

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 22 2022 04:07 PM Elizabeth A. Brown Clerk of Supreme Court</p>
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RESPONSE TO APPELLANT'S STATUS REPORT

FILED DECEMBER 16, 2022

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Comes now Respondent, Jennifer M. Goldstein (“Respondent”), by and through her attorneys of record, Dickinson Wright PLLC, and hereby files her Response to Appellant Clark NMSD, LLC, d/b/a The Sanctuary’s (“Clark”) and Interested Party NuVeda, LLC’s (“NuVeda,” collectively with Clark the “NuVeda Parties”) Status Report filed December 16, 2022.

I. INTRODUCTION

On December 16, 2022, the NuVeda Parties filed a document titled a “Status Report” wherein it seeks action from this Court “on or before January 6, 2023.” (Status Report, Cover Page). While this Court should not give this rogue pleading any consideration, Respondent respectfully submits this Response solely to clarify the misleading and false statements therein, and to address the additional relief the NuVeda Parties seek in the Status Report.

II. ARGUMENT

A. Proceedings Before the District Court and Bankruptcy Court

The NuVeda Parties make several material omissions and misrepresentations in their Status Report regarding the actions taken by both the District Court below and the Bankruptcy Court following NuVeda’s suggestion of bankruptcy. First, Respondent did not file her Motion to Appoint Receiver in the District Court to “punish” NuVeda or Clark, as alleged in the Status Report. Instead, as painstakingly briefed already in this appeal, Respondent filed her Motion to

Appoint Receiver as a result of NuVeda's failure to satisfy Respondent's judgment and corresponding efforts to thwart Respondent's collection efforts. That much cannot be reasonably disputed, and Respondent merely wishes for NuVeda to satisfy her judgment.

Second, while the NuVeda Parties contend that the "primary objective of [NuVeda's suggestion of] bankruptcy was to resolve [Respondent's] Judgment," the Bankruptcy Court expressly found 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." (Clark's Emergency Mot. for Stay or Injunction, filed December 5, 2022 (the "Emergency Motion"), Ex. 2, 46:13-17).

Third, while the NuVeda Parties contend that "the bankruptcy court made specific findings of fact in support of its dismissal including that NuVeda had no income or assets to fund a feasible plan," the NuVeda Parties again omit that Bankruptcy Court's determination that NuVeda has no assets was based only on the schedules provided to the Bankruptcy Court *by NuVeda*. (See Opp'n to Emergency Mot., Ex. 4, Schedule of Assets).

Fourth, while the Cannabis Compliance Board ("CCB") did file a Limited Joinder to Respondent's Motion to Dismiss the NuVeda Bankruptcy Case, the

CCB did not “agree not to challenge NuVeda’s position on the divestment of its cannabis business license in 2019.” (Status Report at 4). Instead, the CCB stipulated that it “would not file an opposition in [the NuVeda Bankruptcy Case] to [NuVeda’s] position that [NuVeda] does not own any interest in any cannabis establishments including, without limitation, Clark . . .” (Emergency Mot., Ex. 1 at 3). Thus, the CCB’s agreement was expressly limited to the NuVeda Bankruptcy Case, and did not extend to the proceedings in the District Court.

However, after Clark filed its Emergency 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. (Opp’n to Emergency Mot., Ex. 6, CCB’s Limited Joinder to Request for Hearing). Thus, the CCB never “changed its position before the district court” as alleged by the NuVeda Parties. (Status Report at 4).

B. Emergency Relief is Unwarranted

While not styled as such, the relief the NuVeda Parties seek is tantamount to a request for emergency relief under NRAP 27(e), as the NuVeda Parties ask that this Court take action no later than January 6, 2023, a mere *thirteen judicial days* from the date it filed its Status Report. Not only did the NuVeda Parties utterly fail

to comply with any of the requirements for emergency relief under NRAP 27(e), the due process basis on which they seek relief is flatly wrong.

Although the NuVeda Parties go to great lengths to express their displeasure with how the District Court conducted the status check on December 13, 2022, the NuVeda Parties' due process argument can be summed up as follows: "NuVeda's subsidiaries/affiliates who are not parties to the district court case did not receive notice of the motion, status check or the hearing on January 12, 2023." (Status Report at 6). The NuVeda Parties' due process arguments are untenable and do not warrant expedited relief from this Court.

There is exactly one NuVeda subsidiary that is at issue in the instant appeal – Clark. And, Clark certainly received notice of the December 13, 2022 status check. (*See* Clark's Supplement to Emergency Mot., filed Dec. 8, 2022 at 4 ("According to the minute order, the hearing on December 13, 2022 will be a status check – not a hearing on Respondent's request for the appointment of a receiver.")). Moreover, while the NuVeda Parties assert that "no party other than NuVeda and Respondent were purportedly required to appear at the status check on December 13, 2022," the Minute Order setting the status check did not provide that only Respondent and NuVeda were required to attend. (Supplement to Emergency Mot., Ex. 11, Minute Order).

During the December 13, 2022 status check, the District Court expressly stated that it was “a court ordered mandatory status check that everyone got notice of. Anyone who’d not here is going to get order show causes.” (Status Check, Ex. 20 at 7:21-23). The District Court also noted that no new counsel had substituted into the case for Clark and expressly asked about whether NuVeda’s new counsel was also appearing for Clark, noted that Mr. Stipp, who represents all of the NuVeda Parties in this appeal, represented Clark in the District Court (*id.* at 7:12-14), and determined that Clark was in “non-compliance” with the court-ordered status check for failing to appear. (*Id.* at 8:7-9).

Thus, because NuVeda actually did attend the December 13, 2022 status check, and Clark indisputably received notice of the same, no party who has made an appearance in this appeal was divested of any due process rights as a result of the December 13, 2022 status check.

C. The NuVeda Parties’ Bond Request Should be Rejected

The NuVeda parties argue that the relief they requested in the Emergency Motion “should be granted as unopposed.” (Status Report at 6). However, Respondent did file an Opposition to the Emergency Motion on December 16, 2022, which explains in detail why the Emergency Motion should be denied. (*See generally*, Opp’n to Emergency Mot., filed Dec. 16, 2022). Regardless, proposed bond amounts suggested by the NuVeda Parties are woefully less than the amount

necessary to protect Respondent's interest in her judgment. While it is true that the principal amount of Respondent's judgment is \$2,565,276.41, the interest that has accumulated since the judgment was entered has significantly increased the actual amount of the judgment. As of December 14, 2022, the accrued interest on the Judgment is \$464,648.94, which brings the full amount of the judgment, with interest, to \$3,029,925.35, exclusive of the attorneys' fees Respondent has incurred in pursuing her collection efforts since September of 2019. Therefore, if this Court does order that a bond be posted, the amount should be no less than \$3,029,925.35. *See Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005) ("The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.").

III. CONCLUSION

Based on the foregoing, the relief requested in the NuVeda Parties' Status Report should be denied.

DATED this 22nd day of December, 2022.

DICKINSON WRIGHT, PLLC

/s/ Brian R. Irvine

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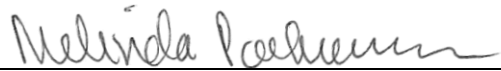
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served on December 22, 2022, with a copy of this document via the Court's CM/ECF system.

DATE: December 22, 2022

A handwritten signature in cursive script, reading "Melinda Poehlmann", written over a horizontal line.

Melinda Poehlmann, an employee of
Dickinson Wright PLLC