

IN THE SUPREME COURT OF THE STATE OF NEVADA

AIRBNB, INC.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE GLORIA STURMAN,
DISTRICT JUDGE, DEPT. XXVI

Respondents, and

BRYAN LOVETT,

Real Party in Interest.

Case No.: 87079

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Elizabeth A. Brown
Clerk of Supreme Court

**MOTION TO STAY
DISTRICT COURT
PROCEEDING ONLY AS TO
PETITIONER AIRBNB, INC.
PENDING RESOLUTION OF
ITS WRIT PETITION**

I. INTRODUCTION

Petitioner Airbnb, Inc. ("Airbnb") filed this original writ proceeding challenging the district court's denial of its Motion to Dismiss because, even accepting Real Party in Interest Bryan Lovett's allegations as true, he has no cognizable claims against Airbnb stemming from a drive-by shooting near an Airbnb listing. Airbnb – an online marketplace through which rental hosts can connect with guests – cannot be liable as a matter of law because there is no set of facts under which Airbnb is a joint-venturer with this (or any) host, and Airbnb does not undertake any duties to strangers like Lovett who was merely a guest of a guest at a listing. When denying Airbnb's Motion, in part, the district court noted that the case

involves a "very interesting industry" and "evolving concepts of liability under Nevada law."

On September 11, 2023, the Court entered an Order Directing Answer, stating that "it appears that an answer may assist this Court in resolving this matter." Lovett filed his Answer on October 9, 2023. Airbnb filed its Reply on November 6, 2023. In the meantime, on September 21, 2023, Airbnb moved the district court to stay the case only as to Airbnb to prevent the object of its petition from being defeated and to afford this Court an opportunity to address the important issues of first impression presented. On March 2, 2024, the district court denied Airbnb's motion to stay. The district court, however, entered a 30-day stay to allow Airbnb to renew its stay request with this Court, pursuant to NRAP 8(a)(2).

Airbnb now files its motion to stay with this Court. If the district court case continues while the Court considers the Petition, Airbnb will needlessly endure the same hardship that it is seeking to avoid through this original proceeding. On the other hand, Lovett will suffer no irreparable harm from a stay. He will retain the ability to pursue discovery from the other remaining defendant. At worst, Lovett might incur slight inconvenience but that is far outweighed by the potential benefits and efficiencies from a stay. Lovett's Answer to the Petition acknowledges that Airbnb presents substantial legal questions. Therefore, under NRAP 8, the Court

should stay the district court case only as to Airbnb until the Court resolves the Petition.

II. STATEMENT OF FACTS

A. The District Court Denies Airbnb's Motion to Dismiss.

As explained more fully in the Petition, in 2019, Lovett sued Airbnb and a slew of individuals and entities alleging that he was shot in a drive-by shooting as he and a friend approached a party held at an Airbnb listing. (Pet. 5-6.) Airbnb moved to dismiss because, as a matter of law, it has no duty to control the dangerous or criminal conduct of third parties, it had no special relationship with Lovett, and drive-by shootings are not foreseeable. (*Id.* at 7.)

Even though Lovett conceded that he had no special relationship with Airbnb, he opposed the motion. (*Id.*) He argued, based on two words in his complaint (used twice) that Airbnb could be liable as a "joint venturer" with each of its hosts. (*Id.*). Lovett also offered another unpled theory of liability. He asserted Airbnb could have negligently undertaken a duty toward complete strangers like him. (*Id.* at 7-8.) Yet, the Terms of Service, which establish and govern the relationship between Airbnb and its hosts, foreclose any joint-venture relationship and any undertaking that Lovett hypothesized. (*Id.* at 8.)

The district court granted Airbnb's motion in part. It struck Lovett's request for punitive damages and held that Lovett failed to allege an agency relationship

between Airbnb and the other defendants. (*Id.* at 8-9.) But, without considering the undisputed Terms of Service, the district court allowed Lovett's negligence and negligent security claims to proceed. The district court recognized that Lovett invoked "developing" and "evolving concepts of liability under Nevada law" in a "very interesting industry." (*Id.* at 9.) According to the district court, the case turns on whether Lovett can impute liability to Airbnb as a joint venturer or whether Airbnb was somehow independently negligent by voluntarily assuming a legal duty. (*Id.*)

B. Airbnb Moves to Partially Stay the Case Pending the Petition and Lovett Seeks to Dodge this Court's Review.

Airbnb filed its writ petition on August 3, 2023. Shortly afterward, on August 21, 2023, Lovett filed a motion for leave to file a first amended complaint seeking to moot or cure the defects in his case. (RA 1.) However, despite rewording his complaint, the underlying substantive and legal issues remain the same. As an online marketplace with a clearly defined role, Airbnb is not liable for unforeseen drive-by shootings committed by strangers against other strangers under joint venture and negligent undertaking theories.

On September 11, 2023, this Court directed Lovett to respond to the Petition. (Or. Directing Ans., Sept. 11, 2023.) Lovett filed his Answer on October 9, 2023, and Airbnb filed its reply on November 6, 2023. On September 22, 2023, Airbnb moved to partially stay the district court case against Airbnb pending its writ petition.

Eventually, the district court denied Airbnb's motion to stay. (Ex. 1 at 2.) It determined that Airbnb would not incur irreparable harm from participating in discovery on potentially legally meritless claims and irrelevant issues. (*Id.*) It next concluded that the object of the writ would not be defeated as Airbnb "will need to participate in at least some discovery regardless of whether it is a party to the case or not." (*Id.*) Finally, after waiting five months, the district court found that Lovett's "interest in moving the case forward" outweighs any countervailing interest. (*Id.*) Even so, the district court granted a temporary 30-day stay so that Airbnb could renew its stay request with this Court. (*Id.* at 3.)

III. ARGUMENT

Nevada Rule of Appellate Procedure 8(a) allows a party to seek a stay from this Court after relief is denied in the lower court. *See* NRAP 8(a)(1)(A); *see also Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). When considering a stay, the Court weighs a number of factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a stay is granted; and (4) whether the petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c). "[I]f one or two factors are especially strong, they may counterbalance other weak factors."

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Airbnb satisfies each of these factors.

A. If a Stay is Denied, the Object of the Writ Petition Will be Defeated.

This Court has indicated that the first stay factor may take on outsized significance. *See Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39 (stating that, with stays in interlocutory appellate proceedings, "the first stay factor takes on added significance"). A stay is generally warranted when a denial would defeat the object of the appellate proceedings. *Id.* at 253, 89 P.3d at 39-40 ("Because the object of an appeal . . . will be defeated if a stay is denied, and irreparable harm will seldom figure into the analysis, a stay is generally warranted."). The object will usually be defeated when this Court will no longer have the opportunity to meaningfully review the issues presented. *See Beazer Homes Holding Corp. v. Dist. Ct.*, 128 Nev. 723, 730, 291 P.3d 128, 133 (2012). That is precisely the case here.

The object of Airbnb's Petition is to enforce its "clear and indisputable" right to writ relief directing the dismissal of Lovett's negligence and negligent security claims under this Court's joint venture and voluntary undertaking jurisprudence as well as the Terms of Service. (*See* Pet. 10-11 (citing *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819-20, 407 P.3d 702, 706 (2017))). Without a stay, the object of the Petition will be defeated because Airbnb will lose the ability to obtain a writ of mandamus directing the district court to dismiss the claims against Airbnb

before engaging in unrecoverable expensive discovery on non-existent claims and irrelevant issues. And, for all practical purposes, the Court will miss the chance to provide meaningful relief to Airbnb on the types of issues raised in the Petition – relief that cannot wait for future appeal. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736 (2007) ("Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented."). The lack of meaningful relief is especially acute given the early stages of the proceeding and the duration of the case so far. *Id.*; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

The district court's contrary, cursory conclusion does not provide otherwise. As an initial matter, it is unclear whether Airbnb would have to participate in discovery as a non-party. And, if so, the scope, cost, burden, and information sought would be drastically different than those Airbnb faces as a party. Therefore, without a stay, the object of Airbnb's Petition will be defeated and it will have no "adequate" or "speedy" remedy in the ordinary course of law.

B. Lovett Will Not Suffer Irreparable or Serious Harm if a Stay is Granted.

"Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a

stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Here, Lovett will not suffer any irreparable harm from a limited stay. Airbnb is not seeking to stay the entire litigation. Rather, it requests only a narrowly tailored stay as to Airbnb that will allow Lovett to pursue discovery against the other remaining defendant.

The only possible "harm" to Lovett is the delay associated with his inability to conduct discovery to which he is likely not entitled. Yet "a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm," *id.* at 253, 89 P.3d at 39, especially where, like here, the district court waits nearly five months to resolve the motion for a stay and for leave to file an amended complaint. Moreover, this Court's docket indicates that this case is set for submission, and thus, a resolution on the Petition is forthcoming far in advance of the October 2025 trial date. Accordingly, granting a stay to Airbnb will not stall when Lovett could go to trial at the earliest.

By contrast, Airbnb confronts the potential of irreparable harm. Contrary to the district court's conclusion, this Court has indicated that allowing improper discovery on irrelevant issues may constitute irreparable harm. *See Hetter v. Eighth Jud. Dist. Ct.*, 110 Nev. 513, 515, 874 P.2d 762, 763 (1994). The burden itself and "the disclosure of irrelevant matter is irretrievable once [incurred]." *Schlatter v. Eighth Jud. Dist. Ct.*, 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977). "[H]aving to conduct substantial, unrecoverable, and wasteful discovery and pretrial motions

practice on matters that could be mooted by a pending [writ] may amount to hardship or inequity sufficient to justify a stay." *State ex Rel Div. Water Resources v. Eighth Jud. Dist. Ct.*, No. 87356, 2023 WL 6620104, at *2 (Nev. Oct. 10, 2023) (unpub.) (describing *Flores v. Bennett*, No. 1:22-CV-01003-JLT-HBK, 2023 WL 3751998, at *8 (E.D. Cal. June 1, 2023)). As a result, if any party faces irreparable harm, it is Airbnb – the party which is subject to potentially improper discovery on legally irrelevant issues – not Lovett.

C. Airbnb Has Presented a Substantial Case to Justify a Stay.

The party requesting a stay need only "present a substantial case on the merits when a serious legal question is involved." *See Hansen*, 116 Nev. at 659, 6 P.3d at 987 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). The movant "does not always have to show a probability of success on the merits" provided that the writ does not appear frivolous or merely an attempt to delay. *Id.* at 253-54, 89 P.3d at 40.

As shown in the Petition and Reply, Airbnb has presented a substantial case on the merits of serious legal questions related to the potential liability of online marketplaces based on the criminal or dangerous acts of random members of the public. Nevada law, the Terms of Service, and the weight of authority from other jurisdictions support that there is no claim against Airbnb under a joint venture and negligent undertaking theory, especially given Lovett's deficient allegations.

Lovett's amended complaint does not undermine the important issue presented. "[T]he amended complaint did not substantively alter the [legal] issue ... presented in this petition. Thus, the amended complaint neither renders the legal issue abstract nor prevents us from granting effectual relief to the prevailing party." *Orbitz Worldwide, LLC v. Eighth Jud. Dist. Ct.*, 139 Nev. Adv. Op. 40 n.5 (2023).

Lovett cannot "mak[e] a strong showing that appellate relief is unattainable" or that the Petition "appears frivolous" or is meant for "purely dilatory purposes." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 40. At minimum, Airbnb presents a substantial case on significant and serious legal issues. Airbnb should be given the chance to obtain meaningful relief through a limited stay.

IV. CONCLUSION

For these reasons, Airbnb respectfully requests that the Court stay the district court proceedings only as to Airbnb pending the resolution of this original proceeding.

DATED this 12th day of March, 2024.

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By: /s/ Jordan T. Smith
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 12th day of March 2024, I caused to be e-filed/e-served through the Court's website true and correct copies of the above and foregoing **MOTION TO STAY DISTRICT COURT PROCEEDING ONLY AS TO PETITIONER AIRBNB, INC. PENDING RESOLUTION OF ITS WRIT PETITION** to the following:

Hon. Gloria Sturman
District Judge, Dept. XXVI
Eighth Judicial District Court
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

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Jordan Schnitzer, Esq.
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Attorney for Real Party in Interest

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC RICE, individually; JEFFERSON
TEMPLE as Special Administrator of the
Estate of RAHEEM RICE; BRYAN
LOVETT,

Plaintiffs,

v.

ZHENG TRUST c/o FENEX CONSULTING;
LI JUN ZHENG, individually;
SHENANDOAH SOUTHWEST, INC., a
Nevada Corporation; JASPER HAN,
individually; AIRBNB, INC., a Foreign
Corporation; ROE HOA; ROE SECURITY
COMPANY; DOE PARTY HOST; ROE
PROPERTY MANAGEMENT COMPANY;
DOES XI through XX, inclusive and ROE
CORPORATIONS XI through XX, inclusive,

Defendants.

CASE NO.: A-19-801549-C
DEPT NO.: 26

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANT AIRBNB, INC.'S
MOTION TO STAY**

PLEASE TAKE NOTICE that an **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT AIRBNB, INC.'S MOTION TO STAY** was entered in the above-captioned case on the 2nd day of March, 2024, a copy of which is attached hereto.

DATED this 4th day of March, 2024.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2024, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT AIRBNB, INC.'S MOTION TO STAY** to be served via this Court's Electronic Filing system in the above-captioned case.

