IN THE SUPREME COURT OF THE STATE OF NEVADA

REZA ZANDIAN, A/K/A GOLAMREZA ZANDIANJAZI, A/K/A GHOLAM REZA ZANDIAN, A/K/A REZA JAZI, A/K/A J. REZA JAZI, A/K/A G. REZA JAZI, A/K/A GHONOREZA ZANDIAN JAZI, an individual, Appellant, v. JED MARGOLIN, an individual, Respondent.	Supreme Court Case No. 82559 District Court Case No. 09OC005791B

ON APPEAL FROM ORDER GRANTING PLAINTIFF'S MOTION TO VOID DEEDS, ASSIGN PROPERTY, FOR WRIT OF EXECUTION AND TO CONVEY
DATED JANUARY 19, 2021
IN THE FIRST JUDICIAL DISTRICT COURT, CARSON CITY
THE HONORABLE JAMES T. RUSSELL PRESIDING

RESPONDENT'S ANSWERING BRIEF

BROWNSTEIN HYATT FARBER SCHRECK, LLP

Attorneys for Respondent
JED MARGOLIN

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None

2. Identification of Respondents' Attorneys: The following are names of all law firms whose partners or associates have appeared or who are expected to appear in this action on behalf of Respondent Jed Margolin (including proceedings in the District Court):

District Court Proceedings:

Matthew D. Francis, Esq.
Arthur A. Zorio, Esq.
Adam P. McMillen, Esq.
Watson Rounds, PC
Brownstein Hyatt Farber Schreck, LLP

The Instant Appeal:

Matthew D. Francis, Esq.
Arthur A. Zorio, Esq.
Brownstein Hyatt Farber Schreck, LLP

3. If litigant is using a pseudonym, the litigant's true name: Appellant has used numerous different names in legal documents: Reza Zandian, Golamreza Zandianjazi, Gholam Reza Zandian, Reza Jazi, J. Reza Jazi, G. Reza Jazi, Ghononreza Zandian Jazi.

DATED September 22, 2021

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

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I. JURISDICTIONAL STATEMENT

This is an appeal of Honorable Judge Russell's January 19, 2021 Order Granting Plaintiff's Motion to Void Deeds, Assign Property, For Writ of Execution and to Convey ("January 19th Order"). This Court lacks jurisdiction because the January 19th Order is not a special order pursuant to NRAP 3A(b)(8).

II. ROUTING STATEMENT

In the event this Court finds that jurisdiction exists pursuant to NRAP 3A(b)(8), this case would not fall under any of the categories of NRAP 17(a) but would instead fall under the purview of NRAP 17(b)(7) because it is an appeal from a postjudgment order in a civil case. As such, this case is presumptively assigned to the Court of Appeals, not the Nevada Supreme Court.

III. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Does this Court lack jurisdiction over the District Court's January 19th Order because that Order is not a special order pursuant to NRAP 3A(b)(8)? **Yes.**

Did the District Court abuse its discretion by granting Respondent's May 3, 2016 Motion to Void Deeds, Assign Property and For Writ of Execution ("Motion to Void Deeds") in the January 19th Order that Appellant never opposed? **No.**

Should Appellant be allowed to raise his NRS 17.150(4) argument in this case for the first time on appeal? **No.**

Where NRS 17.150(2) expressly states when a judgment is recorded "it becomes a lien," is the filing of an affidavit providing additional information about the judgment debtor pursuant to NRS 17.150(4) a condition precedent to the creation of a valid lien over real property when the Nevada Legislature did not expressly require it for the creation of a lien? **No.**

IV. STATEMENT OF THE CASE

Respondent Margolin filed his Complaint against Appellant Zandian and his various cohorts on December 11, 2009, which alleged five claims: (1) conversion, (2) tortious interference with contract, (3) intentional interference with prospective economic advantage, (4) unjust enrichment, and (5) unfair and deceptive trade practices. 1 ROA 10.[1] On June 24, 2013, a Default Judgment was entered against Appellant. 6 ROA 1251-57. The Default Judgment was recorded in Washoe County on August 16, 2013, Lyon County on August 16, 2013, Churchill County on August 16, 2013, Storey County on August 19, 2013, Elko County on August 19, 2013, and Clark County on August 20, 2013. 14 ROA 3498-99; 15 ROA 3548-49. [2]

On December 20, 2013, Appellant filed a Motion to Set Aside the Default Judgment, which was denied on February 6, 2014. 7 ROA 1554-67. On March 12, 2014, Appellant appealed the denial of his Motion to Set Aside to this Court. 7 ROA 1568-75 (Supreme Court No. 65205). On June 30, 2014, Appellant appealed the District Court's award of attorneys' fees and costs against him (Supreme Court No. 65960), which was issued after entry of the Default Judgment.

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[1] The Record on Appeal is cited to herein as (volume number) ROA at (page number(s)).

[2] The Default Judgment was renewed on May 2, 2019, and recorded. 14 ROA 3498-05; 15 ROA 3548-49.

11 ROA 2524-41. This Court affirmed the Default Judgment and the attorneys' fee and cost award on October 19, 2015. 12 ROA 2978-80.

On November 6, 2015, the District Court entered an Order Granting the Motion for Debtor's Examination and to Produce Documents, whereby Appellant was required to produce documents by December 21, 2015, and to appear for a debtor's examination in February of 2016. 12 ROA 2985-92. On February 3, 2016, the Court held Appellant in contempt for failing to produce documents as ordered by the Court and issued a Warrant of Arrest. 13 ROA 3112-16. An Amended Warrant of Arrest for Appellant issued on June 7, 2019. 15 ROA 3508-09.

On December 10, 2015, Appellant appealed the District Court's Order Granting Respondent's Motion for Debtor's Examination and to produce documents. 13 ROA 3000-10 (Supreme Court No. 69372). On January 7, 2016, this Court entered an Order to Show Cause why Appellant's appeal should not be dismissed for lack of jurisdiction. 13 ROA 3098-99. On March 4, 2016, this Court dismissed the appeal because the District Court's debtor's examination order was not a special order that could be appealed pursuant to NRAP 3A(b). 13 ROA 3154-55.

On May 3, 2016, Respondent filed his Motion to Void Deeds, which sought to set aside Appellant's numerous fraudulent transfers of property. 13-14 ROA at

3162-3463. Respondent served his Motion to Void Deeds at the last known address that was provided by Attorney Severin A. Carlson in his January 12, 2016 Affidavit in response to the District Court's Amended Order Granting Motion to Withdraw, namely 9 MacArthur Place, Unit 2105 Santa Ana, California 92707-6753. 13 ROA 3081-89; 13 ROA 3172. In the District Court's January 7, 2016 Amended Order Granting Motion to Withdraw as Counsel, the District Court granted Attorney Carlson's Motion to Withdraw as Counsel for Appellant Zandian on the condition that "a valid address in California and/or Nevada [be] provided to the Plaintiff for service of any and all documents on Defendant Reza Zandian." 13 ROA 3079. The District Court's rationale for this condition was based on Zandian's repeated tactic of changing lawyers/forcing lawyers to withdraw so as to delay the case. *See id.* In Attorney Severin's response to the District Court's Amended Order, he provided the address of 9 MacArthur Place, Unit 2105 Santa Ana, California 92707-6753. 13 ROA 3082. Attorney Severin also stated as follows: "This address has been the address where correspondence and invoices for my firm have been sent since March 5, 2014. None of the correspondence or invoices have been returned as undeliverable at any point in time." 13 ROA 3083.

Appellant never opposed Respondent's Motion to Void Deeds. *See* ROA. On June 2, 2016, Respondent filed and served a Request for Submission for the Motion to Void Deeds, stating that no opposition had been filed. 14 ROA at 3488-

90.

Also on June 2, 2016, Appellant filed a Notice of Pendency of Chapter 15 Petition for Recognition of a Foreign Proceeding, which was venued in the United States Bankruptcy Court, District of Nevada ("USBC"). 14 ROA at 3473-87. On June 3, 2016, Honorable Judge Russell stayed the District Court case pending the foreign proceeding and entered a Notice of Bankruptcy Filing and Automatic Stay. 14 ROA at 3491-93. In his Order, Judge Russell stated as follows:

> GHOLAM REZA JAZI ZANDIAN filed a verified Chapter 15 Petition for Recognition of a Foreign Proceeding with the United States Bankruptcy Court, Case No. 16-50644-btb. Pursuant to the United States Bankruptcy Code, upon the filing of a bankruptcy petition, judicial proceedings involving the bankruptcy petitioner are automatically stayed. *See* 11 U.S.C. § 362(a). Therefore, this Court is unable to proceed on any motions until the automatic stay is lifted by the United States Bankruptcy Court. At that time, the parties should resubmit any pending motions to the Court for decision.

14 ROA 3491.

Between June of 2016 and October of 2020, Appellant and Respondent litigated the underlying Chapter 15 case as well as two ancillary adversary proceedings. 15 ROA 3516-20. On October 14, 2020, the USBC entered an Order Approving Stipulation to Dismiss Chapter 15 Case. *Id.* In that Order, the USBC granted Respondent Margolin's Motion to Dismiss Appellant Zandian's Chapter 15 Case and dismissed Chapter 15 Case No. 16-50644-btb with prejudice. *Id.* The USBC also dismissed the two ancillary adversary proceedings (Adversary Case Nos. 17-05016-BTB and 19-05025-BTB) with prejudice. *Id.* Pursuant to the Bankruptcy Code, the USBC also ordered that a July 20, 2018 interlocutory

summary judgment order ("Interlocutory Order") and findings ("Findings") relating to it, which addressed NRS 17.150(4), be rendered void *ab initio*. *Id.* Specifically, the USBC ordered the following:

