

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT T. SCHETTLER,

Appellant,

vs.

PACIFIC WESTERN BANK,

Respondent. /

Case No. 83408

Electronically Filed
Aug 24 2021 09:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION UNDER NRAP 8 AND 27 FOR STAY PENDING APPEAL

(Stay requested by September 15, 2021)

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Attorneys for Appellant

Appellant Vincent Schettler (“Vincent”) hereby moves for a stay of the district court’s order appointing a post-judgment receiver over Vincent’s property (“Receiver Order”). The district court denied Vincent’s motion for a stay pending appeal on July 26, 2021, but nevertheless ordered a temporary stay of thirty days to afford Vincent the opportunity to request the same before this Court.¹ The district court’s temporary stay expires on September 15, 2021. Accordingly, Vincent respectfully requests that the Court decide this motion on or before September 15, 2021.

I. PROCEDURAL HISTORY AND NATURE OF APPEAL

On September 26, 2014, the Superior Court of the State of California entered judgment against John Ritter, Darren Badger, and Vincent, jointly and severally, in the amount of \$2,717,490.79, in favor of Pacific Western Bank (the “Bank”). The Bank domesticated the same in Nevada on December 3, 2014.

In 2015, the Bank made several attempts to execute against Vincent’s property to apply to the judgment. However, all such attempts were either quashed by the district court or declared to be stale. Certain assets were also deemed to be exempt. From the end of 2015 through March of 2019, the Bank did not pursue any judgment collection against Vincent. However, in April of 2019, the Bank resumed its efforts.

On March 11, 2021, the Bank filed its Motion for Appointment of Receiver over Judgment Debtor Vincent T. Schettler’s Assets (the “Receiver Motion”). Vincent opposed the Receiver Motion and counter-moved for appointment of a special master.

¹ See Order Denying Stay, attached hereto as **Exhibit 1**.

On April 28, 2021, the district court heard the Receiver Motion and Vincent's counter-motion and took the same under advisement.

On June 21, 2021, the district court entered a minute order granting the Bank's Receiver Motion and denying Vincent's counter-motion (the "Minute Order"). As a matter of first impression, the district court ruled that appointing a post-judgment receiver under NRS 32.010(4) requires a different analysis than other receiverships and is not considered a harsh and extreme remedy and/or a remedy of last resort:

[U]nder the Nevada statutory scheme the appointment of a receiver is not a remedy of last resort because Nevada law does not require the Court to consider the interests of both the judgment creditor and the judgment debtor, and whether the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.²

Rather, the district court determined that it need only find that (a) an execution has been returned unsatisfied, or (b) a judgment debtor has refused to apply the judgment debtor's property in satisfaction of the judgment:

Under the Nevada statute, "[a]fter judgement, to dispose of the property according to the judgment, ... in proceedings in aid of execution, when an execution has returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment," a receiver may be appointed by the Court. See, NRS 32.010.4.³

According to the Minute Order, the district court granted the Receiver Motion because the Bank demonstrated that its previous execution efforts had been returned unsatisfied:

In the instant action Pacific West has utilized the standard debt collection procedures as set forth in its motion. In light of the foregoing, Plaintiff Pacific

² See Minute Order, at 2-3, attached hereto as **Exhibit 2**.

³ *Id.*, at 3.

*Western Bank's Motion for the Appointment of Receiver Over Judgment Debtor Vincent T. Schettler's Assets shall be GRANTED.*⁴

Following the entry of the Minute Order, Vincent and the Bank attempted to draft a mutually-approved order. Such efforts were unsuccessful because the Bank's proposed order included several findings of fact that the district court never expressly made and were irrelevant to the district court's narrow interpretation of NRS 32.010(4). The Bank's proposed order also vested the receiver with powers contrary to Nevada law, including, powers to compel distributions from spendthrift trusts and limited-liability companies in violation of Nevada trust law and charging order law, respectively. Competing orders were therefore submitted.

On July 21, 2021, the district court convened a status hearing on the competing orders and a hearing on Vincent's motion to stay pending appeal. During that hearing, the district court reiterated that its decision to appoint a post-judgment receiver was solely based on its interpretation of NRS 32.010(4) and did not consider any other foreign jurisprudence, nor did it weigh any evidence of the equities:

I look at Moore's Federal Practice and Procedure all the time when it comes to, for example, the rules, because our rules many times there can be differences, but we're moving more and more towards the federal rules, I and look to that for guidance sometimes if we have unsettled principles.

But here I specifically just looked at the statute and interpreted the statute, and that's all I did, you know. And I did consider the California arguments that were made, how they handle things over there, but their statute is different.

...
And so I'm not weighing and balancing any harms here, I'm looking at the rights of a creditor, and if they meet the threshold, there's an appointment of a receiver. If they don't meet the requirements, there's not an appointment of the receiver, and that's what I think would be the analysis. (Emphasis added).⁵

⁴ *Id.*

⁵ See July 21, 2021 Hearing Transcript, at 18:16-25; 40:21-25, attached as **Exhibit 3**.

Notwithstanding, the district court entered the Bank's proposed order which is contrary to the district court's reasoning and indeed the Bank's own argument that it only needs to satisfy one of the conditions in NRS 32.010(4). The Receiver Order includes numerous findings of fact that the district court never made nor relied upon in its ruling that would otherwise require a balancing of the equities, which was explicitly deemed unnecessary. Indeed, such findings were made without any evidentiary hearing and were disputed by Vincent with material evidence during the motion practice. Moreover, the district court ruled that no evidentiary hearing was necessary to establish cause for a receiver under NRS 32.010(4), or to determine what assets are exempt, what entities are proper parties, and what judgment amount is to be collected by the receiver as there is a dispute, supported by the Bank's own inconsistent affidavits of judgment, as to what remains due and owing after partial satisfaction.

The district court also refused to grant Vincent's motion for a stay pending appeal despite NRCP 62(d)(1)'s clear mandate that "a party is entitled to a stay by providing a bond or other security." Instead of determining the appropriate amount of a bond, the district court denied a stay entirely (other than a temporary 30-day stay to seek relief in this Court) because "no monies have been paid and the judgment is unsatisfied."⁶ In other words, the district court inferred that under no circumstances is a judgment debtor entitled to a stay of the appointment of a post-judgment receiver pending appeal if judgment debtor has not voluntarily paid the underlying judgment.

⁶ *Id.*, at 53:18-22.

II. LEGAL ARGUMENT

In the proceedings below, Vincent was entitled to a stay of the Receiver Order pending appeal provided that he posted a bond or other security in an amount determined by the district court. NRCP 62(d)(2). The district court denied Vincent this absolute right. In this Court, NRAP 8(c) sets forth factors that it will generally consider in deciding whether to issue a stay.⁷ A movant does not always have to show a probability of success on the merits and can instead show “a substantial case on the merits when a serious legal question is involved and [] that the balance of equities weighs heavily in favor of granting the stay.”⁸ Here, all four factors are especially strong and favor the granting of a stay.

A. The object of Vincent’s appeal will be defeated if a stay is denied.

If a stay is not granted, the damage caused by a receiver to Vincent, the Schettler Family Trust, and Vincent’s non-party clients and business ventures will have already been done before the appeal is decided. A reversal or remand at that point would be meaningless. Moreover, any property that is improperly taken by the receiver and applied to the judgment during the pendency of the appeal leaves Vincent (and potential nonparties to this case) with an undesirable and unliquidated cause of action against the Bank for restitution.⁹ Accordingly, this factor weighs in favor of a stay.

B. Vincent will suffer irreparable and serious injury if a stay is denied.

⁷ See also *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

⁸ *Id.* at 659, 6 P.3d at 987.

⁹ See *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 71 P.3d 1258 (2003).

In most cases, receivers are appointed *pendente lite* (i.e., during the litigation) because of some imminent and demonstrable threat of dissipation or continued harm to the property subject to the litigation. Here, however, a receiver was appointed for a different purpose: to aid in execution of a judgment. In appointing receivers *pendente lite*, this Court has adopted the general view that the same is “a remedy of last resort.”¹⁰ Receiverships are expensive, considered a last resort, are frequently more hurtful rather than helpful, and are “the most expensive luxury known to the realm of law.”¹¹

In this case, Vincent’s business operations have already been seriously damaged as a result of the Bank’s request for a receiver. For example, Mosaic Five, LLC (“Mosaic Five”), one of the numerous LLCs liberally mentioned in the Receiver Order, was in the midst of a real estate development project during the pendency of the Receiver Motion. Its lender on the project discovered the filing of the Receiver Motion. Based on the direct actions of the Bank requesting to include non-party entities in the Receiver Order, including Mosaic Five, the lender put a hold on the loan.¹²

Permitting a receiver to act during the pendency of the appeal will cause additional serious and irreparable harm, not only to Vincent’s business operations, but also to third parties like Mosaic Five that are owned by investors unrelated to Vincent.

¹⁰ See *Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954).

¹¹ See *Zwick v. Security State Bank of Red Wing*, 243 N.W. 140 (Minn.1932); *Monitors: A New Equitable Remedy?*, 70 Yale L. J. 103, at n. 52 (1960) (“Receivership is the most drastic remedy and the most expensive luxury known to the realm of law.”).

¹² See Sound Capital Letter, dated March 30, 2021, attached as **Exhibit 4**.

Moreover, the Receiver Order would force nonparty LLCs to make distributions to the Receiver without a charging order – a direct violation of Nevada law.¹³

The Receiver Order also compels trustees of all trusts where Vincent is a beneficiary to make distributions to the receiver.¹⁴ There are several trusts at issue which contain valid spendthrift provisions.¹⁵ The district court’s ordering of distributions from spendthrift trusts to the receiver is a clear violation of NRS 166.120(1), which “restrains and prohibits the assignment, alienation, acceleration and anticipation of any interest of the beneficiary ... by operation of law or any process at all[.]” Indeed, NRS 166.120(2) bars any court order directing payments by a trustee to a beneficiary of a spendthrift trust to anyone but the beneficiary.¹⁶

The Receiver Order empowers the receiver to assert liens on any entity that it thinks could owe Vincent money. Such power goes well beyond what NRS 32.010(4)

¹³ See Receiver Order, **Exhibit 5**, at 8-9 (“IT IS FURTHER ORDERED that any distributions, commissions, payments, or other monetary consideration (collectively, “Disbursements”) Schettler is or becomes entitled to receive... during the term of this receivership shall be paid and tendered to the Receiver, not Schettler, including, but not limited to, Disbursements from: (1) Vincent T. Schettler, LLC, (2) VTS Nevada, LLC...”).

This is contrary to NRS 86.401(2) which provides that a charging order is the “exclusive remedy by which a judgment creditor of a member [] may satisfy a judgment out of the member’s interest [and that] **no other remedy may be ordered by a court.**” (Emphasis added).

¹⁴ See **Ex. 5**, at 9:17-25.

¹⁵ See **Ex. 3**, at 13:7-12; 33:19-24.

¹⁶ See also *Klabacka v. Nelson*, 133 Nev. 164, 176, 394 P.3d 940, 950 (2017) (confirming that NRS 166.120 “prohibits payments made pursuant to or by virtue of any legal process.”).

contemplates, and even well beyond the case law relied upon by the Bank and the district court.¹⁷ Accordingly, this factor weighs heavily in favor of a stay.

C. A stay will not cause irreparable or serious injury to the Bank.

What is particularly troubling about the receivership, and will be a primary issue on appeal, is that the receiver is charged with what the Bank already has the right to do through proper exercise of its statutory judgment collection remedies. The Bank can (a) send discovery requests to third parties; (b) apply to the district court for charging orders; (c) obtain writs of garnishment and/or execution on the property of Vincent to the extent there is any subject to execution; and (d) elect to prosecute its collection case against the Schettler Family Trust. None of said remedies would be affected by a stay.

The Bank loses virtually nothing with a stay of the receivership other than the passage of time which is already accounted for through post-judgment interest.

D. Vincent is likely to prevail on the merits of his appeal and at a minimum stands a “substantial chance” of prevailing.

NRS 32.010 is the governing Nevada statute for most receiverships, including *pendente lite* and post-judgment. Absent from NRS 32.010 are any express factors that a district court must weigh before appointment a receiver. This Court, however, has held that receiverships are generally regarded as a remedy of last resort and that if

¹⁷ Indeed, in *Morgan Stanley v. Johnson*, the receiver’s power was limited to making an examination of the debtor’s potential assets than then giving a recommendation to the court on which assets were subject to liquidation to satisfy the judgment. See, **Exhibit 6**, *Morgan Stanley v. Johnson*, 2018 WL 5314945 (D.Minn.2018), at 2. The court denied the judgment debtor’s request for a stay of the receivership pending appeal because it had no reason to believe the receiver would exceed the scope of his limited authority. Here, the Receiver Order goes much further by empowering a receiver to actually take possession of assets and liquidate the same without prior court approval.

the desired outcome may be achieved by some less onerous method other than appointing a receiver, then that course should be followed.¹⁸

In this case, the district court ruled that a different standard applies to receivers appointed under subsection 4 of NRS 32.010 where it only needs to determine that (a) an execution has been returned unsatisfied, or (b) a judgment debtor has not applied property in satisfaction of the judgment.¹⁹ And despite the destructive and extreme nature of an appointment of a receiver, the district court also ruled that no evidentiary hearing is necessary to establish cause for a receiver, or to determine what assets are exempt, what entities are proper parties, and what amount is to be collected.

The genesis of NRS 32.010 was California's receivership statute. California's statute used to require, like Nevada's statute, a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply property in satisfaction of the judgment. However, California amended its statute in 1982 and removed such prerequisites. Now, California's statute only requires a finding that the appointment of a receiver is a "reasonable method to obtain the fair and orderly satisfaction of the judgment."²⁰ Importantly, California case law interpreting its receivership statute requires a showing of "exceptional" circumstances

¹⁸ See *Bowler*, at 70 Nev. at 384, 269 P.2d 839-40; and *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983).

¹⁹ See Receiver Order, at 2:5-22, **Ex. 5**.

²⁰ See Cal.C.C.P. § 708.620 and Legislative Committee Comments, **Exhibit 7**.

notwithstanding California’s more liberal statute.²¹ Given that this Court frequently looks to California law on issues of first impression, Vincent stands a substantial chance on appeal that this Court will adopt the same or a similar standard in *Medipro* or the federal standard in *Aviation Supply*.

Moreover, the district court noted its hesitation to appoint a special master due to concerns about an improper delegation of judicial responsibility.²² Vincent submits that the same concerns should apply to delegating judicial responsibility to a receiver. Here, the Receiver Order delegates the responsibilities of determining what property is exempt, what property is Vincent’s share of community property, etc. to a receiver. It even goes a step further and vests the receiver with the unfettered authority to apply whatever property she determines is non-exempt property to the judgment. A receiver is an agent of the court.²³ The district court, however, essentially appointed the receiver as a collection agent for the Bank. Such a delegation violates the law and public policy.

III. CONCLUSION

Based on the above, Vincent respectfully requests that the Court issue a stay of the Receiver Order pending its appeal pursuant to NRAP 8.

DATED: August 24, 2021.

Robert L. Eisenberg (SNB 950)
LEMONS, GRUNDY & EISENBERG

/s/ Alexander G. LeVeque
Alexander G. LeVeque (SNB 11183)
SOLOMON DWIGGINS FREER & STEADMAN

²¹ See *Medipro Medical Staffing v. Certified Nursing Registry*, 274 Cal. Rptr. 3d 797, 801 (Cal.App.2021) (“a receiver is rarely a necessity and, as a consequence, may not ordinarily be used for the enforcement of a simple money judgment.”)

²² See April 28, 2021 Hearing Transcript, attached as **Exhibit 8**, at 12:11-13:24

²³ See *Bowler*, 70 Nev. at 383, 269 P.2d at 839.

CERTIFICATE OF SERVICE

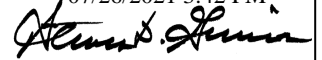
I certify that on the 24th day of August, 2021, I caused to be served via the Court's e-filing system and pursuant to NRAP 25(b) and NEFCR 9, and electronically filed the foregoing MOTION UNDER NRAP 8 AND 27 FOR STAY PENDING APPEAL with the Clerk of the Court for the Supreme Court of Nevada's E-filing system (Eflex). Participants in this case who are registered Eflex users will be served by the Eflex system as follows:

Dan R. Waite
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3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Counsel for Respondent

/s/ Alexandra T. Carnival

An employee of Solomon Dwiggin Freer & Steadman

EXHIBIT 1


CLERK OF THE COURT

ORDR

Dan R. Waite, Bar No. 4078

DWaite@lewisroca.com

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*Attorneys for Plaintiff Pacific Western Bank,
a California corporation*

DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California
corporation,

Plaintiff,

v.

JOHN A. RITTER, an individual; DARREN D.
BADGER, an individual; VINCENT T.
SCHETTLER, an individual; and DOES 1
through 50,

Defendants.

Case No. A-14-710645-B

Dept. No. 16

**ORDER DENYING SCHETTLER'S
MOTION TO STAY APPOINTMENT
OF RECEIVER PENDING APPEAL**

Date of Hearing: July 21, 2021

Time of Hearing: 9:00 a.m.

On July 21, 2021, at 9:00 a.m., in Department XVI of the above-captioned Court, Defendant/Judgment Debtor Vincent T. Schettler's Motion to Stay Appointment of Receiver Pending Appeal ("Motion to Stay"), came on for hearing. Dan R. Waite of Lewis Roca Rothgerber Christie LLP appeared by video on behalf of Plaintiff/Judgment Creditor Pacific Western Bank. Alexander G. LeVeque of Solomon Dwiggin Freer & Steadman, Ltd., and J. Rusty Graf of Black & Wadhams appeared by video on behalf of Mr. Schettler, who was also present telephonically. Based on the papers and pleadings on file, the arguments of counsel, and good cause appearing, the Court rules as follows:

IT IS HEREBY ORDERED that Vincent T. Schettler's Motion to Stay is DENIED.

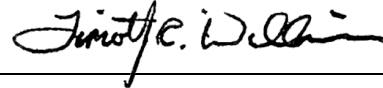
Upon Mr. Schettler's oral motion during the hearing, IT IS FURTHER ORDERED that this Order is stayed for thirty (30) days from notice of entry of order so that Mr. Schettler may

115050289.1

1 seek a stay from the Nevada Supreme Court. This Court's stay shall thereafter expire without
2 further notice.

3 **IT IS SO ORDERED.**

4 Dated this 26th day of July, 2021

5 

6 **A59 A6D 3EF7 6A1E**
7 **Timothy C. Williams**
8 **District Court Judge**

NS

9 Submitted by:

10 LEWIS ROCA ROTHGERBER CHRISTIE LLP

11 By: /s/ Dan R. Waite

12 Dan R. Waite, Esq.
13 Nevada State Bar No. 4078
14 3993 Howard Hughes Parkway, Suite 600
15 Las Vegas, Nevada 89169

16 *Attorneys for Plaintiff/Judgment Creditor*
17 *Pacific Western Bank*

18 Approved as to form and content:

19 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

20 By: /s/ Alexander G. LeVeque

21 Alexander G. LeVeque, Esq.
22 Nevada State Bar No. 11183
23 9060 West Cheyenne Avenue
24 Las Vegas, Nevada 89129

25 *Attorneys for Defendant/Judgment Debtor*
26 *Vincent T. Schettler*

From: Alexander LeVeque <aleveque@sdfnvlaw.com>
Sent: Thursday, July 22, 2021 8:37 AM
To: Waite, Dan R. <DWaite@lewisroca.com>
Cc: Horvath, Luz <LHorvath@lewisroca.com>
Subject: RE: PacWest v. Schettler: Proposed Order

[EXTERNAL]

Dan,

I like simple. Do you want to include the court's order regarding submission of receiver names, and then 1 week for you to object? Your call. Otherwise, the order is fine and you have my permission.

Best,

Alex

Alexander G. LeVeque

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129

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SOLOMON | DWIGGINS
FREER | STEADMAN ^{LTD}
TRUST AND ESTATE ATTORNEYS



From: Waite, Dan R. <DWaite@lewisroca.com>
Sent: Thursday, July 22, 2021 8:31 AM
To: Alexander LeVeque <aleveque@sdfnvlaw.com>
Cc: Horvath, Luz <LHorvath@lewisroca.com>
Subject: PacWest v. Schettler: Proposed Order

Good morning Alex,

Attached is a simple order from yesterday's hearing. Please let me know if it is acceptable to affix your e-signature and submit to the court. Thanks,

Dan

Dan R. Waite

Partner

dwaite@lewisroca.com

D. 702.474.2638

LEWIS  ROCA

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Pacific Western Bank,
Plaintiff(s)

CASE NO: A-14-710645-B

7 vs.

DEPT. NO. Department 16

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9 John Ritter, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/26/2021

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EXHIBIT 2

A-14-710645-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 21, 2021

A-14-710645-B Pacific Western Bank, Plaintiff(s)
vs.
John Ritter, Defendant(s)

June 21, 2021 8:00 AM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file herein, and the argument of counsel, the Court determines as follows:

After a review of the briefs, and a review of the cited case authority, the Court has reviewed the conditions upon which a receiver can be appointed post-judgment under California Law pursuant to CA Civ Pro Code § 708.620 (2019) versus the criteria for post-judgment collections under Nevada Law as set forth pursuant to NRS 32.010.4. This appears to be a question of first impression in Nevada. Unlike California, under the Nevada statutory scheme the appointment of a receiver is not a remedy of last resort because Nevada law does not require the Court to consider the

PRINT DATE: 06/21/2021

Page 1 of 3

Minutes Date: June 21, 2021

interests of both the judgment creditor and the judgment debtor, and whether the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. Under the Nevada statute, “[a]fter judgement, to dispose of the property according to the judgment, ... in proceedings in aid of execution, when an execution has returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor’s property in satisfaction of the judgment,” a receiver may be appointed by the Court. See, NRS 32.010.4. In the instant action Pacific West has utilized the standard debt collection procedures as set forth in its motion.

In light of the foregoing, Plaintiff Pacific Western Bank’s Motion for the Appointment of Receiver Over Judgment Debtor Vincent T. Schettler’s Assets shall be GRANTED.

Counsel for Plaintiff, Pacific Western Bank, shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

EXHIBIT 3

1 IN THE DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 ---o0o---

4 PACIFIC WESTERN BANK,)

5 Plaintiff,)

Case Number

6 A-14-710645-B)

7 vs.)

8 JOHN A. RITTER, DARREN D. BADGER,)

9 VINCENT T. SCHETTLER,)

10 Defendants.)

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12
13
14 Reporter's Transcript of Telephonic Proceedings

15 Wednesday, July 21, 2021

16
17
18 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19 DISTRICT COURT JUDGE

20
21
22
23
24 Reported By: Rhonda Aquilina, Nevada Certified #979, RMR, CRR
25 Court Reporter

Rhonda Aquilina, Nevada Certified Reporter #979

APPEARANCES:

(PURSUANT TO ADMINISTRATIVE ORDER 20-24, ALL MATTERS IN
DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC APPEARANCE)

For Plaintiffs:

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BY: DAN R. WAITE
ATTORNEY AT LAW

For Defendants Vincent T. Schettler:

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BY: ALEXANDER G. LEVEQUE
ATTORNEY AT LAW

BLACK & WADHAMS
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Las Vegas, NV 89135
BY: RUSTY J. GRAF
ATTORNEY AT LAW

Wednesday, July 21, 2021

9:42 a.m.

P R O C E E D I N G S

---o0o---

THE COURT: Anyway, next up happens to be page 14 of the calendar, and that's Pacific Western Bank versus John Ritter.

And let's go ahead and set forth our appearances on the record.

MR. WAITE: Good morning, Your Honor. Dan Waite for the Plaintiff Pacific Western Bank.

MR. LeVEQUE: Good morning, Your Honor. This is Alex LeVeque on behalf of Judgment Debtor Vincent Schletter who is appearing today via Bluejeans.

MR. GRAF: Good morning, Your Honor. Rusty Graf on behalf of Schettler.

THE COURT: And I think that covers all appearances. Do we want to have this status check reported?

MR. LeVEQUE: Yes, Your Honor.

THE COURT: I thought so.

All right. Gentlemen, once again good morning.

And I guess you have a couple matters on. We have the status check regarding competing orders. I put that on calendar, I think, right?

MR. WAITE: That's correct, Your Honor.

THE COURT: Yes. And then we have Vincent Schettler's

1 Motion to Stay Appointment of Receiver Pending Appeal.

2 **MR. LeVEQUE:** Yes.

3 **THE COURT:** All right. Now, I don't mind telling you
4 why I placed -- and we're getting an echo. Somebody has a
5 speaker on. They've got to turn it off.

6 **THE CLERK:** Counsel, this is the courtroom clerk.

7 Mr. LeVeque, I think your line might have a feedback
8 loop possibly by a second microphone, possibly. And I only say
9 that because it appears from Bluejeans it's showing audio.

10 I see now that you've muted your line. We'll see if
11 that works. Thank you very much.

12 **THE COURT:** All right. And apparently that helped.

