

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>CLARK NMSD, LLC, D/B/A THE SANCTUARY</p> <p>Appellant,</p> <p>vs.</p> <p>JENNIFER M. GOLDSTEIN, AN INDIVIDUAL,</p> <p>Respondent,</p>	<p>Supreme Court No. 84623</p> <p>District Court Case No. A738510</p> <p>Electronically Filed Dec 16 2022 04:29 PM Elizabeth A. Brown Clerk of Supreme Court</p>
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**OPPOSITION TO APPELLANT’S EMERGENCY MOTION FOR STAY
OR INJUNCTION**

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Comes now Respondent, Jennifer M. Goldstein (“Goldstein”), by and through her attorneys of record, Dickinson Wright PLLC, and hereby files her Opposition to Appellant Clark NMSD, LLC, d/b/a The Sanctuary’s (“Clark”) Emergency Motion for Stay or Injunction (the “Motion”) filed December 5, 2022.

I. INTRODUCTION

As demonstrated below, Clark filed the instant Motion in bad faith and for no purpose other than to continue to thwart Respondent’s efforts to collect on her judgment against NuVeda, LLC that currently exceeds \$3 million. NuVeda has continuously made every effort to prevent Respondent from collecting on her judgment, both in the District Court and in a bad faith bankruptcy filing, and now has resorted to this Court, through Clark, to aid in its efforts.¹ In so doing, Clark has completely ignored the clear requirements of NRAP 8, has given this Court absolutely no basis to stay any of the proceedings below, specifically, the pending motion to appoint a receiver over NuVeda.

¹ On December 15, 2022, NuVeda filed a Joinder to Relief Requested by Appellant, purporting to join Clark’s Opening Brief and Motion. (*See* Joinder to Relief Requested by Appellant, on file herein). Although NuVeda claims that it does not own any interest in Clark, it has nonetheless “join[ed] in the relief requested by” Clark in this appeal. (*Id.*) There is no apparent reason for NuVeda to file a joinder to Clark’s Opening Brief and Motion other than to further engage in efforts to forestall Respondent’s collection efforts.

Clark's threadbare and procedurally misguided Motion should be denied outright.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Clark's Motion is wrought with misleading and outright inaccurate statements regarding the factual and procedural history of this case. As such, Respondent takes this opportunity to accurately inform this Court of the facts germane to resolution of Clark's Motion.

A. Clark's Application and the District Court's Decision

Respondent is the creditor, and NuVeda the debtor, on a judgment in the amount of \$2,426,163.80 entered against NuVeda on November 15, 2019 (the "Judgment"). (I AA 30). After several, unsuccessful attempts to collect on her Judgment, on June 11, 2021, Respondent caused writs of execution to be issued for several locations that were part of NuVeda's business operations, including Clark. (I AA 32). On August 9, 2021, the Clark County Constable's Office seized \$638.00 from Clark's dispensary location at 1324 S. 3rd Street, Las Vegas, Nevada, 89104. (I AA 21). On August 12, 2021, Clark and NuVeda filed their Application/Petition Pursuant to NRS 31.070(5) and Request to Prohibit Goldstein From Any Further Collection Activity Without Court Approval (the "Application"), wherein Clark requested return of the seized cash, and an order

requiring Respondent “to file a motion with notice to and an opportunity to be heard by NuVeda for approval of any further collection activity.” (I AA 10).²

The District Court entered a minute order dated October 5, 2021, denying the Application without prejudice, and directing Respondent to submit a written order for the Court’s approval. (I AA 61). On March 4, 2022, Clark filed a Motion to Enter Order from hearing and for Reconsideration of Denial of Application/Petition Pursuant to NRS 31.070(5) (the “Motion for Reconsideration”), wherein Clark asked the District Court to (1) enter an order denying the Application, (2) reconsider its Order denying the Application, and (3) enter a stay if the Motion for Reconsideration was denied. (I AA 63-72). The District Court entered its Order Denying the Application on March 11, 2022. (I AA 85-87). Finding that the Motion for Reconsideration was prematurely filed before the Notice of Entry of the Order Denying the Application was filed, on April 21, 2022, the District Court denied the Motion for Reconsideration pursuant to EDCR 2.24(b). (II AA 116; III AA 221-223). Clark filed its Notice of Appeal in this Court on April 21, 2022. (*See* Notice of Appeal, on file herein).

