

1 **OMD**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 E. Sahara Ave #106

6 Las Vegas, Nevada 89104

7 Telephone No: (702) 386-7002

8 Facsimile No: (702) 386-9135

9 Email: Jmujje@mujjelawoffice.com

10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CELESTE LATHIGEE and MICHAEL
12 LATHIGEE, husband and wife,

CASE NO: A-20-824004-C

DEPT NO: XV

Plaintiffs,

vs.

Date of Hearing: February 8, 2021

13 BRITISH COLUMBIA SECURITIES
14 COMMISSION; DAVID HUFF; GREEN
15 VALLEY LOCK & SAFE, INC; DOES I
16 through III inclusive, ROES I through III,
17 inclusive,

Time of Hearing: 9:00 a.m.

Defendants.

OPPOSITION TO MOTION TO DISMISS

18
19
20 COME NOW Plaintiffs, CELESTE LATHIGEE and MICHAEL LATHIGEE, Husband
21 and Wife (hereinafter referred to as "Celeste" or "Lathigee" or collectively "the Lathigees"), who
22 hereby filed their Opposition to Defendant British Columbia Securities Commission (hereinafter
23 "BCSC") Motion to Dismiss.
24

25

26

27

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuije@muijelawoffice.com

1 This Opposition is made and based upon the Points and Authorities that follow, the
2 Declarations of John W. Muije and Michael P. Lathigee attached hereto and incorporated herein
3 by reference as Exhibits "1" and "7" respectively, the other exhibits submitted herewith, all of the
4 pleadings and documents on file herein and the arguments to be adduced at the hearing hereon.
5

6 DATED this 25th day of January, 2021.

7 JOHN W. MUIJE & ASSOCIATES

8
9 By: 

10 JOHN W. MUIJE, ESQ.
11 Nevada Bar No. 2419
12 1840 East Sahara Avenue, #106
13 Las Vegas, Nevada 89104
14 Telephone: 702-386-7002
15 Facsimile: 702- 386-9135
16 E-Mail: jmuije@muijelawoffice.com
17 Attorneys for Plaintiffs

18 **POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 The subject case was filed on behalf of Celeste and Lathigee seeking compensation and
22 redress for the wrongful conduct, *inter alia*, of the BCSC. It alleges abuse of process, conversion,
23 and intentional infliction of emotional distress. The BCSC has filed a Motion to Dismiss arguing
24 essentially claim preclusion predicated on a summary Minute Order issued in Case No. A-18-
25 771407-C (British Columbia Securities Commission vs. Michael P. Lathigee) hereinafter referred
26 to as the Judgment Action. A copy of the Minute Order is attached as Exhibit "A" to the BCSC
27 Motion to Dismiss.

28

1 As is explained in specific detail, however, in the Sworn Declaration of John W. Muije,
2 counsel for Plaintiffs, the subject Minute Order was summarily issued, with no motions formally
3 filed by the Court, primarily for the purposes of addressing earlier proper person claims of
4 exemption (Exhibit "1", Paragraph 23) and for resolving an argument regarding discovery issues
5 and the extent to which, if any, the BCSC could examine the paperwork and electronic files
6 seized from Lathigee (Exhibit "1", Paragraph 23).

8 For purposes of understanding the historical background, and in part to paint Mr. Lathigee
9 as a nefarious villain, the BCSC attached as Exhibit "D" to its Opposition a copy of the recent
10 Nevada Supreme Court decision sustaining Judge Escobar's original ruling in the Judgment Case
11 that Nevada could and would recognize the judgment deriving from the British Columbia
12 Administrative proceedings and register that as a foreign judgment under Nevada law. So that
13 the Court is not deceived, however, attached hereto as Exhibit "2" and by this reference
14 incorporated herein is a copy of a Petition for Rehearing filed contemporaneously herewith and
15 presently pending before the Supreme Court.

18 It should also be noted that the judgment case remains pending, and in fact there is a
19 formal hearing set regarding various properly filed claims of exemption and third-party claims to
20 occur on February 18, 2021. The Supreme Court proceedings, the propriety of the registration,
21 and various claims for exemption and third-party claims are properly lodged before Judge
22 Escobar and need not concern the Court here.

24 The issues in this case, however, involve additional parties (i.e. Celeste, Green Valley
25 Lock & Safe, David Huff) and involve the propriety of the execution and seizure undertaken in
26 the Judgment Case, which Lathigee and Celeste respectfully suggest violate the express
27 pronouncements of the Nevada Supreme Court, were illegal, unconstitutional, and led directly to
28

1 substantial documentable monetary loss and damages, as well as severe emotional distress and
2 health complications.

3
4 II.

5 UNCONSTITUTIONAL SEIZURE

6 This is a traditional tort case predicated upon the unlawful conduct by, *inter alia*, the
7 BCSC. If the Court finds that the BCSC was in fact guilty of an illegal and unconstitutional
8 execution and seizure, and/or engaged in an abuse of process, the BCSS will be liable for all
9 natural consequences and proximately cause damages, including the conversion, theft and
10 embezzlement of 56 one ounce gold coins, as alleged in the complaint.

11
12 It has long been established under Nevada Law that the wholesale *Carte Blanche* seizure
13 of personal property in aid of Civil Process are precluded by the Constitutional provisions against
14 unreasonable searches and seizures. *Luciano vs. Marshall*, 276, 278, 593 P.2d 751 (1979). A true
15 and correct copy of the *Luciano* decision is attached hereto as Exhibit "3". *Luciano* is a relatively
16 short decision, succinct and to the point. Apparently the Plaintiff in *Luciano* obtained an Order
17 allowing the Judgment Creditor/Plaintiff to enter the defendant's personal residence, search for
18 valuable property and *Carte Blanche* seize all of such property wholesale. As noted by the
19 Nevada Supreme Court:
20

21 "As regards the seizing of Petitioner's property, we reach
22 a different conclusion. The procedure was not authorized
23 by statute and it constituted a violation of Petitioner's
24 constitutional right to be freed from unreasonable search
and seizure."

25 *Luciano vs. Marshall, supra* at 95 Nev. 278. Emphasis Supplied

26 After the prior pronouncements, the Court fashioned a remedy and stated:
27

28 "It is ordered that a peremptory writ of mandate
issue commanding the respondent Sheriff of Clark
County to return the property of the Petitioner."

1 *Luciano vs. Marshall, supra* at 95 Nev. 278.

2 In the instant case, the conduct of the BCSC was even more egregious. Specifically,
3 Plaintiff attaches hereto Exhibit "4," constituting a copy of the subject Writ of Execution utilized
4 by the BCSC to undertake their *Carte Blanche* invasion of the Lathigee residence. It should also
5 be officially noted that there was no separate Order In Aid of Execution or any extraordinary
6 process utilized other than the custom drafted overly broad and unconstitutional writ that as
7 drafted by counsel for the BCSC.
8

9 *Inter alia*, the Court is referred to page 1 and 2 of Exhibit "4", the first paragraph,
10 whereby the BCSC has chosen to list just about anything conceivably imaginable as contents of a
11 residence to be seized. Even more egregious, on page 2 starting at line 11, is a unilaterally
12 inserted reference to NRS 31.920 whereby the Constable may take concealed property by force. It
13 should be noted that NRS 31.290 deals with the remedy of claim and delivery, and recovery of
14 property wrongfully distrained and kept from a Petitioner. That same paragraph authorizes the
15 Constable to break and enter etc. Notably, once again, this creative drafting was undertaken by
16 the BCSC, and its counsel, not the Court or any Judge.
17

18
19 Thereafter, in lieu of the Sheriff taking control of the items seized and selling them at a
20 public auction, as contemplated in the execution statute, the Writ further directs (in the last two
21 paragraphs on page 2), that the Constable deliver the files and documents to a copy service, and
22 that the electronic records be delivered to an IT facility for copying and imaging of such
23 electronic files! Once again, this is unilaterally drafted language created by the BCSC and its
24 counsel, and nothing authorized by a Nevada statute or by an extraordinary Order of any Judge or
25 any Court.
26
27
28

1 Very simply, the BCSC far exceeded the bounds of what is allowed under Nevada's post-
2 judgment remedies and execution statutes. Their seizure violated the clear mandate of *Luciano*
3 and cannot be countenanced of allowed to stand.

4
5 **III.**

6 **PRECLUSION**

7 Defendant BCSC's next and major claim is that somehow Judge Escobar in the Judgment
8 Case summarily and completely adjudicated all conceivable issues and claims that could arise
9 regarding the wrongful seizure alleged in the complaint in this action. First and most notably, the
10 Judgment Case was about registering a Canadian judgment in the United States, and whether the
11 State of Nevada would take cognizance of the same.

12 Subsequent to Judge Escobar ruling that it was subject to registration and could be
13 enforced, various post-judgment proceedings began. Issues arose as to claims of exemption and
14 the seizure of files, papers, and electronic data. As is discussed in Exhibit "1", the Declaration of
15 John Muije, an interim Minute Order resulting from a hearing on the original proper person
16 claims of exemption led to the issuance of a Minute Order.

17 Most notably, insofar as there were no motion, no opposition per se, no actual hearing, no
18 evidence taken, and no opportunity to fully brief the law, the Judge entered a Minute Order
19 mistaken in numerous respects. The purpose of the Minute Order was to resolve the "untimely"
20 claims of exemption, and address whether or not BCSC would be entitled to examine confidential
21 and private documents it had already seized. There was *dicta* in the Minute Order addressing
22 other concerns, which could be read as disapproval of Lathigees' claims herein. But the fact of
23 the matter is the actual claims were not fully asserted, nor was evidence taken and opportunity for
24 a full scale hearing thereon had. Let us now turn to applicable Nevada law regarding the legal
25 issue of claim and issue preclusion.
26
27
28

1 Defendant fails to establish that this action is barred under the doctrine of claim
2 preclusion. Under current Nevada law, for claim preclusion to apply, a defendant must
3 demonstrate that (1) there has been a valid, final judgment in a previous action; (2) the
4 subsequent action is based on the same claims or any part of them that were or could have been
5 brought in the first action; and (3) the parties or their privies are the same in the instant lawsuit as
6 they were in the previous lawsuit, or the defendant can demonstrate that he or she should have
7 been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason'
8 for not having done so.
9

10 *Weddell v. Sharp*, 131 Nev. 233, 235, 350 P.3d 80, 81 (2015):
11 Nevada recognizes "numerous exceptions to the doctrine of
12 claim preclusion."

13 *G.C. Wallace, Inc. v. Eighth Judicial Dist. Court*, 127 Nev. 701, 707, 262 P.3d 1135, 1139
14 (2011) (emphasis added). Importantly, Nevada law recognizes that, "generally, a party need not
15 assert every conceivable claim against every conceivable defendant in a single action." *Weddell*,
16 131 Nev. at 238, 350 P.3d at 83.
17

18 Reviewing the standard set forth in *Weddell*, the judgment case involves substantially
19 different issues from the present. Nor is the present action based on claims that were fully
20 addressed and adjudicated before the Court in the Judgment Case, nor were the parties identical
21 or the same,
22

23 The fact of the matter is that Judge Escobar touched upon some of the issues relevant to
24 this case, but in fact the parties STAYED further proceedings in that case pending the outcome of
25 the Supreme Court appeal, which stay has now been dissolved. Judge Escobar is proceeding to
26 resolve filed claims of exemption and third-party claims.
27
28

1 Very simply, however, a limited summary ruling undertaken without appropriate due
2 process and an opportunity to full litigate does NOT invoke the issues of claim or issue
3 preclusion, and does not in any way bar this lawsuit.

4
5 IV.

6 CONCLUSION

7 This case was brought as a result of the egregious misconduct undertaken by the BCSC.
8 The BCSC, having had their Canadian judgment ratified and registered under Nevada law in the
9 prior case, unilaterally took action as judge, jury and executioner. It issued a writ suggesting that
10 it had a right to undertake extraordinary remedies above and beyond anything authorized in the
11 relevant Nevada statutes or under Nevada law. It did NOT obtain an Order In Aid of Execution,
12 and in fact exceeded the bounds of what was permissible or acceptable under Nevada law,
13 flaunting the mandate and direction that *Carte Blanche* seizures in the context of civil judgment
14 enforcement are unconstitutional and prohibited under Nevada law. *Luciano vs. Marshall, supra*.