13 But I realize there were competing orders or issues
14 regarding the order that was submitted by Mr. Waite. And one of
15 the issues I really want to discuss today, as far as the
16 receiver is concerned, Mr. Waite, did we submit any
17 documentation as far as the receiver is concerned: Who he is
18 what, what his credentials are, and all those wonderful things.

19 **MR. WAITE:** Yes, Your Honor. Dan Waite for the
20 plaintiff.

21 When we filed our motion, Exhibit 10, I'm going off of
22 memory, but I'm reasonably certain Exhibit 10 to the motion was
23 our proposed order, and Exhibits 11 and 12 were the two proposed
24 receivers, their CVs, their terms, and so forth. So, yes, those
25 were submitted back when the motion was originally filed.

1 **THE COURT:** All right. I'm going to take a look at
2 that.

3 And as far as receivers are concerned, the debtor, did
4 they suggest any -- I don't think they did, did they?

5 **MR. WAITE:** Your Honor, again, Dan Waite.

6 In response to the motion, no, there was no -- there
7 was no opposition at that time. In the process of the competing
8 orders, Mr. Schettler has proposed a particular receiver.

9 **THE COURT:** Right. And as far as that particular
10 receiver is concerned, I don't remember this, but maybe it was
11 submitted, was there any -- was there an exhibit submitted that
12 had his credentials and all those things for me to consider?

13 **MR. LeVEQUE:** Your Honor, this is Alex LeVeque.

14 When we opposed the original motion, it was implied
15 that we opposed all of them, including the choice of receiver.
16 We --

17 **THE COURT:** No, I'm not saying -- Mr. LeVeque, I'm
18 saying you waived it, because if you did I wouldn't be having
19 this conversation today.

20 **MR. LeVEQUE:** Oh, okay.

21 **THE COURT:** I'm just wondering if there was somebody
22 you recommended more so than anything.

23 Because whenever -- I don't mind telling you from a
24 philosophy perspective, when it comes to appointing a receiver,
25 I just feel the proper way to handle that would be to have, of

1 course, the moving party, who they want and so I can review it,
2 and I understand you had an opposition to it, but that doesn't
3 necessarily prevent you from suggesting someone too. Are you
4 with me?

5 **MR. LeVEQUE:** I appreciate that, Your Honor.

6 **THE COURT:** That's all I'm saying.

7 **MR. LeVEQUE:** Okay. We proposed someone. It was -- I
8 believe it was in some of the briefing, and this was raised in
9 the competing orders.

10 **THE COURT:** Right.

11 **MR. LeVEQUE:** And it was really more directed to
12 Mr. Waite in that competing order process, but we were going to
13 suggest someone who actually resides in Nevada. It would be
14 Robert Ansara who is part of Dunham Trust. He's well respected
15 by the court, especially the probate court. He's been
16 appointed as a professional fiduciary and as a receiver on
17 several occasions.

18 But what my proposed order contemplates is that
19 assuming we can resolve on the other issues, which I think we've
20 got some major issues in the competing orders today, the parties
21 at that point would then submit to the court for the court's
22 consideration two people with full CVs, and I understand that
23 the bank has already done that, but we would want that
24 opportunity, to the extent the court is willing to consider it.

25 **THE COURT:** No, that's why -- I don't want to -- trust

1 me, I don't want to cut you off. That's what I want. I want
2 you to submit somebody I can review, too.

3 **MR. LeVEQUE:** Okay.

4 **THE COURT:** Because at the end of the day, whether you
5 agree or disagree with my decision, I do think due process is
6 of critical import in every case, and I'm going to give you a
7 full and fair opportunity to object to who the receiver is and
8 provide an alternative receiver. That's all I'm doing right
9 now. So I just want to make sure you get that opportunity,
10 sir.

11 **MR. LeVEQUE:** Thank you, Your Honor. We really
12 appreciate that.

13 **THE COURT:** Yeah, I'm just not going to sign off on
14 the order, because, I mean, I have to vet the receiver. You
15 know, if you have somebody better, maybe I'll use them. I
16 don't know, but I just want you to give me the information.

17 **MR. LeVEQUE:** Well, the lesser of two evils for us.

18 **THE COURT:** Yeah. But you understand, I just want to
19 make sure I look at both receivers and then I can make a
20 decision, because I never just do something and say this is
21 what I want to do. No.

22 Whether an appellate court or Supreme Court agrees or
23 disagrees with my decision, I've never had any criticism of the
24 methods and procedures I use.

25 **MR. LeVEQUE:** Understood.

1 **THE COURT:** So sir, how soon will it take you to get
2 me, say, your two suggested receivers as far as information is
3 concerned? And you could file it and have their CVs, do a
4 brief supplement, so I can look at it and make a decision on
5 that issue.

6 **MR. LeVEQUE:** Your Honor, if you could give us a week,
7 I think that would be much appreciated.

8 Just as a matter of a personal issue, I'm taking the
9 Florida bar next week so it's kind of crunch time for me, but
10 with my office and Mr. Graf's office, we could probably submit
11 two proposals in a week.

12 **THE COURT:** Any objection to that, Mr. Waite?

13 **MR. WAITE:** No, Your Honor. I don't know if your
14 anticipated procedure is for me to be able to respond or
15 provide anything.

16 I will just point out that since Mr. LeVeque raised
17 it, the two receivers proposed by my client are outside of
18 Nevada. I think one is in California, one might be in Colorado,
19 but both have agreed that any necessity to travel would be --
20 would not be charged, it would be at their own expense.

21 **THE COURT:** All right. Mr. Waite, I think I do have
22 to give you an opportunity to respond, right?

23 **MR. WAITE:** Yeah, I would like to. I would like to.

24 **THE COURT:** Absolutely. And how much time would you
25 need after the one week, sir, once you get the notification as

1 to who their recommended and/or suggested receivers would be
2 from the debtor's perspective?

3 **MR. WAITE:** Your Honor, I would turn it around in a
4 week, perhaps even shorter than that, but if I could have a
5 week. Obviously my client is motivated to have this resolved
6 sooner than later. That's why we provided the CVs and
7 information with our motion, which has been my practice for 30
8 years in seeking a receiver.

9 **THE COURT:** Right. Of course I'll give you the week,
10 sir.

11 **MR. WAITE:** Thank you.

12 **THE COURT:** And what I'll do, then, if this makes
13 sense, because this case is in a different posture than most,
14 we'll set it for a decision in chambers in three weeks so I can
15 decide who is going to be the receiver as far as the
16 appointment is concerned, and that way it's done, right? You
17 don't have to come back for that.

18 Is there anything else we need to discuss regarding
19 the receiver issue before we move on?

20 **MR. LeVEQUE:** Yes, Your Honor. We submitted -- well,
21 both sides submitted a one-page cover letter summarizing the
22 nature and extent of the disputes with regard to the competing
23 orders. I don't know if the status check the court set today
24 was to address just who was going to be appointed as receiver
25 or if it was going to entertain argument as to why there's

1 competing orders.

2 **THE COURT:** There's always competing orders.

3 **MR. LeVEQUE:** So I'm prepared to do that. I just
4 didn't know what the court wanted to do.

5 **THE COURT:** Mr. LeVeque, I don't want to talk over
6 you. There's always competing orders, right?

7 And so what I do is this -- and I think you understand
8 now that, number one, when it comes to correspondence from
9 counsel, I don't really read that. My law clerk prepares a
10 summary for me as far as what the respective positions are of
11 the parties as it pertains to the order, if there is a dispute.
12 And I just kind of go off of that, that's what I do.

13 Because we've already had argument, I've already
14 looked at the points and authorities, and I've made a decision,
15 so I'm going to stand by my decision. I just want to make sure
16 that whatever order I sign -- I will sign -- best represents my
17 decision making process, that's all I'm going to do, so everyone
18 understands.

19 And so I know what your objections are. In fact, I
20 have a chart on that, correct, Ms. Law Clerk?

21 **THE CLERK:** Yes.

22 **THE COURT:** She's done that, and I know what
23 Mr. Waite's position is, and we try to be pretty efficient in
24 that regard. So I got it.

25 **MR. LeVEQUE:** Okay.

1 **THE COURT:** So as far as the status check is
2 concerned, it's just regarding the no need to argue the merits
3 of -- because an order is an order, it's different than arguing
4 the merits of a motion.

5 So I'm going to -- we don't need any further
6 discussion. I just want to make sure, when it comes to the
7 appointment of a receiver, I've given both parties, both sides a
8 full and fair opportunity to give input on that issue, and we
9 have.

10 **MR. LeVEQUE:** Okay.

11 **THE COURT:** That's what I wanted to do, that's why I
12 put it on calendar. I just didn't want to take Mr. Waite's
13 suggestions without considering your objection. You had an
14 objection, and I wanted to make sure I was clear as to who you
15 had proposed on behalf of your client, that's all. And I think
16 we've done that now, so that's taken care of.

17 **MR. LeVEQUE:** I agree.

18 **THE COURT:** So next we have Schettler's Motion for
19 Stay of Appointment of Receiver Pending Appeal on an Order
20 Shortening Time. That's a different issue, right?

21 **MR. LeVEQUE:** Yes, Your Honor.

22 **THE COURT:** Okay. Go ahead.

23 **MR. LeVEQUE:** Okay. So a lot of what I may be arguing
24 today is premised on the assumption that the court would be
25 entering the base order, so a lot of the arguments there are

1 going to be directed towards that.

2 And the order that was attached to the underlying
3 motion for receivership is substantially similar to the one that
4 was alternately submitted in the competing order process, so I
5 don't think the arguments are going to change much.

6 But, really, it boils down to two groups of issues
7 with regard to the motion to stay. The first, Your Honor, is
8 that there is broad-sweeping language in the order that could
9 conflict with two principles of law that could very well, and
10 likely will, impede on the rights of third parties.

11 The first, Your Honor, is the way that I interpret the
12 order, and I can certainly point the court to the actual
13 language, is that this receiver would be empowered to direct
14 distributions from a litany of LLCs that were enumerated in the
15 order which we contend to be in direct violation of N.R.S.
16 86.401, subsection 2 which provides that a charging order is the
17 exclusive remedy for any type of judgment collection on
18 distributions that would be made to a member of an LLC where
19 that member is subject to a judgment.

20 The other component of our concern with regard to the
21 entities, the various LLCs, is that this proposed order could
22 be argued that any instance where Mr. Schettler manages one of
23 these entities, either directly or indirectly -- and I kind of
24 walked the court through an example in our motion, or I think
25 it was our reply -- that that would also be a violation of

1 *Weddell versus H20*. That case very clearly said that a
2 charging order does not create rights of management where the
3 judgment creditor could step in his shoes and start making
4 decisions or control entities that are directly or indirectly
5 controlled by the judgment debtor, and that's what this order I
6 think could be interpreted to mean.

7 The second group of issues regarding this order is
8 that this would vest the receiver with requesting or compelling
9 or receiving distributions from trusts that are subject to
10 Nevada Spendthrift Law. There are three trusts that I'm aware
11 of where I'm informed that there are Spendthrift Trust
12 provisions. And the law is very clear, under N.R.S. 166.120,
13 that a court has no power to compel through any type of order a
14 trustee of that trust to make distributions to a beneficiary
15 who is subject to a debt, and that law, that statute was
16 affirmed in 2017 by the *Klabacka v. Nelson* case, which
17 specifically ruled that in order, from a divorce court,
18 compelling distributions was void under that statute.

19 So our concern here is that if this were to go forward
20 during the pendency of an appeal, which could last one to two
21 years, that there would be damage done where a receiver is
22 running in and seeking to control these entities, possibly
23 seeking to compel distributions absent a charging order which
24 the bank has never applied for, seeking to compel distributions
25 from trusts which are subject to Nevada Spendthrift Law, but

1 that would cause irreparable harm.

2 The other harm that we have articulated in our
3 briefing, and it's already actually occurred, is that some of
4 these entities -- and we provide the court both redacted and
5 unredacted copies of flowcharts with all the supporting
6 operating agreements and articles, that I'm sure the court
7 didn't even have a chance to review, but I'll represent to the
8 court, as evidenced by those documents, that there are several
9 people and entities that are members of these LLCs that had
10 nothing to do with the Schettler family, that are in business
11 with Mr. Schettler, and the mere whisper of a receiver has
12 already caused damage, and we raised that issue in the
13 underlying motion. There was the Mosaic Five development where
14 they lost funding because the lender in that situation got
15 notice of the receivership motion, not even it being granted.

16 So if you're looking at the time frame of one to two
17 years, that could impose a lot of damage on these entities -
18 many of which have members that completely have no dog in this
19 fight.

20 When you're looking at the issue -- and this is
21 getting more to the NRAP 8 issues, but when you look at what
22 the relative hardships are, we are not seeking a stay of the
23 judgment. I mean, that's long gone. That ship has sailed.
24 The judgment creditor here has all the rights afforded under
25 Nevada law and still trying and executing on that judgment.

1 What we are appealing is an order -- is an equitable
2 remedy of a receiver, which is one of the tools that they have
3 to execute but certainly not all of them. That gets into the
4 issue of bond. We believe, under N.R.S. 62, subsection (d) (2),
5 that because this is not a money judgment, a supersedeas bond
6 is not applicable, but that some type of bond or security
7 Mr. Schettler is, quote, entitled to under 62(d) (2), which we
8 understand and appreciate is at this court's discretion.

9 But what the bank is asking here is they're basically
10 asking for a supersedeas bond. They're asking for the total
11 amount of the judgment -- still not sure exactly what that
12 number is -- in order for a stay. And we submit that's
13 inappropriate, Your Honor, because, number one, the judgment
14 itself isn't being stayed; but, number 2, when you look at what
15 the potential harm could be to the bank as a result of the delay
16 associated with an appeal, say we appeal and we lose, what does
17 the bank lose in that situation? Well, they still have all
18 their other remedies for collection under Nevada law, and other
19 than the passage of time, which is accounted for by
20 post-judgment interest and possibly some attorneys' fees
21 expended, they really aren't out anything.

22 And it would be one thing, Your Honor, if the bank
23 came in with credible evidence that Mr. Schettler was engaging
24 in fraudulent transfers or he was surreptitiously changing his
25 estate planning or moving around assets or some other way of

1 violating the law, then that would be one thing, and then they
2 could show perhaps some sort of irreparable harm in the event
3 that this goes on for two years in appeal, but they haven't
4 done that, and they haven't done that in this motion practice,
5 and they didn't do that in the underlying receivership motion
6 practice. So I don't think, if we get to the point of the
7 appellate court looking at weighing these issues, that they're
8 going to show some sort of irreparable or undue,
9 unsubstantiated harm.

10 The scales tip the exact opposite direction in our
11 case, Your Honor. So we believe that, under N.R.S. 62, our
12 client is entitled, that's what the rule says, he's entitled to
13 a stay pending the posting of bond or security, and we believe
14 that -- you know, we threw out a \$10,000 number, because trying
15 to calculate the risk of loss from the bank, you know, is hard
16 to do when they really don't -- aren't going to sustain any
17 damage during the long run. I guess there could be attorneys'
18 fees that would be appropriate for the court to consider when
19 it's trying to quantify what that bond would be. But given
20 that this receiver, and although we appreciate the court
21 granting it, it could cause a lot of problems. We've already
22 been able to establish with at least one instance it's already
23 occurred.

24 Finally, Your Honor -- I mean, and I understand this
25 is sort of a difficult argument to the district court, but when

1 the appeal court looks at the likelihood of success on the
2 merits, you know, it's not just likelihood of success. All
3 that needs to be shown is a substantial chance.

4 And here, you know, the issue before the court was, as
5 admitted by the court, one of first impression, which was how do
6 we interpret N.R.S. 32.010, subsection 4? And this Court has, I
7 understand it, listening to the court's comments during the
8 hearing and then reviewing the minute order, it essentially said
9 that, you know, there is no requirement of a finding of a remedy
10 of last resort, there is no requirement of weighing the
11 interests of the parties. All that we need to look at here is
12 whether the statute itself has been satisfied. A, was there
13 execution efforts undertaken that were left unreturned; or, B,
14 is this judgment debtor not voluntarily making payments toward
15 the judgment?

16 And while I certainly appreciate that claim to review
17 the statute, we believe that, you know, even the case law cited
18 by the bank in their order and in their motion practice, you
19 know, they have been relying on a lot of federal cases that use
20 the aviation supply factor test for review.

21 **THE COURT:** But you know what, here's the thing, and I
22 don't mind telling you this, when it comes to federal decisions
23 I don't think they always get it right, especially when it
24 comes to the interpretation of Nevada law. And I'll tell you
25 why. I mean, you look at their jurisdiction, it's very

1 limited, right? Federal questions and/or diversity.

2 And I don't mind giving you an example. I remember
3 when I was handling construction defect, Mr. Graf remembers
4 this, *In Re Kitec* litigation, they had a companion case, *Wirsbo*,
5 in federal court. They got reversed three times by the Ninth
6 Circuit over there on Las Vegas Boulevard. I don't know how
7 many writs ran up in *In Re Kitec* on me, probably 20 or 30, maybe
8 40. Every time it would come back: "Judge, continue doing what
9 you're doing."

10 In fact, the only regret I have regarding how I
11 handled that case is they settled one week too early, because
12 Justice Gibbons told me that they had ready for publication an
13 order that was broad-sweeping affirming my handling of that case
14 vis-a-vis Rule 23(a) and (b) and class certification in a
15 construction defect case, which is very difficult to do.

16 But my point is this, I mean, I get it. I look at
17 Moore's Federal Practice and Procedure all the time when it
18 comes to, for example, the rules, because our rules many times
19 there can be differences, but we're moving more and more towards
20 the federal rules, and I look to that for guidance sometimes if
21 we have unsettled principles.

22 But here I specifically just looked at the statute and
23 interpreted the statute, and that's all I did, you know. And I
24 did consider the California arguments that were made, how they
25 handled things over there, but their statute is different.

1 And so, for me, I don't mind telling you this, it was
2 a very difficult decision to make, you know. But at the end of
3 the day I looked at the statute and tried to -- and understand
4 this, I didn't make a determination that the statute was
5 ambiguous, where I had to look at the legislative history and
6 the like. I read the statute and I read the points and
7 authorities, put it down, come back, put it down, come back, and
8 at the end of the day ultimately I think you read what my
9 decision was.

10 **MR. LeVEQUE:** Yes.

11 **THE COURT:** And that's kind of how I got there. But I
12 get it, I do, and you're making your record.

13 But understand this, the only reason I'm bringing this
14 up, no matter what decision I make, I try to at least explain to
15 lawyers why I do what I do, you know, and that's what I did.

16 So continue on, sir, you have the floor.

17 **MR. LeVEQUE:** Okay. Thank you, Your Honor.

18 I appreciate that explanation. And, you know, there's
19 a difference between respecting a decision and, you know,
20 disagreeing with it. I certainly respect it, but I disagree
21 with it.

22 **THE COURT:** It's your job. Wait. Wait. Hold on.

23 It's your job to disagree, and, more importantly, understand
24 this, I have no problem with that, I really and truly don't.

25 That's our process. That's the way our processes work. And if

1 a judge doesn't understand that there's a high probability --
2 and we know this for sure. Every time I make a decision,
3 50 percent of the individuals typically that are involved are
4 unhappy, right? And that's a high number when you think about
5 it. And just as important, there's a probability there will be
6 an appeal, and that's how it is, and that's what goes on. And
7 maybe a written decision in this area would be appropriate
8 because it is an issue of first impression, it just is.

9 **MR. LeVEQUE:** It is, Your Honor.

10 **THE COURT:** But anyway, sir, I don't want to cut you
11 off. Continue on with your argument. I'll just sit back and
12 listen.

13 **MR. LeVEQUE:** Thank you, Judge.

14 The only reason why I brought up the federal case was
15 because they're cited in the order, and we thought the court
16 went the other direction. So I agree there with the court that
17 the court did not look at the federal standards or the federal
18 law.

19 But the other reason why I brought it up, Your Honor,
20 is because the bank makes this argument in their opposition that
21 an appeal of this would be sanctionable, so I just -- I needed
22 to address that. This is, as the court pointed out, a case of
23 first impression, and I don't think that argument has any merit.

24 **THE COURT:** All right. I hear you.

25 **MR. LeVEQUE:** With that, Your Honor, I'll obviously

1 reserve my right to reply, but that kind of covers the main
2 points. The briefing is a lot more detailed, but unless the
3 court has any questions, I'll wait till reply.

4 **THE COURT:** Okay. None at this time, sir.

5 We'll listen to Mr. Waite.

6 **MR. WAITE:** Thank you, Your Honor. Dan Waite for the
7 Plaintiff Pacific Western Bank.

8 Your Honor, I think my argument will cover two broad
9 areas that are problematic here as it relates to the motion:
10 One is procedural and one is substantive. And I think we
11 should not lose sight of what's really happening here. I
12 believe, anyway, Your Honor, that what is happening is that
13 this is a -- you know, before they asked for a stay from the
14 Supreme Court, they have to ask for a stay from you first, so
15 this is to some extent a check-the-box.

16 And I apologize if you can hear my phone ringing. I
17 can see that it's my wife, it's her birthday today, but I'm not
18 going to answer it.

19 So, Your Honor, this is just the pre run before they
20 ask for a stay from the Supreme Court. But that's not the
21 procedural problem that is existing here today. The procedural
22 problem, Your Honor, is that this motion is premature. The rule
23 that they move under is NRCP 62(d) which only applies, quote, if
24 an appeal is taken, end quote.

25 Well, there is no appeal pending, and there's no

1 appeal pending nor could there be, because you haven't entered
2 an order yet. And so until an order appointing the receiver is
3 entered, candidly, any arguments that are made for a stay are
4 hypothetical, they're speculative, and it puts me, as someone
5 responding to hypothetical speculative arguments in even a more
6 difficult situation. So, Your Honor procedurally, the motion
7 should be denied as premature because there's no order entered
8 yet.

9 Substantively, the motion reviewed the NRAP 8A
10 factors, the four factors, and I'd like to go through those
11 just a moment.

12 The first factor, whether an appeal should be
13 stayed -- and by the way, this is just simply the question of
14 whether a stay should issue, not the amount of the bond, this
15 is whether a stay should issue. The first factor is whether
16 the object of Mr. Schettler's appeal would be defeated without
17 a stay.

18 As we point out in the briefs, Your Honor, this isn't
19 a case where your order requires the disclosure of, you know,
20 Colonel Sanders 11 secret herbs and spices, or whether the
21 Colonel's secret formula or the disclosure of attorney-client
22 communications - any of those disclosures would be defeated, or
23 would defeat an appeal from an order requiring the disclosures
24 such that a stay would be appropriate, otherwise the purpose of
25 the stay would be defeated.

1 Here, the appeal, when Mr. Schettler gets around to
2 it, would be to challenge your order appointing a receiver.
3 What they hope to accomplish is that that order would be
4 reversed and that the receivership will terminate. So a
5 successful appeal will accomplish the object that they are
6 seeking, not defeat it, and a stay doesn't change that at all.

7 In other words, even without a stay, the possibility
8 of terminating a receivership is still as available as
9 otherwise. So the object of the appeal will not be defeated
10 without a stay. So that factor cuts in favor of not granting a
11 stay.

12 The second factor is whether Mr. Schettler will suffer
13 or experience irreparable or serious injury if a stay does not
14 issue.

15 Now, I want to address what was in the brief and what
16 Mr. LeVeque mentioned to you here. They reference some harm
17 that has already occurred, and that harm was as a result of the
18 mere filing of the motion. Well, nothing that you do here
19 today, stay or no stay, is going to change this court's docket
20 and the public record that a motion was filed. Nothing is going
21 to change that Your Honor granted that motion. And,
22 furthermore, the factor isn't a fact of focusing on past harm.
23 The factor is whether a stay should issue to preclude future
24 harm. So any reference to the past harm is really irrelevant,
25 Your Honor.

1 Furthermore, any argument that Mr. Schettler makes
2 that the existence of this order might harm third parties begs
3 the question of whether Mr. Schettler has standing to assert any
4 harm to any third-party entities. Of course he doesn't have
5 standing to assert harm to any third parties.

6 And furthermore, Your Honor, if, as a result of the
7 receiver's actions, if the judgment is fully satisfied during
8 the appeal period, in other words, there is no stay and the
9 receiver goes forward, and the receiver is able to fully satisfy
10 the judgment, paying a lawful judgment is not irreparable for
11 serious injury, it's what is required.

12 And even if the receiver order gets reversed on
13 appeal, such that Mr. Schettler has a claim for restitution,
14 that always exists in any case with a money judgment. And here
15 we have my client, the bank is a bank, it's been around for 39
16 years, and it has the ability to make restitution.

17 Now, while that may be inconvenient for Mr. Schettler,
18 it is not irreparable. The fact that the bank, excuse me, the
19 fact that Mr. Schettler may have a claim for restitution for
20 money damages is a very strong argument that irreparable injury
21 will not occur. So that factor cuts against a stay as well.

