IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, 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, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD

Supreme Court No. 86092
District Court Case No. CV12-02222

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

JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; 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, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; 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, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM

TRUST; MICHAEL HURLEY, individually; DUANE WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; MARILYN WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; 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 NAM CHOI, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUN (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Manager of CARRERA PROPERTIES, LLC; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, as Trustee of the RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, individually; DANIEL MOLL, individually,

Respondents.

I. INTRODUCTION

Respondents are the owners of hotel condominium units at the Grand Sierra Resort ("GSR"). The relationship between the unit owners and the GSR is relatively simple: the GSR rents units to hotel/casino guests, collects rental money from the guests, and distributes the money to the unit owners and the GSR under an agreed revenue split. This lawsuit involves the GSR's systematic fraud toward the unit owners—fraud that has been ongoing for years.

Appellants employ a revisionist history here which is belied by the record. In truth, a receiver was appointed over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") due to Appellants' fraudulent business practices. The Receiver is necessary to enforce the parties' contractual obligations concerning the unit rentals, including calculating the fees to be charged to the unit owners, collecting rental proceeds, and disseminating rental proceeds pursuant to the parties' contracts. (1 R.App. 1-181.) These proceeds also fund the receivership, so any withholding thereof interferes with the receivership and prejudices Respondents in that without payment, the Receiver will not protect their property rights. (1 R.App. 182-86.)

The district court approved the Receiver-calculated fees to be charged and set off from the units' rental proceeds for 2020 and 2021, and ordered Appellants to turn over only those amounts to the Receiver. (1 R.App. 182-89 ("Order").) Notably, fees for 2022 and 2023 remain uncalculated and undistributed. Appellants seek an

emergency stay of the Order under NRCP 62(d) by fundamentally mischaracterizing the amounts as supplemental damages versus contractually earned rental proceeds, alleging the amounts are incorrect and unrecoverable after-the-fact, and posting a supersedeas bond. (Motion.) But, NRCP 62(a)(2) does not provide for a stay in the context of a receivership. Appellants' arguments are fatally flawed because they are based upon inaccurate facts and a flawed legal analysis. Further, as the district court recognized, the rents must be released to the Receiver—to fund the receivership and pay Respondents overdue rental proceeds.

II. STATEMENT OF FACTS

The Motion is preceded by over a decade of litigation, including case-terminating sanctions, a three-day prove-up hearing resulting in compensatory damages exceeding $8 million, a two-year jurisdictional appeal, and post-remand proceedings including a punitive damages award exceeding $9 million. (1 R.App. 190-240.) The Motion precedes an upcoming trial on six (6) orders for Appellants to show cause[1], and the receivership's holding the parties' units as trustee until they are appraised and sold pursuant to court order. (1 R.App. 241-47, 2 R.App. 248-52.)

[1] These Orders to Show Cause are largely centered around Appellants' refusal to turn over Respondents' rental proceeds since January 2020. (See, e.g., 2 R.App. 253-313.) This refusal furthers Appellants' long-standing *modus operandi* to make these proceedings as "unjust, dilatory, and costly" as possible. (1 R.App. 212.) The proceeds are critical to fund the receivership and, so long as they are being withheld by Appellants, the Receiver has refused to complete his work in this matter, thereby leaving the parties and the litigation at a standstill. (2 R.App. 317, 438.)

After striking Appellants' answer and counterclaims as sanctions for gross discovery abuses, the district court appointed a receiver over the GSRUOA. (2 R.App. 320-25, 1 R.App. 1-10.) The Receiver was appointed to "implement[] compliance" with the contracts governing the parties (the "Governing Documents"). (1 R.App. 1-2) On October 9, 2015, the district court entered its Findings of Fact, Conclusions of Law and Judgment ("FFCLJ"), which concluded the compensatory damages phase, but explicitly directed "[t]he receiver will remain in place with his current authority until this Court rules otherwise; . . . ." (1 R.App. 232.)

The FFCLJ awarded Respondents compensatory damages for Appellants' wrongdoings through the date of the FFCLJ: October 9, 2015. (1 R.App. 231-32) Going forward, because the parties remained contractually bound and the Receiver would remain in place "with his current authority" to "implement[] compliance" with the Governing Documents, the Receiver was to enforce the contracts for the rest of the litigation, including the payment of rental proceeds. (1 R.App. 232, 1.)

This case was dismissed in error in May 2016. During the pendency of that two-year appeal, without a receiver, Appellants violated the Governing Documents and again misappropriated Plaintiffs' rental proceeds. (2 R.App. 326-94.)

Accordingly, upon remand, Respondents sought supplemental damages accrued from Appellants' violations of the Governing Documents during the appeal. (Id.) Shortly thereafter, the district court ordered that "the Receiver has the authority

to, and shall, disgorge to Plaintiffs any and all fees the Defendants assessed following the Dismissal Order [during the appeal] that are in excess of those calculated by the receiver . . . ." (2 R.App. 396.) By September 2019, the Receiver had fully disgorged the rental proceeds owed to Respondents as a result of Appellants renting Respondents' units during the appeal. (2 R.App. 403.)

After that, so long as the Receiver rented Respondents' units according to the Governing Documents, which he was authorized and mandated to do, Respondents would accrue no further damages because rental proceeds earned by their units would be paid out by the Receiver pursuant to the Governing Documents. Even now, the Receiver retains authority to enforce the Governing Documents—contracts still binding the parties together—such that the parties' contractual obligations are upheld and Respondents receive the proceeds from the rental of their units until they are sold pursuant to a district court order. (2 R.App. 406-14, 1 R.App. 1-10, 232.) The Order confirms this and requires the payment of those wrongly withheld proceeds owed to Respondents for 2020 and 2021—2022 and 2023 still need to be calculated. (1 R.App. 182-189.)

Appellants argue enforcement of the Order must be stayed pending appeal, but this argument lies on a precarious foundation. The amounts to be turned over are rental proceeds—not supplemental damages susceptible to any viable argument on appeal. These rental proceeds are rightfully owed to Respondents for Appellants'

rental of Respondents' units.[2] The juxtaposition of these funds categories cannot be overstated: Appellants have no right to deny Respondents funds which are absolutely owed to Respondents pursuant to contract for the rental of Respondents' units.

Equally important, the order appointing the Receiver is clear: the Receiver is paid from the rental proceeds. (1 R.App. 5-6, 183.) Since Appellants have wrongfully withheld these proceeds, the Receiver has refused to work (which is presumably exactly what Appellants intend). (2 R.App. 418, 436-39.) Accordingly, the rents must be released so the Receiver will perform necessary tasks until the units are sold. (1 R.App. 183-84.) Respondents will suffer irreparable harm if a stay is granted and the receivership does not preserve the units. Indeed, the Receiver must account for the rents until the units sell; otherwise, Appellants will only steal more rental revenue. A stay would operate as an injustice under the law and the circumstances, causing irreparable harm.

III. LEGAL STANDARD

Generally, an "appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2)." NRCP 62(d). An automatic stay is **not** triggered for an interlocutory or final judgment in an action for a receivership. NRCP 62(a)(2).

[2] Appellants have refused to release the rent going back to 2020, yet they send Respondents 1099s for the rents received for the units (and misappropriated by Appellants). (3 R.App. 446-65, 489.) Appellants rent Respondents' units, keep all of the rental revenue, and then 1099 Respondents for the withheld funds. (Id.)

Moreover, the proponent of a stay bears the burden of establishing its need. Clinton v. Jones, 520 U.S. 681, 708 (1997). Before granting a stay pending appeal, the court should consider: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether appellant will suffer irreparable injury if the stay is denied; (3) whether respondent will suffer irreparable injury if the stay is granted; and (4) whether appellant is likely to prevail on the appeal's merits. NRAP 8(c).

IV. ARGUMENT

A. NRCP 62 Does Not Support an Automatic Stay in This Case

Appellants argue by posting a supersedeas bond, they have usurped the district court's ability to deny their request for a stay of the Order. (Motion.) Appellants cite NRCP 62(d) which provides that an "appellant may obtain a stay by supersedeas bond," but Appellants ignore the explicit exception provided: "except in an action described in Rule 62(a)(2)." In turn, NRCP 62(a)(2) provides, "an interlocutory or final judgment in an action for an injunction or **a receivership** is **not** automatically stayed . . . ." NRCP 62(a)(2) (emphasis supplied).

Thus, the Receiver's involvement trumps Appellants' position that a stay is automatic by virtue of their supersedeas bond. Indeed, the existence of a receiver here renders the action and Order "not automatically stayed, unless the court orders otherwise." NRCP 62(a)(2). The district court has already recognized the impropriety of a stay at this juncture. (3 R.App. 509-12.)

Appellants further contend NRCP 62(a)(2), "by its plain terms," only applies to the "initial appointment of a receiver." (Motion at 7.) The rule says no such thing; in fact, it implies the opposite. The rule applies to "interlocutory" judgments in receivership actions. NRCP 62(a)(2). Such interlocutory judgments surely cannot be limited to a receiver's initial appointment because interlocutory judgments would rarely, if ever, be entered at the start of a case involving a receiver's appointment.

No rational reading of NRCP 62(a)(2) reaches Appellants' overly narrow conclusion. Instead, NRCP 62(a)(2) disallows parties who are already subject to district court supervision via receivership or injunction from further evading compliance with a statue, rule, or order, or from continuing to commit those acts prompting the receivership or injunction, to continue their bad acts by posting a supersedeas bond. Allowing a bond to supersede the district court's ability to curtail this behavior would make receiverships and injunctions toothless. See E. Reinhart Co. v. Oklahoma Gold Mining Co., 48 Nev. 32, 32, 233 P. 842, 842 (1925) (to disallow the receivership court full authority over the receivership "would handicap, if not entirely tie, the hands of the court in that matter").

Appellants cite to no legal authority to support their misguided interpretation of NRCP 62(a)(2). Therefore, this unsupported interpretation—which contradicts the rule's inclusion of interlocutory judgments—need not be considered. Appellants are not entitled to any automatic stay as a result of posting a supersedeas bond.

B. A Discretionary Stay Would Be Unduly Prejudicial to Respondents

Respondents will be severely and irreparably harmed by a stay because the amounts to be paid are rental proceeds to which Respondents are contractually entitled as owners of their units—not damages. (3 R.App. 446-65.) Appellants' rental of Respondents' units generates a profit that, pursuant to the Governing Documents, is to be half paid to Respondents. (1 R.App. 124-58.) Respondents will continue to suffer significant harm as a result of Appellants' baseless refusal to pay these rental proceeds from Respondents' own units and any requested stay. And, equally critical, the rents fund the receivership, which is all but defunct now due to nonpayment. (1 R.App. 6, 182-85; 2 R.App. 418, 436-39.)

Further, even if the Receiver's calculations result in an overpayment, which contradicts the Receiver's statements that his calculations are conservative and likely underestimate the totals owed to Respondents, there are multiple funding sources to recoup any such overpayment. (3 R.App. 492-93.) First, Respondents have obtained a compensatory damages award which includes over $4 million for Appellants' indisputable rental of certain Respondents' units without a rental agreement (i.e., Appellants lacked authority to rent certain units, did not report the revenue, and stole the proceeds therefrom). (1 R.App. 231.) This damage amount is unassailable and would more than provide for any unlikely overpayment. Similarly, Respondents earn rental proceeds from their units each month. (See e.g., 1 R.App. 273-88.)

Appellants could use these proceeds, payable to Respondents, to recoup any overpayment.[3] Finally, Respondents' units are a secured reimbursement source, because Respondents must sell their units pursuant to the GSRUOA termination. (2 R.App. 412.) These sale proceeds could easily be offset by any overpayment. There is thus no potential for irreparable harm to Appellants, nor any thwarting of the appeal's purpose, by denying a stay and allowing the Order to be enforced.

In fact, even the case Appellants cite to support their claim of irreparable harm undercuts their position. That case provides, "[i]f expenditures cannot be recouped, the resulting loss may be irreparable." Philip Morris USA Inc. v. Scott, 561 U.S. 1301, 1304 (2010). The judgment monies there were to fund a government program, not compensate the plaintiffs; so, if the judgment was reversed, funds expended by the government program administrators would be unrecoverable. Id.

This matter is nothing like Philip Morris. Here, the funds will not be irrevocably expended; they will be distributed to Respondents, from whom reimbursement can be ordered and collected as set forth in detail above. And, Respondents will be severely harmed by continued deprivation of the rental proceeds to which they are entitled. (1 R.App. 124-58.)

[3] Despite claiming Respondents are unlikely to reimburse Appellants if the $1,103,950.99 is released, Appellants issue 1099s each year, claiming Respondents earn tens of thousands of dollars of rental proceeds for each unit. (3 R.App. 489 (showing $34,418.78 for one unit).) Based on these 1099s, there is plenty of money available for reimbursement.

Finally, a party who "simply asserts" the other "[is] unlikely to be able to pay" has not shown irreparable harm as this statement could be made by "virtually every person" who sues someone. Freedom Mortgage Corp. v. Madariaga, 2020 WL 6798062, at *3 (E.D. Cal., Nov. 19, 2020; unpublished). Where irreparable harm might exist when a potential debtor "is insolvent or facing imminent bankruptcy," a finding of irreparable harm "must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." Id.

Appellants, who owe millions to Respondents pursuant to judgment, baldly assert there will be no funds for any possible future reimbursement if the proceeds are ultimately found to be excessive. But, the assertions are contradicted by fact, based on conjecture and speculation, and therefore do not support a showing of irreparable harm to Appellants. Thus, equity supports denying a discretionary stay.

V. CONCLUSION

Respondents will be severely prejudiced by any further delay in Appellants' performance of their obligations under the Governing Documents. Appellants' arguments fall flat in light of the mischaracterization of the funds, inaccurate factual basis, and overly narrow reading of NRCP 62 upon which they are based. Accordingly, Respondents respectfully request that no stay be granted.

Dated: this 2nd 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 May 2, 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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