> IT IS FURTHER ORDERED that the Order Granting Partial Motion for Summary Judgment and Denying Motion for Summary Judgment Against Cross-Claimant Patrick Canet and Granting Counter Motion for Summary Judgment ("Interlocutory Order") (Adv. ECF No. 61 in Adversary Case No. 17-05016-BTB) and the corresponding Findings of Fact and Conclusions of Law ("Findings") (Adv. ECF No. 60 in Adversary Case No. 17-05016)-BTB are and shall be vacated as void *ab initio*. To the extent that either the Interlocutory Order or the Findings have been recorded in the office of any county recorder, the same, by this Order are and shall be expunged and removed from the record, and any transfers based upon the Interlocutory Order or the Findings shall be void *ab initio*.

15 ROA 3518.

Appellant Zandian never appealed the USBC October 14, 2020 Order Approving Stipulation to Dismiss Chapter 15 Case, and the Chapter 15 Case No. 16-50644-btb and Adversary Case Nos. 17-05016-BTB and 19-05025-BTB were closed on November 2, 2020. 15 ROA 3519-3520.

On January 15, 2021, Respondent filed a Notice of Termination of Bankruptcy Proceedings and concurrently resubmitted his Motion to Void Deeds in accordance with the District Court's June 3, 2016 Order. 15 ROA at 3511-23. In his January 15, 2021 Request for Submission, Respondent again stated that no opposition to his Motion to Void Deeds had been filed. 15 ROA 3521-22. Respondent Margolin also submitted a proposed Order granting his Motion to Void Deeds, which was granted on January 19, 2021 (i.e. the January 19th Order). 15 ROA at 3524-28. Respondent then served the Notice of Entry of Order granting

his Motion to Void Deeds on January 22, 2021, and this appeal was filed on February 25, 2021. 15 ROA at 3529-38, 3539.

Although not required to create a lien against Appellant's real property, an Affidavit of Judgment was recorded in Nevada counties, including Washoe County on April 20, 2021, Elko County on March 18, 2021, Lyon County on March 18, 2021, Churchill County on March 18, 2021, and Clark County on March 26, 2021.[3]

On June 4, 2021, Appellant filed in this Court Appellant's Motion to Take Judicial Notice (NRAP 27(a)(1)) in which he requested that this Court take judicial notice of the Interlocutory Order from the USBC that addressed Appellant's NRS 17.150(4) arguments, which was rendered void *ab initio* and dismissed with prejudice. *See* 15 ROA 3516-18. In response, on June 24, 2021, Respondent opposed Appellant's Motion to Take Judicial Notice (NRAP 27(a)(1)) on the following bases: (1) Appellant never raised his NRS 17.150(4) arguments in the First Judicial District Court and that Appellant should not be able to raise the arguments in this appeal for the first time; (2) the USBC found the Interlocutory Order void *ab initio* and dismissed all of Appellant's bankruptcy proceedings with prejudice, which Appellant never appealed; and (3), the only proper issue before this Court is whether Honorable Judge Russell erred in granting Respondent Margolin's unopposed Motion to Void Deeds, which he did not. On July 30, 2021,

[3] *See* Respondent's Motion to Take Judicial Notice filed concurrently herewith.

this Court denied Appellant's Motion to Take Judicial Notice.

Based on the foregoing facts and the argument set forth below, this Court should reject Appellant's appeal and affirm the January 19th Order.

V. STATEMENT OF FACTS

Respondent submits that the relevant facts for this appeal are as follows:

1. On May 3, 2016, Margolin filed his Motion to Void Deeds, which sought to set aside Appellant's numerous fraudulent transfers of property. 13-14 ROA at 3162-3463.

2. Appellant never opposed Respondent's Motion to Void Deeds. *See* ROA.

3. The District Court granted Respondent's Motion to Void Deeds in the January 19th Order. 15 ROA at 3524-28.

4. Appellant never raised his NRS 17.150(4) argument in the District Court. *See* ROA.

These facts, in and of themselves, show that the District Court did not abuse its discretion and its January 19th Order should be affirmed.

VI. STANDARD OF REVIEW

This Court reviews a district court's decision to grant a motion for failure to timely oppose under DCR 13(3) for an abuse of discretion. *King v. Cartlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005). Respondent submits this standard

of review also applies to FJDCR 3.8, which contains substantially similar language. As discussed herein, Appellant never opposed Respondent's Motion to Void Deeds which forms the basis of the January 19th Order and therefore the District Court properly granted Respondent's Motion pursuant to DCR 13(3) and FJDCR 3.8.

VII. SUMMARY OF ARGUMENT

This is Appellant's fourth appeal to this Court in this action. The previous three appeals were failures and the last one was dismissed because this Court lacked jurisdiction over the post-judgment order Appellant appealed from because – like the Order at issue in this appeal - it was not a special order that could be appealed pursuant to NRAP 3A(b)(8).

Appellant now comes before this Court asking the Court to overturn Honorable Judge Russell's January 19th Order on the basis that Respondent does not have a valid judgment lien pursuant to NRS 17.150(4). Appellant never opposed Respondent's Motion to Void Deeds and never raised the brand new NRS 17.150(4) issue in the District Court.

This Court should reject Appellant's appeal out of hand because (1) the January 19th Order is not a "special order" pursuant to NRAP 3A(b)(8), (2) Appellant never opposed Respondent's Motion to Void Deeds that is the basis for

the January 19th Order, and (3) Appellant's new NRS 17.150(4) arguments should not be considered for the first time on appeal.

In the event this Court does not dismiss Appellant's appeal out of hand – which it should – this Court should find that Appellant's NRS 17.150(4) arguments are without merit because Respondent has a valid and existing judgment lien against Appellant pursuant to NRS 17.150(2).

Like Appellant's three other unsuccessful appeals, Appellant's fourth appeal should be rejected.

VIII. ARGUMENT

A. THIS COURT LACKS JURISDICTION OVER THIS APPEAL BECAUSE THE DISTRICT COURT'S ORDER GRANTING RESPONDENT'S MOTION TO VOID DEEDS IS NOT A SPECIAL ORDER PURSUANT TO NRAP 3A(B)(8)

This Court has limited jurisdiction, and may only consider direct appeals authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). The burden is on the party seeking to invoke the jurisdiction of the Nevada Supreme Court to establish the Nevada Supreme Court does in fact have jurisdiction. *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001).

Appellant claims that the District Court's order is appealable as a special order entered after final judgment pursuant to NRAP 3A(b)(8). Specifically, Appellant states the following on page 1 of his Opening Brief:

> This Court has jurisdiction under NRAP 3A(8) (*sic*) which establishes the appealability of special orders of the District Court after final judgment. Here, the District Court's entry of a default judgment against Appellant was a final judgment. Respondent moved post-judgment to execute on the default judgment, making the granting of that order appealable under the rule. *See also*, *Rawson v. Ninth Judicial Dist. Court of State*, 133 Nev. Adv. Op. 44, 396 P.3d 842 (2017) citing Osman v. Cobb, 77 Nev. 133, 360 P.2d 258 (1961) ("In Nevada, void orders have historically been appealable. . . This court . . . has since its beginning held that an appeal from a void judgment might properly be considered and acted upon."). *See also Smith v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256-257, 167 P. 2d 648, 651 (1946) (holding that void orders may be collaterally attacked at any time).

Opening Brief p. 1.

Appellant's basis for this Court's jurisdiction is therefore: (1) orders that are directly or indirectly related to postjudgment execution are automatically appealable under NRAP 3A(b)(8); and (2), since the District Court's June 24, 2013 default judgment is allegedly "void," a Notice of Appeal can be filed at any time. Appellants' jurisdictional arguments are meritless for the following reasons:

First, NRAP 3A(b)(8) does not state that postjudgment execution orders are automatically appealable under that Rule. Instead, NRAP 3A(b)(8) states that a "special order entered after final judgment" may be appealed. It important to note that no statute or court rule appears to allow for an appeal from an order that relates to the mere enforcement of a prior judgment. On March 4, 2016 <u>in this same case</u>, this Court dismissed Appellant's third appeal to the Nevada Supreme Court (Supreme Court No. 69372) because this Court lacked jurisdiction over the District Court's order requiring Appellant to appear for a debtor's examination and produce documents. 13 ROA 3154-55. This Court found that the District Court's

order, which involved postjudgment execution efforts, was not a special order under NRAP 3A(b)(8). *Id.* As such, Appellant's re-hashed claim that orders involving postjudgment execution are automatically appealable pursuant to NRAP 3A(b)(8) should be rejected.

To qualify as a special order pursuant to NRAP 3A(b)(8), the order "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 920, 59 13.3d 1220, 1225 (2002). In *Gumm v. Mainor*, this Court concluded that a postjudgment order that distributed a significant portion of the appellant's judgment proceeds to certain lienholders was appealable because it altered his rights under the final judgment. *See id.* at 920, 59 P.3d at 1225. In contrast, this Court noted that a postjudgment order directing a portion of the appellant's judgment proceeds to be deposited with the District Court clerk pending resolution of the lien claims was not appealable. *See id.* at 914, 59 P.3d at 1225.

The June 24, 2013 Default Judgment entered for Respondent against Appellant was a money judgment for $1,495,775.74. 6 ROA 1251-57. Respectfully, Appellant did not and does not have any "rights" under that Judgment, just the obligation to compensate Respondent. *Id.* Furthermore, the District Court's Order granting Respondent's Motion to Void Deeds did not affect Appellant's imaginary and nonexistent "rights" under the Default Judgment, but

simply prevented Appellant from continuing to fraudulently dispose of his assets in order to avoid Respondent's valid and existing Default Judgment against him. 15 ROA at 3524-28. Thus, because the District Court's January 19th Order did not affect the rights incorporated in the Default Judgment, it is not appealable as a special order entered after final judgment. This Court therefore lacks jurisdiction over Appellant's appeal.

