IN THE SUPREME COURT OF THE STATE OF NEVADA

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MEI-GSR HOLDINGS, LLC, AM-GSR HOLDINGS, LLC, and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, Appellants, v. ALBERT THOMAS, *et al.,* Respondents.	Case Nos. 85915 86092 86985 87243 87303 87566 87567

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

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I. INTRODUCTION

Lacking any meritorious argument, Respondents resort to mudslinging and allegations of unproven theft. However, once stripped of their bluster, Respondents' arguments reveal their weakness: the record and caselaw overwhelmingly counsel this Court to reinstate its stay pending resolution of Panel Rehearing and, if necessary, En Banc Reconsideration. Appellants have presented a substantial case for rehearing or reconsideration as the Panel's Order overlooked or misapprehended binding Nevada law, creating a jurisprudential split in Nevada authority. The object of the stay will be defeated—and Appellants will face irreparable harm—absent a stay because Respondents lack any credible means of returning the over $17 million they now improperly seek. Finally, Respondents fail to show any irreparable harm from a stay. Thus, this Court should grant Appellants' Motion.

II. ARGUMENT

A. Appellants Have Presented a Substantial Case for Rehearing or Reconsideration.

Respondents contend that Appellants merely "regurgitate" prior arguments that the Panel "correctly" rejected when it concluded *Martin & Co. v. Kirby* and *Alper v. Posin* establish that a final accounting constitutes the final judgment in a receivership action. (Opp'n at 5-6). Respondents' argument misses the mark.

Appellants' Petition for Rehearing makes clear, the Panel's order failed to address any of the many, binding Nevada cases that contradict or undermine *Martin* and *Alper*.

MEI-GSR Holdings, LLC v. Thomas, et al., Docket Nos. 85915, 86092, 86985, 87243, 87303, 87566, & 87567, at **2-4 (Appellants' Petition for Rehearing of December 29, 2023 Order Jan. 16, 2024).[1] Contrary to Respondents' spin, the Panel's order overlooked or misapprehended contrary, binding Nevada law Appellants raised, resulting in a split of this Court's precedent. (*Id.* at **2-7). Notably, Respondents make no effort to reconcile those conflicting lines of authority. Accordingly, Appellants have a substantial case for Panel Rehearing or En Banc Reconsideration.[2] *See* NRAP 40(c)(2); NRAP 40A(a).

B. The Object of the Appeal will be Defeated Without a Stay.

As to the approximately $1.1 million dollar disbursement, Respondents assert that the object of the appeal will not be defeated without a stay because "there are multiple funding sources to recoup any such overpayment." (Opp'n at 6). Specifically, (1) the "unassailable" multi-million-dollar compensatory damages award; (2) monthly rental proceeds from Respondents' units; and (3) the sale proceeds of Respondents' units. (*Id.* at 6-7). Turning to the $16 million dollar judgment, Respondents blithely argue that Appellants "offer virtually no reason for why they should not have to return"

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[1] Respondents filed their opposition before Appellants' Petition for Rehearing so Respondents could not have known the arguments that Appellants' Petition for Rehearing advanced.

[2] Respondents did not cite a single case or offer any analysis supporting their one-line estoppel argument. (*See* Opp'n at 6). Thus, this Court need not consider that argument as it is not cogent. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

the funds beyond that their Petition for Rehearing has not been resolved. (*Id.* at 7). Respondents' arguments, yet again, fall short and misstate the record.

First, Respondents proposed "multiple funding sources" do not guarantee any possibility that Appellants could recoup any funds paid. For starters, Respondents' merits judgment is far from "unassailable." Indeed, its procedural and substantive flaws virtually guarantee that this Court will reverse.[3] Likewise, the legal basis for ongoing rental proceeds as a form of continuing damages is highly suspect and subject to challenge. Appellants cannot be "paid back" with funds they should not have had to pay out in the first place.[4] Similarly, there has been no sale of the units nor an agreed upon price. As such, it is unclear whether the funds from Respondents' units will be able to rectify any overpayment of the approximately $17 million Respondents now seek.

As to the approximately $16 million, as Appellants explained, they have sought rehearing of the order dismissing the appeal related to the $16 million amount. *MEI-GSR Holdings, LLC*, Docket Nos. Nos. 85915, 86092, 86985, 87243, 87303, 87566, & 87567, at **7 (Appellants' Petition for Rehearing of December 29, 2023 Order Jan. 16, 2024). Because a timely petition for rehearing stays remittitur of the December 29, 2023 Order, NRAP 41(b)(1), the stay has not been lifted as a matter of law, *see Mary Ann*

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[3] Appellants' opening merits brief is currently due March 28, 2024.

[4] Even assuming the continued rental amounts were not illegal (they are), rental proceeds are too variable in amount and duration to provide any guaranteed source of funds to recoup multiple millions of dollars improperly paid.

Pensiero, Inc. v. Lingle, 847 F.2d 90, 97 (3d Cir. 1988) ("An appellate court's decision is not final until its mandate issues."). Regardless, should these judgments be disbursed, Respondents' admitted lack of financial wherewithal prevents Appellants from recouping any funds the district court erroneously forces them to spend.

C. Appellants Will Suffer Irreparable Injury Absent a Stay.

Respondents' cursory argument regarding Appellants' irreparable harm, (Opp'n at 8), need not be considered as underdeveloped, *see Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (declining to consider issues that are not supported by cogent argument). However, to the extent that this Court does, it is unpersuasive. At its core, Respondents assert that "there are numerous sources to fund any potential overpayment." (Opp'n at 8). But, as discussed above, no "potential" source of funds will reimburse Appellants for the approximately $17 million in funds Respondents prematurely demand. Respondents' merits judgment rests on tenuous, legally flawed grounds, as does the receiver's ability to rent Respondents' units. *Supra* II.B. Moreover, the meager number of Respondents' units precludes any serious argument that the sale of the units could offset the approximately $17 million in funds. *Id.* As such, Appellants face irreparable harm should this Court deny its stay motion. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., granting application for stay) (concluding a stay is appropriate where expended funds would be unrecoverable).

D. Respondents will not Suffer Irreparable Harm from a Stay.

Finally, Respondents' irreparable harm argument is nonsensical. Respondents contend they "will be severely and irreparably harmed by a stay" because they will not receive the funds directly. (Opp'n at 9). However, they argue—in the same breath—that Appellants face no irreparable harm because the funds "will be held by the Receiver . . . until the district court approves the final accounting. Only then will the funds be disbursed accordingly." (*Id.* at 8-9). If Appellants face no harm because the funds will not be disbursed until a final accounting, then Respondents face no harm from a stay of disbursing the funds as they would not receive the funds in any event. (*See id.*). Appellants have also posted a supersedeas bonds of the supposed past due rents, and thus, Respondents are secured upon resolution of Appellants' appellate rights. *MEI-GSR Holdings, LLC*, No. 86092, at Exhibit K (Appendix of Exhibits to Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay Apr. 25, 2023).

III. CONCLUSION

For these reasons, the Court should enter or maintain the stays in Docket Nos. 86092 and 87243.

DATED this 6th day of February 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to NRAP 25(b) and NEFCR 9, on this 6th day of February 2024, I electronically filed the foregoing **APPELLANTS' REPLY IN SUPPORT OF MOTION TO MAINTAIN OR REINSTATE STAYS PENDING PANEL REHEARING AND EN BANC RECONSIDERATION OF DECEMBER 29, 2023 ORDER** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC