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 No. 87243

EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ORDERS AND FOR ADMNISTRATIVE STAY

RELIEF REQUESTED IMMEDIATELY

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I. INTRODUCTION

At Respondents' urging, the district court continues to drive this case off course. Now, despite the entry of not three, but four, final judgments (and needlessly certifying them), the district court held a weeklong "civil" contempt trial over alleged violations of pre-judgment orders that were merged into the final judgment(s). But the district court lacked jurisdiction to conduct this type of contempt hearing once the final judgment was entered. Nevertheless, Respondents persisted. Misled by Respondents—and applying the wrong standard—the district court denied most of the motions but held Appellants in contempt of its Order Appointing the Pre-Judgment Receiver. As a sanction, the district court erroneously ordered Appellants to remit over $16 million to a reserve account controlled by the Receiver—an arm of the district court.

But such actions are improper. The district court cannot find Appellants in contempt of pre-judgment orders after the entry of a final judgment. Nor can the district court require Respondents to remit over $16 million in funds to the Receiver-controlled reserve account because—as extensively briefed in the pending motion practice in Docket 86092—the Receiver terminated as a matter of law upon entry of the final judgment. If the receivership remains viable (it isn't), then the district court unlawfully imposed a *criminal contempt* sanction without the necessary procedural protections when it ordered Appellants to pay funds to the Court-appointed Receiver rather than to the opposing parties. Thus, not only did the district court improperly find

Appellants in criminal contempt, it imposed an unlawful sanction that cannot be carried out.

Finally, at best, Respondents may have a claim to $2,343,206.44 of the ordered $16 million. Thus, the district court impermissibly demands Appellants remit to an arm of the court over $14 million more than Respondents could be entitled to. Appellants moved to alter or amend the contempt order and sought a stay of it while they pursued appellate remedies. The district court denied the motion and ordered them to pay the amounts "immediately" just like the district court did the last time this Court was forced to grant Appellants emergency relief in Docket 86092. Therefore, Appellants must once again regrettably seek this Court's emergency intervention to stay the Order Finding Appellants in Contempt.

Without a stay, Appellants will suffer irreparable harm because the multimillion-dollar funds are effectively unrecoverable once the zombie-receiver disburses them to the individual Respondents (who don't have a right to the money in the first place). Appellants have a substantial case, if not a likelihood of success, on the merits of multiple issues: First, the district court lacked jurisdiction to conduct the contempt proceedings. Second, the district court erroneously imposed a criminal sanction under the guise of a civil contempt proceeding. Third, as shown in Docket Numbers 85915's and 86092's pending motions, the receivership is terminated as a matter of law and the unit owners association wind-up and sale process is government by a statutory scheme that is not implicated by Respondents' operative complaint. The status of the

receivership pending in those dockets is intertwined with the challenged contempt order.

Respondents will suffer no irreparable harm from a stay while the Court considers the contempt appeal and decides the pending motions in Dockets 85915 and 86092. Thus, Appellants respectfully request an administrative stay while the Court considers this Emergency Motion and, once considered, a stay of the Order Finding Appellants in Contempt until the resolution of all related appellate proceedings.

II. STATEMENT OF FACTS

The facts of this tortured case are detailed more fully in the prior motion for a stay, which this Court granted, as well as Appellants' Response to this Court's Order to Show Cause. S*ee generally MEI-GSR Holdings, LLC v. Thomas et al.*, Docket No. 86092. It suffices to say that the district court's post-judgment actions, encouraged by Respondents, conflict with the Rules of Civil Procedure and this Court's caselaw.[1] As exemplified here, the district court's[2] refusal to recognize that the Receiver terminated as a matter of law upon entry of the final judgment guarantees that this case will continue without regard for the pending appellate proceedings, effectively ensuring that more appeals or writs arising from the district court's actions will occur.[3]

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1 *MEI-GSR Holdings, LLC v. Thomas et al.*, No. 86092, at *11 (Appellants' Supplement to Response to May 8, 2023 Order to Show Cause July 13, 2023).

2 While there has been substantial judicial turnover in this case, the Honorable Senior Judge Elizabeth Gonzalez has signed the orders at issue.

3 Indeed, this one district court case has spawned five (and counting) separate dockets addressing the district court's various orders.

At-issue here is the district court's rogue—and fundamentally flawed—post-judgment contempt order. Despite having entered multiple final judgments, the district court nonetheless held a weeklong post-judgment contempt proceeding to address alleged contempt of several pre-trial orders that had already merged into the final judgment. (*See generally* Ex. A). One issue related to whether the withdrawal of funds from a reserve account to renovate condominiums (including those owned by Plaintiffs so they benefitted) as required by the CC&Rs violated any clear court order. After the trial, the district court denied 5 of 7 contempt motions. However, the district court found, "by clear and convincing evidence," Appellants in contempt of an ambiguous pre-judgment order and directed Appellants to remit $16,455,101.46 to a reserve account controlled by the Receiver, an arm of the district court ("Order Finding Contempt"). (Ex. B at 2-3). The district court also amended or modified certain other merged orders. (Ex. C at 2-3).

However, its Order Finding Contempt was riddled with errors. First, the district court lacked jurisdiction to conduct a post-judgment contempt proceeding based on alleged *pre-judgment* conduct. Second, despite referring to the order as a civil contempt order, the district court effectively imposed a criminal sanction when it directed Appellants to remit over $16 million to the Receiver—an arm of the court—rather than impose a compensatory award for the opposing parties. (Ex. B at 3). Third, the district court's contempt order requires Appellants to remit over $14 million more to the Receiver's controlled reserve account than Respondents could ever hope to be entitled

to. (Ex. D at 11). Thus, the Order Finding Contempt was criminal, not civil, and the district court erred by applying the "clear and convincing" standard instead of the "beyond a reasonable doubt" standard when determining whether contempt occurred. (Ex. B at 2).

The contempt award is intertwined with the issues before the Court in Dockets 85915 and 86092. As briefed extensively there, the Receivership terminated as a matter of law upon the entry of the final judgment.[4] Because the Receiver no longer exists as a matter of law, Appellants cannot be ordered to pay money to an account controlled by a receiver who should no longer exist. The punishment directed by the district court cannot be carried out.

To avoid needlessly burdening this Court's docket (more than the district court's actions have already done), Appellants moved to alter or amend the Order Finding Contempt to rectify the above-noted issues. (*See* Ex. D). Alternatively, Appellants requested that the district court would stay the order until resolution of the appellate process. (*Id.* at 12). On October 6, 2023, the district court rejected its opportunity to correct its decision in a one-line order that did not cite any legal authority or provide any legal analysis. (Ex. E at 1). Similarly, the district court denied Appellants' motion to stay in one line with no analysis of the appropriate factors. (*Id.* at 2).

[4] Much like this Court recognized in Docket 85915, the resolution of this Motion is inextricably linked to the resolution of the receivership question in Docket 86092.

As foreshadowed in Docket 86092, this Court must step in and enforce the finality of the final judgment to allow the appellate process to continue in its ordinary course. Otherwise, it is unclear when, how, or if the district court proceeding will conclude.

III. ARGUMENT

A. Appellants are Entitled to a Stay.

1. Legal standard

Under NRAP 8(a)(2), this Court may stay a district court order pending the resolution of an appeal or writ. When determining whether a stay is appropriate, this Court considers:

> (1) whether the object of the appeal will be defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits in the appeal.

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). No one factor "carries more weight than the others," but "if one or two factors are especially strong, they may counterbalance other weak factors." *Id.* Here, all factors favor staying the Order Finding Contempt.

2. All factors favor staying the Order Finding Contempt

The first factor—whether the object of the appeal will be defeated absent a stay—weighs in favor of a stay. This Court has indicated that the first stay factor usually has outsized significance. *Mikohn Gaming Corp.*, 120 Nev. at 235, 89 P.3d at 39. A stay

is generally warranted when its denial defeats the object of the appeal. *Id.* at 253, 89 P.3d at 39-40 ("Because the object of an appeal . . . will be defeated if a stay is denied, an irreparable harm will seldom figure into the analysis, a stay is generally warranted.").

The object of the appeal would be defeated if the Order Finding Contempt is implemented. With no stay, Appellants will be forced to hand over $16 million to an account in the Receiver's control. (Ex. B at 3). Not only has the Receiver been terminated as a matter of law when the final judgment was entered, but the Appellants will have to remit over $14 million more in funds that neither the zombie-Receiver nor Respondents are arguably even entitled to. If the funds are distributed, Appellants will be effectively unable to recover the amounts paid to the Respondents through the Receiver. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., granting application for stay) (granting stay when expended funds were unrecoverable).

The second factor—whether Appellants will suffer irreparable harm if the injunction is not suspended—also favors issuing a stay. The inability to recoup the disputed amounts once disbursed constitutes irreparable harm. "Normally the mere payment of money is not considered irreparable, but that is because money can usually be recovered from the person to whom it is paid. If expenditures cannot be recouped, the resulting loss may be irreparable." *Id.* (internal citation omitted)). And, after all, "[a]ny act which destroys or results in a substantial change in property, either physically or in the character in which it has been held or enjoyed, does irreparable injury." *Memory Garden of Las Vegas, Inc. v. Pet Ponderosa Mem'l Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d 123,

125 (1972). Here, there are significant funds at the heart of the disputed order—more than $16,455,101.46. Appellants likely have no ability to regain them from the individual unit-owner-Respondents once handed over to them. Recovery from the Receiver may also prove difficult because the district court has not required the Receiver to post a bond while handling millions of dollars. Thus, this factor heavily favors a stay.

Under the third factor, the only possible "harm" to Respondents is the delay associated with the appellate proceedings and the payment of funds to which they are not entitled. However, this Court has rightly observed that delays associated with litigation are not "irreparable." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Appellate proceedings are unavoidable with this substantial amount of money at stake. Appellants have already posted multiple hefty bonds, including one to secure the $32 million final judgment and another for $1.1 million which this Court confirmed stayed execution in an emergency order. *See MEI-GSR Holdings, LLC v. Thomas*, No. 86092, at *6 (Order to Show Cause & Granting Temporary Stay May 8, 2023). By doing so, this Court implicitly found that any delay in execution does not harm the Respondents or Receiver. *Id.* Accordingly, this factor also favors staying the Order Finding Contempt.

On the last factor—whether Appellants are likely to succeed on the merits—Respondents must "mak[e] a strong showing that appellate relief is unattainable" to defeat a stay request. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 40. On the other hand, the movant need only "present a substantial case on the merits when a serious legal question is involved." *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d 982,

987 (2000) (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 appeal does not appear frivolous or merely an attempt to delay." *Id.* at 253-54, 89 P.3d at 40.

Here, Appellants present a substantial case on the merits of the appeal warranting a stay. First, the district court lacked jurisdiction to hold a post-judgment contempt proceeding on *pre-judgment* orders that merged into the final judgment. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96 (1990); *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d 392, 400 (5th Cir. 1987). Second, the district court imposed a criminal contempt sanction under the guise of a civil proceeding. Contempt is criminal when it imposes a fine and ***thus criminal,*** "***when it is paid to the court***." *Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. 202, 210, 486 P.3d 710, 718 (2021) (emphasis added). And because the Receiver is an arm of the Court, *U.S. Bank Nat'l Ass'n v. Palmilla Dev. Co., Inc.*, 131 Nev. 72, 77, 343 P.3d 603, 606-07 (2015) (recognizing that a receiver is "in a sense an arm of the court" and "acts as a court's proxy"), this sanction is punitive and criminal since it requires payment to the court rather than the opposing party. *Detwiler*, 137 Nev. at 210, 486 P.3d at 718. As a result, the district court erred by applying the clear-and-convincing standard instead of the beyond-a-reasonable-doubt standard. *See Hicks v. Feiock*, 485 U.S. 624, 632 (1988). Application of the lesser standard in criminal

contempt proceedings requires reversal as a matter of law. *See Bohannon v. Eighth Jud. Dist. Ct.*, No. 69719, 2017 WL 1080066, at *4 (Nev. Mar. 21, 2017).[5]

Third, the sanction imposed by the Order Finding Contempt—to remit the funds to the Receiver—is improper. As briefed extensively by these parties in Docket 86092, a pre-judgment receiver, like the Receiver here, terminates as a matter of law upon entry of a final judgment. *See, e.g.*, *MEI-GSR Holdings LLC, v. Thomas et al.*, No. 86092, at **9-17 (Appellants' Response to May 8, 2023 Order to Show Cause June 13, 2023); *see also Johnson v. Steel, Inc.*, 100 Nev. 181, 183, 678 P.2d 676, 678 (1984). The contempt order and the issues pending in Docket Number 86092 are inextricably linked. Appellants cannot be required to pay monies to an account controlled by a defunct receiver.

At a minimum, there is a substantial case on the merits that must be resolved by this Court. As such, a stay is warranted to preserve the object of the appeal.

IV. CONCLUSION

For these reasons, the Court should stay execution of the July 27, 2023 Order Finding Defendants in Contempt and enter an administrative stay while the court considers this Motion.

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[5] The contempt merits appeal will also show that the subject orders were ambiguous and did not clearly prohibit the Appellants' alleged actions.

DATED this 9th day of October 2023.

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NRAP 27(e) CERTIFICATE

I, Jordan T. Smith, declare as follows:

1. I am a partner at the law firm of Pisanelli Bice PLLC and counsel for Appellants named herein.

2. I verify that I have read the foregoing Emergency Motion Under NRAP 27(e) to Stay Orders and that the same is true of my own knowledge, except for matters stated on information and belief, and as to those matters, I believe them to be true.

3. The facts showing the existence and nature of the emergency are set forth in the Motion. As described above, Appellants have been ordered to pay over $16 million that will be irretrievably disbursed to the Respondent-Respondents below. Because Appellants contend the order is flawed and have filed an appeal that includes a challenge to this order, a stay is warranted. Without a stay (or other order from this Court), Appellants will be effectively deprived of their appellate rights and will lack any realistic chance to recover the sixteen-million-dollar-plus amount if they succeed on their appeal.

4. Appellants previously submitted the relief requested here to the district court. They filed a motion to stay, which was denied on October 6, 2023. To avoid unnecessary emergency relief from this Court, Appellants filed a motion to alter or amend the contempt order with the district court, but it too was denied on October 6, 2023.

5. I have made every practicable effort to notify the Supreme Court and opposing counsel of the filing of this Motion. I called the Clerk of Court's Office and emailed Respondents' counsel before filing.

6. Below are the telephone numbers and office addresses of the known participating attorneys:

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Executed on this 9th day of October 2023, in Las Vegas, Nevada.

/s/Jordan T. Smith
Jordan T. Smith, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 9th day of October 2023, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing Emergency Motion Under NRAP 27(e) to Stay Orders to all parties registered for service, as follows:

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC