arb. Award, the Investor Member filed the Denton Contempt Litigation.

22. In response, Bloom/SJCV filed a countermotion for the modification of the Arb. Award and a request for expenses, filing the Bloom Declaration which contended that the LLCs had "no funds or employees, and the only way for Defendants to obtain and furnish the records in compliance with the Arb. Award would be for the Court order Plaintiff [TGC/Farkas Funding, LLC, the Investor Member] to first pay expenses."[14] The Court denied Bloom/SJCV's countermotion and affirmed the Arb. Award (the "Denton Award Order") which was entered November 17, 2020.[15] A month later, on Dec. 18, 2020, the Investor Member moved for an Order to Show Cause ("OSC") citing no compliance or communicated intention by Bloom to comply with the Arb Award.[16] Bloom was personally served with the OSC and post-judgment discovery.[17]

23. Following the issuance of the OSC and the existence of the postjudgment discovery, the Court found that despite Farkas no longer being active in the Plaintiff LLC and having given full authority to the Investor Member, Bloom convinced his brother-in-law, Farkas, to sign a series of documents on behalf of the Plaintiff LLC, purporting to bind the Plaintiff LLC and the Investor Member to their detriment (the "Farkas Documents").[18]

24. One of the Farkas Documents was a settlement agreement executed on

[14] RA 067 ¶8.
[15] RA 067
[16] RA 067-RA068 ¶9
[17] Id.
[18] RA 072-RA 075 ¶20.

Jan. 6, 2021 (the "Settlement Agreement"), purportedly on behalf of the Investor Member, which Bloom then asserted mooted the OSC and the post-judgment discovery.[19] Bloom filed with the Court a Motion to Enforce the Settlement Agreement which provided for the immediate dismissal of the Order affirming the Arb. Award and the Arb. Award with prejudice.[20] Bloom also argued that he was a non-party to the dispute and again reiterated the need for expenses to comply.[21] Bloom did not disclose the existence of the Settlement Agreement to the Investor Member.[22] When the Investor Member found out about the Settlement Agreement it immediately sent notice repudiating it. The brother-in-law Farkas testified that he did not believe he had the authority to execute the Settlement Agreement on behalf of the Plaintiff LLC and that Bloom understood that.[23] Ultimately, the court found that "[t]he Settlement Agreement was a sham, never designed to result in any fair benefit to Plaintiff [LLC], and, if effectuated with dismissal of the Order, the underlying Arb. Award… the ramifications to Plaintiff [LLC] would have been unacceptable under law or equity."[24]

25. Judge Denton found that "Bloom disobeyed and resisted the Order in contempt of Court (civil) (the "Contempt Finding"), and further found that the Motion to Enforce was a tool of that contempt as orchestrated by Bloom in disregard

[19] 19 RA 068 ¶10
[20] Id.
[21] RA 068 ¶11
[22] RA 069 ¶13
[23] RA 069 ¶ 15
[24] RA 095 ¶32

of the Arb. Award confirmed by the Order."[25]

26. The Court particularly called out the circumstances of the execution of the Settlement Agreement by Farkas in 2021. Apparently, despite Farkas' having resigned and given all authority to the Investor Member, Jay Bloom had sent several documents to a UPS store to be executed by his brother-in-law Farkas. Jay Bloom sent the Settlement Agreement, and he also sent documents purporting to fire the Plaintiff LLC's counsel, Garman Turner Gordon ("GTG"), to hire Bloom's personal counsel instead, and a release releasing and indemnifying Bloom, on behalf of the Plaintiff LLC (collectively, the "Farkas Documents").[26] Based on those documents and relying on Bloom's representations as to Farkas' authority, Bloom's personal counsel sent correspondence to GTG representing that he was hired to replace GTG and disclosing the existence of the purported settlement agreement.[27]

27. Jay Bloom's personal counsel, in attempting to substitute in, did not contact either of the members of his client, but relied solely on Bloom's (his adversary's) representations, testifying that he took direction from Bloom because Bloom was Farkas' brother-in-law and his "conduit."[28] The Court points out that at all relevant times Bloom and the LLCs (the Defendants) were adverse to the Plaintiff LLC *with pending contempt proceedings against them*, and under no circumstances should Bloom have been directing Plaintiff LLCs counsel without any member of

[25] RA 097 ¶ 3)
[26] RA 073
[27] RA 074
[28] RA 075 ¶21

Plaintiff LLC's participation.[29]

28. The Court found that Bloom and his personal counsel (now purporting to act for the Plaintiff LLC) knew about Farkas ceding his authority to Flatto following the issuance of the Arb. Award and "were unfazed and moved forward in their enforcement efforts" with respect to the Settlement Agreement executed by Farkas, without any authority.[30] The Court further held that "Bloom's refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless" and that "no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent."[31] Bloom tried to convince the Court that the Arb. Award was based on a declaration in which Farkas committed perjury. Farkas provided rebuttal testimony that his declaration was truthful and the "Court finds there is no support for Bloom's allegation of perjury."[32]

29. Despite having received notice of Farkas' consent to the revised operating agreement giving Flatto authority, Bloom then argued that certain old documents executed by Farkas provided apparent authority, which argument the court dismissed.[33] The Court held "there was a lack of good faith in Bloom's dealings with his brother-in-law in order to obtain the signed [Farkas] Documents with haste and in an intentional disregard of the restrictions set forth in the Arb

[29] Id.
[30] RA 075 ¶22.
[31] RA 075 ¶23
[32] Id.
[33] RA 077 ¶26

Award"[34] The court found that Bloom's actions in making Farkas sign the documents amounted to duress by threatening his brother-in-law Farkas with civil action, especially where there are circumstances of emotional consequences,[35] and that such threats amounted to bad faith subject to sanctions.[36]

30. The Court further found that Bloom's Motion to Enforce the Settlement Agreement "was filed for the express purpose of avoiding the consequence of Defendant's and Blooms contempt of the Order."[37] The court found that due to their familial relationship "Bloom had a duty to act with the utmost good faith when dealing with Farkas" which he breached.[38] Farkas testified that "[Bloom] is my brother-in-law. He's family. I didn't think he would-he would try to do something like this..." "I trust him as a brother-in-law, and as somebody who was representing to me that he was just trying to help in this part of what was going on… I believe that he took advantage of a nuance in the law… I think the way Jay treated me was wrong and manipulative. And I think he knew exactly what he was doing."[39] Rather than acting with the utmost good faith, Bloom actually threatened Farkas with civil action if he did not sign the Settlement Agreement and the other Bloom Documents.[40]

31. The court stated that Bloom was only able to procure Farkas' signature

[34] 34 RA 077-RA 078 ¶27.
[35] RA 087-RA 088 ¶¶16
[36] RA 090
[37] RA 080 ¶34
[38] RA 080-RA 081 ¶35
[39] Id.
[40] RA 081 ¶37

through the abuse of special confidences, the threat of adverse action and concealment of the true nature and substance of the Bloom Documents being signed.[41]

32. It is no surprise that the court granted the OSC and found Bloom in contempt holding that Bloom was not incapable of abiding by the Court's order affirming the Arb. Award, "Bloom merely determined to do nothing to comply with the order".[42] The court further concluded "there was no good faith basis for Bloom's intentional disregard of the Arb. Award and Order thereon" and reliance by Bloom on Farkas' signature was not reasonable.[43]

33. The Denton Court found Bloom's testimony demonstrated that the LLCs (similarly to SHAC and SJCV here) had no continued operations, no employees, no bank accounts, no records being maintained as required under the operating agreements or NRS 86.241 and no active governance of any kind (the "Breach of Entity Duties").[44] The court held that "equity must be applied such that Bloom will not be immune from consequences from his intentional conduct for the purpose of disobeying and/or resisting the Order. Therefore, in addition to the "responsible party" rule that applies to contempt, there should be no immunity for liability when, as here, Bloom is [the LLCs] *alter ego*."[45]

34. The Denton FFCLO found that Bloom intentionally concealed the true

[41] 41 Id.
[42] Id. at p. 21:21-22.
[43] RA 088 ¶11.
[44] RA 094-RA 095 ¶29
[45] Id.

facts of the subject of the dispute, and that Bloom made threats to a party who he was bound to act toward in good faith and with due regard. Judge Denton found that "Farkas was threatened by Bloom with civil action by Defendants and/or their members if he did not sign the Settlement Agreement and other documents provided to him by Bloom, his family member;"[46] that "[n]ot only did Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would never have to be revealed until the case was dismissed, inclusive of hiring Farkas separate counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement" (collectively, the "Duress and Bad Faith Acts").[47]

35. In addition, as part of the Breach of Entity Duties, the Denton FFCLO found as a matter of law that "[Bloom's][48] contempt of the [Court] Order through resistance and/or disobedience [was] clearly established."[49]

36. Further, the Denton FFCLO states that Bloom followed "no corporate formalities" with regard to his entities, and "that at this juncture, Bloom is the alter ego of the named corporate Defendants" (previously defined herein as the Alter Ego Finding).[50]

37. The Denton FFCL found "SJ Ventures Holding Company, LLC ("SJV") appointed the sole manager and Bloom is the sole manager of SJV."[51]

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[46] RA 081 ¶37
[47] RA 089 ¶15 at p. 27
[48] Bloom was found to be the "sole natural person legally associated with Defendants." RA 090-RA 091 ¶20
[49] RA 090 ¶ 19
[50] RA 093-RA 094 ¶28
[51] RA 064 ¶2

38. The Denton FFCL, further concluded

> Bloom is the *alter ego* of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf of L.G. v. Eighth Judicial Dist. Courtin &for Cty. of Clark,* 133 Nev. 730,735,405 P.3d 651, 655-56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego,* illegality or other unlawfulness, will equally apply to a Nevada LLC. "As recognized by courts across the country, LLCs provide the same sort of possibilities for abuse as corporations, and creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists." *Id.,* 133 Nev. at 736,405 P.3d 656.[52]

39. On August 10, 2021, an Order Appointing Receiver was entered in this matter.

IV. Summary of Argument

Plaintiffs defaulted the Documents. Although the Real Property securing the documents has been foreclosed upon, there is approximately $4,000,000.00 still remaining to be paid to Defendants. In addition to the certain requirements of the Forbearance Agreement, SJCV pledged its membership interest in SHAC to Defendants. Further, SJCV granted a security interest in a Judgment in the amount of $2,221,039,718,46 in Case No, A-17-753459-C (the "Judgment"). It has been through the Receiver that Defendants have found that SHAC has no assets and there have been no successful efforts to collect on the Judgment. The Receivership is necessary for Defendants to protect their interest in SHAC and the Judgment.

[52] RA 093-RA 094 ¶28

V. 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." *Medical Device Alliance, Inc. v. Ahr,* 116 Nev. 851, 862, 8 P.3d 135, 142 (2000) (citing *Nishon's Inc. v. Kendigian,* 91 Nev. 504, 505, 538 P.2d 580, 581 (1975); *Peri-Gil Corp. v. Sutton,* 84 Nev. 406, 411, 442 P.2d 35, 37 (1968); *Bowler v, Leonard,* 70 Nev. 370, 383, 269 P.2d 833, 839 (1954)). The law is clear that a receiver may be appointed in an action "between partners or others jointly owning or interested in any property" where it is shown that the property "is in danger of being lost, removed or materially injured." *Id,* at 116 Nev. 862, 8 P.3d 142.

> **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.
>
> . . .
>
> 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.

In general, "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 Partnership, Inc.,* 113 Nev. 195, 199, 932 P.2d 1067, 1069 (*citing Lynn v. Ingalls,* 100 Nev. 115, 120, 676 P.2d 797, 800-01 (1984)). A court-appointed receiver acts as an officer of the court. *Bowler v. Leonard,* 70 Nev. 370, 383, 269 P.2d 833, 839 (1954). Nevada law allows for the appointment of a receiver upon the application of a creditor who seeks to subject any property or fund to a claim when the property or a fund is in danger of being dissipated. *See* NRS 32.010. Nevada law also allows for the appointment of a receiver upon the application of a party who has a probable claim to property or a fund. The property or fund is in danger of being lost, removed, or materially injured. NRS 32.010 also provides that a receiver may be appointed in all other cases where receivers have heretofore been appointed by courts of equity.

B. A Receivership is Warranted

Defendants are well justified in having a receivership as it is clear the collateral for the Forbearance Agreement and Amended Forbearance Agreement are in jeopardy of being lost. The Denton Court has found that First 100, LLC and First One Hundred Holdings LLC, the entities holding the interest in the collateral pledged,[53] have no continued operations, no employees, no bank accounts, no records being maintained as required under the operating agreements or NRS 86.241 and no active governance of any kind.[54]

In addition, SJCV has defaulted under the terms of the Documents. The

[53] RA 022-RA 030
[54] RA 063-RA 100

district court exercised its discretion and appointed a receiver to collect the business records of SJCV, First 100, and First One Hundred Holdings to determine the efforts made to collect upon the Judgment and report the financial condition of SJCV, First 100, and First One Hundred Holdings to the court. Pursuant to NRS 32.010 the court appointed the receiver to protect Defendants' collateral in accordance with the Documents.

C. There is No Showing That Larry Bertsch is Biased

The representations made about Receiver Bertsch are false, misleading, and intentionally designed to obtain inappropriate relief. No court has ever found the Receiver to have acted unethically in any matter. Plaintiffs point to *Vion Operations LLC v. Jay Bloom, et al.* (Case No. A-11-646131-C) (the "*Vion Matter*") to purportedly demonstrate the Receiver's animosity toward Mr. Bloom. Although Mr. Bloom did seek to disqualify Mr. Bertsch, those efforts were to no avail. The Honorable Gloria Sturman denied Jay Bloom's *Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record, and for Monetary Sanctions* on May 13, 2013. Furthermore, Judge Sturman granted the *Special Master's Motion for Order Accepting Special Master's Final Report; and Discharging Special Master* via the same Order.[55] At no point in the litigation did the district court find that Mr. Bertsch, as Special Master, acted unethically. In fact, the Order states that "[t]he Court does not find that non-disclosure of such relationship constitutes grounds for disqualification."[56] The district court went on to

[55] RA 001-RA 009
[56] RA 005:27-28

find that the "Special Master is a fair, impartial, unbiased and highly skilled forensic accountant, and the matters in this case to which the Court make reference are in his area of expertise."[57] The district court further accepted his final report, and found that Mr. Bertsch, as Special Master, had "complied in all respects with the Order entered on October 19, 2011," and determined that the "Special Master's Duties in [the matter] were complete."[58]

Unhappy with the report prepared by Mr. Bertsch in the *Vion Matter*, Mr. Bloom then filed suit against Mr. Bertsch, in *Bloom v. Larry L. Bertsch, et al*, Eighth Judicial District Court (Case No. A-15-714007-C). However, this Court directed the district court to dismiss the action stating "the district court [in *Vion*], upon being presented with the evidence, implicitly rejected Bloom's contention and found that Bertsch has not acted beyond the scope of his courtderived duties. To the extent that Bloom's motion can be seen as seeking leave of court to sue Bertsch, the district court did not explicitly permit it."[59] This Court also quoted from the lower court as follows:

> [Bertsch] is a fair, impartial, unbiased and highly skilled forensic accountant, and the matters in this case to which the [c]ourt made its reference are in this area of expertise. The reference to the [s]pecial [m]aster in this case was proper.[60]

This Court then directed the "clerk of this court to issue a writ of mandamus directing the district court to dismiss the under-lying complaint against Bertsch."[61]

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[57] RA 006:2-4
[58] RA 006:23-24
[59] RA 021
[60] RA 041
[61] RA 021

D. The Bankruptcy Court Ruled that The State Court is to Determine the Application of the FFCL

Plaintiffs have intentionally omitted critical parts of the facts and authority they rely upon. During the oral ruling on September 28, 2021, regarding the Motion for Sanctions for Violation of the Automatic Stay, the Bankruptcy Court clearly stated:

> The partial contempt order stated only that the motion is granted in part and the Court finds that the CBC parties violated the automatic stay of 11 U.S.C. 362(a) with respect to the items designated as issues A, B, and C on ECF Number 79-2, Page 3, n.1, Lines 17 through 20.
>
> Not stated therein, but recognized by law, and as set forth by debtor in its moving papers is that violations of the automatic stay are void. Therefore, to the extent that the partial contempt order found the CBC parties pursued if certain of the state court claims was a violation of stay, then any of the state court findings of fact and conclusions of law related solely to those claims **may be** void.
>
> To the extent that the findings of fact and conclusions of law require clarification as to which claim they relate, **it is the state court that is best situated to make that determination and clarify what, if any, findings of fact it relied upon in rendering its conclusions of law.**
>
> Notably, the state court acknowledged debtor's Chapter 11 case in Footnote 2 of its findings of fact and conclusions of law at ECF 112, Exhibit 9, and stated, quote, "As no order lifting the stay has been entered by the bankruptcy court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights, though factual findings related to Spanish Heights are included in its decision."
>
> Debtor has argued without citation to any analogous authority

> with a partial stay violation that the entirety of the April 6th state court decision be rendered void as a result of the partial contempt order. Debtor has not offered an alternative to its "all or nothing" treatment of the state court's findings of fact and conclusions of law that resulted from that hearing.
>
> **This argument is flawed.** This Court did not find the entirety of the March 15, 2021 state court hearing to be in violation of the automatic stay. Indeed, the Court spent a significant amount of time analyzing the claims as they related to this debtor to determine that the CBC parties were in violation of the stay for proceeding with some but not all of the claims.
>
> The automatic stay did not prevent the state court hearing from proceeding with respect to claims against the nondebtor parties. Therefore, determining which findings and conclusions of law, if any, that resulted from that April 6th hearing is not an "all or nothing" proposition.
>
> Were the only parties to the state court case the debtor and the CBC parties, or if the only claims pursued by the CBC parties at the hearing on April 6th were those which this Court ultimately found to be in violation of the stay, only then would debtor's suggestion that the entire hearing and the resulting findings of fact and conclusions of law are void to be accurate.
>
> Because those are not the facts, and I only found a partial violation of the automatic stay, however, a blanket finding that the entirety of the April 6th hearing and resulting findings and conclusions of law is not appropriate. [62]

Emphasis added.

E. The District Court's Findings of Fact and Conclusions of Law are a Result of Evidentiary Hearing for Plaintiffs' Motion for an Injunction

The Findings of Fact and Conclusions of Law entered on April 6, 2021 was a

[62] 62 RA 115:15-RA 117:19.

direct result of Plaintiffs Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction ("Motion for TRO"). At the hearing for Plaintiffs Motion for TRO, the district court ordered that a "trial on the merits would be advanced to the date of the Preliminary Injunction Hearing so all the factual issues raised can be put to bed."[63] This trial was to begin on February 1, 2021. Plaintiffs did not object to this. Further the district court "suggested parties enter into a stipulation on those issue covered in the pleadings that will be tried…"[64] Plaintiffs did not object to this.

On January 12, 2021, a Stipulation and Order was entered, wherein the parties stipulated to five issues to be adjudicated by the State Court at the bifurcated trial on the merits.[65] Plaintiffs did not object. On February 1, 2021, the bifurcated trial on the issues stipulated. Plaintiffs did not object. On February 2, 2022, the Plaintiffs rested their case. On the morning of February 3, 2021, just as the bifurcated trial was resuming, SHAC filed its Chapter 11 Bankruptcy Petition, and the district court stayed the matter for thirty (30) days.[66] Plaintiffs did not object to the trial at any time. District courts have discretion to bifurcate legal and equitable claims in a single action. *Awanda v. Shuffle Master, Inc.,* 123 Nev. 613, 173 P.3d 707 (2007).

By failing to object below, multiple times, Plaintiffs have waived any objection they might have to bifurcation of the trial.

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[63] 63 RA 038-RA 039
[64] Id.
[65] RA 040-RA 041
[66] RA 101-RA 107

VI. Conclusion

Based on the foregoing, Respondents' respectfully requests that this Court affirm the district court's order appointing a receiver.

DATED this 25th day of April 2022.

MUSHKIN & COPPEDGE

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CERTIFICATE OF COMPLIANCE

1. I hereby 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:

2. [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font; or

3. [ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

4. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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[ ] Does not exceed _____ pages.

5. Finally, I hereby certify that I have read this appellate 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 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where

the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of April 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that on this 25th day of April 2022, I served a true and correct copy of the foregoing **Respondents' Answering Brief** as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[X] via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

[ ] via hand-delivery to the addressee listed below;

[ ] via facsimile;

[ ] by transmitting via email to the email address set forth below.

/s/Karen L. Foley
An Employee of
Mushkin & Coppedge