15 The BCSC has failed to enunciate any cogent reason why this Court cannot and should
16 not adjudicate the Plaintiff's claims regarding abuse of process, conversion, and intentional
17 infliction of emotional distress. The claims have not been previously fully litigated, nor have
18 they been resolved.
19
20
21
22
23
24
25
26
27
28

1 This Court clearly has jurisdiction over the parties, clearly has jurisdiction over the
2 subject matter, and can and should proceed to summarily deny BCSC's Motion to Dismiss and
3 order the parties to flesh out their claims through discovery and preparation for the ultimate trial.
4

5 DATED this 25th day of January, 2021.

6 JOHN W. MUIJE & ASSOCIATES

7
8 By: 

9 JOHN W. MUIJE, ESQ.

10 Nevada Bar No. 2419

11 1840 East Sahara Avenue, #106

12 Las Vegas, Nevada 89104

13 Telephone: 702-386-7002

14 Facsimile: 702- 386-9135

15 E-Mail: jmuije@muijelawoffice.com

16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuije@muijelawoffice.com

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on
4 the 25th day of January 2021, I caused to be served a true and correct copy of the foregoing,

5 **OPPOSITION TO MOTION TO DISMISS**, in the following manner:

- 6 ☐ by placing a copy of the same for mailing in the United States mail, with first class
7 postage prepaid addressed as follows; and/or
- 8 ☒ by electronically filing with the Clerk of the Court via the Odyssey E-File
9 and Serve System.
- 10 ☐ by placing a copy of the same for mailing in the United States mail, with first class
11 postage prepaid marked certified return receipt requested addressed as follows.
12 and/or
- 13 ☐ pursuant to EDCR 7.26, by causing a copy to be sent via facsimile
14 at the number(s) listed below; and/or
- 15 ☐ by hand-delivering a copy to the party or parties as listed below:

16 Matthew Pruitt, Esq.
17 **ALVERSON TAYLOR & SANDERS**
18 6605 Grand Montecito Pkwy, #200
19 Las Vegas, NV 89149
20 Telephone: (702) 384-7000
21 Email: efile@alversontaylor.com
22 *Attorneys for Plaintiffs*

23
24
25
26
27
28

An Employee of JOHN W. MUIJE & ASSOCIATES

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuije@muijelawoffice.com

EXHIBIT “1”

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

1 **DECL**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 E. Sahara Ave #106
6 Las Vegas, Nevada 89104
7 Telephone No: (702) 386-7002
8 Facsimile No: (702) 386-9135
9 Email: Jmuije@muijelawoffice.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CELESTE LATHIGEE and MICHAEL
12 LATHIGEE, husband and wife,

Plaintiffs,

vs.

13 BRITISH COLUMBIA SECURITIES
14 COMMISSION; DAVID HUFF; GREEN
15 VALLEY LOCK & SAFE, INC; DOES I
16 through III inclusive, ROES I through III,
17 inclusive,

Defendants.

CASE NO: A-20-824004-C

DEPT NO: XV

Date of Hearing: February 8, 2021

Time of Hearing: 9:00 a.m.

18 **SWORN DECLARATION OF JOHN W. MUIJE REGARDING**
19 **PLAINTIFF'S MOTION TO DISMISS**

20 STATE OF NEVADA)
21) ss.:
22 COUNTY OF CLARK)

23 Your declarant being first duly sworn upon oath, under penalty of perjury states and
24 affirms as follows:

25 1. My name is John W. Muije, Esq. and I am counsel for the Plaintiffs herein,
26 Michael P. Lathigee (hereinafter "Lathigee") and Celeste Lathigee (hereinafter "Celeste"),
27 Husband and Wife.
28

1 2. I make this sworn declaration based upon personal knowledge, except as to items
2 stated on information and belief, and if called as a witness I could and would competently testify
3 thereto.

4
5 3. I have been practicing law in Nevada for over 40 years, and I have developed an
6 expertise and reputation for specializing in complex commercial and business litigation, with a
7 sub-specialty focusing on collection law and judgment enforcement.

8 4. I was first contacted by Lathigee on or about August 20, 2019, and immediately
9 filed a Notice of Appearance in the Dept. XIV "Judgment Case."

10
11 5. I personally have researched and written the brief in opposition to the British
12 Columbia Securities Commission (hereinafter "BCSC") Motion to Dismiss and am familiar with
13 its contents.

14 6. As discussed therein, in order to apply the principles of claim or issue preclusion,
15 the underlying merits must have been fully and fairly litigated, in accordance with due process,
16 and a final disposition reached on the merits.

17
18 7. Contrary to the representations of the BCSC, Judge Escobar in Case No. A-18-
19 771407-C (the "Judgment Case") never held any evidentiary hearing on the propriety of the
20 August 15, 2019 execution and seizure, and never had before her an actual motion or opposition
21 fully briefed.

22
23 8. She was essentially confronted with discovery issues, which resulted in her
24 "shooting from the hip" and issuing a minute order contained at Exhibit "A" to the BCSC Motion
25 to Dismiss, which contained several items of *dicta*, and further contained numerous inaccuracies
26 and mis-statements, some of which have been rectified, and some of which remain unresolved
27 and pending for the upcoming February 18th evidentiary hearing (scheduled to address various
28 claims of exemption and third-party claims filed by Lathigee and Celeste).

1 9. Recounting the procedural history, two days after formally appearing in this
2 action, I appeared before Judge Escobar on August 22, 2019, for a scheduled sworn debtor
3 examination under oath of Lathigee, at which I raised my contention that the August 15, 2019
4 seizure had improperly seized all of the relevant documents and papers necessary for a sworn
5 examination. A true and correct copy by the transcript is attached to the Opposition as Exhibit
6 “2”.

8 10 As the Court will note, the court expressed grave concern in response to the
9 seizure of Lathigee’s documentation, at least preliminarily ordering that everything be delivered
10 to chambers and that the court intended to review it. See Exhibit “2”, page 6, lines 19-24.

12 11. In any event, the parties wrote letters to the Court regarding the issue, and the
13 matter again came before the Court on August 27, 2019, the date on which proper person claims
14 of exemption were set to be heard.

16 12. The Court took under the advisement those proper person claims of exemption as
17 pending before the Court on that date, and continued the matter until September 5, 2019, which
18 hearing was to be vacated in the event that the Court rendered a ruling.

19 13. It should be noted that on that date the only issue properly pending and before the
20 Court were the preliminary improper and ill-advised claims of exemption previously filed in
21 proper person by the Lathigee family (as to prior bank writs) on or about August 6, 2019, prior to
22 retaining counsel.

24 14. I recall the parties being advised that the Court would issue a decision, and that no
25 appearance would be necessary on September 5, 2019, and in fact BCSC Exhibit “A” appears to
26 be a true and correct copy of the Minute Order rendered by the Court regarding the matters before
27 her on August 27, 2019.

1 15. As noted previously, however, the Minute Order is far ranging and erroneous in
2 many regards.

3 16. Even the Court noted, in Exhibit “A”, “no motions were formally filed with the
4 Court, the Court requested the parties to submit an email explaining the surrounding
5 circumstances. . .”

6 17. As a first major erroneous conclusion, the Court noted that *Luciano vs Marshall*,
7 95 Nev. 276 (1979) was a criminal case (Exh “A” page 2, ca. paragraph 6”), which it decidedly is
8 not. See Exhibit “4” to Plaintiffs’ Opposition.

9 18. The Court then next indicated that the law required claims of exemption to be filed
10 by August 8, 2019, which was based on an erroneous conclusion that because the seizure writ
11 was issued on July 30, 2019, that the Defendants immediately received notice of the same.

12 19. In point of fact, a defendant does not receive notice until the day the actual
13 execution and seizure occurs, i.e., August 15, 2019, pursuant to NRS 21.075. Query how a party
14 can file a claim of exemption before it is even notified that an execution or seizure is forthcoming
15 or likely to occur!?

16 20. The Court reasoned that because claims of exemption were due by August 8th
17 based on the Writ issued July 30th, and that because this was a civil matter, the seizure was
18 somehow not violating the Constitution. See Exhibit “A” page 4, paragraph 3. The dates, timing
19 and characterization of the *Luciano* decision are all clearly erroneous and in error.

20 21. Finally, and the primary reason why the Court was even considering the matter
21 (i.e. discovery issues) the Court addresses in the last paragraph on page 4 (of Exh “A”) her
22 specific concerns regarding privilege and steps taken to protect information to which the BCSC
23 was not entitled.

1 22. Even a cursory review of the Minute Order and the surrounding facts discloses that
2 this was not a matter fully and fairly litigated, with notice and opportunity to be heard, and full
3 due process afforded the parties.

4 23. It was a summary ruling focused primarily upon whether or not the erroneous
5 early claims of exemption filed in proper person should be allowed (they were not due to the
6 alleged untimely nature), and to what extent, if any, the BCSC could delve into the paperwork
7 and electronics obtained during the seizure.

8 24. It was not a litigated, noticed, full evidentiary proceeding with a decision on the
9 merits.
10

11 25. In fact, most of the decisions rendered by Judge Escobar pursuant to Exhibit "A"
12 have since been rectified and changed, i.e. the return of the papers and electronics, the filing by
13 Lathigee and Celeste of their proper claims of exemption and third-party claims, and the
14 scheduling of an appropriate evidentiary hearing to decide the same.

15 26. This lawsuit was filed because of what I believe, (having practiced law for 40
16 years and focusing particularly on the specialty area of post-judgment remedies and collections),
17 to a reasonable degree of legal probability, to have been an improper illegal and abusive
18 execution directly in contravention of the Supreme Court pronouncements in *Luciano vs.*
19 *Marshall*.

20 27. This Court clearly has jurisdiction, should deny the Motion to Dismiss, and should
21 allow the parties to litigate the propriety of the BCSC conduct on its merits, after all parties have
22 had an opportunity to engage in appropriate and proper discovery.
23

24
25
26
27
28

JOHN W. MUIJE, ESQ.

EXHIBIT “2”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

vs.

BRITISH COLUMBIA SECURITIES
COMMISSION,

Respondent.

Case No. 78833

APPELLANT'S PETITION FOR REHEARING

JOHN W. MUIJE & ASSOCIATES
JOHN W. MUIJE, ESQ.

Nevada Bar No. 2419

1840 E. Sahara Ave #106

Las Vegas, Nevada 89104

Telephone: (702) 386-7002

Facsimile: (702) 386-9135

Jmuije@muijelawoffice.com

Jay D. Adkisson, Esq.

Nevada Bar No. 12546

RISER ADKISSON LLP

6671 South Las Vegas Blvd., Suite 210

Las Vegas, Nevada 89119

Telephone: (702) 953-9617

Facsimile: (877) 698-0678

jay@jayad.com

Micah S. Echols, Esq.

Nevada Bar No. 8437

CLAGGETT & SYKES LAW FIRM

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

Telephone: (702) 655-2346

Facsimile: (702) 655-3763

micah@claggettlaw.com

Attorneys for Appellant, Michael Patrick Lathigee

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL ARGUMENT	2
A.	STANDARDS FOR REHEARING.....	2
B.	THIS COURT HAS OVERLOOKED OR MISAPPREHENDED KEY FACTS AND MANY OF THE LEGAL HOLDINGS PRESENTED BY LATHIGEE, SUCH THAT THE COURT SHOULD CONCLUDE THAT BCSC’S FOREIGN-COUNTRY JUDGMENT IS, IN FACT, A PENALTY AND, THUS, NOT ENFORCEABLE IN NEVADA.....	3
C.	THIS COURT HAS ALSO OVERLOOKED OR MISAPPREHENDED THE COMPLETE ANALYSIS OF THE PUBLIC VERSUS PRIVATE INTEREST ARGUMENT PRESENTED BY LATHIGEE, SUCH THAT BCSC’S FOREIGN- COUNTRY JUDGMENT IS BASED UPON A PUBLIC INTEREST AND IS NOT ENFORCEABLE IN NEVADA	6
D.	THIS COURT HAS OVERLOOKED OR MISAPPREHENDED THAT IN ORDER TO TAKE ADVANTAGE OF THE “EQUITY” EXCEPTION IN <i>LIU</i> , BCSC’S JUDGMENT CANNOT EXCEED THE GAINS WHEN BOTH THE RECEIPTS AND PAYMENTS ARE TAKEN INTO ACCOUNT, WHICH IS A FACTUAL ISSUE THAT MUST BE DETERMINED ON REMAND.....	8
III.	CONCLUSION	9

TABLE OF AUTHORITIES

CASES

<i>Am. Cas. Co. of Reading, Pa. v. Hotel and Rest. Employees and Bartenders Intern. Union Welfare Fund</i> , 113 Nev. 764, 942 P.2d 172 (1997)	3
<i>Barry Levinson, P.C. v. Milko</i> , 124 Nev. 355, 184 P.3d 378 (2008)	9
<i>City of Oakland v. Desert Outdoor Adver., Inc.</i> , 127 Nev. 533, P.3d 48 (2011)	2, 7
<i>Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)</i> 2001 SCC 37	4
<i>Huntington v. Attrill</i> , 146 U.S. 657 S.Ct. 224 (1892)	1, 6, 7
<i>Jain v. McFarland</i> , 109 Nev. 465, 851 P.2d 450 (1993)	4
<i>J.P. Morgan Securities, Inc. v. Vigilant Insurance Company</i> , 166 A.D.3d 1, 84 N.Y.S.3d 436 (N.Y. App. Div. 2018)	5
<i>Kokesh v. SEC</i> , 581 U.S. ___, 137 S.Ct. 1635 (2017)	5, 8
<i>Law Offices of Barry Levinson, P.C. v. Milko</i> , 124 Nev. 355, 184 P.3d 378 (2008)	2, 9
<i>Liu v. SEC</i> , 591 U.S. ___, 140 S.Ct. 1936 (2020)	2, 8, 9

RULES

NRAP 31(e)	2, 8
------------------	------

NRAP 401

NRAP 40(c)(2)2

OTHER AUTHORITIES

§ 161(1)(g) of the British Columbia Securities Act3, 4, 5, 7

I. INTRODUCTION

Defendant/Appellant, Michael Patrick Lathigee (“Lathigee”), petitions this Court pursuant to NRAP 40 to rehear its opinion issued on December 10, 2020, which is attached as **Exhibit 1**. In its opinion, the Court recognizes the distinction between a remedial judgment, which is enforceable in Nevada as a foreign-country judgment, and a disgorgement or penalty judgment, which is not enforceable in Nevada as a foreign-country judgment. *Id.* at 3. However, the Court overlooks or misapprehends the key facts and many of the legal holdings presented by Lathigee to reach the conclusion that the foreign-country judgment of \$21.7 million (CAD) held by Respondent, British Columbia Securities Commissioner (“BCSC”), is not a penalty, such that it can be enforced in Nevada. Lathigee urges this Court to review the overlooked facts and law to grant rehearing on the initial basis that BCSC’s foreign-country judgment is, in fact, a penalty and, thus, not enforceable in Nevada.

Although the Court mentions *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224 (1892) in its opinion (Op. at 5-6), the Court overlooks or misapprehends the complete analysis of the public versus private interest argument presented by Lathigee. Appellant’s Opening Brief (“AOB”) at 20-29. Indeed, upon considering the overlooked facts and law on this point, Lathigee asks this Court to grant rehearing since BCSC’s judgment is based upon a public interest and cannot be enforced in

Nevada according to the Court's own precedent in *City of Oakland v. Desert Outdoor Adver., Inc.*, 127 Nev. 533, 267 P.3d 48 (2011).

At a minimum, the Court should vacate the District Court's summary judgment order and remand for further determinations based upon the Supreme Court's recent holdings in *Liu v. SEC*, 591 U.S. ___, 140 S.Ct. 1936 (2020). Even though *Liu* was decided after the completion of briefing in this Court, and only the subject of very brief supplemental authorities under NRAP 31(e), the Court's opinion analyzes *Liu* in some detail. Op. at 8, 10. However, the Court overlooks or misapprehends that in order to take advantage of the "equity" exception in *Liu*, BCSC's judgment cannot exceed the gains when both the receipts and payments are taken into account. *Id.* at 1949-50. Yet, this factual issue is not one that this Court is tasked to complete. See *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) ("[I]t is not the role of this court to reweigh the evidence."). Therefore, the Court should, at a minimum, vacate the District Court's summary judgment order in favor of BCSC and remand with instructions to apply *Liu* to the facts of this case, based upon supplemental briefing of the parties.

II. LEGAL ARGUMENT

A. STANDARDS FOR REHEARING

NRAP 40(c)(2) provides that the Court may consider rehearing in the following circumstances: (A) When the court has overlooked or misapprehended a

material fact in the record or a material question of law in the case, or (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. *See, e.g., Am. Cas. Co. of Reading, Pa. v. Hotel and Rest. Employees and Bartenders Intern. Union Welfare Fund*, 113 Nev. 764, 766, 942 P.2d 172, 174 (1997). In the instant case, rehearing is necessary to allow the Court to consider several factual and legal points that the Court misapprehended or overlooked.

B. THIS COURT HAS OVERLOOKED OR MISAPPREHENDED KEY FACTS AND MANY OF THE LEGAL HOLDINGS PRESENTED BY LATHIGEE, SUCH THAT THE COURT SHOULD CONCLUDE THAT BCSC'S FOREIGN-COUNTRY JUDGMENT IS, IN FACT, A PENALTY AND, THUS, NOT ENFORCEABLE IN NEVADA.

This Court has overlooked or misapprehended key facts and many of the legal holdings presented by Lathigee, such that the Court should conclude that BCSC's foreign-country judgment is, in fact, a penalty and, thus, not enforceable in Nevada.

According to § 161(1)(g) of the British Columbia Securities Act ("BCSA"), "If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following: ... (g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly,

as a result of the failure to comply or the contravention. . . .” 1 JAX78 at ¶ 1. Notably, BCSC’s judgment states that “Orders under sections 161(1) and 162 are protective and preventative, intended to be exercised to prevent future harm. *See Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.” 1 JAX61 at ¶ 5.

Importantly, the Court’s opinion relies upon Section 15.1 to take BCSC’s judgment outside the realm of § 161(1)(g). Op. at 8. However, Sections 15 and 15.1 are not mentioned in the sanctions decisions. 1 JAX10-16. Thus, the Court improperly relied upon the mere argument in BCSC’s answering brief, even though the BSCS judgment against Lathigee unequivocally applies a penalty. *See Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993) (“Arguments of counsel are not evidence and do not establish the facts of the case.”). Essentially, the Court adopted BCSC’s briefing proposition regarding Sections 15 and 15.1, while overlooking the critical distinction that the BCSC’s judgment is, indeed, a penalty. The claimed exception is an invention of counsel designed to enforce a foreign-country judgment that is otherwise unenforceable in Nevada.

Additionally, the Court has overlooked that the proper procedure for the BCSC to seek a remedial judgment against Lathigee by which any disgorged proceeds would go directly to investors would have been under §§ 155.1(a) or 157.1(i) or (j) *for the intended purpose of compensation*. Instead, the BCSC chose

to pursue the administrative hearing route of § 161(1)(g) *for the intended purpose of deterrence*. Essentially, the Court's opinion treats an administrative proceeding, lacking the procedural safeguards and due process of a formal court action, as an enforceable judgment, without recognizing that there are separate tracks in Canada by which a judgment can be obtained.

Significantly, *Kokesh v. SEC*, 581 U.S. ___, 137 S.Ct. 1635 (2017) is not limited to the facts of the case or the limitations issues, as the Court's opinion suggests. Op. at 9. Instead, "*Kokesh* has significance beyond the narrow issue of the statute of limitations because the Supreme Court analyzed the fundamental nature and purpose of the SEC's disgorgement remedy, which does not change into some different nature for purposes of insurance coverage." *J.P. Morgan Securities, Inc. v. Vigilant Insurance Company*, 166 A.D.3d 1, 10, 84 N.Y.S.3d 436, 443-44 (N.Y. App. Div. 2018). Within this context, the Court should consider Justice Sotomayor's discussion within *Kokesh* that because disgorgement orders, as in the instant case, are a penalty, any secondary purpose does remove the punitive nature of such disgorgement orders. 137 S.Ct. at 1644-45. Accordingly, Lathigee urges this Court to review the missed facts and law to grant rehearing on this initial basis that BCSC's foreign-country judgment is, in fact, and as a practical matter, a penalty and, thus, not enforceable in Nevada.

C. THIS COURT HAS ALSO OVERLOOKED OR MISAPPREHENDED THE COMPLETE ANALYSIS OF THE PUBLIC VERSUS PRIVATE INTEREST ARGUMENT PRESENTED BY LATHIGEE, SUCH THAT BCSC'S FOREIGN-COUNTRY JUDGMENT IS BASED UPON A PUBLIC INTEREST AND IS NOT ENFORCEABLE IN NEVADA.

This Court has also overlooked or misapprehended the complete analysis of the public versus private interest argument presented by Lathigee, such that BCSC's foreign-country judgment is based upon a public interest and is not enforceable in Nevada.

Although the Court mentions *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224 (1892) in its opinion (Op. at 5-6), the Court overlooks or misapprehends the complete analysis of the public versus private interest argument presented by Lathigee. AOB at 20-29. In *Huntington*, one private individual (Huntington) obtained a securities fraud judgment against another private individual (Attrill), wherein it was stated that “[w]rongs are divisible into two sorts or species: private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed ‘civil injuries;’ the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community, and are distinguished by the harsher appellation of ‘crimes and misdemeanors.’” 146 U.S. at 668-69, 13 S.Ct. at 228 (citation omitted).

Just as in the instant case, this Court's prior application of *Huntington in City of Oakland* also involved "disgorged profits." Desert Outdoor had a billboard in Oakland which violated that city's municipal laws. Oakland sued Desert Outdoor for unlawful business practices, and obtained a judgment against Desert Outdoor for the following: (1) \$124,000 in statutory civil penalties, which were calculated by adding the statutory penalty of \$10,000, plus \$75 per day for 1,520 days of violation; (2) \$263,000 in disgorged profits; and (3) costs and attorney fees in the amount of \$92,353.75. *City of Oakland*, 127 Nev. at 536, 267 P.3d at 50.

Relying upon *Huntington*, the *City of Oakland* court concluded that "this penal judgment cannot be enforced in Nevada pursuant to *Huntington*," even though the judgment included \$263,000 in disgorged profits. 127 Nev. at 543, 267 P.3d at 54. This holding was based upon the fact that Oakland was suing for public wrongs, much like the BCSC sued Lathigee in the instant case under § 161(1)(g). *Id.* Specifically, this Court explained that "private parties could have sued Desert Outdoor pursuant to California Business and Professions Code section 5466." *City of Oakland*, 127 Nev. at 542, 267 P.3d at 54. Similarly, the non-party investors to BCSC's judgment could not have sued under § 161(1)(g). Therefore, since BCSC's foreign-country judgment is based upon a public interest, Lathigee asks this Court to grant rehearing and conclude that BCSC's judgment is not enforceable in Nevada.

D. THIS COURT HAS OVERLOOKED OR MISAPPREHENDED THAT IN ORDER TO TAKE ADVANTAGE OF THE “EQUITY” EXCEPTION IN *LIU*, BCSC’S JUDGMENT CANNOT EXCEED THE GAINS WHEN BOTH THE RECEIPTS AND PAYMENTS ARE TAKEN INTO ACCOUNT, WHICH IS A FACTUAL ISSUE THAT MUST BE DETERMINED ON REMAND.

This Court has overlooked or misapprehended that in order to take advantage of the “equity” exception in *Liu*, BCSC’s judgment cannot exceed the gains when both the receipts and payments are taken into account, which is a factual issue that must be determined on remand, and one which the lower court did not even consider heretofore.

Even though *Liu* was decided after the completion of briefing in this Court, and only the subject of very brief supplemental authorities under NRAP 31(e), the Court’s opinion analyzes *Liu* in some detail. Op. at 8, 10. In essence, this Court’s opinion (at 10) suggests that the holding of *Liu* limits *Kokesh* to its facts and allows a penalty judgment to be *ipso facto* construed as sounding in equity to avoid the entire penalty analysis. But, the Court’s opinion omits that the Supreme Court required certain factual issues to be determined before any such *sua sponte* conversion could take place, including the fact that BCSC’s judgment cannot exceed the gains when both the receipts and payments are taken into account. *Liu*, at 140 S.Ct. at 1949-50. However, the admission from BCSC’s own expert is that Lathigee received no such profits: “Certainly, I agree the impact of the remedy is significant

in that the order in question requires Mr. Lathigee to pay \$21,700,000 Canadian *without proof that Mr. Lathigee personally received that amount.*” 1 JAX132 (emphasis added). But, applying the facts of this case to *Liu* in the first instance is beyond the purview of this Court’s role as a reviewing court. *See Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) (“[I]t is not the role of this court to reweigh the evidence.”). Therefore, the Court should, at a minimum, vacate the District Court’s summary judgment order in favor of BCSC and remand with instructions to apply *Liu* to the facts of this case, based upon supplemental briefing of the parties.

III. CONCLUSION

In summary, Lathigee asks this Court to grant rehearing based upon any the following reasons: (1) this Court has overlooked or misapprehended key facts and many of the legal holdings presented by Lathigee, such that the Court should conclude that BCSC’s foreign-country judgment is, in fact, a penalty and, thus, not enforceable in Nevada; (2) this Court has also overlooked or misapprehended the complete analysis of the public versus private interest argument presented by Lathigee, such that BCSC’s foreign-country judgment is based upon a public interest and is not enforceable in Nevada; and (3) this Court has overlooked or misapprehended that in order to take advantage of the “equity” exception in *Liu*, BCSC’s judgment cannot exceed the gains when both the receipts and payments are

taken into account, which is a factual issue that must be determined on remand.

Lathigee respectfully requests that this Court grant rehearing for any of these reasons, either independently or collectively. If the Court orders BCSC to answer this petition for rehearing, Lathigee requests that the Court also grant him leave to file a reply.

Dated this 25th day of January 2021.

By /s/ John W. Muije

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
JOHN W. MUIJE & ASSOCIATES

Jay D. Adkisson, Esq.
Nevada Bar No. 12546
ADKISSON PLLC

Micah S. Echols, Esq.
Nevada Bar No. 8437
CLAGGETT & SYKES LAW FIRM

*Attorneys for Appellant,
Michael Patrick Lathigee*

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition 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 it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 40 or 40A because it is either:

☐ proportionally spaced, has a typeface of 14 points or more and contains _____ words; or

☒ does not exceed 10 pages.

Dated this 25th day of January 2021.

By /s/ John W. Muije

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
JOHN W. MUIJE & ASSOCIATES

*Attorneys for Appellant,
Michael Patrick Lathigee*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **APPELLANT'S PETITION FOR REHEARING** with the Nevada Supreme Court on the 25th day of January 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John W. Muije
Jay D. Adkisson
Jennifer Braster
John Naylor
Matthew Pruitt
Kurt Bonds
Andrew Sharples

/s/ Fern Vitman

Fern Vitman, an employee of
John W. Muije & Associates

EXHIBIT 1

EXHIBIT 1

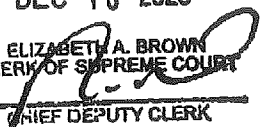
136 Nev., Advance Opinion 79
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,
Appellant,
vs.
BRITISH COLUMBIA SECURITIES
COMMISSION,
Respondent.

No. 78833

FILED

DEC 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

Appeal from a final district court order recognizing and enforcing a Canadian judgment. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Affirmed.

Adkisson PLLC and Jay D. Adkisson, Las Vegas; Claggett & Sykes Law Firm and Micah S. Echols, Las Vegas,
for Appellant.

Naylor & Braster and John M. Naylor and Jennifer L. Braster, Las Vegas; Alverson Taylor & Sanders and Kurt R. Bonds and Matthew Pruitt, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PICKERING, C.J.:

This is an appeal from a district court decision to recognize and enforce in Nevada the disgorgement portion of a securities-fraud judgment from British Columbia. Appellant Michael Lathigee objects that the

disgorgement judgment is in the nature of a fine or penalty, so it should not be enforced outside Canada. We disagree and affirm.

I.

Respondent British Columbia Securities Commission (BCSC) initiated proceedings against Lathigee under the British Columbia Securities Act (BC Securities Act). After a six-day hearing, in which Lathigee participated with counsel, the BCSC found that Lathigee had perpetrated a fraud, violating section 57(b) of the BC Securities Act, when he raised \$21.7 million (CAD) from 698 Canadian investors without disclosing the failed financial condition of the entities he and his associate controlled. As sanctions, the BCSC imposed a disgorgement order on Lathigee under section 161(1)(g) of the BC Securities Act. The disgorgement order directs Lathigee to pay the ill-gotten \$21.7 million (CAD) to the BCSC. Section 15.1 of the BC Securities Act and its associated regulations provide a notice-and-claim procedure by which the BCSC notifies the public and attempts to return any disgorged funds it recovers to the defrauded investors. The BCSC also imposed a \$15 million (CAD) administrative penalty on Lathigee.

The BCSC registered its decision with the British Columbia Supreme Court—roughly, the equivalent of a Nevada district court. Upon registry, the decision became an enforceable judgment by operation of section 163(2) of the BC Securities Act. Lathigee sought and obtained leave to appeal to British Columbia's highest court, its Court of Appeal, which rejected Lathigee's appeal on the merits. *Poonian v. BCSC*, 2017 BCCA 207 (CanLII). With this, the judgment became final and enforceable under British Columbia law.

Lathigee left Canada and relocated to Nevada without paying the judgment. The BCSC then filed the two-count complaint underlying this appeal in Nevada district court. In its complaint, the BCSC asked the district court to recognize and enforce the \$21.7 million (CAD) disgorgement portion of its judgment against Lathigee: (1) under NRS 17.750(1), which directs recognition and enforcement of foreign-country money judgments except, as relevant here, “to the extent that the judgment is . . . [a] fine or other penalty,” NRS 17.740(1), (2)(b); and/or (2) as a matter of comity. The complaint did not seek to enforce the \$15 million (CAD) administrative penalty the judgment imposed. Despite this, Lathigee objected that the disgorgement portion of the BCSC judgment also constitutes a fine or penalty, so neither NRS 17.750(1) nor comity supports its recognition and enforcement in Nevada.

The case came before the district court on cross-motions for summary judgment. Ruling for the BCSC, the district court recognized the disgorgement judgment as enforceable under NRS 17.750(1). It held that the judgment did not constitute a penalty but, rather, an award designed to afford eventual restitution to the defrauded investors under the notice-and-claim mechanism provided by section 15.1 of the BC Securities Act. In addition, citing the close ties between Canada and the United States and the fact that Canadian courts have recognized and enforced United States Securities Exchange Commission (SEC) disgorgement judgments, the district court recognized the judgment based on comity. Lathigee timely appealed.

II.

Nevada has adopted the Uniform Foreign-Country Money Judgments Recognition Act (2005), 13 pt. II U.L.A. 18-43 (Supp. 2020) (Uniform Act), in NRS 17.700 through NRS 17.820. The Act applies to

foreign-country judgments that grant or deny monetary recovery and are “final, conclusive, and enforceable” under the law of the jurisdiction where rendered. NRS 17.740(1). A Nevada court “shall recognize a foreign-country judgment to which NRS 17.700 to 17.820, inclusive, apply,” NRS 17.750(1) (emphasis added), unless one of the grounds for non-recognition stated in NRS 17.750(2) or (3) is proved or one of the categorical exceptions stated in NRS 17.740(2)(a), (b), or (c) applies.¹

By its terms, the Act does not apply “to the extent that the judgment is . . . [a] fine or other penalty.” NRS 17.740(2)(b). But the Act contains a “savings clause,” see NRS 17.820, under which “courts remain free to consider” whether a judgment that falls outside the Act “should be recognized and enforced under comity or other principles.” Uniform Act § 3, cmt. 4, *supra*, 13 pt. II U.L.A. at 26. Essentially, the Act sets base-line standards, not outer limits. It “delineates a minimum of foreign-country judgments that must be recognized by the courts of adopting states, leaving those courts free to recognize other foreign-country judgments not covered by the Act under principles of comity or otherwise.” Uniform Act prefatory note, 13 pt. II U.L.A. at 19.

Statutory interpretation presents a question of law to which de novo review applies. See *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). “In applying and construing the Uniform Foreign-Country Money Judgments Recognition Act, consideration

¹“A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in [NRS 17.750] subsection 2 or 3 exists.” NRS 17.750(4). Conversely, “A party seeking recognition of a foreign-country judgment has the burden of establishing that NRS 17.700 to 17.820, inclusive, apply to the foreign-country judgment.” NRS 17.740(3).

must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.” NRS 17.810. To this end, we accept as persuasive authority the official comments to the Uniform Act and the decisions of courts elsewhere interpreting it. *See Friedman*, 127 Nev. at 847, 264 P.3d at 1165.

A.

Lathigee admits that the disgorgement judgment grants monetary recovery; that it is final, conclusive, and enforceable under British Columbia law; and that neither the grounds for non-recognition specified in NRS 17.750(2) and (3) nor the categorical exceptions stated in NRS 17.740(2)(a) and (c) apply. NRS 17.750(1) thus mandates recognition of the BCSC’s disgorgement judgment except “to the extent” that it is a “fine or other penalty.” NRS 17.740(2)(b). That is, in this case, the \$21.7 million (CAD) question.

The Uniform Act does not define what constitutes a judgment for a “fine” or “penalty.” Its fine-or-penalty exception codifies the common law rule against one sovereign enforcing the criminal laws and penal judgments of another. *Chase Manhattan Bank, N.A. v. Hoffman*, 665 F. Supp. 73, 75 (D. Mass. 1987) (cited in Uniform Act § 3, cmt. 4, 13 pt. II U.L.A. at 26); *see The Antelope*, 23 U.S. 66, 123 (1825) (“The Courts of no country execute the penal laws of another . . .”). The Supreme Court’s decision in *Huntington v. Attrill*, 146 U.S. 657 (1892), stands as the seminal authority on the common law rule against enforcing foreign penal judgments. *Chase Manhattan Bank*, 665 F. Supp. at 75; *see City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 538, 267 P.3d 48, 51 (2011). As *Huntington* recognizes, 146 U.S. at 666, the word “penal” has “different shades of meaning,” depending on context. “The question whether a statute of one state, which in some aspects may be called penal, is a penal law, in

the international sense, so that it cannot be enforced in the courts of another state, depends upon . . . whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act.” *Id.* at 673-74.

Consistent with *Huntington*, “the test for whether a judgment is a fine or penalty”—and so outside the Uniform Act’s (and NRS 17.750(1)’s) recognition mandate—“is determined by whether its purpose is remedial in nature with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice.” Uniform Act § 3, cmt. 4, 13 pt. II U.L.A. at 26. The test is more nuanced than its binary phrasing suggests. A single judgment can include both an unenforceable penalty and an enforceable remedial award. *See* Restatement (Fourth) of the Foreign Relations Law of the United States § 489 cmt. d (Am. Law Inst. 2018). And a money judgment, particularly one that runs in favor of a governmental entity, can serve both remedial and public or penal purposes. Under the Uniform Act, “a judgment that awards compensation or restitution for the benefit of private individuals should not automatically be considered penal in nature and therefore outside the scope of the Act simply because the action is on behalf of the private individuals by a government entity.” *Id.* § 3, cmt. 4, 13 pt. II U.L.A. at 26. On the contrary, when a foreign “government agency obtains a civil monetary judgment for purpose[s] of providing restitution to consumers, investors, or customers who suffered economic harm due to fraud, [the] judgment generally should not be denied recognition and enforcement on [the] ground[s] that it is penal . . . in nature, or based on . . . foreign public law.” *Id.*; *see* Restatement (Third) of the Foreign Relations Law of the United States § 483 cmt. b (Am. Law Inst. 1987) (defining an unenforceable foreign “penal judgment” as “a judgment in favor of a foreign state or one of its

subdivisions” that is “*primarily* punitive rather than compensatory in character”) (emphasis added).

Applying these principles to the disgorgement portion of the BCSC judgment, we reject the contention that it constitutes an unenforceable penalty. The BCSC recovered its disgorgement award under section 161(1)(g) of the BC Securities Act. This statute authorizes the BCSC to recover “any amount obtained[,] directly or indirectly, as a result of” the Securities Act violation. Standing alone, section 161(1)(g)’s purpose is “neither punitive nor compensatory.” *Poonian*, 2017 BCCA 207, at 23, ¶ 70. But, unlike the \$15 million (CAD) penalty portion of the judgment, which was calculated according to the \$1 million (CAD) per violation schedule set by section 162 of the BC Securities Act, the \$21.7 million (CAD) disgorgement award represents the exact amount of money Lathigee and his associate obtained from the 698 investors they defrauded. Such disgorgement serves “to eliminate profit from wrongdoing while avoiding, so far as possible, the imposition of a penalty.” Restatement (Third) of Restitution and Unjust Enrichment § 51(4) (Am. Law Inst. 2011) (noting that “Restitution remedies that pursue this object are often called ‘disgorgement’ or ‘accounting’”); see *id.* cmt. e (“The object of the disgorgement remedy—to eliminate the possibility of profit from conscious wrongdoing—is one of the cornerstones of the law of restitution and unjust enrichment.”).² The fact that section 161(1)(g) calculates the disgorgement

²We recognize that the BCSC disgorgement judgment imposes joint and several liability on Lathigee and his associate and the entities they controlled. It did so based on findings that established that Lathigee and his associate and their corporate entities were “effectively one person.” *Poonian*, 2017 BCCA 207, at 42-43, 49-51, ¶¶ 133, 154-162. The equally culpable, concerted wrongdoing in which the BCSC found Lathigee and his

award by the amount of money the wrongdoer “obtained,” not by reference to a schedule of fines or penalties, weighs in favor of treating the BCSC’s disgorgement award as remedial, not punitive.

The judgment subjects any recovery the BCSC makes on its section 161(1)(g) disgorgement award to section 15.1 of the BC Securities Act. Section 15.1 and its related regulations provide a notice-and-claim procedure for the BCSC to return any money it collects on the disgorgement award to the investors the Securities Act violation harmed. The award does not represent a fine or penalty that, once collected, the BCSC can keep without obligation to the victims of the fraud. *Cf. City of Oakland*, 127 Nev. at 542, 267 P.3d at 54 (deeming a fine imposed and kept by the City of Oakland for violating its zoning ordinances penal and not compensatory). This, too, weighs in favor of treating the disgorgement award as more remedial than punitive.

Disgorgement in securities enforcement actions can take various forms, not all of them restitutionary. *See* Jennifer L. Schulp, *Liu v. SEC: Limited Disgorgement, But by How Much?*, 2019-2020 Cato Sup. Ct. Rev. 203, 207-10 (2020). But the disgorgement award in this case deprives Lathigee and his associate of the money they obtained from the investors they defrauded. *See Poonian*, 2017 BCCA 207, at 20, 23, ¶¶ 61, 70. And, under section 15.1 and its related regulations, any recovery is designed to “provid[e] restitution to . . . investors . . . who suffered economic harm due to fraud,” not to enrich the BCSC. Uniform Act § 3, cmt. 4, 13 pt. II U.L.A. at 26. We therefore conclude that, for purposes of NRS 17.750(1), the

associate engaged supports the imposition of collective liability without transmuting the award from restitutionary to punitive. *See Liu v. SEC*, 591 U.S. ___, ___, 140 S. Ct. 1936, 1949 (2020).

primary purpose of the disgorgement award “is remedial in nature with its benefits accruing to private individuals,” not penal, “punishing an offense against public justice.” Uniform Act § 3, cmt. 4, 13 pt. II U.L.A. at 26. *See* Restatement (Fourth) of the Foreign Relations Law of the United States § 489 note 4 (“Although courts in the United States applying these rules frequently look to foreign practice, . . . the character of a foreign judgment as [penal] is a question of U.S. law.”).

Lathigee acknowledges the statutes and authorities just cited but insists that *Kokesh v. SEC*, 581 U.S. ___, 137 S. Ct. 1635 (2017), compels a different conclusion. We cannot agree. *Kokesh* did not concern recognition of a foreign-country disgorgement judgment. “The sole question” in *Kokesh* was “whether disgorgement, as applied in SEC enforcement actions, is subject to [the five-year] limitations period,” *id.* at ___ n.3, 137 S. Ct. at 1642 n.3, that 28 U.S.C. § 2462 establishes for an “action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture.”

In *Kokesh*, both the district court and the Tenth Circuit Court of Appeals held that § 2462 did not apply to SEC disgorgement claims, which left them with “no limitations period” at all. *Kokesh*, 581 U.S. at ___, 137 S. Ct. at 1641. The Supreme Court reversed. It held that “[d]isgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under § 2462.” *Id.* at ___, 137 S. Ct. at 1645. En route to this holding, the Court acknowledged that “disgorgement serves compensatory goals in some cases.” *Id.* at ___, 137 S. Ct. at 1645. But SEC disgorgement actions are not limited to recovery of funds the wrongdoer obtained. *Id.* at ___, 137 S. Ct. at 1644-45 (noting that “[i]ndividuals who illegally provide confidential trading information have been forced to disgorge profits gained by individuals who received and traded based on that information—even though they never received any profits”). And, unlike a BCSC disgorgement

judgment, where any funds recovered are subject to the notice-and-claim procedure BC Securities Act section 15.1 provides victimized investors, no “statutory command” charges the SEC with remitting the disgorged funds it recovers to victims. *Id.* at ___, 137 S. Ct. at 1644.

In *Liu v. SEC*, 591 U.S. ___, 140 S. Ct. 1936 (2020), the Supreme Court returned to *Kokesh*. It confirmed that the sole question *Kokesh* decided was whether 28 U.S.C. § 2462’s limitations period applies to SEC disgorgement claims. *Liu*, 591 U.S. at ___, 140 S. Ct. at 1941. What *Kokesh* did not decide was “whether a § 2462 penalty can nevertheless qualify as ‘equitable relief’ under [15 U.S.C.] § 78u(d)(5), given that equity never ‘lends its aid to enforce a forfeiture or penalty.’” *Id.* at ___, 140 S. Ct. at 1941 (quoting *Marshall v. Vicksburg*, 82 U.S. 146, 149 (1873)); *see id.* at ___, 140 S. Ct. at 1946 (brushing aside the claim that the Court “effectively decided in *Kokesh* that disgorgement is necessarily a penalty, and thus not the kind of relief available at equity” with a blunt, “Not so.”). Citing the Restatement (Third) of Restitution and Unjust Enrichment § 51, *Liu* recognizes that to the extent a disgorgement award redresses unjust enrichment and achieves restitution, it is situated “squarely within the heartland of equity,” 591 U.S. at ___, 140 S. Ct. at 1943, and does not constitute an impermissible penalty. *See id.* at ___, 140 S. Ct. at 1944. Unlike *Kokesh*, which adopted a bright-line rule appropriate to its statute-of-limitations context, *Liu* counsels a case-by-case assessment of whether a disgorgement claim seeks restitution, consistent with equitable principles, or a penalty, which equity does not allow. *See id.* at ___, 140 S. Ct. at 1947-50.

B.

Alternatively, even crediting Lathigee’s argument that NRS 17.740(2)(b) takes the disgorgement judgment outside NRS 17.750(1)’s mandatory recognition provisions, the district court properly recognized it

as a matter of comity. The comity doctrine is “a principle of courtesy by which ‘the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect.’” *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 18, 317 P.3d 820, 826 (2014) (quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983)); see *Hilton v. Guyot*, 159 U.S. 113, 165 (1895) (stating that comity “contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it as a part of the voluntary law of nations”) (internal quotation marks omitted). Under comity, Nevada courts will not “recognize a judgment or order of a sister state if there is ‘a showing of fraud, lack of due process, or lack of jurisdiction in the rendering state.’” *Gonzales-Alpizar*, 130 Nev. at 19-20, 317 P.3d at 826 (quoting *Rosenstein v. Steele*, 103 Nev. 571, 573, 747 P.2d 230, 231 (1987), and adopting the limits on comity stated in the Restatement (Third) of the Foreign Relations Law of the United States § 482 (Am. Law Inst. 1987)). But otherwise, comity may be “appropriately invoked according to the sound discretion of the court acting without obligation.” *Mianecki*, 99 Nev. at 98, 658 P.2d at 425; see *In re Stephanie M.*, 867 P.2d 706, 716 (Cal. 1994) (reviewing grant of comity for abuse of discretion).

Lathigee does not raise any of the defenses to comity recognized in *Gonzales-Alpizar* or the Restatement (Third) of Foreign Relations Law § 482. Instead, citing the Restatement (Third) of Foreign Relations Law § 483, he argues that Nevada need not and, under *Kokesh*, should not grant comity to a foreign-country disgorgement judgment, because such a judgment constitutes a penalty. But neither the Restatement (Third) § 483 nor its comments speak to comity; section 483 simply restates the rule that “[c]ourts in the United States are not required to recognize or enforce

judgments for the collection of [fines] or penalties” that NRS 17.740(2)(b) already provides. And, as discussed, *supra*, § II.A, *Kokesh* does not establish the profound policy against recognizing and enforcing foreign-country disgorgement judgments that Lathigee says it does.

The policy of promoting cooperation among nations has special strength as between Canada and the United States. The United States shares a long border with Canada. As the district court found, the SEC and the securities commissions of each of the provinces, including the BCSC, often work together, since the proximity and relations of the two countries make it easy for fraud to move between them. In fact, the United States and Canada have signed a Memorandum of Understanding, which provides that the “Authorities will provide the fullest mutual assistance” “to facilitate the performance of securities market oversight functions and the conduct of investigations, litigation or prosecution.” And Canadian courts have upheld SEC disgorgement judgments repeatedly. *United States (SEC) v. Cosby*, 2000 BCSC 338, at 3, 15, ¶¶ 4, 26 (CanLII) (enforcing the disgorgement portion of an SEC judgment against an individual who engaged in fraudulent schemes to raise capital for a Nevada corporation and rejecting the argument that the U.S. disgorgement judgment was “unenforceable” in British Columbia “because it is a foreign penal judgment”); *id.* at 3, 14, ¶¶ 5, 24 (discussing the Canadian decision in *Huntington v. Attrill*, [1893] A.C. 150 (P.C.)); *see United States (SEC) v. Peever*, 2013 BCSC 1090, at 6, ¶ 18 (CanLII) (to similar effect; citing *Cosby*); *United States (SEC) v. Shull*, [1999] B.C.J. No. 1823 (S.C.) (same).

“[I]nternational law is founded upon mutuality and reciprocity” *Hilton*, 159 U.S. at 228. Recognizing these principles,

"Canadian judgments have long been viewed as cognizable in courts of the United States." *Alberta Sec. Comm'n v. Ryckman*, 30 P.3d 121, 126 (Ariz. Ct. App. 2001). The district court properly recognized the BCSC disgorgement judgment under principles of comity.

We therefore affirm.

Pickering, C.J.
Pickering

We concur:

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

EXHIBIT “3”

ê 95 Nev. 276, 276 (1979) Luciano v. Marshall ê


ANTHONY P. LUCIANO, Petitioner, v. HONORABLE GEORGE E. MARSHALL, Senior Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark; WILLIAM C. DIERCKS and VIRGINIA DIERCKS, His Wife; IAMA CORPORATION, a Nevada Corporation; RALPH LAMB, Sheriff of Clark County, Nevada, Respondents.

No. 10902

April 11, 1979 593 P.2d 751

Original proceeding on application for writ of mandate.

Petitioner brought original proceeding to obtain a writ of mandate directing the Eighth Judicial District Court to vacate a money judgment. Petitioner also sought an order directing a sheriff to return certain personal property that had been seized under a search order. The Supreme Court held that: (1) petitioner was not entitled to an extraordinary writ of mandate vacating the money judgment, and (2) where petitioner's property had been seized under a search order that was not authorized by statute, the seizure violated petitioner's constitutional right to be free from unreasonable searches and seizures and petitioner was entitled to an order requiring the return of his property.

Granted in part, denied in part. 

[Rehearing denied June 13, 1979]

Clark and Zubel, Las Vegas, for Petitioner.

Albert G. Marquis, Las Vegas, for Respondents.

1. Mandamus.

Where order which became predicate for money judgment on counterclaim was drafted by counsel for defendant counter-claimants and approved by plaintiff's counsel who initialed the order and where trial court had jurisdiction to enter the judgment, plaintiff was not entitled to extraordinary writ of mandate vacating the judgment.

2. Execution.

In view of fact that statutory procedures supplementary to execution nowhere authorize issuance of a search order to enforce a money judgment and that search warrants may be issued only to obtain the fruits, instrumentalities and evidence of criminal activity, judgment debtor whose property was seized by sheriff pursuant to a search order entered "in pursuance of execution" of a civil money judgment was entitled to return of property seized under the order. NRS 21.050, 21.270-21.340, 179.035, 179.085, subd. 1(c); Const. art. 1, § 18; U.S.C.A.Const. Amend 4.

95 Nev. 276, 277 (1979) Luciano v. Marshall

.....

ê 95 Nev. 276, 277 (1979) Luciano v. Marshall ê

3. Searches and Seizures.

Even if there were a statutory basis for issuing a search order to execute a civil money judgment, search of the judgment debtor's residence pursuant to such order and wholesale seizure of judgment debtor's personal property violated constitutional prohibitions against unreasonable searches and seizures. Const. art. 1, § 18, U.S.C.A.Const. Amend. 4.

OPINION

Per Curiam:

In this original proceeding, petitioner, Anthony P. Luciano, seeks a writ of mandate directing the respondent Judge to vacate a money judgment 1 entered below, and to permit petitioner to proceed to trial on an amended complaint.

Petitioner also seeks an order directing respondent sheriff to return certain personal property seized pursuant to a search order entered "in pursuance of execution" of the civil judgment.

Petitioner Anthony P. Luciano commenced this action against defendants William C. and Virginia Diercks and IAMA Corporation (hereafter Diercks), seeking specific performance, or, alternatively, reformation of a sub-lease agreement claiming that the Diercks had failed to secure their landlord's consent to the full term contemplated by the agreement.

The Diercks filed a counterclaim for restitution of the premises predicated upon alleged breaches of the sub-lease agreement. The case came on for trial, at which time the Diercks produced their landlord's written stipulation extending the full term of the lease as sought in the complaint. Luciano's then counsel of record moved for a continuance claiming surprise. 2

[Headnote 1]

Then followed a conference between the court and counsel, culminating in the entry of an order dated May 5, 1978, drafted by counsel for the Diercks and approved by Luciano's counsel who initialed the order. This order became the predicate for the very judgment, entered May 26, 1978, which petitioner now seeks to vacate by this extraordinary writ proceeding.

1 Petitioner has abandoned his request for relief from that part of the judgment awarding possession of the property to respondents Diercks.

2 MR. KEEFER: Your Honor, in the light of the situation developed, we claim surprise as a result of this stipulation. We're going to move the Court for a continuance of this matter for the purpose of moving to modify the complaint to include a cause for rescission.

And that's based upon these two grounds: First, surprise as a result of the stipulation and the order granting the term of the lease that was prayed for in the first cause of action; second, upon the ground that the equipment is not available that was sold with the lease.

95 Nev. 276, 278 (1979) Luciano v. Marshall

.....

ê 95 Nev. 276, 278 (1979) Luciano v. Marshall ê

seeks to vacate by this extraordinary writ proceeding. Clearly, the court below had jurisdiction to enter the judgment, and that part of the instant petition seeking relief therefrom is manifestly meritless.

[Headnote 2]

As regards the seizing of petitioner's property, we reach a different conclusion. The procedure was not authorized by statute, and it constituted a violation of petitioner's constitutional right to be free from unreasonable search and seizure.

NRS 21.050 provides that a money judgment "shall be enforced" by execution. Statutory procedures supplementary to execution are spelled out at NRS 21.270-21.340, and nowhere do they authorize such an order. The statutory grounds upon which a search warrant may be issued are set forth in NRS 179.035, and are limited to searches for the fruits, instrumentalities and evidence of criminal activity. Petitioner was clearly entitled to return of his property under the statute, and his motion therefor should have been granted. NRS 179.085(1)(c).

[Headnote 3]

Even could a statutory basis for the procedure have been found, the search of petitioner's residence, and wholesale seizure of his personal property therein, in aid of civil process, would have been precluded by the constitutional prohibitions against unreasonable searches and seizures found in the United States and Nevada constitutions. U.S. Const., Amend. IV. Nev. Const., Art. 1, § 18. As has been recognized, *Allen v. Trueman*, 110 P.2d 355, 360 (Utah 1941):

Since the purpose of the interdiction against unreasonable searches and seizures appears to be primarily the protection of the individual against oppressive invasion of his personal rights, it has long been recognized that the use of such warrants should be carefully limited and controlled to attain the objects sought by the constitutional guaranties. Thus Judge Cooley in his "Constitutional Limitations" has said: "Search warrants are a species of process exceedingly arbitrary in character and which ought not to be resorted to except for very urgent and satisfactory reasons."

Moreover, it has generally been recognized that the legitimate use of the search warrant is restricted to public prosecutions, and that in no event may such proceeding be invoked for the protection of any mere private right. . . .

The Supreme Court of Utah concluded that the plaintiff, who sought return of property seized pursuant to statute, but who was neither arrested nor criminally charged with any crime, was entitled to

restitution of his property, since the search and seizure was "unreasonable" under the state constitution.

95 Nev. 276, 279 (1979) Luciano v. Marshall

.....

ê 95 Nev. 276, 279 (1979) Luciano v. Marshall ê

sought return of property seized pursuant to statute, but who was neither arrested nor criminally charged with any crime, was entitled to restitution of his property, since the search and seizure was "unreasonable" under the state constitution. Similar conclusions are reached or reflected in State v. Derry, 85 N.E. 765 (Ind. 1908); Robinson v. Richardson, 79 Mass. (13 Gray) 454 (1859); State v. Dillon, 281 P. 474 (N.M. 1929); and People v. Kempner, 101 N.E. 794 (N.Y. 1913).

It is ordered that a peremptory writ of mandate issue commanding the respondent Sheriff of Clark County to return the property of petitioner. Petitioner's application for a writ of mandate commanding respondent court to vacate its money judgment entered against petitioner May 26, 1978, and further commanding the district court to proceed to trial upon his amended complaint is denied.

95 Nev. 279, 279 (1979) R & S Investments v. Howard

95 Nev. 279, 279 (1979) R & S Investments v. Howard

EXHIBIT “4”

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

ALVERSON TAYLOR & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
MATTHEW M. PRUITT, ESQ.
Nevada Bar #12474
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149
(702) 384-7000
efile@alversontaylor.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

19-4952
CASE NO.: A-18-771407-C
DEPT. NO.: XIV

INSTRUCTIONS

Storage deposit or fees collected \$

INSTRUCTIONS TO THE SHERIFF OR ANY CONSTABLE
OF THE COUNTY OF CLARK

YOU ARE HEREBY INSTRUCTED TO LEVY by virtue of the accompanying

Writ, in the above entitled matter, by following the instructions below:

Any and all personal property, including specifically vehicles, trailers, cash, chattel paper, electronic storage devices, equipment, monies from sales, inventory or investment property, precious metals, precious gems, firearms, household property, safes, financial records, documents, business documents, stock and/or membership certificates, filing cabinets, notes, commercial paper, boxes, computers, computer peripherals, hard drives, copy machines, printers, fax machines, keys, phones, mobile devices, appliances, items held in collateral, briefcases, bags, artwork, gold, silver,

furniture, appliances, kitchenware, decorations, livestock, jewelry, electronics, mechanical equipment, and other valuables belonging to Judgment Debtor MICHAEL PATRICK LATHIGEE, including any and all such community property in possession of his wife, CELISTE LATHIGEE, whether now or hereafter owned or acquired by them, and wherever located including, but not limited to, vehicles, homes, on the person(s), garages, storage units, cash registers, cash boxes, drawers, safes, locked rooms, and/or any other part of any location.

Any and all personal property located within, or attached to, the unit located at 9404 Empire Rock Street, Las Vegas, NV 89143.

2014 Jeep Grand Cherokee – VIN # 1C4RJEAGXEC217235

2015 Chevrolet Colorado – VIN # 1GCHSBE37F1150895

2014 BMW 3 Series 320I – VIN # WBA3B1G50ENS80105

Pursuant to NRS 31.920 the constable may take concealed property by force after demand. If the property, or any part thereof, be concealed in a building or enclosure, the constable shall publicly demand its delivery. If it be not delivered, the constable shall cause the building or enclosure to be broken open, and take the property into the constable's possession, and, if necessary, the constable may call to the constable's aid the power of the constable's county.

Liquid assets are being searched for and there exists evidence that such assets are being concealed. Therefore, forensic analysis of the taken property is necessary and approved.

Any documents taken are to be delivered to a facility of the Creditor's choosing as soon as practicable after seizure and that facility shall be given a reasonable time to copy and scan such documents based on the quantity thereof, and in no case less than 10 days unless otherwise ordered by the Court. Unless otherwise directed to another facility by the Creditor, the Constable or Sheriff may deliver the documents to NRC Discovery at 2250 South Rancho Drive, Las Vegas, NV 89102.

Any computers, hard drives, and sources of electronic data taken are to be delivered to a facility of the Creditor's choosing as soon as practicable after seizure and that facility shall be given a reasonable time to copy and image such devices based upon the quantity thereof, and in no case less than 10 days unless otherwise ordered by the Court. Unless otherwise directed to another facility by the Creditor, the Constable or Sheriff shall deliver the electronic data devices to Expert Data Forensics at 5071 N. Rainbow Blvd. Suite 180, Las Vegas, NV 89130.

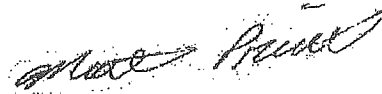
ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

1 See Exhibit A for description of vehicles to be executed on.

2 Please direct all payments of levied monies to ALVERSON TAYLOR & SANDERS at 6605
3 GRAND MONTECITO PKWY, STE 200, LAS VEGAS, NV 89149.

4 DATED this 30th day of July, 2019.

6 ALVERSON TAYLOR & SANDERS

7 

8 KURT R. BONDS, ESQ.

9 Nevada Bar #6228

10 MATTHEW M. PRUITT, ESQ.

11 Nevada Bar #12474

12 6605 Grand Montecito Pkwy, Ste 200

13 Las Vegas, NV 89149

14 (702) 384-7000

15 efile@alversontaylor.com

16 Attorneys for Plaintiff

ALVERSON TAYLOR & SANDERS
LAYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 394-7000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

VEHICLES

2014 Jeep Grand Cherokee – VIN # 1C4RJEAGXEC217235

2015 Chevrolet Colorado – VIN # 1GCHSBE37F1150895

2014 BMW 3 Series 320I – VIN # WBA3B1G50ENS80105

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

ALVERSON TAYLOR & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
MATTHEW M. PRUITT, ESQ.
Nevada Bar #12474
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149
(702) 384-7000
efile@alversontaylor.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

.*

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

WRIT OF EXECUTION

THE STATE OF NEVADA TO THE SHERIFF OR ANY CONSTABLE OF CLARK
COUNTY, NEVADA, GREETINGS:

WHEREAS, on the 14th day of May, 2019, a Judgment was entered by the District Court of
Clark County, Nevada in the above-entitled action in favor of Plaintiff BRITISH COLUMBIA
SECURITIES COMMISSION, as judgment creditor and against Defendant MICHAEL PATRICK
LATHIGEE as judgment debtor for the principal and total amount of \$21,700,000.00 CAD, or at the
option of the debtor the number of United States dollars which will purchase the Canadian Dollar
with interest due at a bank-offered spot rate at or near the close of business on the banking day next

before the day of payment, plus interest at the statutory rate and costs in the amount of \$1,173.39 USD.

WHEREAS, any satisfaction has been credited first against total accrued interest and costs, leaving the following net balance, which sum bears interest at 7.50% per annum, \$4,458.90 CAD per day from issuance of this writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

<u>JUDGMENT BALANCE</u>		<u>AMOUNTS TO BE COLLECTED BY LEVY</u>	
Principal	\$21,700,000.00 CAD	NET BALANCE	<u>17,897,892.63</u>
Pre-Judgment Interest	\$1,859,363.01 CAD	Fee for this Writ	\$10.00
Attorney Fees	\$0.00	Garnishment Fee	<u>0</u>
Costs	\$1,173.39 USD	Mileage	<u>36.20</u>
	\$23,559,363.01 CAD		
JUDGMENT TOTAL	+ \$1,173.39 USD	Levy Fee	<u>18.00</u>
Post-Judgment			
Interest	\$271,992.90 CAD	Advertising	<u>0</u>
Accrued Costs	\$0.00	Interest from Date of Issuance	<u>0</u>
Less Satisfaction	\$862.36 USD	SUB-TOTAL	<u>17,897,961.83</u>
	\$23,831,355.91 CAD		
NET BALANCE	+ \$311.03 USD	Commission	<u>89,542.31</u>
		TOTAL LEVY	<u>17,987,504.14</u>

NOW, THEREFORE, SHERIFF OR ANY CONSTABLE OF CLARK COUNTY, NEVADA, you are hereby commanded to satisfy this judgment for the total amount due out of the following described property:

Any and all personal property, including specifically vehicles, trailers, cash, chattel paper, electronic storage devices, equipment, monies from sales, inventory or investment property, precious metals, precious gems, firearms, household property, safes, financial records, documents, business documents, stock and/or membership certificates, filing cabinets, notes, commercial paper, boxes, computers, computer peripherals, hard drives, copy machines, printers, fax machines, keys, phones, mobile devices, appliances, items held in collateral, briefcases, bags, artwork, gold, silver, furniture, appliances, kitchenware, decorations, livestock, jewelry, electronics, mechanical equipment, and other valuables belonging to Judgment Debtor MICHAEL PATRICK LATHIGEE, including any

1 and all such community property in possession of his wife, CELISTE
2 LATHIGEE, whether now or hereafter owned or acquired by them,
3 and wherever located including, but not limited to, vehicles, homes,
4 on the person(s), garages, storage units, cash registers, cash boxes,
5 drawers, safes, locked rooms, and/or any other part of any location.

6 Any and all personal property located within, or attached to, the unit
7 located at 9404 Empire Rock Street, Las Vegas, NV 89143.

8 2014 Jeep Grand Cherokee – VIN # 1C4RJEAGXEC217235

9 2015 Chevrolet Colorado – VIN # 1GCHSBE37F1150895

10 2014 BMW 3 Series 320i – VIN # WBA3B1G50ENS80105

11 Pursuant to NRS 31.920 the constable may take concealed property
12 by force after demand. If the property, or any part thereof, be
13 concealed in a building or enclosure, the constable shall publicly
14 demand its delivery. If it be not delivered, the constable shall cause
15 the building or enclosure to be broken open, and take the property
16 into the constable's possession, and, if necessary, the constable may
17 call to the constable's aid the power of the constable's county.

18 Liquid assets are being searched for and there exists evidence that
19 such assets are being concealed. Therefore, forensic analysis of the
20 taken property is necessary and approved.

21 Any documents taken are to be delivered to a facility of the Creditor's
22 choosing as soon as practicable after seizure and that facility shall be
23 given a reasonable time to copy and scan such documents based on
24 the quantity thereof, and in no case less than 10 days unless otherwise
25 ordered by the Court. Unless otherwise directed to another facility by
26 the Creditor, the Constable or Sheriff may deliver the documents to
27 NRC Discovery at 2250 South Rancho Drive, Las Vegas, NV 89102.

28 Any computers, hard drives, and sources of electronic data taken are
to be delivered to a facility of the Creditor's choosing as soon as
practicable after seizure and that facility shall be given a reasonable
time to copy and image such devices based upon the quantity thereof,
and in no case less than 10 days unless otherwise ordered by the
Court. Unless otherwise directed to another facility by the Creditor,
the Constable or Sheriff shall deliver the electronic data devices to
Expert Data Forensics at 5071 N. Rainbow Blvd. Suite 180, Las
Vegas, NV 89130.

///

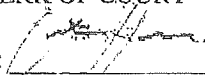
///

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

You are required to return this Writ from the date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

DATED this ____ day of July, 2019.


STEVEN D. GRIERSON
CLERK OF COURT

By:  8/1/2019
Deputy Clerk Courtnie Hoskin

Submitted by:

RETURN

ALVERSON TAYLOR & SANDERS


KURT R. BONDS, ESQ.
Nevada Bar No. 6228
MATTHEW M. PRUITT, ESQ.
Nevada Bar #12474
6605 Grand Montecito Pkwy, Suite 200
Las Vegas, Nevada 89149

_____	Not satisfied	\$ _____
_____	Satisfied in sum of	\$ _____
_____	Cost retained	\$ _____
_____	Commission retained	\$ _____
_____	Costs incurred	\$ _____
_____	Commission incurred	\$ _____
_____	Costs received	\$ _____

REMITTED TO JUDGMENT \$ _____
CREDITOR _____

I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy endorses thereon.

Jordan Ross, Constable, Laughlin Township
55 Civic Way
Laughlin, NV 89029-1563

EXHIBIT “5”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

BRITISH COLUMBIA SECURITIES)	CASE NO. A-18-771407-C
COMMISSION,)	
)	DEPT NO. XIV
Plaintiff,)	
)	
vs.)	
)	
MICHAEL LATHIGEE,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

HEARING FOR EXAMINATION OF JUDGMENT DEBTOR

THURSDAY, AUGUST 22, 2019

APPEARANCES:

FOR THE PLAINTIFF: MATTHEW M. PRUITT, ESQ.

FOR THE DEFENDANT: JAY D. ADKISSON, ESQ.
JOHN W. MUIJE, ESQ.

RECORDED BY: SANDRA ANDERSON, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 22, 2019, 9:31 A.M.

2 (Court was called to order)

3 THE COURT: British Columbia Securities Commission
4 versus Michael Lathigee.

5 MR. ADKISSON: Present for the judgment creditor, Your
6 Honor.

7 THE COURT: Your -- your appearances for the record,
8 please.

9 MR. PRUITT: Good morning, Your Honor. Matthew
10 Pruitt, Bar No. 12474, for the plaintiff.

11 THE COURT: Thank you. Good morning. You're going to
12 have to speak louder. I'm sorry.

13 MR. PRUITT: Sure. Matthew Pruitt, Bar No. 12474, for
14 the plaintiff.

15 THE COURT: Okay.

16 MR. MUIJE: Good morning, Your Honor. I think we got
17 the parties mixed up. I think Mr. Lathigee is a defendant, and
18 British Columbia is the plaintiff. And this is John Muije as
19 co-counsel, special co-counsel for defendant Mike Lathigee.

20 THE COURT: Good morning.

21 MR. ADKISSON: And Jay Adkisson, Your Honor, for
22 debtor Lathigee.

23 THE COURT: Okay. Very good. So today we're on the
24 stack for a -- you're going to have --

25 MR. PRUITT: Exam.

1 THE COURT: -- a hearing.
2 MR. PRUITT: Right. Sorry?
3 THE COURT: You're going to have a debtor's exam?
4 MR. PRUITT: Yes, Your Honor.
5 THE COURT: Okay.
6 MR. PRUITT: Yes.
7 MR. MUIJE: Your Honor, if I might address --
8 THE COURT: Can you update ---
9 MR. MUIJE: -- that for a minute.
10 THE COURT: -- me, please. Yes.
11 MR. MUIJE: The Court clearly ordered the debtor exam
12 for today.
13 THE COURT: Yes.
14 MR. MUIJE: It also ordered substantial documentation
15 to be produced. We have a problem with that insofar as
16 plaintiff, British Columbia Commission, seized all of our papers
17 last week in the most unusual way I have ever seen, and I've
18 done this for 40 years, Your Honor. They not only took all of
19 the file folders, file cabinets, binders, etcetera, they took
20 the computers and instructed the constable to take them over to
21 duplication services.
22 We'd had no due process, no chance to assert
23 privilege. There are tons of documents in there that are
24 attorney-client privilege, they're espousal privilege. But
25 without a subpoena, without notice, without an opportunity to be

1 heard or to quash it, they took all of our papers so we have
2 nothing to testify about.

3 THE COURT: Counsel.

4 MR. PRUITT: Your Honor, we understand that the
5 constable is in possession of some of their papers, that they
6 may not be produced today, and -- and we're ready to go forward
7 with that understanding. Everything in the writ was according
8 to law. There's nothing wrong with -- with taking papers.

9 MR. MUIJE: Your Honor, if I might respond briefly. I
10 have no doubt that it was a lawful writ. They did use force to
11 break the locks and enter without court authorization. More
12 importantly, the procedure for getting documents post-judgment
13 is either by an order to produce them or by a subpoena, both of
14 which give a defendant an opportunity to be heard, to assert
15 privilege, to protect stuff which the law says is private and
16 sacrosanct.

17 I would ask for a summary order from this Court that
18 they not be allowed to look at any of those. We are filing
19 claims of exemption. We are filing third-party claims on some
20 of the property which was taken. Those will be heard in due
21 course. But in the meantime, they should not be entitled to be
22 leafing through my communications with Mr. Lathigee,
23 co-counsel's communications, out of state transactional counsel
24 communications. There's privileged documents in there and
25 they're just copying them willy-nilly.

1 MR. PRUITT: And, Your Honor, it's not my
2 understanding that we have access to any privileged
3 communications. You know, if he wants to bring a motion for
4 specific things that would be privileged, then, you know, that's
5 their prerogative to bring a motion. That's not what we're here
6 on today.

7 But, you know, certainly, if there are, you know, one
8 thing that -- that I know that they possessed is a phone. If
9 there's -- I don't think that we'll have access to his email
10 server, but if -- you know, if there are emails between his
11 counsel, certainly we're agreeable to not go through those and
12 look at those.

13 MR. MUIJE: Your Honor, that's the fox guarding the
14 henhouse. We should be able to determine what's privileged.
15 And if there's a dispute about it, the Court can decide. They
16 -- they shouldn't be able to look at anything until the Court
17 decides the propriety of seizing papers without notice. And the
18 writ says right on it, take it to the duplication service and
19 copy the whole thing. So who are we to trust? They may have
20 already gone through numerous privileged files and examined
21 them.

22 THE COURT: This is unique.

23 MR. PRUITT: Sure. I don't think -- I haven't been
24 told of anything privileged. You know, I think that the -- as
25 far as privileged goes, it mostly applies to communications

1 between a client and his attorney, and I'm not aware of those in
2 what's been found so far.

3 You know, certainly we can instruct the e-discovery
4 company that has -- that is going to make copies of the
5 electronic systems to maybe flag things that -- that may be
6 privileged or -- or the company that's making -- scanning the
7 records to make copies. But most of these are just business
8 records. There's dozens and dozens, if not hundreds of entities
9 that Mr. Lathigee has opened, and -- and we need these records
10 to be able to, you know, see where he's putting his money at.
11 And it's not -- they're not communications between a client and
12 counsel. They're business records.

13 MR. MUIJE: Your Honor, how -- how do we know? If a
14 text from Mr. Lathigee to an attorney says, hey, Joe, how does a
15 duplication company know that Joe is his attorney?

16 THE COURT: And are these still being copied and --
17 and --

18 MR. MUIJE: Yes.

19 THE COURT: Okay. I want everything delivered here
20 and I'm going to go through -- we'll find a way. Maybe we'll
21 have a working group altogether so that we're sure --

22 MR. MUIJE: I think that's a good idea, Judge.

23 THE COURT: Yes. It's going to go in chambers, okay.
24 This way you're both protected, all right.

25 MR. MUIJE: And one additional item, Your Honor.

1 There's a hearing set for Tuesday on a claim of exemption.
2 THE COURT: I know that.
3 MR. MUIJE: My -- my wife and I bought Rolling Stones
4 tickets. This is the fourth time we've tried for Glendale,
5 Arizona on Monday night.
6 THE COURT: You haven't seen the Rolling Stones yet?
7 MR. MUIJE: I have not seen the Rolling Stones.
8 THE COURT: I've seen them like four or five times,
9 once in Vienna.
10 MR. MUIJE: I think it's going to be a good concert.
11 THE COURT: It's a great concert.
12 MR. MUIJE: One time he had laryngitis.
13 THE COURT: Okay.
14 MR. MUIJE: The other time he had a heart procedure.
15 THE COURT: All right. Let's see. So you're not
16 available on Tuesday?
17 MR. MUIJE: I could be available by Court Call, but
18 what I propose, we are filing, in the next two or three days,
19 multiple claims of exemption, multiple third-party claims. I
20 would suggest we find a good day a couple of weeks from now
21 where we can have it all ordered.
22 THE COURT: You know, Mr. Muije, this case has taken
23 awhile to begin with, and there -- we're moving forward. So I
24 don't want you to miss the Rolling Stones, but I will accept a
25 Court Call.

1 MR. MUIJE: Okay.

2 THE COURT: Absolutely. I've called in from Italy
3 before when I was on the Public Utilities Commission, so Tuesday
4 it is.

5 MR. MUIJE: Understood, Your Honor.

6 THE COURT: Okay. In the meantime --

7 MR. PRUITT: Your Honor, just kind of a housekeeping
8 matter with delivering things here, the Court needs to
9 understand there's tens of thousands probably of pages.

10 THE COURT: Well, before -- before that happens,
11 we're --

12 MR. PRUITT: Yeah.

13 THE COURT: -- going to -- I mean, I don't suspect
14 they're going to be with me very long, but we will find an
15 accommodation and we will have a working day so that we can go
16 through this. I mean, I think it's very important,
17 attorney-client privilege, and also you need the information,
18 and I am available, okay.

19 MR. PRUITT: So where --

20 THE COURT: Call --

21 MR. PRUITT: We've asked to have --

22 THE COURT: I would like you to all my office --

23 MR. PRUITT: Okay.

24 THE COURT: -- after court when I'm available and I'm
25 off the bench --

1 MR. PRUITT: Okay.
2 THE COURT: -- and we can coordinate.
3 MR. PRUITT: Okay.
4 THE COURT: Okay.
5 MR. MUIJE: Very good, Your Honor.
6 THE COURT: All right. Very good. Today, though.
7 MR. PRUITT: Okay.
8 MR. MUIJE: Thank you, Judge.
9 THE COURT: All right. And I would like you to try to
10 work together as much as possible, all right.
11 MR. MUIJE: I've never had a problem working with Mr.
12 Pruitt's firm.
13 THE COURT: Okay.
14 MR. MUIJE: I've never had the pleasure of working
15 with him personally, but I'm sure --
16 THE COURT: Very good.
17 MR. MUIJE: -- we'll work it out.
18 MR. PRUITT: Yeah.
19 THE COURT: So I -- I will see you next week --
20 MR. PRUITT: Okay.
21 THE COURT: -- if not before.
22 MR. MUIJE: Via Court Call.
23 THE COURT: Okay. Very good. Thank you.
24 MR. PRUITT: And should we proceed into a jury room
25 for the exam? Is that where we have it?

1 THE COURT: Yes. Yes.
2 MR. PRUITT: Okay. Should we proceed to the back
3 there?
4 THE COURT: You can do that, yes.
5 Jerry, can you arrange that, please.
6 THE MARSHAL: Absolutely.
7 THE COURT: Go ahead.
8 MR. MUIJE: Let me grab my computer.
9 MR. PRUITT: Thank you, Your Honor.
10 MR. MUIJE: Thank you, Judge.
11 THE COURT: You're very welcome.
12 (Proceedings concluded at 9:40 a.m.)
13 * * * * *
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

EXHIBIT “6”

REGISTER OF ACTIONS

CASE NO. A-18-771407-C

British Columbia Securities Commission, Plaintiff(s) vs. Michael Lathigee, Defendant(s)

§
§
§
§
§
§
§
§Case Type: Other Civil Matters
Date Filed: 03/20/2018
Location: Department 14
Cross-Reference Case Number: A771407
Supreme Court No.: 78833

PARTY INFORMATION

Defendant	Lathigee, Michael Patrick	Lead Attorneys Jay D. Adkisson <i>Retained</i> 702-953-9617(W)
Other	ACO Finance Group LLC	John W. Muije <i>Retained</i> 7023867002(W)
Other	Lathigee, Celiste	John W. Muije <i>Retained</i> 7023867002(W)
Other	Marsada, Lolita	John W. Muije <i>Retained</i> 7023867002(W)
Other	ML Holdings II LLC	John W. Muije <i>Retained</i> 7023867002(W)
Other	Smith, Monica Teresa	John W. Muije <i>Retained</i> 7023867002(W)
Plaintiff	British Columbia Securities Commission	Kurt R. Bonds <i>Retained</i> 702-384-7000(W)

EVENTS & ORDERS OF THE COURT

08/27/2019 | All Pending Motions (9:30 AM) (Judicial Officer Escobar, Adriana)

Minutes

08/27/2019 9:30 AM

- Mr. Pruitt stated that the accounts in question must have had Mr. Lathigee on them as well, which is why they were garnisheed. Mr. Muije advised that the original forms used were self help forms and were not correct, but now that he is in the case, they have been filed properly. Following further arguments by counsel, COURT ORDERED, matter is taken UNDER ADVISEMENT, however the hearing is CONTINUED in the event that a ruling is not given. If the ruling is given prior to the continuance date, parties will be notified and the hearing will be vacated. CONTINUED TO: 9/5/19 11:00 AM

[Parties Present](#)[Return to Register of Actions](#)

EXHIBIT “7”

1 **DECL**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 E. Sahara Ave #106
6 Las Vegas, Nevada 89104
7 Telephone No: (702) 386-7002
8 Facsimile No: (702) 386-9135
9 Email: Jmuije@muijelawoffice.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CELESTE LATHIGEE and MICHAEL
12 LATHIGEE, husband and wife,

Plaintiffs,

vs.

13 BRITISH COLUMBIA SECURITIES
14 COMMISSION; DAVID HUFF; GREEN
15 VALLEY LOCK & SAFE, INC; DOES I
16 through III inclusive, ROES I through III,
17 inclusive,

Defendants.

CASE NO: A-20-824004-C

DEPT NO: XV

Date of Hearing: February 8, 2021

Time of Hearing: 9:00 a.m.

SWORN DECLARATION OF DEFENDANT MICHAEL LATHIGEE

18 STATE OF NEVADA)
19) ss.:
20)
21 COUNTY OF CLARK)

22 Your declarant being first duly sworn upon oath, under penalty of perjury states and
23 affirms as follows:

24 1. My name is Michael P. Lathigee (hereinafter "Lathigee") and I make this sworn
25 declaration under penalty of perjury, based upon personal knowledge, except as to items stated on
26 information and belief, which I reasonably believe to be true. If called as a witness I could and
27 would competently testify thereto.
28

1 2. I was personally present at my residence on the day of August 15, 2019, when
2 multiple Constable's Deputies showed up, demanded entrance, and commenced seizing and
3 hauling out virtually all personal property contained in the residence.
4

5 3. On information and belief, the seizure was done pursuant to the Writ drafted by
6 and issued by the British Columbia Securities Commission (hereinafter "BCSC"), a true and
7 correct copy of which is attached to the Plaintiff's Opposition to Motion to Dismiss as Exhibit
8 "4".
9

10 4. As noted above, the Constable and the Deputy Constables and/or their locksmith
11 located and broke into our hidden "panic" room..

12 5. In accessing that hidden "panic" room, they knocked loose an electrical outlet and
13 tore an item from the wall, as shown in the pictures attached hereto as Exhibits "1", "2", and "3"
14 respectively.
15

16 6. They also broke into and irreparably damaged multiple safes on premises.

17 7. More importantly, they terrorized my wife and small child, taking jewelry that my
18 wife had acquired long before she even met me, taking items out of my child's bedroom and his
19 I-Pad as well as other toys and possessions.
20

21 8. While I understand that one purpose of the BCSC's seizure was to gather valuable
22 property for purposes of partially satisfying the judgment they claimed I owe, the BCSC's
23 specific instructions as contained in the Writ went far above and beyond actual seizure of items
24 for sale, including delivering my papers to a copy center for purposes of copying, and delivering
25 my electronics, including my personal cell phone, to an IT specialist for purposes of cloning and
26 inspecting the data.
27

28 ////

////

1 9. What was particularly egregious, however, was that I had previously conveyed to
2 counsel and in discussions with BCSC counsel that I would be in Canada in late July or early
3 August due to my mother's failing health.

4
5 10. On information and belief, the BCSC knew or reasonably should have known that
6 my mother had passed away and that her funeral was to be held on August 15, 2019, because I
7 had told them so in requesting more time to compile paperwork for my EJFD

8 11. When the Deputy Constable demanded my cell phone upon pain of arrest, and I
9 explained to him that I was scheduled to give an eulogy via phone at my mother's funeral in
10 approximately 30 minutes, the Constable was kind enough to call Mr. Pruitt, counsel for BCSC,
11 as he told me at the time.

12
13 12. I overheard the Constable's part of the conversation as he requested that he be
14 allowed to at least let me have my cell phone for purposes of rendering the eulogy, and I actually
15 overheard an individual whom I believe to be counsel for the BCSC specifically say "no, don't let
16 him have it back".

17
18 13. The BCSC has consistently made me out to be some major criminal who pocketed
19 millions of dollars at the expense of investors, but the same was far from the truth.

20
21 14. As I have repeatedly documented before the Supreme Court and before Judge
22 Escobar, I am certain I lost more from the collapse of the investment company than any
23 individual investor.

24 15. Investment monies were received by the company in the ordinary course, spent on
25 business expenses and for the ordinary functioning of its property development.

26 16. When the company collapsed due to the economic and liquidity crisis caused by
27 the collapse of Lehman Brothers, I lost everything.
28

JOHN W. MUTJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmutje@mutjelawoffice.com

1 17. Even the BCSC's own expert witness in the underlying Canadian proceeding
2 stated, "certainly I agree the impact of the remedy is significant in that the Order in question
3 requires Mr. Lathigee to pay \$21,700,000 Canadian without proof that Mr. Lathigee personally
4 received that amount." 1 JAX 132 Emphasis added.

5
6 18. The seizure as orchestrated by the BCSC was beyond anything that one would
7 consider normal, civil, or decent, literally stripping myself, my wife, and my child of, virtually all
8 possessions in the residence with the exception of our personal clothing items, despite the BCSC,
9 on information and belief, knowing or being in a position to reasonably know that many of the
10 items, including my child's toys, my wife's jewelry, my personal cell phone, etc., would be
11 exempt from execution.

12
13 19. It is my understanding, on information and belief, that Dept. 14 is belatedly
14 handling the resolution of the exemptions and third-party claims at this time.

15
16 20. Nevertheless, there has never been an opportunity to address the propriety of the
17 seizure, on the merits, with each party in a position to present competent evidence and call
18 witnesses.

19 21. I feel it only appropriate, after being advised that as to Nevada law, that I be
20 afforded a reasonable opportunity in court to address the overly aggressive and inhumane seizure
21 of all of the contents of my residence, on the merits, with the court considering evidence and
22 testimony from the relevant witnesses.

23
24 22. I make the above and foregoing Declaration under penalty of perjury and if called
25 as a witness I could and would competently testify thereto, except as to items on information and
26 belief which I reasonably believe to be true,
27

28

MICHAEL P. LATHIGEE

EXHIBIT “1”



EXHIBIT “2”



EXHIBIT “3”

