

In the Supreme Court of Nevada

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.

Electronically Filed
Apr 27 2022 05:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

EMERGENCY MOTION UNDER NRAP 27(e)

**REQUEST TO CONVERT
“MOTION FOR STAY PENDING WRIT PETITION”
TO EMERGENCY MOTION UNDER NRAP 27(e)**

(Action Required by May 10, 2022)

**REQUEST TO CONVERT
“MOTION FOR STAY PENDING WRIT PETITION”
TO EMERGENCY MOTION UNDER NRAP 27(e)**

(Action Required by May 10, 2022)

Petitioners Felice Fiore, Jr. and SpeedVegas, LLC ask that their motion for a stay pending the resolution of the writ petition—filed April 8 and fully briefed as of April 18—be converted into a motion under NRAP 27(e) to be considered on an emergency basis.

Relief is required by May 10. The parties completed briefing on the stay outside the 14-day window for seeking emergency relief, but we have now entered that window.

A. Emergency Relief Is Now Appropriate

Under NRAP 27(e), parties may seek emergency relief only if “relief is needed in less than 14 days.” In addition, as with a motion for stay, the movant must ordinarily seek relief first in the district court. NRAP 27(e)(4); *cf.* NRAP 8(a)(1)(A).

Here, petitioners could not initially move under NRAP 27(e) but must do so now. After the district court on April 6 orally denied petitioners’ motion for stay, petitioners promptly moved for relief in this Court. At the time, more than a month remained before the putative trial date of May 9, precluding relief under NRAP 27(e). And by the

time the motion was fully briefed, 21 days still remained. (Since then, the district court has again moved the trial date—now to May 10. (Ex. A.))

Because relief is needed by May 10, less than 14 days from today, emergency relief is appropriate for the first time. Petitioners therefore ask this Court to evaluate the previously briefed motion for stay and issue its decision on or before May 10.

B. As Previously Briefed, a Stay Is Appropriate

A chief concern of NRAP 27(e) motions is that the moving party “notify respondents of the emergency before filing the motion.” *TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev., Adv. Op. 21, 506 P.3d 1056 (2022).

Petitioners have done so here, through phone calls to the offices of the real parties in interest to the writ petition. Petitioners have also alerted the clerk of this Court.

As discussed, the motion itself is already fully briefed. The passage of time merely necessitates its expedited resolution. For the reasons discussed in the motion and reply, the district court’s professed concern over a potential NRCP 49(e) violation is unfounded: the

deadline, still more than 17 months away, would be suspended during the period of a stay. That gives the parties and the district court adequate time to proceed to trial on any remaining claims after the resolution of the writ petition and the lifting of the stay.

Without a stay, petitioners would not only lose the object of the petition—the pretrial dismissal of the products-liability claims—but they may be unable to obtain effective relief on appeal. Instead, a stay is necessary to prevent the loss of the evidence necessary to defend the claim, as all of Lamborghini’s confidential information, including the evidence marked for use at trial, is required to be returned. The prospect of harm particularly great if Fiore, as an individual not in the regular business of selling or even leasing multiple vehicles, is nonetheless subjected to an astronomical product-defect judgment of the kind normally borne by commercial manufacturers or distributors like Lamborghini. The potential judgment’s magnitude would make it difficult to prevent execution during the appeal.

The district court itself contemplated that this Court could grant relief: “you have the remedy of seeking the relief from the Supreme Court so that if they intend to proceed on the writ, I’m sure that they

will grant a stay in that case.” (Ex. G to Mot., 4/6/22 Hr’g Tr., at 18:1-

4.) But to make that relief effective, the motion should be decided before trial begins on May 10.

Dated this 27th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

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Attorneys for Petitioners

NRAP 27(e) CERTIFICATE

A. Contact information

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Attorneys for Real Parties in Interest 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

Attorneys for Real Parties in Interest 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

B. Nature of Emergency

On April 6, 2022, the district court orally denied petitioners' motion for a stay pending this Court's resolution of the writ petition, which has been fully briefed since February 24, 2022. Although the district court has not entered a written order, petitioners obtained a transcript and promptly moved this Court for a stay. The motion in this Court has been fully briefed as of April 18.

Without a stay, petitioners would not only lose the object of the petition—the pretrial dismissal of the products-liability claims—but they may be unable to obtain effective relief on appeal. Instead, a stay is necessary to prevent the loss of the evidence necessary to defend the claim, as all of Lamborghini's confidential information, including the evidence marked for use at trial, is required to be returned. The prospect of harm particularly great if Fiore, as an individual not in the regular business of selling or even leasing multiple vehicles, is nonetheless subjected to an astronomical product-defect judgment of the kind normally borne by commercial manufacturers or distributors like Lamborghini. The potential judgment's magnitude would make it difficult to prevent execution during the appeal.

Petitioners cannot precisely predict when such a judgment would be entered, but as trial is set to begin on May 10, this Court should decide the previously motion no later than that date.

At the least, this Court should grant an interim stay while it considers whether to grant a stay for the full pendency of the writ petition.

C. Notice and Service

Today I personally called Rahul Ravipudi and Jennifer Andreevski to let them and their respective clients know that we would be making this request to resolve the previously briefed motion for stay on or before May 10. Both agreed that they had been adequately notified about this request. I e-mailed copies of the request and this certificate to each of the listed attorneys for real parties in interest.

I also alerted the clerk of this Court about the forthcoming request.

Dated this 27th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
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(702) 949-8200
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on April 27, 2022, I submitted the foregoing “Request to Convert ‘Motion for Stay Pending Writ Petition’ to Emergency Motion under NRAP 27(e)” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

William R. Brenske
Jennifer R. Andreevski
Ryan D. Krametbauer
BRENSKE ANDREEVSKI & KRAMETBBAUER
3800 Howard Hughes Parkway
Suite 500
Las Vegas, Nevada 89169

Attorneys for Real Parties in Interest 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

Corey M. Eschweiler
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Paul A. Traina
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Attorneys for Real Parties in Interest 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

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Nancy L. Allf
DISTRICT COURT JUDGE – DEPT. 27
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

Kapolnai, Emily

From: Lawrence, Karen <lawrencek@clarkcountycourts.us>
Sent: Wednesday, April 27, 2022 10:22 AM
To: 'Paul Traina'; JD Murdock, II; Ian Samson; 'Susan Vargas'; Helm, Jessica; Kapolnai, Emily; Kelley, Cynthia; Smith, Abraham; 'rkrametbauer@baklawlv.com'; 'bak@baklawlv.com'; 'f.hostetler@musickeeler.com'; 'corey@erinjuryattorneys.com'; Isolde Parr; 'miriam@erinjuryattorneys.com'; 'Anneke Shepard'; 'rpetersen@wileypetersenlaw.com'; 'Blanca@baklawlv.com'; 'paul@agajanianlaw.com'; Brent Anderson; Jin Hee Park; Sarah Rayburn; Mary Davis; Desiree Byrd; 'jlinke@perrywestbrook.com'; 'awestbrook@perrywestbrook.com'; Polsenberg, Daniel F.; 'Chastity Dugenia'; Rahul Ravipudi
Cc: White, Terrance
Subject: RE: Ben-Kely v. Speedway 757614 -

[EXTERNAL]

Just to be clear, the start date will be May 10...not 9. I did say the 9th in my first email then I sent another email saying the date would be May 10. Sorry for any confusion.
Karen

From: Paul Traina [mailto:traina@psblaw.com]
Sent: Wednesday, April 27, 2022 10:13 AM
To: JD Murdock, II; Lawrence, Karen; Ian Samson; 'Susan Vargas'; 'Helm, Jessica'; 'Kapolnai, Emily'; 'Kelley, Cynthia'; 'Smith, Abraham'; 'rkrametbauer@baklawlv.com'; 'bak@baklawlv.com'; 'f.hostetler@musickeeler.com'; 'corey@erinjuryattorneys.com'; Isolde Parr; 'miriam@erinjuryattorneys.com'; 'Anneke Shepard'; 'rpetersen@wileypetersenlaw.com'; 'Blanca@baklawlv.com'; 'paul@agajanianlaw.com'; Brent Anderson; Jin Hee Park; Sarah Rayburn; Mary Davis; Desiree Byrd; 'jlinke@perrywestbrook.com'; 'awestbrook@perrywestbrook.com'; 'Polsenberg, Daniel F.'; 'Chastity Dugenia'; Rahul Ravipudi
Cc: White, Terrance
Subject: RE: Ben-Kely v. Speedway 757614 -

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Ms. Lawrence,

Please be advised that the Plaintiffs, on behalf of Gwendolyn Ward and Zane Sherwood, are ready to start trial on May 9, 2022.

There are a couple of issues that need to be addressed by the Court before trial starts. SpeedVegas has indicated that they intend to use videotaped deposition testimony, in their case in chief, of three experts designated by Lamborghini. SpeedVegas never designated the Lamborghini experts as their own experts and, Lamborghini has settled with the Plaintiffs. The parties have met and conferred and are unable to resolve the issue without Court intervention. Plaintiffs Motion to Exclude the use of Lamborghini Experts Deposition Testimony in SpeedVegas' Case in Chief will be filed by tomorrow.

The second issue are the jury instructions applicable to this case, in particular any of SpeedVegas' defenses. The parties agreed to exchange drafts of the proposed instructions (which Plaintiffs have done already) and will raise any impasse with the Court for resolution before the parties commence with voir dire.

Other issues may arise as Plaintiffs are waiting for the SpeedVegas Defendants to provide any revisions to the Joint Pre-Trial Memorandum.

Thank you,

From: JD Murdock, II <JMurdock@talawfirm.com>

Sent: Tuesday, April 26, 2022 11:05 AM

To: Lawrence, Karen <lawrencek@clarkcountycourts.us>; Ian Samson <samson@psblaw.com>; 'Susan Vargas' <SVargas@kslaw.com>; 'Helm, Jessica' <JHelm@lewisroca.com>; 'Kapolnai, Emily' <EKapolnai@lewisroca.com>; 'Kelley, Cynthia' <CKelley@lewisroca.com>; 'Smith, Abraham' <ASmith@lewisroca.com>; 'rkrametbauer@baklawlv.com' <rkrametbauer@baklawlv.com>; 'bak@baklawlv.com' <bak@baklawlv.com>; Paul Traina <traina@psblaw.com>; 'f.hostetler@musicpeeler.com' <f.hostetler@musicpeeler.com>; 'corey@erinjuryattorneys.com' <corey@erinjuryattorneys.com>; Isolde Parr <parr@psblaw.com>; 'miriam@erinjuryattorneys.com' <miriam@erinjuryattorneys.com>; 'Anneke Shepard' <AShepard@kslaw.com>; 'rpetersen@wileypetersenlaw.com' <rpetersen@wileypetersenlaw.com>; 'Blanca@baklawlv.com' <Blanca@baklawlv.com>; 'paul@agajanianlaw.com' <paul@agajanianlaw.com>; Brent Anderson <BAnderson@talawfirm.com>; Jin Hee Park <JHPark@talawfirm.com>; Sarah Rayburn <SRayburn@talawfirm.com>; Mary Davis <MDavis@talawfirm.com>; Desiree Byrd <DByrd@talawfirm.com>; 'jlinke@perrywestbrook.com' <jlinke@perrywestbrook.com>; 'awestbrook@perrywestbrook.com' <awestbrook@perrywestbrook.com>; 'Polsenberg, Daniel F.' <DPolsenberg@lewisroca.com>; 'Chastity Dugenia' <cdugenia@wileypetersenlaw.com>

Cc: White, Terrance <Dept27LC@clarkcountycourts.us>

Subject: RE: Ben-Kely v. Speedway 757614 -

CAUTION: External Email

Hi Ms. Lawrence,

On behalf of Defendants SpeedVegas and Phil Fiore, we will be ready to start May 9.

Please note earlier today we were informed by counsel for Plaintiffs Sherwood Estate, that they anticipate their case will last 4 to 5 weeks. We expect our defense case will last 1 to 2 weeks. We are unsure how long the Ben-Kely Estate Plaintiff's and the Ben-Kely Estate defense cases will last. However, depending on how many hours we get each trial day, it looks like the case will likely last through at least June 17 and likely until June 24th.

Thank you,
JD

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From: Lawrence, Karen <lawrencek@clarkcountycourts.us>

Sent: Tuesday, April 26, 2022 11:38 AM

To: 'Ian Samson' <samson@psblaw.com>; 'Susan Vargas' <SVargas@kslaw.com>; 'Helm, Jessica' <JHelm@lewisroca.com>; 'Kapolnai, Emily' <EKapolnai@lewisroca.com>; 'Kelley, Cynthia' <CKelley@lewisroca.com>; 'Smith, Abraham' <ASmith@lewisroca.com>; JD Murdock, II <JMurdock@talawfirm.com>; 'rkrametbauer@baklawlv.com' <rkrametbauer@baklawlv.com>; 'bak@baklawlv.com' <bak@baklawlv.com>; 'Paul Traina' <traina@psblaw.com>; 'f.hostetler@musicpeeler.com' <f.hostetler@musicpeeler.com>; 'corey@erinjuryattorneys.com' <corey@erinjuryattorneys.com>; 'Isolde Parr' <parr@psblaw.com>; 'miriam@erinjuryattorneys.com' <miriam@erinjuryattorneys.com>; 'Anneke Shepard' <AShepard@kslaw.com>; 'rpetersen@wileypetersenlaw.com' <rpetersen@wileypetersenlaw.com>; 'Blanca@baklawlv.com'

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<cdugenia@wileypetersenlaw.com>

Cc: White, Terrance <Dept27LC@clarkcountycourts.us>

Subject: Ben-Kely v. Speedway 757614 -

Can I please get a response to my question from yesterday saying: Judge wanted me to make sure you are on track to start May 9. Please respond to this email. Thank you.