IN THE SUPREME COURT OF THE STATE OF NEVADA

****

MEI-GSR HOLDINGS, LLC, AM-GSR HOLDINGS, LLC, and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, Appellants, v. ALBERT THOMAS, *et al.,* Respondents.	Case Nos. 85915 86092 86985 87243 87303 87566 87567

APPELLANTS' REPLY IN SUPPORT OF MOTION TO SET ASIDE OR STRIKE NRCP 54(b) CERTIFICATION OF AMENDED FINAL JUDGMENT
AND
APPELLANTS' RESPONSE TO NOVEMBER 16, 2023 ORDER TO SHOW CAUSE

Jordan T. Smith, Esq., Bar No. 12097
Brianna Smith, Esq., Bar No. 11795
Daniel R. Brady, Esq., Bar No. 15508
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Appellants MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC

I. INTRODUCTION

Respondents try to defend the improperly certified Amended Final Judgment using the same legally flawed arguments that they advance in response to the Court's May 8, 2023 Order to Show Cause in Docket 86092 and in their opposition to Appellants' Motion to Dismiss as Moot in the preliminary injunction appeal found in Docket 85915. However, the Amended Final Judgment is not amenable to certification because it is already "final." The Amended Final Judgment resolved all claims between all parties and awarded damages based on the claims and allegations in the operative complaint. The Amended Final Judgment resolved all claims because it is well-settled in Nevada law that a receivership is an interim *remedy* that remains in place to protect the plaintiff only until a final judgment is entered. A receivership is not a separate claim or cause of action; it is a provisional remedy like a preliminary injunction. Thus, like a preliminary injunction, the Receivership terminated as a matter of law with entry of the (Amended) Final Judgment. Respondents themselves represented to this Court that a final judgment had been entered before they realized the final judgment's ramifications on their plan to wield the Receivership to obtain never-ending compensatory damages outside the confines of their operative complaint and the previously entered default.

Aside from the Amended Final Judgment's finality, remedies are not subject to NRCP 54(b) certification. Only "claims" can be certified. Accordingly, no order – let alone an already final, appealable judgment – can be NRCP 54(b) "certified" to allow a receivership *pendente lite* to continue post-judgment *pendente forever*. So, at minimum, the

Court should strike the district court's erroneous certification.

II. ARGUMENT

A. The Amended Final Judgment was Already "Final" Because a Receivership is Not a "Claim."

Respondents assert that there was no final judgment before certification because the "the receivership *claim* remains pending and outstanding, but all other claims have been resolved in Respondents' favor." (Opp'n 4) (emphasis added). But this Court has held time after time that a receivership is not a claim – it is a remedy. *See Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954); *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983); *Direct Grading & Paving, LLC v. Eighth Jud. Dist. Ct.*, 137 Nev. 320, 324, 491 P.3d 13, 17 (2021). This Court's decisions align with the majority rule across jurisdictions as reflected in many secondary authorities. 75 C.J.S. *Receivers*, §§ 2, 5; *Remedy*, *Provisional Remedy*, *Black's Law Dictionary* (2006). Respondents do not address this Court's precedents or the secondary sources' recognition of the majority rule.

Instead, Respondents point to just *two* far-flung jurisdictions that have different remedial schemes to suggest that the traditional nature of a receivership is changed under a statutory appointment. (Opp'n at 7.) Respondents emphasize (with bold and italics, no less) that they asked for "the appointment of a receiver….*as a matter of statute* and equity." (*Id.*) (original emphasis). Respondents ignore the "and equity" part. But it makes no difference. NRS 32.010 codifies the remedial character of a receivership and the traditional distinction between a pre-judgment provisional/interim receiver and a

post-judgment receiver appointed to assist with collection. *See* NRS 32.010(1) ("***In an action***…."); NRS 32.010(3) ("***After judgment***…."); [1] *see also* NRS 32.010(6) ("In all other cases where receivers have heretofore been appointed by the usages of the courts of equity."). These statutes confirm that a receivership is a remedy, not a claim.

This Court has also rightly characterized a receivership as a provisional remedy when discussing a receivership appointed under NRS 32.010. Last year, in *N5HYG, LLC v. Iglesias*, 511 P.3d 319, 2022 WL 2196855, *1 (Nev. 2022) (unpub.), the Court distinguished a case which "sought a receiver under NRS 32.010 as a means to facilitate the final relief sought, i.e., the dissolution of respondents' company." The Court cited 75 C.J.S. *Receivers* § 5 (2022) to "explain[] that generally the appointment of a receiver 'is not the final or ultimate relief. ... It is merely an ancillary remedy, or it is merely an auxiliary, incidental, and provisional remedy.'" *Id.* Therefore, this Court has maintained that a NRS 32.010 receivership is still a provisional remedy. *See id.*; *see also id.* at *2 n.2. As a provisional remedy, a receivership cannot be NRCP 54(b) certified.[2]

---

[1] *WB Music Corp. v. Royce Int'l Broad. Corp.*, 47 F.4th 944 (9th Cir. 2022), does not apply because it involved a debtor who did not pay a judgment and an unpaid receiver. Here, Appellants have posted more than $30 million in bonds to secure Respondents' judgment and the Receiver has been, and will be, paid. Since Respondents are fully secured, there is no basis to continue or appoint a post-judgment receiver. *Senior Care Living VI, LLC v. Preston Hollow Cap., LLC*, 2023 WL 1112162, at *13 (Tex. App. Jan. 31, 2023) (stating trial court abused its discretion continuing receiver after debtor posted bond sufficient to supersede the judgment).

[2] *Martin & Co. v. Kirby*, 34 Nev. 205, 214, 117 P.2, 4 (1911), does not hold otherwise. Indeed, in *Alper v. Posin*, 77 Nev. 328, 331, 363 P.2d 502, 503 (1961), this Court described *Kirby* as "where, *by way of dictum*, the court indicated that the order of

B. Neither the District Court Nor the Receivership May Conduct Tasks Beyond the Operative Complaint Post-Default and after Judgment.

Respondents contend that the Receivership cannot be terminated because it supposedly has tasks to complete under the Court's December 5, 2022 preliminary injunction order. (Opp'n 2-3, 5-6.)[3] But, as explained in Appellants' Motion to Dismiss as Moot in Docket 85915, the Amended Final Judgment also terminated the interlocutory preliminary injunction. The preliminary injunction was not made permanent in the Amended Final Judgment. As a result, the December 5, 2022 preliminary injunction dissolved along with the Receivership.[4]

More fundamentally, Respondents' operative complaint has no claims or allegations related to the NRS Chapter 116 wind up of the UOA or the sale of units. (*Cf.* Opp'n 1.) Nor could it. The vote to dissolve the UOA and sell the units occurred *years* into litigation and *years* after a default was entered. NRCP 54(c) prohibits courts from awarding relief beyond the request in the pleadings, especially after final judgment based on a default. Respondents have been awarded multimillion dollars in compensation as damages, including past and future rents. (*Cf. id.* at 8 n.3.) And NRS

---

final distribution was the final judgment in a receivership proceeding." This was self-admitted dictum. A receivership is incidental to substantive claims. The term "receivership action" is a misnomer. (*Cf.* Opp'n 6.)

[3] Additionally, Respondents say the Receiver has tasks to complete related to a recent contempt order. (*Id.* at 9.) This simply reinforces the unlawful nature of the so-called contempt order as explained in Appellants' Emergency Motion Under NRAP 27(e) to Stay Orders and Administrative Stay in Docket 87243.

[4] The Amended Final Judgment is an "additional direction from the Court" on the receivership and preliminary injunction. (*Cf.* Opp'n 2 (citing 1.R.App. 71); *id.* at 3.)

Chapter 116 governs the dissolution and sale of the units. If Respondents have any objection to those processes (they don't), they must seek relief in a separate action under NRS Chapter 116. Respondents cannot use the Receivership to circumvent NRS Chapter 116 or to extract more compensatory damages after judgment. Respondents cannot impose an endless receiver because of their imaginary conspiracies of "endless bad acts" by Appellants. (Opp'n 1.)

As a last-ditch effort to resurrect the zombie-receivership, Respondents assert that Appellants stipulated that it could last forever when they agreed to dissolve the UOA. (*Id.* at 2, 3-4.) This is wrong. Appellants did not agree the Receivership could continue post-final judgment or submit to a process contrary to NRS Chapter 116. The February 6, 2023 stipulation governed *until* final judgment. (Appx. Respondents' Reply to Applts' Resp. to 5/8/2023 OSC Vol. 2, 276-77, Dkt. 86092.)[5] The February 6, 2023 stipulation predated the April 10, 2023 Amended Final Judgment therefore the Receivership and December 5, 2022 preliminary injunction still dissolved when the Amended Final Judgment was filed. It is unavoidable that the Receivership was an interim remedy which dissolved at judgment. The "Receivership" cannot be certified.

III. CONCLUSION

The Court should set aside or strike the district court's certification of the Amended Final Judgment. *See Paul v. Pool*, 96 Nev. 130, 133, 605 P.2d 635, 637 (1980).

[5] Respondents' cite to 1.R.App.168-58 appears to be mistaken.

DATED this 26th day of December, 2023.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*
Jordan T. Smith, Esq., #12097
Brianna Smith, Esq., #11795
Daniel R. Brady, Esq., #15508
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to NRAP 25(b) and NEFCR 9, on this 26th day of December, 2023, I electronically filed the foregoing **APPELLANTS' REPLY IN SUPPORT OF MOTION TO SET ASIDE OR STRIKE NRCP 54(b) CERTIFICATION OF AMENDED FINAL JUDGMENT AND APPELLANTS' RESPONSE TO NOVEMBER 16, 2023 ORDER TO SHOW CAUSE** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC