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

REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ORDERS AND FOR ADMNISTRATIVE STAY

RELIEF REQUESTED IMMEDIATELY

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I. INTRODUCTION

Lacking a meritorious ground to oppose Appellants' Emergency Motion for a Stay—and eager to obtain monies to which they are not entitled by denying appellate rights—Respondents resort to hyperbole and flagrant misrepresentations of the record. However, Respondents' histrionics cannot obscure the truth of this docket: Acting without jurisdiction and applying the wrong legal standard, the district court found Appellants in criminal contempt of ambiguous orders and imposed an invalid sanction that relied on a terminated receiver to effectuate the "relief" the district court manufactured. No unequivocal district court order required prior approval to use reserve funds already ear-marked *to improve the Respondents' units as required by the governing documents*. Unlike the zombie-Receiver's lack of work, Appellants have properly accounted for all funds and accounts. And Respondents know it. They simply want to deprive Appellants of the opportunity to again seek relief from this Court. But the law is inescapable; the district court's order cannot stand and the applicable factors counsel this Court to stay enforcement of the district court's order pending review. Thus, as this Court has done once before, it should stay execution of the district court's fundamentally flawed order pending this Court's merits review. Similarly, this Court should administratively stay the order pending resolution of this Emergency Motion.

II. ARGUMENT

Respondents' arguments rely on factual misrepresentations and a faulty understanding of the law. Stripped of its rhetoric, the Opposition functionally confesses

the merits of Appellants' Emergency Motion. Upon applying the correct law to an unvarnished view of the record, it is clear that a stay is warranted here.

Respondents use the same arguments to oppose the first two stay factors—the object of the stay being defeated and Appellants' irreparable harm. They contend that neither factor warrants a stay because the money "will not *immediately* be disbursed." (Opp'n at 4) (emphasis added). But the stay factors examine whether the object of the appeal will be defeated, and whether irreparable harm will be inflicted, *before* the appellate process runs its course. Both Respondents and the district court have made clear they do not intend to wait for this Court's review—otherwise they would have stayed the order in the first place. Rather, Respondents again want to rush another form of post-judgment compensatory damages outside of the operative complaint before this Court can halt the error. Notably, Respondents do not suggest that they will (or can) repay the monies when Appellants prevail. Allowing these tactics is a perversion of the appellate process.

The so-called "final accounting" is no safeguard either. (*Cf.* Opp'n at 5-6.) The Receivership was terminated—and the case ended—as matter of law long before the contempt trial occurred. The district court lacked jurisdiction to continue the interim Receivership and to hold the contempt proceeding after final judgment was entered. In other words, even if Appellants committed the alleged contemptuous acts (they did not), Appellants cannot be held in contempt of an expired or terminated order. Respondents whistle past these fatal facts, burying in a footnote that they dispute "the

receivership was terminated upon entry of the judgment [and] [t]his argument has been fully briefed by the parties in docket number 85915 and 86092." (Opp'n at 4 n.1). There is no legitimate debate that the object of the appeal will be defeated and Appellants will suffer irreparable harm without a stay.[1]

Next, Respondents face no irreparable harm from a stay. Respondents recklessly assert that Appellants used the reserve funds "to support Appellants' casino 'cage,'" and that this Court cannot trust the "thief" to hold the reserve funds. (Opp'n at 8). To be clear: this assertion is patently false and the record belies both arguments. First, the reserve funds were never used to support the casino cage; indeed, the sole record cite Respondents provide simply states that the reserve funds were held in a general operating account with debits attributed to the reserve line items. (RA at 94). There is a fundamental difference between a bank account and a casino's physical cage. Moreover, while Respondents misrepresent the funds as stolen or missing, the funds were used to pay for the renovation of rooms at the GSR—including Respondents' rooms—as dictated by the governing CC&Rs. (1 AA 91-97). In fact, Appellants provided receipts for the work performed, for which Appellants fronted the costs.. (2

[1] Respondents' argument that the "court-appointed Receiver being in control of these [reserve] accounts is exactly what the Appointment Order contemplated," (Opp'n at 7), is belied by the record. The Receiver refused to take control of the reserve funds, and Respondents agreed to have Appellants hold the reserve funds. (1 AA 24). Thus, this post hoc justification for their contempt motion attempts to rewrite history and ignores Respondents' own role.

AA at Ex. F).[2] Simply stated, Appellants did not "steal" any money, nor did the orders at issue clearly preclude Appellants' actions. Under the governing CC&Rs, Appellants had an obligation to renovate the various units within the association. (1 AA 91-97). No court order relieved Appellants of this obligation. (*Id.* at 24, 40-48). After advancing the costs of the renovation—in part because the Receiver refused to perform his duties—Appellants obtained a reimbursement of the costs spent pursuant to the CC&Rs. (2 AA at Ex. F). Work was performed, renovations completed, and receipts provided. (*Id.*). No order precluded Appellants actions.[3] In fact, Respondents likely would have cried foul if Appellants had *not* improved the units of the association. Finally, if Respondents' contention that Appellants do not face irreparable harm because the Receiver will not "immediately" release the funds to Respondents is credited, then Respondents likewise face no irreparable harm through a delay in the Receiver obtaining the funds.

On the merits of the appeal, Respondents did not address Appellants' arguments. (*See* Opp'n at 9-10). Respondents did not argue that the Order Finding Contempt was civil as opposed to criminal. (*Id.*). Indeed, they concede that the Receiver is an arm of

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[2] The withdrawn funds have already been committed to vendors, or spent, on renovations.

[3] Respondents imply that Appellants may use funds to build a stadium. (Opp'n at 8 n.3). However, while the stadium is being built on GSR's land, it is expected to be a privately-financed stadium led by non-party Meruelo Gaming. (https://thenevadaindependent.com/article/grand-sierra-owner-announces-plans-to-build-a-10600-seat-arena-in-reno).

the court, (*id.* at 6), which makes any payment to the Receiver a criminal contempt sanction, (Emergency Mot. at 9). They do not contend that the district court had jurisdiction to hold a post-judgment contempt trial to address pre-judgment orders that had merged into the final, appealed judgment. (Opp'n at 9-10). Nor did they defend remitting funds to a Receiver who terminated as a matter of law upon entry of the final judgment. (*Id.*). Thus, Respondents confessed error, and this factor accordingly favors issuing a stay. *See Bates v. Chronister*, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984).

Respondents' sole substantive argument is that this Court lacks jurisdiction because this is an appeal of a contempt order. (Opp'n at 9-10). But Respondents ignore the unique (odd) procedural posture of this case, a morass created by their determination to use the zombie-Receiver to obtain pseudo-compensatory damages that Respondents did not plead. The district court held a post-judgment contempt "trial." (1 AA 3). The "trial" occurred after the entry of a final judgment and a perfected notice of appeal. (*Id.* at 7). The district court entered a post-judgment order finding Appellants in contempt. (*Id.* at 10-12). Thus, the post-judgment order from the contempt "trial" is either a final judgment itself or a quintessential special order entered after final judgment, which are appealable. NRAP 3A(b)(1), (8). To the extent that this Court has any jurisdictional concerns, it should stay the Order Finding Contempt and enter an Order to Show Cause as it did in Docket 82069.

IV. CONCLUSION

For these reasons, the Court should stay the Order Finding Contempt.

DATED this 16th day of October 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 16th 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 Reply In Support of 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