22 The third factor, Your Honor, is the flipside of that,
23 and that is whether the bank as the judgment creditor will
24 suffer serious or irreparable injury as a result of the stay.

25 Now, Mr. Schettler makes his money in the real estate

1 development market. That market could tank again, and,
2 moreover, Mr. Schettler could lose his ability to pay the
3 judgment, whereas it might have otherwise been fully satisfied
4 without a stay. So when there is a judgment debtor who does
5 not have the ability to pay, that constitutes irreparable
6 injury.

7 The fourth factor, Your Honor, is Mr. Schettler's
8 success whether he is likely to succeed on appeal. I agree
9 with what Mr. LeVeque indicated, it would really be kind of odd
10 for Your Honor to enter an order in favor of a receiver and
11 then stay that order saying, essentially, but I believe that
12 that order is going to be reversed on appeal or there is a
13 likelihood that it is going to be reversed on appeal.

14 The fact that there is a question of first impression
15 does not mean that there's a likelihood of it being reversed on
16 appeal. And, in fact, when we look at the merits, Your Honor --
17 and by the way, this is not an equitable remedy, this is a
18 statutory remedy. The statutes provide judgment creditors with
19 various collection tools. So far the bank has exercised their
20 rights pursuant to lots of those tools and have not been
21 successful to yield a penny.

22 The receiver is just another one of those statutory
23 remedies. And the statute was very clear, I think you just said
24 it, authorizing or appointing a receiver in two circumstances
25 when the judgment debtor refuses to apply property, his property

1 in satisfaction of the judgment, that's occurred here. And what
2 ultimately happened is he turned the constable with a writ of
3 execution right from his home and denied them entry to his home.
4 That was just, you know, a few months ago now.

5 And the other factor, or the other reason for cause
6 for a receiver to a judgment creditor is if there's been --
7 excuse me, I flipped those. The first one is if there's been
8 execution returned unsatisfied, and that's evidenced by
9 Mr. Schettler turning the constables away. The other one is if
10 he refuses to apply his property.

11 Mr. Schettler is employed. He's employed by Byzantine
12 Schettler, LLC. He goes to work every day. He's a licensed
13 real estate person. He is the licensed real estate person. He
14 provides those services. He decides when he gets paid. He has
15 been paid periodically, and yet he has not paid the creditor, so
16 that's by their own admissions, by the deposition testimony,
17 that's supported, that factor.

18 So I don't think that they have a likelihood of
19 success on the merits. They can go and try to pitch that to
20 the Supreme Court, if and when they ask the Supreme Court for a
21 stay, as I fully suspect they do -- that they will.

22 Before I turn to the bond, let me just check my notes
23 on claims that Mr. LeVeque argued.

24 Oh, about the charging orders and the Spendthrift
25 Trust arguments, Your Honor. First of all, I'll take those in

1 reverse.

2 The Spendthrift Trust provision, which, by the way,
3 there's so much of what Mr. Schettler is arguing here today that
4 came up for the first time in the reply brief: The Spendthrift
5 Trust provision, and these types of things. But as it relates
6 to the Spendthrift Trust, Mr. Schettler has repeatedly made
7 reference throughout these, not today, but throughout this
8 proceeding to the proceedings in front of Judge Sturman, and
9 that there was an issue in front of Judge Sturman, and that
10 Judge Sturman was going to decide, and they use that pending
11 action and decision numerous times to try to convince you to
12 take certain action or to not take certain action.

13 And Monday, Judge Sturman issued her order in favor
14 of -- she signed my client's order, not Mr. Schettler's proposed
15 order. And what she found, as I think you said a year
16 and-a-half ago in one of these hearings, that it was thrust off
17 one on one, but if you have a revocable trust, of course the
18 assets are subject to satisfaction of the settlor's liabilities
19 and debts, and that's what Judge Sturman found, is that the
20 Schettler Family Trust, since it was fully revocable, provides
21 no asset protection to Mr. Schettler. He is entitled to claim
22 exemptions and those types of things, but otherwise the
23 Spendthrift Provision does not apply to Mr. and Mrs. Schettler
24 as the settlors.

25 As it relates to the charging order and the *Weddell*

1 case, Your Honor, we just disagree on what the law applies --
2 when I say, "we" I mean Mr. LeVeque and I -- what the *Weddell*
3 case calls for, but of course, of course a receiver must comply
4 with the law. And built into my order are phrases like "to the
5 extent allowed by law," and these types of things. But I would
6 even go so far as to say I'm perfectly fine, Your Honor,
7 interlineating into my proposed order something that would say
8 something along the lines of "Nothing in this order" -- you
9 know, "It is further ordered that the receiver must interpret
10 and apply this order in conformance with *Weddell versus H20*
11 case."

12 Given the history of this case, Your Honor, the
13 appointment of a receiver is not going to end the disputes, and
14 Mr. Schettler is free at any time to come back to the court if
15 he believes the receiver is doing something that's not right or
16 appropriate. Any third party can come to the court, the
17 statutes already provide for third party protections. The
18 statutes already provide for resolution of exemptions. None of
19 that has changed by the receivership or by the court.

20 Lastly, Your Honor, again, regarding this charging
21 order, they point to a provision on the proposed order which
22 lists like 26, 27 LLCs and they say that that violates the
23 charging order and *Weddell*, but then they go on record saying
24 that Mr. Schettler isn't a member of any of those LLCs except
25 for one. Well, we'll eliminate that one from the order, if

1 that gets them anywhere.

2 But it's inconsistent to say -- it's entirely
3 inconsistent to say that the charging order applies against the
4 membership interest when Mr. Schettler isn't a member of any of
5 those LLCs, so then it must be revoked. It's entirely a
6 non-issue. By their claim he's not a member of any of those
7 LLCs.

8 The bond, Your Honor, this is -- if this were -- if
9 they were staying the judgment, they would be required, required
10 to post a full security bond. We're not asking for a
11 supersedeas bond. They are proceeding on their 62(d) which
12 allows for and requires a bond or other security. The only
13 question is how much? There's nothing that precludes you from
14 ordering the same amount that would be required under a
15 supersedeas bond. They are wanting to stay a collection tool
16 that is available to us when all others have proven
17 unsuccessful, and this one is very possible to be the one that
18 it collects for us, and they want that stay.

19 That's going. But if they want it stayed, they should
20 have to pay for it by securing a judgment, including interest
21 for two years. That way, two years from now, whenever the
22 appeal is resolved, Mr. Schettler would be protected during that
23 period of time. There would be -- in fact, the bank is willing
24 to agree to stay the matter completely upon execution during
25 that period of time. But when the appeal is over, the bank

1 would be paid. That's the security that's being provided.

2 So, Your Honor, one, the motion should be denied
3 procedurally as premature. Two, the motion should be denied as
4 substantive reasons because the NRAP 8A, four factors, the four
5 factors of that rule have not been satisfied. And if you
6 nevertheless disagree with all of those, the amount of the bond
7 should be in an amount to fully secure the judgment.

8 Thank you, Your Honor.

9 **THE COURT:** Okay. Thank you, sir.

10 Mr. LeVeque, sir.

11 **MR. LeVEQUE:** Yes, Your Honor. Thank you.

12 I'll first address the procedural issue. This order
13 puts my client between a rock and a hard place because -- I'm
14 getting some sort of feedback.

15 **THE COURT:** No, I can hear you very clearly, sir.
16 We're not getting any.

17 **MR. WAITE:** I can't hear him, Your Honor.

18 **THE COURT:** Okay. Apparently Mr. Waite can't hear
19 you.

20 **MR. WAITE:** I'm going to mute myself.

21 **THE COURT:** Okay.

22 **MR. LeVEQUE:** Can you hear me okay now?

23 **THE COURT:** Can you hear him, Mr. Waite?

24 **MR. LeVEQUE:** I can't hear Mr. Waite. He muted
25 himself, I think.

1 **THE COURT:** Yes, he did.

2 **MR. WAITE:** Go ahead, Alex. I'll see if I can put the
3 speaker in front of my ear, but I'm really having a hard time.
4 Go ahead.

5 **MR. LeVEQUE:** Okay. Your Honor, with regard to the
6 procedural issue, it put my client between a rock and a hard
7 place because NRS 62(a), or excuse me, (d)(1), where you are in
8 the judgment does give you a 30-day automatic stay so that the
9 parties can file appropriate motions to extend that stay. We
10 don't have that luxury, because this is not an appeal of money
11 judgment, it's an appeal of a receivership order, which is
12 excluded.

13 So we had the decision to be on top of this and
14 proactive to try getting this motion before the court before the
15 order is actually entered, because the order will be effective
16 the day it's entered. So that's the reason why we filed it when
17 we did.

18 With regard to the procedure under NRS 62, it really,
19 at this stage, Your Honor, is a question of what the
20 appropriate bond is. I think that is really the primary
21 inquiry at the district court level. And I'm not going to go
22 back into the arguments I already made for why essentially a
23 supersedeas bond is improper. But, you know, effectively what
24 the bank is saying here is that, well, we want you to post the
25 whole thing so we can execute on it regardless of where the

1 appeal goes, and I just don't think that is the intent of NRS
2 62(d)(2) because why would that rule be there otherwise?

3 With regard to the substantive issues, Your Honor, I'm
4 first going to address the Trust, because I think Mr. Waite is
5 conflating some things here. It is true that Judge Sturman
6 entered her order the day I filed the reply. It was actually
7 probably 5 or 6 hours after I filed my reply. That order only
8 applies to the Schettler Family Trust, which is a revocable
9 trust. And in that court's order, which Mr. Waite filed
10 yesterday with this department, the court did say that because
11 this is a revocable trust and because the Spendthrift
12 Provisions of that Trust expressly by the terms of the Trust
13 don't apply to the Trustors, and to the extent that there's
14 property of Mr. Schettler's in that Trust, it would be subject
15 to execution.

16 But what's important to point out about Judge
17 Sturman's order, and this was reflected during the hearing last
18 year before Judge Sturman, is that she made a finding, and this
19 is finding number 4 in the order that was entered yesterday on
20 page 2, that, quote, the Schettlers funded the Trust with
21 community and separate property.

22 The court went on to say in its conclusions of law
23 that the reason why the court declined to take jurisdiction,
24 interim jurisdiction over the Schettler Family Trust, because,
25 quote, as this Court determines the matter is better resolved as

1 a civil action and declines the response request for an
2 evidentiary hearing on such basis.

3 What the court contemplated and intimated, both in
4 this order and in the transcript that we cited, is that Your
5 Honor would be determining, through a hearing, what assets are
6 community property assets, what assets are separate assets,
7 what assets are not exempt, what assets are subject to
8 execution, and that I think is the takeaway from Judge
9 Sturman's order, is that, yes, there are potentially assets
10 that are subject to the debts and liabilities of Mr. Schettler,
11 but it also says, as an order of the court, the last sentence,
12 quote, subject to the community property law and debtor
13 protection laws afforded under Nevada law.

14 One of the issues we have, Your Honor -- and I don't
15 want to belabor this point -- is that it was the probate
16 court's understanding the reason why it wasn't going to
17 continue on with an evidentiary hearing to ferret this out is
18 because this court -- she thought this court was going to do
19 it. That Trust is separate and apart from other Trusts at
20 issue here that would be subject to this receivership order
21 that is proposed by the bank, and that would include the VTS
22 Nevada Trust, the SCS Trust, and the VS Trust - all of which my
23 understanding are irrevocable Spendthrift Trusts who have
24 beneficiaries that are more than Mr. Schettler.

25 So when I see in this order -- and this is on page 8

1 where it says: It is further ordered that any disbursement
2 shall or is or becomes entitled to during the term of the
3 receivership from any Trust, including not limited to the
4 Schettler Family Trust, that those payments should be paid
5 intended to the receiver.

6 That is in direct violation of NRS 166, subsection
7 170, as affirmed by the *Klabacka v. Nelson* decision that the
8 court has no power to compel, either through itself or a
9 receiver, a trustee to make distributions to a creditor of a
10 beneficiary. That's -- that speaks to the issue of harm, if you
11 look under the NRA -- excuse me, the NRAP 8 factors.

12 With regard to the *Weddell* issue, and this was not --
13 this was raised in our reply, it was not raised by Mr. Waite in
14 his argument just now, is that subsection 2 of NRS 86.401
15 states: This section provides the exclusive remedy by which a
16 judgment creditor of a member or an assignee of a member may
17 satisfy judgment on the member's interest of a judgment debtor.
18 Whether the limited liability company has one member or more
19 than one member, no other remedy, including without limitation,
20 foreclosure of the member's interest, or a court order for
21 direction to counsel inquiries of the debtor or member may have
22 made is available to the judgment creditor attempting to
23 satisfy the judgment while the judgment debtor's interest in
24 the limited liability company, and no other remedy may be
25 ordered by the court.

1 They have not provided an explanation for why there
2 was no application made under NRS 86.401, subsection 1, 4
3 charging it. And when Mr. Waite talks about these third
4 parties and standing issues, that's where a third party would
5 have due process rights to come in, if an application is made
6 for a charging order, to come in and say, hey, there's no
7 member here who is subject to a charging order.

8 So that's one of the major issues we see with this
9 order and why we think the order ought to be stayed.

10 The other issue with the third parties, Your Honor, is
11 that, you know, they want to shoot and ask questions later. I
12 mean, this type of order would be infringing upon beneficiaries
13 and trustees of trusts that have no dog in this fight and are
14 protected by Nevada law from this type of invasiveness,
15 including Mr. Schettler himself who would be a beneficiary
16 subject to appropriate Spendthrift Law.

17 With regard to the management of LLCs, I put this in
18 our reply, but I'm going to walk through it with the court.
19 Yes, Mr. Schettler is not an individual, in his individual
20 capacity, a manager of all these entities. But here's how this
21 works, this is just an example. Mr. Schettler is a manager of
22 Vincent T. Schettler LLC. Vision Commercial One, LLC is
23 managed by Vincent T. Schettler LLC, and Vision Commercial One
24 LLC is a manager of some entities including Mosaic Five, Mosaic
25 Land One and Mosaic Hollywood 247.

1 So the argument that could be made, because this
2 proposed order from the bank says it should be interpreted
3 broadly, is that if Mr. Schettler can manage individually VTS
4 LLC, which in turn manages these other entities, that a receiver
5 can come in and step in the shoes of Mr. Schettler, indirectly
6 or directly to take charge of these entities, and I haven't
7 heard any argument that that's not what the receiver wants to
8 do.

9 So yes, when you talk about irreparable harm, one to
10 two years, management of LLCs could cause irreparable harm, and
11 improper attempts to execute charging orders or orders to order
12 a trustee of a Spendthrift trust to make distribution could
13 cause harm.

14 Finally, Your Honor, on the issue of the bond, court's
15 indulgence for one moment.

16 (Pause in proceedings.)

17 Finally, on the issue of bond, the bank is conflating
18 the issue of supersedeas and the bond under subsection (d) (2),
19 and the point of the bond under (d) (2) is not to protect and not
20 to guarantee a full repayment of the judgment, it's to protect
21 against the anticipated harm the bank could cause -- could be
22 caused as a result of delay on this receivership.

23 And other than costs that might be incurred --

24 **THE COURT:** What are you -- what do you mean by that?
25 Because it appears to me what you're trying to do is you're

1 trying to say, Judge, this would be analogous to the bond filed
2 under, for example, NRCF Rule 65 when it comes to filing a bond
3 when you're seeking some sort of an injunctive relief and what
4 the bond should be. And the case law is pretty clear: An
5 improperly entered preliminary injunction order, or something
6 like that, and it would pay for the attorneys' fees for that,
7 right? I get that.

8 But I'm looking here at the language. What language
9 specifically, as set forth in Rule 62(d)(2), stands for the
10 proposition that it would be limited only to fees and costs?

11 **MR. LeVEQUE:** Your Honor, I understand, under Rule 65,
12 subsection C which talks about security, that that section
13 talks about an amount that, quote, the court considers proper
14 to pay the costs and damages sustained by any party being
15 wrongfully enjoined.

16 **THE COURT:** Right.

17 **MR. LeVEQUE:** Under 62, you're right, it's not spelled
18 out, and I agree that it provides the court discretion, but I
19 guess I just go back to the general law with regard to
20 appropriateness of a bond pending appeal of the order, and my
21 understanding is that that's usually intended to protect a
22 party in the event that the responding party prevails.

23 And it would be one thing if we were sitting here
24 today arguing a stay of the money judgment, but we're not, we're
25 seeking the stay of one of the tools of collection. And

1 although this tool is prescribed by statute, it's an equitable
2 remedy prescribed by statute.

3 **THE COURT:** Not really. I mean, why is that an
4 equitable remedy when the statute specifically provides that --
5 and I took a look at it, and it's pretty clear to me, there's
6 two conditions -- and this might be unique to Nevada law. I'd
7 really like -- I didn't do it because I didn't see the
8 necessity, but it would be fascinating to read the legislative
9 history on this specific -- under chapter, I should say,
10 32.010, because it says there's only two conditions: When an
11 execution has been returned unsatisfied, or when the judgment
12 debtor refuses to apply the judgment debtor's property in
13 satisfaction of the judgment. That's what it says, right? And
14 I didn't see any ambiguity there.

15 And so when I'm looking at it and I'm trying to figure
16 out -- I mean, I do understand when you say, well, Judge, this
17 isn't a monetary judgment, but aren't we really talking
18 about -- isn't this part and parcel of one of the tools that's
19 utilized by a creditor to collect?

20 And I don't know if Nevada is the only state in the
21 union that has this specific statutory provision, but these are
22 the rights of the creditor as a matter of law. There's no
23 equity to consider here. The Nevada legislature has spoken, and
24 this is what they have mandated. And I looked at it, and
25 whether I agreed or disagreed with what specifically the statute

1 provides, it appeared to me to be fairly clear that upon these
2 two conditions a receiver can be appointed, and so that's why I
3 ruled the way I did, I don't mind saying that.

4 But then I come back and I look at Rule 62(d)(2), and
5 I'm trying to -- I just want to make sure I understand what your
6 position is, because it doesn't really focus on like Rule 65,
7 the parameters of a bond under those circumstances. It doesn't.
8 And so if I was going to require a bond pending an appeal, why
9 wouldn't I, under the facts of this case where we have a
10 judgment creditor trying to collect on this judgment and has
11 been doing so for some time, a receiver has been appointed, to
12 me it appears to be fairly clear under the law under which
13 circumstances can a receiver be appointed pursuant to 32.010(4),
14 and that's the decision I made, why wouldn't I have the bond in
15 an amount much higher than a nominal amount? That's my
16 question. Why wouldn't it be for the judgment or something
17 close to that?

18 **MR. LeVEQUE:** Thank you, Your Honor.

19 I can only speak based on analogy on the issue of
20 equity. You know, injunctions are also prescribed by statute,
21 and I spoke considerably to injunctive relief and equitable
22 relief.

23 And then in my own practice, Your Honor, which is
24 primarily trust and estate litigation, all the rights for
25 petitions are covered under Chapter 164 and 163 of Nevada

1 Revised Statutes. Those are codified, but those are equitable
2 proceedings, and there's no right to a jury trial, and it is
3 considered equitable relief.

4 So I still think that just because the statute
5 codifies equitable relief, it's not something different.

6 **THE COURT:** But, I mean, I'd probably agree with this.
7 I don't think equity would be -- would necessarily stand for
8 the proposition that a receiver should be appointed under these
9 circumstances.

10 The Nevada Supreme Court made a decision as a matter
11 of law upon which circumstances a receiver may be appointed
12 under Chapter 32, and I follow their mandate, because I just
13 don't see it as an equitable issue. I look at it as an
14 enforcement right of a judgment creditor, what they can and
15 cannot do. And just because it hasn't been done in the past
16 very much, just because judgment creditors haven't taken
17 advantage of the Nevada statutory scheme, Mr. Waite has made a
18 decision that, you know what, it's there, it's been there for
19 quite a while, and he's going to try to take advantage of it on
20 behalf of his client, and that's kind of how I look at it.

21 And so I'm not weighing and balancing any harms here,
22 I'm looking at the rights of the creditor, and if they meet the
23 threshold, there's an appointment of a receiver. If they don't
24 meet the requirements, there's not an appointment of the
25 receiver, and that's what I think would be the analysis.

1 Because here we're talking about rights as a matter of law of
2 the creditor to do this, not a weighing and balancing.

3 Because at the end of the day, the creditor in this
4 case has a 2 million plus dollar judgment -- right? -- that's
5 been domesticated in the state of Nevada, and that's where we're
6 at.

7 **MR. LeVEQUE:** And I understand that that was the
8 court's analysis in concluding the receiver ought to be
9 appointed. But for the bond issue, I think the question ought
10 to be what's the perceived and quantifiable harm that a -- that
11 this bank could sustain as a result of a stay being granted.

12 And while I understand that NRS 32 --

13 **THE COURT:** Oh, no, no, and I look at it slightly
14 different. No question your client has a right to request the
15 stay, I get that, and I consider that. But what happens if I
16 grant the stay? What should be the amount of the bond,
17 ultimately? Because if I granted a stay, I would be precluding
18 the rights granted to this creditor as a matter of law, right?
19 And so what happens under those circumstances? Why would I
20 give a nominal bond?

21 And so if I'm going to preclude the creditor in this
22 case from exercising their rights as a matter of law based upon
23 an appeal, it seems to me, if we're talking about equity -- and
24 I don't think it's an equitable issue, that if I granted the
25 stay, the bond should be posted for the entire amount of the

1 outstanding judgment. That would be fair.

2 Because here we have a judgment -- right? -- that's
3 been entered in one of our sister states, and the judgment, my
4 recollection based upon the history of this case, was
5 domesticated in the state of Nevada, and it's a valid judgment.
6 Why wouldn't that be -- if I'm going to consider equity, and I'm
7 not going to preclude and stay the judgment creditor's statutory
8 rights as to whether my decision is correct or not, wouldn't
9 equity say, look, Judge, if you're going to do that, make them
10 post the entire amount of the judgment.

11 And I'll throw that out there, because that's what I'm
12 thinking about.

13 **MR. LeVEQUE:** Your Honor, I'll respond to that.

14 **THE COURT:** And I'll give Mr. Waite --

15 Mr. Waite, I'll give you a chance to, of course,
16 because this is an important issue, to weigh in on that.

17 But go ahead, Mr. LeVeque, you have the floor, sir. I
18 don't want to cut you off.

19 **MR. LeVEQUE:** Okay. Thank you, Your Honor.

20 The underlying statute, Your Honor, states that the
21 two bases that were advanced by the bank if execution is
22 returned unsatisfied, and if the judgment debtor hasn't applied
23 any of his property to satisfy the judgment.

24 One of the other issues in the case, and this is just
25 something we've argued, is that we're looking at the property of

1 the judgment debtor, not the property of LLCs or Trusts, and
2 that's one of the issues that we're going to probably ask the
3 Supreme Court to review.

4 But here, when I look at the remedies of a judgment
5 creditor in Nevada, it's kind of like property in the bottomless
6 pits argument, where they've got a lot of tools, and we're not
7 asking that the court foreclose on their opportunity to seek to
8 execute.

9 You know, there's been no attempts for writs of
10 garnishment. There's been really only one -- I mean only one
11 attempt that was recent that was October of last year where this
12 court never really decided the motion for protective order on
13 the merits because that writ was expired on its own terms, and
14 it was the bank that made that argument that the protective
15 order was moot because it had already expired, and before that
16 we had efforts to execute that were quashed because they were
17 seeking to execute on property that wasn't Mr. Schettler's.

18 So when the court -- and I see where the court is
19 going here, is that why don't we just post the entire amount.
20 Who is going to pay that? There's been no showing that there
21 are -- there's actually property in Mr. Schettler to do that.

22 And I'm looking at this analysis saying, okay, I
23 understand that this would be postponing a tool that the
24 judgment creditor can use, how do I potentially protect from any
25 harm that could be caused as a result of being denied the right

1 to use that tool for a couple years?

2 As I've already argued, if there was a showing that
3 the absence of a receiver would cause assets to be moved around
4 or have it moved already around or there was weird things going
5 on with asset protection or estate planning, okay. But, here,
6 if I were to quantify what could be lost, it would be time and
7 it would be perhaps attorneys' fees and costs for having to deal
8 with the appeal.

9 So yes, was \$10,000 nominal? Yes, it was. Would
10 something like \$200,000 -- excuse me \$250,000 be nominal? No,
11 I think that would be adequate if we're looking at attorneys'
12 fees and costs. But to say, well, in order to prevent this
13 receiver from going in and looking at a lot of things that I've
14 got confidence they're not going to bear fruit, that this
15 judgment debtor has to post the full amount of the judgment to
16 stave that off, I just think that would be grossly inequitable.

17 And then the reality, too is that now that we have a
18 bond of the full judgment amount, what happens then? What
19 happens when this appeal is decided? Is the bank going to try
20 executing on the bond if we win? I understand that there might
21 be arguments if we lose, but what if we win?

22 The next thing I'm sure I'm going to see is a writ of
23 execution of the bond, so --

24 **THE COURT:** But here's the thing, though. We can't
25 overlook the fact that the bank has a judgment in this case,

1 right? They do. They have a valid judgment in this case.

2 **MR. LeVEQUE:** Against Mr. Schettler, yeah.

3 **THE COURT:** I mean this isn't -- this is not a
4 question to be decided by the ultimate fact-finder, a judge
5 and/or jury. They have a judgment that's been entered in this
6 case, and we can't overlook that.

7 And I don't mind saying this, what attempts has your
8 client made to satisfy any portion of the judgment?

9 **MR. LeVEQUE:** Well, he has made offers.

10 **THE COURT:** No. No.

11 **MR. LeVEQUE:** The offer --

12 **THE COURT:** I made a really clear question: To
13 satisfy. And you satisfy by doing what? Making payments,
14 right?

15 **MR. LeVEQUE:** Well, the problem, Your Honor, that we
16 have is that there are uncertainties with regard to how much is
17 actually owed. There is a dispute as to what interest rate
18 applies. There is a dispute as to how certain payments have
19 already been made by other judgment debtors, how those were
20 applied. There was, if the court recalls, a \$1.25 million
21 judgment, or excuse me, payment by Mr. Badger. There were a
22 couple, approximately a hundred thousand dollar payments that
23 came in from the Ritter bankruptcy from the sale of houses.
24 It's my understanding, actually, that the Ritter bankruptcy is
25 close to being resolved. We don't know how much money is

1 coming with that.

2 So it's only prudent in my mind for a judgment debtor,
3 before they start making payments on something, they need to
4 know what the actual amount is. And I understand the bank has a
5 position on that, but we have, I think, valid arguments as to
6 why we don't completely agree.

7 So, you know, it's not that my client doesn't want
8 this resolved, he does, and we've made good faith offers to do
9 that. But, you know, it's not good business sense in my mind
10 to start paying on something when you don't know what the total
11 amount is, and that's the client's position.

12 **THE COURT:** But, I mean, I would understand that if
13 there was a dispute or uncertainty, because what we do is we
14 have a judgment. I would anticipate -- I mean, I've never
15 practiced -- this was a California judgment, right? Wasn't it
16 California?

17 **MR. LeVEQUE:** Originally, yes.

18 **THE COURT:** Okay. And I'm quite sure there's specific
19 statutes in place that determine pre-judgment and post-judgment
20 interest in the state of California. Maybe there's a contract
21 in place that calculates that, I don't know, but it appears to
22 me that issues regarding the judgment amount are certain.
23 Whatever rights the creditor has as it pertains to pre-judgment
24 or post-judgment interest in the state of California, that can
25 be easily calculated.

1 Just as important, too, if there's issues regarding
2 setoff vis-a-vis satisfaction from other sources, that would be
3 pretty easy to calculate, too, right?

4 **MR. LeVEQUE:** To my knowledge, Your Honor, I have not
5 seen a spreadsheet that sets forth this. I mean I've seen bits
6 and pieces in different briefs filed by the bank, I've read
7 their affidavit of renewal of judgment that was filed I think
8 in September of last year, but there is not a consensus on
9 that.

10 So no, I mean, like an example of that is the interest
11 rate, right? There's the California interest rate at
12 10 percent, there's a Nevada interest rate of, varies, depending
13 on the year because it's 2 percent over prime, but then there's
14 also not -- if you have a contractual rate of interest, that's
15 what controls. And my understanding is that this was a default
16 of a credit line where there was an interest rate, so --

17 **THE COURT:** Well, this is how I look at that. It
18 all -- we go back to the judgment. What does the judgment
19 provide, right? I mean, we could make all these arguments, but
20 those are arguments that should have been raised in front of
21 the California court. And whatever the California court order
22 says regarding interest, and it wasn't appealed, to me that
23 appears to me would be the ultimate determination as far as
24 calculation of the judgment.

25 Just as important, too, whatever rights the creditor

1 has as set forth under California law and a California judge
2 enters that into a final judgment and that wasn't appealed, all
3 these arguments, to me, wouldn't have a significant amount of
4 merit because I would go back to the judgment itself, and
5 whatever the California judge did as far as that judgment is
6 concerned as it pertains to the pre-judgment calculation of
7 interest and post-judgment, and you could get -- and run a
8 mathematical calculation that would tell you what the current
9 amount is based upon that California judgment, because this
10 isn't a Nevada judgment.

11 And understand, sir, I wasn't a collection lawyer.
12 I'm a tort lawyer.

13 **MR. LeVEQUE:** I'm not either, Your Honor.

14 We have done that calculation, and I've shared it with
15 Mr. Waite. I did so last night. There's still disagreements.
16 And I agree that whatever interest is in the judgment controls,
17 but that's not what we're getting from the bank. We've
18 calculated that interest rate to be about 5 percent, but they're
19 coming in arguing California rate is 10 percent.

20 So, yeah, I mean, that is an issue that I think
21 probably, even though we have a judgment and we're supposed to
22 follow what that judgment is, if this Court is going to find the
23 amount of that judgment relevant when it's assessing a bond in
24 this case, there needs to be an adjudication in this case as to
25 what that really is, because we've got payments that have been

1 made, we don't know how they've been applied.

2 This is a joint and several judgment, by the way.
3 There were two judgments. There was one --

4 **THE COURT:** But that doesn't matter, does it, joint
5 and several? The only reason that would come into play would
6 be if there's been a satisfaction by one of the joint debtors
7 in this case as far as the amounts that were paid.

8 **MR. LeVEQUE:** There has been.

9 **THE COURT:** But the bottom line is this, joint and
10 several, they can collect a hundred percent from one or a
11 hundred percent from the other.

12 **MR. LeVEQUE:** That's correct, Your Honor. But what I
13 was going to say is that there are two components of the
14 California judgment. It was amended, so there's one portion of
15 the judgment where my client, Mr. Ritter and Mr. Badger are
16 joint and severally liable, and then there's another portion of
17 the judgment where only Mr. Ritter and Mr. Badger were joint
18 and severally liable.

19 And we don't know -- it's been represented to me by
20 the bank how they've applied it, but we haven't actually seen
21 how those payments have been applied, so it's something that
22 needs to be brought before this Court.

23 If this Court is going to be entertaining a bond that
24 is somehow based on that, then both sides need to present their
25 evidence to the court in order to make that determination.

1 **THE COURT:** All right. Okay, I understand, sir, but
2 continue on.

3 **MR. LeVEQUE:** Just one moment, Your Honor. I think
4 I'm almost done. I've just got to look at my notes.

5 (Pause in proceedings.)

6 Thank you, Your Honor. I know it's been really long,
7 and thank you for indulging me in what I needed to say.

8 **THE COURT:** You're welcome, sir.

9 Mr. Waite, anything you want to add to that, sir,
10 because I did bring up some new issues.

11 **MR. WAITE:** Can you hear me, Your Honor?

12 **THE COURT:** Yes, yes, sir, but I'm getting a feedback
13 loop right now.

14 **MR. WAITE:** I had to dial in, and that's where that's
15 coming from. So to hear you I'm going to have to turn up my
16 phone, but while I'm speaking I turned the volume down.

17 Your Honor, you're spot on, you're absolutely correct.
18 And while there is a dispute regarding the amount of the
19 judgment that is owed by Mr. Schettler, there is no dispute
20 that that dispute only exists above the \$2 million mark. In
21 other words, the part, the calculation that Mr. LeVeque
22 referenced that he shared with me last night, under
23 Mr. Schettler's own calculations he owes more than \$2 million.
24 Yet he hasn't paid a million and a half, he hasn't paid one
25 million, he hasn't paid one dollar in over six years, and yet

1 he could have done something, but he's done nothing.

2 Second of all, Your Honor, as it relates to the bond,
3 and this will be my last point as it relates to just simply the
4 amount of the bond, you are spot on on that as well.

5 Think, hypothetically, if there was a stay on all of
6 the judgment creditor's collection rights except for one, you
7 could undertake collection through every tool available to you
8 except for -- or you could not take -- execute except for you
9 can do a judgment debtor exam. That's a tool that's available
10 to a judgment creditor. Well, in that case I don't think there
11 would be any question that a security in the full amount of the
12 judgment will be required.

13 Well, let's get on that slippery slope. All tools
14 available to a judgment creditor are stayed except for two. You
15 could do a judgment debtor exam, and you could garnish wages.
16 Well, Your Honor, the fact of the matter is if you preclude even
17 one wrongfully, statutorily allowed judgment creditor tool of
18 collection, that may be the one from which the judgment creditor
19 is both able potentially and lawfully able to collect. So if
20 you take away one judgment creditor tool of collection, then the
21 judgment should be fully secured. And that's what we request
22 here, Your Honor, and that's what's fair.

23 And while Mr. LeVeque -- the problem here, Your Honor,
24 is Mr. Schettler has been shown numerous times the base
25 calculations. They showed Mr. Cory, and then we showed

1 Mr. Graf, and now we have Mr. LeVeque, and I'm happy to sit
2 down with them. Your order should be that if Mr. Schettler
3 wants a stay, he has to fully secure it. I can get with them,
4 I can show them exactly how the bank has calculated it and the
5 amount, and then if there's a dispute as to that amount, well,
6 then we could come back before you and decide that.

7 That's all I have. I'm going to turn up my volume
8 again.

9 **THE COURT:** All right. Thank you, sir.

10 And Mr. LeVeque, you get the last word, and I'll rule.

11 Mr. LeVeque, anything you want to add, sir?

12 **MR. LeVEQUE:** Your Honor, I might make a request, but
13 it just depends on how the court is going to rule on this.

14 So I don't have anything further unless and until the
15 court rules.

16 **THE COURT:** Okay. And I don't mind saying this, and
17 we had a very rigorous discussion, I think it's important to
18 set forth all positions on the record. I want to make sure
19 everyone has an opportunity to do so.

20 Just as important, too, I always feel it's important
21 as a trial judge for me to at least express my thoughts on the
22 record, and that at the end of the day that helps in many
23 regards, because I know one thing for sure, that our court of
24 appeals and/or Nevada Supreme Court, they do review these
25 transcripts for sure, and so anyway, we've met that

1 requirement.

2 And so in looking at this matter as it pertains to the
3 motion to stay appointment of a receiver pending appeal, I've
4 looked at the rules, I've looked at the statutory requirements
5 as it relates to my decision to appoint, that would go to the
6 probability of success on the merits and the like. And at the
7 end of the day this will be my conclusion as far as -- my
8 decision as far as the appointment, I mean, staying this matter.
9 I'm going to deny the request for a stay pending appeal.

10 It appears to me that -- I mean, the statute is pretty
11 clear, and although maybe unique to Nevada, judgment creditors
12 in the state of Nevada have rights that are set forth pursuant
13 to NRS 32.010, paragraph 4, as it pertains to the appointment of
14 a receiver, and they're very simple and straight forward. One
15 is when an execution has been returned unsatisfied or when the
16 judgment debtor refuses to apply the judgment debtor's property
17 in satisfaction of the judgment.

18 As far as those two requirements are concerned, no
19 monies have been paid and judgment is unsatisfied. And just as
20 important, too, none of the debtor's properties have been used,
21 visa, money or property, to satisfy this judgment, and so I just
22 don't see a basis for a stay at this time, I don't.

23 We did have a discussion, and if there's -- and the
24 only reason I did this, if, hypothetically -- and you could
25 always stipulate to a stay pending appeal, I would anticipate,

1 you could come to some sort of accord. My thoughts are if I
2 did stay it, it would have to be somewhere close to the amount
3 of the judgment, I don't mind saying that.

4 Anyway, but the bottom line is I'm going to deny the
5 stay.

6 Notwithstanding that, what I'm going to do, I did make
7 some notes, I'm going to take a look at the receiver issue,
8 Mr. LeVeque, once you give me the information that I've
9 requested.

10 But just as important, too, as far as the thrust and
11 focus of the order, I'm just not going to sign the order. I'm
12 going to take a close look at some of the issues you've raised,
13 but, ultimately, I'm going to make a decision as to the ultimate
14 authority of the receiver and what that shall be in this case;
15 do you understand that?

16 **MR. LeVEQUE:** I do, Your Honor.

17 **THE COURT:** I'm going to take a look at what you
18 raised, and if I feel I need anything in addition, I'll let you
19 know, I don't mind saying that, what we discussed in open
20 court, like I do everything, all right?

21 **MR. LeVEQUE:** I appreciate that.

22 **THE COURT:** And Mr. Waite, can you prepare an order,
23 sir?

24 **MR. WAITE:** Yes, Your Honor. Just on the denial of
25 the motion for stay, I assume?

1 **THE COURT:** Yes, sir.

2 **MR. WAITE:** Okay. Thank you.

3 **THE COURT:** All right. And everyone, enjoy your day.
4 I think we're going to take a quick recess, and we have a
5 calendar call starting in 5 minutes.

6 **MR. LeVEQUE:** Your Honor, I do have one request --

7 **THE COURT:** Yes.

8 **MR. LeVEQUE:** -- before we go off record.

9 In light of the court's denying me the stay, will the
10 court grant a temporary stay so that I can file the same in the
11 appellate court?

12 **THE COURT:** Any objection to that, Mr. Waite?

13 **MR. WAITE:** I don't think that's -- I don't think
14 that's unreasonable, the request. The question is how long. I
15 think a short stay would probably be appropriate so they can
16 try to protect their interests and rights, but a short stay.

17 **THE COURT:** A stay of 30 days after entry of the
18 order, how is that, Mr. LeVeque?

19 **MR. LeVEQUE:** I think that will be great, Your Honor.
20 I appreciate that.

21 **THE COURT:** All right. I have no problem with that, I
22 don't. That's what we'll do.

23 Okay. Enjoy your day, gentlemen. We'll take a quick
24 recess.

25 **ALL COUNSEL:** Thank you, Your Honor.

State of Nevada)
)
County of Clark)

In witness whereof, I have hereunto subscribed my name
in my office in the County of Clark, State of Nevada.

Thompson

Rhonda Aguilina, RMR, CRR, Cert. #979

EXHIBIT 4

3/30/2021

Good afternoon Vincent,

I want to thank you for allowing myself and the entire Sound Capital team the opportunity to work with you on your new Alexander Coralie project.

As you know we were able to 100% qualify you on your experience history and our requirements per our lending partners.

We were all ready to go to underwriting this week for your first loan and we were notified by our attorney on Friday that there had been a Motion For Appointment of Receiver over the 2016 Judgement filed by Pacific Western Bank on March 11, 2021. After review of the motion our underwriting and partners regretfully have to put this loan on hold.

Please know we are here and ready to get this back into the system once you have this resolved or excused by the courts. Keep me updated when you have new information.

Sincerely,

John Gurr
Sound Capital Loans
Director of Builder Finance
702-901-2309
johng@soundcapital.com



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EXHIBIT 5

Heather S. Smith
CLERK OF THE COURT

ORD

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Attorneys for Plaintiff

Pacific Western Bank, a California corporation

DISTRICT COURT

CLARK COUNTY, NEVADA

PACIFIC WESTERN BANK, a California
corporation,

Plaintiff/Judgment Creditor,

v.

JOHN A. RITTER, an individual; DARREN D.
BADGER, an individual; VINCENT T.
SCHETTLER, an individual; and DOES 1
through 50,

Defendants/Judgment Debtors.

Case No. A-14-710645-B

Dept. No. XVI

**ORDER (1) APPOINTING RECEIVER
OVER JUDGMENT DEBTOR VINCENT
T. SCHETTLER'S ASSETS and
(2) DENYING COUNTERMOTION FOR
SPECIAL MASTER**

Date of Hearing: April 28, 2021

Time of Hearing: 9:00 a.m.

On April 28, 2021, at 9:00 a.m. in Department XVI of the above-captioned Court,
(1) Plaintiff/Judgment Creditor PACIFIC WESTERN BANK's (hereinafter "PacWest") Motion
for Appointment of a Receiver Over Judgment Debtor Vincent T. Schettler's Assets ("Motion"),
and (2) Defendant/Judgment Debtor VINCENT T. SCHETTLER's (hereinafter "Schettler")
Counter-motion for Appointment of Special Master ("Counter-motion"), came on for hearing. Dan
R. Waite of Lewis Roca Rothgerber Christie LLP appeared on behalf of PacWest. J. Rusty Graf
of Black & Wadhams and Alexander G. LeVeque of Solomon Dwiggin Freer & Steadman, Ltd.,
appeared on behalf of Defendant/Judgment Debtor VINCENT T. SCHETTLER.¹ Based on the

¹ As used throughout this Order, the term "Schettler" shall mean the judgment debtor, Vincent T. Schettler, in his individual capacity.

1 papers and pleadings on file, the arguments of counsel, and good cause appearing, the Court rules
2 as follows:

3 IT IS ORDERED that PacWest's Motion is GRANTED and Schettler's Countermotion is
4 DENIED.

5 The Court has reviewed the conditions upon which a receiver can be appointed post-
6 judgment under (a) California law pursuant to California Civil Procedure Code § 708.620 (2019),
7 versus (b) Nevada law as set forth pursuant to NRS 32.010(4). This appears to be a question of
8 first impression in Nevada. Unlike California, under the Nevada statutory scheme the
9 appointment of a receiver is not a remedy of last resort because Nevada law does not require the
10 Court to consider the interests of both the judgment creditor and the judgment debtor, and
11 whether the appointment of a receiver is a reasonable method to obtain the fair and orderly
12 satisfaction of the judgment. Under the Nevada statute, "[a]fter judgment, to dispose of the
13 property according to the judgment, . . . in proceedings in aid of execution, when an execution has
14 been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's
15 property in satisfaction of the judgment," a receiver may be appointed by the Court. *See* NRS
16 32.010(4). In the instant action, PacWest has utilized the standard debt collection procedures as
17 set forth in its motion, i.e., judgment debtor examination, requests for production of documents
18 from the judgment debtor, subpoena for documents from numerous third parties, writs of
19 garnishment, writs of execution, etc.

20 In light of the foregoing, the Court finds that it is appropriate to appoint a receiver under
21 the circumstances presented here and makes the following Findings of Fact and Conclusions of
22 Law:

23 **FINDINGS OF FACT**

24 1. PacWest obtained a lawful judgment against Schettler in 2014, which judgment
25 has a current outstanding balance of approximately \$3,000,000.

26 2. Schettler lives an affluent lifestyle but has not voluntarily paid anything on the
27 judgment in more than six years. For example:
28

1 a. Schettler purchased a \$2,000,000 home in a gated and guarded community
2 during the summer of 2019. Title to the home was taken in the name of the Schettler Family
3 Trust.

4 b. Associated with the purchase of that home, Schettler qualified for a
5 \$1,500,000 loan by representing his income was \$77,231 per month, i.e., more than \$926,000
6 annually.

7 c. On one AMEX Centurion card (aka “Black Card”), which Schettler is
8 individually obligated to pay, the Schettlers have a history of charging and paying more than
9 \$40,000 per month. In December 2018, the charges exceeded \$100,000, which were paid in full
10 the next month. In late 2019 (over a period of 50 days), Schettler used the AMEX card to pay
11 \$206,983.72 to one of the many law firms he retains.

12 3. In November 2020, PacWest attempted to execute upon Schettler’s personal
13 property located at his home but Schettler, upon the advice of counsel, denied access to the
14 Constable’s agents and thwarted any satisfaction of the judgment pursuant to the writ of
15 execution.

16 4. Schettler controls a complex network of companies and trusts in an attempt to
17 make himself judgment proof. For example, Schettler is self-employed by Vincent T. Schettler,
18 LLC and he goes to work every day for that company. However, Schettler decides when and how
19 much he gets paid and he pays himself very infrequently.

20 5. Even if Schettler pays himself only infrequently, he refuses to apply any of his
21 property towards satisfaction of PacWest’s judgment. Indeed, on two separate occasions,
22 Schettler has represented in open court that he offered to pay PacWest \$1,000,000 in settlement of
23 the judgment he owes PacWest. (See Hrg. Trans. (7/29/20) at 13:12-13, and Hrg. Trans.
24 (10/14/20) at 13:19-20). Thus, while Schettler admits he has access to at least \$1,000,000 to pay
25 toward the judgment, he refuses to pay anything voluntarily, i.e., in the language of NRS
26 32.010(4), he “refuses to apply [his] property in satisfaction of the judgment.”

27 6. Schettler’s employer, Vincent T. Schettler, LLC, is an operational entity for the
28 commission income Schettler earns as a licensed real estate broker. In other words, Schettler

1 provides valuable services as a real estate broker and he, the judgment debtor, earns the
2 commissions. Yet, the compensation and commissions earned by Schettler are not paid to
3 Schettler. Instead, Schettler, through his control of Vincent T. Schettler, LLC, pays his own
4 commissions and other compensation directly to the Schettler Family Trust, which then pays
5 Schettler's living expenses.

6 7. Since 2014, Schettler has thumbed his nose at PacWest's judgment and attempted
7 to thwart and frustrate PacWest's collection efforts at every opportunity, forcing PacWest to incur
8 hundreds of thousands of dollars in post-judgment collection efforts, none of which prompted
9 Schettler to pay anything.

10 8. Schettler is a very recalcitrant judgment debtor.

11 9. This Court has previously found that Schettler has not acted in good faith and,
12 instead, has acted in bad faith; he's unreasonably multiplied these proceedings; has engaged in
13 stonewalling; and has acted to delay and obfuscate as long as possible. (*See* Order (filed 9/10/20)
14 at Findings 31-32, 38-39, 42). The Court confirms and incorporates those Findings here.

15 10. As demonstrated by Schettler's misrepresentations to his lender (where, in 2019,
16 he misrepresented that he had no judgments against him and that he was not a party to any
17 lawsuits), the Court finds that Schettler will falsify the truth while in the very act of
18 acknowledging it is a federal crime to do so.

19 11. The Court finds that Schettler cannot be trusted to tell the truth. He will say and
20 do whatever is expedient to serve his purposes in the moment and to thwart PacWest's lawful
21 collection efforts. A receiver is needed to obtain trustworthy information.

22 12. A receiver is also needed (1) because Schettler is "a judgment debtor with direct or
23 indirect access to substantial wealth and assets, who [has] frustrated [PacWest's] considerable
24 efforts to collect its judgment," and (2) to "investigate and determine what assets [Schettler]
25 possesses, whether in the LLC's or otherwise, and to determine whether the arrangements are a
26 subterfuge for avoiding [Schettler's personal] debt." *Morgan Stanley Smith Barney LLC v.*
27 *Johnson*, 952 F.3d 978, 983 (8th Cir. 2020) (internal quotation marks omitted); *accord, Otero v.*
28

1 *Vito*, 2008 WL 4004979, at *4 (M.D. Ga. 2008) (a receiver was needed to “unravel[] the
2 complicated web of entities and transactions woven by [the judgment debtors]”).

3 13. In its Motion, PacWest suggested two receiver candidates: (a) Cordes & Company,
4 principally by and through Bellann Raile, and (b) Stapleton Group, principally by and through
5 Jacob Diiorio. PacWest also provided the CVs and rates for both receiver candidates in its
6 Motion. Schettler did not oppose or otherwise object to PacWest’s receiver candidates in his
7 opposition brief or during the April 28, 2021, hearing on PacWest’s Motion.

8 14. Nevertheless, at a status hearing on July 21, 2021, upon request from Schettler’s
9 counsel, the Court authorized Schettler to submit names, CVs, and rates for some receiver
10 candidates. The Court also provided PacWest with an opportunity to thereafter respond to
11 Schettler’s proposed receiver candidates.

12 15. On July 27, 2021, Schettler filed his Notice of Production of Documents whereby
13 he suggested three receiver candidates: (a) Judge David Barker (retired), (b) Paul Haire, Esq., and
14 (c) Justice Nancy Saitta (retired).

15 16. On August 3, 2021, PacWest submitted its Response to Mr. Schettler’s Proposed
16 Receivers.

17 17. Upon a review of the two receiver candidates suggested by PacWest and the three
18 receiver candidates suggested by Schettler, it is clear that the receiver candidates suggested by
19 Schettler have zero receiver experience whereas those suggested by PacWest have been appointed
20 as professional receivers more than 500 times in separate court actions in multiple states and
21 jurisdictions. This experience imbalance weighs heavily in favor of PacWest’s nominees.

22 18. Also, PacWest’s proposed receiver candidates charge a significantly lower hourly
23 rate than those proposed by Schettler. Indeed, Schettler’s candidates charge hourly rates ranging
24 from \$450-\$750 (David Barker), \$490-\$800 (Paul Haire), and \$590-\$900 (Nancy Saitta), but
25 none indicated what specific rate they would charge for receiver services in this case. On the
26 other hand, PacWest’s proposed receiver candidates charge a specific hourly rate of \$325 (Cordes
27 & Company, Bellann Raile) and \$345 (Stapleton Group, Jacob Diiorio) to serve as a receiver in
28 this case. The specificity and lower rates weigh heavily in favor of PacWest’s nominees.

20. Any findings of fact that are partially or completely conclusions of law shall be deemed conclusions of law.

CONCLUSIONS OF LAW

1. NRS 1.210 provides: “Every court shall have power: . . . 3. To compel obedience to its lawful judgments”

2. NRS 32.010 provides: “A receiver may be appointed by the court in which an action is pending, . . . 4. After judgment, . . . 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.”

3. A receiver is an officer and agent of the Court. *See U.S. Bank Nat’l Ass’n v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 606 (2015) (“the receiver, for all intents and purposes, acts as a court’s proxy”).

4. A receiver is warranted here under NRS 32.010(4) for the following three reasons: (1) to aid PacWest’s execution rights against Schettler, (2) a writ of execution was returned unsatisfied, and (3) Schettler refuses to apply any of his property toward satisfaction of the judgment. *See Morgan Stanley Smith Barney LLC v. Johnson*, 952 F.3d 978, 981 (8th Cir. 2020) (receivership appropriate “to protect a judgment creditor’s interest in a debtor’s property when[, as here,] the debtor has shown an intention to frustrate attempts to collect the judgment.”).

5. NRS 32.010(4) does not require evidence of fraudulent transfers, alter ego, or post-judgment planning by the judgment debtor before the court may appoint a receiver.

6. Nevada's statutory scheme does not preclude the appointment of a receiver over an individual judgment debtor, like Schettler. *See* NRS 32.175, 32.185, 32.155, 32.160, and 32.300(2).

7. Given that Schettler has not voluntarily paid anything in more than six years since the judgment was entered against him but has somehow managed to live opulently, the receiver

1 should be given broad powers to locate and apply property of Schettler in satisfaction of the
2 judgment, including commissions Schettler may be entitled to receive.

3 8. Given the complex network of trusts and business entities under Schettler's
4 control, the receiver should be given broad powers to pursue alter ego and fraudulent transfer
5 claims if the receiver determines such are warranted.

6 9. Although Schettler claims his network of business entities and trusts is legitimate
7 business and asset protection planning, the "possibility of legitimate business coexisting with
8 fraudulent schemes" warrants a receiver. *See U.S. v. Hoffman*, 560 F. Supp.2d 772, 777 (D.
9 Minn. 2008). A receiver can sort out the legitimate from the fraudulent and thereby ensure
10 legitimate business is left alone and fraudulent schemes are dismantled.

11 10. NRCP 53(a)(2) relevantly provides:

12 "(2) **Scope.** Unless a statute provides otherwise, a court may appoint a master
13 only to:

14 "(A) perform duties consented to by the parties;

15 "(B) address pretrial or posttrial matters that cannot be effectively and
16 timely addressed by an available judge; or

17 "(C) in actions or on issues to be decided without a jury, hold trial
18 proceedings and recommend findings of fact, conclusions of law,
19 and a judgment, if appointment is warranted by:

20 "(i) some exceptional condition; or

21 "(ii) the need to perform an accounting or resolve a difficult
22 computation of damages."

23 11. With respect to NRCP 53(a)(2)(A), PacWest did not consent to a master
24 performing any of the duties described in the Countermotion so a master cannot be appointed
25 under NRCP 53(a)(2)(A).

26 12. With respect to NRCP 53(a)(2)(B), there has been no evidence or allegation that
27 the Court cannot "effectively and timely" address the issues in this case, and the Court can
28

continue to “effectively and timely” address the issues here; so a master is not warranted under NRCP 53(a)(2)(B).

13. With respect to NRCP 53(a)(2)(C), this action has not presented any “exceptional condition” that requires assistance from a master. Nor does this case present a “need to perform an accounting or resolve a difficult computation of damages.” A master is not warranted under NRCP 53(a)(2)(C).

14. A master is not warranted in this case.

15. Any conclusions of law that are partially or completely findings of fact shall be deemed findings of fact.

ORDER

Therefore, IT IS ORDERED that a receiver shall be appointed over the Receivership Estate of Vincent T. Schettler. For purposes of this Order, the “Receivership Estate” shall consist of all of Vincent T. Schettler’s right, title, claims, demands and/or interest, including community property interest, in property and other assets of any kind and nature, including, but not limited to real, personal, intangible, and inchoate property and property held in trust, that Schettler currently has or may hereafter acquire, and includes “receivership property” as defined in NRS 32.185. The Court intends “Receivership Estate” and the terms of this Order to be interpreted broadly to facilitate the lawful satisfaction of PacWest’s judgment against Schettler.

IT IS FURTHER ORDERED that Cordes & Company, LLC, by and through Bellann Raile, is hereby appointed receiver in this action (the “Receiver”) over the Receivership Estate, subject to the condition that before entering upon its duties as Receiver, its shall execute a Receiver's oath and post a cash bond, or bond from an insurer, in the sum of \$5,000.00, to secure the faithful performance of its duties as Receiver herein. The Receiver’s oath and bond are to be filed with the Clerk of Court no later than August 1, 2021. Prior to the Receiver posting its bond, Plaintiff PacWest shall advance \$6,000.00 to the Receiver to cover its cost to post a bond and initial fees and expenses. This advance will be added to the judgment Schettler owes to PacWest.

IT IS FURTHER ORDERED that any distributions, commissions, payments, or other monetary consideration (collectively, “Disbursements”) Schettler is or becomes entitled to

1 receive, directly or indirectly, during the term of this receivership shall be paid and tendered to
2 the Receiver, not Schettler, including, but not limited to, Disbursements from: (1) Vincent T.
3 Schettler, LLC, (2) VTS Nevada, LLC, (3) Vision Commercial One, LLC, (4) S&G Partners,
4 LLC, (5) Mosaic Commercial Advisors, LLC (6) Mosaic Development, LLC, (7) Mosaic Land
5 Fund, (8) Mosaic Land Fund Two, LLC, (9) Mosaic Land 1 LLC, (10) Mosaic Land 2 LLC, (11)
6 Mosaic Three, LLC, (12) Mosaic Five, LLC, (13) Mosaic Six, LLC, (14) Mosaic Seven, LLC,
7 (15) Mosaic Hollywood 247, LLC, (16) Mosaic Simmons LLC, (17) VTS Investments LLP, (18)
8 Vision Home Sales II LLC, (19) Investor Equity Homes, LLC, (20) West Henderson 140 LLC,
9 (21) Multi Acquisitions, LLC, (22) HCR Unit F3 Owners LLC, (23) ND Holdings, LLC (LV
10 series), (24) ND Holdings, LLC (Hndrsn series), and (25) Mosaic CC Mgr, LLC. Schettler shall
11 provide a copy of this Order to any person or entity he anticipates receiving a Disbursement from
12 and instruct them in writing that all Disbursements are to be paid and tendered to the Receiver,
13 and Schettler shall promptly send a copy of the written instruction to the Receiver.

14 Notwithstanding the foregoing, if Schettler receives a referenced Disbursement, he shall
15 immediately (a) advise the Receiver of such, and (b) deliver the Disbursement in full to the
16 Receiver.

17 IT IS FURTHER ORDERED that any Disbursement Schettler is or becomes entitled to
18 receive, directly or indirectly, during the term of this receivership from any trust, including, but
19 not limited to, the Schettler Family Trust, including, but not limited to, payments from trust assets
20 for the benefit of Schettler, shall be paid and tendered to the Receiver, not Schettler. Schettler
21 shall provide a copy of this Order to the trustee(s) of any trust he anticipates receiving a
22 Disbursement from and instruct the trustee(s) in writing that all Disbursements, for his benefit, or
23 on his behalf, are to be paid and tendered to the Receiver, and Schettler shall promptly send a
24 copy of the written instruction to the Receiver. Notwithstanding the foregoing, if Schettler
25 receives a referenced trust Disbursement, he shall immediately deliver such to the Receiver.

26 IT IS FURTHER ORDERED that the Receiver is directed by this Court to do the
27 following specific acts:
28

1 1. Immediately take possession, control, and management of the Receivership Estate,
2 and shall have all power and authority of a receiver provided by law, including, but not limited to,
3 the following powers and responsibilities:

- 4 a. The Receiver is authorized and empowered to liquidate non-exempt assets
5 of the Receivership Estate and/or apply the non-exempt portion of the
6 proceeds to satisfaction of the judgment that Schettler owes to PacWest.
- 7 b. The Receiver is authorized and empowered to seize, operate, manage,
8 control, conduct, care for, preserve, and maintain the Receivership Estate,
9 wherever located. In this regard, the Receiver is authorized to the fullest
10 extent allowed by law to manage, operate and make all decisions and
11 exercise all discretion on behalf of the Receivership Estate.
- 12 c. The Receiver may change the locks, if any, providing access to the
13 Receivership Estate, so long as changing the locks does not interfere with
14 Schettler's access to his personal residence, and to do all other things
15 which the Receiver deems necessary to protect the Receivership Estate.
- 16 d. The Receiver is further authorized to take possession of and collect any
17 accounts, distributions, commissions, exempt wages and bonuses, chattel
18 paper, and general intangibles of every kind hereafter arising out of the
19 Receivership Estate and to have full access to and, if it desires, take
20 possession of all the books and records, ledgers, financial statements,
21 financial reports, documents and all other records (including, but not
22 limited to, information contained on computers and any and all software
23 relating thereto) relating to the foregoing, wherever located, as the
24 Receiver deems necessary for the proper administration of the Receivership
25 Estate.
- 26 e. The Receiver is authorized and empowered to demand any and all records
27 from any and all banks and other financial institutions holding accounts
28

which constitute part of the Receivership Estate, including past or closed accounts in existence at any time on or after January 1, 2014.

- f. The Receiver shall preserve and protect the assets, tax records, books and records, wherever located, while it acts to operate the affairs of the Receivership Estate. Notwithstanding anything to the contrary herein, Schettler, not the Receiver, shall be responsible for preparing and filing Schettler's state and federal tax returns. However, (1) the Receiver shall timely cooperate with Schettler and his tax preparer as they may reasonably request so that they (i.e., Schettler and/or his tax preparer) can timely prepare and file Schettler's tax returns, and (2) Schettler shall provide (or cause his tax preparer to provide) a copy of each state and federal tax return to the Receiver promptly after the return is filed.
- g. The Receiver is authorized and empowered to execute and prepare all documents and to perform all acts, either in the name of Schettler or, as applicable, in the Receiver's own name, which are necessary or incidental to preserve, protect, manage and/or control the Receivership Estate. In particular, the Receiver shall have the authority, without limitation, to immediately cancel, extend, modify or enter into any existing or new contracts or leases necessary to operate the Receivership Estate.
- h. The Receiver is authorized and empowered to demand, collect, and receive all monies, funds, commissions, distributions, and payments arising from or in connection with any sale and/or lease of any assets of the Receivership Estate, including related to any services provided by Schettler.
- i. The Receiver may take possession of all Receivership Estate accounts and safe deposit boxes, wherever located, and receive possession of any money or other things on deposit in said accounts or safe deposit boxes. The Receiver also has the authority to close any account(s) that the Receiver deems necessary for operation or management of the Receivership Estate.

Institutions that have provided banking or other financial services to Schettler are instructed to assist the Receiver, including by providing records that the Receiver requests. These institutions may charge their ordinary rates for providing this service.

- j. The Receiver is empowered to establish accounts at any bank or financial institution the Receiver deems appropriate in connection with the operation and management of the Receivership Estate. The Receiver is authorized to use the Defendant's tax identification number to establish such accounts. Any institutions that have accounts and/or funds that are part of the Receivership Estate shall turnover said accounts and/or funds to the custody and control of the Receiver and that institution shall not be held liable for turnover of funds.
- k. To the extent feasible, the Receiver shall, within thirty (30) days of its qualification hereunder, file in this action an inventory of all property the Receiver took possession of pursuant to this Order and file quarterly accountings thereafter.
- l. The Receiver is authorized to institute ancillary proceedings in this state or other states as necessary to obtain possession and control of assets of the Receivership Estate, including, without limitation, to pursue claims for alter ego and fraudulent transfers.
- m. The Receiver is empowered to serve subpoenas when necessary with court approval.
- n. Any entities in which Schettler holds an interest are ordered to turn over to the Receiver any funds, profits, cash flow or property that would otherwise be distributable to Schettler, which the Receiver may use in satisfaction of the judgment Schettler owes to PacWest.
- o. The Receiver is authorized to contact any of Schettler's debtors ("Accounts Receivable Debtors") in order to advise them not to send further accounts

receivable payments to Schettler and to instruct the Accounts Receivable Debtors to send any and all payments directly to the Receiver.

- p. The Receiver is authorized to borrow funds from PacWest as may be necessary to satisfy the costs and expenses of the receivership and issue Receiver's Certificates, Certificates of Indebtedness, or similar instruments (individually, a "Certificate" and collectively, the "Certificates"), up to an initial aggregate total of \$25,000, evidencing the secured obligation of the Receivership Estate (and not the Receiver individually) to repay such sums; the principal sum of each such Certificate, together with reasonable interest thereon, shall be payable out of the next available funds from any other assets subject to the Receiver's authority and control. In the event that the Receiver determines, in its reasonable business judgment, that Certificates in excess of an aggregate of \$25,000 are necessary to fund the present receivership, it may issue such Certificates to PacWest upon PacWest's written consent and agreement, and without further order of this Court.

2. Even though the Uniform Commercial Real Estate Act does not apply here, the Receiver shall exercise the powers and duties set forth in NRS 32.290, NRS 32.295, NRS 32.315, and NRS 32.320 to the extent reasonably deemed necessary to effectuate the purposes of this Order, which is the satisfaction of the judgments in favor of PacWest.

3. The Receiver is also authorized, but not obligated, to perform the following:

- a. Hire and pay (from Receivership Estate assets) the fees and costs of any professionals, including attorneys, accountants, and property managers to aid and counsel the Receiver in performing its duties.
- b. Hire contractors to evaluate and make repairs to assets of the Receivership Estate.

- 1 c. Pay (from Receivership Estate assets) such other and ordinary expenses
2 deemed appropriate by the Receiver to carry out the Receiver's duties as
3 specified herein.
- 4 d. Pay the Receiver's fees and costs from Receivership Estate assets.
- 5 4. Quarterly accounting of Receiver's efforts, income, expenses, and fees ("Receiver's
6 Report"):
- 7 a. Each quarter, the Receiver shall prepare and serve on the parties a report
8 identifying (1) the issues it is addressing, (2) an accounting of revenues
9 received, (3) an accounting of expenses incurred, in the administration of
10 the Receivership Estate, including an itemization of the Receiver's own
11 fees and costs incurred for the reported period, and (4) an accounting of
12 payments made to PacWest, if any, in full or partial satisfaction of the
13 judgment Schettler owes to PacWest.
- 14 b. The Receiver and its attorneys, accountants, agents and consultants shall be
15 compensated from the assets of the Receivership Estate for its normal
16 hourly charges and for all expenses incurred in fulfilling the terms of this
17 Order. The compensation for the Receiver's principal (Bellann Raile) shall
18 be at the rate of \$325 per hour. Compensation for the Receiver's other
19 personnel, agents, and consultants shall be at their customary hourly rates.
20 The Receiver shall also be compensated for photocopying, long distance
21 telephone, postage, travel (except travel to and from Nevada necessitated
22 because the Receiver's office is located outside Nevada) and other
23 expenses at actual cost. The Receiver may periodically pay itself and its
24 attorneys, accountants, agents and consultants from the assets of the
25 Receivership Estate, provided that the Receiver shall apply to the Court for
26 approval of these charges quarterly.

27 IT IS FURTHER ORDERED that PacWest, Schettler, and all other parties to this action,
28 including any of their respective agents, servants, directors, assignees, successors, representatives,

1 employees, and all persons or entities acting under, or in concert with them, or for them, are
2 required to cooperate with the Receiver and shall immediately turn over to the Receiver
3 possession, custody, and control of all books and records pertaining to the Receivership Estate,
4 wherever located, whether electronic or hardcopy, as the Receiver deems necessary for the proper
5 administration, management and/or control of the Receivership Estate, necessary to carry out any
6 of the Receiver's duties as set forth in this Order, including but not limited to: all keys, codes,
7 locks, usernames, passwords, security questions to access any systems / online portals, etc.
8 necessary to operate the business, records, books of account, ledgers, and all documents and
9 papers pertaining to the Receivership Estate.

10 IT IS FURTHER ORDERED that Schettler and his agents shall not interfere in any
11 manner with the discharge of the Receiver's rights vested or duties imposed by this Order.

12 IT IS FURTHER ORDERED that Schettler shall not collect any debts or demands due to
13 him, except as may be requested by or approved in advance by the Receiver in writing.

14 IT IS FURTHER ORDERED that Schettler shall not commit or permit any waste of the
15 Receivership Estate or take any action to avoid, hinder, delay, or evade the effect of this Order.

16 IT IS FURTHER ORDERED that Schettler shall not pay out, assign, sell, convey,
17 transfer, encumber, or deliver any of his assets to any person or entity other than the Receiver,
18 except as may be requested by or approved in advance by the Receiver in writing.

19 IT IS FURTHER ORDERED that Schettler shall not act or fail to act in a manner that,
20 directly or indirectly, hinders, delays, or obstructs the Receiver in the conduct of its duties or
21 otherwise interferes in any manner with the Receiver and the performance of its rights or duties
22 pursuant to this Order.

23 IT IS FURTHER ORDERED that this Order shall be interpreted and applied by the
24 Receiver in a manner consistent with *Weddell v. H2O, Inc.*, 128 Nev. 94, 271 P.3d 743 (2012).

25 ////

26 ////

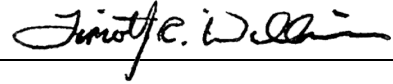
27 ////

28 ////

IT IS FURTHER ORDERED that the Receiver, or any party to this action, may apply to this Court for further orders instructing the Receiver. This Order shall remain in full force and effect until further order of this Court.

IT IS SO ORDERED.

Dated this 16th day of August, 2021



NS

598 153 589B 938D
Timothy C. Williams
District Court Judge

Submitted by:
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Dan R. Waite

Dan R. Waite, Esq.
Nevada State Bar No. 4078
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Plaintiff/Judgment Creditor
Pacific Western Bank

Agreement was not reached on the form or content of this order. PacWest's counsel understands that Mr. Schettler will submit a competing order.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Pacific Western Bank,
7 Plaintiff(s)

CASE NO: A-14-710645-B

8 vs.

DEPT. NO. Department 16

9 John Ritter, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/16/2021

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EXHIBIT 6

2018 WL 5314945

Only the Westlaw citation is currently available.

United States District Court, D. Minnesota.

MORGAN STANLEY SMITH BARNEY
LLC, and [Morgan Stanley Smith Barney
FA Notes Holdings LLC](#), Plaintiffs,

v.

Christopher JOHNSON, Defendant.

Civ. No. 17-1101 (PAM/TNL)

|

Signed 10/26/2018

Attorneys and Law Firms

[David Robbins](#), [Stephen M. Harris](#), Meyer Njus Tanick, PA, Minneapolis, MN, [Ira N. Glauber](#), Dilworth Paxson LLP, New York, NY, [Timothy P. Griffin](#), [William Thomson](#), Stinson Leonard Street LLP, Mpls, MN, for Plaintiffs.

[Brandon J. Wheeler](#), Felhaber, Larson, Fenlon & Vogt, PA, Minneapolis, MN, [Daniel R. Kelly](#), Felhaber Larson, Mpls, MN, for Defendant.

MEMORANDUM AND ORDER

[PAUL A. MAGNUSON](#), United States District Judge

*1 This matter is before the Court on Defendant's Motion to Stay Pending Appeal. For the following reasons, the Motion is denied.

BACKGROUND

This case arises out of Defendant's failure to satisfy a judgment for Plaintiffs in the amount of \$1,502,000. The full factual background is set forth in the Court's September 27, 2018, Memorandum and Order, in which the Court granted Plaintiffs' request to appoint a receiver and for a charging order. (Docket No. 75.) Defendant filed a Motion to Stay Pending Appeal on October 2, 2018. (Docket No. 82.)

DISCUSSION

The power to stay proceedings is inherent in the Court's power to control its docket. [Twin Cities Galleries, LLC v.](#)

[Media Arts Grp., Inc.](#), 431 F. Supp. 2d 980, 983 (D. Minn. 2006) (Doty, J.). Whether to issue a stay is within the Court's discretion. [Virginian Ry. Co. v. United States](#), 272 U.S. 658, 672 (1926). Such a stay "is not a matter of right" and "[t]he party requesting a stay bears the burden of showing that the circumstances justify [it]." [Nken v. Holder](#), 556 U.S. 418, 433-34 (2009) (quotation omitted). In determining whether to grant a stay, the Court can consider "(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." [Hilton v. Braunskill](#), 481 U.S. 770, 776 (1987). A balance of these factors weighs against granting a stay.

A. Likelihood of Success

Defendant has not met the first factor, requiring a strong showing that the applicant is likely to succeed on the merits. Defendant contends that he is likely to succeed because of this Court's treatment of the factors found in [Aviation Supply Corporation v. R.S.B.I. Aerospace, Inc.](#), 999 F.2d 314, 316 (8th Cir. 1993). In [Aviation Supply](#), the Eighth Circuit provided courts with several factors to consider when deciding whether appointment of a receiver is appropriate:

Although there is no precise formula for determining when a receiver may be appointed, factors typically warranting appointment are a valid claim by the party seeking the appointment; the probability that fraudulent conduct has occurred or will occur to frustrate that claim; imminent danger that property will be concealed, lost, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and likelihood that appointing the receiver will do more good than harm.

Id. at 316-17.

In its Order, this Court found that three of the [Aviation Supply](#) factors were clearly met: (1) Plaintiffs have a valid claim; (2) their attempts to secure payment through conventional means have been largely unsuccessful; and (3) a receiver would do more good than harm. (Docket No. 75 at 5.) Defendant argues he is likely to succeed on appeal because these factors are inadequate to appoint a receiver. Defendant largely relies on the absence of the second [Aviation Supply](#) factor, "the probability that fraudulent conduct has occurred or will occur to frustrate that claim." [Aviation Supply](#), 999 F.2d at 316. However, while fraudulent conduct is a circumstance that often leads to the appointment of a receiver, it is but one

factor that the Court may consider. See id. at 317 (“It is well settled that proof of fraud is not required to support a district court’s discretionary decision to appoint a receiver.”); see also 12C Wright & Miller, Fed. Practice & Procedure § 2983 (discussing situations warranting appointment of a receiver).

*2 Defendant also argues that there is an absence of “imminent danger that property will be concealed, lost, or diminished in value” and Plaintiff’s legal remedies are not inadequate. Aviation Supply, 999 F.2d at 316-17. Similarly, Defendant disputes that Plaintiffs’ “attempts to secure payment through conventional means have been largely unsuccessful.” (Docket No. 75 at 5.) However, the record reflects that Defendant has not been forthcoming in discovery and has made very few efforts to pay the judgment. Additionally, there are unresolved questions regarding assets that should be remitted to Plaintiffs (see Pls.’ Opp’n Mem. (Docket No. 90) at 8), and Plaintiffs’ attempts to enforce this judgment through ordinary legal remedies have been largely unsuccessful for more than a year. These facts show that appointment of a receiver is an appropriate remedy to resolve these problems, and that the Aviation Supply factors have been adequately satisfied.

Second, Defendant contends that this Court erred by granting the receiver broad powers over Defendant’s LLC property and assets, such that the receiver will have “managerial control” over Defendant’s property and the ability to “force a sale.” (Def.’s Supp. Mem. (Docket No. 84) at 13-14.) Defendant argues that the Court’s Order “might be interpreted to grant broad powers that conflict with the ... Minnesota LLC statute.” (Id. at 14.) The Court granted the receiver no such managerial powers, and any concern that the language could be construed to grant those powers is mere speculation.

In sum, it was properly within this Court’s discretion to appoint a receiver, and Defendant’s arguments regarding the Aviation Supply factors are either unpersuasive or unsupported by the facts of this dispute. Further, his claim that the Court exceeded its authority by granting the receiver more power than Minnesota law allows is mere speculation and unsupported by the language of the Order itself. Therefore, Defendant has failed to make a strong showing that he is likely to succeed on the merits of his appeal.

B. Injury to the Parties

Defendant has also not established that he will be irreparably injured absent a stay. He claims that the Court was incorrect when it decided that a receiver would “do more good than

harm” and argues that the receiver will irreparably harm his business and personal assets. Aviation Supply, 999 F.2d at 317. However, Defendant’s claims of future injury are speculative. Defendant repeatedly argues that the receiver “might attempt” several acts outside the scope of the Court’s Order. (Def.’s Supp. Mem. at 15.) This Court authorized the receiver to: “examine Johnson’s assets When the examination is complete, the receiver shall report the results to the Court, and shall make a recommendation on the assets’ liquidation to ensure the payment of the amounts Johnson owes Morgan Stanley.” (Docket No. 75 at 5-6.) Defendant claims the receiver might collect and liquidate his assets, including his personal assets, and interfere with the management of his companies. (Def.’s Supp. Mem. at 15.) There is simply no reason to believe that the receiver will exceed the scope of their authority at this time, and accordingly, the Defendant has not shown that he will suffer irreparable harm in the absence of a stay.

