CASE NO. 83590

In the Supreme Court of Nevada

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Elizabeth A. Brown
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FELICE J. FIORE and SPEEDVEGAS LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE NANCY L. ALLF, District Judge,

Respondents,

and

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the Estate and as the widow and heir of Decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL BEN-KELY; NATHALIE BEN-KELY SCOTT, daughter and heir of the decedent GIL BEN-KELY; GWENDOLYN WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD, deceased; GWENDOLYN WARD, individually, and as surviving spouse of CRAIG SHERWOOD, deceased; GWENDOLYN WARD, as Mother and Natural Guardian of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD, deceased,

Real Parties in Interest.

District Court Case Nos.
A-17-757614-C &
A-18-779648-C

REAL PARTIES IN INTEREST GWENDOLYN WARD AND ZANE SHERWOOD'S OPPOSITION TO PETITIONERS' MOTION FOR STAY

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I.

INTRODUCTION

On February 12, 2017, Craig Sherwood, a Canadian tourist visiting Las Vegas, Nevada for a real estate convention, died after the 2015 Lamborghini Aventador he was driving impacted a tire barrier and wall at a racetrack operated by Petitioner SpeedVegas LLC. The Aventador burst into flames, causing a fire that killed Mr. Sherwood as he was trapped in the vehicle. Petitioner Felice "Phil" Fiore owned the Aventador, which he leased to SpeedVegas LLC under the terms of a "commercial lease agreement" drafted by the two parties. Real parties in interest Gwendolyn Ward and Zane Sherwood (Mr. Sherwood's widow and son, respectively) assert claims against Petitioners for negligence and product liability. Trial of those claims, which is expected to take more than a month, is set to commence before Judge Nancy Allf of the Eighth Judicial District Court on May 9, 2022.

Petitioners' present request for a stay pending the outcome of their writ petition should not be granted. As Petitioners acknowledge, Judge Allf set the trial based upon her Court's calendar and the need to

try this case prior to the expiration of the five-year period provided by NRCP 41(a). She also denied Petitioners' eleventh-hour request for a stay—heard only on Wednesday of last week despite the writ pending since October—because she appropriately found a stay would only prejudice Real Parties in Interest, who have worked diligently to prepare their case and bring it to trial. Instead, Judge Allf has ordered the parties to proceed to trial on May 9, 2022, and has specifically allocated time in her calendar to accommodate the expected trial length.

As before Judge Allf, Petitioners present no persuasive reason why their request for a stay should be granted. Petitioners seek relief from a ***denial*** of summary judgment, a request inapposite to this Court's "general rule" against exercising its writ discretion for such orders absent extraordinary circumstances. *Smith v. Eighth Judicial District Court*, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997). Petitioners fail to demonstrate the kind of "serious issues of substantial public policy" or "important precedential questions of statewide interest" justifying deviation from that "general rule." *Polous v. Eighth Judicial District Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). Since Petitioners themselves acknowledge they have an adequate and

speedy remedy—an appeal from a final judgment—writ relief is inappropriate.

For that same reason, Petitioners cannot show irreparable harm. This Court has repeatedly concluded the time and expense of trial Petitioners reference as harm is **not** "irreparable." *Hansen v. Eighth Judicial District Court*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) ("[L]itigation expenses, while potentially substantial, are neither irreparable or serious."). By contrast, as Judge Allf recognized below, Real Parties in Interest would suffer irreparable harm from operation of NRCP 41's five-year rule and the practical realities of re-setting a trial set for longer than a month within that tight window.

Nor can Petitioners show likelihood of success on the merits. As noted, since the adequate and speedy remedy of an appeal exists, writ relief is not only unlikely—it runs counter to this Court's "general rule." And far from showing a trial would be unnecessary, Petitioners continue their efforts to transmute the facts to fit their narrative. Case in point: they again present Mr. Fiore as a "one-time seller or lessor" despite the fact he entered what he called a "commercial lease agreement" with SpeedVegas to share revenue from repeated uses of

the Aventador by paying Nevada customers. He is not, as Petitioners pretend, a layman selling his car on Craigslist—he affirmatively created a business relationship centered on the relevant product and expected to receive half of the **revenue** (not just profits) from doing so. That Petitioners continue to misstate the true nature of Mr. Fiore's involvement over multiple briefs only emphasizes the necessity of bringing this case to trial and allowing the jury to determine the facts.

In short, Petitioners cannot meet the factors required for a stay under NRAP 8. The Court should deny that relief, just as it should deny Petitioners' petition. This case should proceed to trial on May 9, 2022 as Judge Allf has ordered. If Petitioners are unsatisfied with the outcome, they may appeal, and this Court can consider the issues they raise with the benefit of a fully developed factual record.

II.

ARGUMENT

As the party advocating for a stay, Petitioners bear the burden to show one is appropriate. The factors the Court considers are:

> (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen, 116 Nev. at 657, 6 P.3d at 986 (citing NRAP 8).

A. The Object of the Appeal Will Not Be Defeated in the Absence of a Stay

The object of Petitioners' present writ will not be defeated in the absence of a stay. As noted, Petitioners seek writ relief from the ***denial*** of summary judgment. Even if they are ultimately unsuccessful at trial, they retain appellate rights, and there is no prejudice to the legal arguments they raise in their petition if a stay is not imposed. In fact, the ***only*** argument Petitioners raise on this point is that denying a stay will require them to go to trial—something this Court has repeatedly found as insufficient grounds to warrant a stay. *Hansen*, 116 Nev. at 658, 6 P.3d at 986-87 ("[L]itigation expenses, while potentially substantial, are neither irreparable or serious."). Since proceeding to

trial would not defeat any legal basis for the present writ (or any appeal following the trial), Petitioners fail to demonstrate a stay is appropriate under this factor.

B. Petitioners Fail to Show Irreparable Harm

Though they wish to indefinitely suspend litigation of this matter and derail the current trial date (again), Petitioners fail to any irreparable harm they would suffer absent a stay. Although they argue Mr. Fiore will have to undergo the trial and have "potential difficulty of obtaining a bond to vindicate his appeal rights," *see* Mot. at 7, participation in litigation is **not** irreparable harm sufficient to warrant a stay. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252-53, 89 P.3d 36, 38-39 (2004) ("We have previously explained that litigation costs, even if potentially substantial, are not irreparable harm."); *Hansen*, 116 Nev. at 658, 6 P.3d at 986-87 (same). Petitioners identify no other "irreparable harm" they claim they would suffer. They instead acknowledge either or both of them may appeal any adverse judgment regardless of the writ's outcome. (*See* Mot. at 7 (discussing the purported difficulty in obtaining an appellate bond).) Possessing a right

to appeal is the opposite of "irreparable harm." Petitioners fail to demonstrate a stay is appropriate under this factor.

C. Real Parties in Interest Would Suffer Irreparable Harm

As Petitioners acknowledge, Real Parties in Interest face a looming five-year mark imposed by NRCP 41. The delay between filing and trial is not due to Real Parties in Interest's lack of diligence—they were consolidated into an earlier-filed action, SpeedVegas LLC went through bankruptcy proceedings, and the COVID-19 pandemic significantly impacted discovery and the ability to set a trial date. As Petitioners acknowledge, and Judge Allf found, Real Parties in Interest have diligently pursued this matter but, despite that, have only a few months remaining to try this action under NRCP 41.

Petitioners turn this reality on its head, arguing the upcoming five-year deadline counsels in favor of a stay. That is false. Judge Allf has worked diligently to set aside time in the Court's busy calendar for the expected trial length needed. There is no guarantee that, if this matter is stayed even for a short period, she will be able to accommodate the same length within the tolled five-year period. It would be patently unfair and prejudicial to Real Parties in Interest to

jeopardize their day in court by staying the trial again and raising the specter that, once the stay is lifted, a trial cannot be set within the tolled five-year window. That would undoubtedly constitute irreparable harm to Real Parties in Interest. As a result, this factor counsels against a stay.

D. Petitioners Have Not Demonstrated Likelihood of Success on the Merits of their Writ

Petitioners are unlikely to succeed on their writ petition in light of this Court's "general rule" against exercising its discretion to review orders denying summary judgment. *Smith*, 113 Nev. at 1344, 950 P.2d at 281. That general rule arises because "[w]rit relief is not available … when an adequate and speedy legal remedy exists." *Int'l Game Technology, Inc. v. Second Judicial District*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "[A]n appeal from the final judgment typically constitutes an adequate and speedy legal remedy." *Id.* Hence why, absent extraordinary circumstances not present here, this Court declines to entertain writ petitions from summary judgment denials. As noted in *International Game Technology*, Petitioners retain their right to appeal.

Petitioners do nothing to change this conclusion. They do not explain why an appeal would be inadequate or not speedy. They do not explain any legal impairment of their position trying the case would require. They do not show how this case implicates "serious issues of substantial public policy" or "important precedential questions of statewide interest" justifying deviation from this Court's "general rule." *Polous*, 98 Nev. at 455, 652 P.2d at 1178. And although they tacitly admit they are unprepared to try the case after Real Parties in Interest's settlement with Automobili Lamborghini America ("ALA"), that is neither a reason to grant the writ relief nor stay this action.

Petitioners instead repeat their confidence this Court will agree with their legal analysis based on their self-serving factual conclusion Mr. Fiore was a "one-time seller or lessor." He was not—the Aventador was used multiple times, and was contemplated by the "commercial lease agreement" to have continued to be used and generating revenue for both Petitioners had the crash not occurred. Petitioners' persistence in this misstatement of fact emphasizes how important finding the facts are to liability determinations in this matter. Rather than support the propriety of writ relief, Petitioners' repeated emphasis on the facts (or,

more accurately, misstatements of the facts) demonstrates why it is inappropriate.

In sum, Petitioners cannot show likelihood of success on the merits because they have an adequate and speedy remedy. They cannot show why this Court should deviate from its "general rule" against writ relief for summary judgment denials. And, as their repeated factual misstatements evidence, even they tacitly acknowledge the need for a jury to find the facts underlying the legal issues they raise. This factor, as with all of the other NRAP 8(c) factors, counsel against a stay.

III.

CONCLUSION

For the foregoing reasons, the motion for stay should be denied.

Dated this 11th day of April, 2022.

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CERTIFICATE OF SERVICE

I certify that on April 11, 2022, I submitted the foregoing "Real Parties in Interest Gwendolyn Ward and Zane Sherwood's Opposition to Petitioners' Motion for Stay" for filing via the Court's eFlex filing system. Electronic notification will be sent to the following:

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