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

APPELLANTS' RESPONSE TO MAY 8, 2023 ORDER TO SHOW CAUSE

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I. INTRODUCTION

The Court's May 8, 2023 Order to Show Cause questions the Court's jurisdiction given the odd posture of the receivership below. The question presented, however, *is not* "how is there a final, appealable judgment when the receivership remains pending?" Rather, the question presented *is* "how is there a receivership still pending when there is a final, appealable judgment?"

Under Nevada statutes, this Court's precedent, and other authorities, a receivership *pendente lite* automatically terminates upon entry of a final judgment. This is because a receivership is a provisional *remedy* – not a standalone claim or cause of action. Much like a preliminary injunction, a receivership maintains the status quo pending the disposition or outcome of litigation. Once the litigation is over – and damages assessed in a judgment – the receivership's purpose is finished. The law does not recognize a receivership *pendente forever*. Indeed, if the Amended Final Judgment did not terminate this litigation and the Receivership, it is difficult to see when the case will ever end and when this Court will obtain jurisdiction.

The district court agrees with Appellants that the Amended Final Judgment is "final." In a recent May 23, 2023 order, the district court stated, "[t]he Court has entered a final judgment on the issues pending in the operative pleadings."[1] Yet the district court expressed the belief that it has continuing jurisdiction over the

[1] (Ex. 1 at 1.)

Receivership and related issues outside the operative pleadings such as the dissolution of the unit owners association.[2] But the district court is mistaken that a pre-judgment receivership may continue indefinitely post-judgment. The Amended Final Judgment resolved all cognizable *claims* against all parties. Therefore, the Amended Final Judgment is a final, appealable judgment and this Court has jurisdiction over this appeal. By contrast, the district court no longer has jurisdiction to preside over the Receivership and the lower court case is finished.

Because the Amended Final Judgment is a final, appealable judgment, all prior interlocutory or interim receivership orders have merged into it and may be challenged as part of this appeal. Thus, interim Receivership disbursement, turnover, or payment orders are reviewable as part of this appeal from the Amended Final Judgment.

Despite the merger of interlocutory orders into the Amended Final Judgment, the Receiver need not be named as a party to this appeal. The Receiver is not a formal party to this action. Instead, the Receivership was ostensibly imposed during the litigation as a neutral arm of the court to protect *all* parties during the pendency of the case. After the payment of his invoices, the Receiver is not personally interested in the $1.1 million that has been bonded. Any disbursements, disgorgements, or payments from the bond will flow to the Respondents' benefit. Accordingly, the

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[2] (*Id*. at 1-2.)

relief Appellants seek in this appeal in the form of reversal, offsets, recoupment, or otherwise will be against the Respondents – not the Receivership itself. Even so, out of an abundance of caution, the Court may name or join the Receiver as a respondent if necessary.

Thus, the Amended Final Judgment is properly appealable, and this Court has jurisdiction over the issues presented, including those related to the $1.1 million supersedeas bond automatic stay.

II. STATEMENT OF FACTS

A. Appellants Rescue the Grand Sierra Resort and Its Condos.

This litigation started as a mundane HOA dispute, but it has since exploded into a multimillion-dollar case because of a defense attorney's personal problems and the resulting draconian sanctions. Respondents are condo owners at the Grand Sierra Resort ("GSR") in Reno – formerly known as the Reno Hilton. In 2005, the GSR's earlier owners created a program to sell 670 hotel rooms as a hotel-condominium arrangement. But, by 2010, the GSR was a distressed, bank-owned asset on the verge of being shuttered. Respondents' condos were essentially worthless. Appellants rescued the property – and the condos – when they purchased it for $42 million in 2011. Appellants have since invested more than $500 million dollars in renovations. These improvements have benefited the property, the condo owners, and the Reno area generally.

Dissatisfied with Appellants' efforts to turnaround the GSR, Respondents – just 92 condo unit owners – filed suit the year after the purchase, alleging certain improprieties and mismanagement of the condo unit owners association ("GSRUOA"). Respondents' operative Second Amended Complaint asserted twelve claims for relief based on tort and contract theories with a request for a receiver under NRS 32.010. (Ex. 2 at 15-25.)

B. Appellants Are Defaulted and Respondents are Awarded Astronomical Damages.

Appellants have never had the chance to defend against the merits of Respondents' allegations. 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. 3 at 11-12; Ex. 4 at 2-3.) After being defaulted, the district court imposed a receiver over the GSRUOA (not GSR itself) in 2015. (Ex. 5 at 1-4.)

