IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company; AM-GSR HOLDINGS, LLC, a Nevada Limited Liability Company; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company,

Appellants,

vs.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOLI,

Supreme Court No. 85915
District Court Case No. CV12-02222

RESPONDENTS' OPPOSITION TO APPELLANTS' MOTION TO DISMISS AS MOOT

individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, GREG A. CAMERON; TMI PROPERTY GROUP, LLC; RICHARD LUTZ; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A.

WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLEEN LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISTINE MECHAM, individually; KWANG SOON SON, individually; SOO YEU MOON, individually; JOHNSON AKINBODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; and DANIEL MOLL, individually,

Respondents.

I. INTRODUCTION

There are two related pending appeals arising from the same underlying matter: Case No. 86092 and the instant appeal. The instant appeal is an interlocutory appeal of an order granting preliminary injunction. (1 R.App. 1-29.) Case No. 86092 began as an interlocutory protective appeal by Appellants of the district court's order awarding Respondents over $9 million in punitive damages, but has evolved to include Appellants' appeal of over twenty other orders, and Respondents' protective cross-appeal thereof. The court cannot exercise simultaneous jurisdiction over both of these appeals. Instead, it should exercise jurisdiction only over the instant appeal, as the underlying proceeding has not been fully adjudicated.

Appellants are using their motion to dismiss as a devious attempt to obtain an advisory ruling from this court regarding the continued vitality of the receivership. Appellants contend the receivership was "automatically dissolved" by the Amended Final Judgment. (Motion at 1, 4, 7.) To date, Appellants have tried everything possible to evade the receivership, and they are now obviously hoping this court will issue an order dismissing this appeal docket and suggesting the Amended Final Judgment dissolved the receivership. Then, after the dismissal, Appellants will use this court's order as a tool to convince the district court to abandon the receivership because everything else relating to the receiver has been automatically dissolved—including the receiver's ongoing vital tasks relating to distribution of funds and the

sale of parties' condominium units. This court must reject Appellants' effort. See Capanna v. Orth, 134 Nev. 888, 897, 432 P.3d 726, 735 (2018) (this court lacks constitutional authority to render advisory opinions).

The crux of Appellants' argument is simple: a final judgment has purportedly been entered below, so this interlocutory appeal is moot, and the Amended Final Judgment dissolved the injunction as well as the receivership below. But this court has already expressly questioned Appellants' premise. (1 R.App. 30-35.) This court's order to show cause in No. 86092 properly recognized that "[a]lthough the district court's amended judgment appears to have resolved all of the damages claims asserted below, the receivership imposed pursuant to [R]espondents' complaint remains pending." (1 R.App. 33.) The court's inclination to reject jurisdiction in No. 86092 is correct because, as stated, the judgment entered by the district court falls far short of resolving all the outstanding claims and issues below.[1] The court does, however, have proper jurisdiction over this interlocutory appeal—although the appeal is substantively without merit, it is procedurally proper.

Appellants' entire argument is misplaced and ignores case law. The misnamed "Final Judgment" and later "Amended Final Judgment" do not operate as final judgments which resolve all claims and issues in the litigation. They deal with

[1] Appellants' amended docketing statement in No. 86092 asserted their appeal is from an order "resolving all claims" (answer to question 21(b)). This was false.

monetary claims only; they do not adjudicate the numerous non-monetary claims for relief, including those related to the receivership. Indeed, on February 6, 2023, after the "Final Judgment" was entered, Appellants stipulated, and the district court ordered, the receivership would continue until the parties' units were sold and the proceeds were disbursed. (1 R.App. 224-31.) The district court has not certified the so-called judgments under NRCP 54(b)[2]; the receivership claim is still pending; and the remaining tasks have been ordered by the district court.

Chiefly among these remaining tasks is the sale of the parties' units pursuant to NRS Chapter 116, the parties' stipulation, and district court orders. This task will be relatively time-consuming and complex, and requires cooperation from the Receiver, the district court, and the parties. Until this task, and numerous others, are completed to the district court's satisfaction, the underlying proceeding remains incomplete and the receivership remains intact. Further, until these tasks are completed, there cannot be a valid "final judgment" in the matter, and this court may properly exercise jurisdiction over this interlocutory injunction appeal.

II. STATEMENT OF FACTS

A receiver was appointed over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") on January 7, 2015, following Appellants' fraudulent operation of the entity. (1 R.App. 36-44.) This receivership is vital to Respondents'

[2] Respondents intend to file an NRCP 54(b) motion to certify the Final Judgment.

claims, remains intact, and has a substantial district court-established to-do list that must be completed to finally resolve the underlying action. The Receiver's task list includes: (1) recalculating contractual rents, fees, and expenses from 2020 to the date of sale and managing the units until the sale (1 R.App. 195, 229-31, 2 R.App. 279-80); (2) setting the GSRUOA budget for 2023 (id.); (3) recalculating reserve accounts, which Appellants unilaterally calculated using reserve studies the district court rejected (2 R.App. 289); and (4) coordinating Appellants' reimbursement to the reserve accounts of misappropriated amounts (id.; 1 R.App. 200).

Once these tasks are completed, the parties and the district court will embark upon the remaining tasks to bring this litigation to a conclusion, which include, but are not limited to: (1) scrutinizing the calculations described above and conducting limited discovery to ensure their veracity (1 R.App. 211); (2) the district court approving the Receiver-calculated fees (id.); (3) once the fees are calculated and approved, Respondents obtaining their own appraisals to determine fair market value of their units (id.; 1 R.App. 218; 1 R.App. 222); (4) the district court overseeing the sales of the units and distribution of the sales proceeds (1 R.App. 212-19; 1 R.App. 224-231); and (5) the district court determining procedures for retained claims for diminution in value of their units, as necessary (id.; 1 R.App. 241-243).

These tasks present a significant amount of work to be completed by the Receiver, the parties, and the district court—all of which is critical to dispose of all

claims and issues presented in the underlying litigation. Of course, Appellants would like to dissolve the receivership; avoid all obligations to release rents owed to Respondents; and avoid all obligations relating to appraisals and procedures involving sales of Respondents' units. Their motion to dismiss is the vehicle they are using to achieve these improper goals.

The district court issued a so-called "Final Judgment" on February 2, 2023. (1 R.App. 245-48.) This partial judgment resolved some of the monetary claims in this proceeding: more than $17 million in compensatory and punitive damages. (Id.) Importantly, it did not resolve any of the above-described, court-ordered remaining tasks. The so-called "Amended Final Judgment" similarly only resolved some monetary claim portions of this proceeding with some revisions, but did not address any outstanding claims, tasks, or the receivership in general. (2 R.App. 249-52.)

Despite these so-called "final" judgments being entered, the underlying litigation continues on all remaining claims. Thus, this interlocutory appeal is procedurally proper, but substantively doomed.

III. ARGUMENT

A. The "Final Judgment" is Not 'Final' Because it Does Not Dispose of All Claims and Issues Presented in the Underlying Proceeding

Defendants admit "[t]he Amended Final Judgment only enters judgment on compensatory and punitive damages in favor of Respondents and dismisses

Appellants' counterclaims." (Motion at 4.) The Amended Final Judgment does not address any of the outstanding claims relating to receivership issues, the sale of the condominium units, nor any other remaining court-directed tasks.

"[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues . . . ." Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). There are critical claims and issues remaining for the district court's consideration which are not post-judgment issues: approving the Receiver's recalculated fees, overseeing the parties' appraisals for the units, determining fair market value of the units, supervising the sale of the units, and ensuring the proceeds along with the outstanding rental proceeds (currently due and owing from January 2020 to present) are properly distributed to the unit owners. (1 R.App. 211, 218, 229-32, 241-43.)

None of these issues are post-judgment issues "such as attorney's fees and costs." Lee, 116 Nev. at 426, 996 P.2d at 417. Instead, each of these issues are substantive court-ordered tasks which must be completed prior to final resolution of all claims in this action. The district court has set these issues for future resolution—not to be cast aside by the entry of the Final Judgment or Amended Final Judgment which omits any reference thereto.[3]

[3] Nothing in the so-called Final Judgment or the Amended Final Judgment even remotely suggests that the district court intended these "judgments" to constitute the final adjudication of all claims—including the receivership claim—in this case.

The finality of a district court's order "depends not so much on its label as an 'order' or a 'judgment,' but on what the 'order' or 'judgment' substantively accomplishes." Lee, 116. Nev. at 427, 996 P.2d at 417. Thus, "whether the district court's decision is entitled a 'judgment' or an 'order' is not dispositive in determining whether it may be appealed; what is dispositive is whether the decision is final." Id.

The Amended Final Judgment does not fully adjudicate all of the claims and issues—rather, it leaves much to be considered by the district court prior to complete adjudication. Indeed, as this court pointed out in recently questioning its jurisdiction in No. 86092, a final judgment in a receivership action is one that approves or rejects all of the items in the receiver's final account and directs distribution of any remaining funds. Martin & Co. v. Kirby, 34 Nev. 205, 214, 117 P. 2, 4 (1911).[4] No such order on the Receiver's final account has been entered here. In fact, a request for such has been denied by the district court as "premature given the status" of the matter and the outstanding tasks to be completed prior to terminating the receivership. (1 R.App. 221.) Prior to such order, all of the tasks outlined above must be completed. (Id.) Thus, a final judgment in this action is yet to come.

[4] See also Alper v. Posin, 77 Nev. 328, 330-31, 363 P.2d 502 (1961) (where receiver was to liquidate debts of a joint venture, wind up its affairs, distribute the remaining proceeds, and present his final report to the court, which would prompt further court action, there was no final judgment), abrogated on other grounds by Lee, 116 Nev. 424, 996 P.2d 416.

Here, the Amended Final Judgment resolves only the monetary damages claims in this litigation, but leaves the non-monetary claims, including the receivership, to be considered at a later date. Thus, the so-called Amended Final Judgment is not actually "final" for purposes of an appeal. Accordingly, the court should reject Appellants' argument that there has been a full and final judgment, which somehow renders this appeal moot.

B. <u>The District Court Clearly Intended to Retain Jurisdiction</u>

In the December 5, 2022 Order, which is the subject of this appeal, the district court set forth its intention to retain jurisdiction over this matter until further orders:

- "[T]he Court shall enter an Order on motion to terminate or modify the Receivership that addresses the issues of payment to the Receiver and his counsel, the scope of the wind[-]up process of the GSRUOA to be overseen by the Receiver, as well as the responsibility for any amounts which are awarded as a result of the pending Applications for OSC";[5]
- No sale of the units "shall occur until further order of this Court which includes a process for the resolution of any retained claims by Plaintiffs and procedure for the determination of fair market value of Plaintiffs' units under NRS 116.2118 et seq.";[6] and
- "[T]his Court shall provide supervision of the appraisal process of the units in order to assure that Plaintiffs are provided an opportunity to submit their

[5] Appellants' efforts to obtain this order were denied as "premature." (1 R.App. 221.)

[6] The approved termination of the GSRUOA sets forth these requirements. (1 R.App. 229-31.)

own appraisal of their respective units for consideration and determination of the fair market value of the units and their allocated interests." (1 R.App. 218.)

The district court ordered these tasks be completed, under its supervision, and denied Appellants' attempts to obtain certain court orders up to now as "premature." It follows that the district court intended to retain jurisdiction and not transfer the matter across the "sharply delineated" jurisdictional threshold to the appellate court. Rust v. Clark Cty. School Dist., 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

Similarly, since the Final Judgment was entered on February 2, 2023, the district court issued an Amended Final Judgment, and the court has issued multiple further orders requiring its own action: for Appellants to show cause; approving the parties' stipulation to terminate the GSRUOA, wherein Appellants explicitly agreed to the district court's continued jurisdiction and some of the Receiver's remaining tasks; confirming the Receiver's obligations to recalculate the fees, conduct true-ups of the parties' accounts, and set the GSRUOA's 2023 budget; directing the Receiver to continue renting the parties' units pursuant to contract until the units are sold; directing the Receiver to provide Respondents "accurate rental information" as well as the recalculated fees so Respondents' can obtain an appraisal of their units; and granting Appellants leave to seek reconsideration of previous orders. (1 R.App. 194-96, 221-23; 2 R.App. 253-59, 279-81, 282-84.) These orders each require further action from the district court and Receiver, thus thwarting the complete adjudication

and resolution of all claims and issues presented in the litigation. Lee, 116 Nev. at 426, 996 P.2d at 417; Alper, 77 Nev. at 330-31, 363 P.2d 502.

The district court therefore intended to retain jurisdiction over the remaining non-monetary claims in this case, as evidenced by its various post-Final Judgment orders which call for future district court orders or oversight. The Final Judgment and Amended Final Judgment only "substantively accomplish[]" resolution of the monetary damage award in this case—they do not address, let alone fully adjudicate, the non-monetary issues. Valley Bank of Nev., 110 Nev. at 445, 874 P.2d at 733. Thus, what the Amended Final Judgment "actually does" is simple: it only resolves the monetary damages component below. Id. It does no more and no less.

IV. CONCLUSION

This appeal, while substantively doomed, is procedurally proper as an interlocutory appeal of an order granting a preliminary injunction. This appeal is not mooted by the poorly-named Judgment and the Amended Final Judgment, because those documents do not finally resolve all the claims and issues below, but instead leave many for the district court's consideration. Moreover, the receivership and preliminary injunction remain intact and critical to bring the matter to a close—an event which has not yet occurred. The motion should be denied.

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Dated this 16th day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on the 16th day of May, 2023, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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