

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TAHICAN, LLC,

Petitioner,

VS.

THE EIGHTH JUDICIAL DISTRICT  
COURT of the State of Nevada in and  
for the County of Clark, and THE  
HONORABLE KATHLEEN E.  
DELANEY,

Respondents.

and

MAX JOLY, PATRICIA JOLY, JEAN  
FRANCOIS RIGOLLET, LE  
MACARON LLC and BYDOO, LLC,

## Real Parties in Interest

Appeal No.: 22-845-2 Electronically Filed  
Mar 10 2022 09:54 a.m.  
Elizabeth A. Brown  
Nature of Proceeding: writ of Clerk of Supreme Court  
Mandamus

Court below:  
Eighth Judicial District Court  
Case No.: A-16-734832-C

**PETITIONER TAHICAN, LLC’S MOTION FOR STAY  
PENDING APPEAL PURSUANT TO NRAP 8**

COMES NOW Petitioner Tahican, LLC (“Tahican”), by and through its counsel R. Christopher Reade, Esq. and P. Rowland Graff, Esq. of the law firm of Cory Reade Dows and Shafer, submits the instant Motion for Stay Pending Appeal Pursuant to NRAP 8. This Motion is based upon the Points and Authorities

1 contained herein and incorporated herein by this reference, and any and all papers  
2 and pleadings on file herein, as well as any argument required by the Court.

3 DATED this 10th day of March, 2022.

4 CORY READE DOWS & SHAFER

5  
6  
7 By: R. Christopher Reade  
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19 TAHICAN, LLC

## 20 **POINTS AND AUTHORITIES**

21 Tahican requests that this Court stay the district court litigation to allow a  
22 writ of mandamus to be brought before the Nevada appellate courts. The writ of  
23 mandamus is requested to expunge a Notice of Pendency of Action and Lis  
24 Pendens (“Lis Pendens”) which has been wrongful filed and recorded on  
25 Appellant’s real property know as 2003 Smoketree Village Circle, Henderson,  
26 Nevada 89012 (“Property”).  
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1 A party must first request a stay in the district court NRAP 8(a)(1)(A). This  
2 requirement also applies to seeking a stay before filing a writ with the Nevada  
3 appellate courts. Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650,  
4 657, 6 P.3d 982, 986 (2000). The district court has authority to issue a stay pursuant  
5 to NRCp 62(d).  
6

7 Tahican requested a stay in the underlying district court case as an  
8 alternative relief in its Motion to Expunge Lis Pendens Pursuant to NRS 14.015  
9 (“Lis Pendens Motion”). (II AA255–AA257). During the oral argument on the Lis  
10 Pendens Motion, Tahican reiterated its Motion for Stay. (II AA428). The  
11 underlying district court originally granted the stay. “While I believe it might make  
12 more sense to wait on seeking relief, if Tahican does wish to seek writ relief, then  
13 I believe granting a stay at this time, at this level, is appropriate.” (II AA428–  
14 AA429). See also (II AA440). The court then stated:  
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18 “I think there's some confusion about the stay. This case is not stayed.  
19 The decision to expunge the lis pendens not, so to speak, is stayed.  
20 Meaning the decision not to expunge the lis pendens is stayed. That's  
21 it. And if Mr. Reade wants to get writ relief on that, he can try.

22 (II AA429). See also (II AA440). While the court had originally stated that the  
23 motion to stay the case was granted, the stay was limited to just the Lis Pendens  
24 Motion. (II AA428–AA429 & II AA440–AA441). In the March 1, 2022, final  
25 pretrial hearing, the court stated that Tahican had sought a stay and the court had  
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1 denied the motion for stay for purposes of NRAP 8. See Affidavit of P. Rowland  
2 Graff ¶¶7–8, attached as Exhibit “A”.

3 NRAP 8(c) provides the factors for the appellate court to review when  
4 deciding to issue the stay. Those factors are:  
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6 (1) whether the object of the appeal or writ petition will be defeated if  
7 the stay or injunction is denied; (2) whether appellant/petitioner will  
8 suffer irreparable or serious injury if the stay or injunction is denied;  
9 (3) whether respondent/real party in interest will suffer irreparable or  
10 serious injury if the stay or injunction is granted; and (4) whether  
appellant/petitioner is likely to prevail on the merits in the appeal or  
writ petition.

11 NRAP 8(c). The first factor is will the writ petition be defeated if the stay is denied.

12 NRAP 8(c)(1). In this matter, Joly has filed a Lis Pendens which is beyond what  
13 is authorized by NRS 14.010. The Nevada Supreme Court has recognized the  
14 importance of restoring the vendibility of land after a lis pendens has been  
15 recorded. See Coury v. Tran, 111 Nev. 652 (1995). In this mater, Joly filed a Lis  
16 Pendens which was not authorized by Nevada law. Every day that the Lis Pendens  
17 it is in place, harms Tahican. If the stay is not granted, the underlying matter will  
18 continue towards a trial and possible a subsequent appellate review and Tahican  
19 will continue to be deprived of the use of its property.  
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22 The second and third factors weigh any irreparable harm to either party.  
23 NRAP 8(c)(2)&(3). Tahican will suffer irreparable harm if the stay is not granted.  
24 “Normally, the only cognizant harm threatened to the parties is increased litigation  
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1 costs and delay.” Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d  
2 36, 39 (2004). “We have previously explained that litigation costs, even if  
3 potentially substantial, are not irreparable harm.” Id. However, it is not the costs  
4 of suit that are harming Tahican, it is the slander of Tahican’s title to the Property.  
5 See Dixon v. Thatcher, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) (holding  
6 that "real property and its attributes are considered unique and loss of real property  
7 rights generally results in irreparable harm"). Joly filed an unauthorized lis pendens  
8 which is causing irreparable harm to Tahican.  
9

11 The third factor is whether Joly will be irreparable harmed by the stay. Since  
12 Joly has filed a Lis Pendens, that is beyond the scope of NRS 14.010, the only harm  
13 Joly has is a delay in the litigation. “[A] mere delay in pursuing...litigation  
14 normally does not constitute irreparable harm.” Mikohn Gaming Corp. 120 Nev.  
15 at 253, 89 P.3d at 39 (2004).  
16

18 The last factor is the likelihood of the success on the merits. NRAP 8(c)(4).  
19 This factor is strongly in favor of Tahican. Joly filed a Lis Pendens on the Property.  
20 (I AA046-AA048). In this case, none of Joly’s causes of action affect the title or  
21 possession of the Property. (I AA066–AA094). “[L]is pendens are not appropriate  
22 instruments for use in promoting recoveries in actions for personal or money  
23 judgments; rather, their office is to prevent the transfer or loss of real property  
24 which is the subject of dispute in the action that provides the basis for the lis  
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pendens.” Weddell v. H2O, Inc., 128 Nev. 94, 106, 271 P.3d 743, 751 (2012). The Nevada Supreme Court has held that lis pendens are not appropriate in fraudulent transfer cases. Levinson v. Eighth Judicial Dist. Court, 109 Nev. 747, 749, 857 P.2d 18, 19 (1993). As the lis pendens is beyond the scope of the NRS 14.010, success on appeal is balanced in favor of Tahican.

In deciding whether to grants a stay, this Court must look at the four factors in NRAP 8(c). Since these factors all balance in favor of granting the stay, the Court should grant this motion and stay the underlying district court case until these issues with this pending writ of mandamus has been decided.

### **CONCLUSION**

This Court should issue a stay in the underlying district court case. Tahican requested a stay in the underlying district court case, which was denied for purposes of NRAP (8)(a)(1)(A). The underlying district court confirmed this in the March 1, 2022 status conference.

When deciding to issue the stay, the appellate court must review the factors in NRAP 8(c). The factors are whether the object of the writ petition will be defeated if the stay is denied; whether either party will suffer irreparable or serious injury if the stay is denied; and whether petitioner is likely to prevail on the merits in the appeal or writ petition. In balancing these factors, the decision to grant this stay weighs heavily in favor of Tahican. Tahican asks this Court to grant a stay in

1 the underlying district court case until such time as this Court has ruled on the  
2 Petition for Writ of Mandamus.

3  
4 Dated this 10th day of March, 2022.

5 CORY READE DOWS & SHAFER

6  
7 By: /s/ R. Christopher Reade  
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19 TAHICAN, LLC  
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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that on the 10th day of March, 2022,  
a copy of the foregoing Petition for Writ of Mandamus was deposited in the US  
Mail by first class mail, postage fully prepaid, to the following

Honorable Kathleen E. Delaney  
EIGHTH JUDICIAL DISTRICT COURT  
Department 25  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Jean Francois Rigollet  
2003 Smoketree Village  
Henderson, Nevada 89012  
Defendant Pro Se and Real Parties in  
Interest

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Attorneys for Defendants and Real  
Parties in Interest Le Macaron LLC and  
Bydoo LLC

/s/ Elizabeth Arthur  
An Employee of CORY READE DOWS & SHAFER



**EXHIBIT “A”**

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**AFFIDAVIT OF P. ROWLAND GRAFF**

I, P. Rowland Graff, Esq., declare under the penalty of perjury, that:

1. I am an associate attorney at the Law Firm of Cory Reade Dows & Shafer, counsel for Petitioner TAHICAN, LLC (“Tahican”).

2. I have read and know the contents of this Affidavit and the facts stated therein.

3. This Petition states facts true of my own knowledge, except as to those matters stated on information and belief, and as to such matters, I believe them to be true.

4. Tahican requested a stay in the underlying district court case as an alternative relief in its Motion to Expunge Lis Pendens Pursuant to NRS 14.015 (“Lis Pendens Motion”).

5. While the court had ruled that the motion for stay was granted, the stay was limited to just the Lis Pendens Motion.

6. During the March 1, 2022 Calendar Call hearing, the court again discussed Tahican’s motion for stay.

7. After a discussion of whether a motion for stay had been brought, the district court found that Tahican had properly brought a motion for stay before the district court.

1           8.     The court further found that the court had reviewed the Motion to Stay  
2 and that Tahican's motion for stay was denied for purposes of NRAP 8.

3           FURTHER YOUR AFFIANT SAYETH NAUGHT.  
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7 \_\_\_\_\_  
8 P. ROWLAND GRAFF

9     Subscribed and Sworn to  
10    before me on this 10th day of March, 2022.

11   
12 \_\_\_\_\_

13   Notary Public in and for  
14   Said County and State

