IN THE SUPREME COURT OF THE STATE OF NEVADA

****

MEI-GSR HOLDINGS, LLC, AM-GSR HOLDINGS, LLC, and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, Appellants, v. ALBERT THOMAS, *et al.,* Respondents.	Case No. 86092

EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ORDERS AND ENFORCE NRCP 62(d)'S AUTOMATIC SUPERSEDEAS BOND STAY

RELIEF REQUESTED BY MAY 5, 2023

Jordan T. Smith, Esq., Bar No. 12097
Brianna Smith, Esq., Bar No. 11795
Daniel R. Brady, Esq., Bar No. 15508
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Appellants MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC

I. INTRODUCTION

This tortured, twelve-year-old dispute over the Grand Sierra Resort ("GSR") condos has finally reached *what should be* its conclusion. On the litigation front, the court entered a final amended judgment, awarding Plaintiffs-Respondents (condo unit owners) over eight million dollars in compensatory damages – and more than nine million dollars in punitive damages – related to alleged improper renting of condos and wrongful fees and assessments. Appellants have appealed and, so far, have posted about $30 million in supersedeas bonds. On the unit owners association ("UOA") front, the parties stipulated to terminate the UOA and recorded a termination agreement. With the UOA disbanded at last, Appellants intend to sell the units in accordance with the NRS Chapter 116 statutory process.

Yet, despite the entry of a final judgment and the termination of the UOA, the district court refuses to dissolve the previously imposed receivership *pendente lite* and is treating it as a receivership *pendente forever*. Respondents are wielding the perpetual receivership as a weapon to extract supplemental compensatory damages from Appellants on an ongoing basis *for the same actions and same damage categories on which judgment has been entered – all without any evidentiary proceeding to contest the supplemental amounts*. Indeed, Respondents abandoned a post-compensatory award supplemental damage effort in favor of funneling the same amounts through the receivership. But, the time for Respondents to prove their damages, including future damages, was long ago at the completed default prove-up hearing.

The order at issue in this motion is one of those supplemental compensatory damage awards to Respondents masquerading as a payment to the receivership. After overruling Appellants' objections, the district court ordered Appellants to pay $1,103,950.99 to the Receiver. But there is a catch: Both the Receiver and Respondents admit the million-dollar figure is *not* accurate. The best Respondents can muster is that there will be a "true-up" process sometime later and, according to them, the odds of an overpayment might be "slim." The Receiver's computation is "conservative," the Respondents assure us. But here, "conservative" is simply code for "wrong."

To secure their rights to challenge this million-dollar payment order as part of this appeal from the amended final judgment – and to prevent the irreparable harm from nonrecovery from Plaintiffs-Respondents when there is a reversal – Appellants posted another full supersedeas bond under NRCP 62(d). However, despite two rounds of briefing, the district court refused to apply NRCP 62(d)'s automatic, non-discretionary stay of execution to which Appellants are entitled. Therefore, setting aside the merits of the Receiver's miscalculations, Appellants are entitled to the automatic stay of execution pending this appeal so there can be meaningful review of the order. This Court's emergency intervention is warranted.

II. STATEMENT OF FACTS

Respondents are condo owners at the GSR who filed this action over a decade ago alleging certain improprieties. Appellants never had the opportunity to defend the merits of those allegations because, in 2014, the district court entered a default as a

result of purported discovery abuses by Appellants' original attorney who was later suspended for a series of misconduct that prejudiced his clients. (Ex. A at 11-12; Ex. B at 2-3.) In 2015, the district court imposed a receiver over the UOA and, to assure compliance with the governing documents, the Receiver was charged with calculating the fees and assessments that unit owners owed to GSR. (Ex. C at 1-4.)

That same year, the district court conducted a prove-up hearing that virtually eliminated Appellants' participation. The Respondent-Plaintiffs presented *only one non-party witness* to establish their compensatory damages. Not one unit owner/plaintiff testified. Based on this thin evidentiary record, the district court entered an $8 million compensatory damage award without specifying any particular verdict amount for any of the 93 individual plaintiffs. (Ex. D at 21-22). It is impossible to discern who was awarded how much and for what. Supposedly, the compensatory award was for items like "underpaid revenues," "discounting rooms," "comp'ing rooms," "improperly calculat[ing] and assess[ing] contracted hotel fees," "improperly collect[ing] assessments" – all things the Receiver was overseeing and computing. (*See id.*).

