

IN THE SUPREME COURT OF THE STATE OF NEVADA

MM DEVELOPMENT COMPANY,
INC., D/B/A PLANET 13, a Nevada
Corporation,

Appellant,

vs.

TRYKE COMPANIES SO NV, LLC, A
Nevada Limited Liability Company,

Respondent.

Case No. 81938

District Court Case No.
A-19-804883-C

Electronically Filed
Jan 18 2022 03:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MM DEVELOPMENT COMPANY,
INC., a Nevada corporation,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JESSICA PETERSON, DISTRICT
COURT JUDGE,

Respondents,

and

TRYKE COMPANIES SO NV, LLC, A
Nevada Limited Liability Company,
Real Parties in Interest.

Case No. 83920

District Court Case No.:
A-19-804883-C

**APPELLANT/PETITIONER'S MOTION TO CONSOLIDATE APPEAL
AND WRIT PETITION AND TO POSTPONE ORAL ARGUMENT**

Appellant/Petitioner MM Development Company, Inc. (“MM”), moves to consolidate its appeal in Case No. 81938 with its petition for a writ of mandamus in Case No. 83920 against Tryke Companies SO NV, LLC (“Tryke”). *The cases should be consolidated by February 16, 2022*, the date currently set for oral argument in the appeal. This Motion is based on the following Memorandum of Points and Authorities and the papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

MM moves this Court to consolidate its appeal and writ petition arising from the same underlying district court action, between the same parties, and concerning the same facts and legal issues. Consolidating the appeal and the writ petition will serve judicial economy and help this Court decide the legal issues. Moreover, this Court’s decision in the appeal will affect the outcome of the writ petition. Therefore, the appeal and the writ petition should be consolidated.

II.

RELEVANT FACTUAL BACKGROUND

The underlying action is essentially a competitive business dispute between retail cannabis dispensaries in Las Vegas, Nevada. MM owns and operates Planet 13, and Tryke owns and operates Reef; these dispensaries are located across the street from each other. At Planet 13, MM runs a Driver Compensation Program

where it tips taxi and rideshare drivers for bringing passengers to Planet 13, a legal practice widely used throughout the Las Vegas valley. On November 5, 2019, Tryke sued MM for intentional interference with prospective economic advantage (“IIPEA”), civil conspiracy, and aiding and abetting. Tryke’s claims are entirely premised on the fact that MM tips taxi and rideshare drivers.

Almost ten months later on August 24, 2020, Tryke moved for a preliminary injunction to prevent MM from operating its Driver Compensation Program. The district court granted the preliminary injunction, concluding that MM’s practice of tipping taxi and rideshare drivers incentivized those drivers to unlawfully divert passengers from Reef to Planet 13. MM appealed that decision on March 25, 2021 and briefing for the appeal was completed on July 23, 2021.

On September 9, 2021, after the expiration of the deadline to move to alter or amend the pleadings, MM moved for judgment on the pleadings, which the district court denied. MM then petitioned for a writ of mandamus on December 16, 2021. On January 5, 2022, oral arguments were scheduled for February 16, 2022 on MM’s preliminary injunction appeal.

MM now moves to consolidate the two pending appellate proceedings and continue the February 16, 2022 oral arguments to allow briefing on MM’s writ petition to be completed prior to any hearing.

III. ARGUMENT

A. Legal Standard

A separately filed appeal and writ petition “may be joined or consolidated by the Supreme Court upon its own motion or upon motion of a party.” *See* NRAP 3(b); *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 132 Nev. 784, 787, 383 P.3d 246, 248 (2016) (citing NRAP 3(b) when consolidating two writ petitions). Consolidation is favored when cases raise the same or similar issues, and will result in judicial economy. *See Nevada Yellow Cab*, 132 Nev. At 787, 383 P.3d at 248 (consolidating writ petitions “[g]iven the identical legal issues”); *Prieur v. D.C.I. Plasma Ctr. of Nev.*, 102 Nev. 472, 473, 726 P.2d 1372, 1372 (1986) (consolidating appeals because they “present[ed] identical issues and similar facts”).

B. Consolidation Serves Judicial Economy.

The appeal in Case No. 81938 and the writ petition in Case No. 83920 arise from the same underlying district court action between the same parties and address almost identical issues. The appeal is based on whether the district court properly granted a preliminary injunction, and the writ petition is based on whether the district court properly denied judgment on the pleadings. The district court relied on the same flawed premise for both rulings: that Tryke is entitled to a private right of action for violations of statutes which do not provide for such claims.

Specifically, in both the appeal and the writ petition, MM argues that Tryke cannot succeed on its IIPEA, civil conspiracy, or aiding and abetting claims because Tryke cannot demonstrate that MM committed any underlying wrong. Tryke insists the underlying wrong is MM's practice of tipping taxi and rideshare drivers, but that practice is legal. By consolidating the appeal and the writ petition, the Court can address all of the parties' appellate issues at one time, in a single decision. The additional briefing in the writ petition will assist the Court in determining whether Tryke's claims are likely to succeed on the merits in the appeal. Finally, this Court's decision in the appeal will directly affect its decision in the writ petition. Therefore, MM requests that Case Nos. 81938 and 83920 be consolidated.

C. Oral Argument Should be Postponed.

"A motion to postpone the argument must be filed reasonably in advance of the date fixed for hearing." NRAP 34(a). Oral argument in the appeal is set for February 16, 2022. However, should this Court consolidate the appeal with the writ petition, the oral argument should be postponed to allow for full briefing of the writ petition.

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IV.

CONCLUSION

Because the appeal and the writ petition arise from the same district court action, involve overlapping issues of law and fact, and will promote judicial economy, MM requests this Court grant this Motion to Consolidate. MM also requests that upon consolidation, oral argument be postponed until the writ petition is fully briefed.

Respectfully submitted this 18th day of January, 2022.

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CERTIFICATE OF SERVICE

I certify that on the 18th day of January, 2022, I electronically filed and served a copy of this Motion to Consolidate Appeal and Writ Petition and to Postpone Oral Argument upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

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Dated this 18th day of January, 2022.

/s/ Jessica Lopez
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