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

3 TAHICAN, LLC,)
4 Petitioner,)

5 vs.)

6 THE EIGHTH JUDICIAL DISTRICT)
7 COURT of the State of Nevada in and)
8 for the County of Clark, and THE)
9 HONORABLE KATHLEEN E.)
10 DELANEY,)

11 Respondents.)

12 and)

13 MAX JOLY, PATRICIA JOLY, JEAN)
14 FRANCOIS RIGOLLET, LE)
15 MACARON LLC and BYDOO, LLC,)

16 Real Parties in)
17 Interest)
18)
19)

Electronically Filed
Mar 10 2022 09:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Mandamus

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

20 **PETITIONER TAHICAN, LLC’s MOTION FOR STAY**
21 **PENDING APPEAL PURSUANT TO NRAP 8**

22 COMES NOW Petitioner Tahican, LLC (“Tahican”), by and through its
23 counsel R. Christopher Reade, Esq. and P. Rowland Graff, Esq. of the law firm of
24 Cory Reade Dows and Shafer, submits the instant Motion for Stay Pending Appeal
25 Pursuant to NRAP 8. This Motion is based upon the Points and Authorities
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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
8 R. CHRISTOPHER READE, ESQ.
9 Nevada Bar No. 006791
10 P. ROWLAND GRAFF, ESQ.
11 Nevada Bar No. 015050
12 1333 North Buffalo Drive, Suite 210
13 Las Vegas, Nevada 89128
14 Telephone: (702) 794-4411
15 Facsimile: (702) 794-4421
16 create@crdslaw.com
17 rgraff@crdslaw.com
18 Attorney for Appellant
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
11 appellant/petitioner is likely to prevail on the merits in the appeal or
12 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 Cury 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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23 The second and third factors weigh any irreparable harm to either party.
24 NRAP 8(c)(2)&(3). Tahican will suffer irreparable harm if the stay is not granted.
25 “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).
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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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1 pendens.” Weddell v. H2O, Inc., 128 Nev. 94, 106, 271 P.3d 743, 751 (2012). The
2 Nevada Supreme Court has held that lis pendens are not appropriate in fraudulent
3 transfer cases. Levinson v. Eighth Judicial Dist. Court, 109 Nev. 747, 749, 857
4 P.2d 18, 19 (1993). As the lis pendens is beyond the scope of the NRS 14.010,
5 success on appeal is balanced in favor of Tahican.
6

7 In deciding whether to grants a stay, this Court must look at the four factors
8 in NRAP 8(c). Since these factors all balance in favor of granting the stay, the Court
9 should grant this motion and stay the underlying district court case until these issues
10 with this pending writ of mandamus has been decided.
11

12 CONCLUSION

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14 This Court should issue a stay in the underlying district court case. Tahican
15 requested a stay in the underlying district court case, which was denied for
16 purposes of NRAP (8)(a)(1)(A). The underlying district court confirmed this in the
17 March 1, 2022 status conference.
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19 When deciding to issue the stay, the appellate court must review the factors
20 in NRAP 8(c). The factors are whether the object of the writ petition will be
21 defeated if the stay is denied; whether either party will suffer irreparable or serious
22 injury if the stay is denied; and whether petitioner is likely to prevail on the merits
23 in the appeal or writ petition. In balancing these factors, the decision to grant this
24 stay weighs heavily in favor of Tahican. Tahican asks this Court to grant a stay in
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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
8 R. CHRISTOPHER READE, ESQ.
9 Nevada Bar No. 006791
10 P. ROWLAND GRAFF, ESQ.
11 Nevada Bar No. 015050
12 1333 North Buffalo Drive, Suite 210
13 Las Vegas, Nevada 89128
14 Telephone: (702) 794-4411
15 Facsimile: (702) 794-4421
16 create@crdslaw.com
17 rgraff@crdslaw.com
18 Attorneys for Appellant
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

Jared B, Jennings, Esq.
Adam R. Fulton, Esq.
Logan G. Wilson, Esq.
JENNINGS & FULTON
2580 Sorrel Street
Las Vegas, Nevada 89146
Attorneys for Plaintiff and Real Party
in Interest Max Joly

R. Christopher Reade, Esq.
Nevada Bar No. 006791
CORY READE DOWS & SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
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”

EXHIBIT “A”

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.

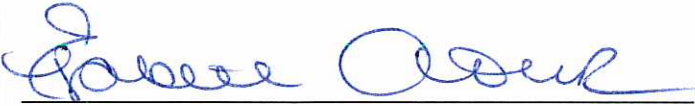
7. After a discussion of whether a motion for stay had been brought, the district court found that Tahican had properly brought a motion for stay before the district court.

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 _____
9 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