The district court conducted a prove-up hearing in 2015 and entered an $8 million compensatory damage award against Appellants. (Ex. 6 at 21-22.) The Findings of Fact, Conclusions of Law and Judgment specifically addressed and resolved each of the Respondents' claims for relief when rendering the award, including the Receivership. (*Id*. at 16-23.) The $8 million award for just 92 condo units is almost 20% of Appellants' purchase price for the entire hotel and casino.

Despite the enormity of the compensatory award, the district court reserved additional punitive damage issues until a later hearing. (*Id*. at 23.) Eventually, the parties stipulated that the 2015 compensatory award "does not constitute a final judgment under NRCP 54(a) because the Court has not resolved whether it will award punitive damages." (Ex. 7 at 1.)

The punitive damage phase was not conducted until seven years later. (Ex. 8 at 1.) The written order from the hearing was delayed six months until January 2023. (*Id*.) Ultimately, the district court awarded $9,190,521.92 in punitive damages against Appellants. (*Id*. at 5.) Between the compensatory and punitive damage orders, the district court awarded as damages the equivalent of 40% of Appellants' entire purchase price for the whole hotel and casino for only 92 units out of hotel's 2,000 rooms. The punitive damage order instructed Respondents "to submit a final judgment consistent with the October 9, 2015 [compensatory damage] Order and this Order." (*Id*.)

Nine days after the punitive damage award, but before entry of a final judgment, the district court entered an order on the Receiver's Motion for Orders & Instructions (filed 12/1/23). (Ex. 9.) Aside from addressing Receiver payment issues, the order directed Appellants to pay additional amounts that overlap with Respondents' already-awarded compensatory damage categories – specifically, rental income amounts allegedly owed to the individual Respondents. (*Id*. at 2-3.)

The district court ordered Appellants to 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 objected but were overruled on March 27, 2023. (Ex. 10 at 1.) Appellants filed a supersedeas bond on April 4, 2023 to stay execution. (Ex. 11.) The district court refused to enforce the stay so Appellants were forced to obtain an emergency stay from this Court. *See generally MEI-GSR Holdings, LLC*, No. 86094 (Order to Show Cause & Granting Temporary Stay May 8, 2023).

C. The District Court and Respondents Acknowledge the Finality of the Judgment but Refuse to Terminate the Receivership Despite Entry of the Judgment and Appellants' Appeal.

Meanwhile, the district court entered a "Final Judgment" on February 2, 2023. (Ex. 12.) Respondents filed a motion to alter or amend, which was granted in part on March 27, 2023. (Ex. 13 at 1.) Once again, the district court directed Respondents "to prepare and submit an amended judgment." (*Id*. at 2.)

The Amended Final Judgment was entered on April 10, 2023. (Ex. 14 at 3.) It awarded $8,318,215.54 in compensatory damages and $9,190,521.92 in punitive damages. (*Id*. at 2.) The Amended Final Judgment also struck Appellants' counterclaims. (*Id*. at 3.) However, the Amended Final Judgment does not continue or re-appoint the Receiver. (*See generally id*.) The Receivership therefore automatically dissolved. *Cf*. NRS 32.010(3), (4) (allowing appointment of receivers "After judgment").

Appellants filed a notice of appeal on April 13, 2023. To date, Appellants have posted more than $30 million dollars of supersedeas bonds to secure their rights to appeal the various issues. (*See, e.g.,* Exs. 11, 15, 16.)

Respondents filed a cross-appeal. In their docketing statement, they acknowledge the finality of the Amended Final Judgment. Respondents answered question 21(b) by representing "[t]he punitive damages order … may have concluded the second *and final phase of the underlying proceeding*." *MEI-GSR Holdings, LLC v. Thomas, et al.*, No. 86092, at § 21(b) (Cross-Appellants' Docketing Statement Mar. 14, 2023) (emphasis added). Respondents conceded that "[a]ll claims remain[ed] pending *until a motion to alter or amend the Final Judgment entered February 2, 2023 is decided*." (*Id*. at § 25(a)) (emphasis added). Once their motion to alter or amend was decided, Respondents foresaw "it potentially resolved *all outstanding issues in the underlying proceeding*." (*Id*. at § 26) (emphasis added).[3] Respondents did not indicate that the Receivership remained pending or that there were other tasks allegedly remaining to complete.

