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

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

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

The Supreme Court's May 8, 2023 order required Appellants to show cause why this appeal should not be dismissed, and explain how the court has jurisdiction, especially in light of the continuing receivership in the lower court proceeding. Appellants responded. As allowed by the court's order, Respondents hereby reply.

The simple answer to this court's jurisdictional question is that, at the time of posing the question, the Supreme Court did not have proper jurisdiction because there has been no final accounting by the Receiver. Appellants' sole argument as to the basis of this court's jurisdiction is that the receivership automatically terminated upon the district court's issuance of the Amended Final Judgment. Appellants are wrong that the receivership automatically terminated, and that the Supreme Court has proper jurisdiction based solely on the issuance of the Amended Final Judgment.

However, after the Supreme Court's order to show cause and Appellants' response thereto, the district court certified the Amended Final Judgment pursuant to NRCP 54(b), and expressly preserved jurisdiction over the receivership so the necessary final accounting can be completed. So long as the receivership remains intact and operative in the lower court proceeding—to complete financial evaluations, to prevent chaos in the sale of Respondents' units, and to avoid devastating harm to Respondents—this appeal can properly move forward based upon the NRCP 54(b) certification.

Appellants have made clear that they will employ any strategy imaginable—either in the district court or this court—to evade the Receiver's authority, to disobey court orders, and to avoid obligations to pay Respondents (hotel condominium owners) money that has been due, yet unpaid, for years. Their argument set forth to this court, that the receivership automatically terminated upon the issuance of the Amended Final Judgment, is simply a furtherance of this modus operandi.

As the district court has now confirmed, the Amended Final Judgment did not fully adjudicate all claims in this case, including Respondents' claim for the appointment of a receiver. Rather, it adjudicated all of Respondents' compensatory claims, but preserved the receivership until the Receiver's outstanding tasks—including but not limited to preparing a final accounting for the rents under the receivership, holding the parties' condominium units in trust, and effecting the sale of all such units—are completed to the district court's satisfaction. Accordingly, while the Supreme Court may have lacked jurisdiction when it initially posed its question, it now has proper jurisdiction over the certified Amended Final Judgment pursuant to NRCP 54(b).

II. STATEMENT OF FACTS

For the most part, the facts asserted by Appellants are misleading, selectively omissive of critical circumstances, or blatantly false. In truth, (1) Appellants have been appropriately sanctioned in this matter after their repeated, egregious, and

intentional misconduct which, in large part, was intended to conceal Appellants' blatant fraud and theft, (2) the district court appointed the Receiver to (among other things) protect Respondents' rights in their condominium units located within Appellants' hotel and casino, (3) the receivership remains intact and operational, has critical tasks remaining, and was not automatically terminated by the Amended Final Judgment, and (4) the district court's subsequent certification of the Amended Final Judgment provides this court with jurisdiction over this appeal.

A. The Parties' Contractual Relationship and Summary of Litigation

The parties are contractually bound by three primary contracts that comprise the Governing Documents. (1 R.App. 12-158.) These Governing Documents provide that Appellants will rent Respondents' condominium units within the Grand Sierra Resort to the general public, charge certain fees to Respondents for doing so, and the parties will split the net profits earned from the rentals. (Id.) The impetus of this lawsuit was Appellants' falsely underreporting income from and usage of Respondents' units on certain monthly accounting statements and increasing the fees charged to Respondents by an unreasonable and unjustified amount—thus further reducing the profits and sometimes leaving the Respondents owing Appellants funds at the end of the month, despite Respondents' units earning rental revenue. (1 R.App. 166:16-67:19; 193:6-8; 218:16-19:20.)

After repeatedly violating discovery rules and discovery orders, the district court appropriately sanctioned Appellants by striking their answer and entering a default, as discussed in more detail below. (1 R.App. 231-43.) After a three-day default prove-up hearing, the district court awarded Respondents compensatory damages in the amounts totaling the proper rental proceeds and the wrongly charged fees, which would have made Respondents whole for their lost rental proceeds through the date of that order (if Appellants had ever paid the award, which they have not). (1 R.App. 207-30; see also 1 R.App. 244-56.) To ensure Respondents continued being paid their rental proceeds from their respective units in accordance with the Governing Documents, the Receiver was kept in place until further order of the district court. (1 R.App. 228:22.)

Appellants were specifically required to turn over all rental proceeds from the parties' units to the Receiver. (1 R.App. 9:1-2.) The Receiver would then calculate the appropriate fees to be charged to the unit owners, apply such fees, and split the remaining proceeds between the parties pursuant to the Governing Documents. (See generally 1 R.App. 1-11.) All rental proceeds owed to Respondents under this method after the district court's initial order are therefore contractually-owed funds—not damages. (1 R.App. 124-158.)

The distinction between these categories of funds is critical and cannot be overstated. Indeed, Respondents abandoned efforts to recover further compensatory

damages based upon the understanding that the receivership would operate to ensure Respondents received their rental proceeds until further district court order. No such further order has been entered, especially since the receiver has not yet prepared a final accounting.

Critically, after Appellants terminated the unit owners' association (as explained below), the district court has ordered the parties' units be sold and the parties have entered into a stipulation which, together with the district court order, provides a comprehensive procedure for the appraisal and sale of all the Respondents' units. (2 R.App. 257-65; 2 R.App. 266-86.) The Receiver's duties to enforce the Governing Documents—namely, to calculate the fees, apply such fees, and distribute proceeds—will therefore wind up upon the final sale of all the parties' units and the final true up and distribution of all outstanding funds owed (*i.e.*, fees owed to Appellants and proceeds owed to Respondents). (2 R.App. 287-90.) Thus, the district court has contemplated a definitive end date for the receivership, and the parties' stipulation contemplates the same. (Id.; 2 R.App. 266-86.)

B. Complaint to Findings of Fact, Conclusions of Law and Judgment

Respondents filed their Complaint on August 27, 2012. (1 R.App. 159-80.) The operative Second Amended Complaint was filed on March 26, 2013, setting forth twelve (12) causes of action. (1 R.App. 181-206.) Following a variety of flagrant discovery abuses by Appellants, including intentional misrepresentations to

the court about their compliance with discovery orders, the court entered case-terminating sanctions, striking Appellants' answer and counterclaims. (1 R.App. 231-43.) Prior to entry of this order, Appellants had every opportunity to defend themselves from the allegations set forth in Respondents' various complaints—including the operative complaint. However, because Appellants chose to violate the discovery rules and court orders, the court issued appropriate sanctions against Appellants. (1 R.App. 208:16-18, "The record speaks for itself regarding the protracted nature of these proceeding and the systematic attempts at obfuscation and intentional deception on the part of the Defendants," and at 208:21-25, "The [Appellants] have consistently, and repeatedly, chosen to follow their own course rather than respect the need for orderly process in this case . . . . [Appellants have] done everything possible to make the proceedings unjust, dilatory, and costly.")[1]

[1] Appellants attempt to shift blame to their former attorney regarding the flagrant misrepresentations and discovery abuses that resulted in the sanctions. (E.g., Appellants' June 13, 2023 Response to OSC at 4, blaming original attorney.) The discovery abuses, however, went far beyond anything that could possibly be blamed on the former attorney. The abuses were committed by Appellants' own officers and employees, including brazen falsification of discovery responses, hiding and lying about thousands of emails, lying to the court, and other sanctionable misconduct committed by Appellants themselves. (1 R.App. 234:21-5:1; 1 R.App. 235:16-23, juxtaposing Appellants' disclosure of 200-300 emails and subsequent third-party searches uncovering 224,226 relevant, undisclosed emails; 1 R.App. 235:23-36:7, designated Appellant employee to search emails was not provided sufficient access to discover responsive emails; 1 R.App. 236:8-18, misrepresentations that previously undisclosed emails would be inconsequential; 1 R.App. 236:22-24, "Both the [Appellants] and the [Appellants]' counsel failed to meet their discovery obligations.")

The Court appointed the Receiver by issuing its Order Appointing Receiver and Directing Appellants' Compliance on January 7, 2015 ("Appointment Order"). (1 R.App. 1-158.) The Appointment Order appointed the Receiver pursuant to NRS 32.010(1), (3), and (6). (Id. at 1:23-26.) Appellants did not move for reconsideration of the Appointment Order at that time, nor did Appellants appeal this immediately appealable Appointment Order. See NRAP 3A(b)(4) (order appointing receiver is appealable). Appellants instead acquiesced to the Appointment Order's contents, terms, and obligations.

After the district court entered case-terminating sanctions against Appellants, striking their answer and counterclaims, the district court held a three-day prove-up hearing to determine Respondents' compensatory damages. (1 R.App. at 209:16-17.) The district court then issued its Findings of Fact, Conclusions of Law and Judgment ("FFCLJ"), awarding Respondents $8,318,215.55 in compensatory damages on their monetary claims. (FFCLJ at 227:23-22:7.) The FFCLJ further explicitly stated that "[t]he receiver will remain in place with his current authority until this Court rules otherwise." (Id. at 228:22.) To date, the district court has not "rule[d] otherwise" to modify or terminate the receivership.

C. Remand Following Successful Appeal of Erroneous Dismissal

In the order awarding compensatory damages, the district court also recited an inclination to consider awarding punitive damages. (Id. at 23:4-20.) The district

court initiated a process for considering punitive damages. (Id.) But approximately one week before a scheduled punitive damages hearing, Appellants filed a motion to dismiss the underlying case entirely for lack of subject matter jurisdiction, claiming Respondents had not exhausted their administrative remedies prior to filing their initial Complaint. (2 R.App. 291-459.) This argument came after Appellants had actively participated (albeit in a "lackadaisical" manner) in this case for over three years and stipulated to consolidating Appellants' justice court claims for fees into the district court action. (2 R.App. 472:1-6; 1 R.App. 208:19.) The district court ultimately agreed with Appellants and reluctantly dismissed the case for lack of subject matter jurisdiction. (See generally, 2 R.App. 472:1-6.)

Following this erroneous dismissal, Respondents successfully appealed. This court issued an Order Reversing and Remanding on February 26, 2018. (Docket No. 70498.) The court determined that the statute on which Appellants relied in the district court and on appeal was not jurisdictional, and that, in any event, Appellants were estopped from asserting the statute because of Appellants' conduct in the litigation. (Order Reversing and Remanding, at 6-10.) This court remanded the matter back to the lower court for further proceedings. (Id.) After being remanded, the receivership went back into effect. (2 R.App. at 475:1-4.) But, while the case was on appeal, Appellants had offered the original receiver employment, creating an irremediable conflict for the original receiver. (3 R.App. at 477:22-24; 3 R.App.

498.) Because of Appellants' interference with the original receiver, a new receiver needed to be appointed to re-take control over the Grand Sierra Resort Unit Owners Association ("GSRUOA") and Respondents as dictated by the Appointment Order. This new receiver, who still holds the position today, was required to undertake the task of recalculating all fees charged to Respondents by Appellants while the case was on appeal—indeed, Appellants had returned to their fraudulent practices while the matter was on appeal and the effects of such practices had to be unwound. (3 R.App. 517-519.) The Receiver required Appellants to disgorge funds to Respondents for rents misappropriated during the appeal. (3 R.App. 520-27.) Notably, these amounts were ***not*** compensatory damages, but rather a true-up of the rental proceeds Respondents should have earned while the case was on appeal.

The matter then underwent a flurry of judicial turnover. The original judge who imposed the sanctions against Appellants, and who was considering punitive damages, was ousted at the next election by an opposing candidate whose campaign was funded almost entirely by Appellants and their related entities. (3 R.App. 528-611.) This succeeding judge recused herself from the matter and was shortly followed by disqualification of all the remaining judges sitting in the Second Judicial District. (3 R.App. 612-688.) The case was then assigned to Senior Justice Nancy Saitta, after a peremptory challenge was exercised. (3 R.App. 686-92.) Unfortunately, following this reassignment, the matter languished. (3 R.App. 693-

713.) Despite the parties filing a multitude of motions—including time sensitive motions for orders to show cause concerning the receivership and certain motions on orders shortening time—in the nearly nineteen (19) months with that judicial assignment, Justice Saitta entered only eight (8) substantive orders. (Id.) This caused the case to stagnate, as it could not be moved forward without the involvement of the judiciary enforcing court orders concerning the receivership. Justice Saitta was later removed from the matter and replaced with the current Senior Judge Elizabeth Gonzalez, who has been promptly moving the case toward conclusion. (3 R.App. 714-723.)

Based upon this delay during Justice Saitta's tenure on the case, and despite the case having been remanded in 2019, Respondents were not awarded punitive damages until January of 2023. (4 R.App. 724-729, awarding $9,190,521.92 in punitive damages.) The award of punitive damages was based upon the district court's findings of fraud, conversion, and other intentional torts committed by Appellants, including a finding that one of Appellants' highest officers, the Senior Vice President of Operations, had admitted to Appellants' tortious scheme against Respondents. (Id. at 726:8-13, fn.6.)

Following this punitive damages award, the Court entered its Final Judgment awarding Respondents compensatory and punitive damages. (4 R.App. 730-34.) Although this document is entitled "final," it did not mention nor resolve

Respondents' equitable claims for the appointment of a receiver or an accounting, thus maintaining the receivership, consistent with the FFCLJ. (1 R.App. at 228:22.)

The district court later entered the Amended Final Judgment, which again did not mention nor resolve Plaintiffs' claims for a receivership or an accounting. (4 R.App. 736-39.) The district court recently certified the Amended Final Judgment as final pursuant to NRCP 54(b). (2 R.App. 287-90.) Lastly, the district court entered a Second Amended Final Monetary Judgment, which includes the Amended Final Judgment to include the award of Respondents' attorneys' fees and costs. (4 R.App. 740-44.) This new amended final judgment does not address the receivership nor Respondents' claim for an accounting, thus also leaving the receivership in place until further district court order. (Id.; 1 R.App. at 228:22.)

The parties' contractual relationship under the Governing Documents has remained intact throughout all the years from the initial Complaint and continues today—thus requiring the rental proceeds to be accounted for and paid under the Governing Documents.

D. District Court-Ordered and Stipulated Termination of GSRUOA

In early 2022, Appellants attempted to exercise their power to terminate the GSRUOA, and Respondents filed a motion challenging this action. (4 R.App. 745-92.) On December 5, 2022, the Court issued an order resolving the motion filed on March 1, 2022, upon which a one-day hearing before Justice Saitta was held on

March 11, 2022, which allowed Appellants to terminate GSRUOA and for the parties' units to be sold through the Receiver pursuant to NRS 116.2115. (2 R.App. 257-65.) The order contemplated giving Appellants exactly what they wanted, *i.e.*, the ability to terminate the GSRUOA and sell Respondents' units; and, at the same time contemplated preventing chaos and protecting Respondents, and thus established an orderly procedure for valuing and selling the units, with oversight by the district court and the Receiver. (Id.)

In the December 5, 2022 order, the district court expressly contemplated requiring the entry of 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 [but now heard and resolved] Applications for OSC.

(Id. at 263:13-18.) No such order has been entered. Instead, in ruling on Appellants' motion for such an order, the district court found the motion was "premature given the status of [Appellants'] compliance with the Court's prior order." (4 R.App. 793:20-21.) Thus, the receivership which was to remain in place until further order of the district court has never been terminated by such further order.

Following the December 5, 2022 order, the parties entered into a stipulation approved by the district court where they agreed that: (1) the sale of the parties' units

shall be pursuant to the terms of a subsequently drafted agreement "and further Court Order" from the district court, (2) that only "the Receiver appointed in the Receivership Action [the underlying matter], on behalf of the Units' Owners, [has authority] to contract for the sale" of the parties' units, (3) that, upon termination of the GSRUOA, title to the parties' units "vests in the Association with the Receiver as trustee[] for the holders of all interests in the units," and (4) that the sale proceeds would be "distributed upon Court approval in the Receivership Action." (2 R.App. 266-86.) Appellants thus explicitly agreed that the receivership would continue to accomplish all of these tasks—not a single one of which has been completed as of the date of this reply.

E. Amended Final Judgment is Entered

The district court amended the February 6, 2023 Final Judgment to address certain errors. The subsequent Amended Final Judgment did not address the receivership in any way, but instead only set forth the compensatory and punitive damages. (4 R.App. 736-39.) The Amended Final Judgment is the purported basis for the current appeal before this court.

F. District Court Finds Appellants in Contempt

The district court recently held a four-day evidentiary hearing on seven (7) of Respondents' motions for orders to show cause ("MOSCs"). (4 R.App. 796-97.) Some of these MOSCs had been pending since late 2021. (3 R.App. 693-713.) Each

of the MOSCs related to Appellants' intentional, repeated violations of various district court orders. The violations can be simplified into four categories: (1) refusing to implement the Receiver's calculated fees which were approved by the district court, (2) refusing to turn over the rental proceeds to the Receiver for distribution to Respondents, (3) misappropriating over $13 million from the reserve accounts, and (4) refusing to pay the Receiver's invoices, thereby halting the receivership for over eighteen (18) months.

At the conclusion of the hearing, the district court found Appellants to be in contempt for their violations of certain court orders.[2] (4 R.App. 798-808.)

G. District Court Expressly Retains Jurisdiction Over Receivership

Finally, the district court's recent orders clearly and unequivocally indicate the claim for a receivership remains pending as well. First, the district court ordered that despite entry of the Amended Final Judgment, it "retains jurisdiction to: supervise the Receivership . . . ; oversee the dissolution of the owners' association; truing up of funds due among the parties . . . ; and, to enforce its own orders through

[2] As mentioned above in footnote 1, Appellants repeatedly try to pin their past wrongdoings in this litigation, including those leading to the case-terminating sanctions, on one of their numerous previous attorneys, despite having always been represented by more than one attorney. It is abundantly clear from the record that Appellants' misconduct was not the result of their singular previous attorney whom they attempt to use as a scapegoat. Indeed, Appellants have been through a variety of attorneys in this case. The misconduct, however, has been consistent—clearly exemplifying the fact that Appellants' misconduct is attributable to Appellants alone, not one of their former attorneys.

contempt proceedings." (4 R.App. 809:22-10:2, footnote omitted.) Second, the Court recently ordered at the close of the MOSC evidentiary hearing that the Receiver is to complete certain time-consuming tasks such that the matter can be moved closer to a final resolution. (4 R.App. 798-808.) Third, in certifying the Amended Final Judgment as final pursuant to NRCP 54(b), the district court stated, "the oversight of the Receivership and the Receivership Estate is a continuing judicial responsibility" and that "[t]he Court has repeatedly stated that it retains jurisdiction over the dissolution plan detailed in the December 5, 2022 order, and the winding up of the Receivership." (2 R.App. 287:24-88:1.)

According to all of these filings, it is unequivocal that Respondents' claim for the appointment of a receiver is still pending and outstanding, and will continue to remain pending so long as the receivership remains intact (*i.e.*, until all the units are sold, the Receiver's tasks are finished, all financial issues relating to the Receiver are resolved, the Receiver issues a final accounting for the district court's approval, and such approval is granted).

H. The District Court Certifies the Amended Final Judgment

Recently, on June 28, 2023, the district court entered an order certifying the Amended Final Judgment as final pursuant to NRCP 54(b)—and preserving its jurisdiction over the receivership. (Id.) This order was largely based upon the district court's December 5, 2022 order which provided the process to terminate the

GSRUOA and sell the parties' units, along with the parties' stipulation wherein Appellants agreed the Receiver and the district court would be involved in the ultimate sale of the parties' units. (Id.) Thus, the Amended Final Judgment is now deemed "final" for appellate purposes and therefore may be used as the basis of this appeal and the supreme court's jurisdiction.

III. ARGUMENT

A. The District Court Retained Jurisdiction Over the Receivership, But Certified the Amended Final Judgment as Final for Appeal

The district court, in certifying the Amended Final Judgment as final, expressly retained jurisdiction over the receivership and the receivership estate. (2 R.App. 287:24-88:2.) Indeed, the district court has also affirmed that "it retains jurisdiction over the dissolution plan detailed in the December 5, 2022 order, and the wind up of the Receivership." (Id.) The December 5, 2022 order provides a dissolution plan whereunder the Receiver holds title to the parties' units as trustee until they are sold. (2 R.App. 260, fn.4.) To ensure the units are sold for a reasonable amount, Respondents are to submit an appraisal which sets forth the fair market value of the units to be compared with Appellants' previously submitted appraisal. (Id. at 262:3-5.) After these appraisals are considered and a fair market value is determined, the Receiver is to enter into a contract to sell the units to an Appellant-affiliated entity. (Id. at 4, fn.4.) Once the sale is completed and the proceeds are

appropriately disbursed, along with other account true-ups, the GSRUOA may be wound up and the receivership may submit a final accounting for approval and then be terminated. (Id. at 263:10-64:5.)

Regardless of this remaining work, however, the district court certified the Amended Final Judgment as final for appellate purposes. (2 R.App. 287-90.) This certification therefore provides the supreme court with adequate jurisdiction to hear the appeal from the Amended Final Judgment.

B. Without the 54(b) Certification, the Supreme Court Would Not Have Proper Jurisdiction Over This Appeal

i. Respondents' Claim for the Appointment of a Receiver Is Statutory, and Therefore Can Stand Alone

Where a receiver is appointed "under statutory authorization," "it is unnecessary that . . . an independent cause of action exist." Sims v. Stegall, 197 S.W.2d 514, 515 (Tex. Civ. App. 1946); see also Coyne v. Fusion Healthworks, LLC, No. CV 2018-0011-MTZ, 2019 WL 1952990, at *9 (Del. Ch. Apr. 30, 2019) (holding that the appointment of a receiver pursuant to statute "is an independent statutory cause of action, ***not an equitable remedy***") (emphasis added).

The Appointment Order in this matter is clear: the Receiver was appointed pursuant to NRS 32.010(1), (3), and (6). (1 R.App. 1:23-26.) Indeed, this is what Respondents' Second Amended Complaint requested—that "the appointment of a

receiver is appropriate in this case ***as a matter of statute*** and equity." (1 R.App. 196:5-6, emphasis added.) The receivership is thus established under statutory authority, and therefore does not require any independent cause of action to exist.

Even if, however, the receivership was not statutorily invoked and rather arose from the equitable state of facts, it would still be inappropriate to terminate the receivership by virtue of the Amended Final Judgment. The Receiver was appointed to ensure Respondents' units were preserved, which includes the rental proceeds Respondents' units earn from being rented each month by Appellants. (See generally, 1 R.App. 1-12.) Notably, these rental proceeds are ***not*** compensatory damages, but instead are funds belonging to Respondents as rents derived from their units. Although the parties have stipulated to the termination of the GSRUOA and to procedures for the eventual sale of the parties' units, such a sale has not yet taken place and so Respondents' units still earn rental proceeds each month which must be collected and paid out to Respondents according to the Governing Documents. This is accomplished through the receivership.

Further, the district court has assigned the Receiver numerous tasks now which will move this proceeding to a final resolution. These tasks include but are not limited to: (1) re-calculating the fees to be applied to all parties' units for 2020, 2022, and 2023; (2) applying said re-calculated fees to determine the net rental proceeds payable to the parties; (3) distributing all net rents due but not yet paid; (4)

overseeing the sale of the parties' units; (5) holding the parties units as trustee until such time as they are sold; (6) operating the GSRUOA to the extent necessary until the wind-up thereof; and (7) ultimately winding up the GSRUOA. (See, e.g., 2 R.App. 257-65; 4 R.App. 798-808.) Given the Appellants' history of stonewalling these processes, including the fact that Appellants have not paid Respondents even a single dollar of the millions of dollars owed in rental proceeds Appellants have received for Respondents' units during the last two (2) years, it is critical the Receiver remain in place to facilitate these tasks. See, e.g., WB Music Corp. v. Royce Int'l Broad. Corp., 47 F.4th 944, 950 (9th Cir. 2022) (where defendants had repeatedly refused to satisfy a judgment, court found it "simply could not trust Defendant [representative]'s representations that he will satisfy amounts due in the future" and concluded the receiver would remain in place).

As implied by the supreme court's order for Appellants to show cause, "[C]ourts normally do not terminate receiverships until the Receiver prepares a final accounting." Id. (internal citations and quotations omitted). In WB Music, the Ninth Circuit affirmed the lower court's conclusion that it would be inappropriate to terminate the receivership because defendants there had proven they would evade attempts to enforce the judgment against them however possible. Id. The same is true here of Appellants' never-ending attempts to evade paying Respondents what they are rightfully owed for the rental of their units. Appellants perpetrated a

fraudulent scheme to the detriment of Respondents, stonewalled Respondents at every turn during discovery, obtained an erroneous dismissal of the matter which was later reversed, conflicted the original receiver out of his position on remand, financed an election that removed the original district judge from office after the remand, interfered with the new Receiver's performance of his duties, had over $9 million of punitive damages assessed against them, and were ultimately, recently, found in contempt of Court. (1 R.App. 207-43; 2 R.App. 460-75; 3 R.App. 476-516; 3 R.App. 528-611; 4 R.App. 724-729; and 4 R.App. 798-808.) The district court has virtually no reason to trust Appellants to complete the tasks which have been assigned to the Receiver in a way that is legal, fair, and equitable. However, the district court need not rely on Appellants to complete these tasks when the receivership remains intact.

Indeed, some of these tasks the Receiver is to complete prior to termination have even been stipulated to by Appellants, showcasing Appellants' recognition that the receivership would continue until the parties' units are sold or shortly thereafter. (2 R.App. 266-286.) The parties' stipulation to terminate the GSRUOA would never have been entered by Respondents had Appellants not agree to these provisions. Allowing Appellants to entice Respondents' entry into such a stipulation to terminate the GSRUOA, and then to underhandedly terminate the receivership on a technicality, would perpetrate yet another fraudulent scheme on Respondents—the

exact sort of thing that prompted the underlying lawsuit. At some point, Appellants must be held to their word; in this case, their agreement that the Receiver would remain in place until the parties' units are sold, or shortly thereafter.

Finally, the district court and the parties just finished a multi-day evidentiary hearing of the MOSCs. (4 R.App. 798-808.) At the conclusion of the hearing, the district court assigned the Receiver certain tasks and ordered the Receiver would complete certain tasks going forward until such time as the parties' units were sold, the amounts were distributed, and any other trueing up of the parties' accounts and distribution of such amounts was completed. (Id.)

Effectively, the Court's order aligns with substantial case law setting forth the premise that receiverships are not terminated until a final accounting is completed and approved by the Court. See, e.g., Martin & Co. v. Kirby, 34 Nev. 205, 214, 117 P. 2, 4 (1911); WB Music, 47 F.4th at 950; 3 Ralph Ewing Clark, *Treatise on the Law & Practice of Receivers* § 693, at 1271 (3d ed. 1959). There has not been a final accounting here, but the district court, through various orders, has collectively assigned the Receiver tasks akin to a final accounting. (2 R.App. 257-265; 4 R.App. 798-808.) Only at such time that the final accounting or similar accounting is presented to the district court, and upon a proper district court order, would the receivership terminate.

It is thus apparent that Respondents' claim for a receivership remains outstanding as there are a variety of tasks remaining for the Receiver to complete, ***some of which the Appellants stipulated to***. Because the receivership arises from statutory authority, it can stand alone and continue without any other causes of action remaining in the lower court proceeding.

ii. The Receiver Was Specifically Appointed for Post-Judgment Work, Such as Those Currently-Assigned Tasks

The Appointment Order appoints the Receiver pursuant to NRS 32.010(1), (3), and (6). (1 R.App. 1:23-26.) Subsection 3 provides that a receiver may be appointed "[a]fter judgment, to carry the judgment into effect." In appointing the Receiver, the district court clearly anticipated the Receiver being required to perform certain post-judgment tasks. There is no indication in the Appointment Order that the appointment partly pursuant to Subsection 3 intended for the receivership to terminate immediately upon entry of the so-called final judgment. Instead, the inclusion of this Subsection 3 indicates the contrary: that the district court intended the Receiver to remain in place after any judgment. Thus, even if the Amended Final Judgment is truly final—which it was not without the district Court's later NRCP 54(b) certification—the receivership must remain intact until an explicit district court order based on this specific appointment for post-judgment work.

iii. Terminating the Receivership Based on the Amended Final Judgment Would Result in a Grave Injustice to Respondents

The record clearly shows that Appellants have withheld all of Respondents' rental proceeds since January 2020. (4 R.App. 801:16-18, "Regardless of the terms of the Appointment Order, the [Appellants] chose not to pay any of the rents, dues, reserves and revenues to the receivership estate.") The Receiver has conservatively estimated that Respondents' portions of the proceeds for just 2020 are roughly $1.1 million.[3] Thus, the total amount withheld by Appellants, while unknown to Respondents, is undoubtedly substantial.

If the receivership were terminated at this point, Respondents would be forced to file another lawsuit against Appellants to recover the amounts they are currently owed under the receivership—thus duplicating their efforts to recover those amounts through the receivership for the last three (3) years. This would require an unnecessary expenditure of Respondents' and the judiciary's resources, render the underlying receivership and all related litigation and expenditures meaningless, and operate as a grave injustice to Respondents who have already suffered severely in this matter.

[3] The district court ordered Appellants to turn over this amount to the Receiver to be distributed to Respondents, but Appellants instead posted a bond and filed for relief in this court—keeping true with their strategy of withholding funds from Respondents at every turn. (4 R.App. 812-14; 2 R.App. 244-56.)

Similarly important, the district court has allowed Appellants to terminate the GSRUOA and sell the parties' units to an affiliate of Appellants. (2 R.App. 257-65.) The Receiver has been specifically instructed to perform certain updated calculations and provide such calculations to Respondents so Respondents can prepare an appraisal for their units. (Id.) Respondents believe these orders are the only thing stopping Appellants from selling the units to an Appellant-affiliate for pennies on the dollar—thus further depriving Respondents of the value of their units.

As discussed above, the parties entered into a stipulation to terminate the GSRUOA after Appellants agreed to provisions allowing the Receiver and the Court to participate in the termination and sale process. (2 R.App. 266-86.) Had Appellants not agreed to these provisions, Respondents would never have entered into the stipulation to terminate the GSRUOA, because their property rights would not have been protected. To now allow Appellants to rescind their agreements surely would result in an injustice to Respondents and would also require the reversal of the order permitting the termination of the GSRUOA and sale of the units.

C. The Certified Amended Final Judgment Confers Jurisdiction

When an action involves multiple parties and/or claims, the Supreme Court lacks jurisdiction to review a judgment unless the district court properly certifies the judgment as final pursuant to NRCP 54(b). Fernandez v. Infusaid Corp., 110 Nev. 187, 192-93, 871 P.2d 292, 295 (1994). Here, the district court properly certified

the Amended Final Judgment as final pursuant to NRCP 54(b) on June 28, 2023. (2 R.App. 287-90.) Thus, the Supreme Court now has proper jurisdiction over the appeal from the Amended Final Judgment.

D. The Receiver Need Not Be a Party to Any Appeal

The Supreme Court's second question posed in its Order to Show Cause is "whether the receiver should be a party to this appeal." (Order to Show Cause at 6.) Appellants' response contends the Receiver need not be named a party. (Response at 22-25.) Respondents agree. Unless the Receiver is affected by the Amended Final Judgment, he need not be a party to the appeal. Frank Settlmeyer & Sons, Inc. v. Smith & Harmer, Ltd., 124 Nev. 1206, 1213, 197 P.3d 1051, 1056 (2008) (where receiver was a party to the garnishment proceeding brought to enforce judgment which affected the receiver's payment, receiver was proper party for appeal). The Receiver is not a party to the underlying matter nor is he affected by the district court's orders to be appealed. Rather, he is an arm of the district court. The Receiver therefore need not be named a party to this appeal.

V. CONCLUSION

Appellants' appeal of the Amended Final Judgment was premature as it did not fully adjudicate all of the underlying claims. However, now that the district court has certified the Amended Final Judgment as final pursuant to NRCP 54(b), the Supreme Court may exercise jurisdiction over this appeal and allow it to go forward.

Dated: this 10th day of July, 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 July 10, 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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