

IN THE SUPREME COURT OF THE UNITED STATES

SANFORD A. MOHR and TINA A.
MOHR, Individually and as Co-
Trustees of their October 15, 1996
unrecorded Revocable Trust,

Petitioners,

vs.

MLB, SUB I, LLC,

Respondent.

No. 21-393

PETITIONERS' MOTION FOR STAY
OF THE NINTH CIRCUIT COURT
OF APPEALS' MANDATE and
DENIAL OF PETITIONERS' STAY
MOTION; MEMORANDUM IN
SUPPORT OF THE MOTION;
DECLARATION OF TINA A. MOHR
& EXHIBIT 1-A; APPENDIX

CERTIFICATE OF SERVICE

2021-Sept 22 stay motion in Supreme Ct

R. STEVEN GESHELL, #3349
345 Queen Street, Suite 709
Honolulu, HI 96813
Tel. No. 808.396.7701
Fax No. 808.395.8556
E-Mail: geshlaw@lava.net

Attorney for Petitioners
SANFORD A. MOHR and TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable Trust

**PETITIONERS' MOTION FOR STAY
OF THE NINTH CIRCUIT COURT OF APPEALS'
MANDATE and DENIAL OF PETITIONERS' STAY MOTION**

COME NOW Petitioners, SANFORD A. MOHR and TINA A. MOHR,
Individually and as Co-Trustees of their October 15, 1996 unrecorded Revocable
Trust, and pursuant to Rules 22 and 23 of the Rules of the Supreme Court of the
United States, and move the Court for an order staying the Ninth Circuit Mandate
and the Ninth Circuit's denial of Petitioner's stay motion, for each and all of the
reasons set forth hereinbelow and in the memorandum supporting this motion.

1. Petitioner's stay motion in the Ninth Circuit was denied on 17 September 2021 (**Appendix page 46**).
2. The District Court for the District of Hawaii on 14 September 2021 filed its Minute Order dissolving the stay (**Appendix pages 22-23**) that was previously granted by the District Court for the District of Hawaii on 7 July 2021 (**Appendix pages 1-13**).
3. The Ninth Circuit panel decision in this case was filed on 9 July 2021 (**Appendix pages 14-19**), and on 12 August 2021 the Ninth Circuit denied Mohrs' Petition for Rehearing en Banc (**Appendix page 20**).

4. On 20 August 2021, the Ninth Circuit filed its mandate (**Appendix page 21**).
5. On 15 September 2021, the Respondent, MLB, SUB I, LLC mailed its waiver of responding to the Mohr's Certiorari Petition (**Appendix page 40-45.**)
6. Petitioners will ultimately prevail in this Court, so preservation of the status quo is needed to save Petitioners' home from foreclosure sale.

Dated at Honolulu, Hawaii, this 22nd day of September, 2021.

/s/ R. STEVEN GESHELL
Attorney for Petitioners
SANFORD A. MOHR and
TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable
Trust

MEMORANDUM IN SUPPORT OF MOTION

Mohrs as Petitioners will prevail in this Court per their Petition for Writ of Certiorari that was filed in this Court on 8 September 2021. Petitioners incorporate herein by reference their arguments and facts asserted in their Petition for Writ of Certiorari to support the granting of this motion to preserve the status quo of this case pending this Court's decision in this case. If no stay is granted and the Mohrs' home is sold, they will lose their home valued at \$621,000.00. As the District Court ordered back in July of 2020 (**Appendix pages 1 -13**), the Mohrs' home was allowed to be used as security in lieu of a supersedeas bond or a surety and therefore the Mohrs request that the same apply here because:

1. Mohrs will prevail in this case;
2. Respondent's counsel advised the district court that respondent will not be seeking a deficiency against the Mohrs in the event the home is sold;
3. Under Hawaii case law, *Shanghai Investment Co. Inc. v. Alteka Co., Ltd.*, 92 Haw. 482, 503-504, 993 P.3d 516, 537-538 (2000), the Mohrs' home can act as security in lieu of a supersedeas bond, and the real estate property is worth at least \$621,000 per **Exhibit 1-A** attached. Mohrs will pay the taxes and maintain the property and adequately insure it against casualty loss

during the pendency of this appeal.

4. Respondent's counsel mailed to this Court and the undersigned on 15 September 2021 an executed Waiver that Respondent does not intend to file a Response to the Petition for Writ of Certiorari. (**Appendix pages 40-45**). Hopefully, by the time this motion is filed, that document will be in the Court's file. Thus, the Petition is not contested so Petitioners should prevail, hence another valid reason for granting the requested stay motion.

Accordingly, the Mohrs request that the motion be granted and stay the Ninth Circuit's decisions on the mandate and deny the stay motion, and further that the district court be ordered to allow the property to be used and applied in this case to be the supersedeas bond in lieu of a surety, all in accordance with the district court's order back in July of 2020, all of which appears in **Appendix pages 1-13** for the Court's convenience.

Dated at Honolulu, Hawaii, this 22nd day of September, 2021.

/s/ R. STEVEN GESHELL
Attorney for Petitioners
SANFORD A. MOHR and
TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable
Trust

DECLARATION OF TINA A. MOHR

I, TINA A. MOHR, am one of the Petitioners in this case, wherefore I make this declaration upon personal knowledge of the facts contained herein.

1. Attached hereto marked **Exhibit 1-A** is a true and correct copy of the County of Hawaii's 2021 Assessment of our home valued as of 8 August 2021 that I retrieved from the County's property tax website.
2. I agree with the property value being \$621,000.00, and that is my opinion as a co-owner of the subject property in this case that it is the fair market value of our home which has appreciated during our appeal.
3. The real estate taxes on our home were paid and are current. My husband and I agree to keep the real estate taxes paid on our home.
4. I assure the Court that if the stay is granted while this case is pending in this Court, we will keep the home adequately insured against casualty loss and continue to maintain it in the present condition so it does not depreciate.

5. I respectfully request the Court allow our home to act as supersedeas bond in this case in the interest of justice, reasonableness, and necessity under the circumstances.

I declare under penalty of law that the foregoing is true and correct.

Executed this 21 day of September, 2021.

/s/ TINA A. MOHR
TINA A. MOHR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 22 September 2021, three hard copies of Mohrs' attached stay motion were duly served upon the following parties at their last known addresses as follows and one PDF version emailed to them at said email addresses:

lester@leu-okuda.com
danielk@leu-okuda.com

Lester K.M. Leu, Esq.
Daniel K. Kikawa, Esq.
222 Merchant Street, Main Floor
Honolulu, HI 96813

Attorneys for Respondent,
MLB SUB I, LLC

DATED: Honolulu, Hawaii, this 22nd day of September, 2021.

/s/ R. Steven Geshell
R. STEVEN GESHELL
Attorney for Plaintiffs
SANFORD A. MOHR and
TINA A. MOHR,
Individually and as Co-Trustees
of their October 15, 1996
unrecorded Revocable Trust