IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 88065

MEI-GSR HOLDINGS, LLC, a Nevada corporation; AM-GSR HOLDINGS, LLC, a Nevada corporation; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada corporation,

Petitioners,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHNER, RECEIVER,

Respondents,

and

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE 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; DONALD SCHREIFELS, 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, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; 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; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, 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 HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually;

Real Parties in Interest.

MOTION TO STAY PENDING THIS COURT'S REVIEW

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I. INTRODUCTION

A court cannot act without jurisdiction. This fundamental rule applies strongly in default judgment cases where a court lacks jurisdiction to award relief beyond what the operative complaint expressly seeks and in violation of governing statutes. Here, however, the district court has directed a receiver to oversee (and delay) the statutory dissolution of a unit owners association, continue renting units, and remit funds from Petitioners to Real Parties as a form of unpled compensatory damages. None of these issues are encompassed in the operative complaint. Nor could they have been because they arose more than a decade after its filing and after damage awards had been entered. To date—after a compensatory judgment—Petitioners have already paid over $1 million to Real Parties, who have recently moved below to attack another $1.1 million amount for which a supersedeas bond has been posted.

Once this Court directed an answer to the petition, Petitioners moved the district court to stay further receivership actions and payments to Real Parties pending the outcome of this proceeding. The district court recognized that a partial stay was warranted but refused to stay the most damaging part: Petitioners' ongoing rental and payment obligations. In other words, the district court halted any dissolution process but not payment—the worst of both worlds for Petitioners. In the meantime, this Court reiterated that it had "expressed no opinion on the propriety of the district court's actions, leaving [Petitioners] free to challenge the district court's exercise of jurisdiction

when appropriate."[1] The Court also stated that Petitioners could "seek a stay in the writ proceeding …."[2]

Thus, to prevent the object of their writ petition from being defeated and to prevent the irreparable harm of continued likely unrecoverable payments to Real Parties, Petitioners renew their stay request in this Court. The Court should stay the remaining piece that the district court's partial stay left open: any continued obligation to rent Real Parties' units and turn over of funds until this Petition is decided.

Real Parties will suffer no irreparable harm as they would simply not receive money to which they are not entitled. And, as controlling law makes clear, Petitioners have raised at least a serious question on the merits of this case. The district court itself impliedly recognized Petitioners' serious legal question by implementing a partial stay. Thus, under NRAP 8, this Court should complete the partial stay entered below by staying any obligation to continue renting Real Parties' units and staying any obligation to turn over rental amounts to the receiver for distribution to Real Parties.

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1 *MEI-GSR Holdings, LLC v. Thomas, et al.*, Nos. 85915, 86092, 86985, at *11 (Order Denying Motions for Reconsideration and Stay and Granting Motion for Extension of Time April 15, 2024).

2 *Id.* at *12.

II. RELEVANT FACTS[3]

As set forth more fully in the Petition, in March 2013, Real Parties brought the operative complaint against Petitioners, raising twelve claims related to alleged violations of the Terminated Rental Agreement for actions taken prior to March 26, 2013. (1.PA.23-47). The operative complaint did not seek to preclude the termination of the common-interest community comprised of condominium units owned by Petitioners, Real Parties, and several non-parties. (*See id.*). Nor did the operative complaint seek to reinstate the terminated rental agreement or otherwise seek to force Petitioners to continue to rent Real Parties' condominium units. (*See id.*).

Ultimately, the district court struck Petitioners' answer and entered a default judgment in Real Parties' favor. (*Id.* at 118; 3.PA.502, 679, 697-99). After the default, Real Parties sought the appointment of a receiver to ensure compliance with the Governing Documents. (1.PA.127-28). Specifically, they argued that a receiver was proper because, after the default, Real Parties "prevailed on [the] cause of action" for a receiver. (*Id.* at 126). Over Petitioners' objection, the district court appointed a receiver of the common-interest community pursuant to its order striking Petitioners' answer. (3.PA.519). Under the terms of the operative complaint—and thus, the limits of the court's jurisdiction—the receiver existed purely to preserve Real Parties' condominium

[3] This Motion highlights only the facts relevant to issuing a stay. For a more fulsome factual background, this Court may look to the Petition in this Docket. Pet. 5-18.

units pending the conclusion of the litigation, i.e., through the damages phase. (1.PA.37-38, 127-28).

Eventually, the district court held a prove-up hearing where only one "expert" witness testified. (3.PA.679). No Real Party testified about their supposed damages. (*Id.*). Regardless, the district court awarded a $8,318,215.54 lump sum amount in compensatory damages. (*Id.* at 697-98). While the order did not address a timeframe for damages, (see *id.*), it was nonetheless limited to the damages Real Parties sought, which were past damages alone, (1.PA.23-47).

Despite its jurisdictional limitation, the district court continues to direct the receiver to award relief that exceeds the scope of the operative complaint. For example, even though the common-interest community has been dissolved, the district court mandated that Petitioners continue to rent Real Parties' former units and turn over rental amounts to the receiver to be disbursed to Real Parties. (9.PA.1717-18). To date, Petitioners have been forced to turn over several million dollars to the receiver, who has distributed approximately $1 million of the funds to the Real Parties. (Ex. A at 3). And it will only grow—not only is the district court currently requiring Petitioners to turn over funds to the receiver for distribution monthly, but Real Parties have moved for an order requiring Petitioners to turn over another $1.1 million in rental revenues secured by a supersedeas bond. (Ex. B at 22-23; Ex. C at 34).

And the district court continues to rubber stamp these turn-over orders despite the fact that Real Parties conceded that the ongoing rents function as continuing or

supplemental compensatory damages for injuries that supposedly occurred after the default judgment (and thus, outside the scope of the operative complaint). (9.PA.1694 n.3). Indeed, despite current protestations, Real Parties admitted that these rents should have been part of "additional litigation," but they "forwent that avenue of recovery in favor of having the Receiver take control of the rents . . . and distribute the proceeds to Plaintiffs under the Governing Documents." (*Id.* at 1964 n.3, 1734-35).

Recognizing the district court's extra-jurisdictional actions, Petitioners filed this Petition for a Writ of Prohibition or, in the Alternative, Mandamus. After this Court directed an answer, Petitioners moved for a stay of the district court proceedings regarding the receiver. (Ex. A at 1). Real Parties opposed, (Ex. D at 39), Petitioners filed a reply, (Ex. E at 66), and the district court granted the stay motion in part, (Ex. F at 92). Specifically, the district court stayed the order allowing post-judgment discovery, but it refused to stay the ongoing turn over of unwarranted rental funds to Real Parties even though Real Parties admitted that they cannot repay Petitioners should this Court grant the Petition. (*Id.* at 93).

This Court also indicated that Petitioners could seek a stay related to the receivership and rents in this pending writ proceeding. *MEI-GSR Holdings, LLC*, Nos. 85915, 86092, 86985, at *11 (Order Denying Motions for Reconsideration and Stay and Granting Motion for Extension of Time April 15, 2024). ("This order, which is procedural, is without prejudice to appellants' ability to seek a stay in the writ proceeding….").

III. ARGUMENT

When determining whether to grant a stay, courts consider whether (1) the object of the writ petition will be defeated if the stay is denied; (2) petitioner will suffer irreparable or serious injury if the stay is denied; (3) real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) petitioner is likely to prevail on the merits in the appeal or writ petition. *Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 660, 657-59, 6 P.3d 982, 986-87 (2000); *see also* NRAP 8(c). "[I]f one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Petitioners satisfy each factor.

A. If a Stay is Denied, the Object of the Writ Petition Will be Defeated, and Petitioners will face Irreparable or Serious Harm if the Stay is Denied.

This Court has indicated that the first stay factor may take on outsized significance. *See Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39 (holding that with stays in interlocutory appellate proceedings, "the first stay factor takes on added significance."). A stay is generally warranted when a denial would defeat the object of the appellate proceedings. *Hansen*, 116 Nev. at 657, 6 P.3d at 986.

Absent a stay, Petitioners will be forced to continue renting and remitting substantial monetary sums to Real Parties that cannot be recovered. To date, Real Parties have received over $1 million in funds they are not entitled to. (Ex. A at 3). Real Parties now seek to grab an additional $1.1 million that Petitioners have posted a bond for. (Ex. B at 22; Ex. C at 34). And Real Parties make clear that they want the money

immediately as their counsel pre-emptively reached out to Petitioners to inform them that he would not agree to any extension of time to file an opposition to his motion seeking the $1.1 million. (Ex. G at 95). The reason for Real Parties' haste is obvious: They realize the receivership and their ongoing compensatory damages outside the complaint may no longer last in perpetuity. Moreover, Real Parties continuously represented to the district court that they had no funds and could not even fund this litigation.[4] (Ex. E. at 78; H at 112). These representations make clear that Petitioners likely will not be able to recover any funds from Real Parties should they obtain writ relief. In fact, the lack of a stay—forcing Petitioners to remit millions of dollars to Real Parties—would defeat the object of the Petition by rendering any writ relief a pyrrhic victory. *See Philip Morris USA Inc. v. Sco*tt, 561 U.S. 1301, 1304 (2010) (Scalia, J., granting application for a stay) (granting a stay where the expended funds were unrecoverable). Thus, the first factor favors issuing a stay.

Similarly, absent a stay, Petitioners will suffer irreparable or serious harm. The inability to recoup disputed amounts once disbursed constitutes irreparable harm. *Id.* ("Normally the mere payment of money is not considered irreparable, but that is because money can usually be recovered from the person to whom it is paid. If expenditures cannot be recouped, the resulting loss may be irreparable." (internal citation omitted)). After all, "[a]ny act which destroys or results in a substantial change

[4] Indeed, Real Parties' counsel has already threatened once to withdraw due to lack of payment.

in property, either physically or in the character in which it has been held or enjoyed, does irreparable injury." *Memory Garden of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d 123, 125 (1972). Here, should the funds be disbursed, Petitioners are likely unable to recover them directly from Real Parties or their counsel. As such, Petitioners have shown—at worst—a "serious" injury, and thus, the second factor favors issuing a stay.

B. Real Parties will not Suffer Irreparable or Serious Harm if a Stay is Granted.

"Although irreparable or serious harm remains a part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Here, the only possible "harm" Real Parties face is a delay associated with the appellate proceedings and the payment of funds to which they are not entitled. However, a delay in execution incurred as the result of the exercise of a party's appellate rights is not harm cautioning against a stay. In fact, this Court has already temporarily stayed the execution of various orders in this case, thus implicitly finding that a delay in execution does not harm either the Real Parties or receiver. *See MEI-GSR Holdings, LLC v. Thomas*, No. 86092, at *3 (Order to Show Cause & Granting Temporary Stay May 8, 2023). The district court's partial stay also demonstrates Real Parties will not suffer irreparable harm sufficient to deny a stay. (*See* Ex. F at 92-93).

C. Petitioners Have Presented a Substantial Case to Justify a Stay.

To defeat a stay, Real Parties must "mak[e] a *strong showing* that appellate relief is unattainable." *Mikohn Gaming Corp.*, 120 Nev. at 249, 89 P.3d at 40 (emphasis added). Conversely, the movant need only "present a substantial case on the merits when a serious legal question is involved." *Hansen*, 116 Nev. at 659, 6 P.3d at 987 (emphasis added) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). In other words, the movant "does not always have to show a probability of success on the merits." *Id.*

Here, Petitioners have shown at least a substantial case on the merits. As the Petition explains, the district court lacks jurisdiction to grant relief not sought in the operative complaint in this default case, especially when that relief conflicts with governing statutes. Pet. 21-31. The operative complaint did not contemplate the termination of the common-interest community or the continued renting of the units as neither scenario had occurred prior to the filing of the operative complaint. (1.PA.47). Nor did the complaint seek injunctive relief authorizing the district court's orders. (*See id.*). And, finally, the complaint sought only damages incurred in the period before the complaint was filed—it did not seek these ongoing compensatory damages the district court has now awarded. (*See id.*). At worst, Petitioners have shown a substantial case on the merits, and thus, this factor favors a stay.

IV. CONCLUSION

For these reasons, this Court should grant the Motion and stay the district court's orders directing Petitioners to turn over the continuing rental proceeds and orders

directing the receiver to continue renting the Real Parties' dissolved units. The receivership should be stayed pending the outcome of this writ proceeding.

DATED this 23rd day of April 2024.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 23rd day of April 2024, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **MOTION TO STAY PENDING THIS COURT'S REVIEW** properly addressed to the following:

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