The punitive damage phase was not held until July of 2022 – seven years following entry of the compensatory award and more than three years after the matter was remanded from an interim appeal. For various reasons, the order related to punitive damages was not entered until January 17, 2023. (Ex. E at 2.) Due to the non-specific compensatory damage award before her appointment, Senior Judge Gonzalez was left to surmise which compensatory damage elements were tied to Respondents' contract

claims (punitives not available) or the tort claims (punitives may be available). (*See generally id.*). Senior Judge Gonzalez tried to parcel out the claims and awarded $9,190,521.92 in punitive damages against Respondents. (*Id.* at 4.)

After the compensatory damages were awarded in October 2015, on January 26, 2023, the district court entered an order on the Receiver's Motion for Orders & Instructions (filed 12/1/23). (Ex. F.) In addition to addressing Receiver payment issues, the order levied additional amounts that overlap Respondents' already-awarded compensatory damage categories – rental income amounts allegedly owed to the individual Respondents. (*Id.* at 2-3.) The district court ordered Appellants to file either an objection to the order or pay $1,103,950.99 to the Receiver within 25 judicial days before the amount is distributed to the individual Respondents. (*Id.* at 3.) Appellants filed an objection contesting the Receiver's application of his 2021 fee calculations to be deducted from rents before any net payment to Respondents and the speculative nature of his estimate of balances allegedly due and owing Respondents. (Ex. G.)

On March 27, 2023, the district court overruled Appellants' objection and ordered them to pay the million-dollar amount within five judicial days. (Ex. H at 1-2.) The next day, Appellants filed a motion to stay to afford them time to acquire a supersedeas bond for such a large amount and consider their appellate options. (Ex. I at 9.) Respondents opposed the stay request, confessing that they are treating payments to the Receiver as supplemental compensatory damages after the prior award and without any sort of evidentiary hearing: Respondents contend that payments to the

Receiver are needed to "*partially compensate Plaintiffs*." (Ex. J at 3) (emphasis added). Without the receivership, Respondents threaten that they "would have to reopen the prove-up hearing conducted in March 2015 and show further damages resulting from Defendants continuing to rent Plaintiffs' units." (*Id.* at 12-13.) In their own words, "Plaintiffs forewent [the supplemental damage] avenue of recovery in favor of having the Receiver take control of rents." (*Id.* at 13.) But a receiver is not a substitute for compensatory damages, an evidentiary hearing, or Appellants' due process rights.

Sensitive to the impropriety of their tactics, Respondents defensively assert that these payments are "not damages." (*Id.*) But they are. And, the million-dollar amount is admittedly wrong. Respondents concede the calculations are simply "temporary," "estimates" before a "true-up." (*Id.* at 10, 13, 15.) Still, Respondents recognize that there are "chances of Defendants overpaying Plaintiffs for the rental of Plaintiffs' units" but speculate that it is "unlikely" or "incredibly slim." (*Id.* at 11, 13.) "Slim" is not zero, and Appellants are not required to pay a million-dollar-guestimate.

To preserve appellate rights, Appellants rushed to obtain the million-dollar supersedeas bond before filing their reply in support of the motion to stay. (Ex. K.) Although Appellants posted the supersedeas bond and appealed, the district court denied the automatic stay of execution. (Ex. L at 1.)[1] The district court's order ignored

[1] The Court reasoned that payments to the Receiver along with other "orders related to the termination of the Association and transfer of the property are all interrelated [so] it would be inappropriate and premature for the Court to issue the stay of only a portion for that framework as requested in the motion." (Ex. L at 3.)

the supersedeas bond so Appellants moved to clarify or reconsider in light of NRCP 62(d)'s automatic stay. (Ex. M at 4.) Appellants also argued they were entitled to a discretionary stay, if nothing else. (Ex. N at 8-9.) The district court denied the motion to clarify or reconsider, but granted a temporary 14-day stay to allow Appellants to seek a stay from this Court. (Ex. O at 1-2.)

In the meantime, Appellants deposited, under protest, $135,735.00 with the district court to cover the Receiver's expenses. (Ex. P.) Ignoring Respondents' intent to siphon the bonded funds from the Receiver as damages, this separate deposit obviates any claim that the bonded funds are needed while Appellants appeal.

III. ARGUMENT

A. A Stay of Execution is Automatic, and Non-Discretionary After a Supersedeas Bond has been Posted and an Appeal Filed.

The district court twice denied Appellants' request to stay execution without acknowledging that Appellants have appealed and posted a million-dollar-plus supersedeas bond to secure their appellate rights stemming from the January 26, 2023 and March 27, 2023 Orders on the Receiver's calculations. Under NRCP 62(d), "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. *The stay is effective when the*

Appellants also appealed the Court ordered supervised process as conflicting with NRS Chapter 116 in Case No. 86915.

supersedeas bond is filed." (Emphasis added.) This Court has held that a stay is automatic and not discretionary once a supersedeas bond has been posted. *See Clark Cnty. Off. of Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 134 Nev. 174, 176, 415 P.3d 16, 18 (2018); *see also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005).

Below, Respondents opposed the stay motions, relying on NRCP 62(d)'s cross-reference to NRCP 62(a)(2). NRCP 62(a)(2) states, "[a]n interlocutory or final judgment in an action for an injunction or a receivership is not automatically stayed, unless the court orders otherwise." By its plain terms, NRCP 62(a)(2) only applies to the initial appointment of a receiver. It does not apply to each and every interlocutory or interim payment or disbursement order rendered during the life of a receivership. That is why an order appointing a receiver is immediately appealable under NRAP 3A(b)(4) just like a final judgment. A party has other appellate rights to challenge the initial appointment of a receiver and need not resort to a supersedeas bond to protect themselves.

On the other hand, an NRCP 62(d) supersedeas bond *does* stay interim orders related to a receivership once a receiver has been appointed. Or, put differently, NRCP 62(a)(2)'s exception to NRCP 62(d)'s automatic stay does not apply to other interim orders requiring payments to, or disbursements from, a receivership. Unlike the initial appointment of a receiver, the appellate rules do not provide for an immediate appeal from other interim receivership orders. Thus, NRCP 62(d)'s automatic stay with a supersedeas bond is the only mechanism to preserve appellate rights in circumstances

like this one when a receiver has been appointed but Appellants have been ordered to pay substantial and disputed amounts to the Receiver for eventual disbursement to plaintiffs as compensation and damages.

NRS 15.040 confirms Defendants' reading. It states, "[w]henever an order for the payment of a sum of money is made by a court, it may be enforced by execution in the same manner as if it were a judgment." NRCP 62(d) is the means to stay enforcement of a monetary judgment. And "[t]he stay is effective when the supersedeas bond is filed." NRCP 62(d)(1); *Heer*, 121 Nev. at 834, 122 P.3d at 1253 ("FRCP 62(d) allows an appellant to obtain a stay pending appeal *as of right upon the posting of a supersedeas bond for the full judgment amount*, but that courts retain the inherent power to grant a stay in the absence of a full bond.") (emphasis added).

Respondents' overreading of NRCP 62(a)(2) is obvious when looking at the other type of action referenced in NRCP 62(a)(2). In addition to receiverships, NRCP 62(a)(2) also references "an action for injunction." According to Respondents' view, no order requiring immediate payment to an adversary could be automatically stayed by supersedeas bond anytime a complaint includes a request for injunctive relief. That position proves too much. Of course, interim or interlocutory orders requiring nonrecoverable monetary payments may be stayed when bonds are posted and appeals are filed during an action for injunction. Were it otherwise, defendants would lack appellate recourse simply because the plaintiffs also sought, or even obtained, an injunction. *Cf.* NRCP 62(c). The same logic must apply to receivership actions. It is

clear that only the imposition of a receivership (or injunction) is *not* automatically stayed merely by posting a supersedeas bonds. All other interim payment and disbursement orders can be stayed by posting a supersedeas bond and filing a proper appeal.

Other cases recognize that interim receivership orders, like disbursements, are entitled to an automatic stay once a supersedeas bond has been posted and defendants lose appellate rights without a bond. For example, in *Valley Federal Savings & Loan Association of Hutchinson, Kan. v. Aspen Accommodations, Inc.*, 716 P.2d 483 (Colo. App. 1986), a defendant tried to appeal from the appointment of the receiver and from later orders disbursing income. The court issued an order to show cause why the appeal should not be dismissed as moot. The court ultimately dismissed the appeal because the defendant did not post a supersedeas bond or otherwise seek a stay. The court explained, "[s]ubsequent orders discharged the receiver *and approved disbursement of income from the property collected by the receiver. Aspen neither sought a stay of the order appointing the receiver, applied for a supersedeas bond, nor appealed from either of the later orders*." *Id.* at 484 (emphasis added); *see also City Ice Co. of Kansas City v. Quivira Dev. Co.,* 30 P.2d 140, 141 (Kan. 1934).

