IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company;

Appellants/Cross-Respondents,
vs.

ALBERT THOMAS; JANE DUNLAP; JOHN DUNLAP; BARRY HAY; 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; HENRY NUNN; MADELYN VAN DER BOKKE; LEE VAN DER BOKKE; DONALD SCHREIFELS; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON; LORI ORDOVER; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON; LOREN D. PARKER; SUZANNE C. PARKER; MICHAEL IZADY; STEVEN TAKAKI; FARAD TORABKHAN; SAHAR TAVAKOLI; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES; R. RAGHURAM; USHA RAGHURAM; LORI K. TOKUTOMI; GARRET TOM; ANITA TOM; RAMON FADRILAN; FAYE FADRILAN; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN; ELIAS SHAMIEH; JEFFREY QUINN; BARBARA

Supreme Court No. 87243
District Court Case No. CV12-02222

RESPONDENTS' OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ORDERS AND FOR ADMINISTRATIVE STAY

ROSE QUINN; KENNETH RICHE; MAXINE RICHE; NORMAN CHANDLER; BENTON WAN; TIMOTHY D. KAPLAN; SILKSCAPE INC., a California Corporation; PETER CHENG; ELISA CHENG; GREG A. CAMERON; TMI PROPERTY GROUP, LLC; a California limited liability company; RICHARD LUTZ; SANDRA LUTZ; MARY A. KOSSICK; MELVIN H. CHEAH; DI SHEN; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA; SEEMA GUPTA; FREDERICK FISH; LISA FISH; ROBERT A. WILLIAMS; JACQUELIN PHAM; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST; MICHAEL HURLEY; DOMINIC YIN; DUANE WINDHORST; MARILYN WINDHORST; VINOD BHAN; ANNE BHAN; GUY P. BROWNE; GARTH A. WILLIAMS; PAMELA Y. ARATANI; DARLEEN LINDGREN; LAVERNE ROBERTS; DOUG MECHAM; CHRISTINE MECHAM; KWANG SOON SON; SOO YEU MOON; JOHNSON AKINBODUNSE; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA; TERRY POPE; NANCY POPE; JAMES TAYLOR; RYAN TAYLOR; KI NAM CHOI; YOUNG JA CHOI; SANG DAE SOHN; KUK HYUN (CONNIE) YOO; SANG SOON (MIKE) YOO; BRETT MENMUIR, as TRUSTEE OF THE CAYENNE TRUST; WILLIAM MINER, JR; CHANH TRUONG; ELIZABETH ANDRES MECUA; SHEPHERD MOUNTAIN, LLC; a Texas limited Liability company; ROBERT BRUNNER; AMY BRUNNER; JEFF RIOPELLE; PATRICIA M. MOLL; and DANIEL MOLL,

Respondents/Cross-Appellants.

I. INTRODUCTION

Glaringly absent from Appellants' emergency motion to stay the district court's order requiring Appellants to return over $16 million to certain accounts ("Motion") is that ***Appellants misappropriated these funds and have been found in contempt for doing so.*** Appellants attempt to depict themselves as the victims of a district court-imposed fine, but this is a misrepresentation: following a four-day hearing, the district court found Appellants in contempt for removing over $16 million from reserve accounts without district court or Receiver approval, as required by certain orders. It is upon this background that Appellants seek an emergency stay of the district court's order requiring return of the stolen funds.

Shortly before Appellants were required to return the approximately $16 million to the reserve accounts from which Appellants unilaterally removed the funds, Appellants scrambled to fabricate a last-ditch way out of the district court's Order Finding Appellants in Contempt ("Contempt Order") and obligation to return the stolen funds to the accounts where they belong. Appellants' attempt to evade long overdue consequences of their contemptuous acts was denied by the district court and should be denied by this court as well.

II. FACTUAL BACKGROUND

After Appellants removed millions of dollars from the reserve accounts on two occasions, without permission, the district court found Respondents had shown

cause to hold a hearing on whether Appellants should be held in contempt for violating a long-standing district court order vesting authority over the subject accounts in the Receiver ("Appointment Order"). (1 R.App. 1-12.) The district court held a four-day trial. The district court found Appellants in contempt for violating the Appointment Order and misappropriating over $16 million from the reserve accounts without the requisite district court or Receiver authorization.

The Court specifically ordered that:

> (1) Within 30 days of the entry of this written order, Defendants are to return the $16,455,101.46 misappropriated from the reserve fund along with interest that would have been earned in the reserve account, or statutory interest, whichever is higher, from the date of the withdrawal; and (2) Within 45 days of the entry of this written order, transfer all of the reserve funds to a separate interest-bearing account designated by the Receiver.

(Contempt Order at 3:1-6.)

Following the Contempt Order, Appellants moved the district court to alter or amend the Contempt Order. (1 R.App. 13-29.) This request was based on the trial not applying the appropriate standard in light of its imposition of an allegedly criminal sanction when the district court ordered Appellants to return the contemptuously stolen funds. (Id.) Appellants alternatively argued the amount of the stolen funds ordered to be returned should be reduced based upon Respondents' percentage ownership of the units within the Grand Sierra Resort. (Id.)

The district court summarily denied this motion, holding: "the order to return misappropriated funds along with interest is not criminal contempt" and that "[t]he entire sum of reserve funds contemptuously removed from the Reserve account . . . is to be transferred to the Receiver immediately." (1 R.App. 30-32.)

Now, Appellants ask this court to issue an emergency stay of the order requiring them to return the stolen funds. Nowhere in their emergency motion, however, do Appellants (1) inform this court that the funds were contemptuously misappropriated in the first place, or (2) dispute that the funds were indeed misappropriated. Rather, Appellants have admitted they took the funds without the requisite approval—but, now they bemoan the district court's appropriate order that Appellants unwind their misappropriation. (1 R.App. 33-36.) Appellants' positions cannot be reconciled, thus undermining any need for an emergency stay.

III. LEGAL STANDARD

The proponent of a stay bears the burden of establishing its need. Before granting a stay pending appeal, the court must generally consider:

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

NRAP 8(c).

While no one factor alone is sufficient for a stay to be granted, there must be a threshold showing for each factor before a court can begin balancing them. Leiva-Perez v. Holder, 640 F.3d 962, 965-66 (9th Cir. 2011). "[I]f the appeal appears frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes, the court should deny the stay." Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 40 (2004).

IV. ARGUMENT[1]

The alleged need for a stay is a premature farce: when the misappropriated millions are returned to the reserve accounts and subsequently transferred to the Receiver, they will not immediately be disbursed. The Receiver, instead, will complete his final accounting of the reserve accounts prior to any distribution. Only upon this final accounting and Court approval thereof would any funds from the reserve accounts be disbursed to Respondents. (1 R.App. 38.)

Appellants repeatedly allege that if the misappropriated funds are returned to the reserve accounts, the funds will be immediately disbursed to Respondents. This is a transparent attempt by Appellants to paint Respondents' financially starved status, singularly caused by Appellants' refusal to turn over rental proceeds for over

[1] Appellants argue the receivership was terminated upon entry of the judgment. This argument has been fully briefed by the parties in docket numbers 85915 and 86092. Appellants' argument is wrong, for the reasons Respondents argued in the other dockets. Those arguments will not be repeated here.

three years, as a threat to Appellants. To the contrary, not only will the misappropriated funds not be disbursed until the final accounting and true up are approved by the district court, but Respondents are finally receiving their rental proceeds, thus easing the financial hardship they have suffered for over three years, albeit minimally. (Id.; 1 R.App. 40-45.)

The strongest factor which should be dispositive of the stay analysis is Appellants' likelihood of success. The applicable authority is clear: ***the Contempt Order is not appealable***. Appellants have no chance of success because their appeal is improper from the start. As discussed below, contempt orders are not appealable under any rule or statute, and no case law cited by Appellants applicably contradicts this fact. This alone should warrant the court's denial of a stay in this matter. The other factors, however, also weigh in favor of denying the stay.

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

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 the Appointment Order; the district court found Appellants in contempt for violating its orders vesting the Receiver with authority over the reserves; the Court ordered Appellants to return the misappropriated millions to the reserve accounts; and now

Appellants argue they should not be required to do so until the Contempt Order is reviewed on appeal. (1 R.App. 13-27, 46-58; Motion.)

Appellants illogically argue they will "suffer irreparable harm because the multimillion-dollar funds are effectively unrecoverable once the zombie-receiver disburses them to the individual Respondents. . . ." (Motion at 2.) Appellants' reference to the Receiver as a "zombie" is highly insulting and demeaning to a court-appointed arm of the court. In any event, Appellants contend their alleged harm is exacerbated because the district court did not require the Receiver to post a bond "while handling millions of dollars." (Id. at 8.) Appellants fail to disclose to this court that the Receiver will not disburse ***any*** of these funds to Respondents until the Receiver's final accounting is completed and approved by the district court. (1 R.App. 38.) Nor do Appellants disclose that they themselves have not offered a bond to secure the $16 million they removed from the reserve accounts.

If Appellants are truly entitled to the amount of reserves they claim they are entitled to—the entire misappropriated amount—then they certainly can wait a little longer for the Receiver to confirm this in his final accounting and distribute the funds accordingly, which will be reviewed and approved by the district court. (Id.) It is unjust for Appellants to argue that the funds they ***misappropriated from the reserve accounts*** should be held by them for safekeeping while they pursue this frivolous (and doomed) appeal, 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). (1 R.App. 59-82.) Surely this court should not trust the thief to hold the chattel he has stolen while the illegality of his theft is being appealed.

B. Appellants Cannot Suffer Irreparable Injury by Being Ordered to Return Stolen Funds

Appellants will not suffer any irreparable injury if they return the misappropriated funds to the reserve accounts, and those accounts are then transferred to the Receiver. (1 R.App. 46-48.) Indeed, the court-appointed Receiver being in control of these accounts is exactly what the Appointment Order had always contemplated. 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. (1 R.App. 43-44, 83-90.) In fact, the alleged reimbursement amounts claimed by Appellants are to be addressed in this final accounting. (1 R.App. 102-04.) 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.

C. Respondents Continue to Suffer at the Hands of Appellants

Conversely, Appellants have repeatedly proven they cannot be trusted to hold any funds which may belong to Respondents without misappropriating those funds.[2] The simplest example is the reserve accounts at issue. Appellants have previously admitted the reserve accounts, while under their control, were held improperly. (1 R.App. 92-95.) Instead, these funds were used to support Appellants' casino "cage," to ensure Appellants' casino operation complied with applicable gaming rules. (Id.) Such an inappropriate use of the funds is indicative of how the misappropriated millions—which the district court has already found Appellants in contempt for stealing and ordered Appellants to return—will be treated if a stay is entered. Thus, whereas returning the misappropriated millions will merely put the funds in the hands of a neutral third party who is under district court orders to perform numerous tasks before any potential disbursement, leaving the misappropriated millions with the thief thereof could cause the stolen funds to be irreversibly intermingled with Appellants' casino operations such that they cannot be reobtained.[3] Indeed,

[2] It is clear that, even after being exposed through this litigation, Appellants have learned nothing from the compensatory damages award or subsequent punitive award and will, given any opportunity, treat others' property as their own under some warped sense of entitlement. (1 R.App. 59-81, 96-100.)

[3] Appellants recently announced a billion-dollar arena will be built on their property. (See https://www.grandsierraresort.com/press-releases/20230927-historic-1-billion-dollar-private-capital-investment-announced-for-grand-sierra-resort-in-reno-nev.) There is no guarantee the stolen funds will not be poured into this new undertaking if Appellants hold the stolen funds while this court reviews the Contempt Order.

Appellants have admitted they misappropriated the funds to improperly reimburse themselves without approval, so there is little to no likelihood that the funds are being held in any separate form so they can be returned. (1 R.App. 33-36.)

If any party is threatened with irreparable harm by the stay being requested here, 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 three years. Allowing Appellants to sidestep the district court's Contempt Order now would only further Respondents' harm.

D. Appellants Cannot Prevail Because Contempt Is Not Appealable

No rule or statute authorizes an appeal from an order of contempt. Pengilly v. Rancho Santa Fe Homeowners Ass'n, 116 Nev 646, 649, 5 P.3d 569, 571 (2000) (citing NRAP 3A(b) listing appealable orders) and NRS Chapter 22 (concerning grounds and procedure for imposing contempt sanctions); see also Vaile v. Vaile, 133 Nev. 213, 217, 396 P.3d 791, 794 (2017). Indeed, if any post-judgment contempt was immediately appealable, "the effect would be to tie the hands of the district court, diminish compliance with its orders, and augment [the court's] own workload." Combs v. Ryan's Coal Co., 785 F.2d 970, 977 (11th Cir. 1986).

Here, the Contempt Order concerns only a finding of contempt by the district court against Appellants. It is therefore not appealable. Appellants argue because the Contempt Order awarded Respondents part of their fees, the entire order,

including the order that Appellants return the stolen millions, is appealable. This argument is belied by the fact that Appellants do not appeal the attorneys' fees award of the Contempt Order. (Appellants' Docketing Statement, filed Sept. 28, 2023 at 4.) Instead, each of the issues Appellants have presented to this court relate solely to the finding of contempt and the district court's order that the stolen funds be returned to the accounts from which they were stolen.

That a finding of contempt includes a separately appealable issue does not make the finding of contempt also appealable when the separately appealable issue is not presented. See Vaile, 133 Nev. at 217, 396 P.3d at 794-95 (where party appealed ***both*** special child support order after final judgment and contempt arising therefrom); see also Yu v. Yu, 133 Nev. 737, 739, 405 P.3d 639, 640 (2017) (where party appealed from ***both*** special orders after final judgment and a non-appealable vexatious litigant finding). Appellants should not be allowed to bootstrap their appeal of the Contempt Order on a properly appealable issue which Appellants do not actually appeal here.

V. CONCLUSION

Respondents urge the court to deny Appellants' emergency motion for stay of the district court's order requiring them to return the misappropriated millions to the proper account.

Dated: this 13th day of October, 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 October 13, 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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