The district court also recently confirmed that the Amended Final Judgment is "final." In a May 23, 2023 order, the district court stated, "[t]he Court has entered

[3] While Respondents called "protective" an earlier cross-appeal related to punitive damages (so did Appellants), they did not call their cross-appeal from the *Amended Final Judgment* a "protective" notice of appeal. *Compare MEI-GSR Holdings, LLC*, No. 86092, at *2 n.1 (Notice of Cross Appeal Feb. 22, 2023), *with MEI-GSR Holdings, LLC*, No. 86092 (Notice of Cross-Appeal May 1, 2023).

a final judgment on the issues pending in the operative pleadings." (Ex. 1 at 1.) It denied Respondents' request for additional discovery because "a final judgment has been entered, [and] those pretrial discovery obligations are no longer mandated." (*Id*. at 2.) Still, the district court erroneously concluded that it retains jurisdiction to supervise the Receivership and oversee the dissolution of the owner's association even though the district court observed there are no dissolution related claims in the operative pleading. (*See id*. at 1-2.)[4] These claims cannot exist post-default judgment under NRCP 54(c).

The district court's refusal to acknowledge the legal consequences of entering final judgment has caused this case to continue spiraling and expanding exponentially post-judgment. The district court recently purported to exercise jurisdiction over a four-day evidentiary hearing from June 6, 2023 to June 9, 2023 where, in the end, it modified the already-extinguished Receivership and ordered Respondents to pay another $16 million dollars to the Receiver who is already legally terminated after the entry of the Amended Final Judgment. (Ex. 18 at 5-6, 8.)

The rogue Receivership proceedings lingering in the district court prompted this Court to issue an Order to Show Cause on May 8, 2023. However, this Court

[4] After awarding additional attorneys' fees and costs to Respondents in May 2023, the district court directed them "to prepare an amended judgment." (Ex. 17 at 3.) The Amended Final Judgment cannot be substantively modified because it is on appeal and such an amendment is unnecessary because orders granting fees and costs are separately appealable as special orders after judgment. NRAP 3A(b)(8).

has jurisdiction over this appeal while the district court does not have jurisdiction to maintain the Receivership in place perpetually.

III. ARGUMENT

A. The Amended Final Judgment is Final and Appealable Because the Receivership is Not a Claim and it Dissolved as a Matter of Law.

The Court's May 8, 2023 Order queried whether there is a potential jurisdictional defect. *MEI-GSR Holdings, LLC*, No. 86094, at *4 (Order to Show Cause & Granting Temporary Stay May 8, 2023). It outlined a potential concern: "Although the district court's amended judgment appears to have resolved all of the damages claims asserted below, the receivership imposed pursuant to respondents' complaint remains pending." *Id*. The Court suggested that, if its concern about the Receivership is true, the Amended Final Judgment may lack finality or, alternatively, "the receivership proceedings might be collateral to the claims resolved by the judgment." *Id*.

While the Court's concern is understandable given this litigation's complicated procedural history, the Court's premise is incorrect. A judgment does not lack finality because of a pre-judgment receivership. On the contrary, a final judgment automatically terminates a pre-judgment remedy of a receivership. Because all claims have been resolved, and the Receivership has terminated, the Amended Final Judgment is final and appealable. As a result, all interim receivership

orders merge into the final judgment and become appealable. Therefore, this Court possesses jurisdiction.

1. A Receivership is Not a Claim for Relief or Cause of Action.

Generally, a final judgment is the end of a "case." *Greene v. Eighth Jud. Dist. Ct.*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) (stating a final judgment '"puts an end to an action at law."') (emphasis in original) (quoting Black's Law Dictionary 843 (6th ed. 1990)). A final judgment is one that resolves all "claims" against all parties. *See* NRCP 54(b); *see also* NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 425, 996 P.2d 416, 417 (2000) (describing a "final and appealable" order as one "which disposes of all claims and parties before the district court").

The Amended Final Judgment qualifies as "final" because all substantive claims have been resolved – Respondents have been awarded more than $17.5 million plus attorneys' fees, costs, and other amounts. The district court itself recognized in its May 23, 2023 order that the Amended Final Judgment resolved all "issues pending in the operative pleadings." (Ex. 1 at 1.) Before the Court's Order to Show Cause – and Appellants' related Motion to Dismiss as Moot in Case No. 85915 – Respondents acted as though the Amended Final Judgment was final.

The Receivership does not undermine the Amended Final Judgment's finality. A Receivership is not a "claim" or "cause of action." 75 C.J.S. *Receivers* § 5 ("it alone does not constitute a cause of action."); *see also Sessions v. UMB Bank, N.A.*,

No. 2:21-CV-01490-LK, 2022 WL 1110282, at *1 (W.D. Wash. Apr. 8, 2022); *Power Support (USA), Inc. v. Power Support, Ltd*, No. CV 12-10900 BRO (FFMx), 2013 WL 12113231, at *4 (C.D. Cal. June 7, 2013).

Rather, a receivership is a provisional prejudgment *remedy*. *See Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954) ("Receivership is generally regarded as a *remedy* of last resort.") (emphasis added); *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983) ("The appointment of a receiver *pendente lite* is a harsh and extreme *remedy* which should be used sparingly and only when the securing of ultimate justice requires it.") (emphasis added); 75 C.J.S. *Receivers*, *What is a Receivership*? § 2 ("A receivership is a remedy.").

Nevada statutes only allow the *remedy* of a receivership in two circumstances: during a pending action *or* after final judgment to assist with collecting the judgment. NRS 32.010 provides, "[a] receiver may be appointed by the court *in which an action is pending* …." (emphasis added). All but two statutory subsections confirm receiverships are allowable only in a pending action. NRS 32.010(1)-(2), (5) ("[*i*]*n* an action") (emphasis added); *see id*. at (6). Otherwise, a receiver may be separately appointed "[a]fter judgment" to carry out or execute the judgment. NRS 32.010(3)-(4). Issues related to a *post*-judgment receiver are, by definition, collateral to the claims resolved by the judgment itself. *See id.* Therefore, according to NRS Chapter 32, receiverships appointed during litigation are a remedy that lasts only so long as

the litigation does. *See Couch v. ADC Realty Corp.*, 268 S.E.2d 237, 240 (N.C. App. 1980) (holding under similar North Carolina statutes that "[a]lthough the court characterized it as the appointment of a 'permanent' receiver, the most the court could do under subsection (1) was to appoint a receiver pending the outcome of the litigation.").

Here, the Receiver was appointed during the litigation in 2015 but before any final judgment. Thus, the Receiver was necessarily appointed as a provisional remedy to maintain the status quo *until* final judgment.[5] A receivership is not a claim for relief that remains pending after judgment or prevents the Amended Final Judgment from being appealable. Instead, any receivership automatically terminates when the substantive claims for relief for which it was imposed are resolved and the underlying case concludes with a final judgment.

2. The Receivership Automatically Dissolved on Entry of the Amended Final Judgment.

This Court has held that a receivership *pendente lite*, like the one in this case, terminates upon final judgment. In *Johnson v. Steel, Inc.*, 100 Nev. 181, 183, 678 P.2d 676, 678 (1984), this Court ruled that a "receiver *pendente lite* is an ancillary remedy used to preserve the value of assets ***pending outcome of the principal case***."

[5] A post-judgment receiver is unavailable here because Respondents are fully secured by a supersedeas bond. *See* NRS 32.010(2)-(3). Moreover, Respondents have not requested non-monetary receivership relief post-judgment. Indeed, they cannot. *See* NRCP 54(c).

(emphasis added).[6] More recently, in *Direct Grading & Paving, LLC v. Eighth Judicial District Court*, 137 Nev. 320, 324, 491 P.3d 13, 17 (2021), the Court characterized a receivership as a provisional remedy before judgment to maintain the status quo until the action is over. This Court said, "[a] provisional remedy is '[a] *temporary remedy awarded before judgment and pending the action's disposition*, such as a temporary restraining order, a preliminary injunction, *a prejudgment receivership*, or an attachment,' that 'is intended to maintain the status quo by protecting a person's safety or preserving property.'" *Id*. (quoting *Remedy*, *provisional remedy*, *Black's Law Dictionary* (11th ed. 2019)) (emphases added).

In other recent unpublished orders, this Court has explained "that generally the appointment of a receiver 'is not the final or ultimate relief. ... It is merely an ancillary remedy, or it is merely an auxiliary, incidental, and provisional remedy.'" *N5HYG, LLC v. Iglesias*, No. 83425, 2022 WL 2196855, at *1 (Nev. June 17, 2022) (parenthetically quoting 75 C.J.S. *Receivers* § 5 (2022)). '"The appointment of a receiver is incidental to the purpose of effecting other relief."' *Id*. (quoting *Goldfine v. United States*, 300 F.2d 260, 263 (1st Cir. 1962)). Thus, under this Court's precedents, a receivership must be tied to other substantive claims and dissolves

[6] *overruled on other grounds by Shoen v. SAC Holding Corp*., 122 Nev. 621, 137 P.3d 1171 (2006).

when the "principal case" is no longer "pending" because there has been a disposition of the action through other ultimate relief at judgment.

The United States Supreme Court has also held that a receivership is an ancillary or auxiliary remedy that must be connected to an underlying case and other non-receivership relief. Like this Court, the Supreme Court has reasoned that a receivership is "*auxiliary to some primary relief which is sought* …." *Kelleam v. Maryland Cas. Co. of Baltimore, Md*., 312 U.S. 377, 381 (1941) (emphasis added). "A receivership," the Supreme Court clarified, "is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. *It is not an end in itself*." *Id*. (emphasis added). A receivership exists only while the action has some other purpose "in which there is a prayer for other relief." 75 C.J.S. *Receivers* § 5; *New York Cmty. Bank v. Sherman Ave. Assocs., LLC*, 786 F. Supp. 2d 171, 175 (D.D.C. 2011) ("The court may appoint a receiver as an ancillary, provisional action in connection with a pending matter."). Where, as here, all other relief has been awarded through substantial monetary damages, the receivership necessarily terminates.

"It is the rule that a receivership 'pendente lite' terminates with the rendition of the judgment . . . ." *Carpenson v. Najarian*, 62 Cal. Rptr. 687, 692 (Ct. App. 1967); *see also Mayo v. Mayo*, 63 P.2d 822, 823 (Cal. 1936) ("In 22 California Jurisprudence, 476, § 61, it is stated that 'a receivership pendente lite terminates with

the rendition of judgment; thereafter any questions as to the propriety of an appointment are moot, and will not be reviewed.'"); *Stier v. Don Mar Operating Co.*, 305 N.Y.S.2d 397, 398 (N.Y. App. Div. 1969) ("Since an order was not obtained to continue the receivership, it was terminated upon final judgment and respondent now lacks standing to maintain an action for rents."); *McMurrey v. McMurrey*, 168 S.W.2d 944, 945 (Tex. Civ. App. 1943) ("By implication, if not expressly, the receivership was terminated, as was the temporary injunction, by the entry of the final judgment, hence the appeal as to that phase of the case has become moot."); *see also Dulberg v. Ebenhart*, 417 N.Y.S.2d 71 (N.Y. App. Div. 1979) (finding no order continuing receiver after final judgment and stating "The boiler-plate language in the original order of appointment—'until the further order of this Court'--does not specifically refer to the tenure of the receivership and does not convey, with the requisite specificity, an intent that the receivership be continued after the final judgment.").

The Court's Order to Show Cause cites *Martin & Co. v. Kirby*, 34 Nev. 205, 214, 117 P.2, 4 (1911) as potentially casting doubt on this Court's jurisdiction. *MEI-GSR Holdings, LLC*, No. 86092, at *5 (Order to Show Cause & Granting Temporary Stay May 8, 2023). The Court characterized *Kirby* as "recognizing that 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 remaining funds." *Id*. But that

interpretation of *Kirby* is less than clear given its vintage, and *Kirby* appears otherwise distinguishable in any event.

First, *Kirby* involved a collateral lawsuit by creditors against a receiver's surety bond company when the receiver failed to pay claims. 117 P. at 4. Second, the underlying case appears to have involved a post-judgment receiver because the opinion speaks in terms of "creditors," "a writ of attachment," "debts," and "liabilities." *Id*. at 2-3. Those creditors sued in a separate action when their objections were sustained as part of the underlying case and the receiver refused to pay. *Id*. at 3-4. In that context, the Court held that the *receiver* could have appealed the orders requiring disbursement to the creditors so the *surety* is later barred from attacking the disbursement orders in the collateral case. *Id*. at 4-5. Nothing in *Kirby* indicates that the *creditors* were required to appeal or barred by the initial disbursement order from pursuing the separate action. And *Kirby* discusses both interlocutory and final judgments in relation to the receiver's account. *Id*. at 5 ("An interlocutory order, no matter how erroneous, if not void, will justify and protect all persons as completely as the final judgment itself. … Thus, interlocutory orders made in administration proceedings are only prima facie correct in a direct proceeding to set them aside, but are conclusive in a suit on an administrator's bond.").

What's more, this Court has described *Kirby*'s statement about the finality of a receiver's final distribution order as dicta. In *Alper v. Posin*, 77 Nev. 328, 331, 363 P.2d 502, 503 (1961)[7] – also cited in the Order to Show Cause – this Court described *Kirby* as "where, by way of dictum, the court indicated that the order of final distribution was the final judgment in a receivership proceeding." Accordingly, this Court has not characterized the cited portion of *Kirby* as a binding holding.

Kirby aside, *Alper* solidifies that the Amended Final Judgment is final and appealable. There, "Posin brought suit against Alper for [1] accounting and [2] dissolution of their joint venture, and for [3] the appointment of a receiver." *Id.* at 329, 363 P.2d at 502. This Court unremarkably held that an order confirming a receiver's sale of property was not final or appealable because the other causes of action for [1] accounting and [2] dissolution remained pending. *Id*. at 331, 363 P.2d at 503.

Unlike *Alper*, all underlying claims between Appellants and Respondents in the operative complaint have been resolved and Respondents have been awarded $17.5 million in damages. There are no claims remaining. The Amended Final Judgment is therefore final and appealable.

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[7] *abrogated on other grounds by Lee*, 116 Nev. 424, 996 P.2d 416.

B. The January 26, 2023 and March 27, 2023 Orders Have Merged into the Final Judgment and are Appealable.

Next, the Court's Order to Show Cause indicated that "it is unclear whether the January and March orders may be challenged in the context of the appeal and cross-appeal" from the Amended Final Judgment because the "orders appear merely to direct turnover of receivership assets at the request of the receiver." *MEI-GSR Holdings, Inc.*, No. 86092, at *5 (Order to Show Cause & Granting Temporary Stay May 8, 2023). Yet, because the Amended Final Judgment is a "final" judgment as shown above, all interlocutory or interim Receivership orders have merged into it and have become appealable.

Citing *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co*., 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998), this Court's Order to Show Cause correctly notes that usually "interlocutory orders may be considered in the context of an appeal from a final judgment." (*Id.*) Those interim orders "merge" into the final judgment. *Est. of Adams By & Through Adams v. Fallini*, 132 Nev. 814, 818, 386 P.3d 621, 624 (2016) (citing *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp*., 248 F.3d 892, 897 (9th Cir. 2001)).

This general principle applies equally to interim or interlocutory receivership orders. The Third Circuit's decision in *S.E.C. v. Black*, 163 F.3d 188, 195 (3d Cir.

1998) is an example that this Court has cited with approval.[8] The parties in *Black* appealed an order approving a receivership trustee's interim expense application while the receivership was still pending. *Id*. at 191, 193. The Court determined that it lacked jurisdiction over appeals from interim orders, but explained "there is no reason why this fee order could not be reviewed following a final judgment." *Id*. at 195 (citing *Law Offices of Beryl A. Birndorf v. Joffe*, No. 90-2745, 1991 WL 54857 (7th Cir. Apr. 11, 1991) (holding that a fee award is not appealable under the collateral order doctrine as it could be effectively reviewed following a final judgment because it did not cause irreparable harm in the interim)).

The Fifth Circuit has held likewise. In *Netsphere, Inc. v. Baron*, 799 F.3d 327, 330 (5th Cir. 2015), a party in receivership challenged interim orders granting fees and payments to the receiver and its counsel. On appeal, the Fifth Circuit surveyed its sister courts and found that "they have long concluded that orders directing the payment of monies or the transfer of property to receivers and their professionals are unreviewable" on an interlocutory basis. *Id*. at 332. But, deciding an issue of first impression, the court held that an interim order to pay receiver fees is later reviewable on appeal from a final judgment. *Id*. at 335.

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[8] *See Zabka v. Curo Funds, L.P.*, No. 53957, 2010 WL 3528617, at *1 (Nev. Apr. 29, 2010) (citing *Black* for the proposition that "an interlocutory fee order in a receivership matter is not appealable until a final order is entered").

These cases indicate that an otherwise non-appealable interlocutory or interim receivership order becomes appealable upon entry of a final judgment through merger provided that the order has not been mooted by intervening events. *See United States v. Alder Creek Water Co.*, 823 F.2d 343, 345 (9th Cir. 1987) (holding that interlocutory receivership orders related to the sale of company assets and disbursement of funds are appealable from a final judgment unless they are mooted due to the failure to obtain a stay of the interlocutory orders). By posting a $1.1 million supersedeas bond (on top of the other $29.4 million supersedeas bond) and obtaining an emergency stay from this Court, Appellants are able to appeal the interlocutory January 26, 2023 and March 27, 2023 Orders because they have merged into the "final" Amended Final Judgment.[9]

The other cases cited in the Order to Show Cause are in harmony. For instance, *United States v. Beasley*, 558 F.2d 1200, 1200 (5th Cir. 1977), involved an interlocutory order directing turnover of receivership expenses. The court determined the appeal was premature because there was no final judgment finally adjudicating the parties' rights. *See id*. at 1200-01. The turnover order would be

[9] As this Court has already noted, the Receiver's outstanding invoices have been paid in full. *MEI-GSR Holdings, LLC*, No. 86092, at *6 (Order to Show Cause & Granting Temporary Stay May 8, 2023). But to the extent the Receiver's compensation is separately contested afterward, those orders would be separately appealable as special orders after final judgment like customary attorneys' fee awards. *See* NRAP 3A(b)(8).

appealable from a final judgment. *See id.* Similarly, in *Art Institute of Chicago v. Integral Hedging, L.P.*, 129 S.W.3d 564, 572 (Tex. App. 2003), the Texas court ruled that an order directing a receiver to pay attorneys' fees was not yet appealable because the objections were not decided, issues were left open, and there was no final order.[10] Finally, *F.T.C. v. NHS Systems, Inc.*, No. 08-2215, 2009 WL 4729893, at *2 (E.D. Pa. Dec. 10, 2009), concluded that a non-party could not obtain a Rule 62 supersedeas bond stay of an order directing payment to a receiver without a final judgment like the one entered in this case.[11] This outcome is consistent with the Third Circuit's decision in *S.E.C. v. Black* analyzed above, which held "there is no reason why this [interim receivership] fee order could not be reviewed following a final judgment." 163 F.3d at 195.

These cases do not signal that an interlocutory receivership order is not appealable (or that a Rule 62 stay is unavailable) when they merge with a final

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[10] The Texas court appears to have applied a version of the so-called collateral order doctrine. *See id*. at 570-71. Nevada has not yet recognized the collateral order doctrine. *State Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 425 (1993). On the other hand, California courts have employed the collateral order doctrine and held that certain interlocutory orders requiring payment before a judgment in a receivership proceeding may be appealable. *Koshak v. Malek*, 200 Cal. App. 4th 1540, 1545, 136 Cal. Rptr. 3d 1, 6 (2011). The January 26, 2023 and March 27, 2023 Orders would be appealable if this Court recognizes the collateral order doctrine.

[11] As shown, the Amended Final Judgment constitutes a final judgment under NRCP 62 and allows Appellants to obtain an automatic stay. This Court also separately granted an emergency stay of execution.

judgment. Quite the opposite. Interlocutory or interim receivership orders merge, and become appealable, as part of an appeal from a final judgment. Consequently, the January 26, 2023 and March 27, 2023 Orders are appealable and properly before this Court. [12]

C. The Receiver Need Not be Named as a Party to this Appeal.

Lastly, the Court's Order to Show Cause asks whether the Receiver should be named as a respondent to the appeal. *MEI-GSR Holdings, LLC*, No. 86092, at *5 (Order to Show Cause & Granting Temporary Stay May 8, 2023.) The Receiver need not be named for this Court to exercise jurisdiction.

Unless sued directly, a receiver is not a party or adversary in litigation. "A receiver is an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation *pendente lite*, when it does not seem reasonable to the court that either party should hold it." *Bowler*, 70 Nev. at 382-83, 269 P.2d at 839. A receiver is regarded as an impartial officer of the court and does not represent either party. *Id.* at 383, 269 P.2d at 839. Just like the

[12] If nothing else, the January 26, 2023 and March 27, 2023 Orders are properly before this Court as part of Appellants' appeal from the March 27, 2023 Order on Defendants' Motion to Modify and Terminate Receivership which is included in Appellants' April 13, 2023 Notice of Appeal. An order refusing to vacate a receiver is appealable under NRAP 3A(b)(4). As with a final judgment, interlocutory receivership orders merge into an appealable order refusing to vacate a receiver and become appealable themselves. *See United States v. Antiques Ltd. P'ship,* 760 F.3d 668, 673–74 (7th Cir. 2014) (Posner, J.).

district court itself, a receiver is not a proper party to an appeal between adversaries because he is not personally interested in the outcome. *See* NRAP 3A(a)(stating a party "aggrieved" may appeal).

This Court addressed an analogous situation in *State v. State Bank & Trust Co.*, 36 Nev. 526, 137 P. 400 (1913), when a bank's receiver was ordered to release funds to Esmeralda County and he tried to appeal. The Court rejected the receiver's right to appeal. It stated, "[t]he receiver is an agent of the court… and it is a rare case that he can be justified to appeal[], and certainly he is not when, as in this instance, the question is merely between two sets of creditors as to the distribution of the fund." *Id*., 137 P. at 401-02 (quoting *Battery Park Bank v. W. Carolina Bank*, 37 S.E. 461, 462 (N.C. 1900)).

A receiver may appeal from orders in which he is personally interested like orders related to his compensation and administrate expense allowances. *Id*. A receiver, however, may not appeal "from any order or decree declaring the respective equities of the parties to the suit." *Id*. An appointment order does not invest the receiver with a personal interest in the estate's funds. *Id*., 137 P. at 403-04. The line of demarcation is this:

> He has the right of appeal with respect to any claim asserted by or against the estate, for therein he is the representative of the entire estate. He has the right of appeal from any decree which affects his personal right, for therein he has an interest. But he has not the right of appeal from a decree declaring the respective equities of parties to the suit. He

> should therein be indifferent, and not a partisan. His duty is to all parties in common. He should not become an advocate of one against another.

Id., 137 P. at 404 (quotations omitted). "There was no duty imposed upon [the receiver] to assert the rights of one creditor or class of creditors over those of another in respect to the common fund, nor in respect to their particular claim or preference." *Id*., 137 P. at 404. Instead, "the receiver not being a party affected should stand indifferent and not a partisan. His duty is to all the parties in common; he should not become an advocate of one creditor against another or of one class of creditors against another." *Id*., 137 P. at 403.

Here, the Receiver is not personally interested in the $1.1 million that Appellants were ordered to deliver to him. As this Court noted, Appellants have already separately paid the Receiver's invoices. *MEI-GSR Holdings, LLC*, No. 86092, at *6 (Order to Show Cause & Granting Temporary Stay May 8, 2023). The $1.1 million amount the district court ordered turned over to the Receiver constitutes alleged rental income supposedly owed to the Respondents. As a result, Appellants and Respondents are adverse to each other regarding the $1.1 million – the Receiver *should* be disinterested as an officer of the court. Accordingly, the Receiver is not a proper party to this party.

The immateriality of the Receiver's presence is shown in the Third Circuit's decision in *Black*, discussed above. There, the court emphasized that "the only party

not actually before us on this appeal is the [receivership] Trustee" even though the parties were appealing the trustee's interim expense payment. *Black*, 163 F.3d at 194. Even though the receivership trustee was not participating, the court found no obstacle from the trustee's absence. "Although we would have welcomed the Trustee's views with respect to this matter, we believe that we have an adequate record based upon the briefs and argument of those parties to this appeal." *Id*. at 194 n.3.

The same is true here. The Receiver is not a proper party to this appeal and its absence will not hamper this Court's decision-making. Out of an abundance of caution, the Court could add the Receiver as a respondent as it has done in other cases. *See Havens v. Kurian,* No. 83196, 2021 WL 5903271, at *1 n.1 (Nev. Dec. 13, 2021) ("Although Environmental initially was not designated as a respondent in this appeal, Susan L. Uecker, as receiver for Environmental, has made a notice of appearance. We direct the clerk of this court to add Environmental as a respondent to this appeal ….The clerk shall also amend the caption to conform to the caption on this order."); *cf. Frieder v. Morehead State Univ*., 770 F.3d 428, 430 (6th Cir. 2014) ("Rule [3(c)] does not require an appellant to list any appellee's name. It tells a prospective appellant only to 'specify the party or parties taking the appeal,' to 'designate the judgment, order, or part thereof being appealed,' and to 'name the court to which the appeal is taken.' The person required to notify the appellees is not

the appellant but the district clerk . . . . [T]he 'failure to serve notice does not affect the validity of the appeal.' [Appellant] complied with Rule 3, and we have jurisdiction over all of the defendants.") (internal citations omitted).

Given the current posture of this appeal, neither the Receiver nor Respondents would suffer any prejudice if the Receiver is joined. The alternative is for Appellants to pursue an original writ proceeding against the Receiver further expanding and complicating these proceedings.

IV. CONCLUSION

For these reasons, this Court may properly exercise jurisdiction over this appeal, including the January 26, 2023 and March 27, 2023 Orders. Thus, the temporary stay of execution of those orders should continue pending the outcome of this appeal.

DATED this 13th day of June 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 13th day of June 2023, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing **APPELLANTS' RESPONSE TO MAY 8, 2023 ORDER TO SHOW CAUSE** to all parties registered for service, as follows:

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC