

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. 87685
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Elizabeth A. Brown
Clerk of Supreme Court

REPLY IN SUPPORT OF APPELLANTS' MOTION TO RECALL
REMITTITUR

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

Rather than addressing the merits of Appellants’ Motion to Recall Remittitur, Respondents contend only that the Motion is not timely. But their timeliness argument is foreclosed squarely by this Court’s precedent. As Appellants’ unchallenged arguments show, the order dismissing Docket 87685 and the related remittitur were mistakenly granted and issued. Docket 87685 was not subject to either order to show cause or any motion to dismiss. Appellants received no notice of the remittitur in this docket until after they filed this motion to recall. Even so, Appellants timely moved to recall the remittitur. Thus, it seems the appeal was mistakenly dismissed, and remittitur inadvertently issued. Accordingly, this Court should grant the Motion.

II. ARGUMENT

Respondents’ sole argument against recall is that “[t]he motion to recall the remittitur is simply too late, and the motion should be denied.” (Opp’n at 4-5). However, Respondents’ argument ignores both the law and the record. A motion to recall remittitur is timely if it is filed within 15 days of the entry of the remittitur in the district court. *Wood v. State*, 60 Nev. 139, 140, 104 P.2d 187, 188 (1940). Here, Appellants received no notice from this Court that remittitur issued. The district court filed the notice of remittitur on January 25, 2024. (Mot. at Ex. 1(A)). Appellants promptly made this motion. Thus, this Motion is timely as it was filed on February 1, 2024—well within the 15-day period. (Mot. at 1).

Because Respondents failed to challenge the merits of the Motion, solely

challenging its timeliness, they have confessed error. *Bates v. Chronister*, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984) (treating the respondent's failure to respond to the appellant's argument as a confession of error). Accordingly, this Court should grant the Motion on that ground alone. *A Minor v. Mineral Cnty. Juv. Dep't*, 95 Nev. 248, 249, 592 P.2d 172, 173 (1979) (reversing district court order where respondents confessed error by failing to respond to appellant's argument).

Regardless of Respondents' confessed error, this Court should still grant the Motion. Neither order to show cause questioning this Court's jurisdiction over the various appeals were filed in Docket 87685. Nor did any party file a motion to consolidate or dismiss Docket 87685. As a result, it appears this Court accidentally included Docket 87685 in the December 29, 2023 Order and dismissed it without notice. *See Fullbrook v. Allstate Ins. Co.*, 131 Nev. 276, 278, 350 P.3d 88, 89-90 (2015) (“[R]emittitur will be recalled when, but only when, inadvertence, mistake of fact, or an incomplete knowledge of the circumstances of the case on the part of the court or its officers, whether induced by fraud or otherwise, has resulted in an unjust decision.” (quoting *Wood*, 60 Nev. At 141, 104 P.2d at 188)).

Moreover, because the issue in Docket 87685 is similar to that in Dockets 87303 and 87567, this Court should withhold remittitur until the Court resolves the pending Petition for Rehearing (and any en banc reconsideration).

III. CONCLUSION

For these reasons, the Court should recall the Remittitur in Docket 87685 and

withhold it until the Court has resolved the Petition for Rehearing (and any en banc reconsideration).

DATED this 12th day of February 2024.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
Jordan T. Smith, Esq., Bar No. 12097
Brianna Smith, Esq., Bar No. 11795
Daniel R. Brady, Esq., Bar No. 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 12th day of February 2024, I electronically filed the foregoing **REPLY IN SUPPORT OF APPELLANTS' MOTION TO RECALL REMITTITUR** 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