Unlike the defendant in *Aspen*, here, Appellants have posted a supersedeas bond (and sought a stay) to protect their appellate rights and to obtain a stay of execution for the challenged amounts pending this Court's review. The stay of execution is automatic now that a supersedeas bond has been posted and an appeal filed.

B. Appellants are Entitled to a Discretionary Stay, if Necessary.

Although the non-discretionary stay of execution is automatic because Appellants have appealed and filed a supersedeas bond, they are also entitled to a discretionary stay. *See* NRAP 8; *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (explaining factors for a stay pending appeal).

Appellants will suffer irreparable harm if they are forced to pay over a million dollars without any realistic chance of reimbursement upon a reversal. *Philip Morris USA Inc. v. Scott,* 561 U.S. 1301, 1304 (2010) (Scalia, J., granting stay when expended funds were unrecoverable). On the contrary, Respondents will suffer no harm because the bond fully secures their ability to collect if there is an affirmance. *Nelson*, 121 Nev. at 835, 122 P.3d at 1254. And delayed payment of monetary amounts to Respondents does not constitute irreparable harm. *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723 (2015). Further, Appellants' $135,745 deposit on April 12, 2023 is more than sufficient to cover the Receiver's expenses. Thus, the bonded funds need not be distributed and Appellants need not be denied their right to appeal.

IV. CONCLUSION

For these reasons, the Court should stay execution of the January 26, 2023 Order on Receiver's Motion for Orders & Instructions and the March 27, 2023 Order overruling Defendants' Objection to Receiver's Calculations Contained in Exhibit 1 Attached to Receiver's Omnibus Reply to Parties Oppositions to the Receiver's Motion for Orders & Instructions because Appellants have posted a supersedeas bond.

DATED this 25th day of April, 2023.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*
Jordan T. Smith, Esq., #12097
Brianna Smith, Esq., #11795
Daniel R. Brady, Esq., #15508
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Appellants
MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC

NRAP 27(e) CERTIFICATE

I, Jordan T. Smith, declare as follows:

1. I am a partner at the law firm of Pisanelli Bice PLLC and counsel for Appellants named herein.

2. I verify that I have read the foregoing Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay and that the same is true of my own knowledge, except for matters stated on information and belief, and as to those matters, I believe them to be true.

3. The facts showing the existence and nature of the emergency are set forth in the Motion. As described above, Appellants have been ordered to pay a disputed receiver calculation of $1,103,950.99 that will be irretrievably disbursed to the Respondent-Plaintiffs below. Because Appellants contend the calculation is flawed, they have posted a full supersedeas bond to cover the amount and have filed an appeal that includes a challenge to this calculation. Despite posting a supersedeas bond, and filing an appeal, the district court has twice refused to stay execution of the two relevant orders under NRCP 62(d). Without a stay (or other order from this Court), Appellants will be effectively deprived of their appellate rights and will lack any realistic chance to recover the million-dollar-plus amount if they succeed on their appeal.

4. Appellants previously submitted the relief requested here to the district court. They filed a motion to stay, which was denied on April 10, 2023. To avoid unnecessary emergency relief from this Court, Appellants filed a motion to

clarify or reconsider with the district court, but it too was denied on April 21, 2023. The district court, however, granted a 14-day temporary stay to allow Appellants to seek relief from this Court. Thus, all parties are aware that Appellants would seek this relief.

5. The district court's temporary 14-day stay expires on May 5, 2023. Accordingly, relief is needed in less than 14 days (on or before May 5, 2023) to avoid irreparable harm to Appellants.

6. I have made every practicable effort to notify the Supreme Court and opposing counsel of the filing of this Motion. I called the Clerk of Court's Office and emailed Respondents' counsel before filing.

7. Below are the telephone numbers and office addresses of the known participating attorneys:

Counsel for Respondents

Jarrad C. Miller
Briana N. Collings
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: 775.329.5600

Robert L. Eisenberg
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: 775.786.6868

Executed on this 25th day of April, 2023, in Las Vegas, Nevada.

/s/ Jordan T. Smith
Jordan T. Smith, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 25th day of April, 2023, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay to all parties registered for service, as follows:

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC