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

RESPONDENTS' REPLY TO APPELLANTS' SUPPLEMENTAL 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[1]

Appellants emphatically argue there is "literally no end in sight" and "this case will continue to unconstitutionally go off the rails in perpetuity." (Supplemental Response at 3, 10.) This exaggerated rhetoric could not be further from the truth. There is in fact a very clear end to this litigation in sight: the district court issued its December 5, 2022 Order which lays out the exact process to bring this case to a final conclusion. Namely, the district court has allowed Appellants to terminate the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and to sell the parties' units—including Respondents' units—to an entity that is affiliated with Appellants. To ensure this process is completed equitably, however, the district court will supervise the process. Additionally, the parties entered into a stipulation which was ordered by the district court wherein they agreed that (1) the Receiver would hold the parties' units in trust until they are sold to the Appellants' affiliated entity, and (2) various district court orders are required to effectuate such a sale. In

[1] This court's May 8, 2023 order to show cause allowed a response and a reply, without providing for additional filings. Nonetheless, on July 13, 2023, after completion of all briefing on the OSC's jurisdictional issue, appellants filed a so-called "supplement" to their response, without first requesting permission. By doing so, appellants have attempted to gain the last word on the jurisdictional issue, which is contrary to what the OSC contemplated. Appellants' supplement expands on arguments in their initial response. Accordingly, respondents are hereby filing this supplemental reply, to address appellants' supplement.

short, the end is in sight, and this litigation will absolutely not continue in perpetuity, contrary to Appellants' contention.

Respondents have been suffering at the hands of Appellants for over a decade. Indeed, this suffering is part of the reason the district court initially appointed a receiver over Appellants—to enforce the contracts between the parties and lessen or eliminate Respondents' suffering by eradicating Appellants' flagrant violations of these contracts.

Appellants' argument that the receivership has been terminated is just the latest in a long line of attempts by Appellants to avoid the district court's orders and the Receiver's authority. For example, Appellants have attempted to manipulate the Receiver into believing Appellants' absurd interpretations of district court orders, Appellants have refused to pay the Receiver so that the Receiver will cease working, and Appellants have simply refused to comply with the Receiver's requests and instructions. Now that the district court has, again, ordered Appellants to cooperate with the Receiver, Appellants seek recourse from this court so that Appellants can evade compliance with the Receiver's directions and the district court's orders. This court should not allow such an unjust and absurd result.

Appellants have violated multiple district court orders at this point and have been held in contempt by the district court (in addition to an award of more than $9 million in punitive damages being imposed against Appellants due to their fraud

and theft). Their furthering this argument that the receivership has terminated as a matter of law is simply another of their nefarious attempts to dodge the liability they face for their wrongdoing in this matter.

The supreme court appears to have three options, only two of which should be entertained, and the first of which should be followed: (1) the court can exercise jurisdiction based upon the certified Amended Final Judgment, (2) the court can refuse to exercise jurisdiction based upon the ongoing receivership, or (3) the court could exercise jurisdiction under the unsupported notion that the receivership has been terminated as a matter of law. The third option is inappropriate as the receivership is necessary to perform final accountings and other functions, and clearly remains intact at this point. Thus, the court should follow one of the first two options in this case (and preferably the first, because Respondents still have not been paid funds that were misappropriated more than ten years ago).

II. ARGUMENT[2]

A. <u>This Court Can Exercise Jurisdiction Based Upon the Certified Amended Final Judgment</u>

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

[2] Respondents have attempted to not completely rehash arguments previously set forth in their initial reply. However, because Appellants' arguments are repetitive, Respondents must repeat some of their previous arguments herein.

over the receivership. (1 R.App. 1-4.) 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 voluntarily agreed the Receiver and the district court would be involved in the ultimate sale of the parties' units. (Id.; 1 R.App. 5-13.) 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.

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." (1 R.App. 1-4.) The December 5, 2022 order provides an orderly dissolution plan where the Receiver holds title to the parties' units as trustee until they are sold. (1 R.App. 8-9, 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. (1 R.App. 10:3-5.) 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.) 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. (R.App. 11:10-12:5.)

In light of the Receiver's remaining work, the district court certified the Amended Final Judgment as final for appellate purposes. (1 R.App. 1-4.) This certification therefore provides the supreme court with jurisdiction to hear the appeal from the Amended Final Judgment. Further, the supreme court ***should*** exercise jurisdiction over this appeal pursuant to the certified Amended Final Judgment in order to bring this matter to a final conclusion sooner rather than later.

B. <u>This Court Can Refuse Jurisdiction Based On the Ongoing Receivership</u>

There is substantial case law setting forth the premise that receiverships are not terminated until a final accounting is completed and approved by the Court. <u>See e.g.</u>, <u>Martin & Co. v. Kirby</u>, 34 Nev. 205, 214, 117 P. 2, 4 (1911); <u>WB Music Corp. v. Royce Int'l Broad. Corp.</u>, 47 F.4th 944, 950 (9th Cir. 2022); 3 Ralph Ewing Clark, Treatise on the Law & Practice of Receivers § 693, at 1271 (3d ed. 1959). Indisputably, there has not been a final accounting here, but the district court, through various orders, has collectively assigned the Receiver important tasks that will result in a final accounting. (1 R.App. 5-13, 14-24.) Only at such time that the final accounting or similar accounting is presented to the district court, and upon a proper district court order approving the accounting, would the receivership terminate.

Furthermore, the Receiver currently holds title to the parties' units in trust, pursuant to NRS 116.2118(5). The Receiver will continue to do so until he enters

into a contract to sell the units to an Appellant-affiliate for a fair market price, which is to be computed based upon competing appraisals submitted by the parties. Importantly, ***Appellants have agreed to this process by entering into a stipulation setting out the same—a stipulation approved and ordered by the district court***. The receivership therefore remains intact.[3]

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. Moreover, the receivership has been put into place to protect Respondents' property interests in their units. Appellants almost certainly would immediately sell Respondents' units for pennies to the Appellant-affiliate who is to purchase the parties' units—thus depriving Respondents of their units' value ***even further***. Such an inequitable result surely cannot be allowed. The ongoing receivership therefore will remain before the district court until the units are sold, all proceeds are distributed, and other various true-ups and accountings are completed. This court

[3] Appellants do not provide a realistic alternative solution to holding an equitable sale through the receivership. Indeed, Appellants argue that if Respondents have claims arising from any such sale (presumably facilitated by Appellants), Respondents can file yet another lawsuit—invariably extending this supposedly never-ending lawsuit. (Supplemental Response at 11-12.) In other words, Appellants have complained to this court about litigation without an end in sight, in perpetuity, yet in the same breath Appellants are orchestrating a scenario in which the parties will literally be forced into further litigation—with another new lawsuit—dealing with disputes involving the sale of the parties' units. Appellants' proposed solution therefore cannot be taken seriously.

would be well within its authority to refuse to exercise jurisdiction until these matters are fully completed and the Receiver submits and obtains the district court's approval of a final accounting.

C. This Court Should Not Exercise Jurisdiction Based on the Notion that the Receivership Has Been Terminated

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. 25-34.) Indeed, this is what Respondents' operative complaint requested—that "the appointment of a receiver is appropriate in this case as a matter of statute and equity." (1 R.App. 35-60.) 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, as Appellants argue. 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. 25-34.) Although the parties have stipulated to the termination of the GSRUOA and to procedures for the orderly 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. 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 that Appellants have received for Respondents' units during the last two years, it is critical the Receiver remain in place to facilitate these tasks. See, e.g., WB Music 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 set forth by the supreme court's order for Appellants to show cause, a receivership typically terminates upon the approval of a final accounting. (Order to

Show Cause at 4-5, citing Martin & Co. v. Kirby, 34 Nev. 205, 214, 117 P. 2, 4 (1911).) See also WB Music, 47 F.4th at 950 ("[C]ourts normally do not terminate receiverships until the Receiver prepares a final accounting") (internal citations and quotations omitted). The Receiver here has not yet prepared a final accounting—largely because Appellants are keeping critical information from the Receiver which is precluding him from completing his tasks. The Receiver has been thwarted from completing much of his work over the last many months because Appellants either withhold information from the Receiver, withhold payment to the Receiver, or attempt to manipulate the Receiver into performing his duties in a way that violates existing district court orders.

To find the receivership was terminated upon entry of the Amended Final Judgment—which, despite its name, did not fully adjudicate all of Respondents' claims—would effectuate a grave injustice upon Respondents. And, it would reward Appellants for their fraud and intentional misconduct which resulted in case-terminating sanctions, a punitive damage award against them exceeding $9 million, and, most recently, a finding of contempt against them regarding the receivership.

V. CONCLUSION

Appellants attempt to depict this case as having gone "off the rails" and predict it will "continue to unconstitutionally go off the rails in perpetuity." This could not be further from reality. Instead, it is Appellants' actions which are

prolonging the receivership—if Appellants would both pay the Receiver and provide him with the information necessary to complete his tasks, the Receiver would be able to finish his work. Once the Receiver's work regarding historical calculations is completed, Respondents will obtain a competing appraisal for the parties' units, said units can be sold to an Appellants' affiliated entity for a fair market price, the Receiver can true-up all of the parties' individual accounts with both rental and sale proceeds, and applicable fees, such amounts can be distributed accordingly, and the Receiver can prepare a final accounting, thereby bringing the matter to a close. However, because Appellants continue to refuse to pay the Receiver and refuse to provide certain information to the Receiver, the Receiver cannot perform his work.

It would operate as a grave injustice to allow Appellants to stonewall the Receiver's work, and then benefit from such stonewalling by terminating the unfinished receivership upon entry of the so-called Amended Final Judgment. Accordingly, Respondents request this court either exercise its jurisdiction by virtue of the certified Amended Final Judgment or refuse to exercise its jurisdiction based upon the ongoing receivership. Any other result would be inequitable.

Dated: this 20th 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 20, 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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