

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ELIZABETH
GONAZLEZ, DISTRICT JUDGE

Respondents,

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

Real Parties In
Interest.

**PETITION FOR WRIT OF HABEAS CORPUS
MANDAMUS OR PROHIBITION
DIRECTING THE EIGHTH
JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA,
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
TO VACATE AN (1) INJUNCTIVE
RELIEF ORDER WITH RESPECT
TO PROPERTY FORECLOSURE;
AND (2) AN ORDER
APPOINTING A RECEIVER
OVER SJC VENTURES
HOLDING COMPANY, LLC**

Dist. Ct. Case No.: A-20-813439-B

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County
The Honorable Elizabeth Gonzalez, District Judge

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NRAP 26.1 DISCLOSURE

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

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

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

DATED this 20th day of September, 2021

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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JURISDICTIONAL STATEMENT

This petition for writ of mandamus is from (1) an Eighth Judicial District Court ruling/order on injunctive relief with respect to foreclosure of the Property at issue, with notice of entry of order entered on April 20, 2021, in conjunction with (2) an Eighth Judicial District Court ruling/order appointing a receiver over petitioner SJC Ventures, LLC, with notice of entry of order entered on August 11, 2021. PA0689-693; PA0694-701.¹

Writ relief is available when there is no “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170.

Under Nevada law, a “writ of prohibition ... arrests the proceedings of any tribunal ... exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal” NRS 34.320. “Prohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction.” *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677 (1991). “A writ of prohibition may issue when a district court acts without or in excess of its jurisdiction and the petitioner lacks a plain, speedy, and adequate remedy at law.” *Nev. State Bd. of Architecture v. Eighth Jud. Dist. Ct.*, 135 Nev. 375, 377 (2019) (citations omitted). “Whether a writ of prohibition will issue is within this [C]ourt’s

¹ “PA” refers to Petitioners’ independent appendix.

sole discretion.” *Id.*

A writ of mandamus will issue to compel the performance of an act, which the law requires as a duty resulting from an office, trust, or station, and where there is no plain, speedy, and adequate remedy in the ordinary course of law. *Hickey v. District Court*, 105 Nev. 729, 782 P.2d 1336 (1989); NRS 34.160. A writ of mandamus is available when the respondent has a clear, present legal duty to act, or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). The writ is the appropriate remedy to compel performance of a judicial act. *Solis-Ramirez v. Eighth Judicial Dist. Court ex rel. County of Clark*, 112 Nev. 344, 913 P.2d 1293 (1996).

The Court may, in its discretion, treat a petition for writ of mandamus as one for prohibition, or vice versa, or treat a notice of appeal interchangeably as a Petition for a Writ. *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988); *In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901 (1989).

ROUTING STATEMENT

This case should be assigned to the Court of Appeals, as the Court of Appeals has original jurisdiction over “cases challenging the grant or denial of injunctive relief.” N.R.A.P. 17(b)(12). The Court of Appeals also has original jurisdiction over “pretrial writ proceedings challenging discovery orders,” which is relevant here, as the district court permitted the receiver to conduct discovery

beyond the discovery deadline, and those requests are at issue. N.R.A.P. 17(b)(13).

RELIEF SOUGHT

This petition seeks a writ of mandamus directing the Eighth Judicial District Court to vacate: (1) its order declining to issue an injunction against Defendants with respect to their efforts to foreclose on the Property at issue, and (2) its order appointing a receiver over SJC Ventures, which has led to the Property at issue being at risk of immediate foreclosure.

The district court abused its discretion in failing to issue an injunction against Defendants, instead ruling that the temporary restraining order filed on January 5, 2021 “will remain in place pending further order of the Bankruptcy Court.” PA0346. This was an error, as counsel for Defendants specifically argued that he is “trying to get a straight line to foreclose,” and that the bankruptcy debtor SHAC is only protected from foreclosure “because the bankruptcy stay is in place.” PA0310. Pursuant to Defendants’ counsel, once the stay is lifted “I’ll have that ability to go forward [with foreclosure].” PA0310.

The bankruptcy court lifted the stay on July 27, 2021, which has created an imminent danger with respect to Defendants attempting to foreclose on the Property at issue. PA0689-693.

The district court also abused its discretion in issuing a receiver over SHAC, as it made a clear error in basing its decision upon (1) April 2021

findings from the district court’s “trial on legal issues surrounding the claims and counterclaims” that took place in violation of the bankruptcy stay of litigation following SHAC filing for bankruptcy; and (2) misrepresentations that CBC Partners I, LLC and 5148 Spanish Heights, LLC made about SJC Ventures’ purported involvement in a separate matter adjudicated by the Honorable Mark Denton in which SJC Ventures was not a party.

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

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

ISSUES PRESENTED

Did the district court abuse its discretion in failing to issue an injunction order

against Defendants, instead ruling that the temporary restraining order issued on January 5, 2021 “will remain in place pending further order of the Bankruptcy Court”? PA0346.

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

FACTS NECESSARY TO CONSIDER THE PETITION

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

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

The Property is now owned by SHAC pursuant to a recorded deed, and leased by plaintiff SJC Ventures pursuant to a valid lease agreement. PA0049; PA0017-48. SJC Ventures has already made rent payments to SHAC in advance through December 2024. PA0049. Jay Bloom, who serves as a manager for SHAC and SJC

Ventures, uses the Property as his primary residence where he lives with his family, including his elderly octogenarian in-laws.

Defendants/ real parties in interest CBC Partners I, LLC and 5148 Spanish Heights, LLC (“Defendants”) claim to hold an interest in the Property purportedly secured by a contested third-position Deed of Trust.

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

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

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

on March 15, 2021.

On the final day of trial, Defendants' counsel argued that any injunctive relief should be denied, because "the bankruptcy stay is in place . . . [t]he estate has a stay. They're protected." And, "I am trying to get a straight line to foreclose. As soon as I get the relief that I need from the bankruptcy court, then I'll have that ability to go forward." PA0310.

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

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

- (a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;
- (b) Interpretation and/or validity of the claimed third-person Deed of Trust and

all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and

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

See PA0328 at fn. 1. It has long been established that “violations of the automatic stay are void, not voidable.” *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). This means that the district court’s rulings on contractual interpretation of the aforementioned agreements, as well as its ruling on injunctive relief, are void.

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

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

after Mr. Bloom submitted a declaration certifying that he had no further documents in his possession, and after SJC Ventures (the company that the district court has determined needs a receiver over it) posted the \$151,535.81 sanctions bond on behalf of First 100. PA0657-688.

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

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

TGC/Farkas Matter does not even involve the appointment of a receiver. PA0327-347.

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

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

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

into the billions of dollars. PA0702-703.

Further, the Property is now at risk of foreclosure as a result of the district court failing to grant injunctive relief outright, and only granting relief pending further order of the Bankruptcy Court,” which has created problems because the Bankruptcy Court recently lifted the stay of litigation. Defendants’ counsel has identified the bankruptcy stay as the obstacle preventing immediate foreclosure. Without complete injunctive relief in place, there is no protection against foreclosure of the Property

Because Petitioners have no adequate remedy in the ordinary course of the law with respect to the injunctive relief that was not granted outright, along with the receiver order which has led to discovery abuses, this Court should exercise its discretion to consider and resolve this issue now. Petitioners submit that extraordinary relief is not only warranted, but demanded under the circumstances.

WHY THE WRIT SHOULD ISSUE

A. The Injunctive Relief Should Have Been Fully Granted

The district court should have granted injunctive relief and prevented Defendants from being able to foreclose on the Property, as there is no valid third-position Deed of Trust affording Defendants the right to foreclose.

The Promissory Note underlying the purported third-position Deed of Trust had nothing to do with the Property but was actually a \$300,000 commercial loan issued to KCI Investments, LLC, which is one of Kenneth Antos’ companies that

was in the business of operating restaurants. PA722-737. *See also*, PA0770, Deposition Transcript of Kenneth Antos at p. 54.

Q: Okay. And what company was CBC loaning that money to?

A: KCI Investments

Q: And what was KCI Investments in the business of doing?

A: Operating restaurants.

Q: Okay. Now, were there – so there was an underlying note, correct, between CBC and KCI; is that correct?

A: Correct.

The Promissory Note is secured by a “Security Agreement” dated June 22, 2012, where the security interest included KCI’s intellectual property, goods, tools, furnishings, furniture, equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables. PA0730-754. Notably, the Security Agreement does not include the subject real property owned by the Antos Trust, non-party to the commercial loan.

Kenneth and Sheila Antos were personal guarantors on the underlying Promissory Note in their individual capacity, but not in their capacity as trustees to the Antos Trust. PA0779-793 Guaranty and Acknowledgement and Agreement of Guarantors. *See also*, PA0771.

Q: Okay. Now what did you understand this guarantee to be?

A: Guaranteeing that 300,000.

Q: Okay. And did you understand that this would be a personal guarantee, that you and Sheila are personally guaranteeing this?

A: Yes.

The Promissory Note was modified several times due to KCI wanting further loan funds from CBC Partners I, LLC. PA0773.

