

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

Electronically Filed
Jun 09 2022 09:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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' REPLY BRIEF

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-7900
Facsimile: (702) 629-7925
Email: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION.....	1
ARGUMENT	2
A. There is No Basis for a Receivership Over SJC Ventures.....	2
B. Receiver Larry Bertsch is Not Neutral.....	4
CONCLUSION.....	6
ATTORNEY’S CERTIFICATE OF COMPLIANCE.....	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

Cases

<i>Salnita Corp. v. Walter Holding Corp.</i> , 19 Del. Ch. 426, 168 A. 74, 76 (1933).....	3
<i>Thoroughgood v. Georgetown Water Co.</i> , 9 Del. Ch. 84, 90, 77 A. 720, 723 (1910)	3

Statutes

NRS 107.100.....	2
NRS 40.459(1)(c).....	1
NRS 32.010.....	2

Rules

NRAP 28(e)	22
NRAP 28	22
NRAP 32	22

INTRODUCTION

In their Answering Brief (AB), Respondents 5148 Spanish Heights, LLC and CBC Partners I, LLC concede that the “Real Property securing the documents has been foreclosed upon.” AB at p. 14. Respondents then claim that there is “approximately \$4,000,000.00 still remaining to be paid to Defendants.” AB at p. 14. This is not accurate, as Respondents have failed to obtain any deficiency judgment – nor do Respondents even have a cause of action pending for a deficiency judgment.

To date, 5148 Spanish Heights, LLC has not initiated any deficiency action against Appellants, and in fact, cannot prevail on any such action pursuant to NRS 40.459(1)(c), wherein a Note holder who purchased on the secondary market is precluded from recovering more than the amount paid to purchase the Note or the difference between that amount and the value of the real property.

This is relevant because it goes to the mootness of the order appointing the Receiver over SJC Ventures at this point. There is no longer any real property to protect, and there is no deficiency judgment. At a minimum, receiver order should be reversed in light of its mootness.

Further, Respondents mistakenly argue that “No court has ever found the Receiver to have acted unethically in any matter.” AB at p. 17. To the contrary, the Honorable Gloria Sturman has previously found that Larry Bertsch (the appointed

Receiver in this case) 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. A violation of NCJC 2.11(C) is in fact a violation of an ethical canon. The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. As such, if a violation of the Code of Judicial Conduct is found, that means an ethical violation is at play.

Accordingly, the Receiver order should be reversed in light of its mootness, and alternatively, it should be reversed because a biased receiver was selected.

ARGUMENT

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

In the Answering Brief, Respondents contend that they 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." AB at p. 16. It is unclear what "collateral" is being referred to here. The real property at issue has already been foreclosed on (as Respondents concede), and the only other "collateral" is a monetary judgment (the Ngan Judgment referenced on AB at p. 4) held by First 100, which has nothing to do with SJC Ventures' regular business activities. SJC

Ventures merely holds a Membership Interest in First 100 (AB at p. 4), and there has been no explanation or findings as to how merely holding that Membership Interest somehow equates to actual evidence of the subject property being lost, injured, destroyed, or subject to waste per NRS 107.100 and NRS 32.010.

The Answering Brief does not deny that 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 made rent payments to SHAC, paying rent in advance all the way through December 2022. PA0050-54.

Instead, Respondents point to findings that First 100, LLC has no continued operations, employees, bank accounts, or active governance. AB at p. 16. Respectfully, that has nothing to do with whether a receiver over SJC Ventures was justified. While Respondents repeatedly point out that SJC Ventures has allegedly “defaulted under the terms of the Documents,” a monetary default alone is not enough to warrant a receiver. 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).

There were no findings that SJC Ventures was not being properly maintained and governed. There were no findings whatsoever stating that SJC Ventures was improperly governed and funded, which goes to the lack of justification for any receiver order, and the Answering Brief fails to shed light on any such findings.

Further, even if somehow there was justification for the appointment of a receiver, that no longer is the case, as Respondents concede that the real property at issue has been foreclosed on. Therefore, instead of just declaring that they have a deficiency interest, Respondents would need to pursue a deficiency judgment against Appellants, and they would need to abide by NRS 40.459(1)(c) in doing so, which indicates that a Note holder who purchased on the secondary market is precluded from recovering more than the amount paid to purchase the Note or the difference between that amount and the value of the real property.

B. Receiver Larry Bertsch is Not Neutral

The Answering Brief also contends that Appellants have made “false” and “misleading” representations about the findings in the *Vion Operations LLC v. Jay Bloom, et al.* case. AB at p. 17. Not so. The Honorable Gloria Sturman found that Mr. Bertsch’s violated NCJC 2.11(C). PA0009-16. This was an ethical violation.

The fact that Judge Sturman did not spell out in the order that violating NCJC 2.11(C) is an ethical violation is not dispositive – the Code of Judicial Conduct is designed to establish standards for ethical conduct, that is its entire purpose, as set forth in its Preamble. Respondents appear to be arguing that because Judge Sturman did not find that disqualification was appropriate, that must have meant that no ethical rules were violated, but this is not the case.

And further, stating that the district court “accepted Mr. Bertsch’s final report” in the *Vion* matter is a bit misleading, as the district court also specifically “does not adopt the Final Report of Special Master as findings of fact or conclusions of law,” so “accepting” the report was not an extraordinary step. PA0014.

The Answering Brief also does not deny that Mr. Bloom personally sued Mr. Bertsch following the *Vion* case. 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 in this underlying matter, holding that “the Court’s experience with Larry Bertsch has not been similar to that outlined by Jay Bloom.” PA0690.

Accordingly, it was an abuse of discretion to allow Mr. Bertsch to be the receiver at all in this case, as no consideration was made to the storied history

between Mr. Bertsch and Mr. Bloom.

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 8th day of June 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Appellants

CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2

I hereby certify that I have read this reply 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 1,882 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 8th day of June 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Appellants

CERTIFICATE OF SERVICE

I certify that on the 8th day of June 2022, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' REPLY BRIEF** shall be made in accordance with the Master Service List as follows:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 S. Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
Attorney for Respondents

/s/ Brandon Lopinero
An Employee of MAIER GUTIERREZ & ASSOCIATES