NO. _____

In the Supreme Court of the United States

RICKEY NEWSOME,

Petitioner,

–v–

RSL FUNDING, LLC; RSL SPECIAL-IV, LIMITED PARTNERSHIP,

Respondents.

On Petition for Writ of Certiorari to

The Supreme Court of Texas

PETITIONER RICKEY NEWSOME'S APPLICATION TO STAY ENFORCEMENT OF JUDGMENT

EARL S. NESBITT
Supreme Court Bar No. 310166
COUNSEL OF RECORD FOR PETITIONER RICKEY NEWSOME
NESBITT, VASSAR & MCCOWN, LLP
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TEXAS 75001
(972) 371-2411

ENESBITT@NVMLAW.COM
July 31, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit.

I. BACKGROUND AND PROCEDURAL HISTORY

1. In December of 2018, the Texas Supreme Court reversed the decisions of the 193rd District Court of Dallas County, Texas (the "193rd Court") and the Fifth District Court of Appeals of Texas (the "Dallas Court of Appeals") denying Respondent RSL Funding, LLC's ("RSL") motion to compel arbitration in this case. (A copy of the Texas Supreme Court's opinion [the "Tex. Sup. Ct. Opinion"] and judgment [the "Tex. Sup. Ct. Judgment"] rendered December 21, 2018, the denial of Petitioner Rickey Newsome's Motion for Rehearing on March 29, 2019, and the mandate issued by the Texas Supreme Court on March 29, 2019 [the "Tex. Sup. Ct. Mandate"] are included in the Appendix [App. 1-4])

2. Petitioner Rickey Newsome ("Newsome") timely filed a Petition for Writ of Certiorari (the "Newsome Petition") with the Supreme Court of the United States on June 27, 2019. The case was docketed by the Clerk of the Supreme Court on July 3, 2019. The Newsome Petition, which seeks to have this Court review (and ultimately reverse) the decision/judgment of the Texas Supreme Court, remains pending with this Court. RSL waived its right to file a response to the Newsome Petition, which has been set for a Conference by the Court on October 1, 2019.

3. The underlying case involves a bill of review filed by Petitioner Newsome seeking to set aside and vacate two conflicting court orders signed by the 193rd Court in a structured settlement transfer proceeding, which proceeding had

originally been filed by Respondent RSL in accordance with the Texas Structured Settlement Protection Act, TEX. CIV. PRAC. & REM. CODE ANN. § 141.001 *et. seq.* (the "Texas SSPA")[1]. The Texas SSPA provides, in part, as follows:

> No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final order based on express findings by the court . . .

4. The 193rd Court approved a proposed transfer of structured settlement payment rights by Newsome to RSL in October 2013 and signed a final order/judgment (the "Order Approving Transfer") in accordance with the Texas SSPA. The 193rd Court included a condition (the "Funding Condition") in the Order Approving Transfer, which required RSL to pay Newsome $ 53,000 if the transaction was funded within ten days and $ 106,000 if the transaction was funded after 10 days. RSL did not comply with the Funding Condition and did not pay Newsome any money at all.

5. In August of 2014, RSL proposed securing a new order from the 193rd Court, which would remove the Funding Condition, and promised to pay Newsome the $ 53,000 within 10 days. RSL submitted a Corrected Order Approving Transfer Nunc Pro Tunc (the "Nunc Pro Tunc Order") in September 2014 and the 193rd Court improperly signed same. Still RSL refused to pay. Mr. Newsome then retained counsel who made a written demand on RSL, which responded by filing a new lawsuit

[1] A bill of review is an independent equitable action brought by a party to a previous suit who seeks to set aside a judgment that is no longer subject to a motion for new trial or appealable. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 926-927 (Tex. 1999).

in Harris County, Texas. Newsome promptly filed the bill of review in the 193rd Court to set aside and vacate both orders. RSL sought to compel arbitration in the bill of review proceeding and Newsome opposed arbitration. The 193rd Court denied RSL's motion to compel arbitration and the Dallas Court of Appeals affirmed. RSL appealed to the Texas Supreme Court.

II. RSL PUSHES FOR IMMEDIATE ARBITRATION

6. On December 17, 2018, four (4) days before the Texas Supreme Court rendered its decision in this case, the CEO of RSL, Stewart Feldman, wrote to Arbitrator Scott Link. (App. 5, the "December 14 Letter"). (The letter is dated December 14, but was e-mailed on December 17, 2019.)