At some point, CBC Partners I, LLC obtained a “deed of trust” on the property that the Antos’ resided in but did not own, as the property was already transferred to the Antos Trust years before CBC Partners I, LLC became involved as a lender to KCI. PA0773.

Q Okay. So you’re saying that there were – there were numerous modifications to this loan; correct?

A: Correct.

Q: Okay. And you’re saying that in one of the modifications, it got to the point where CBC was demanding to also have a deed of trust on the property; is that correct?

A: Correct.

Attached as PA0795-852 are numerous other loan modifications to the underlying Promissory Note, none of which mention the Antos Trust, and none of which the Antos Trust executed.

Q: And then looking through these documents, do you have any recollection of the – the trust signing off on any – on any of these modifications?

A: No.

PA0773. On December 29, 2014, years after the commercial loan to KCI was made, a third position “Deed of Trust” was recorded, in which the Antos Trust, again, a non-party to the commercial loan, purported to provide a deed of trust to CBC Partners I, LLC. PA0852-874. Subsequently a First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was recorded in the Property records through the Clark County Recorder’s Office on December 19, 2016. PA0876, First Modification to Deed of Trust (collectively referred to as “Deed of Trust”).

The “Deed of Trust” specifically mentions that it is securing that Promissory Note dated June 22, 2012, as modified, that was executed “by KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively, “Borrower”). PA0855. Kenneth and Sheila Antos signed this “Deed of Trust” on behalf of the Antos Trust. PA0873. In other words, the Antos Trust attempted to provide a Deed of Trust to CBC Partners I, LLC in order to secure a Promissory Note that the Antos Trust never executed or even guaranteed and with which it had no nexus whatsoever. PA0773.

The Antos Trust, as owner of the real property, was not a borrower on the underlying Note, and the Antos Trust was not a guarantor on the underlying Note. Even further, the Antos Trust testified that it had no business relationship whatsoever with CBC Partners I, LLC, making it highly inappropriate for CBC Partners I, LLC to be attempting to get a “Deed of Trust” from the Antos Trust, as there was no underlying promissory note in which the Antos Trust was involved. PA0774.

Q: Now, I just want to clarify for the record. So the Antos – the trust itself was not the borrower on this commercial loan with CBC; is that correct?

A: That is correct.

Q: Okay. And the trust itself also was not a guarantor on the note; is that correct?

A: That is correct.

Q: Okay. And so what exactly did the trust get for signing that Deed of Trust for the property?

...

A: It got a, you know, continued good relationship with the Otters and with CBC.

Q: And I just want to clarify, there – isn’t going to be any

documentation showing the trust getting any kind of monetary consideration; correct?

A: Not that I –

Q: Okay. All right. And so what kind of a relationship did the trust have with CBC? Any kind of business relationship between the trust and CBC?

A: No.

As such, because the Antos Trust never actually signed off on the underlying promissory note in any capacity whatsoever, and because the Antos Trust never received any consideration for providing a Deed of Trust to CBC Partners I, LLC, there is a reasonable likelihood that the third position “Deed of Trust” which secures a commercial loan to the Antos’ companies and has nothing to do with the owners of the Property, is neither valid nor enforceable.

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

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

Customarily, a receiver is a neutral party appointed by the court to take possession of property and preserve its value for the benefit of the person or entity subsequently determined to be entitled to the property. *Anes v. Crown P'ship, Inc.*,

113 Nev. 195, 199, 932 P.2d 1067, 1069 (1997). Pursuant to NRS 32.010:

NRS 32.010 Cases in which receiver may be appointed. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, **and where it is shown that the property or fund is in danger of being lost, removed or materially injured.**

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

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

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

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

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

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

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

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

property.

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

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

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

Defendants’ only argument in their motion was that a receiver should be appointed because Defendants believe the Petitioners have defaulted on disputed loan obligations as claimed are owed to Defendants. But even if that were the case (it is not), much more than a mere monetary default is needed to justify the Court issuing the extraordinary relief of appointing a receivership. Courts of equity exercise the receivership power “with great caution and only as exigencies of the case appear by proper proof. . . .” *Thoroughgood v. Georgetown Water Co.*, 9 Del.

Ch. 84, 90, 77 A. 720, 723 (1910). This is particularly the case where the entity continues to function actively.

A receiver pendente lite for a corporation actively functioning is never to be justified except under circumstances that show an urgent need for immediate protection against injury either in the course of actual infliction or reasonably to be apprehended. As the remedy is a stringent one and fraught often times when asked for with the possibilities of as much if not more harm than that which it seeks to avoid it should be applied with scrupulous care. Only emergent situations can evoke its application.

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

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

Most importantly, there is zero evidence that the Property is in danger of being lost, injured, or destroyed – the actual evidence suggests the exact opposite, as Plaintiffs are the only party advancing all funds required to maintain the property. The entire motion for receiver was based on Defendants' conjecture (not supported by actual evidence even in the form of an affidavit) that a receiver should be appointed because Defendants believe Petitioners breached certain loan agreements. This did not satisfy Defendants' burden under NRS 107.100 and NRS 32.010.

The scope of the district court's order also needs to be addressed. Defendants

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

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

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

Nonetheless, the district court still appointed Mr. Bertsch as the receiver, holding that “the Court’s experience with Larry Bertsch has not been similar to that outlined by Jay Bloom.” PA0690. Respectfully, Mr. Bertsch *already* acted inappropriately in this action by making demands upon SJC Ventures for business records before a Notice of Posting Bond was filed making the receiver order effective. PA0704-707. Mr. Bertsch has also been put on notice of this instant petition, as well as a motion to stay the enforcement of the order appointing receiver being heard by the district court on August 16, 2021, yet still demanded that SJC Ventures produce documents “immediately.” PA0704-707. It is concerning, but not surprising, that Mr. Bertsch is making demands for records instead of waiting for the judicial process to determine if the motion appointing receiver was made in error.

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

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

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

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

- (d) Contractual interpretation and/or validity of the underlying “Secured Promissory Note between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;
- (e) Interpretation and/or validity of the claimed third-person Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and
- (f) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts.

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

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

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

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

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

not involve a receiver being appointed over any entity.

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

The district court abused its discretion in relying upon Defendants' misrepresentations as to the scope of Judge Denton's order in the TGC/Farkas Matter, thus justifying a writ of mandamus or prohibition.

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

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

This was an unprecedented proceeding, found nowhere in the rules of

procedure, and it was interrupted in the middle when the Bankruptcy Court issued its automatic stay. The district court then used that interrupted and unauthorized proceeding, originally styled as limited only to legal questions, to nonetheless resolve *factual* disputes, apparently in lieu of and depriving the parties of the actual jury that they had requested.

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

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

Nonetheless, at the “trial,” Plaintiffs’ counsel immediately objected to the nature of the proceedings on February 3, 2021, noting that the proceedings were

subject to the bankruptcy court stay. The district court proceeded over this objection. The district court then permitted Defendants to present factual evidence, including witness testimony, on a number of factual disputes and then proceeded to issue its “findings of fact” resolving those issues, expressly stating that it had conducted a “trial” without a jury. This rogue hearing and the findings stemming from it clearly violated Plaintiffs’ right to a jury trial.

CONCLUSION

Therefore, Petitioner requests a writ of mandamus or prohibition requiring the Eighth Judicial District Court to vacate its order failing to grant full injunctive relief related to foreclosure of the Property at issue, and its order appointing non-neutral individual Larry Bertsch as a receiver over SJC Ventures.

DATED this 20th day of September 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,513 words.

3. Finally, I certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied

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

DATED this 17th day of September 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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VERIFICATION

On September 17th, 2021, the affiant, Joseph A. Gutierrez, Esq. appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears on this document, who stated:

I am counsel for Petitioners Spanish Heights Acquisition Company, LLC (“SHAC”) and SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC (“SJC Ventures”). I have read the foregoing petition for writ of mandamus and all factual statements in the petition are either within the affiant’s personal knowledge and true and correct or supported by citations to the appendix accompanying the petition.

The exhibits in the appendix are true and correct copies of the original documents.


JOSEPH A. GUTIERREZ, ESQ.

SUBSCRIBED and SWORN to before
me this 17th day of September, 2021.


Notary Public for Said County and State



CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a) and 25(c), I certify that I am an employee of MAIER GUTIERREZ & ASSOCIATES, and that on September 20th 2021, **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, TO VACATE AN (1) INJUNCTIVE RELIEF ORDER WITH RESPECT TO PROPERTY FORECLOSURE; AND (2) AN ORDER APPOINTING A RECEIVER OVER SJC VENTURES HOLDING COMPANY, LLC** was served via electronic means by operation of the court's electronic filing system:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
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Tel: 702.454.3333
Email: Michael@mccnvlaw.com
Attorney for Real Parties in Interest

Filed and electronically served via Eighth Judicial District Court electronic filing system Odyssey on September 17, 2021, of **NOTICE OF FILING PETITION FOR WRIT OF MANDAMUS IN THE NEVADA SUPREME COURT:**

Honorable Judge Joanna S. Kishner
Eighth Judicial District Court
RJC Courtroom 12B
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES