

1 Richard F. Holley, Esq. (NV Bar No. 3077)
 Email: rholley@nevadafirm.com
 2 Andrea M. Gandara, Esq. (NV Bar No. 12580)
 Email: agandara@nevadafirm.com
 3 Mary Langsner, Ph.D. (NV Bar No. 13707)
 Email: mlangsner@nevadafirm.com
 4 HOLLEY DRIGGS WALCH
 FINE PUZEY STEIN & THOMPSON
 5 400 South Fourth Street, Third Floor
 Las Vegas, Nevada 89101
 6 Telephone: 702/791-0308
 Facsimile: 702/791-1912
 7

8 *Attorneys for Fred Sadri, both in his individual capacity and as Trustee for The Star Living*
 9 *Trust, dated April 14, 1997; Ray Koroghli, individually; and Ray Koroghli and Sathsowi T.*
 10 *Koroghli, in their individual capacities as well as Managing Trustees for Koroghli Management*
 11 *Trust*

12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 In re
 15 GHOLAM REZA JAZI ZANDIAN,
 16
 17 Debtor in Foreign Proceeding.

18 Case No. BK-N-16-50644-BTB
 Chapter 15

19 **RESPONSE TO SUPPLEMENT TO**
 20 **AMENDED MOTION TO DISMISS**
 21 **CHAPTER 15 CASE**

22 Hearing Date: January 2, 2020
 23 Hearing Time: 2:00 p.m.

24 Judge: Hon. Bruce T. Beesley

25 Fred Sadri, both in his individual capacity and as Trustee for The Star Living Trust, Dated
 26 April 14, 1997; Ray Koroghli, individually; and Ray Koroghli and Sathsowi T. Koroghli, in their
 27 individual capacities as well as Managing Trustees for Koroghli Management Trust (“Claimants”),
 28 by and through counsel, Richard F. Holley, Esq., Andrea M. Gandara, Esq., and Mary Langsner,
 Ph.D. of the law firm Holley Driggs Walch Fine Puzey Stein & Thompson, hereby respond to the
 Supplement to Amended Motion to Dismiss Chapter 15 Case [ECF No. 71] filed by Jed Margolin
 (“Movant” or “Margolin”).

The Movant’s motivation for seeking dismissal of this proceeding is made readily apparent
 in his Supplement: he is dissatisfied with the results of this Court’s Order Granting Partial Motion
 for Summary Judgment and Denying Motion for Summary Judgment Against Crossclaimant

1 Patrick Canet and Granting Counter Motion For Summary Judgment¹ (the “MSJ Order”)
2 invalidating the Movant’s defective foreclosure after the parties fully litigated that dispute on the
3 merits more than a year ago. To the extreme prejudice of Claimants, Movant now is attempting an
4 end-run to avoid the consequences of the Court’s Order. Accordingly, if the Court is inclined to
5 grant dismissal of this proceeding, such dismissal should be structured to ensure the Court’s Order
6 remains enforceable after termination of these proceedings.

7 Dated this 19th day of December, 2019.

8 **HOLLEY DRIGGS WALCH**
9 **FINE PUZEY STEIN & THOMPSON**



10 Richard F. Holley, Esq.
11 Nevada Bar No. 3077
12 Andrea M. Gandara, Esq.
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19 capacity and as Trustee for The Star Living
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21 individually; and Ray Koroghli and Sathswi T.
22 Koroghli, in their individual capacities as well
23 as Managing Trustees for Koroghli
24 Management Trust*

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Margolin is clearly attempting to invalidate or circumvent the Court’s Order to improperly
22 retain his rights in nine (9) parcels of real property located in Washoe County, Nevada, which
23 rights are premised on a judgment against Gholam Reza Jazi Zandian (“Debtor”) who is equal
24 parts one-third co-owner of the parcels with Claimants. However, Margolin failed to avail himself
25 to relief under the federal rules and to do so within the time allotted and therefore Margolin has
26 forfeited his ability to seek relief from the Order. Margolin should not be entitled to do so.

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28 ¹ *Sadri v. Margolin*, Cas No. 17-05016-btb, ECF No. 61.

HOLLEY DRIGGS WALCH FINE PUZEY STEIN THOMPSON

1 **II. BACKGROUND**

2 By way of summary of the proceedings related to this Chapter 15 proceeding, the Court
 3 found the Claimants and Debtor to be equal one-third undivided interest holders in the properties.
 4 The dispute as to Debtor's one-third undivided interest arose when Margolin filed a civil action
 5 against Debtor and obtained default judgment in the amount of \$1,495,775.74. Margolin then
 6 caused parcels 2, 4, and 8 to be sold to himself by Sheriff's Sale for \$5,000, \$5,000, and \$3,000
 7 respectively. The Court found that Margolin never recorded an affidavit to create his judgment
 8 lien as required under NRS 17.150(4). Accordingly, the Claimants received no notice of the sale
 9 to protect their interest in the parcels. The Court further found that the sales to Margolin were void
 10 *ab initio* and affirmed the Claimants' respective undivided one-third interests in the parcels. *See*
 11 Order, *Sadri v. Margolin*, Cas No. 17-05016-btb, ECF No. 23; *see also* Findings of Fact and
 12 Conclusions of Law in Support of Order Granting Partial Motion for Summary Judgment and
 13 Denying Motion for Summary Judgment Against Cross Claimant Patrick Canet and Granting
 14 Counter Motion For Summary Judgment² (the "MSJ Findings/Conclusions").

15 **III. ANALYSIS**

16 **A. The Court Should Consider the Prejudice to Claimants in Modifying or**
 17 **Terminating Recognition of this Proceeding Pursuant to Section 1517(d) and**
 18 **Preserve Its Order Consistent with Discretion for a Structured Dismissal Afforded**
 19 **Under Section 349.**

20 Section 1517(d) governs the modification or termination of recognition of a foreign
 proceeding and in pertinent portion provides:

21 The provisions of this subchapter do not prevent modification or
 22 termination of recognition if it is shown that the grounds for granting
 23 it were fully or partially lacking or have ceased to exist, but in
 24 considering such action the court shall give due weight to possible
prejudice to parties that have **relied** upon the order granting
 recognition.

25 11 U.S.C. 1517(d) (emphasis added).

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 28 ² *Sadri v. Margolin*, Cas No. 17-05016-btb, ECF No. 60.

1 The factors to grant recognition under section 1517 are the same to terminate that
2 recognition. *In re Cozumel Caribe, S.A. de C.V.*, 508 B.R. 330, 335 (S.D.N.Y. 2014). In *Cozumel*,
3 a creditor petitioned the court to withdraw recognition of a reorganization that was occurring in
4 Mexico. *Id.* at 332. The creditor pointed to conduct of the Foreign Representative in both the New
5 York bankruptcy court and Mexican court as cause for the termination of recognition. *Id.* The
6 bankruptcy court found that while serious, the alleged misconduct did not give rise to termination
7 of recognition under 11 U.S.C. 1517(d). *Id.* at 335-36. Further, the court found that the creditor
8 could not use termination to “invalidate or circumvent proceedings in the Mexican courts.” *Id.*
9 at 336.

10 In the Ninth Circuit, legal prejudice is defined as “prejudice to some legal claim, some
11 legal interest, some legal argument[.]” *Smith v. Lenches*, 263 F.3d. 972, 976 (9th Cir. 2001). By
12 way of contrary examples, the panel identified four factors where there was an insufficient basis
13 to find prejudice: (1) uncertainty because a dispute remains unresolved; (2) the threat of future
14 litigation causes uncertainty; (3) the defendant will be inconvenienced by having to defend in
15 another forum; (4) the plaintiff would gain a tactical advantage by the dismissal. *Id.* The court
16 affirmed a district court’s dismissal even though the plaintiff would gain a tactical advantage by
17 litigating the dispute in state court. *Id.*

18 In the present case, Margolin is trying to “invalidate or circumvent” the Order as did the
19 creditor in *Cozumel*. Instead of timely availing himself to relief under FRCP 59 and 60, Margolin
20 has waited more than a year to attempt his upend of the Order and the parties’ respective rights.
21 Just as the creditor in *Cozumel* was not entitled to circumvent a previous proceeding by invoking
22 section 1517(d), Margolin should not be entitled to do so.

23 Even if the Court were to terminate or modify recognition of the foreign proceeding under
24 section 1517(d), it must “give due weight to possible prejudice to parties that have relied upon the
25 order granting recognition.” Here the prejudice to Claimants is clear: the bankruptcy court has
26 already entered its Order finding the Movant’s sale void *ab initio* after the parties fully litigated
27 the issue. The dispute has been resolved since July 20, 2018 and therefore no uncertainty remains.

