

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3           ROCHELLE MEZZANO,

4                   Appellant,

5           vs.

6           JOHN TOWNLEY,

7                   Respondent.

No.: 87863

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Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION TO STAY  
(Emergency Motion Under NRAP  
27(3))**

8           COMES NOW Appellant, Rochelle Mezzano, by and through her counsel,  
9           F. Peter James, Esq., who hereby moves this Honorable Court to stay the Decree  
10          of Divorce. A decision is being requested on this motion by February 8, 2024.

11          This Motion is made and based on the papers and pleadings on file herein,  
12          the attached points and authorities, the attached affidavit(s) / declaration(s), the  
13          filed exhibit(s), and upon any oral argument the Court will entertain.

14                   **POINTS AND AUTHORITIES**

15                   **DISCUSSION**

16          The Court should stay the Decree of Divorce pending the outcome of the  
17          appeal. The Nevada Rules of Appellate Procedure require a motion to stay be  
18          filed in the district court first. *See* NRAP 8(a)(1). However, NRAP 27(e) permits  
19          emergency motions to be sought in the Supreme Court before adjudication in the  
20          district court if relief is needed in less than 14 days to avoid irreparable harm.

1 This matter must be heard expeditiously to prevent any irreparable harm to  
2 Appellant. As such, Appellant is requesting that the Supreme Court stay the  
3 Decree of Divorce pending the outcome of the appeal.

4 The factors for stays in civil cases not involving child custody are as  
5 follows:

- 6 1. Whether the object of the appeal will be defeated if the stay or  
7 injunction is denied;
- 8 2. Whether the appellant / petitioner will suffer irreparable or serious  
9 injury if the stay or injunction is denied;
- 10 3. Whether respondent / real party in interest will suffer irreparable or  
11 serious injury if the stay or injunction is granted;
- 12 4. Whether movant is likely to prevail on the merits in the appeal.

13 *See* NRAP 8(c).

14 **Whether the object of the appeal will be defeated if the stay or injunction is**  
15 **denied**

16 Rochelle Mezzano (hereinafter “Wife” or “Rochelle”) is appealing the  
17 distribution of assets / debts. Many of the issues on appeal relate to the  
18 characterization of real property, and the subsequent distribution of said property.  
19 If this decision is not stayed pending appeal, Respondent will have the authority  
20 to sell disputed property and use any proceeds as he pleases. If Wife prevails on

1 appeal and Respondent has sold real property, the issue will become moot and  
2 Appellant would subsequently be deprived of said property. Rights to real  
3 property are unique.

4       There is a unique issue with the award of the property located at 3120  
5 Achilles Drive. This property also contains a home referred to as the “Atlas  
6 Court” property. The Atlas Court property has the same APN as 3120 Achilles  
7 Drive. An old Washoe County building code permitted this home to be built on  
8 the Achilles Drive land without a unique identifier.

9       Historically, Wife has managed the home that was built on Atlas Court as  
10 a rental property. The Court determined that 3120 Achilles Drive was Husband’s  
11 separate property despite it being listed as Wife’s property in the prenuptial  
12 agreement. The property, including the rental home on 855 Atlas Court that is  
13 managed by Wife, was awarded to Husband. Wife believes the district court  
14 erred in awarding this property to Husband and will be appealing the  
15 determination. In the interim, Wife asks the Court to order that status quo remain  
16 with the Atlas Court rental property she managed. Wife wishes to continue  
17 renting out the property and seeks to protect her current tenants from an eviction.

18       If Wife’s request is not granted as to 3120 Achilles Drive, she will be  
19 deprived of property she had prior to marriage if Husband sells it. She will also  
20

1 lose rental income as she has tenants living at the house that was built on the  
2 property.

3 Respondent has already made his intent to sell at least one property he was  
4 awarded in the divorce (855 Atlas Court). He issued a No Cause Termination  
5 Notice to Vacate on the property the day the Decree of Divorce was entered,  
6 November 28, 2023. He has now initiated eviction proceedings. This, combined  
7 with Respondent's trial testimony that he intended to sell the property, guarantees  
8 that the property will be lost if a stay is not granted. As such, Defendant asks the  
9 Court to stay the real property awards pending appeal.

10 The object of the appeal will be defeated if the stay or injunction is denied.  
11 Husband will be free to sell any property he has been awarded. He would  
12 subsequently be permitted to use all the proceeds from the sale for his own  
13 benefit. If Wife prevails on a real property award and Husband has already sold  
14 this property, there will be nothing left to litigate. It would be incredibly difficult  
15 to track any proceeds from a sale, and if the proceeds are gone Wife would never  
16 recover her full interest. Defendant may be deprived of real property and income  
17 if the stay is not granted.

18 **Whether the appellant / petitioner will suffer irreparable or serious injury**  
19 **if the stay or injunction is denied**

1 Appellant will suffer irreparable harm if the stay is denied. Appellant is  
2 moving for immediate relief from the Supreme Court for this reason. Loss of real  
3 property rights generally results in irreparable harm. *See Dixon v. Thatcher*, 103  
4 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

5 At trial, Husband testified that he would sell 1532 F Street and 3120  
6 Achilles (which includes 855 Atlas Court). Wife is contesting the property  
7 awards as there has been property awarded to Husband that she believes to be her  
8 separate property.

9 Absent a stay, Husband is free to manage property as he pleases. He may  
10 sell the property and use all proceeds. He has made his intent to do so clear. If  
11 Wife prevails on appeal and Husband has done this, she will never recover her  
12 interest.

13 The property located at 3120 Achilles Drive is unique. First, it includes  
14 855 Atlas Court on the parcel. The homes are on a view lot, and both homes  
15 enjoy a day view, and a night view of the City of Reno and Mount Rose.  
16 Additionally, the homes are not a part of an HOA. Due to the unique nature of  
17 the property, a stay must be granted to protect Wife's interest. This property is  
18 rare. If it is sold, it is unlikely that Wife would ever be able to purchase a similar  
19 property.

1           Additionally, Wife has renters that live at 855 Atlas Court, the house  
2 connected to the Achilles Drive property. If a stay is denied, Husband will be  
3 free to evict her tenants and eliminate her rental income. Husband has already  
4 initiated eviction proceedings, and a hearing is being held on February 8, 2024,  
5 at 1:30 p.m. to decide the issue. If the stay is denied, Wife will lose the real estate  
6 that provides her with purpose and an income. This will cause irreparable harm  
7 to Wife.

8           Finally, there is an equalization payment of \$740,647.00 owed to Plaintiff  
9 which will be modified if Defendant prevails on appeal. Wife is contesting the  
10 determination of cash on hand as community property, as well as several other  
11 property awards. If Wife makes payment on this prior to the appeal disposition,  
12 she may never recover any amount she has overpaid.

13           Wife would only be able to pay the equalization amount if she sold  
14 property. If she fails to make this payment in the time allotted, Husband will  
15 force the sale of real property that has been awarded to Wife. This will cause her  
16 to lose other real estate that provides her with an income. With the equalization  
17 payment subject to change, it is reasonable to stay the payment pending appeal.

18           As such, Appellant will suffer from irreparable harm if the stay is denied.

19 **Whether respondent / real party in interest will suffer irreparable or serious**  
20 **injury if the stay or injunction is granted**

1 Husband will not suffer irreparable harm if the stay is granted. He has  
2 income and a place to live. Husband testified at trial that he has a hobby that is  
3 profitable. This hobby has been so lucrative for Husband that he has been able  
4 to purchase vehicles and keep cash on hand. He does not need the ability to sell  
5 any assets at this point in time. He will continue to live just as he has for the past  
6 several years.

7 **Whether movant is likely to prevail on the merits in the appeal**

8 With all due respect to the Court, chances of prevailing on appeal are  
9 quite high. This matter was first on appeal after a default was entered against  
10 Appellant without proper service. While the first appeal was pending, the district  
11 court permitted Husband to transfer property he was awarded in the default to his  
12 name. Upon remand, the property that was re-titled as a result of the default was  
13 not restored to how it was originally titled. Property determinations were made  
14 based upon how property was titled at the time of trial. The Court needed to look  
15 at the character of property prior to the entry of the default as titles were not  
16 properly restored. Presuming that accounts belonged to a party simply because  
17 it was in one name only following the default is insufficient to determine the  
18 character of the property.

19 The characterization of 3120 Achilles Drive as Husband's sole and  
20 separate property is clearly erroneous. The Court ignored the prenuptial

1 agreement that detailed the property as belonging to Wife prior to marriage.  
2 Instead, the Court denied Wife a trial on the merits by adopting a discovery  
3 sanction over clear evidence to the contrary.

4 In the time period that the parties were divorced by default, Wife acquired  
5 properties located at 105 Yellowstone Drive and 125 Yellowstone Drive.  
6 Evidence was presented showing that the properties were purchased by Wife as  
7 an unmarried woman alongside with another individual not a party to this action.  
8 The community did not purchase these properties. Despite this, Wife's interest  
9 in the property was determined to be community in nature.

10 Per the prenuptial agreement, the parties were permitted to purchase  
11 separate properties in their own names. It also provided that Wife's income and  
12 bank accounts are separate property. Any payments she may have made towards  
13 these properties would have come from her separate property, including  
14 payments towards the initial purchase. The characterization of these properties  
15 were determined based upon a discovery sanction, though there was evidence  
16 that clearly contradicted the discovery sanction. Wife was deprived of a trial on  
17 the merits and believes that she will prevail on this issue on appeal.

18 Wife also believes that the Court erroneously awarded cash she had on  
19 hand to the community. It was well documented that this cash was intended to  
20 be separate property. Husband awarded it to her in the initial default. His counsel



1 sent a letter confirming the characterization. Wife believes that she will prevail  
2 on this issue.

3 If Wife prevails on even one issue, the equalization payment owed will  
4 also need to be revisited. Wife is confident that she will prevail on at least one  
5 property award.

6 There are a plethora of appealable issues in this matter. All things  
7 considered, Wife has a high chance of prevailing on appeal.

### 8 **CONCLUSION**

9 Based on the foregoing, the Court should stay the Decree pending the  
10 resolution of the appeal.

11 Dated this 6<sup>th</sup> day of February, 2024

12 */s/ F. Peter James*

13 LAW OFFICES OF F. PETER JAMES

14 F. Peter James, Esq.

15 Nevada Bar No. 10091

16 3821 W. Charleston Blvd., Suite 250

17 Las Vegas, Nevada 89102

18 702-256-0087

19 Counsel for Appellant

1 **NRAP 27(e) CERTIFICATE**

2 I, F. Peter James, Esq., hereby declare and state under penalty of perjury  
3 as follows:

4 1. I am a member in good standing of the State Bar of Nevada.

5 2. Counsel for the parties are as follows:

6 Rochelle Mezzano, Appellant  
7 F. Peter James, Esq.  
8 Law Offices of F. Peter James, Esq.  
9 3821 W. Charleston Blvd., Suite 250  
10 Las Vegas, Nevada 89102  
11 702-256-0087  
12 702-256-0145 (fax)  
13 Counsel for Appellant

Respondent, John Townley  
Alexander Morey, Esq.  
Silverman Kattleman Springgate,  
Chtd.  
500 Damonte Ranch Pkwy., Suite  
675  
Reno, Nevada 89521  
775-322-3223  
Counsel for Respondent

14 3. This matter must be heard on an emergency basis as on January 18, 2024,  
15 Respondent filed an action in the Washoe County Justice Court (case no.  
16 REV2024-000254) to evict the tenant that resides at 855 Atlas Court  
17 (connected to the APN of 3120 Achilles Drive). Husband was awarded  
18 3120 Achilles Drive in the divorce. Wife is appealing this award as there  
19 was a prenup indicated that this was Wife's separate property. Wife has  
20 historically rented out the 855 Atlas Court property and earned rental  
income from her tenants. Husband is actively seeking to evict Wife's

1       tenant from 855 Atlas Court so that he can sell both Achilles Drive and  
2       Atlas Court. A hearing is being held on the eviction on February 8, 2024.

3       4. Wife filed a Motion to Stay in the district court on January 25, 2024. It is  
4       unknown when a decision will be rendered. Husband's counsel has  
5       indicated that he is not willing to agree to a stay pending appeal. It is  
6       unlikely that the district court will issue an order prior to the eviction  
7       hearing. If Husband is permitted to move forward with the eviction and a  
8       stay is not in place, Wife's tenant will be locked out and she will lose out  
9       on rental income that she relies upon.

10       5. If the district court denies the stay, an emergency motion would still be  
11       necessary in the Supreme Court to prevent the sale of Achilles Drive and  
12       Atlas Court. Husband informed the district court during trial that he  
13       intends to sell these properties. Wife is appealing the district court's  
14       decision to award these properties to Husband. If Husband succeeds in  
15       having the Atlas Court tenants removed, it is expected that Husband will  
16       quickly list the properties for sale.

17       6. Rights to real property are unique. Wife obtained the Achilles Drive / Atlas  
18       Court properties prior to marriage. Achilles Drive was specifically notated  
19       as Wife's separate property in a prenup that was introduced and upheld at  
20       trial. Absent a stay, Husband will sell the properties at issue and Wife will

1 be deprived of these assets if she prevails on appeal. She will also lose  
2 rental income that she is reliant on.

3 7. In addition to this, Wife is expected to pay an equalization payment of  
4 \$740,647.00 to Husband by March 27, 2024. The Court issued an order  
5 requiring Appellant to execute a note for the equalization payment and  
6 deeds of trust securing that note against real properties she was awarded in  
7 the Decree of Divorce. Respondent filed a Motion for an Order Appointing  
8 Clerk of the Court to Execute Promissory Note and Deed of Trust in the  
9 district court on January 24, 2024. Wife is asking that the equalization  
10 payment be stayed as property awards are being contested on appeal, and  
11 these awards have a direct impact on the equalization payment. If Wife  
12 makes payment and the award is overturned, she may not be able to recover  
13 any overpayment made. Moreover, it is anticipated that Respondent will  
14 push for the sale of property Appellant was awarded in the Decree of  
15 Divorce if she does not make the equalization payment by March 27, 2024.  
16 Again, this would result in Wife losing real property. Husband is already  
17 striving to take action to secure his equalization payment and will not agree  
18 to a stay pending appeal.

19 8. Respondent's counsel was served with the Motion to Stay in the District  
20 Court on January 25, 2024. This motion is nearly identical to the Motion

1 to Stay filed in the district court. Additionally, an email containing this  
2 motion was sent to Respondent's counsel on February 6, 2024.  
3 Respondent's counsel will also be served with this motion via eFlex.

4 9. Relief has been sought in the district court. The Motion to Stay was filed  
5 on January 25, 2024. Respondent has until February 8, 2024 to file an  
6 opposition. Appellant will then have until February 15, 2024, to file any  
7 reply and to file a request for submission. Notwithstanding this, the district  
8 court has six months from the date of service to render a decision.  
9 Appellant cannot wait months for a decision to be rendered on these issues.

10 Dated this 6<sup>th</sup> day of February, 2024

11 /s/ *F. Peter James*

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15 Counsel for Appellant

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Alexander Morey, Esq.  
Counsel for Respondent