7. In the December 14 Letter, Mr. Feldman, while purporting to address the "status" of the case, made arguments and contentions about the underlying proceedings and the alleged actions of Newsome and his counsel, who Feldman claimed had improperly delayed the arbitration and complained that Newsome had "caused immense expense to RSL which it seeks to recover [from Newsome] in arbitration." (App. 5). Mr. Feldman also complained about the trial judge's "unusually aggressive actions to prevent" arbitration. (App. 5). The "unusually aggressive actions" of the trial judge consisted of: (i) enjoining RSL from pursuing a motion to compel arbitration in the newly (and improperly) filed Harris County lawsuit; and (ii) denying RSL's motion to compel arbitration. The December 14 Letter went on to note that "RSL believes a favorable opinion enforcing RSL's rights to arbitrate will be issued relatively soon" (by the Texas Supreme Court) and "[i]n

anticipation of Mr. Newsome being compelled to arbitrate, RSL wants to make sure Judge Link . . ." will proceed with the arbitration quickly. (App. 5).

8. Thus, RSL sought to fast-track arbitration in this case even before the Texas Supreme Court had rendered a decision. The arbitrator responded to Mr. Feldman's letter within 10 minutes, confirming that he was ready to proceed with the arbitration. (App. 6). The Texas Supreme Court rendered its decision 4 days later.

9. The Tex. Sup. Ct. Opinion, Tex. Sup. Ct. Judgment, and Tex. Sup. Ct. Mandate directed the 193rd Court to issue an order consistent with the decision/opinion of the Texas Supreme Court and to grant RSL's motion to compel arbitration. The Texas Supreme Court had written in its opinion that it had "no choice but to send this dispute to arbitration for the arbitrator to at least decide arbitrability." (App. 1, Tex. Sup. Ct. Opinion, p.9).

10. When the Tex. Sup. Ct. Opinion was issued on December 21, Mr. Feldman again emailed Arbitrator Link pressing for immediate arbitration. Arbitrator Link responded "I am ready to arbitrate this matter" and requested dates in January 2019 when the arbitration could go forward. (App. 7, 8).

11. Later that same day an attorney for RSL, Mr. Paredes, e-mailed the undersigned counsel for Mr. Newsome, Earl Nesbitt, noting that the arbitrator "would like to get this proceeding moving forward." (App. 9). The undersigned, who was on a family vacation, responded promptly noting that he was on vacation and was not in the office, had not had the opportunity to review the decision thoroughly or discuss it with Mr. Newsome, had not been engaged to represent Mr. Newsome in

an arbitration, and would be unable to address this matter until his return to his office. (App. 10).

12. On January 2, 2019, in response to a follow-up e-mail from Mr. Paredes, Mr. Nesbitt informed RSL (via Mr. Paredes) and Arbitrator Link (via a cc, as Mr. Paredes had copied Arbitrator Link on his e-mail) that Newsome would be seeking rehearing in the Texas Supreme Court. (App. 11). Mr. Nesbitt also informed RSL that he had not yet been retained to represent Mr. Newsome in the arbitration and, in any event, Mr. Newsome would not be moving forward with an arbitration until after he had exhausted all appellate options. (App. 11).

13. On March 29, 2019, the Texas Supreme Court denied Mr. Newsome's motion for rehearing. (App. 3). Mr. Paredes e-mailed Arbitrator Link that day, again seeking to fast track the arbitration. (App. 12). Arbitrator Link responded that he was "ready to start the arbitration process." (App. 13). Mr. Paredes then contacted Arbitrator Link's office on April 2, 2019 and proposed a conference call.

14. That same day Mr. Nesbitt called Mr. Paredes and informed him that he had not been engaged to represent Mr. Newsome in the arbitration and, more importantly, that Mr. Nesbitt did continue to represent Mr. Newsome in the litigation and that Mr. Newsome had not yet exhausted his appellate remedies. Mr. Paredes was also informed, by phone and in writing, that Mr. Newsome would be seeking review of the Texas Supreme Court's decision by the United States Supreme Court. (App. 14). Mr. Paredes shot back an e-mail again pressing for a speedy arbitration,

notwithstanding the fact that RSL and Mr. Paredes had been informed that Newsome was proceeding with an appeal to the United States Supreme Court. (App. 15).

15. Mr. Newsome, via his counsel, urged the arbitrator (and RSL) that arbitration should be postponed until the United States Supreme Court made a decision on Newsome's Petition for Writ of Certiorari, which at that time had not yet been filed, but has since been filed and docketed with this Court. In the view of Newsome, proceeding with an arbitration that could become moot and waste the time and resources (very limited resources in the case of Newsome) of all parties while the Newsome Petition is pending with this Court would be extremely imprudent and highly prejudicial to Mr. Newsome. (App. 16). Nevertheless, the undersigned counsel did agree to participate in the conference call on April 5, noting that he was not appearing as counsel in the arbitration case, but rather to protect Mr. Newsome's rights and the jurisdiction of the Supreme Court to at least have an opportunity to consider the Newsome Petition. (App. 16).

16. Incredibly, Mr. Feldman then contacted Mr. Newsome directly. In an e-mail dated April 4, 2015, Mr. Feldman acknowledged that he called Mr. Newsome directly to advise him of the "hearing tomorrow at 3:30 p.m." (Mr. Feldman was referring to the conference call that had been scheduled with Arbitrator Link in which counsel was going to address with the arbitrator whether the arbitration should go forward while Newsome pursued his appeal to the Supreme Court.) (App. 17).

17. Mr. Newsome's version of the phone call he received from Mr. Feldman was different than Mr. Feldman's account in his April 4 e-mail. Mr. Newsome noted

that Mr. Feldman had informed him during the telephone call that Earl Nesbitt was no longer representing him (Newsome), that an arbitration was taking place on April 5, 2019, and that Mr. Feldman had some money for Mr. Newsome. (App. 18). None of those statements by Mr. Feldman to Mr. Newsome were accurate.

18. This occurred despite the fact that in an e-mail dated April 2, 2019, the undersigned counsel for Mr. Newsome had unequivocally confirmed that he would participate in the April 5 conference call with RSL and Arbitrator Link. In response to Mr. Feldman's e-mail in which he admitted that he had called Mr. Newsome directly, Newsome's counsel directed Mr. Feldman not to contact his client directly, stating as follows:

> I will be participating in the conference call tomorrow on behalf of Mr. Newsome, for the sole purpose, as his litigation counsel in the continuing court proceedings, to ensure that a premature, improper arbitration does not move forward at this time and to protect Mr. Newsome's interests. RSL and Mr. Feldman knew that I would be participating in the conference call tomorrow, to protect Mr. Newsome's interest, yet still Mr. Feldman improperly contacted my client directly by phone. It is clear to me that he did this for the purpose of harassing, scaring, and upsetting Mr. Newsome by providing him inaccurate information.

(App. 19).

19. During the April 5 conference call, Arbitrator Link indicated that he was not going to move forward with an arbitration while legal proceedings were ongoing relative to whether arbitration would be compelled or not. Prior to that call, Arbitrator Link sent an e-mail in which he stated that he was setting a hearing date for the arbitration based on the Texas Supreme Court ruling. He also noted that if a party chooses to file an appeal, then the arbitration hearing date would be abated

until the court ruled. (App. 20).

20. Based on the April 5 call and Arbitrator Link's e-mail, Newsome and his counsel understood that no arbitration was going to move forward until proceedings in the United States Supreme Court concluded. RSL then decided to pursue an alternative avenue to compel a premature arbitration.

21. On Wednesday, May 22, 2019, RSL submitted a proposed Order Referring Case to Arbitration (the "Arbitration Order") to the 193rd Court, via electronic filing at 3:08 p.m. (App. 21). In doing so, RSL's lawyers failed to comply with Dallas Local Rule 2.08, which requires a lawyer to tender to opposing counsel a draft of a proposed order in a contested matter at least two working days before the order is submitted to the Court. Newsome's counsel was not provided the opportunity to review or provide comments to the form or substance of the proposed arbitration order before it was tendered to the Court by RSL.

22. On Friday, May 24, 2019, Mr. Paredes e-mailed Arbitrator Link informing him that the trial court had signed an Arbitration Order on May 23, 2019. (App. 22). Counsel for Newsome, who had been preparing to object to the proposed order and provide comments to the Court regarding same, learned the order had been signed from Mr. Parades' e-mail to Arbitrator Link.

23. Newsome has since filed a formal objection to the Arbitration Order submitted by RSL and a motion for a new/amended order, and a hearing on said objection/motion is set in the 193rd Court on August 12, 2019. To be clear, Newsome is not asking the 193rd Court to stay the arbitration; rather Newsome is asking the

trial court to sign an order which is consistent with the decision and judgment of the Texas Supreme Court. The 193rd Court cannot stay the arbitration pending the resolution of the Newsome Petition in this court—as that is the purpose of this Application to Stay. Newsome is simply seeking to have the 193rd Court render an appropriate and proper arbitration order, consistent with the Tex. Sup. Ct. Opinion and Texas law.

24. After securing the Arbitration Order, RSL again pressed the arbitrator for the arbitration to commence immediately, this time relying on the Arbitration Order, even though nothing had changed relative to Newsome's intention to file a Petition for Writ of Certiorari with the Supreme Court. (App. 22).

25. On May 29, 2019, Arbitrator Link responded to all counsel indicating that he was preparing to proceed with the arbitration. (App. 23).

26. The "hook" that RSL is using to try and compel a hasty arbitration is the false suggestion by RSL that Arbitrator Link's "jurisdiction" to arbitrate will expire unless the arbitration is completed within four months after the order compelling arbitration is signed. (App. 5, 22, 24).[2] That is simply not true, as the "four-month" provision upon which RSL relies provides that the arbitration should be concluded within four months from the written demand for arbitration being made. RSL made

[2] The arbitration provision in the Transfer Agreement relied on by RSL in seeking to compel arbitration provides as follows: "If the first arbitration organization or arbitrator which receives a written demand for arbitration of the dispute from any interested party does not complete the arbitration to finality within four months of the written demand, any interested party then may file a written demand for arbitration of the dispute with another neutral arbitration association or arbitrator, with the prior arbitration association or arbitrator then being immediately divested of jurisdiction, subject to a decision being rendered by the replacement arbitration association within four months of the written demand being filed with the replacement arbitration group."

its written demand for arbitration in November of 2013. RSL's contention that the four month provision is tied to the signing of the arbitration order is wrong.

27. Furthermore, the language cited by RSL does not divest the designated arbitrator of "jurisdiction" upon the expiration of the four months. Instead, it provides that if arbitration is not completed within four months, "any interested party then may file a written demand" with another neutral arbitration association or arbitrator, "with the prior arbitration association or arbitrator then being divested of jurisdiction." (App. 24; emphasis added). Additionally, Newsome has confirmed in writing (to the arbitrator and to RSL) that Newsome will not object to arbitration, if and when it is compelled, based on the fact that the arbitration is not concluded within the alleged 4 month window cited by RSL.

28. Notwithstanding his prior statement that the arbitration would be abated while the case was on appeal, the filing and docketing of Newsome's Petition for Writ of Certiorari and Arbitrator Link is now moving forward with the arbitration. A Scheduling Order has been signed by Arbitrator Link which includes quick deadlines and a final arbitration hearing on October 20-21, 2019. (App. 25).

29. Newsome requested that the Texas Supreme Court recall and/or stay enforcement of its mandate in a motion filed in accordance with Tex. R. App. P. 18.2 on June 5, 2019. That motion was denied by the Texas Supreme Court on June 28, 2019 (App. 26). A significant deadline for Mr. Newsome relative to the arbitration is looming for August 9, 2019.

30. It is the actions of RSL in trying to force a premature, and possibly

unnecessary and futile, arbitration that has necessitated the filing of this Application to Stay.

III. RELEVANT AUTHORITIES

31. 28 U.S.C. § 2101 (c) provides that the "execution and enforcement" of a judgment may be stayed by a justice of the Supreme Court for a "reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court." Thus, this application is filed in accordance with 28 U.S.C. § 2101(c) and Supreme Court Rule 22 and 23.