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1 Second, the Court’s ruling determined that Margolin failed to comply with NRS 17.150(4)
2 thereby nullifying any need for future litigation. Third, Margolin will not be inconvenienced by
3 having to defend in another forum. Fourth, Margolin would not gain a tactical advantage by the
4 dismissal but, would receive a complete reset because the fully litigated issue would be relitigated
5 more than fifteen months after the bankruptcy court entered its Order. Such an outcome would
6 prejudice the Claimants because they would have to incur the expense and time of relitigating the
7 same issue: validity of the Sherriff’s sale. Dismissal would also be a waste of judicial resources
8 since this matter has already been resolved by a competent court on July 20, 2018. Thus, unlike
9 the four examples of a lack of prejudice set forth in *Lenches*, the harm to Claimants supports
10 preservation of the Order as a condition of termination under section 1517. *See also* 11 U.S.C.
11 § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to
12 carry out the provisions of this title. No provision of this title providing for the raising of an issue
13 by a party in interest shall be construed to preclude the court from, sua sponte, taking any action
14 or making any determination necessary or appropriate to enforce or implement court orders or
15 rules, or to prevent an abuse of process.”)

16 In order to properly take into account the prejudice to parties like the Claimants who have
17 relied on upon the Chapter 15 recognition in this proceeding, the Court should exercise discretion
18 to preserve its Order similar to the discretion available to bankruptcy courts under section 349(b).
19 Specifically, a structured dismissal is warranted for cases under other chapters of the Bankruptcy
20 Code for cause. *See* section 349(b)(3) (emphasis added) (“unless the court, for **cause**, orders
21 otherwise, a dismissal of a case other than under section 742 of this title... revests the property of
22 the estate in the entity in which such property was vested immediately before the commencement
23 of the case under this title.”)

24 The United States Supreme Court found cause to grant a structured dismissal under
25 11 U.S.C. 349(b)(3) to be “any acceptable reason.” *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct.
26 973, 984-85 (2017). The Supreme Court referenced the American Bankruptcy Institute’s definition
27 of a structured dismissal as a “hybrid dismissal... that... typically dismisses the case while... not
28 necessarily vacating orders or unwinding transactions undertaken during the case.” *Id.* at 979. The

1 Court found that in reorganization cases such as those under Chapter 11, there are three possible
2 outcomes. *Id.* First, a confirmed plan by the bankruptcy court. *Id.* Second, the conversion of the
3 reorganization case to a Chapter 7 liquidation. *Id.* Third, the dismissal of the case. *Id.* The purpose
4 of dismissal under the Bankruptcy Code is to “undo the bankruptcy case, as far as practicable, and
5 to restore all property rights to the position in which they were found at the commencement of the
6 case.” *Id.*; H. R. Rep. No. 95-595, p. 338 (1977). However, section 349(b) is designed to give
7 bankruptcy courts the flexibility to “make the appropriate orders to protect rights acquired in
8 reliance on the bankruptcy case.” *Czyzewski*, 137 S. Ct. 973, 984-85.

9 Should the Court be inclined to dismiss this Chapter 15 case, it should exercise its
10 discretion under section 1517 and by analogy section 349(b) to preserve its Order because the
11 premise and rationale for a structured dismissal is equally applicable here. The parties and of
12 particular importance Margolin himself fully litigated the merits of the validity of the Sherriff’s
13 sales and reliance by the Claimants as to their rights under the Order is present and consistent with
14 *Czyzewski*. Further, the Court’s entered its MSJ Findings/Conclusions and Order on July 20, 2018.
15 Yet Margolin did not file his amended motion to dismiss until July 31, 2019. Pursuant to the FRCP
16 59(e), as incorporated by FRBP 9023, a motion to amend or alter judgment must be filed within
17 28 days of entry, and under FRCP 60(b), as incorporated by FRBP 9024, a motion for relief from
18 an Order must be brought within a reasonable time or within one year for certain grounds. Margolin
19 has essentially indicated to all involved, and particularly the Claimants, that he would not seek
20 amendment or relief from the Order. The motion to dismiss appears to be Margolin’s attempt at an
21 end-around of the procedural rules to obtain relief from judgment and should be considered an
22 “acceptable reason” to order a structured dismissal.

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IV. CONCLUSION

For the reasons set forth above, Claimants respectfully requests that Court structure any dismissal of this Chapter 15 proceeding to preserve the Order following termination of the case and further requests such other relief as the Court determines is just and equitable.

Dated this 19th day of December, 2019.

**HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON**



Richard F. Holley, Esq.
Nevada Bar No. 3077
Andrea M. Gandara, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Holley, Driggs, Walch, Fine, Puzey, Stein & Thompson, and that on the 19th day of December, 2019, I caused to be served a true and correct copy of **RESPONSE TO SUPPLEMENT TO AMENDED MOTION TO DISMISS CHAPTER 15 CASE** in the following manner:

(ELECTRONIC SERVICE) Under Local Rule 5005 of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

(OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

(FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.

An employee of Holley Driggs Walch
Fine Puzey Stein & Thompson

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