Finally, Plaintiffs will suffer injury if a stay is granted because it will further delay satisfaction of this judgment and potentially harm Plaintiffs’ ability to be repaid. A balance of the second and third Hilton factors weighs against granting a stay.

C. Public Policy

Public policy also supports denying a stay. The public interest lies with the swift resolution of legal claims and judgments. Arbitration is intended to promote this interest in a timely, cost-saving manner. “Arbitration is supposed to be swift. It will not be swift if orders to arbitrate are routinely stayed pending appeals from those orders.” Graphic Commc’ns Union, Chicago Paper Handlers’ & Electrotypers’ Local No. 2 v. Chicago Tribune Co., 779 F.2d 13, 15 (7th Cir. 1985).

*3 A Financial Industry Regulatory Authority (“FINRA”) arbitration found Defendant liable for \$1,502,000 in damages, and this Court confirmed that award. (Docket No. 19.) More than a year has passed, and Plaintiffs have collected approximately \$3,000 of the outstanding judgment. (Pls.’ Opp’n. Mem. at 2.) Continuing to delay the payment of the judgment does not serve the public interest in swiftly resolving debtor/creditor disputes.

CONCLUSION

Defendant has failed to make a strong showing of a likelihood of success. He has further failed to show that the interests of the parties or the public support granting a stay. Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Stay Pending Appeal (Docket No. 82) is **DENIED**.

All Citations

Not Reported in Fed. Supp., 2018 WL 5314945

End of Document

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EXHIBIT 7

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 9. Enforcement of Judgments (Refs & Annos)
Division 2. Enforcement of Money Judgments (Refs & Annos)
Chapter 6. Miscellaneous Creditors' Remedies (Refs & Annos)
Article 7. Receiver to Enforce Judgment (Refs & Annos)

West's Ann.Cal.C.C.P. § 708.620

§ 708.620. Circumstances under which appointment of receiver appropriate

Currentness

The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

Credits

(Added by Stats.1982, c. 1364, p. 5203, § 2, operative July 1, 1983.)

Editors' Notes

LEGISLATIVE COMMITTEE COMMENTS—ASSEMBLY

1982 Addition

Section 708.620 supersedes portions of [Section 564](#) that authorized the appointment of a receiver to enforce a judgment. It eliminates as a prerequisite to the appointment of a receiver a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply properly in satisfaction of the judgment as was formerly required by [subdivision 4 of Section 564](#). See [Olsan v. Comora](#), 73 Cal.App.3d 642, 647-49, 140 Cal.Rptr. 835 (1977).

Under Section 708.620, a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate. A receiver may also be appointed in examination proceedings under Article 2 (commencing with [Section 708.110](#)) where the requisite showing is made under this section. Cf. [Tucker v. Fontes](#), 70 Cal.App.2d 768, 771-72, 161 P.2d 697, 699 (1945); [Medical Finance Ass'n v. Short](#), 36 Cal.App.2d Supp. 745, 747, 92 P.2d 961, 962 (1939) (appointment of receiver in supplementary proceedings under former law). A receiver may be appointed to enforce a charging order against a partnership under [Corporations Code Section 15028](#). See [Section 708.310](#) (charging orders). As to the appointment of a receiver where necessary to preserve the value of property, see [Section 699.070](#).

A receiver may also be appointed to enforce a judgment for the possession or sale of property. See [Section 712.060](#). See also [Section 708.920](#) (receiver for enforcement against franchise granted by public entity). [16 Cal.L.Rev.Comm. Reports 1530 (1982)].

[Notes of Decisions \(6\)](#)

West's Ann. Cal. C.C.P. § 708.620, CA CIV PRO § 708.620

Current with urgency legislation through Ch. 13 of 2021 Reg.Sess

End of Document

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EXHIBIT 8

1 CASE NO. A-14-710645-C

2 DOCKET U

3 DEPT. XVI

4

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DISTRICT COURT

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CLARK COUNTY, NEVADA

8

* * * * *

9

PACIFIC WESTERN BANK,

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Plaintiff,

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vs.

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12

JOHN RITTER,

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Defendant.

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15

REPORTER'S TRANSCRIPT
OF
MOTION

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(VIA TELEPHONIC CONFERENCE CALL)

19

20

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

23

DATED WEDNESDAY, APRIL 28, 2021

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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3 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
4 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
APPEARANCE)

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Pursuant to NRS 239.053, illegal to copy without payment.

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1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 28, 2021

2 10:21 A.M.

3 P R O C E E D I N G S

4 * * * * *

10:21:26 5 THE COURT: Next up, page 14. And that
6 happens to be Pacific Western Bank versus John Ritter.

7 And let's go ahead and set forth our
8 appearances on the record.

9 MR. WAITE: Good morning, your Honor. Dan
10:23:35 10 Waite for the plaintiff, Pacific Western Bank.

11 MR. LEVEQUE: Good morning, your Honor. This
12 is Alex Leveque on behalf of the judgment debtor
13 Vincent Schettler who is appearing today via BlueJeans.

14 THE COURT: Okay. Once again --

10:23:50 15 MR. GRAF: Good morning, your Honor, Rusty
16 Graf also on behalf of Mr. Schettler.

17 THE COURT: All right. Mr. Graf, good morning
18 to you too, sir.

19 Anyway, do we want to have this matter
10:23:58 20 reported before we get started?

21 MR. LEVEQUE: Yes, your Honor.

22 THE COURT REPORTER: I don't know who said
23 that.

24 THE COURT: And who made the request, for the
10:24:04 25 record?

10:24:04 1 MR. LEVEQUE: This is Alex Leveque on behalf
2 of the judgment debtor.

3 THE COURT: Okay, sir. All right. And it
4 shall be reported.

10:24:12 5 And for the record, it's my understanding that
6 this is plaintiff's motion for appointment of a
7 receiver. We have an opposition and also a
8 countermotion for the appointment of a special master.

9 Is that correct, Counsel?

10:24:34 10 MR. WAITE: That's correct, your Honor. Dan
11 Waite.

12 THE COURT: All right. Okay.

13 MR. LEVEQUE: Yes, your Honor. This as Alex
14 Leveque. I did have one question, your Honor. I don't
10:24:41 15 see you. Is it my end? Or is your video turned off?

16 THE COURT: No, I'm -- we're in the lower
17 right corner. Can you see it? I see myself.

18 MR. WAITE: I'll add that, with Mr. Leveque, I
19 don't see the Court either. I haven't seen the Court
10:24:57 20 all day.

21 MR. GRAF: Me neither.

22 THE COURT: I don't know what's --

23 Is there something going on, CJ?

24 THE COURT CLERK: Maybe so. Can I quickly --

10:27:35 25 THE COURT: Yeah. Go ahead and see if you can

10:27:35 1 adjust.

2 (A discussion was held off the record.)

3 THE COURT: So we have Mr. Schettler.

4 Mr. Graf, are you there too, sir? Are you
10:28:15 5 connected?

6 MR. GRAF: I am, your Honor.

7 THE COURT: Okay. Just wanted to make sure we
8 didn't overlook you.

9 All right.

10:28:26 10 MR. GRAF: Yes, your Honor.

11 THE COURT: Anyway, let's go ahead and -- it's
12 my recollection this is Mr. Waite's motion, sir. You
13 have the floor.

14 MR. WAITE: Thank you. Thank you, your Honor.

10:28:38 15 Again, Dan Waite speaking on behalf of Pacific
16 Western Bank.

17 Your Honor, there is lots in the briefs. I'd
18 like to focus on just a couple of things, highlight a
19 few things, but start very broadly with the

10:28:51 20 uncontroversial position that under Nevada law a
21 judgment creditor, of course, has many different
22 collection tools available to them. There's judgment
23 debtor examination, writs of execution, writs of
24 garnishment, charging orders, document subpoenas to
10:29:13 25 third parties, document requests to parties.

10:29:15 1 There's lots of tools that are available.

2 Importantly, there is no hierarchy. No one
3 particular tool is deemed superior to or better than
4 another. They just serve different purposes.

10:29:31 5 Similarly, there is no sequencing required.

6 One tool is not required to be exercised or exhausted
7 before resorting to another collection tool.

8 Simply in order to avail oneself of a
9 particular collection tool, the judgment creditor must
10 simply satisfy the requirement for that particular
11 tool.

12 And here we're talking about the tool of the
13 appointment of a receiver. And, your Honor, to be
14 sure, as I know you know, there are many statutes and
10:30:04 15 even several rules that talk about and address the
16 circumstances under which the appointment of a receiver
17 is authorized.

18 Each is intended for different circumstances.
19 Each has different requirements.

10:30:21 20 If the requirements are satisfied, then a
21 receiver is available. But importantly, the
22 requirements for one situation should not be confused
23 with or grafted into a different situation regarding
24 the appointment of a receiver.

10:30:36 25 Narrowing further, your Honor, here we're

10:30:39 1 talking about the appointment of a receiver in
2 conjunction with litigation.

3 However, even in the litigation context, a
4 very important distinction should be made, and that
10:30:51 5 distinction is the appointment of a receiver
6 prejudgment versus post judgment.

7 In the prejudgment context, there are a lot of
8 cases that talk about it being a remedy of last resort
9 should be -- a receiver should be appointed only
10:31:07 10 sparingly, and for very good reason, your Honor.

11 In the prejudgment context, of course,
12 liability has not yet been determined. In the
13 prejudgment context the amount of damages have not been
14 determined yet.

10:31:21 15 So, of course, before you take someone's -- a
16 litigant's assets and put them under the control of a
17 receiver before the rights and responsibilities
18 regarding those assets have even been adjudicated, of
19 course, it should be a remedy of last resort and should
10:31:39 20 be used only sparingly.

21 However, in the post judgment context, it's a
22 completely different situation. Liability and damages
23 have already been determined. Due process has been
24 afforded.

10:31:50 25 Narrowing further, your Honor, the specific

10:31:53 1 statute -- and this is where we -- it gets very
2 important: The statute that we are seeking the
3 appointment of a receiver is NRS 32.010(4), which
4 contemplates the appointment of a receiver in two
10:32:10 5 different situations. There are two independent bases
6 for appointing a receiver under that statute
7 subsection.

8 The first element is common to both of those
9 two situations: There must be a judgment. In other
10:32:26 10 words, NRS 32.010(4) only applies in the "after
11 judgment context."

12 Well, of course, we have -- the bank has a
13 judgment here. So that is clearly satisfied.

14 The next prong of the first basis is that
10:32:44 15 there must be execution returned unsatisfied.

16 Your Honor will recall that earlier this year
17 the bank had a writ of execution issued and the
18 constable went to Mr. Schettler's home. And the
19 constable -- Mr. Schettler denied the constable access
10:33:04 20 to his home. The constable could not execute on the
21 writ of execution; he was turned away.

22 So clearly the writ of execution -- a writ of
23 execution has been returned unsatisfied.

24 With the judgment and with an execution having
10:33:19 25 been returned unsatisfied, the first basis for the

10:33:23 1 appointment of a receiver is satisfied and the Court
2 can and should appoint a receiver on that basis.

3 But the second basis is also satisfied. And
4 that calls for the appointment of a receiver when the
10:33:37 5 judgment debtor refuses to apply his property in
6 satisfaction of the judgment.

7 Here we have Mr. Schettler who is gainfully
8 employed. He goes to work every single day. He goes
9 to work for two of his company, Vincent T. Schettler
10:33:58 10 LLC. He provides services to that company, which, in
11 turn, provides services to some other related entity
12 which provides services to some other related entity.
13 They're all interconnected.

14 But at the end of the day, it's Mr. Schettler
10:34:10 15 who is providing the services, but Mr. Schettler is
16 also the one that decides when he gets paid and how
17 much he gets paid. And in his judgment debtor exam, as
18 he indicated, he only gets paid very infrequently.

19 But whether he's paid even very infrequently,
10:34:28 20 he does get paid. He is employed. But yet he has
21 chosen to apply nothing, none of his assets, none of
22 his compensation to the satisfaction of this judgment.

23 So he refuses to apply the property in
24 satisfaction of the judgment.

10:34:48 25 Also your Honor may recall at least twice in

10:34:50 1 these proceedings in open court, Mr. Schettler, through
2 his counsel, has -- has -- I don't know how you would
3 say "bragged," but has wanted to make sure that the
4 Court was aware in his attempt to make himself look
10:35:05 5 reasonable and the bank to look unreasonable, he's
6 indicated that he has made an offer twice of a million
7 dollars to settle this judgment, which now is in the
8 neighborhood of 3 to \$4 million. In fact, in the
9 California statute, it now exceeds \$4 million.

10:35:24 10 Well, if he's got a million dollars to settle
11 this case, as he has twice told this Court, he has
12 clearly -- and he hasn't paid a penny, he clearly has
13 access to substantial assets and refuses to apply them
14 in satisfaction of this judgment.

10:35:44 15 So the second basis is satisfied as well. We
16 have a judgment, and Mr. Schettler refuses to apply his
17 property in the satisfaction of the judgment.

18 Again, there is no requirement to exhaust all
19 other collection tools first. There's no requirement
10:36:03 20 that this judgment creditor tool in the context of post
21 judgment proceedings be used sparingly. Even if there
22 was, your Honor, the bank has been trying to collect
23 for six and a half years now and has not received a
24 penny from Mr. Schettler.

10:36:21 25 So even if you graft into this post judgment

10:36:24 1 remedy a sparingly or last resort element that doesn't
2 exist in the statute, this is being used as a remedy of
3 last resort, or certainly a remedy of after
4 six-and-a-half-years resort.

10:36:42 5 So the requirements have been satisfied, your
6 Honor, two different ways. The Court can and should
7 appoint a receiver under either or both of those ways.

8 With that, your Honor, I can address the
9 countermotion if you wanted me to jump into that now or
10:36:58 10 if you wanted to wait and address that later.

11 THE COURT: You know, as far as the
12 countermotion is concerned, when it comes to
13 appointment of a special master, this is just my
14 general observation. I don't mind sharing this with
10:37:16 15 you.

16 Number one, I wonder about the necessity for
17 that in light of one fact, which is much different from
18 the prior case load that the chief judge gave me when I
19 was handling construction defect. We would routinely
10:37:31 20 appoint receivers -- I mean, I'm sorry -- special
21 masters in construction defect cases because of the
22 complexity. And many times, probably 80 percent, 90
23 percent of the time we'd appoint Floyd Hale, and he
24 would help marshal those cases to finality.

10:37:46 25 In contrast -- and let me make sure I'm

10:37:49 1 correct on this again, but I think I am -- this is a
2 business court case; right? And consequently, for
3 example, I'm no longer handling construction defect and
4 my charge is much different as a business court judge.

10:38:05 5 In essence, I'm required to perform many of
6 the same functions the discovery commission and/or a
7 special master would perform.

8 I can't say that I enjoy doing it, but I do
9 it. Because it's almost like herding cats when you're
10:38:25 10 dealing with discovery issues and the like.

11 And so I'm just wondering with it being a
12 business court case, in a general sense, unless it was
13 really unduly complex -- and I'll give you an example.
14 I even think -- I don't remember appointing a receiver
10:38:40 15 in the Wynn shareholder derivative litigation cases,
16 which was really complex; right?

17 And so I'm -- it just seems to me it would
18 just be a very limited set of facts that I would
19 consider appointing a receiver in light of the fact
10:38:57 20 that this is a business court. This is a business
21 court and I'm a business court judge.

22 That's part of what -- I mean, not -- a
23 special master. That's part of what I do and I'm
24 required to do.

10:39:08 25 And those are my comments, sir, if you want to

1 address it.

2 MR. WAITE: Sure. Your Honor, Dan Waite
3 again. I couldn't agree more. You know, your Honor
4 has demonstrated yourself more than capable to resolve
5 the issues in this case in a timely and effective and
6 efficient manner. We don't need a special master who
7 would act only in a reactionary manner. In other
8 words, only act upon the issues, the disputes that the
9 parties brought to the special master. That's what
10 you -- that's what you do here.

11 Instead, we need a receiver that -- that has
12 some power, some teeth to alternatively go out and,
13 with the power of the Court, to -- to turn over the
14 stones of Mr. Schettler's complex network of companies
15 and so forth and ascertain what's legitimate and what's
16 not legitimate.

17 I don't -- I don't dispute Mr. Schettler
18 undoubtedly has some legitimate business. But it is
19 the -- it is the conjunction of legitimate business
20 with illegitimate business or hiding assets, not paying
21 himself.

22 Just a week ago, your Honor, there was a
23 bankruptcy court hearing where Mr. Schettler and one of
24 his related entities in a settlement was receiving a
25 million dollars, something just under or just over a

10:40:42 1 million dollars in settlement and I think it's 11
2 parcels of property. Anyway, a number of parcels of
3 property.

4 And even though Mr. Schettler personally is a
10:40:53 5 party to that bankruptcy proceeding -- he's not the
6 debtor there, but even though he is a party there, he
7 has structured the settlement to where nothing, zero
8 percent of it comes to him personally. You know, he --
9 this is just not right.

10:41:12 10 But a receiver can get to the bottom of all
11 these things and, for example, direct that he be
12 compensated and that some of that go to satisfy this
13 judgment. The receiver will have a lot more abilities
14 and power than what the judgment creditor has.

10:41:33 15 So, your Honor, we don't need -- we don't need
16 another judge in the form of a special master. The
17 elements of NRCP 53(a)(2) which controls the
18 appointment of special masters in three situations,
19 none of the three situations apply.

10:41:50 20 I'm happy to address each one of them in turn.
21 But I sense where we're going, and I feel that's
22 unnecessary.

23 Thank you.

24 THE COURT: Thank you, sir.

10:41:59 25 All right. We'll hear from the opposition.

10:42:06 1

MR. LEVEQUE: Thank you, your Honor.

2

I have some sort of feedback issue. Can you hear the feedback issue, or is that just on my end?

4

THE COURT: I think it's just on your end, because we can hear you very clearly.

10:42:15 5

6

Is that correct, Madam Court Reporter?

7

THE COURT REPORTER: Yeah.

8

THE COURT: Yeah. We hear you.

9

10:42:23 10

MR. LEVEQUE: Okay. All right. If it becomes an issue for me, I might just put on my headphones.

11

THE COURT: And that's fine, too.

12

MR. LEVEQUE: Okay. Your Honor, before I say what I need to say, which I apologize in advance is going to be a lot, does the Court have any specific questions that come to mind after reviewing the extensive briefing in this case?

10:42:36 15

16

17

THE COURT: Yes, I do. And it's really focusing on the application of NRS 32.010, paragraph 4, and its application to the requested relief in this case.

10:43:03 20

21

MR. LEVEQUE: Okay. With the Court's permission, I'm going to share my screen because I'm going to be showing the Court some slides and things. Is that okay?

24

10:43:10 25

THE COURT: No, sir, you have the floor. This

10:43:11 1 is no different than in open court.

2 MR. LEVEQUE: Okay. I appreciate that, your
3 Honor.

4 What hopefully just came up on the screen --

10:43:22 5 THE COURT: Let me see -- we don't see
6 anything. Oh, there it is. It's coming up, yes.

7 MR. LEVEQUE: You see the statute, your Honor?

8 THE COURT: I see it. I actually have the
9 book right open in front of me, for the record. I have
10:43:31 10 it right in front of me.

11 MR. LEVEQUE: Okay. Okay. Very good.

12 Your Honor, this NRS 32.010 is the general
13 statute for receivership. And this -- this statute
14 governs all receiverships, not just receiverships that
10:43:46 15 are post judgment.

16 And you'll see on the face of this statute if
17 you go through all six situations where receivers can
18 be appointed, at least under 010, and even if you go
19 down to 015 which, you know, increased the scope of the
10:44:00 20 receiverships in 1993, there is absolutely no analysis
21 provided in the statute with regard to balancing
22 inequities for both receivers pretrial, pendente lite,
23 or receivers posttrial in judgment collection.

24 The reason why I bring that up, your Honor, is
10:44:18 25 because the balancing of equities comes from Nevada

1 case law. It doesn't come from the statute.

2 And your Honor knows very well that
3 receiverships pretrial, there is an abundance of case
4 law that talks about the balancing of the equities for
5 prejudgment receivers.

6 And I submit, your Honor, that it is sort of a
7 strange situation here where we have no Nevada case law
8 that talks about the application of balancing of the
9 equities to the specific statute -- the specific
10 section of 32.010(4). We certainly have plenty of case
11 law that talks about the statute as a whole.

12 And, your Honor, I submit that I don't think
13 that Nevada law, if this were to go to the Supreme
14 Court, would buy the argument that the bank is making
15 that there is no analysis required when you're looking
16 at NRS 32.010(4) when the Court at its discretion may
17 appoint a receiver.

18 And this is supported by not only the case law
19 that we provided, your Honor, which, you know, we went
20 to look to see that the genesis of this statute, and
21 our statute actually comes from California statute from
22 over a hundred years ago, and it hasn't been modified
23 since subsection 4.

24 And when -- a long time ago, in 1925, our
25 Nevada Supreme Court, when it was interpreting our

10:45:51 1 statute for receivership, it said that it gives great
2 weight to California statute because that's where it
3 came from. And what's really important about this,
4 your Honor, is that in 1982 California amended their
10:46:03 5 receivership statute for post judgment receivership to
6 actually make it more liberal than what it used to be.
7 It used to be the same situation where the judgment
8 creditor first had to meet some of these prerequisites
9 that the judgment debtor is not voluntarily paying,
10:46:19 10 that the execution came back unsatisfied.

11 Now the statute provides -- and the bank cited
12 the wrong statute. They cited 564, it's actually Code
13 of Civil Procedure 708.620 which I have on the
14 PowerPoint right now -- is that they broaden it to say
10:46:35 15 that the appointment of a receiver is just a reasonable
16 method to obtain a fair and orderly satisfaction of
17 judgment.

18 The reason why that's important, your Honor,
19 is that California in case law interpreting this
10:46:45 20 statute, and most recently this is a case from the
21 California Court of Appeals, the Medipro case that came
22 out just in February of this year, and it looked at its
23 statute, and even with it being more liberal than ours,
24 California said that you normally can't appoint a
10:47:03 25 receiver for the enforcement of a simple money judgment

1 unless there are exceptional circumstances.

2 That is what I believe the Nevada Supreme
3 Court would say if this issue were to go to the Supreme
4 Court, number one, because there is no provisions in
5 the statute that talk about weighing equities that's
6 been developed by case law for prejudgment receivers.

7 Number two, and perhaps more importantly, is
8 that the vast majority of the cases cited by the bank
9 in support of their motion for receivership were
10 federal cases. And in federal courts, because it's
11 technically a procedural issue, the Court -- a lot of
12 that -- the circuits follow what's called the Aviation
13 Supply factors.

14 And almost, I think, all the cases, the
15 federal cases that were cited by the bank apply the
16 Aviation Supply factors to a post judgment receiver
17 situation.

18 And those strikingly similar to the factors
19 that you would look at for a prejudgment receiver. You
20 look to see if there's a valid claim. You look to see
21 if there is a probability that fraudulent conduct has
22 occurred or will occur. You look to see if there's
23 imminent danger the property will be concealed, lost,
24 destroyed, or diminished. You look to see if there is
25 an inadequacy of legal remedies. You look to see if

10:48:16 1 there's a less drastic remedy. And you look to see if
2 the likelihood of appointing a receiver will do more
3 good than harm.

4 And I submit, your Honor, that if the Court
10:48:25 5 applies at its discretion some sort of analysis, I
6 don't think the Court can apply zero analysis. I think
7 that would be an error of law. That if you were to
8 rely -- even if you were to rely on the California
9 interpretation of the standard, which basically says
10:48:38 10 you don't get one in money judgment situations unless
11 there's exceptional circumstances, that the Court at a
12 minimum should apply the standards that have been set
13 forth in the cases in support of the bank's motion.

14 And if you go through each of these factors --
10:48:53 15 and, by the way, the federal court in Aviation Supply
16 said that this was not an exhaustive list of factors.
17 Every case is different.

18 But, you know, I have to spend some time, your
19 Honor, to go through some of the factual allegations,
10:49:07 20 because we painstakingly took enough of our opposition
21 to debunk their factual allegations. Really what it
22 boils down to is they're trying to smear the
23 credibility of my client, and their allegations are
24 demonstrably false.

10:49:24 25 In addition to the credibility issue, your

10:49:25 1 Honor, I keep on hearing in their briefing and now in
2 oral argument that there are assets that Mr. Schettler
3 has and refuses to use to satisfy the judgment.

4 Your Honor, my client has produced over 7,000
10:49:38 5 pages of documents in this case. He has produced bank
6 statements. He has produced tax returns. He's
7 produced tax returns for his offshore accounts. He's
8 produced operating agreements. He's produced operating
9 agreements for every entity -- I think almost every
10:49:54 10 entity that was listed in the receivership motion.
11 He's produced credit card statements.

12 In fact, there is no dispute right now -- at
13 least nothing I'm aware of, nothing teed up in a
14 motion -- that he hasn't produced everything that the
10:50:05 15 bank has asked for.

16 What the bank is upset about, your Honor, is
17 that my client has valid asset protection, and they
18 just don't like it. They are aware of how his business
19 is organized, of how his estate planning is organized,
10:50:17 20 and his asset protection is organized. They just don't
21 like the answer.

22 So what they're trying to do, your Honor, is an
23 end run to try in getting a receiver to come in to be
24 the proverbial bull in a china shop and try to dig up
10:50:30 25 information that they already know. That's pretextual,

10:50:33 1 your Honor, because really what they're trying to do is
2 they're trying to exert pressure in a punitive way on
3 my client to do something about the judgment.

4 And they're trying to get the threat of a
10:50:45 5 receiver although not having an adequate basis to do so
6 to get to where they want to be. That is an improper
7 use of an equitable remedy, your Honor. And they just
8 don't meet the standard.

9 There are -- and, by the way, I'm just going
10:50:58 10 to go back up here for a moment, because I wanted to
11 draw the Court's attention to an interesting quote and
12 something that Mr. Waite said.

13 This comes from the reply to their motion.
14 They say, "Appointing a receiver will add -- will aid
10:51:10 15 in the bank's execution efforts because a receiver will
16 have the power to fully investigate the scope and
17 location of Schettler's assets."

18 Your Honor, the bank already has the power to
19 fully investigate the scope and location of Schettler's
10:51:19 20 assets, and they've already exercised that power to
21 investigate the scope and location of Mr. Schettler's
22 assets.

23 And Mr. Waite is right. There are a bunch of
24 tools that a judgment creditor has. And they've
10:51:31 25 executed -- they've used some of the tools, but they

1 haven't what I would consider done even close to due
2 diligence with the use of those tools before getting to
3 the point of throwing their hands up in the air and
4 saying we need a receiver.

5 Your Honor, in our Rules of Civil Procedure
6 says that -- this is NRCP 69, a money judgment is
7 enforced by a writ of execution unless the Court
8 directs otherwise. That is the standard for what a
9 remedy a bank or any judgment creditor has against a
10 debtor.

11 Essentially, your Honor, what the bank is
12 seeking is a de facto state court bankruptcy trustee.
13 That's really what they're asking for here. They're
14 asking that -- that -- Mr. Schettler, the debtor, is no
15 longer in possession of his assets as if this were a
16 bankruptcy. But as this Court is fully aware, there is
17 no such thing as a state court bankruptcy.

18 The bank -- and I summarize their basis for a
19 receivership in their motion. And I bullet pointed
20 them here. They're complaining, I guess, about
21 Mr. Schettler's lifestyle. They take issue with some
22 statements he made in application for his -- for the --
23 the trusts loan, the home that the trust purchased,
24 post judgment discovery issues, their unsuccessful
25 attempts to execute on property that -- this is what I

1 find the most offensive -- the legitimacy of
2 Mr. Schettler's medical conditions. And then their
3 unsupported claims for alter ego and fraudulent
4 transfer.

5 And then their argument that Mr. Schettler
6 refuses to satisfy the judgment.

7 They take issue with the American Express
8 statements and charges that are incurred on there. But
9 Mr. Schettler testified in a judgment debtor's

10 examination, and this hasn't been refuted by the bank,
11 that that card covers both personal and business
12 expenses. They take issue with the fact that he uses
13 JetSuiteX sometimes to go to Southern California. But
14 as I demonstrated in my opposition, you can actually
15 buy a ticket on JetSuiteX for less than Southwest. So
16 that's what -- I think that's irrelevant, in my mind.

17 They want the facts on the -- on the trust
18 application for a loan to buy the home. They allege
19 that it's Mr. Schettler that purchased the home. He
20 didn't. We provided the grant bargain and sale deed.
21 The family trust purchased the home.

22 They allege that Mr. Schettler represented his
23 income was \$77,000. Again, we obtained a declaration
24 for the mortgage broker who testified that the
25 application was for the Schettler Family Trust for that

10:53:57 1 loan. We also have an email from Mr. Schettler before
2 that loan was funded.

3 And, by the way, before he filled out the
4 uniform loan application that the bank takes issue with
10:54:08 5 that -- where they claim that he misstated who the
6 borrower was, that he emailed almost a month before
7 that to the mortgage broker that the loan was going to
8 be with the Schettler Family Trust and that the changes
9 to the loan documents needed to be done to reflect

10:54:21 10 that. For whatever reason, your Honor, the uniform
11 loan application that you usually sign the day that the
12 loan was funded didn't have that, and it was
13 DocuSigned.

14 So I don't really see any evidence there of
10:54:32 15 the fraud that is alleged by the bank.

16 With regard to post judgment discovery, your
17 Honor, the bank claims that he's been evasive and
18 non -- and noncooperative.

19 Your Honor, Mr. Schettler sat for two days of
10:54:47 20 his judgment debtor's exam for 11 hours. He's produced
21 over 7,000 documents in this case. Before their motion
22 to compel, he already produced over 6,500 pages of
23 documents. And not only documents for his own personal
24 assets, but he also provided documents relating to all
10:55:04 25 the various entities that he manages or one of his

1 trusts might have an indirect ownership interest in.
2 So the bank has all this information.

3 And, your Honor, this -- this order that the
4 Court entered in September of last year, Mr. Schettler
5 has fully complied with that. I understand that the
6 court ordered the motion to compel. I read the
7 arguments. I think Mr. Schettler made a good-faith
8 argument. He lost the argument. It is what it is.
9 But at the end of the day, he produced what the Court

10 was asking. And there's been no dispute since then
11 that he has not fully complied with that Court's order.

12 And I bring that up. I'm going to digress for
13 a minute, your Honor. I'm going to jump to one of the
14 last slides here.

15 And this comes from your order, your Honor, in
16 September of last year that the bank brings up in
17 support of their argument that he's been
18 noncooperative. Your Honor, you stated that -- you
19 admonished Mr. Schettler that future stonewalling
20 efforts will not be tolerated. And if they continue,
21 increasingly harsher sanctions will result.

22 Your Honor, there have been -- we submit there
23 have been no stonewalling efforts. But in any event,
24 there has been nothing alleged by the bank other than
25 this writ of execution that was served on the house,

10:56:12 1 which I'll talk about in a minute, that would warrant
2 additional sanctions like the appointment of a
3 receiver.

4 So by this Court's own order, there first have
10:56:21 5 to be a finding, I think, and a motion for sanctions
6 that there was initial stonewalling efforts before the
7 Court can even consider a receivership.

8 Sorry I was trying to get back to my place
9 here.

10:56:37 10 I want to talk about the efforts that the bank
11 has undertaken because I think it's somewhat
12 misrepresented.

13 If the Court recalls, this is -- this just, by
14 the way, has gone through three judges now. The first
10:56:50 15 judge that had this was Judge Gonzalez.

16 And when the Court domesticated the judgment
17 at the end of 2014, the bank did proactively try to
18 execute on things.

19 And they tried to execute and levy on several
10:57:03 20 bank accounts, accounts at financial institutions. And
21 Mr. Schettler filed motions for protective order and to
22 quash. And every single one of those writs was quashed
23 by this Court. Writs against Wells Fargo, writs
24 against TD Ameritrade and another bank.

10:57:16 25 As the Court determined later, that the assets

10:57:18 1 that they were subject -- that they were trying to
2 execute on were exempt from execution. There was 529
3 accounts for his kids. There was a -- a qualified
4 ERISA plan for his employees. So, yeah, the bank tried
10:57:29 5 to execute, but they did so improperly. And the Court
6 made that finding that they did so improperly because
7 they quashed the writs and later determined those
8 assets were exempt.

9 We then, your Honor -- and that was August and
10:57:42 10 November of 2015.

11 Other than the bank filing a motion to
12 reconsider that ruling in January '16, the bank did
13 nothing for over three years with respect to execution
14 efforts, garnishment efforts, anything of that nature
10:57:56 15 against my client. In fact, it got to the point, your
16 Honor, where Judge Hardy, the second judge in this
17 case, issued orders for cause why the case shouldn't be
18 dismissed.

19 And counsel appeared for -- not Mr. Waite --
10:58:06 20 former counsel appeared saying it should stay open for
21 collection purposes. The Court set status checks. And
22 then the very first status check, there's a failure to
23 appear by counsel for the bank and the Court dismissed
24 it.

10:58:15 25 It wasn't until Mr. Waite came into the case

10:58:17 1 that they start resuming efforts, but that wasn't until
2 April of 2019. And since then, they've only tried to
3 execute once. And that was -- and I'll get to it.

4 That was the writ of execution that was served for all
10:58:30 5 the assets in the house, which is owned by the family
6 trust.

7 This one, your Honor, I have a real problem
8 with, and so does my client, quite frankly.

9 The bank tries -- and, again, this is a
10:58:46 10 sophisticated financial institution that has a money
11 judgment against a debtor is attacking the credibility
12 of not only my client but also my client's wife who's
13 not a judgment debtor and who has significant health
14 issues that were supported by several letters from her
10:59:04 15 physicians where those physicians opined that she
16 should not sit for her deposition back in -- I think it
17 was November or September of last year.

18 And just so the Court is aware, Mrs. Schettler
19 in the past 13 months has had ten chemo infusions;
10:59:20 20 she's seen her lung doctor at Comprehensive Cancer
21 Institute 28 times in the last 24 months; she's had 238
22 prescriptions filled in the last 24 months, was
23 hospitalized twice in 2019 and had surgery in December
24 of last year.

10:59:35 25 So the fact that the bank has to stoop to this

1 level to try conjuring up some evidence for receiver,
2 it just shows how weak their position really is.

3 This one, I think, is perhaps one of the most
4 important, because this is -- you know, when you look
5 at the case law cited by the bank, the federal courts,
6 they look to see if there's any evidence of alter ego,
7 fraudulent transfers. That's the real stonewalling the
8 judgment debtor does to evade a judgment.

9 And there's been no allegations, no evidence
10 whatsoever that Mr. Schettler has fraudulently conveyed
11 things under the UFTA, his -- the name of his entities
12 are the alter ego. All they got right now is they say,
13 well, we want a receiver to come in and make sure and
14 see if they're not the alter ego.

15 That's not the standard, your Honor. We've
16 produced everything they've requested. They've had
17 their own opportunity to make a determination as to
18 whether they believe there is alter ego or not, whether
19 there is fraudulent transfers. And guess what. They
20 obviously haven't come up with anything, because they
21 would have done that themselves. Now they're trying to
22 get a receiver to do it pretextually to try causing
23 damage to Mr. Schettler's business endeavors.

24 This issue of refusing to satisfy the
25 judgment, your Honor, a couple points here. First of

11:00:50 1 all, there is no requirement under Nevada law that a
2 judgment debtor is required to satisfy a judgment
3 voluntarily. That's why we have Chapter 22 of NRS.

4 A judgment creditor has rights.

11:01:03 5 THE COURT: I get that. But here's my
6 question: Isn't that a potential condition where the
7 appointment of a receiver pursuant to Chapter 32 might
8 be appropriate?

9 MR. LEVEQUE: Absolutely not. Because a
11:01:18 10 receivership is a drastic remedy. It's a remedy of
11 last resort. And I don't believe that a prerequisite
12 is that a judgment debtor voluntarily pay a judgment.
13 There's some significant public policy reasons for why
14 that should not be the case --

11:01:33 15 THE COURT: Well, here's my question.

16 MR. LEVEQUE: -- not merely because --

17 THE COURT: Here's my question. And I get
18 that -- I do understand those cases, but we're dealing
19 with a slightly different scenario as it pertains to
11:01:44 20 the appointment of a receiver.

21 I have a statute in front of me that
22 specifically sets forth conditions upon which a
23 receiver may be appointed; right? And it clearly sets
24 forth those conditions.

11:01:59 25 I understand the distinction between the

11:02:01 1 prejudgment appointment of a receiver versus post
2 judgment.

3 And the reason why I point that out with some
4 particularity, the Nevada legislature has set forth
11:02:13 5 some requirements. And I'm looking -- and I will agree
6 that there's not a lot of Nevada case law out there as
7 it pertains to the requirements as it relates to the
8 appointment of a receiver regarding the debtor.

9 There is a 1933 case that I looked at, and
11:02:30 10 that's the Electrical Products Corporation versus
11 Second Judicial District Court case. And I looked at
12 that. And one of the distinctions that case, it
13 appeared to be made, was the difference between a
14 prejudgment appointment of a receiver, because that's
11:02:49 15 what happened under the facts and circumstances of that
16 case. And it appeared to me our Nevada Supreme Court
17 at that time looked at that as a standing issue.

18 And -- and this is specifically what they said
19 in the case. And this is on page, I guess -- let me
11:03:08 20 see here. I don't know if it's 502 of the decision,
21 because I just had it printed out a little earlier.
22 But they say -- they set forth the following:

23 "The property of defendant Beck was not
24 seized under process attachment to create a
11:03:24 25 lien upon the property. The appointment of the

11:03:28 1 receiver did not give the court jurisdiction of
2 the res. It is not a case in which the court
3 had jurisdiction to appoint a receiver at all.
4 The plaintiff is a mere contract creditor and
11:03:44 5 the defendant an individual debtor. The former
6 has not reduced his claim to a judgment, nor
7 has he any rights or interests therein" -- I'm
8 sorry -- "interest in or lien upon the specific
9 property of the latter. The plaintiff
11:04:04 10 therefore has no standing to obtain the
11 appointment of a receiver for the defendant's
12 property."

13 And so when I looked at that, I went back and
14 I looked at the statute. And you take a look. There's
11:04:20 15 potentially -- if you look at NRS 32.010 and you look
16 at the statute, and understand this, the Court's given
17 discretion to appoint a receiver.

18 And I look at all these and, understand, these
19 appear to me to be disjunctive and not conjunctive.
11:04:42 20 And if you agree, that's -- if you disagree, that's
21 okay. You can point it out to me. But I will always
22 explain to you what my thoughts are.

23 And so I'm looking at paragraph 4, which
24 provides:

11:04:55 25 "After judgment, to dispose of the property

11:04:58 1 according to the judgment, or to preserve it
2 during the pendency of an appeal, or in
3 proceedings in aid of execution, when the
4 execution has been returned unsatisfied, or
11:05:15 5 when the judgment debtor refuses to apply the
6 judgment debtor's property in satisfaction of
7 the judgment."

8 And if you look at that issue there, when it
9 comes -- and my point is this: Why doesn't the
11:05:35 10 judgment debtor -- and forget all the prejudgment cases
11 where I have to conduct specific analysis. But why
12 doesn't the judgment debtor under the facts of this
13 case who has a judgment meet the requirements of the
14 statute as set forth? And that's really what I want to
11:05:55 15 hear.

16 And I realize there's no case out there. To
17 me, it's implicit that it's a standing issue. But it
18 appears to me once you obtain a judgment, potentially
19 you have the standing to enforce the specific potential
11:06:12 20 provisions under Subsection 4 of the statute.

21 MR. LEVEQUE: I understand the Court's
22 question, and here's how I'll respond. And this is
23 where the Medipro case, I think, helps.

24 Your Honor's correct that this is a
11:06:26 25 discretionary statute. It's a "may"; it's not a

11:06:27 1 "shall."

2 So the question becomes if that discretion is
3 exercised, it would be subject to an abuse of
4 discretion. And when the -- if an appellate court were
11:06:40 5 to look at this, it would look to see what the Court
6 relied on to support its position that it was going to
7 exercise that discretion.

8 I would say that --

9 THE COURT: And -- stop. Stop right there.
11:06:52 10 Don't say "position." Say "supports the Court's
11 decision," because I never have a position.

12 But go ahead.

13 MR. LEVEQUE: You're right. Fair enough, your
14 Honor. The Court's -- correct. The Court, correct.
11:07:03 15 The Court's decision.

16 THE COURT: Yes.

17 MR. LEVEQUE: And, you know, I think that
18 Subsection 4 actually imposes a higher burden than any
19 other section in NRS 32.010 because before the Court
11:07:14 20 even looks at exercising discretion, one of these
21 factors has to be met.

22 I'm going to pull up, your Honor, the Medipro
23 decision because I think it's right on point.

24 And this -- again, this came out of the Court
11:07:29 25 of Appeals in February, but it -- it basically gathered

11:07:32 1 up all the California law on post judgment receivers.

2 And the facts of this case, your Honor, were
3 that it was -- it was a dispute between two nursing
4 staffing companies, Medipro and Certified Nursing. And
11:07:44 5 the opinion didn't say what the business torts were,
6 but there were some intentional business torts, and
7 Medipro obtained a judgment against Certified Nursing
8 and its principal. Her name was Sy. I think the
9 company was like a \$2 million judgment, and then she
11:07:58 10 was on the hook for like another 4- or \$500,000.

11 And the Court in the very beginning of its
12 opinion says, "Does a trial court have discretion to
13 appoint a receiver to aid in the collection of a
14 judgment?"

11:08:11 15 And the answer to that question, yes, of
16 course, it does.

17 The standard in California is they have to
18 first determine if it's a reasonable method to obtain
19 the fair and orderly satisfaction of the judgment.

11:08:23 20 The Court looked to see even if there is
21 discretion to do so, and even if the standard was just
22 was it a reasonable method to obtain a fair and orderly
23 satisfaction of judgment, if there was no evidence in
24 the record that the judgment debtor had obfuscated or
11:08:42 25 frustrated the creditor's collection efforts and there

11:08:44 1 was no evidence that less intrusive collection methods
2 were inadequate or effective, the Court held that it
3 did, that that was an abuse of discretion.

4 And what -- and actually what's also
11:08:55 5 interesting about this case, your Honor, is that this
6 Court held an evidentiary hearing because it -- there
7 was allegations that were advanced by the judgment
8 creditor that the staffing company intentionally was
9 reducing its business operations and was using a
11:09:12 10 different biller when they were trying to execute on
11 the hospitals that -- that had accounts payable to this
12 company.

13 And the Court took all that evidence. And it
14 stated here, and I'll state it again that, you know, in
11:09:27 15 California law it's an extraordinary remedy that's
16 strongly discouraged for just the enforcement of a
17 money judgment.

18 And it determined here that the trial court
19 abused its discretion because there was not substantial
11:09:39 20 evidence that there was obfuscation or other
21 obstreperous conduct to a degree that other collection
22 mechanisms available under the Enforcement of Judgments
23 Law were ineffective.

24 I don't believe, your Honor -- because this is
11:09:53 25 basically what I'm hearing from the other side is that,

11:09:55 1 well, it's ineffective because his assets are in
2 trusts, and he did the good thing several years ago of
3 forming business entities where charging orders are
4 your remedy to shield yourself from judgment.

11:10:13 5 I don't believe that that is a basis to say,
6 oh, well, under the statute, because we can't -- we
7 can't get anything because he's employed good asset
8 protection and now we're going to appoint a receiver to
9 really see what's there. I think that would be an
11:10:28 10 abuse of discretion if the Court were to apply the
11 analysis of the Medipro case, which I understand is
12 persuasive, but, again, the statutes both had a genesis
13 of the same statute a hundred years ago.

14 And again, it's a more liberal standard now in
11:10:45 15 California than what our standard is here for the
16 appointment of a receiver.

17 So I do believe, your Honor, that you still
18 have to -- if you are -- if the Court is going to
19 exercise that discretion, I don't think it can simply
11:10:57 20 say, well, one of these bases has been met. It has to
21 go a step further and say one of these bases has been
22 met and something else.

23 Let me get to the -- a couple of the points
24 here on what -- on 32.010(4).

11:11:16 25 Okay. So, yes, the Court has discretion --

11:11:19 1 THE COURT: But you -- here's my next
2 question, because I'm listening to you on the Medipro
3 case analysis. And I'm sitting here wondering because
4 it's my understanding -- and I think you actually
11:11:33 5 comment on this, and you do, on page -- in your
6 Footnote 63 on page 20 of 30, you indicate that in 1982
7 California amended its statute and removed
8 prerequisites.

9 And --

11:11:55 10 MR. LEVEQUE: Um-hum.

11 THE COURT: And then you go further. You said
12 now California, the California statute only requires a
13 finding that the appointment of a receiver is a
14 reasonable method to obtain the fair and orderly
11:12:09 15 satisfaction of the judgment; right?

16 MR. LEVEQUE: Right.

17 THE COURT: And I get that. And that's the
18 specific -- I'll take a look at that. But that's the
19 specific language that's utilized in the California
11:12:22 20 court. And the California Court of Appeals looked at
21 the decision of the Nevada -- of the trial judge to
22 make a determination as to whether he abused his
23 discretion.

24 But here's my point: It appears to me that
11:12:36 25 that change in the statute potentially would impact the

11:12:40 1 analysis by our Nevada Supreme Court and/or our Court
2 of Appeals in this respect.

3 The language under subsection 4 is different;
4 right?

11:12:50 5 And what I mean by that is -- and maybe we do
6 have to have an evidentiary hearing. I'm not sure or
7 not, because I haven't really thought about it in that
8 perspective because I've just been focusing on the
9 language of the statute.

11:13:03 10 And -- because under our statute, it says:

11 "Or in proceedings in the aid of execution,
12 when an execution has been returned
13 unsatisfied, or" --

14 MR. LEVEQUE: Um-hum.

11:13:21 15 THE COURT: -- "when the judgment debtor
16 refuses to apply judgment debtor's property to the
17 satisfaction of the judgment."

18 And the reason why --

19 MR. LEVEQUE: Right.

11:13:29 20 THE COURT: -- I bring that up, that appears
21 to me to be a slightly different but potentially
22 meaningful distinction between the California statute
23 and the Nevada statute.

24 And if you agree or disagree -- I mean, if you
11:13:45 25 disagree, that's okay. But that's my observation. And

11:13:49 1 the reason why I'm discussing it is essentially this:
2 When it comes to issues like this -- really all
3 issues -- I do like to express my thoughts on the
4 record because I've been told on many occasions by
11:14:03 5 either one of the justices of the Nevada Supreme Court
6 and/or judges on the Court of Appeals, they appreciate
7 discussion by the trial judge as to what his thoughts
8 are in open court. And so I try to do that.

9 But go ahead.

11:14:18 10 MR. LEVEQUE: I do too, your Honor. It helps.
11 Let me just respond as follows: First of all,
12 and this is somewhat of a rhetorical question. If you
13 were to take this statute just looking at it in a box
14 in the four corners, and the Court has discretion to
11:14:39 15 appoint a post judgment receiver in proceedings in aid
16 of execution, that, taken literally, could mean that
17 any time a judgment creditor has a judgment, he can
18 march into court and ask this Court to appoint a
19 receiver. That doesn't make any sense.

11:14:56 20 THE COURT: But -- and I don't want to cut you
21 off.

22 MR. LEVEQUE: That's why --

23 THE COURT: I don't want to cut you off, but
24 potentially if you look at the straight language of
11:15:02 25 Subsection 3, it almost says that. Because it says:

11:15:07 1 "After judgment to carry the judgment into
2 effect."

3 And that's paragraph 3.

4 But understand this: It's not my job or
11:15:19 5 responsibility to rewrite the law, only follow the law
6 as written, you know.

7 And so -- but it's there. And just because
8 it's never been done in the past doesn't mean it's not
9 appropriate. And I don't know that for sure.

11:15:32 10 But I do understand what you're saying. I get
11 what you're saying.

12 MR. LEVEQUE: It is discretionary, your Honor.
13 At the end of the day, it's discretionary.

14 And the reason why I bring that up is because
11:15:44 15 there -- I don't know if the Court's ultimately going
16 to look at, you know, weighing the equities here, but
17 we brought this up in our brief.

18 The appointment of a receiver will be
19 extremely damaging to my client's business affairs.
11:15:59 20 And, in fact, it already has.

21 Just the fact that a motion was filed, your
22 Honor -- let's see if I can find it here. There it is.

23 One of the companies that Mr. Schettler
24 manages is called Mosaic Five.

11:16:16 25 And he's been very up front with this case and

1 the fact that he has a judgment and the fact that
2 there's judgment collections proceedings going on.

3 And as a result, Sound Capital has been
4 monitoring the case. After this motion was filed,
5 Sound Capital put the loan on hold for Mosaic Five.

6 And I anticipate, as does my client, that if a
7 receiver is appointed that this is going to be
8 exponentially more of a problem, because this is land
9 development business, this involves loans. And the
10 thought of a receiver coming in is going to scare off a
11 lot of business and it's going to cause a lot of damage
12 not just to Mr. Schettler but to all the business
13 partners that are members of all these various
14 entities. So it's potentially causing damage to people
15 who aren't even part of this proceeding.

16 The other thing, your Honor, is that when
17 balancing the equities, there is another alternative,
18 and I know where the Court is going with a special
19 master. But the reason why I asked for it was it
20 sounds to me like what the -- what the Court really
21 ought to see is an accounting, an explanation in a good
22 summarized format of how Mr. Schettler is organized.

23 Because if the Court sees that at the end of
24 the day they're not going to get anything other than
25 what's in his individual name -- which is the condo in

11:17:38 1 Hawaii they've chosen not to execute on; he does
2 receive income as wages that the bank has, for whatever
3 reason, not sought to garnish -- that there is no
4 mechanism for trying to execute on this -- on all these
11:17:52 5 entities.

6 So why I think a special master -- and the
7 Court can even -- I know the Court is capable of doing
8 this. I just threw it out there to give the Court an
9 option or excuse to have someone else do it.

11:18:03 10 THE COURT: Trust me -- trust me -- and I
11 don't want to cut you off. I don't enjoy doing it, but
12 I just look at it from this perspective: That's my
13 charge. And just as important too, I can't say that
14 there might be unique circumstances in a "business
11:18:18 15 court matter," depending on the complexity and size
16 where it might be appropriate to appoint a special
17 master.

18 But go ahead, sir.

19 MR. LEVEQUE: Okay.

11:18:26 20 THE COURT: Yeah.

21 MR. LEVEQUE: Thank you. And I really
22 appreciate the Court's patience with me today. It does
23 not -- it is very much appreciated.

24 So it's interesting this Court is in business
11:18:40 25 court on this case. But it's not really a business

1 case. It's an enforcement of a foreign judgment.

2 And maybe that -- maybe that's within the
3 business court parameters. I don't remember it being.

4 But in any case, NRCP 53 does not prohibit the
5 appointment. And one of the situations where the Court
6 can exercise its discretion is if there's a need to
7 perform an accounting.

8 And this was -- I cite the Venetian Casino
9 Resort case, and I'm sure the Court is aware of this
10 one where there's a bunch of lienholders, claimants for
11 the construction of the Venetian. And I agree that
12 it's not as complicated. This case isn't as
13 complicated as the Venetian.

14 But if there is an opportunity via through an
15 evidentiary hearing or an accounting directly to this
16 Court or an accounting to a special master to show that
17 the appointment of a receiver would be futile, it would
18 be more -- it would be just purely damaging to my
19 client, we certainly would like that opportunity. And
20 I think it's within the Court's discretion to do so.

21 THE COURT: All right. Anything else, sir?

22 MR. LEVEQUE: I don't believe so, your Honor.

23 Again, I appreciate the time. I guess --
24 yeah.

25 MR. GRAF: If you could take a look at some

11:19:54 1 notes that we had sent you.

2 MR. LEVEQUE: Oh. Did you text them?

3 MR. GRAF: I did.

4 MR. LEVEQUE: All right. Sorry, your Honor.

11:20:01 5 I got some notes here.

6 Yeah. Okay. Now, I should -- I was going to
7 bring this up, and then I forget.

8 The -- the only effort to execute which wasn't
9 successfully quashed by the Court was their effort to

11:20:25 10 bring the constable to the Schettler family house,
11 which is owned by the Schettler Family Trust, which, by
12 the way, there's no order that's been entered yet in
13 that trust proceeding with regard to whether those
14 assets are subject to the creditor claims of

11:20:37 15 Mr. Schettler. The Court ruled that, but there's no
16 order pending, no order entered.

17 In November they brought two moving trucks and
18 basically the language of that writ said all property
19 inside the house belonging to Mr. Schettler needs to go
11:20:52 20 in these trucks. That was the gist of the writ.

21 The problem with that, your Honor, is that it
22 is pretty obvious that that house Mrs. Schettler lives
23 in; she has her own property there. I believe at the
24 time they had a child that lived there; there's
11:21:06 25 property of his in there. And there's also issues with

11:21:08 1 regard to what assets in the Schettler Family Trust are
2 subject to the debts, because some of those assets are
3 Mrs. Schettler's assets.

4 So Mr. Schettler, on the advice of counsel,
11:21:21 5 said, no, you're not entering my house and then
6 promptly thereafter filed a motion for protective
7 order. This Court never reached the merits of that
8 protective order because the bank, in opposition, said,
9 well, it's moot now because our writ has expired on its
11:21:34 10 own terms.

11 And this Court said, yeah, you're right. It's
12 moot. So I'm not addressing the merits.

13 So that is the only effort that the bank has
14 undertaken to execute on the property where it hasn't
11:21:46 15 been resolved by the Court on its merits, whether that
16 was proper or not. Everything else has been deemed to
17 be improper.

18 They also have not identified -- and this is
19 where it goes to the fishing expedition, your Honor.
11:21:59 20 Their -- their order -- their proposed order says
21 receiver takes possession of all assets. What assets?
22 They haven't identified the assets of Vincent Schettler
23 that he refuses to apply to the judgment. Why?
24 Because there aren't any assets other than the assets
11:22:12 25 that Mr. Schettler testified he had during the judgment

1 debtor's examination.

2 And then again, you know, it is the absence of
3 a complaint for alter ego, the absence of a claim for
4 fraudulent transfer is indicative of the fact, your
5 Honor, that they simply don't have the evidence.

6 So what is a receiver going to do other than
7 cause harm in trying to ascertain what that evidence is
8 when they already have it, they've already reviewed it,
9 they already know what the answer is.

10 I should make this final point. The way that
11 Mr. Schettler is able to pay bills comes from trusts.
12 It comes from asset protection trusts. It comes from
13 the Schettler Family Trust. And this is no secret.
14 The operating agreements that were produced for all
15 these various entities, some of them identified these
16 asset protection trusts.

17 So, you know, this is -- they're upset that
18 this is asset protection. They don't like it. And now
19 they want a receiver. And I just think it would be a
20 Draconian measure, even the way the statute is written
21 given that this Court has the discretion to say yea or
22 nay on it.

23 At the end of the day, if the Court is not --
24 is not certain, I really think that there ought to be
25 an evidentiary hearing on this or some sort of

11:23:37 1 accounting before we get to that level of causing
2 extreme damage not only to Mr. Schettler but his
3 business affiliates and its relationships.

4 With that, I submit, your Honor. Again, I
11:23:48 5 appreciate the time.

6 THE COURT: Thank you, sir.

7 MR. LEVEQUE: And Mr. Waite's patience.

8 THE COURT: Mr. Waite.

9 MR. WAITE: Thank you, your Honor.

11:24:00 10 Dan Waite for the judgment creditor, Pacific
11 Western Bank.

12 There was a lot there. You heard an awful lot
13 about a lot, but heard, candidly, only very little
14 about what matters. And what matters is the statute,
11:24:17 15 NRS 32.010(4).

16 And that's what needs to be focused on, as I
17 think your Honor has tried to focus the parties on.

18 Mr. Schettler is trying to graft into a
19 statute that the legislature is -- is so clear that the
11:24:41 20 legislature has not seen a need to amend in order -- in
21 110 years.

22 It's very clear, unambiguous, and it applies
23 here. We look at the prongs, your Honor. You heard a
24 lot, but you did not hear any dispute that
11:24:59 25 Mr. Schettler is employed. In fact, they acknowledge

11:25:02 1 that he's employed and that he receives, from time to
2 time, compensation that he refuses to apply to the
3 satisfaction of this judgment.

4 Now, what do you suppose would happen if we
11:25:17 5 served a writ of garnishment on his wages that goes to
6 Mr. Schettler, and Mr. Schettler is the one that
7 decides when and how often and how much he gets paid?
8 He's not going to get paid during that garnishment or
9 any period that we garnish. That's just a ruse.

11:25:36 10 That's just busywork that they want to accomplish.

11 But in any event, there is no requirement that
12 a writ of garnishment for wages be served before the
13 statute.

14 There's only two situations, and we've --
11:25:53 15 we've identified those. We've satisfied both of those.
16 The satisfaction -- the execution has been returned
17 unsatisfied. And he refuses to apply any of his assets
18 to the judgment.

19 Let me just take a look, your Honor. I've got
11:26:12 20 a lot of notes here, but I'm not sure that a whole lot
21 more needs to be said.

22 The whole diversion into California, your
23 Honor, as you point out, those -- those two worlds that
24 joined together in 1911 have since diverged
11:26:29 25 significantly.

11:26:31 1 So in 2021, California's case that is
2 interpreting a completely different statute is of no
3 force or effect. It's not even persuasive.

4 They said, well, it may not be used -- a
11:26:49 5 receiver may not be used for the enforcement of a
6 simple money judgment. But when you look at, your
7 Honor, 32.010(4), that's exactly what -- the situation
8 that it contemplates. That subsection contemplates a
9 receiver in aid of collecting a money judgment.

11:27:09 10 It's also interesting that they -- you know,
11 this Court has already found as findings of fact
12 Mr. Schettler has acted in bad faith, he has obfuscated
13 and delayed. Interesting that that word is used in the
14 finding of this Court, because it's the same word
11:27:26 15 that's used in that 2021 case, Medipro case.

16 This Court has found that Mr. Schettler has
17 engaged in stonewalling, referred to him in direct --
18 really as a recalcitrant judgment debtor.

19 And whatever Mr. Schettler has provided in
11:27:48 20 these proceedings, whether it be documents or whatever,
21 has been provided only after this Court has compelled
22 him to do so. They have objected to everything. And
23 they have lost everything because this Court has,
24 ultimately, ordered them to produce the documents,
11:28:06 25 which only kicking and screaming did they then produce.

11:28:09 1 If Mr. Schettler has a valid asset protection
2 plan in place, he has nothing to fear. The receiver
3 can get into that. And, very candidly, your Honor, if
4 the receiver comes back, who is an officer of this
11:28:25 5 Court, and says, Your Honor, I have looked at
6 everything in this matter that is relevant and
7 Mr. Schettler has nothing available to satisfy this
8 judgment, everything is legitimate, while the bank will
9 be disappointed with that information, it will do a
11:28:40 10 service to everyone, to Mr. Schettler, it will do a
11 service to the bank, because that will be word that the
12 bank can trust. The bank does not trust what
13 Mr. Schettler says.

14 And you read our pleadings. I won't go into
11:28:55 15 it. I'm not going to go into all the slides and things
16 that were indicated, but there are good reasons why the
17 bank does not trust what Mr. Schettler says.

18 There is nothing pretextual about trying to
19 collect a multimillion-dollar judgment which
11:29:11 20 Mr. Schettler has not paid a penny on for six and a
21 half years.

22 With all due respect, if -- if these
23 proceedings are causing Mr. Schettler some business
24 problems, that's a problem of his own making.

11:29:24 25 Not paying a now \$4 million dollar judgment is

11:29:28 1 a problem to my client's business.

2 And I'm sorry if his not paying the judgment
3 is causing collateral issues, but just pay the
4 judgment. It's causing business issues to my client as
11:29:41 5 well.

6 Your Honor, I think that -- well, as far as
7 the escalation argument which showed the last sentence,
8 the wording that you gave, appointment of a receiver in
9 this instance isn't a sanction; it's a statutory remedy
11:29:59 10 available to judgment creditors. So that warning that
11 you gave him isn't a -- isn't a check the box, you got
12 to do something different.

13 But in any event, he chased away a constable.

14 Your Honor, I think that if you have
11:30:14 15 questions, I'm happy to answer them, but -- I've got
16 lots more to say, but there are just more ramblings.
17 You've been very patient and other counsel with other
18 matters awaiting.

19 THE COURT: Yeah. I have a couple questions,
11:30:27 20 Mr. Waite. And, I mean, I've really been thinking
21 about this issue here and contemplating on what the
22 ultimate result should be.

23 My first question would be this: And really
24 two questions. Number one, would it be more prudent to
11:30:46 25 have an evidentiary hearing? And secondly, a receiver

11:30:52 1 over what -- over what? If you're -- you see where I'm
2 going on that? Because just appointing a receiver
3 for -- I mean, I can see where that can be potentially
4 abuse of discretion. And I -- and there's no question
11:31:07 5 about it. The Court -- I mean, the statute gives me
6 discretion. It says "may."

7 But I do think the -- or feel that although
8 the statutory language isn't exactly the same, I do
9 feel the Medipro Medical Staffing case has some
11:31:30 10 persuasive authority in this regard, focusing on the
11 actions of the trial judge and the failure of the trial
12 judge, I think, in that case to hold an evidentiary
13 hearing.

14 Because they talk about substantial evidence
11:31:43 15 to support the decision of the trial judge as it
16 related to appointing a receiver pursuant to the
17 statutory language. And I do think about that too,
18 because I think that potentially would be required.

19 Interestingly, I always thought about: What
11:32:00 20 is substantial evidence? What's the meaning? I read a
21 really good definition the other day. And I think it's
22 applicable to decisions like that. And I think the
23 case stood for the proposition that it's more than a
24 scintilla of evidence or prima facie case but less than
11:32:22 25 preponderance of the evidence.

11:32:23 1 And I said to myself, that's a pretty good
2 definition of -- as to what type of evidence
3 potentially when I have to make decisions like that
4 would be appropriate.

11:32:33 5 And so when I -- what do I do with that,
6 Mr. Waite? Because those are my thoughts. Shouldn't
7 there be an evidentiary hearing? And secondly, because
8 I think that protects everyone, because, ultimately, if
9 I have a hearing, I make a decision based upon the
11:32:48 10 hearing, the chances are far less that the Nevada
11 Supreme Court would say, Look, Judge, you abused your
12 discretion.

13 And then secondly, a receiver over what? I
14 mean, I have to be specific. And I would anticipate it
11:33:04 15 would have -- it would have to be the assets of the
16 debtor.

17 So with that in mind, sir, go ahead and tell
18 me. Those are my thoughts.

19 MR. WAITE: Thank you, your Honor.

11:33:12 20 Dan Waite, for the record.

21 Let me take them in reverse order. Your
22 Honor, in this instance, we contemplated -- I
23 contemplated that question. And actually when this
24 started out, it started out as a motion for the
11:33:28 25 appointment of a receiver over Mr. Schettler.

11:33:31 1 And I thought, you know what? We're not
2 seeking to get Mr. Schettler's mail that comes to his
3 house. We're not -- that's pretty extreme and so
4 forth. We can -- we can narrow this. Really what we
11:33:45 5 are interested in is Mr. Schettler's assets.

6 But given Mr. Schettler's what he would call
7 asset planning or asset protection, what we would call
8 perhaps asset hiding, asset commingling and so forth,
9 we're not in a position -- no one can sit there and
11:34:05 10 say, well, here's what's in his home, these are the
11 assets that are in his home. I think, generally
12 speaking, a designation of a receiver over
13 Mr. Schettler's assets is more than sufficient.

14 What would that include? Well, it would
11:34:19 15 include his wages, his commissions, his settlements
16 that he's -- if he's receiving any. But that is
17 something that the receiver can get into and evaluate.

18 We're not seeking a receiver over assets of
19 the Schettler Family Trust or any of his -- at least
11:34:37 20 this is -- this is a receivership not over
21 Mr. Schettler but over Mr. Schettler, the judgment
22 debtor's assets.

23 Beyond that, very candidly, we're not in a
24 position -- it's impossible to identify what those
11:34:54 25 assets specifically are. Even if we did, he could

11:34:57 1 dispose of them tomorrow. And then what? Does the
2 receiver have to come back for a further inspection of
3 the new assets as those were acquired?

4 So the scope being over Mr. Schettler's assets
11:35:11 5 is no different than in a business context where a
6 receiver is appointed over a business to run the
7 operations of a business.

8 You don't have to identify every single thing.
9 Now, the order that we attached, your Honor, as the
11:35:27 10 standard requires order is very specific. It includes
11 specific powers and, as you know, the receiver would
12 have those powers but only those powers that your order
13 vests him with.

14 And so that's where things could maybe be
11:35:45 15 looked at.

16 Turning to the evidentiary hearing, your
17 Honor, I guess my question -- my first observation is
18 NRS 32.010 doesn't contemplate an evidentiary hearing
19 in any of those circumstance, let alone (4). But I
11:36:03 20 guess my question would be, what would be the issue
21 that we're having an evidentiary hearing about?

22 There's not a current issue pending or a dispute other
23 than the appointment of the receiver. And that is a
24 legal issue that is within your discretion absolutely.

11:36:19 25 But that is a legal issue in the first instance to

11:36:22 1 determine whether to appoint a receiver or not that
2 does not require an evidentiary hearing.

3 So you certainly can do whatever you, within
4 your discretion, would like to do, your Honor. But I
11:36:34 5 just don't see it's necessary or even what the purpose
6 would be.

7 I hope that answers your questions.

8 THE COURT: Yeah. And the reason why I bring
9 that up is in -- I was reading the Medipro Medical
11:36:47 10 Staffing LLC case. And I think this is from page 629
11 of the decision. And let me look here if I can get it
12 right.

13 Yeah. Because the cite is 6 -- 60 Cal.App.5th
14 622, and this is at 629 of the decision.

11:37:10 15 This is what the California Court of Appeals
16 stated in their decision. They say:

17 "The trial court in this case abused its
18 discretion in appointing a receiver to enforce
19 Medipro's money judgment because there was no
11:37:30 20 evidence -- let alone the substantial evidence
21 necessary to sustain -- to sustain a proper
22 exercise of discretion."

23 And that's why a little earlier in the
24 discussion I was thinking about it -- and as far as the
11:37:51 25 application of the statute in this case, and I do

1 realize that the statutory language in California has
2 changed and, potentially, it could be considered
3 material. However, at the end of the day, I think the
4 introductory language as far as what the Court may do,
5 there's still discretion built in there.

6 And so that's why I was wondering from a
7 discretionary perspective, because the standard at
8 least could be argued that if I make a decision to
9 appoint a receiver, it just can't be arbitrary or
10 capricious because that's what I want to do. There
11 should be substantial evidence in the record to support
12 the appointment of a receiver with some analysis, I
13 guess, as it pertains to the statute.

14 For example, if I made a determination when
15 the debtor refuses to apply the judgment debtor's
16 property in satisfaction of the judgment, I have to
17 have a litany or set forth specific facts based upon
18 substantial evidence in order to appoint a receiver.
19 And that's really what I was kind of focusing on in
20 that regard, you know, and why I asked the question as
21 it applied to the potential application or conducting
22 an evidentiary hearing.

23 I can't say that I'm fond of doing that. But,
24 once again, it's important to point out that if it
25 appears the law mandates that, that's what I do.

11:39:37 1 MR. WAITE: Would you like a response?

2 THE COURT: Yes.

3 MR. WAITE: Yeah. So certainly, your Honor,

4 you had a -- I'm sorry. Dan Waite.

11:39:45 5 You certainly have discretion. You have, I

6 think, a great deal of discretion here, and that comes

7 from the preamble to the statute.

8 But you have that discretion not because of

9 the -- the abuse of discretion doesn't come because of

11:40:02 10 what the Medipro case said.

11 Remember, in Medipro, in California, there's

12 been a new statute. Mr. Leveque pointed out the -- in

13 one of his slides there has to be a balancing of the

14 interests and so forth. That's not on its face --

11:40:18 15 that's not part of our statutory scheme under

16 NRS 32.010.

17 What you need is to consider evidence of has

18 there been -- under the first prong has there been

19 execution return unsatisfied? And you have -- you sat

11:40:37 20 through a hearing where you know that there was

21 execution that was returned unsatisfied.

22 That evidence is in the record already.

23 That's undisputed.

24 The second prong, you would need evidence that

11:40:52 25 the judgment debtor refuses to apply the judgment

11:40:55 1 debtor's property in satisfaction of the judgment. We
2 have evidence that six and a half years, undisputed
3 evidence, that Mr. Schettler has not paid a penny in
4 six and a half years towards this judgment. There's
11:41:06 5 evidence admitted today that he works. He receives a
6 compensation, albeit he controls everything about that.
7 But whatever he receives, it is undisputed he has
8 refused to apply a penny of that towards satisfaction
9 of this judgment.

11:41:21 10 You have twice heard counsel say in this court
11 that he made an offer of a million dollars to settle
12 this case, and yet he has not paid a penny of that
13 towards the satisfaction of this judgment.

14 There is substantial evidence already
11:41:39 15 undisputed in this case.

16 Again, we'll have an evidentiary hearing if
17 you feel one is necessary. I just don't feel it's
18 necessary.

19 THE COURT: All right.

11:41:50 20 MR. WAITE: You have substantial evidence
21 already.

22 And, by the way, there are all the findings --
23 I go back to all the findings you already made about
24 Mr. Schettler, his bad faith, his obstinance and
11:42:03 25 obfuscation and all those types of things. You made

11:42:06 1 those as findings of fact already.

2 THE COURT: Here's my next question as far as
3 that's concerned. Where can I go to to look to those
4 findings? Where was that again in the record?

11:42:15 5 MR. WAITE: Well, I'm sorry. I couldn't hear
6 you, your Honor.

7 THE COURT: Yeah. As far as -- I assume there
8 was an order with findings of facts and conclusions of
9 law as to those findings; is that correct?

11:42:25 10 MR. WAITE: Yes.

11 THE COURT: What date is that?

12 MR. LEVEQUE: September 10th, your Honor.

13 MR. WAITE: September 10, 2020.

14 THE COURT: Okay. Anything else? I want to
11:42:42 15 hear -- Mr. Debtor -- I should say counsel on behalf of
16 the debtor, I don't want to overlook you, sir.
17 Anything else you wanted to add? Because I did ask
18 some different questions, slightly.

19 MR. LEVEQUE: Thank you, your Honor.

11:42:56 20 We would want an evidentiary hearing for a
21 couple of reasons. One, if we look at the prongs of
22 the statute, a refusal to apply assets. Well, what
23 assets? You know, I think there needs to be an
24 evidentiary hearing as to what assets could even be
11:43:12 25 applied.

11:43:12 1 And that's really, I think, the issue that the
2 bank is really upset about is that there -- there are
3 assets that aren't touchable. So you -- you -- you
4 can't refuse to apply assets that you don't control is
11:43:27 5 kind of my point.

6 The second point, your Honor, is with regard
7 to execution returned unsatisfied, again, there is only
8 one attempted execution, and the Court never decided on
9 the merits of whether that attempted execution was
11:43:41 10 proper because it was determined to be moot because the
11 writ expired.

12 So even if we go under a strict analysis of
13 the statute, there are still issues with regard to a
14 refusal to apply assets and also whether there's been
11:43:57 15 attempts for writs returned unsatisfied.

16 I'll finally end on this point, your Honor,
17 and that is: The Medipro case stated on the same page
18 that you read. It went on, because Medipro made this
19 argument on appeal that the trial court could have made
11:44:16 20 reasonable inferences that in that case that the
21 slowdown to the accounts receivable and distributions
22 were due to nefarious conduct. But the Court -- the
23 appellate court said, you know, those inferences were
24 based on nothing but speculation. And that's what we
11:44:31 25 have here, your Honor. We have speculation that there

1 are assets that can be used to satisfy an art.

2 And so that's why I think we need an
3 evidentiary hearing. I think this -- you know,
4 Mr. Waite says that a receiver will help everybody. I
5 think, your Honor -- I know your Honor has experienced
6 enough receivers to know that they can cause damage.

7 I believe an evidentiary hearing will actually
8 help both sides because it will bring to light some of
9 these issues that you just can't fully articulate and
10 show the Court in motion briefing.

11 So with that, your Honor, I appreciate the
12 time, and I submit.

13 THE COURT: And I just have one last question
14 for you. What do I do with that? Because obviously
15 there's been distributions made that weren't utilized
16 or applied to pay the judgment, right?

17 MR. LEVEQUE: Distributions of what? For his
18 wages?

19 THE COURT: Well, wages or distributions from
20 the trust or something to pay for his day-to-day
21 expenses.

22 MR. LEVEQUE: Well, my understanding, your
23 Honor, is that money doesn't come from Mr. Schettler.
24 It comes from trusts where -- they're irrevocable
25 trusts where they're discretionary for making

11:45:41 1 distributions. My understanding is that one of those
2 trusts, he's not even the beneficiary; his wife is.

3 So, yeah, yeah, there are issues.

4 And I just think it would be punitive, it
11:45:55 5 would punish valid estate planning if the law of Nevada
6 was such that a judgment creditor can come in and get a
7 receiver because there has been good asset protection
8 and business planning and estate planning. I just
9 can't imagine that that is where our appellate court
11:46:13 10 would go.

11 THE COURT: All right. Okay. All right.
12 Gentlemen, this is what I'm going to do.

13 And, Mr. Waite, your proposed order, that was
14 attached; is that correct?

11:46:22 15 MR. WAITE: That's correct, your Honor.

16 THE COURT: Okay. What I'm going to do is
17 this: I don't mind telling you this. I'm going to
18 really focus on potentially the need for an evidentiary
19 hearing.

11:46:31 20 I want to take a look at the proposed order.

21 And I'm going to make some decision as to
22 how -- because this is a case of first impression. And
23 potentially, if it is, I want to make sure if I'm the
24 first out I get it right. That's all, you know.

11:46:49 25 And so I'm going to think about it. But I'll

11:46:53 1 give you a decision relatively -- in a relatively short
2 period of time.

3 MR. LEVEQUE: Thank you, your Honor.

4 MR. WAITE: Thank you very much.

11:47:01 5 THE COURT: Everyone enjoy your day.

6 MR. LEVEQUE: You too.

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10 (Proceedings were concluded.)

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