IN THE SUPREME COURT OF THE STATE OF NEVADA

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

REPLY IN SUPPORT OF 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

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I. INTRODUCTION

Respondents seek to deprive Appellants of the right to meaningfully appeal an order to pay more than $1 million dollars that Respondents concede is not accurately calculated. Unlike Respondents, Appellants have no realistic chance (or security) to recoup the million dollars if they prevail in this Court. By contrast, Respondents are fully secured if Appellants do not succeed. Appellants posted a supersedeas bond for the entire $1 million amount (plus other bonds totaling about $30 million). Under NRCP 62(d), this supersedeas bond entitles Appellants to an automatic, non-discretionary stay of execution. NRCP 62(a)(2)'s plain language shows that its exception to the automatic stay only applies to the initial receivership appointment either during an existing case ("interlocutory") or at the end ("final judgment"). Respondents identify no authority holding otherwise and do not address the cases Appellants advance. Respondents also ignore that – conveniently after Appellants filed this motion – the Receiver finally sought disbursement of funds Appellants deposited with the district court. Thus, the bonded funds are unnecessary for the Receiver's operations, if any. The Court should grant a stay to secure Appellants' appellate rights.

II. ARGUMENT

A. NRCP 62(a)(2)'s Exception Applies Only to Initial Implementation of a Receiver so Appellants are Entitled to an Automatic Stay of Execution.

Respondents contend that NRCP 62(d)'s automatic stay of execution does not apply to *any* interim order requiring monetary payments after a receiver has been

appointed. (Opp'n at 6 ("the Receiver's involvement trumps Appellant's position that a stay is automatic by virtue of their supersedeas bond.").) Respondents try to counter Appellants' straightforward, textual reading by stretching the word "interlocutory" in NRCP 62(a)(2). (*Id.* at 7.)

But "interlocutory" refers to *when* the receiver is initially appointed – "interlocutory" does not refer to each and every individual payment or disbursement ordered during a receivership. Under NRS 32.010, a receiver may be appointed at two junctures: One, when "an action is pending" *i.e.* interlocutory or, two, "after judgment" *i.e.* at final judgment. NRS 32.010(1) ("A receiver may be appointed by the court in which an action is pending . . . . In an action . . . . After judgment . . . ."). That is why NRCP 62(a)(2) mentions "[a]n interlocutory or final judgment in an action for an injunction or a receivership." Respondents' contorted interpretation would transform all interim payment directives into "interlocutory . . . judgments" subject to NRCP 62(a)(2). But there are no interlocutory "judgments" without NRCP 54(b) certification.

Compounding their flawed reading, Respondents do not address the interplay with NRS 15.040 or the ramifications of their interpretation on the other injunctive relief class of cases referenced in NRCP 62(a)(2). (*Compare* Mot. at 8-9, *with* Opp'n at 6-7.)[1] The plain language and context of NRCP 62 show that only the initial

[1] Respondents also neglect to reconcile the immediate appealability of receivership and injunctive relief orders. *See* NRAP 3A(b)(3)-(4); Mot. at 7-8.

appointment of a receiver – either during an existing case or at final judgment – is *not* automatically stayed by posting a supersedeas bond. All other interim or interlocutory payment or disbursement orders are automatically stayed under NRCP 62(d) when a supersedeas bond is posted.

Respondents offer no case law to support their view.[2] Instead, Respondents wave their hands and claim "[a]ppellants cite to no legal authority to support their misguided interpretation of NRCP 62(a)(2)." (Opp'n at 7.) Yet, Respondents do not grapple with the cases Appellants presented showing that supersedeas bonds stay receivership directives to pay monetary amounts. (Mot. at 9 (citing *Valley Federal Savings & Loan Ass'n of Hutchinson, Kan. v. Aspen Accommodations, Inc.*, 716 P.2d 483 (Colo. App. 1986); *City Ice Co. of Kansas City v. Quivira Dev. Co.,* 30 P.2d 140, 141(Kan. 1934)).

