

IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company; AM-GSR HOLDINGS, LLC, a Nevada Limited Liability Company,

Appellants,

vs.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; 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, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD

**Supreme Court No. 86092,
86985, 87243, 87303, 87566,
and 87567**

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**CROSS-APPELLANTS'
JOINDER IN PART AND
OPPOSITION IN PART
TO MOTION TO
CONSOLIDATE AND
STAY BRIEFING
PENDING RESOLUTION
OF CERTAIN MOTIONS**

JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM

TRUST; MICHAEL HURLEY, individually;
DUANE WINDHORST, as Trustee of DUANE
H. WINDHORST TRUST U/A dtd. 01/15/2003
and MARILYN L. WINDHORST TRUST U/A/
dtd. 01/15/2003; MARILYN WINDHORST, as
Trustee of DUANE H. WINDHORST TRUST
U/A dtd. 01/15/2003 and MARILYN L.
WINDHORST TRUST U/A/ dtd. 01/15/2003;
VINOD BHAN, individually; ANNE BHAN,
individually; GUY P. BROWNE, individually;
GARTH A. WILLIAMS, individually;
PAMELA Y. ARATANI, individually;
DARLEEN LINDGREN, individually;
LAVERNE ROBERTS, individually; DOUG
MECHAM, individually; CHRISTINE
MECHAM, individually; KWANG SOON SON,
individually; SOO YEU MOON, individually;
JOHNSON AKINBODUNSE, individually;
IRENE WEISS, as Trustee of the WEISS
FAMILY TRUST; PRAVESH CHOPRA,
individually; TERRY POPE, individually;
NANCY POPE, individually; JAMES TAYLOR,
individually; RYAN TAYLOR, individually; KI
NAM CHOI, individually; YOUNG JA CHOI,
individually; SANG DAE SOHN, individually;
KUK HYUN (CONNIE) YOO, individually;
SANG SOON (MIKE) YOO, individually;
BRETT MENMUIR, as Manager of CARRERA
PROPERTIES, LLC; WILLIAM MINER, JR.,
individually; CHANH TRUONG, individually;
ELIZABETH ANDRES MECUA, individually;
SHEPHERD MOUNTAIN, LLC; ROBERT
BRUNNER, individually; AMY BRUNNER,
individually; JEFF RIOPELLE, as Trustee of the
RIOPELLE FAMILY TRUST; PATRICIA M.
MOLL, individually; DANIEL MOLL,
individually,

Respondents.

I. INTRODUCTION

Setting aside Appellants' overly-aggressive rhetorical attacks on the district court, Receiver, and Respondents, Respondents do not object to consolidating certain appeals to best utilize the parties' resources and to promote judicial economy. Appellants' proposed three separate consolidations of the currently outstanding seven appeals is agreeable to Respondents. However, Respondents request that these three consolidated matters be heard and decided together by the en banc court or by the same panel. This will assist the court in becoming intimately familiar with the voluminous underlying record, reduce the likelihood of conflicting decisions, and will ultimately further judicial economy.

Alternatively, if the three separately consolidated appeals cannot be heard together by the en banc court or the same panel, Respondents request all seven outstanding appeals be consolidated into one proceeding and the briefing schedule staggered by issues presented in the various appeals.

II. STATEMENT OF RELEVANT FACTS

These appeals arise from a proceeding initiated in late 2012. The underlying proceeding has included a variety of flagrant discovery and litigation abuses by Appellants, the district court striking Appellants' counterclaim as a sanction, the district court entering case-concluding sanctions striking Appellants' answer, a prove up hearing resulting in an award of over \$8 million in compensatory damages,

an erroneous dismissal of the case obtained by Appellants on jurisdictional grounds (which was later reversed by this court), an ouster of the then-sitting district court judge (orchestrated by Appellants), the assignment of a senior judge who failed to move the case forward in any meaningful way, the assignment of a second senior judge, an award of over \$9 million in punitive damages against Appellants, and, most recently, a finding that Appellants are in contempt of court.

This matter continues to proceed in the district court, including a receiver's involvement in winding down the litigation by preparing a final accounting and facilitating a sale of the condominium units that are the subject of the litigation, while the matter is also pending before this court in seven separate appeals. Each appeal is discussed in turn below.

On December 5, 2022, the district court issued an order partially granting Respondents' motion for preliminary injunction. Appellants appealed this order and Respondents cross-appealed. This appeal is Docket No. 85915.

The district court later entered an order awarding Respondents over \$9 million in punitive damages. A "final" judgment reflecting all monetary damage awards, but notably devoid of any resolution of the receivership, was entered on February 2, 2023. Four days after entry of this "final" judgment, Appellants filed their "protective" appeal arising from the punitive damages order on February 6, 2023. Respondents cross-appealed in an abundance of caution. This is Docket No. 86092.

Respondents moved to alter or amend the “final” judgment, which motion was granted in part. Thus, an amended “final” judgment was entered on April 10, 2023, which also omitted any reference to the still pending receivership. Again, Appellants appealed from this amended “final” judgment and Respondents cross-appealed. This new appeal was consolidated into Docket No. 86092.

After these three appeals had been filed, the supreme court issued an Order to Show Cause and Granting Temporary Stay in Docket No. 86092. This order arose from the supreme court’s doubt as to whether or not it had jurisdiction over the pending appeals, in light of the receivership in the underlying proceeding remaining intact and active. The parties briefed this issue and await a decision from the court.¹

In an effort to allow the appeals based upon the various “final” judgments to go forward, and bring this case to a penultimate conclusion, Respondents filed a motion to certify the amended “final” judgment as final for appeal purposes. The district court granted this motion.

The Court then awarded Respondents their fees and costs, and again directed Respondents to prepare an amended “final” judgment. Respondents thus prepared the second amended final monetary judgment, named in an effort to clarify the numerous “final” judgments then having been issued. Following discovery of a

¹ The parties have also briefed a corollary motion to dismiss Docket No. 89515 which Appellants argue is moot given the “final” judgments being entered.

mathematical error, the district court then entered a corrected second amended final monetary judgment. Appellants again appealed this “final” judgment and Respondents cross-appealed. This is Docket No. 86985.

Because the underlying receivership is not concluded, and will not conclude until a final accounting and the sale of the condominium units occurs pursuant to the district court’s December 5, 2022 order, the receivership has continued to operate and the district court has appropriately retained jurisdiction over the receivership. Among the Receiver’s duties is calculating rental proceeds due from Appellants to Respondents for Appellants’ rental of Respondents’ condominium units at the Grand Sierra Resort, applying calculated fees to such proceeds, and distributing the net rent proceeds.² This process was set forth by district court order and will continue until the units are sold. Each month, the Receiver issues his calculations and allows the parties an opportunity to object thereto; and, each month, Appellants have unsuccessfully objected. Appellants have appealed two of the orders overruling their objections (and apparently intend to continue appealing such orders as they are issued). These appeals are Docket Nos. 87303 (July rents) and 87567 (August rents).

² Appellants again make their tired argument that these rental proceeds are additional compensatory damages. As Respondents have explained in multiple briefs with this court, they are not. Respondents will not rehash the issue here.

While the case was pending before the initial senior judge (Justice Saitta), Respondents filed a number of motions for order to show cause based upon Appellants' failures to comply with district court orders. Additional such motions were filed when the subsequent senior judge (Judge Gonzalez) began presiding over the matter. These motions were ruled upon and most were set for a formal hearing. This week-long contempt hearing took place in June 2023. The court ultimately found Appellants in contempt and issued an order accordingly. The court also granted Respondents part of their attorneys' fees incurred relating to this hearing. Appellants have appealed each of these orders separately. They are Docket Nos. 87243 (finding of contempt) and 87566 (granting Respondents partial fees). Respondents have cross-appealed only the latter.

Now, one week before Appellants' opening brief is due in Docket No. 86985 (appealing the corrected second amended final monetary judgment), Appellants have moved to consolidate these seven appeals in the following tranches:

1. Merits based appeals. Appellants argue that Docket Nos. 86092 (final judgment and amended final judgment), 86985 (corrected second amended final monetary judgment), 87303 (overruling objections to Receiver's calculations of July rent), and 87567 (same regarding August rents) should be consolidated;

2. Contempt related appeals. Appellants argue that Docket Nos. 87243 (finding of contempt) and 87566 (granting Respondents partial fees) should be consolidated; and

3. Injunction appeal. Appellants argue that Docket No. 85915 (granting injunction order, allowing Appellants to terminate unit owners' association, and providing procedure to sell units) should remain separate.

III. ARGUMENT

When timely appeals have been filed separately, and they arise from the same district court case and involve the same parties, “in the interest of judicial economy, th[o]se appeals should be consolidated.” NRAP 3(b); Somerset Owners Assoc. v. Somerset Dev. Co., Ltd., 136 Nev. 879, 2020 WL 3051303, at *1 (Nev. June 5, 2020; Docket Nos. 79920, 79921, 80843, 80880, 80881; unpublished disposition). While a number of the appeal described above were filed in an abundance of caution by the parties, the notices of appeal were each filed in a timely manner, arise from the same district court case, and involve the same parties. Thus, consolidation of the seven appeals is appropriate.

By separating the seven appeals into three tranches, however, it is imperative that all of the appeals are heard and decided together because they have overlapping issues which, if decided differently in separate tranches, would cause a conflict in this court's decisions. For example, Appellants argue the court-ordered receivership

is a “zombie” and should have terminated upon the issuance of the original “final” judgment. This issue is present in both Docket Nos. 87303 (relating to calculation of July rents) and 87567 (relating to calculations of August rents) *and* Docket Nos. 87243 (finding Appellants in contempt for violating order appointing receiver) and 87566 (granting Respondents partial fees incurred relating to contempt proceedings). These two pairs of appeals are currently set to be decided in two separate tranches. Thus, if these tranches are decided separately, or by separate panels, there is a possibility that one panel will find the receivership is still active and therefore the district court had proper jurisdiction to issue all of the appealed from orders, while the other panel finds the opposite. The receivership issue is one of many arising from these tranches of consolidated appeals that overlap and therefore must be decided together by the en banc court or by same panel.

Alternatively, if coordinating the three consolidated tranches to be decided altogether by the en banc court or by the same panel is not feasible, the court should consolidate all seven of the pending appeals and set a staggered briefing schedule derived from the proposed tranches herein.

Regardless of how the cases are consolidated, according to the proposed tranches to be decided together, or all as one with a staggered briefing schedule, the court should issue a new briefing schedule. Respondents request the court set

Appellants' opening brief due thirty (30) days after the court's decision on its order to show cause, and the subsequent briefs due according to NRAP 31(a)(1)(B), (C).

IV. CONCLUSION

Respondents do not disagree that consolidation would further judicial economy in these seven pending appeals; however, Respondents request that the three proposed consolidated tranches be heard and decided together by the en banc court or by the same panel, to ensure consistency in the decisions.

Dated: this 15th day of November, 2022.

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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 November 15, 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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