32. To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent. *Hollingsworth v. Perry,* 558 U.S. 183, 190, 130 S. Ct. 705, 175 L. Ed 2d 657 (2010); *Lucas v. Townsend,* 486 U. S. 1301, 1304, 108 S. Ct. 1763, 100 L. Ed. 2d 589 (1988) (Kennedy, J., in chambers); *Rostker v. Goldberg,* 448 U.S. 1306, 1308, 101 S. Ct. 1, 65 L. Ed. 2d 1098 (1980); (Brennan J., in chambers). (hereafter referred to as the "Stay Factors").

33. Newsome files this application seeking a stay from this Court of the Texas Supreme Court's judgment and a stay of the arbitration for a reasonable period of time to allow Newsome (as the party aggrieved by the Tex. Sup. Ct. Opinion) to

obtain a writ of certiorari from the Supreme Court. Failure to secure said stay will unfairly prejudice and harm Mr. Newsome and, if the Petition for Writ of Certiorari is ultimately granted, would result in a moot and useless arbitration and cause all parties to incur unnecessary expenses and attorneys fees.

IV. THE ARBITRATION SHOULD BE STAYED PENDING THIS COURT'S ACTION ON NEWSOME'S PETITION FOR WRIT OF CERTIORARI

34. Since Petitioner Newsome has already filed his Petition for Writ of Certiorari, Newsome would refer Justice Alito and the Court to the Newsome Petition for a thorough discussion of the reasons why the Newsome Petition should be granted and for purposes of addressing the Stay Factors (1) and (2).

35. Briefly, the grounds for Newsome's Petition is that in reversing the lower courts the Texas Supreme Court disregarded its own legal precedents and binding precedents of the United States Supreme Court, and ignored or misconstrued critical provisions of the Texas SSPA and the Federal Arbitration Act, as well as the written agreement of the parties (the Transfer Agreement). The case does not involve a typical, arms-length contract, where the parties are generally free to agree to arbitrate any issue, including the issue of arbitrability. With respect to a transfer of structured settlement payments, the Texas Legislature has provided that a contract to transfer payments is not "effective" unless and until it is approved by a Texas court, in accordance with TEX. CIV. PRAC. & REM. CODE. ANN. 141.004. That statutory provision requires a final court order from a Texas court, which court order must include specific findings, in order for a contract to be formed.

36. In this case, the trial court signed two, conflicting orders, which

purported to be final orders under the Texas SSPA. The second order (the Nunc Pro Tunc Order), which was signed after the trial court had lost plenary power and jurisdiction over the case and is thus void as a matter of Texas law, purported to replace the first order, the Order Approving Transfer. RSL's actions were conflicting, in that RSL relied on and used the Order Approving Transfer to take control of Mr. Newsome's structured settlement payments, but refused to comply with the Funding Provision included in same. Then, RSL secured the Nunc Pro Tunc Order, which in fact was not a nunc pro tunc order at all, under the false promise that RSL would pay Mr. Newsome. RSL never paid Mr. Newsome under either order. In order to regain control of his structured settlement payments Newsome filed the bill of review proceeding, and sought to set aside and vacate both orders, albeit under different theories. Otherwise, Newsome's payments would have been lost to RSL, without him receiving anything at all.

37. If Newsome is successful in his bill of review—which is the exclusive process and procedure under Texas law by which the 193rd Court's two final orders could be attacked, set aside, and vacated—then clearly there could be no "effective" transfer of structured settlement payments under Texas law. If there is no transfer there is no dispute over what payments have been transferred (none) and what payments RSL is entitled to receive (none). And there is no contract, and no arbitration agreement, and nothing to arbitrate.

38. The case involves significant Federal and State legal and statutory issues and implicates statutes enacted by the Texas Legislature and legal precedents

of both this Court and the Texas Supreme Court. The case also presents novel issues relative to the interplay between the Federal Arbitration Act and state contract law and a state structured settlement protection statute, including the fundamental, and required, initial court determination of whether a contract has been formed and is valid and effective, when the only way, under applicable Texas statutes (the Texas SSPA) and state contract law, that a contract to transfer and assign structured settlement payments may be formed, effective and valid is by the approval of said contract by a state court in strict compliance with the Texas SSPA.

39. The case will also have a significant impact beyond Texas and the Texas SSPA. The interplay between arbitration provisions, arbitration law, and structured settlement transfer statutes, currently enacted in 49 states and the District of Columbia, all of which require court approval of transfers in a final judgment rendered by a state court, not an arbitrator, is an important issue that should be decided by this Court.

40. Arbitration is a way to resolve those disputes—but only those disputes—that the parties have agreed to arbitrate. *First Options of Chicago, Inc. v. Kaplan,* 514 U.S. 938, 943 (1995). Arbitration under the FAA is a matter of consent, not coercion, and the parties are generally free to structure their arbitrations as they see fit; just as they may limit by contract the issues which they will arbitrate. *Volt Info. Scis. v. Bd. Of Tr.,* 489 U.S. 468, 479 (1989). Here, the parties agreed in the Transfer Agreement that a "court must approve Assignor's [Newsome's] sale, assignment and transfer" of the structured settlement payments. (App. 24, p.1). Thus, not only does

a Texas statute require that the transaction be approved by a Texas court in accordance with the Texas SSPA, in order for a contract (the Transfer Agreement) to be formed until and unless it received the statutorily required court approval, but RSL and Newsome expressly reserved the issue of court approval of the transfer to a court (not an arbitrator). The Newsome Petition seeks, in part, to have this Court enforce the parties' agreement as to which issues would and would not be arbitrated. Newsome maintains that there is a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari and that there is a fair prospect that a majority of this court will vote to reverse the judgment of the Texas Supreme Court, and reinstate the judgments of the 193rd Court and the Dallas Court of Appeals.

V. NEWSOME WILL BE PREJUDICED AND WILL INCUR SERIOUS HARDSHIP IF THE STAY IS NOT GRANTED

41. A stay is warranted because Newsome will be prejudiced and incur substantial hardship and unnecessary expense if he is forced to arbitrate with RSL while the Newsome Petition is pending before this Court. This is painfully evident from the nature of the proceedings and the actions of RSL, detailed herein. RSL is attempting to exploit and leverage, to Newsome's profound financial and personal detriment, the legal and strategic advantage it has received as a result of the Tex. Sup. Ct. Opinion and the arbitrator's decision to proceed with the arbitration notwithstanding Newsome's pending Petition for Writ of Certiorari.

42. As evidenced by RSL's constant pestering of the arbitrator to move forward immediately with the arbitration, RSL seeks to press its legal, financial, and

strategic advantage. Newsome does not have the financial resources to fight RSL on two fronts – at the Supreme Court and in an arbitration that could very well be unnecessary, futile, and become moot. Frankly, Newsome does not have the resources to battle RSL at all. The arbitrator has confirmed that he will charge the parties (RSL and Newsome) monthly for his services as arbitrator—at $350.00 per hour ($175.00 per hour, per side). Additionally, Newsome continues to incur attorneys fees with his counsel in connection with the proceedings before this Court and the arbitrator. If this Court were to grant Newsome's Petition and take up this case, Newsome will incur attorneys fees and arbitration fees that will have been entirely wasted. If the Supreme Court grants Newsome's Petition, who is going to compensate Newsome for the attorneys and arbitration fees incurred in the arbitration? How will Newsome recover the fees and expenses of arbitration should the Supreme Court reverse the Texas Supreme Court?

43. Newsome's lawyer, who is basically handling the case *pro bono* at this point, does not have the resources to simultaneously represent Newsome both at the Supreme Court and in an arbitration. If the undersigned counsel does not agree to represent Newsome in both the pending appeal to this Court and in the premature arbitration, Newsome would be unable to oppose RSL on his own as RSL presses forward with arbitration. And that is precisely what RSL hopes to accomplish by pushing for the hasty arbitration.

44. The choices for Newsome's counsel are to: (i) fight RSL and its army of lawyers on two fronts, on appeal to the Supreme Court and in an arbitration; (ii)

abandon Newsome in the arbitration, in the Supreme Court, or both; or (iii) seek relief from this Court in the form of this application, to have this Court stay the arbitration pending resolution of the Newsome Petition. Newsome will suffer irreparable harm if the Application for Stay is denied, especially if the Newsome Petition is ultimately granted by this Court and the judgment of the Texas Supreme Court is overruled. He will have been forced to incur substantial attorneys and arbitration fees for no reason. Moreover, if the Newsome Petition is denied, the arbitration can proceed without further delay. Since this Court has scheduled the Newsome Petition for conference on October 1, 2019, there appears to be a strong likelihood that this Court will be making a decision on the Newsome Petition in that approximate time period. Obviously, if the Newsome Petition is granted, the arbitration should not go forward until this Court decides the case. In any event, maintaining the status quo for three months or so, until this Court makes a decision on the Newsome Petition is appropriate and will not unduly prejudice RSL Funding.

45. Newsome has a viable appeal to the Supreme Court. The undersigned counsel has been willing to pursue that appeal on his behalf. Without a stay, RSL will likely prevail because Newsome will have been deprived of his right: (i) to pursue an appeal; and/or (ii) if it ultimately comes to be that he must prematurely arbitrate, be represented by counsel in arbitration. RSL intends to prevail not on the merits of its legal argument, or by presenting a compelling case to the arbitrator, but rather through exerting economic and legal pressure and by squeezing Newsome and his counsel. Such tactics should not be sanctioned or allowed by this Court.

46. On the flip side, RSL will not suffer any harm if the arbitration is stayed, because Newsome is not receiving any of the disputed structured settlement payments at this point. RSL is not either, but RSL did not pay anything for those payments AND RSL has already collected $ 8,800 of Newsome's structured settlement payments, from February 2014 to May of 2015, which RSL captured using the original Order Approving Transfer. RSL advanced Newsome $ 1,000, but otherwise Newsome has received nothing for agreeing to assign to RSL $105,600 in future payments, other than the privilege of litigating with RSL for almost 5 years. The servicing agent and annuity issuer obligated to make the payments to Newsome are currently holding over $ 25,000 in payments and will continue to hold such payments until this matter is fully and finally resolved.

47. If the stay is issued, the payments will continue to be held until resolution of the case (in the Supreme Court or in arbitration if the Supreme Court declines to hear the case), so neither party will risk losing the intervening payments to the other in the meantime. Moreover, if the Texas Supreme Court's judgment is stayed, neither party will have to incur attorneys and arbitration fees in an arbitration that could become moot. Fairness, justice, and common sense would all be well served by staying arbitration until the Supreme Court decides whether to grant the Newsome Petition.

48. This Court has held that "in close cases" relative to an application for stay, the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent. *Lucas,* 486 U.S. at 190. Here, the

equities clearly weigh in favor of Newsome and in favor of granting this Application to Stay, at least until this Court makes a decision on the Newsome Petition.

49. While RSL and its lawyers press their strategic advantage, one can hardly envision a more appropriate case for a stay to provide Newsome the opportunity to pursue the Newsome Petition with the Supreme Court and allow all parties to delay a potentially moot and futile arbitration.

50. RSL, citing some unspecified "emergency," obtained a stay of proceedings in the trial court pending appeal to the Dallas Court of Appeals while RSL pursed its appeal. (App. 27). What is good for the goose is good for the gander. Justice and fairness mandate Newsome being afforded the same accommodation (the stay) here.

VI. PRAYER

For the reasons set forth herein, Petitioner Rickey Newsome respectfully requests this Court to grant this Application to Stay pending disposition of Petitioner Rickey Newsome's Petition for Writ of Certiorari. If this Court grants the Petition, and directs the case to be briefed on the merits and decides to hear the case on appeal, Newsome requests the Court to continue the stay until the case is decided by this Court.

Respectfully Submitted,

/s/ Earl S. Nesbitt

EARL S. NESBITT
COUNSEL OF RECORD FOR PETITIONER RICKEY NEWSOME
NESBITT, VASSAR & MCCOWN, LLP
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TEXAS 75001
(972) 371-2411
ENESBITT@NVMLAW.COM

July 31, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner Rickey Newsome's Application to Stay Enforcement of Judgment and Appendix in Support of Application to Stay was served upon the following counsel for Respondent RSL Funding, LLC on this 31st day of July, 2019 in accordance with Supreme Court Rule 29 and that all parties required to be served with these pleadings were served in accordance with Supreme Court Rule 29.5.

Via Regular Mail and E-Mail
E. John Gorman
The Feldman Law Firm, LLP
Two Post Oak Central
1980 Post Oak Blvd., Suite 1900
Houston, Texas 77056-3877

/s/ Earl S. Nesbitt
Earl S. Nesbitt