These cases recognize that a defendant must post a supersedeas bond covering receivership disbursements or they may lose their right to appeal. *See Aspen Accommodations, Inc.*, 716 P.2d at 484 ("Subsequent 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."); *City Ice Co. of Kansas City*, 30 P.2d

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[2] Respondents generically cite *E. Reinhart Co. v. Oklahoma Gold Mining Co.,* 48 Nev. 32, 233 P. 842, 842 (1925), for a proposition about the court's general supervisory authority over receiverships. (Opp'n at 7.) The case is inapplicable because it does not involve NRCP 62 or supersedeas bonds.

at 141 ("While the objections were made by Thayer . . . no supersedeas bond or one to stay proceedings was given by him. Trickett, the receiver, went on and transferred the property, paid the indebtedness of various kinds as directed by the court, and made his report to the court showing that all the funds had been paid out except $226.74.").

The circumstances of this case confirm the soundness of those decisions and Appellants' interpretation. Respondents admit that they are treating the Receivership distributions as a substitute for a supplemental damage claim which has never been formally pled after the compensatory award in October 2015. (Opp'n at 3-4; Ex. J at 3, 12-13.) And, Respondents recognize the possibility that the Receiver's post-October 2015 calculations may result in overpayment. (Opp'n at 8.) Still, Respondents posit that Appellants have no ability to secure a right to appeal and must, instead, pay more than a million dollars with no hope of reimbursement.

But, if the miscalculated amounts were properly characterized as compensatory damages since they serve the same function, Appellants *would* be entitled to dispute the calculations at a trial (or at least at a prove up hearing) *and* to an automatic stay of execution by posting a supersedeas bond. Respondents' strained interpretation of NRCP 62 strips Appellants of the automatic stay of execution that Appellants would otherwise be entitled to when appealing a compensatory damage award. Without the applicable stay, Appellants lose the opportunity to meaningfully appeal Respondents' million-dollar guesstimate.

B. Alternatively, Respondents Will Suffer No Harm from a Discretionary Stay.

Respondents contest Appellant's alternative request for a discretionary stay. (Opp'n at 8-10.) Respondents contend that they will suffer irreparable harm if they do not receive the Receiver's wrongly-calculated disbursements before Appellants' appeal runs its course. However, it is Appellants – not Respondents – who will suffer irreparable harm without this Court's intervention.

First, monetary amounts do not give rise to irreparable harm unless the amounts are unrecoverable. *Philip Morris USA Inc. v. Scott,* 561 U.S. 1301, 1304 (2010) (Scalia, J.). The supersedeas bond guarantees that Respondents will recover if Appellants are unsuccessful. By contrast, Appellants have zero shot at reimbursement after the million dollars is distributed to Respondents even if Appellants prevail. Respondents have not posted a bond, and they have complained throughout the case about their lack of financial resources. (*See* Ex. J at 16.) After continually highlighting their lack of funds, Respondents cannot credibly claim Appellants can get their money back. *Chevron Corp. v. Donziger*, 833 F.3d 74, 142 (2d Cir. 2016).

Lastly, Respondents ignore that after Appellants filed this motion, the Receiver finally opened a bank account and sought payment from funds that Appellants deposited with the district court. (*See* Ex. Q.) Accordingly, the Receiver has funds available and the bonded amounts are unnecessary. Notably, the Receiver has not opposed Appellants' stay request. Therefore, a stay is warranted.

DATED this 4th day of May 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 4th day of May 2023, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing Reply in Support of 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

EXHIBIT Q

F I L E D
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Clerk of the Court
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CASE NO. CV12-02222 ALBERT THOMAS VS. MEI-GSR HOLDINGS ETAL

JUDGE OFFICERS OF COURT	
4/26/2023 HONORABLE ELIZABETH GONZALEZ	**MINUTE ORDER** The Court notes that A "Notice of Interpleader" was filed by Defendants on April 12, 2023. Any party seeking disbursement or award of a portion of the interpled funds shall file a motion within 15 judicial days.