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. 85915, 86092, 86985, 87243, 87303, 87566, and 87567

District Court Case No. CV12-02222

RESPONDENTS/CROSS-APPELLANTS' OPPOSITION TO MOTION TO SET ASIDE OR STRIKE NRCP 54(b) CERTIFICATION OF AMENDED FINAL JUDGMENT

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

After unsuccessfully opposing the NRCP 54(b) certification before the district court twice, Appellants are now recycling their tired arguments here in an effort to destroy the receivership, in place to remedy Appellants' endless bad acts which have and continue to harm Respondents. Appellants argue the inaptly named Final Judgment and Amended Final Judgment fully resolve all of Respondents' claims, and therefore, these judgments are final in their own right. Appellants are flatly wrong—as this court has already seemingly recognized.

The district court appointed a receiver on January 7, 2015, pursuant to NRS 32.010(1), (3), and (6), based on Respondents' claim. That receivership remains intact and the Receiver has been tasked with certain projects that must be completed before the receivership is dissolved and the lawsuit is finished. Among those tasks is a final accounting, terminating/winding up of the Grand Sierra Resort Unit Owners' Association ("UOA"), and selling the parties' units pursuant to a stipulation and district court orders. The receivership—and the claim therefor—is thus necessary and outstanding. NRCP 54(b) certification of the Amended Final Judgment is appropriate and necessary for an appeal to proceed before this court.

II. FACTUAL BACKGROUND

Respondents' Second Amended Complaint sought the appointment of a receiver, and the district court appointed a Receiver to oversee the UOA. (1 R.App.

1-26, 40-49.) Later, the district court held that "[t]he continued management of the [UOA] by the receiver is appropriate under the circumstances of this case and ***will remain in effect absent additional direction from the Court***." (1 R.App. 71; emphasis added.) This statement was made in late 2015, after the district court had entered a default against Appellants for a variety of flagrant, severe discovery abuses. (1 R.App. 27-39.)

Following the default, the district court held a prove up hearing and awarded over $8 million in compensatory damages; erroneously dismissed the case on jurisdictional grounds (which this court later reversed); saw an ouster of the then-sitting district court judge (orchestrated by Appellants), the assignment of a senior judge who failed to meaningfully move the case forward, and the assignment of a second senior judge; awarded Respondents over $9 million in punitive damages; and recently found Appellants in contempt of court for intentionally violating court orders. (1 R.App. 50-101, 114-15, 128-33, 166-68.) Critically, the parties have also stipulated to terminate the UOA and sell their units through the receivership. (1 R.App. 138-58.) It is against this backdrop of repeated, flagrant abuses that Appellants again are attempting to dissolve the receivership that provides necessary oversight over Appellants—who have an undeniably nefarious track record.

In early 2022, Appellants attempted to terminate the UOA. (1 R.App. 102-112.) On December 5, 2022, the district court issued an order resolving

Respondents' challenge to Appellants' attempt, allowing Appellants to terminate the UOA and the parties' units to be sold through the Receiver pursuant to NRS 116.2115. (1 R.App. 116-24.) The order contemplated giving Appellants exactly what they wanted, *i.e.*, the ability to terminate the UOA and sell the parties' 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.) No such order has been entered. Instead, in ruling on Appellants' motion for such an order, the district court found it was "premature given the status of [Appellants'] compliance with the Court's prior order." (1 R.App. 159-61.) Thus, the receivership, which was to remain in place until further order, has never been terminated by such further order.

Following the December 5, 2022 order, the parties stipulated to: (1) the sale of the parties' units shall be pursuant to the terms of a subsequently drafted

agreement "and further [district] Court Order," (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 UOA, 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." (1 R.App. 168-58.) Appellants explicitly stipulated the receivership would continue to accomplish these tasks—not a single one of which has been completed.

The Court entered an Amended Final Judgment on April 10, 2023, which, like the Final Judgment entered February 2, 2023, did not mention nor resolve Respondents' receivership claim. (1 R.App. 162-65.) Thus, the receivership claim remains pending and outstanding, but all other claims have been resolved in Respondents' favor. (See 1 R.App. 50-73, 128-37, 162-65.)

Appellants have appealed the Final Judgment, the Amended Final Judgment, and the subsequently entered Second Amended Final Monetary Judgment, among other orders. (Case Nos. 86092 and 86985.) Respondents have filed associated cross-appeals to preserve their rights to such a cross-appeal—despite Appellants' appeals being premature. (Id.) Importantly, this court has questioned whether it has jurisdiction over the appeals when the receivership remains outstanding. (Order to Show Cause and Granting Temporary Stay, filed May 8, 2023.)

To move the case forward without awaiting the Receiver's final accounting and sale of the units under the Stipulation, Respondents sought NRCP 54(b) certification of the Amended Final Judgment. The Court granted such certification on June 28, 2023. Unfortunately, this order was technically flawed in that it failed to include certain necessary language, as pointed out by this court. Respondents then sought an amended certification order, which Appellants vehemently opposed using the same arguments set forth in their initial opposition and now, and the district court issued an Amended Order on November 28, 2023. After two bites at the apple, Appellants now seek a third. Their doomed attempts should be denied.

III. ARGUMENT

a. The Amended Final Judgment Did Not Fully Adjudicate All Claims

The Amended Final Judgment enters judgment on compensatory and punitive damages in favor of Respondents and dismisses Appellants' counterclaims. It does not address the outstanding claims relating to receivership issues, sale of the parties' units, nor any other remaining court-directed matters, including but not limited to, the receiver preparing a final accounting as already ordered by the district court.

"[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues . . . ." Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). There are critical such issues remaining for the district court's consideration:

approving the Receiver's recalculated fees, overseeing the parties' appraisals for the units, determining fair market value of the units, supervising the sale of the units, and ensuring the proceeds along with the outstanding rental proceeds (from January 2020 to June 2023) are properly distributed. (1 R.App. 116-24.)

None of these issues are post-judgment issues. Lee, 116 Nev. at 426, 996 P.2d at 417. Instead, each are substantive court-ordered tasks which must be completed prior to final resolution. The district court has assigned the Receiver these tasks—not to be cast aside by the so-called Final Judgment or Amended Final Judgment which omit any reference thereto.[1]

The Amended Final Judgment does not fully adjudicate all of the claims and issues—rather, it leaves much to be considered by the district court prior to complete adjudication. Indeed, as this court pointed out in recently questioning its jurisdiction in No. 86092, 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 any remaining funds. Martin & Co. v. Kirby, 34 Nev. 205, 214, 117 P. 2, 4 (1911).[2] No

[1] Nothing in the so-called Final Judgment or the Amended Final Judgment even remotely suggests that the district court intended these "judgments" to constitute the final adjudication of all claims—including the receivership claim—in this case.

[2] See also Alper v. Posin, 77 Nev. 328, 330-31, 363 P.2d 502 (1961) (where receiver was to liquidate debts of a joint venture, wind up its affairs, distribute the remaining proceeds, and present his final report to the court, which would prompt further court action, there was no final judgment), abrogated on other grounds by Lee, 116 Nev. 424, 996 P.2d 416.

such order on the Receiver's final account has been entered here. In fact, a request for such has been denied by the district court as "premature given the status" of the matter and the outstanding tasks to be completed prior to terminating the receivership. (1 R.App. 159-61.) Prior to such order, all of the tasks outlined above must be completed. (Id.) Thus, a final judgment in this action had not previously been entered, but the NRCP 54(b) certification provides appellate jurisdiction.

b. The Receivership is Absolutely a Claim in the Underlying Litigation

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 is clear: the Receiver was appointed pursuant to NRS 32.010(1), (3), and (6). (1 R.App. 40-49.) This follows Respondents' request that "the appointment of a receiver is appropriate in this case ***as a matter of statute*** and equity." (1 R.App. 1-26, emphasis added.) The receivership is established under statutory authority, and does not require any independent cause of action to exist.

Even if the receivership was not statutorily invoked and rather arose from the equitable state of facts, it would still be inappropriate to terminate the receivership

based on 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.[3] (1 R.App. 40-49.)

Further, the district court assigned the Receiver numerous tasks which will move this proceeding to a final resolution. These tasks include: (1) re-calculating and applying the 2020, 2022, and 2023 fees for the units; (2) distributing all net rents; (3) holding the parties' units as trustee until they are sold and overseeing the sale; (4) operating the UOA to the extent necessary until the wind-up thereof; and (5) winding up the UOA. (See, e.g., 1 R.App. 116-24.) Given Appellants' history of stonewalling these processes, most recently depicted by Appellants' refusal to provide the Receiver with information necessary for the Receiver's calculations and analysis, 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 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).

[3] 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 terminate the UOA and sell their 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.

In WB Music, the Ninth Circuit preserved a receivership because defendants there had proven they would evade attempts to enforce the judgment against them however possible. Id. The same is true here. 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.[4] However, the district court need not rely on Appellants to complete these tasks when the receivership remains intact.

Indeed, some of the Receiver's tasks have even been stipulated to by Appellants, showcasing Appellants' recognition that the receivership would continue until the parties' units are sold or shortly thereafter. (1 R.App. 138-58.) Respondents would never have stipulated to terminate the UOA had Appellants not agreed to these provisions. Allowing Appellants to entice Respondents' agreement to terminate the UOA, and then underhandedly attempt to terminate the receivership on a technicality, would perpetrate yet another fraudulent scheme on Respondents.

Finally, the district court recently assigned the Receiver certain tasks at the conclusion of the contempt hearing. The district court ordered the Receiver would complete those tasks going forward until the parties' units were sold, the proceeds distributed, and any other trueing up was completed.

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[4] Appellants committed fraud against Respondents, stonewalled Respondents during discovery resulting in case-concluding sanctions, obtained an erroneous (later reversed) dismissal, conflicted the original receiver out, financed the unseating of the original district judge, interfered with the new Receiver's performance, had over $9 million of punitive damages assessed against them, and were found in contempt.

It is axiomatic 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. (1 R.App. 169-75.) Only when the final accounting is presented to and approved by the district court, and upon a proper district court order, would the receivership terminate.

c. Respondents' Actions Do Not Warrant Estoppel

Appellants lastly argue Respondents are estopped from arguing that the Amended Final Judgment requires certification because Respondents have filed cross-appeals. It would be an absurd result to hold a compulsory cross-appeal—which would be waived if not filed within the statutory timeframe—as an admission of appealability. See NRAP 4(a)(2). Rather, each of Respondents' cross-appeals has been filed in an abundance of caution, given Respondents' belief that the Amended Final Judgment is not actually final for appeal purposes. Indeed, that is why Respondents sought certification of the Amended Final Judgment. (See No. 86985 Docketing Statement at 11, noting that the NRCP 54(b) certification provided a final judgment.)

IV. CONCLUSION

Based on the foregoing, the court should deny Appellants' motion to set aside.

Dated: this 5th day of December, 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 December 5, 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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