Before the District Court entered its Order Denying the Motion for Reconsideration, on April 5, 2022, Clark filed its Second Renewed Motion for

² NuVeda had previously filed a Motion to Quash the writs of execution, which the District Court denied on July 30, 2021 (**Exhibit 1** Ord. Denying Mot. to Quash). The District Court determined that “a judgment debtor such as NuVeda lacks standing to assert exemptions on behalf of third parties” including Clark. (*Id.* ¶ 10).

Reconsideration of Denial of Application/Petition Pursuant to NRS 31.070(5) (the “Second Motion for Reconsideration”), wherein Clark again sought reconsideration of the Order Denying the Application. (II AA 130-140). In its Reply in Support of the Second Motion for Reconsideration, Clark stated that “[a] stay imposed by this court on [Respondent’s] illegal collection activities is no longer necessary. There is an automatic stay in place because of the chapter 11 bankruptcy petition of NuVeda. Therefore the request is withdrawn.” (IV AA 254). On May 20, 2022, the District Court entered its Order Denying the Second Motion for Reconsideration, finding that “there is no mechanism” under the NRCP or the Eighth Judicial District Court Local Rules for filing a “renewed” motion for reconsideration. (IV AA 264). The District Court also denied the Second Motion for Reconsideration on the basis that Respondent was “impermissibly precluded from addressing the impact, if any, of the Notice of Appeal” filed in this Court. (IV AA 265).

B. Respondent’s Motion to Appoint Receiver

On March 7, 2022, Respondent filed in the District Court a Motion to Appoint a Receiver over NuVeda and its subsidiaries and affiliates. (*See* Mot., Ex. 5). In the Motion to Appoint Receiver, Respondent argued that a receiver over NuVeda was appropriate under the circumstances because (1) Respondent had attempted to collect on her judgment through several less intrusive mechanisms

with no avail, and (2) NuVeda had made all efforts to thwart Respondent's collection efforts. (*See generally, id.*) In its Reply in Support of its Motion to Appoint Receiver, Respondent also alerted the District Court that, pursuant to the terms of a certain Membership Interest Exchange and Contribution Agreement (the "Agreement"), the principals of NuVeda had attempted to strip NuVeda of all of its assets, and transfer the same assets, with the same individuals retaining their respective ownership interests, into a newly formed Delaware entity, "NuVeda DE." (**Exhibit 2**, Reply in Support of Mot. to Appoint Receiver). Respondent further explained that this facially fraudulent transfer constituted an additional basis for the appointment of a receiver over NuVeda. (*Id.*)

C. NuVeda's Bankruptcy

On April 11, 2022, the day before the Motion to Appoint Receiver was set to be heard, NuVeda filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court, District of Nevada, Case No. 22-11249-abl (the "NuVeda Bankruptcy Case"), and filed a Notice of Suggestion of Bankruptcy in this case on the same day. (**Exhibit 3**, Notice of Suggestion of Bankruptcy). Respondent filed a Motion to Dismiss the NuVeda Bankruptcy Case, which the Bankruptcy Court ultimately granted. In dismissing the NuVeda Bankruptcy Case, the Bankruptcy Court determined that "[o]n the entire record before it," NuVeda "has no assets or income to support a feasible plan." (Mot. Ex. 2, 46:17-18, 46:24). While Clark

characterizes this finding as conclusive proof that NuVeda has no assets, Clark ignores that the Bankruptcy Court’s determination that NuVeda has no assets was based on the schedules provided to the Bankruptcy Court *by NuVeda*. (See **Exhibit 4**, Schedule of Assets).

What is far more telling is the Bankruptcy Court’s determination that “by filing the [NuVeda Bankruptcy Case, NuVeda] was and is attempting to first, unreasonably deter and harass [Respondent] and its other creditors” and “second, to impede the exercise of [Respondent’s] state court collection rights and remedies.” (Mot., Ex. 2, 46:13-17). Importantly, the Bankruptcy Court also determined that it was

of the view that the substance of the issues here can best be resolved through state court receivership proceedings and enforcement of the state court’s judgment that has already been entered and is final in terms of its not being appealable. There isn’t anything else to do in connection with the state court proceedings, other than to enforce it for purposes of collection, and that is something that the state court receivership statute works well for.

(*Id.*, 60:7-14).

Also in the NuVeda Bankruptcy Case, the Nevada Cannabis Compliance Board (“CCB”) filed a Limited Joinder to Respondent’s Motion to Dismiss, wherein it disclosed that “the CCB’s records reflect [NuVeda], not NuVeda DE, as the parent company that owns both Clark NMSD and Nye Naturals.” (**Exhibit 5**, CCB’s Limited Joinder to Motion to Dismiss). The CCB did stipulate to withdraw

its Limited Joinder in the NuVeda Bankruptcy Case. (Mot., Ex, 1). However, after Clark filed its instant Motion, the CCB filed a Limited Joinder to Respondent's Request to Set Hearing on Motion to Appoint Receiver, stating that it had "come to the CCB's attention" that NuVeda and Clark "misrepresented in recent court proceedings, either hinting or outright claiming that the CCB agrees with" Clark's position that NuVeda does not own Clark. (**Exhibit 6**, CCB's Limited Joinder to Request for Hearing).

III. ARGUMENT

A. Appellant has Failed to Comply with NRAP 8(a)(2)(A)

Pursuant to NRAP 8(a)(1), "[a] party must ordinarily move first in the district court for" a stay of proceedings in a district court pending appeal or an order granting an injunction while an appeal is pending. NRAP 8(a)(1)(A)-(C). "A motion for the relief mentioned in Rule 8(a)(1) . . . *shall* (i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion . . ." NRAP 8(a)(2)(A)(i)(ii) (emphasis added).

Here, Clark does not argue that it previously moved the District Court for an order granting an injunction or stay while this appeal remains pending. (*See generally*, Mot.) Instead, Clark merely asserts that it "requested as part of its relief before Department 31 for an order prohibiting Respondent from pursuing her

illegal collection activity,” and “also requested a stay to pursue the matter before the Nevada Supreme Court.” (Mot. at 6). However, to the extent Clark’s position is that these actions below constitute compliance with NRAP 8(a), Clark is mistaken.

Earlier this year, this Court addressed the requirements of NRAP 8(a)(2)(A) in *TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev. Adv. Op. 21, 506 P.3d 1056 (2022). There, “appellant TRP Fund VI, LLC, sought a preliminary injunction to enjoin respondents PHH Mortgage Corporation and Federal National Mortgage Association from foreclosing under the first position deed of trust on its property.” *Id.* at 1057. The district court entered an order denying the preliminary injunction, and TRP Fund appealed. *Id.* TRP Fund filed in this Court an emergency motion for stay and/or injunction, asserting “that it was ‘clearly impracticable’ to seek a stay pending appeal in the district court as set forth in NRAP 8(a) because the district court had just refused to grant it a preliminary injunction seeking similar relief, such that it ‘would be a waste of time and resources’ to ask that court for a stay.” *Id.* Respondents filed a response to the motion for stay and/or preliminary injunction, arguing the motion should be denied because TRP Fund “failed to first seek stay relief in the district court or to demonstrate that doing so was impracticable.” *Id.* This Court agreed with respondents.

This Court first stated that “[i]mpracticable’ requires the movant to show that it was ‘not capable’ of first seeking relief in the district court or that such an

act could not be done.” *Id.* Applying that standard, this Court held that “unless movants can demonstrate that first asking the district court for relief is truly impracticable, they are required to seek stay and injunctive relief pending appeal in the district court even when that court has denied them a preliminary injunction.” *Id.* at 1058. Determining that seeking an injunction or stay before the district court was not impractical, this Court denied TRP Fund’s emergency motion for stay or injunction, notwithstanding that the district court had previously denied TRP Fund’s prior motion for injunctive relief. *Id.*³

Here, Clark does not even argue that it sought injunctive relief or a stay of proceedings before the District Court while its appeal was pending. Moreover, as was the case in *TRP Fund*, Clark’s prior request for an order prohibiting collection activity or a stay to pursue the instant appeal *before* this appeal was initiated does not satisfy the requirements of NRAP 8(a)(1).⁴ Finally, Clark does not argue that

³ Since its publication, this Court has twice cited to *TRP Fund VI, LLC v. PHH Mortg. Corp.* for the proposition “that appellants’ failure to first seek relief in the district court per NRAP 8(a)(1) would preclude relief.” *Matter of Lenk Fam. Tr.*, 519 P.3d 501 (Nev. 2022) (unpublished); *see also Quaintance v. Eighth Judicial Dist. Court*, 2022 WL 17592195, at *1 (Nev. Dec. 12, 2022) (“[W]e are not inclined to intervene before the district court has had an opportunity to consider petitioner’s stay motion.”).

⁴ Even if Clark’s prior request for a stay could be construed as complying with NRAP 8(a)(1), Clark explicitly withdrew its request in its Reply to Opposition to Second Renewed Motion for Reconsideration of Denial of Application/Petition Pursuant to NRS 31.070(5), filed on May 3, 2022. (*See* I AA 254 (“A stay imposed by this court on Ms. Goldstein’s illegal collection activities is no longer necessary. There is an automatic stay in place because of the chapter 11 bankruptcy petition of NuVeda. Therefore, the request is withdrawn.”)).

first seeking an injunction or stay in the district court would be impracticable (i.e., that Clark was not capable of filing such motion) under the circumstances.

Based on the foregoing, and consistent with this Court's decision in *TRP Fund*, Clark's Motion should be denied pursuant to NRAP 8(a).

B. Relief Under NRAP 8(c) is Not Warranted

In deciding whether to issue a stay or injunction, this Court “will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or 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.” NRAP 8(c).

1. The Object of the Appeal

While Clark does not explicitly address this issue, the object of its appeal will not be defeated if its Motion is denied. Specifically, Clark asserts that it is seeking “a stay of the district court proceedings below or an injunction under NRAP 8(a)(1)(C) prohibiting Respondent from pursuing collection activities against [Clark] (including requesting the appointment of a receiver over [Clark] and other former subsidiaries/affiliates of NuVeda.” (Mot. at 8). However, the object of Clark's appeal has nothing to do with the request for appointment over a

receiver over NuVeda.

Instead, in its appeal, Clark takes issue with the District Court's refusal to grant its request to prohibit further collection activity, and requests a decision from this Court: (1) vacating the District Court's order denying the application to prohibit collection activity pursuant to NRS Chapter 31, (2) ordering the Chief Judge of the Eighth Judicial District Court to reassign the district court case, and (3) directing the reassigned judge "to enter an order for the return of the cash seized by the Constable's Office to" Clark. (AOB at 17). None of Clark's objectives will be frustrated if the Motion is denied.

First, the request to appoint a receiver over NuVeda has absolutely nothing to do with the order denying Clark's application to prohibit collection activity, which was expressly limited to Clark's request for relief under NRS 31.070. (I AA 85-87). Additionally, if the request to appoint a receiver over NuVeda is granted, Respondent will be prohibited from engaging in any further collection activity, under NRS Chapter 31 or otherwise. (See **Exhibit 7**, Proposed Ord. at ¶ 38 ("Except with the concurrence of the Receiver or until further written order of this court, all suits, proceedings, and seizures against NuVeda in any court are hereby stayed in order to prevent the obtaining of any preference, judgment, seizure, levy, or lien and to preserve the property and assets of NuVeda."))).

Second, Clark's request for reassignment will not be frustrated if the instant

Motion is denied primarily because Clark could not have even requested reassignment in the District Court, as Clark is not a party below. *See* NRS 1.235(1) (“Any *party* to an action or proceeding pending in any court other than the Supreme Court, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought.”) (emphasis added). Moreover, even if the Motion is denied, Clark could still obtain the ultimate relief it seeks – vacation of the order denying relief under NRS Chapter 31 and return of the seized cash. In fact, Clark has already initiated a separate lawsuit against Clark County Sheriff Joe Lombardo, Office of the Ex-Officio Constable seeking to recover the \$638.00 and requesting an injunction against future writs of execution against Clark’s assets. (*See Exhibit 8*, Complaint in Case No. A-22-850747-W).

At bottom, the object of Clark’s appeal will in no way be impacted regardless of whether the Motion is granted or denied by this Court.

2. Clark Will Not Suffer Irreparable Harm

Clark makes the bald, unsupported statement in its Motion that “[t]he appointment of a receiver over NuVeda’s former subsidiaries/affiliates (including [Clark]) will cause irreparable harm.” (Mot. at 7). Then, Clark asserts that “[t]he appointment of a receiver is a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it.” (*Id.*) While

this may be an accurate statement of the law, Clark does not even touch on what irreparable harm it will suffer if the proceedings below are not stayed pending **this appeal**. Rather, Clark posits that **if** a receiver is appointed and **if** the ultimate receivership order encompasses Clark, then Clark will be the subject of a “harsh and extreme remedy.” (*Id.*) However, it is well-settled that where multiple contingencies must occur before an alleged injury would become a concrete harm, the injury is “too speculative to constitute an irreparable harm justifying injunctive relief.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 675 (9th Cir. 1988).

Moreover, **this appeal** concerns **only** alleged monetary harm in the form of cash allegedly wrongfully seized pursuant to a writ of execution under NRS Chapter 31. (*See generally*, AOB). And, to demonstrate irreparable harm, a plaintiff must show that “remedies available at law, such as monetary damages, are inadequate to compensate for the injury.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). This appeal only concerns Clark’s alleged monetary injury and the district court’s refusal to afford Clark the relief it sought under NRS Chapter 31. This type of injury fits squarely within the categories of injuries that courts have found inadequate to form the basis for injunctive relief.

Because Clark will not suffer irreparable harm if an injunction or stay is not ordered, Clark’s Motion must be denied.

3. Respondent Will Suffer Irreparable Harm

The instant Motion is nothing more than the latest in a long line of efforts NuVeda has taken to thwart Respondent's efforts to collect on her Judgment. As explained in Respondent's Motion to Appoint Receiver, Respondent has made painstaking efforts to collect on her Judgment to no avail. (*See generally*, Mot. Ex. 5). However, NuVeda has made every attempt to frustrate Respondent's efforts, including filing the NuVeda Bankruptcy Case, which the Bankruptcy Court explicitly found was done in bad faith in an attempt to "unreasonably deter and harass [Respondent] and its other creditors" and "to impede the exercise of [Respondent's] state court collection rights and remedies." (Mot., Ex. 2, 46:13-17). The instant Motion is no different, and this Court should reach the same conclusion as the Bankruptcy Court – that the instant Motion was filed in bad faith for the sole purpose of harassment.

There is no dispute that Respondent holds a valid Judgment against NuVeda, and it is also widely recognized that irreparable harm may result where a judgment debtor's conduct would render a judgment creditor unable to collect on a judgment. *See, e.g. Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1227 (8th Cir.1987) (holding in civil RICO, fraud, and conversion case that, "[t]he authority of a trial court to issue a preliminary injunction to ensure the preservation of an adequate remedy is well established"; plaintiff demonstrated that the defendants would not

satisfy award of damages and is “entitled to a preliminary injunction to protect its remedy”); *Tri-State Generation and Transmission Ass’n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir.1986) (preliminary injunction warranted where irreparable harm would result from inability to collect money judgment).

4. Clark is Unlikely to Prevail on the Merits

Clark states: “Appellant is likely to be successful on the merits of its appeal.” (Mot. at 8). This is the extent of Clark’s argument regarding the likelihood of success on the merits. And, in similar circumstances, courts have held that this type of bare allegation is insufficient to obtain injunctive relief. *See Hill v. Oakley*, No. 3:11-CV-00609-RCJ, 2015 WL 727926, at *2 (D. Nev. Jan. 29, 2015), *report and recommendation adopted*, No. 3:11-CV-00609-RCJ, 2015 WL 714060 (D. Nev. Feb. 19, 2015) (denying motion for preliminary injunction where “Plaintiff’s motion fails entirely to address his likelihood of success on the merits.”).

Moreover, to obtain injunctive relief, a moving party must show “[a] relationship between the injury claimed in the party’s motion and the conduct asserted in the complaint.” *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir.1994); accord *Little v. Jones*, 607 F.3d 1245, 1250–51 (10th Cir.2010); *Colvin v. Caruso*, 605 F.3d 282, 299–300 (6th Cir.2010); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir.1997). As explained herein, Clark cannot, and does not, draw any nexus between the potential appointment of a receiver over

NuVeda and the substance of the instant appeal. As such, the likelihood of success on the merits of Clark's appeal is flatly irrelevant to whether a stay or injunction should be granted below.

IV. CONCLUSION

Based on the foregoing, Goldstein respectfully requests that Clark's Motion be denied in its entirety.

DATED this 16th day of December, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2022, I filed the foregoing document using the court's electronic filing system.

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