

1 CODE: 3370  
2  
3  
4  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 MCGEE & MCGEE WINE MERCHANTS, LLC, a  
10 Nevada limited liability company, dba SAPPHIRE  
11 FAMILY OF WINES,

12 Plaintiff,

13 v.

14 JAM CELLARS, INC., a California Corporation;  
15 JOHN ANTHONY VINEYARDS, LLC, a  
16 California limited liability company; and DOES I-X,  
17 inclusive,

18 Defendants.

Case No.: CV16-00761  
Dept. No.: 9

19 **ORDER DENYING EMERGENCY MOTION FOR STAY AND INJUNCTION PENDING**

20 **APPEAL**

21 This case came on for hearing on June 7, 2016 regarding Plaintiff MCGEE & MCGEE  
22 WINE MERCHANTS LLC's (hereinafter "McGee") *Emergency Motion for Stay and Injunction*  
23 *Pending Appeal*. At the time of the hearing, the Court was also in receipt of Defendants', JAM  
24 CELLARS, INC. and JOHN ANTHONY VINEYARDS (collectively "Jam Cellars"), *Opposition to*  
25 *Plaintiff's Emergency Motion for Stay and Injunction Pending Appeal*, as well as McGee's *Reply in*  
26 *Support of Plaintiff's Emergency Motion for Stay and Injunction Pending Appeal*.

27 **FACTUAL BACKGROUND**

28 In January 2014, McGee, a family-run wine and spirits distribution company, entered into  
an oral exclusive franchise agreement (the "Franchise Agreement") with Jam Cellars, a wine  
producer located in the Napa region of California, to be the exclusive distributor of Jam Cellar's

1 products in Nevada. One wine produced by Jam Cellars in particular, Butter Chardonnay, has  
2 increased substantially in popularity in Nevada over the last few years. On February 17, 2016 and  
3 February 18, 2016, Jam Cellars sent McGee letters terminating the Franchise Agreement effective  
4 May 17, 2016 and May 18, 2016, partially out of concern for McGee's alleged failure to timely  
5 expand Jam Cellar's product in the Las Vegas area. On March 16, 2016, McGee submitted purchase  
6 orders for the wine. Jam Cellars has declined to fulfil the purchase order of the wine, thus giving  
7 rise to McGee's filing of its *Emergency Ex-Parte Application for Temporary Restraining Order and*  
8 *Motion for Preliminary Injunction* in this Court on April 4, 2016.

### 9 PROCEDURAL BACKGROUND

10 This Court denied McGee's *Emergency Ex-Parte Application for Temporary Restraining*  
11 *Order and Motion for Preliminary Injunction* on April 11, 2016 after ordering parties to submit an  
12 opposition and response to the application. The Court denied the application on the basis that as the  
13 subject matter of the dispute was essentially contractual in nature, an adequate remedy at law  
14 existed for an alleged breach of a contract between McGee and Jam Cellars.

15 McGee filed a *Notice of Appeal* to the Supreme Court of Nevada on April 12, 2016. On  
16 April 18, 2016, McGee filed the pending *Emergency Motion for Stay and Injunction Pending*  
17 *Appeal*. This Court entered an *Order to Set Hearing* on McGee's motion on May 2, 2016. However,  
18 on May 5, 2016, Jam Cellars filed a *Notice of Removal to Federal Court*, thus causing the Supreme  
19 Court of Nevada to enter an order stating it would take no action on the pending appeal from this  
20 Court. The United States District Court for the State of Nevada entered an order denying removal to  
21 federal court on May 24, 2016. On May 24, 2016, the Supreme Court of Nevada entered an *Order*  
22 *Reinstating Appeal and Denying Motion for Stay*.

23 Thus, the *Emergency Motion for Stay and Injunction Pending Appeal* are once again before  
24 this Court for determination.

### 25 STANDARD OF REVIEW

26 In deciding whether to issue a stay, a court considers four factors: first, "whether the object  
27 of the appeal or writ petition will be defeated if the stay is denied"; second, "whether  
28 appellant/petitioner will suffer irreparable or serious injury if the stay is denied"; third, "whether

1 respondent/real party in interest will suffer irreparable or serious injury if the stay is granted”; and  
2 fourth, “whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.”  
3 *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 6 P.3d 982 (2000)  
4 (referencing NRAP 9(c); *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)). Pursuant to *State v.*  
5 *Robles-Nieves*, no weight has been ascribed “to any of the stay factors in the civil context, but . . .  
6 depending on the type of appeal, certain factors may be especially strong and counterbalance other  
7 weak factors.” 306 P.3d 399, 129 Nev. Adv. Op. 55 (2013).

### 8 DISCUSSION

9 For the reasons set forth below, the Court DENIES McGee’s *Emergency Motion for Stay*  
10 *and Injunction Pending Appeal*.<sup>1</sup>

#### 11 **I. Object of Appeal**

12 The Court finds the object of the appeal will not be defeated if a stay of this Court’s order is  
13 denied. McGee argues that the object of the appeal will be defeated insofar as the termination of the  
14 parties’ Franchise Agreement occurs on May 17, 2016; without a stay of this Court’s order denying  
15 an injunction, the issue on appeal would essentially be moot as the termination date will already  
16 have passed. *See* (Mot. Stay, 7-8). McGee cites *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,  
17 89 P.3d 36 (2004) and *State v. Robles-Nieves*, 306 P.3d 399, 129 Nev. Adv. Op. 55 (2013) for the  
18 proposition that McGee’s rights would be lost if a stay is denied. *Id.* at 7.

19 The Court does not find either *Mikohn* or *Robles-Nieves* applicable to the case at hand. First,  
20 the issue of object of appeal in *Robles-Nieves* concerned the review of a criminal statute permitting  
21 interlocutory appeals of orders granting motions to suppress evidence, which is not the issue in the  
22 case at hand. *Robles-Nieves*, 306 P.3d 403. Second, in *Mikohn*, the issue on appeal was a district  
23 court’s denial of a motion to compel arbitration. The Supreme Court of Nevada reasoned that it  
24 would be illogical for parties to participate in litigation at the district court level while  
25 simultaneously proceeding in appeal regarding the arbitration forum: “the benefits of arbitration  
26 would likely be lost or eroded” and the victory fundamentally hollow. *Mikohn*, 120 Nev. 252, 39.

---

27  
28 <sup>1</sup> The Court declines to address McGee’s good cause argument under the Nevada Revised Statutes on the basis that  
issues of fact exists regarding good cause and any alleged improper termination of the Franchise Agreement.

1 In the case at hand, McGee is not proceeding in both a judicial and arbitral forum. Further, a  
2 McGee victory on appeal would not be hollow. Rather, as Jam Cellars asserts, “if for some reason  
3 the Nevada Supreme Court reverses this Court’s order denying Plaintiff’s motion for an injunction,  
4 it will simply remand it for a hearing on Plaintiff’s Application.” *See* (Opp. Mot. Stay, 7).

5 As such, the Court does not find the object of the appeal will be defeated if a stay is denied.

6 **II. Irreparable or Serious Injury to Petitioner**

7 Second, the Court does not find irreparable injury to McGee if the stay is denied. McGee  
8 argues that the Franchise Agreement is an exclusive property right, which mandates injunctive  
9 relief to prohibit interference with it. *See* (Reply Mot. Stay, 10) (citing *De Luca Importing Co., Inc.*  
10 *v. Buckingham Corp.*, 90 Nev. 158, 520 P.2d 1365 (1974)). Further, McGee asserts, even though  
11 Jam Cellar’s business makes up approximately thirty-percent (30%) of McGee’s annual sales and  
12 business, McGee’s “inability to fulfill orders” for its numerous clients will cause irreparable injury  
13 to McGee’s business reputation. *Id.* at 11.

14 The Court declines to read *De Luca* as a requirement that in every instance where an  
15 exclusive franchise agreement is at issue, a court *must* issue the requested injunctive relief. The  
16 Court agrees with McGee that an exclusive franchise is a property right. *See De Luca*, 90 Nev. 160.  
17 However, *De Luca* does not state that injunctive relief is mandatory. Rather, *De Luca* states  
18 injunctive relief is merely *available* and that a court must afford parties the opportunity to be heard  
19 on the issue; each case turns on its own unique facts and circumstances. *Id.*

20 In the case at hand, this Court has found an adequate remedy at law exists for McGee to  
21 recover under from the alleged breach of the Franchise Agreement: as indicated in this Court’s  
22 *Order Denying Plaintiff’s Emergency Ex-Parte Application for Temporary Restraining Order and*  
23 *Motion for Preliminary Injunction*, two alternative remedies exist at law for McGee to recover  
24 under: first, contractual remedies for alleged breach of the Franchise Agreement, and second,  
25 statutory remedies found in the provisions of NRS 507.120 to 597.180, inclusive.

26 Moreover, the Court does not find McGee’s argument persuasive that its inability to fulfil its  
27 client’s orders will cause a total destruction of McGee’s business. While McGee argues that Jam  
28 Cellar’s products will likely constitute much more than thirty-percent (30%) of the business in

1 2016, the Court notes that McGee still has contracts with numerous other suppliers; again, the  
2 allegation of total destruction of the business is purely speculative for this Court to enter a stay.

3 Therefore, the Court does not find McGee will suffer irreparable injury if the stay is denied.

4 **III. Irreparable or Serious Injury to Respondent**

5 Next, the Court denies McGee's request for stay on the basis that should the Court issue a  
6 stay, the injury to Jam Cellars would be serious. Thus, the Court finds this third factor particularly  
7 strong to counterbalance the other three factors analyzed.

8 During oral argument on this matter, Jam Cellars asserted that Las Vegas is one of the top  
9 liquor markets in the United States, and possibly the world. Jam Cellars stated that in 2015, McGee  
10 only had fourteen customers in the Las Vegas area and sold a total of three-hundred and thirty cases  
11 in the same market. Essentially, Jam Cellars argues that McGee was incapable of distributing Jam  
12 Cellar's products in an efficient manner. As such, Jam Cellars argues it has "actually been hurt by  
13 its absence in the largest market in the state." *See* (Opp. Mot. Stay, 10).

14 The Court finds Jam Cellar's argument on this issue persuasive: if a stay is issued, the Court  
15 would essentially be preventing Jam Cellars from fully competing in Nevada's economy. Further,  
16 while forms of equitable relief may be available for the alleged breach of contract, such as specific  
17 performance, the Court cannot force the parties to remain in an exclusive franchise agreement in  
18 perpetuity. As the Supreme Court of Nevada has stated,

19 Our equitable powers do not extend so far as to permit us to disregard fundamental  
20 principles of the law of contracts, or arbitrarily to force upon parties contractual  
21 obligations, terms or conditions which they have not voluntarily assumed. In this  
22 regard, equity respects and upholds the fundamental right of the individual to  
23 complete freedom to contract or decline to do so, as he conceives to be for his best  
24 interests, so long as his contract is not illegal or against public policy. In this respect,  
25 and many others, equity follows the law. Much as we would like to relieve the  
26 appellant from his unfortunate situation, we cannot rightfully do so, as we must  
27 maintain the necessary certainty, stability and integrity of contractual rights and  
28 obligations.

29 *McCall v. Carlson*, 63 Nev. 390, 424, 172 P.2d 171, 187-88 (1946).

30 Therefore, the Court denies McGee's request for a stay insofar as the injury to Jam Cellars  
31 would be serious.

1 **IV. Likelihood of Prevailing on the Merits of Appeal**

2 The Court finds McGee has not established the balance of equities weighs heavily in favor  
3 of granting a stay. "Although, when moving for a stay pending an appeal or writ proceedings, a  
4 movant does not always have to show a probability of success on the merits, the movant must  
5 'present a substantial case on the merits when a serious legal question is involved and show that the  
6 balance of equities weighs heavily in favor of granting the stay.'" *Hansen v. Eighth Judicial Dist.*  
7 *Court ex rel. County of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle*,  
8 650 F.2d 555, 565 (5<sup>th</sup> Cir. 1981)). As addressed above, granting a stay would prevent Jam Cellars  
9 from fully participating in the Nevada economy. This Court cannot impose contractual obligations  
10 not voluntarily assumed, nor can it mandate contractual obligations in perpetuity absent such terms  
11 written into the instrument itself. Thus, the balance of equities does not weigh heavily in favor of  
12 granting a stay.

13 THEREFORE, and good cause appearing, based upon careful review of the moving papers,  
14 oral arguments, above analysis, the Court HEREBY DENIES Plaintiff MCGEE & MCGEE WINE  
15 MERCHANTS LLC's *Emergency Motion for Stay and Injunction Pending Appeal*.

16 DATED this 17 day of June, 2016.

17  
18   
19 \_\_\_\_\_  
20 DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28