/s/ CaraMia Gerard

An employee of McDonald Carano LLP

Heaven S. Linn
CLERK OF THE COURT

ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC RICE, individually; JEFFERSON
TEMPLE as Special Administrator of the
Estate of RAHEEM RICE; BRYAN
LOVETT,

Plaintiffs,

v.

ZHENG TRUST c/o FENEX CONSULTING;
LI JUN ZHENG, individually;
SHENANDOAH SOUTHWEST, INC., a
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individually; AIRBNB, INC., a Foreign
Corporation; ROE HOA; ROE SECURITY
COMPANY; DOE PARTY HOST; ROE
PROPERTY MANAGEMENT COMPANY;
DOES XI through XX, inclusive and ROE
CORPORATIONS XI through XX, inclusive,

Defendants.

CASE NO.: A-19-801549-C

DEPT NO.: 26

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
AIRBNB, INC.'S MOTION TO STAY**

1 Before the Court is Defendant Airbnb, Inc.'s ("Airbnb") *Motion to Stay Proceedings*
2 *as to Airbnb Pending Writ Petition* ("Motion"). Appearing on behalf of Plaintiff Bryan Lovett
3 was Jordan Schnitzer, Esq. of THE SCHNITZER LAW FIRM. Appearing on behalf of
4 Defendant Airbnb was Rory T. Kay, Esq. of the law firm McDONALD CARANO LLP.
5 Appearing on behalf of Defendant Jasper Han, was Matthew A. Sarnoski, Esq. of the law firm
6 DENNETT WINSPEAR, LLP.

7 The Court, having heard oral arguments and after review of the points and authorities
8 and the pleadings, GRANTS Airbnb a temporary 30-day stay of the case against it so that
9 Airbnb may seek further relief in the Supreme Court of Nevada, but in all other respects
10 DENIES its motion, as follows:

11 In considering Airbnb's Motion, the Court has considered (1) whether the object of the
12 appellate review will be defeated if the stay is denied; (2) whether the petitioner will suffer
13 irreparable or serious injury if the stay is denied; (3) whether the real party in interest will
14 suffer irreparable or serious injury if the stay is granted; and (4) whether the petitioner is likely
15 to prevail on the appellate review. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251
16 (2004). On balance, the Court finds that these factors weigh in favor of denying the stay.

17 For the reasons expressed at the hearing and previously expressed in the Court's Order
18 Granting in Part and Denying in Part Airbnb, Inc.'s Motion to Dismiss Plaintiff Bryan Lovett's
19 Claims Against Airbnb, Inc., the Court finds that Airbnb is not likely to prevail on the merits
20 of its writ petition, and that any interests in favor of granting a stay are outweighed by
21 Plaintiff's interest in moving the case forward. Having to go through discovery and trial, even
22 if it means incurring "substantial" expense, is not an irreparable or serious injury in the stay
23 context. *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658 (2000) (collecting cases). Going
24 through the discovery process will not defeat the object of the writ petition or prejudice
25 Airbnb, which will need to participate in at least some discovery regardless of whether it is a
26 party to the case or not. Therefore, there is no basis to stay the case as to Airbnb while its writ
27 petition is pending and such a stay would only result in unnecessary delay.

28 Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that these proceedings are hereby temporarily stayed as to Airbnb for 30 days from entry of this Order so that Airbnb may seek a stay from the Nevada Supreme Court. If the Supreme Court has not resolved Airbnb's motion to stay within 30 days after entry of this Order, then Airbnb shall have 14 days from the expiration of the temporary 30-day stay to respond to any pending discovery requests and Plaintiff's operative pleading. If the Supreme Court denies Airbnb's motion to stay prior to the expiration of the temporary 30-day stay, then Airbnb shall so respond within 14 days after such denial. If the Supreme Court grants a stay, then Airbnb's time to so respond shall be governed by the provisions of that stay.

IT IS FURTHER ORDERED that Airbnb's Motion is DENIED in all other respects.

IT IS SO ORDERED.

Dated this 2nd day of March, 2024



**064 3ED 894B B24C
Gloria Sturman
District Court Judge**

Respectfully submitted:

THE SCHNITZER LAW FIRM

Disapproved – Competing Order

Jordan P. Schnitzer, Esq.

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Attorneys for Plaintiff, Bryan Lovett

Approved as to Form:

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2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric Rice, Plaintiff(s)

CASE NO: A-19-801549-C

7 vs.

DEPT. NO. Department 26

8 Zheng Trust, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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