Second, Appellant's argument that the District Court's June 24, 2013 Default Judgment can be attacked at any time because it is allegedly "void" is wholly without merit. Appellant's first two appeals to this Court failed to set aside the Default Judgment. *See supra.* It is much too late now to file a Notice of Appeal regarding the Default Judgment entered in 2013 that has been upheld by this Court in Appellant's first appeal. The Default Judgment is not void. To the contrary, it is valid and enforceable and Appellant should not be provided another chance to try to set it aside.

For all of the foregoing reasons, Appellant has failed to meet his burden to establish that this Court has jurisdiction over this appeal. *Moran*, 117 Nev. at 527, 25 P.3d at 899. As such, Appellant's appeal should be rejected because this Court lacks jurisdiction.[4]

[4] In the event jurisdiction exists pursuant to NRAP 3A(b)(8), this case would not fall under any of the categories of NRAP 17(a) but would instead fall under the purview of NRAP 17(b)(7) because it is an appeal from a postjudgment order in a

B. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY GRANTING RESPONDENT'S MOTION TO VOID DEEDS BECAUSE APPELLANT NEVER OPPOSED IT

Appellant never opposed Respondent's Motion to Void Deeds. *See* ROA. FJDCR 3.8 states that "failure of an opposing party to timely file a memorandum of points and authorities shall constitute a consent to the granting of the motion." Similarly, DCR 13(3) states that the "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." That is exactly what happened here – Respondent filed his Motion to Void Deeds, served it upon Appellant, Appellant never opposed it, and the District Court granted Respondent's Motion. As such, the January 19th Order should be affirmed.

C. APPELLANT SHOULD NOT BE ALLOWED TO RAISE HIS NRS 17.150(4) ARGUMENT FOR THE FIRST TIME ON APPEAL

Appellant never raised his NRS 17.150(4) argument in the District Court. *See* ROA. The first time Appellant raised the issue in this case was when he filed his Notice of Appeal on February 25, 2021. 15 ROA 3539-44. Even though Appellant never raised his NRS 17.150(4) argument in the case below, he asks this

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civil case. No credible argument can be made that NRAP 17(a)(12) applies because the Appellant's Motion to Void Deeds in the District Court was never opposed, hence, the applicability or effect of NRS 17.150(4) is not a proper issue on appeal. As such, the Court of Appeals would be the proper forum for this appeal, not the Nevada Supreme Court as Appellant alleges.

Court to decide whether Respondent properly created a valid judgment lien pursuant to NRS 17.150(4), and whether the First Judicial District Court wrongfully relied on such lien in issuing its January 19th Order.[5] *Id.* This Court should not accept Appellant's invitation to review an issue that was never raised in the court below.

The law is clear that an issue may not be raised for the first time on appeal. *Kahn v. Dodds (In re AMERCO Derivative Litigation)*, 127 Nev. 196, 217 n.6, 252 P.3d 681, 697 n.6 (2011) (declining to consider an issue raised for the first time on appeal), citing *Mainor v. Nault*, 120 Nev. 750, 770 n. 42, 101 P.3d 308, 321 n. 42 (2004) (same); *Montesano v. Donrey Media Group*, 99 Nev. 644, 650 n.5, 668 P.2d 1081, 1085 n.5 (1983); *Tupper v. Kroc*, 88 Nev. 146, 151, 494 P.2d 1275, 1278 (1972). If Appellant was allowed to raise his NRS 17.150(4) argument for the first time on appeal, it would render the foregoing authority meaningless, and would eviscerate the requirements to oppose motions set forth in FJDCR 3.8 and DCR 13(3).

D. EVEN IF THIS COURT CONSIDERS APPELLANTS' NRS 17.150(4) ARGUMENTS THAT WERE NEVER RAISED IN THE CASE BELOW – WHICH IT SHOULD NOT – THE ARGUMENTS MUST FAIL

Appellant argues that Judge Russell's January 19th Order should be set aside

[5] The January 19th Order does not mention a judgment lien at all. 15 ROA 3524-3528.

because the Order is allegedly based on a judgment lien that was allegedly not perfected by Respondent because Respondent did not record an NRS 17.150(4) affidavit at the same time he recorded his Default Judgment. Opening Brief, p. 6. Appellant further argues that the District Court erred in entering the January 19th Order because it was on notice of the USBC's – void - Interlocutory Order that was disclosed in Respondent's Affidavit of Renewal on May 2, 2019.[6] Opening Brief, pp. 6-7. Again, Appellant never opposed Respondent's Motion to Void Deeds, and these arguments were never raised in the case below. As such, they should not be considered now. Even if they are considered, the arguments are meritless for a number of reasons.

First, Appellant's argument that the District Court erred in granting Respondent's Motion to Void Deeds because the District Court was on notice of the USBC's Interlocutory Order when it entered the January 19th Order is specious because the USBC's Interlocutory Order was ruled void *ab initio* and all of the BK proceedings were dismissed on October 14, 2020, more than three (3) months before the January 19th Order was entered.[7] 15 ROA 3516-18. Because the

[6] It is important to note that this Court denied Appellant's Request for Judicial Notice to submit as part of this appeal a copy of the void Interlocutory Order entered in the Bankruptcy Court. Appellant's reliance upon the void Interlocutory Order of the Bankruptcy Court should be disregarded.

[7]As a matter of law, dismissal of a bankruptcy case "vacates any order, judgment, or transfer ordered … and revests the property of the estate in the entity in which

Interlocutory Order is void *ab initio*, it has no legal effect, despite Appellant's attempt to resurrect it in his failed Motion to Take Judicial Notice and in his Opening Brief. *See Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (addressing a complaint); *Nev. Power Co. v. Metro. Dev. Co.*, 104 Nev. 684, 686, 765 P.2d 1162, 1163-64 (1988) (addressing a statute); *see also* Void Ab Initio, Black's Law Dictionary (11th ed. 2019) ("[n]ull from the beginning, as from the first moment when a contract is entered into.").

Second, Respondent properly secured the properties identified in the January 19th Order by recording the Default Judgment in counties including Washoe County on August 16, 2013, Lyon County on August 16, 2013, Churchill County on August 16, 2013, and Clark County on August 20, 2013. 14 ROA 3498-99; 15 ROA 3548-49. Respondent undisputedly recorded his Default Judgment against Appellant, thereby creating a lien securing those properties on the dates recorded pursuant to NRS 17.150(2).

NRS 17.150(2) expressly states that a "transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or court of the United States in and for the District of

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such property was vested immediately before the commencement of the case." 11 U.S.C. § 394(b)(2-3). Thus, Judge Beesley's Order rendering the Interlocutory Order in the adversary proceeding void is typical upon dismissal of the bankruptcy. Appellant had ample opportunity to appeal Judge Beesley's Order but did not.

Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, ***and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from the execution in that county***, owned by the judgment debtor at the time or which the judgment debtor may afterward acquire, until the lien expires." *Id.* (emphasis added). NRS 17.150(2) is clear and unambiguous: the lien comes into existence and therefore secures the real property upon the recordation of the judgment. This conclusion is supported by case law interpreting NRS 17.150(2). *See Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) ("NRS 17.150(2) creates a lien on a debtor's real property in a particular county when a judgment is recorded in that county.").

Despite the clear language of NRS 17.150(2) and the foregoing authority, Appellant argues that if a party does not also record an affidavit in accordance with NRS 17.150(4), the lien created by NRS 17.150(2) is somehow nullified. As a threshold matter, nothing in 17.150(4) or any other statute or case expressly states that the filing of a 17.150(4) affidavit is a condition precedent to the creation of a lien pursuant to NRS 17.150(2). Furthermore, Appellant's arguments violate the principles of statutory construction. "It is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one

another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *S. Nevada Homebuilders Ass'n v. Clark Ciy.,* 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).

Interpreting NRS 17.150(4) to be a condition precedent for the existence of a valid lien would render the express and unambiguous language of NRS 17.150(2) without meaning. The Nevada Legislature could have added language to NRS 17.150 that made the filing of an NRS 17.150(4) affidavit a condition to the creation of a lien. It did not. Similarly, the Nevada Legislature could have created a remedy in the Nevada Revised Statutes that addressed the instance where a party does not file the 17.150(4) affidavit. It did not. There is nothing in the Nevada Revised Statutes that contains a penalty for failing to comply with NRS 17.150(4), or a right of action for a judgment debtor to dispute the validity of the lien created pursuant to NRS 17.150(2). *See* NRS 17.150.

The bottom line is that NRS 17.150(4) does not state that the affidavit is required to secure a lien upon the property. All that is required to create a judgment lien upon real property is to record a copy of the judgment, which Respondent did. NRS 17.150(2). Therefore, Respondent properly perfected judgment liens upon the properties and Appellant's argument must fail as a matter of law.

(1) EVEN IF APPELLANT COULD RAISE ITS NRS 17.150(4) ARGUMENT FOR THE FIRST TIME ON APPEAL, AND EVEN IF APPELLANT COULD PROPERLY CITE THE UNPUBLISHED DECISION *SECURED HOLDINGS, INC. V. EIGHTH JUDICIAL DIST. COURT OF STATE* (NEV. APP. 2017, NO. 73158), *SECURED HOLDINGS* SUPPORTS RESPONDENT, NOT APPELLANT

Appellant cites to the unpublished Nevada Court of Appeal decision *Secured Holdings, Inc. v. Eighth Judicial Dist. Court of State*, 2017 Nev. App. Unpub. LEXIS 468, 2017 WL 3013065 (Nev. Ct. App. July 11, 2017) (unpublished) in support of its argument that an NRS 17.150(4) affidavit is required to create an enforceable judgment lien against real property. Opening Brief, pp. 8-9. *Secured Holdings* is an unpublished decision of the Court of Appeals that cannot be used in support of Appellant's arguments. NRAP 36(c)(3). With that said, even if *Secured Holdings* was considered, that case supports Respondent, not Appellant.

Secured Holdings involved a petition for writ of mandamus in which the petitioner asked the Court of Appeals[8] to compel the district court to grant petitioner's motion to dismiss the underlying action. *Id.*, 2017 Nev. App. Unpub. LEXIS 468, 2017 WL 3013065 **1-3. Specifically, the petitioner alleged that NRS 17.150(4) requires a judgment creditor to file an affidavit at the same time that it records a judgment for the purpose of creating a lien upon the real property

[8] The Supreme Court transferred the issue involving NRS 17.150(4) to the Court of Appeals. *See* Case No. 73158/73158-COA, June 7, 2017 Notice of Transfer to Court of Appeals ("Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals.").

of the judgment debtor. *Id.* And, since the judgment creditor failed to file the required affidavit, its lien was allegedly invalid and the underlying case should be dismissed. *Id.*

In denying the petitioner's writ of mandamus on the alleged failure to comply with NRS 17.150(4), the Nevada Court of Appeals acknowledged that the district court properly held that an NRS 17.150(4) was not a condition precedent to the creation of a valid lien and the statute does not provide that the lien is invalid if the NRS 17.150(4) affidavit is not filed. *Id.*, citing NRS 17.150(2). This is the exact argument advanced by Respondent here. Appellant's arguments should therefore be rejected.

(2) EVEN IF APPELLANT COULD RAISE ITS NRS 17.150(4) ARGUMENT FOR THE FIRST TIME ON APPEAL, NRS 17.150 AND NRS 17.214 ARE NOT ANALOGOUS AND LEVEN V. FREY DOES NOT INVALIDATE RESPONDENT'S VALID AND EXISTING LIEN AGAINST APPELLANT

Appellant wrongly argues that the recording requirements of NRS 17.214 and NRS 17.150 are analogous. Appellant then avers that Respondent's alleged failure to record an affidavit pursuant to NRS 17.150(4) renders the Respondent's judgment lien unperfected and unenforceable. Opening Brief, pp. 9-17. Appellant is wrong for a number of reasons stated below. Before addressing the Appellant's legal arguments, Appellant's misrepresentations of fact must be corrected.

On page 11 of Appellant's Opening Brief, Appellant falsely characterizes

Respondent's filing of his Affidavit of Judgment on March 11, 2021 as an alleged admission that "he had failed to comply with the statute and [attempted] a retroactive cure for that failure" and that the Affidavit of Judgment was not "***recorded*** anywhere." *Id.* (emphasis is original). As a threshold matter, Respondent filed the Affidavit of Judgment because it was clear from Appellant's Notice of Appeal that he planned on advancing NRS 17.150(4) arguments for the first time on appeal that were never raised in the case below, but that were advanced, voided, and dismissed with prejudice in the bankruptcy proceedings in discussed above. *See supra*. The filing of the Affidavit of Judgment was not an admission that 17.150 requires the filing of such an affidavit to perfect a lien – it does not. *See supra.*

Furthermore, Appellant's statement to this Court that the Affidavit of Judgment was never "***recorded*** anywhere" is a false statement of fact. If Appellant had conducted any basic research before making this false statement, he would have discovered that Respondent in fact recorded the Affidavit of Judgment in Washoe County on April 20, 2021, Elko County on March 18, 2021, Lyon County on March 18, 2021, Churchill County on March 18, 2021, and Clark County on March 26, 2021. *See* Respondent's Motion to Take Judicial Notice filed concurrently herewith.

Next, Appellant argues that NRS 17.214 and NRS 17.150 are analogous

because they both describe the steps that a judgment creditor must follow in order to be entitled to the benefits of the two statutes, and that filing the affidavit identified in 17.150(4) is required step to perfect a lien under NRS 17.150. Opening Brief, p. 11. Appellant is wrong.

NRS 17.214(1) expressly states in subordinated sub-sections of Section (1) that each of the steps are required to renew a judgment: (a) filing an affidavit within 90 days before the judgment expires with specific information identified in NRS 17.214(1)(a)(1-9); and (b) recording the judgment within 3 days after filing pursuant to NRS 17.214(b). Section 17.214(2) confirms that the "filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit." *Id.*

In contrast to Section 17.214(1) that requires multiple steps to renew a judgment, NRS 17.150(2) specifically requires only one step to create a valid lien on real property: recording a judgment in a county recorder's office. It is undisputed that Respondent "strictly complied" with NRS 17.150(2) by recording the Default Judgment. As such, a lien on real property was properly created.

Because of the differences between NRS 17.214 and NRS 17.150, *Leven v. Frey* does not apply to invalidate Respondent's valid and existing judgment lien against Appellant. Neither does the unpublished case *Worsnop v. Karam*, 458 P.3d 353 (Nev. 2020) (unpublished), as Appellant argues. *See* Opening Brief, pp. 15-

16.

(3) THE LEGISLATIVE HISTORY OF NRS 17.150(4) DOES NOT SUPPORT APPELLANT'S MISINTERPRETATION OF NRS17.150(4)

Appellant argues that the legislative history of NRS 17.150(4) supports his argument that, despite the plain language of NRS 17.150(2) that brings a lien into existence upon recordation of a judgment, an NRS 17.150(4) affidavit must also be filed to create such a lien. Opening Brief, pp. 19-24. Appellant cites Senate Bill 186 to support this argument, and claims that SB 186 was enacted to benefit judgment debtors. *Id.* The legislative history of SB 186 does not support this position.

SB 186 was brought to the Legislature by the counties' recorders and was designed to help third party consumers, so that the valid lien created by NRS 17.150(2) would not encumber the property of the wrong person. *See* Minutes of the Meeting of the Assembly Comm. on Judiciary, 76th Leg. Sess. (statement of Carson City Recorder Alan Glover) (April 20, 2011). On April 20, 2011, Carson City Recorder Alan Glover testified as follows: "this bill is designed to help consumers." *Id.*

Contrary to Appellant's arguments, SB 186 was not designed to protect judgment debtors like Appellant who the judgment creditor knew owned the property at issue. *See* Minutes of the Meeting of the Assembly Comm. on

Judiciary, 76th Leg. Sess. (statement of Ms. Lora E. Myles of the Nevada County Recorders) (March 2, 2011). As Ms. Lora E. Myles of the Nevada County Recorders stated in that hearing on March 2, 2011, "[i]f the judgment creditors are going to file liens against property, they must know the person they are suing actually owns the property." *Id.* That is the case here – Respondent knew Appellant owned the given properties that he fraudulently transferred to avoid Respondent's valid and existing Default Judgment.

Respondent submits that if the Nevada Legislature intended for 17.150(4) to be a condition precedent for a valid lien, it would have expressly so stated. Again, the legislative history of SB 186 expressly states that it was designed to help consumers who allegedly had a lien wrongfully placed on their real property. *See* April 20, 2011 Assembly Committee on Judiciary Minutes. This commentary suggests that NRS 17.150(4) creates a duty, the breach of which could give rise to damages for perhaps a quiet title action (or similar) action brought by a party within the class of persons sought to be protected by the statute: a third party consumer – not a judgment debtor. A judgment debtor could not claim damages in any such a tort action because the judgment debtor's property is properly subject to the lien.

The legislative history does not support Appellant's argument that an NRS 17.150(4) affidavit is a condition precedent to the creation of a valid lien under

NRS 17.150(2). Rather, the commentary reflects an acknowledgement that recording the Judgment alone creates a valid lien, and NRS 17.150(4) is being created to clarify the identity of the judgment debtor (if known).

In light of the foregoing, Appellant's argument that the legislative history of NRS 17.150 establishes that a judgment creditor needs to record an affidavit of judgment pursuant to NRS 17.150(4) to create a valid judgment lien against real property should be rejected.

IX. CONCLUSION

The District Court's January 19th Order should be affirmed because this Court lacks jurisdiction over this appeal. Appellant never opposed Respondent's Motion to Void Deeds, Appellant never raised his NRS 17.150(4) argument in the District Court, and even if Appellant's NRS 17.150(4) argument was considered – which it should not be – Respondent complied with NRS 17.150 and therefore has a valid judgment lien over Appellant's real property.

WHEREFORE, Respondent prays that this Court affirm the ruling of the District Court.

DATED September 22, 2021

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2010 in 14 pt Times New Roman font.

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, Times New Roman font, and contains 6023 words (less than 14,000 words); or

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Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires

every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED September 22, 2021

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and on this 22nd day of September, 2021, I served the document entitled **RESPONDENT'S ANSWERING BRIEF** on the parties listed below in the manner described below:

☐ **VIA FIRST CLASS U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada.

☐ **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

☐ **VIA COURIER:** by delivering a copy of the document to a courier service for over-night delivery to the foregoing parties.

☒ **VIA ELECTRONIC SERVICE:** by electronically filing the document with the Clerk of the Court using the Court's Electronic Filing System which served the foregoing parties electronically.

/s/ Jeff Tillison
Employee of Brownstein Hyatt Farber Schreck, LLP