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, 86985 & 87243

District Court Case No. CV12-02222

OPPOSITION TO APPELLANTS' MOTION TO MAINTAIN OR REINSTATE STAYS PENDING PANEL REHEARING AND EN BANC RECONSIDERATION OF DECEMBER 29, 2023 ORDER

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]

Unable to accept defeat, Appellants are now seeking to reinstate a rightfully lifted temporary stay and impose a stay based on regurgitated and incorrect legal analysis that were just unambiguously denied by this court, all while Appellants seek to further delay and prolong these proceedings. The request flies in the face of the law, this court's ruling, and basic notions of justice.

The district court imposed a receivership in this matter in January 2015. (R.App. 0001-10.) The receivership remains intact and is tasked with multiple action items, including but not limited to performing a final accounting. In the midst of this, however, the district court issued an order granting Respondents over $9 million in punitive damages, and later issuing an inaptly named "final judgment" which lists all of the compensatory damages obtained by Respondents. (R.App. 0056-61, 0067-70.) This "final judgment" did not address the receivership, the Receiver's outstanding tasks, or wind up of the receivership. Rather, the district court later expressed that it intended to retain jurisdiction over the receivership while it finished its tasks and wound up.[2] (See, e.g., R.App. 0035-43, 0074-94.)

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[1] The first page of Appellants' motion, indicates it was filed in all related dockets. The clerk's online portal, however, shows Appellants' motion was only filed in docket numbers 86092, 86985, and 87243. This opposition identifies those three dockets, but it should also apply to the other four dockets, to the extent necessary.

[2] Respondents own approximately 100 units at the GSR. At Appellants' request, the district court allowed Appellants to terminate the unit owners' association and to sell all the parties' units to an Appellant-affiliated entity. In granting Respondents'

Contrary to this express retention, Appellants unsuccessfully argued the receivership terminated as a matter of law. This court issued an order on December 29, 2023, wherein it unambiguously rejected this argument ("Order"). This Order, in finding the receivership remained outstanding and in the district court's jurisdiction, dismissed all receivership order-related appeals. Among those were appeals of three orders which directed Appellants to pay to the Receiver approximately $1.1 million in wrongfully withheld rental proceeds for 2020 and 2021, and approximately $16 million which Appellants contemptuously misappropriated. To defeat the mandate that they pay these funds over to the rightful holder, Appellants are attempting to revive their lifeless argument that the receivership is terminated and no longer viable.

The district court previously ordered Appellants to pay to the Receiver in the underlying matter approximately $1.1 million, which is an estimated accounting of Respondents' actual rental proceeds stolen by Appellants for 2020 and 2021. (R.App. 0062-66, 0095-97.) This order was first issued in January 2023 and later

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request, the district court established an orderly process for appraisals and sales of the units, and for allocation and distribution of the funds generated by the sales. (R.App. 0035-43.) This process includes extensive involvement of the Receiver, with district court supervision. (Id.) The process has not been completed. Thus, the Receiver's continuing responsibilities—and the district court's continuing supervision—are critical to the fair sales of the units and to a final resolution of this case. Appellants' present motion yet is another desperate effort to avoid further supervision of their activities, and to sell Respondents' units to an entity related to Appellants, without any oversight by the receiver or the district court.

affirmed in March 2023. (Id.) This court stayed the order while it questioned its jurisdiction in light of the continuing receivership. The district court later found Appellants in contempt for misappropriating roughly $16 million from accounts under the Receiver's control. (R.App. 0098-100.) Consequently, the district court ordered Appellants to return the stolen funds back to Receiver's control (where they could later be disbursed to Appellants if it was appropriate under various contractual documents). (Id.) Appellants never obtained a stay of this latter order.

Now, after this court has lifted the stay of the January and March 2023 orders, and denied a stay of the contempt order, Appellants have moved to reinstate and impose the two stays so they do not have to turn over the multiple millions of dollars they have always owed to the Receiver—only a small portion of which will be disbursed to Respondents shortly after deposit with the Receiver.[3]

Appellants have failed to show the stays are warranted under NRAP 8(a). First and foremost: Appellants have no likelihood of success when they are merely regurgitating their already denied arguments. (Order at 23-25.) Similarly, enforcing the lower court's orders—which require Appellants to pay funds into the receivership that were either blatantly stolen or wrongfully withheld for years—does

[3] The approximately $1.1 million is rental proceeds Respondents' units earned in 2020 and 2021. These amounts are rightfully owed to Respondents as profits gleaned from their ownership of their respective units. Notably, Appellants refused to pay Respondents ***any*** of their rental proceeds from 2020 until after the June 2023 contempt trial—depriving Respondents of literally millions of dollars.

not undermine the appeal's purpose. If the court reverses its orders, the $1.1 million in withheld rent could be recovered from the units' proceeds and/or set off from the purchase proceeds when the units are sold pursuant to district court order. The approximately $16 million that was contemptuously misappropriated will be held by the receivership for further assessment and not immediately disbursed. Thus, there is no imminent threat of funds being disbursed and irreparably lost to Appellants.

Next, Appellants' argument that Respondents will not suffer from the requested stays is missing a critical component: Appellants argue Respondents will not suffer ***more than they already have*** by the requested stays. However, this is not the analysis. The court should appreciate that, at minimum, Appellants have wrongfully stolen and withheld over one million dollars from Respondents that were earned in 2020 and 2021—thus ***for years***, Respondents have been denied funds they are rightfully owed. To continue this severe harm would be to reject justice.

Accordingly, this court should reject Appellants' request for stays, as it did in its recent Order. Respondents are entitled to the benefit of the district court's orders and now this court's Order—they should not be forced to suffer any further harm due to Appellants baseless refusal to admit defeat.

II. ARGUMENT

This court correctly found the receivership cannot be terminated in this matter by the Amended Final Judgment (which was inaptly named, and not effective as

final for appeal purposes). (Order at 23-24.) Indeed, the district court specifically directed the Receiver to undertake critical tasks which must be completed by a neutral party. These tasks include but are not limited to: recalculating the applicable fees, determining gross rental proceeds based on such fees, holding the parties' units as trustee until they are sold, and conducting a final accounting for multiple years when Appellants unilaterally inflated fees and depleted rental proceeds. (See, e.g., R.App. 0035-43, 0062-66, 0095-97.) Thus, to terminate the receivership prior to these tasks being completed would deprive Respondents of justice.

Similarly, because the receivership has not conducted its final accounting, applicable case law directs that any judgment entered cannot be final to wind up the receivership. (Order at 23-24.) Instead, the receivership is only wound up upon its submission and the approval of a final accounting. (Id.) No accounting has been completed here, so the purported final judgment cannot terminate the receivership.

A. Appellants Have No Chance of Success on Rehearing

Appellants motion advances the same arguments previously rejected by this court and, thus, has no change of success on rehearing. This court correctly determined that Martin & Co. v. Kirby, 34 Nev. 205 (1911) and Alper v. Posin, 77 Nev. 328 (1961) are binding and dictate that a receivership is not final until an accounting is done, so no judgment entered can be final until the receivership's final accounting is submitted and approved. (Order at 22-23.) The district court has

ordered the Receiver to prepare a final accounting, which is currently being done. Further, Appellants have expressly agreed to the termination of the association—and to execute such termination under the Receiver's oversight and through the receivership generally. (R.App. 0084.) Appellants are thus estopped from asserting the receivership has terminated and a final accounting under the receivership is not proper in this action.

Rather than set forth new arguments as to why the court's analysis is incorrect (likely because there are no such arguments), Appellants opt to regurgitate their now denied legal analysis that the inaptly named final judgment terminated the receivership—despite this court's finding that the "final" judgment was an interlocutory order. (Order at 24, n.2.) Appellants therefore have no likelihood of success on the alleged petition for rehearing they are going to seek.

B. The Object of the Appeal Will Not Be Defeated Without a Stay

Even if the Receiver's calculated $1.1 million results in an overpayment, which contradicts the Receiver's statements that his calculations are conservative and likely underestimate the totals owed to Respondents, there are multiple funding sources to recoup any such overpayment. (R.App. 0047.) First, Respondents have obtained a compensatory damages award which includes over $4 million for Appellants' indisputable rental of certain Respondents' units without a rental agreement. (R.App. 0011-34.) This damage amount is unassailable and would more

than provide for any unlikely overpayment. Similarly, Respondents earn rental proceeds from their units each month (although Appellants did not pay any of the proceeds to Respondents from 2020 to June 2023). (See e.g., R.App. 0044-55.) Appellants could use these proceeds, payable to Respondents, to recoup any overpayment. Finally, Respondents' units are a secured reimbursement source, because Respondents must sell their units pursuant to the GSRUOA termination. (R.App. 0074-94.) These sale proceeds could easily be offset by any overpayment. There is thus no potential for irreparable harm to Appellants, nor any thwarting of the appeal's purpose, by denying a stay and allowing the Order to be enforced.

With respect to the order requiring Appellants to return the $16 million, the apparent object of Appellants' appeal is they should not be forced to remedy their contemptuous misappropriation. Appellants offer virtually no reason for why they should not have to return the stolen funds. Appellants removed over $16 million from the reserve accounts without approval and in flagrant violation of district court order; the district court found Appellants in contempt for violating its orders vesting the Receiver with authority over the reserves; the district court ordered Appellants to return the misappropriated millions; and now Appellants argue they should not be required to do so until the Order is reheard. (R.App. 0098-100.)

If Appellants are truly entitled to the amount of reserves they claim—the entire misappropriated amount—then they certainly can wait for the Receiver to

confirm this in his final accounting, which will be reviewed and approved by the district court. It is unjust for Appellants to insist that the funds they ***misappropriated*** should be held by them for safekeeping while they pursue this frivolous (and doomed) rehearing, especially when the district court has already found they have committed blatant fraud (e.g., falsely reported rental activity, rented units not even in the rental program for which they had no right to use, and sent false invoices). (R.App. 11-34.) Surely this court should not trust the thief to hold the chattel he has stolen while the illegality of his theft is being appealed.

C. Appellants Cannot Suffer Irreparable Injury

Appellants will not suffer any irreparable injury if they turn over the funds to the Receiver, as ordered. The $1.1 million in rental proceeds is a conservative estimate made by the Receiver of the actual rental proceeds, and, if it is an overestimation, there are numerous sources to fund any potential overpayment. Any argument by Appellants about the hurt of losing funds that may be rightfully theirs falls on the deaf ears of Respondents—who have been deprived multiple millions of dollars over the last few years by Appellants.

The district court has ordered, now multiple times, that the Receiver is to complete a final accounting and the reserves will be a function thereof. (R.App. 0101-03.) In fact, the alleged reimbursement amounts claimed by Appellants are to be addressed in this final accounting. (Id.) Thus, these returned funds will be held

by the Receiver—a neutral court-appointed third party—until the district court approves the final accounting. Only then will the funds be disbursed accordingly—some to Respondents and some to Appellants. As is clear, no irreparable injury is threatened because, contrary to Appellants doomsday claims, none of the funds will be disbursed to Respondents until the Receiver completes his final accounting and the district court approves it.

D. Respondents Continue to Suffer at the Hands of Appellants

Respondents will be severely and irreparably harmed by a stay because the amounts to be paid are rental proceeds to which Respondents are contractually entitled as owners of their units—not damages. Appellants' rental of Respondents' units generates a profit that, pursuant to contract, is to be half paid to Respondents. Respondents will continue to suffer significant harm as a result of Appellants' baseless refusal to pay these rental proceeds from Respondents' own units and any requested stay. Conversely, Appellants have repeatedly proven they cannot be trusted to hold any funds which may belong to Respondents without misappropriating those funds.

If any party is threatened with irreparable harm by the requested stay, it is Respondents. Respondents have already been deprived of huge sums by Appellants, as Appellants baselessly refused to turn over Respondents' rental proceeds for over multiple years. Moreover, the reserve funds were contemptuously withdrawn by

Appellants from the reserve accounts—a fact Appellants do not dispute. These amounts must be returned to the receivership for safekeeping. Allowing Appellants to sidestep the district court's orders now would only further Respondents' harm.

III. CONCLUSION

This court correctly determined that the receivership remains intact and under the jurisdiction of the district court. In fact, the receivership is critical to the proper progression and eventual end of this litigation. Unable to accept that their arguments were undercut by both the unflattering history of this case and binding case law, Appellants seek a stay while they request rehearing. This stay is nothing more than a further attempt to deny Respondents the justice they have long deserved. Accordingly, Respondents respectfully request that no stay be granted.

Dated: this 16th day of January, 2024.

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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 January 16, 2024, 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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