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8 *Attorney for Fred Sadri, as Trustee for The Star Living*

9 *Trust, dated April 14, 1997 and Ray Koroghli and Sathsowi T.*

10 *Koroghli, as Managing Trustees for Koroghli Management Trust*

11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 In re:

14 JAZI GHOLAMREZA ZANDIAN,

15 Debtor in Foreign Proceeding.

16 Case No.: 16-50644-btb

17 Chapter 15

18 **LIMITED OPPOSITION TO**
19 **AMENDED MOTION TO DISMISS**
20 **CHAPTER 15 CASE**

21 Hearing Date: October 1, 2019

22 Hearing Time: 2:00 PM

23 Fred Sadri as Trustee for The Star Living Trust, dated April 14, 1997; Ray Koroghli and
24 Sathsowi T. Koroghli as Managing Trustees for Koroghli Management Trust (“Judgment
25 Creditors”), by and through their undersigned counsels of record and files this Limited
26 Opposition to Amended Motion to Dismiss (“Opposition”).

27 This Opposition is made and based upon the attached Memorandum of Points and
28 Authorities, Exhibits attached hereto, judicial notice of any pleadings and papers on file in this
case, and any oral arguments this court may entertain at the time of hearing the underlying
Motion.

DATED this 17th day of September, 2019.

WRIGHT, FINLAY & ZAK, LLP

/s/ Yanxiong Li, Esq.

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Attorney for Plaintiffs/Counter-Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 To the extent Margolin’s Amended Motion to Dismiss seeks dismissal of the Adversary
4 Proceeding No. 17-05016-BTB and the September 20, 2018 Order granting summary judgment
5 in favor of Judgment Creditors [Bankr. No. 38, at 6:21-23], Margolin’s Motion should be
6 denied for reasons detailed herein.

7 As a threshold matter, this Court should strike Margolin’s request for relief from
8 judgment entered in the Adversary Proceeding as it relies on bare citation without factual
9 support. Nor is it procedurally proper to seek an order setting aside summary judgment by
10 moving in the underlying Bankruptcy Case.

11 Even if this Court considers Margolin’s request, Margolin’s Amended Motion to
12 Dismiss should be denied because: (1) the plain language of 11 U.S.C. § 349(b)(1) shows it is
13 inapposite because it addresses liens voided pursuant to Section 506(d); (2) similarly, 11 U.S.C.
14 § 349(b)(2) does not apply because summary judgment at issue was not based on any of the
15 substantive grounds referenced therein. Importantly, summary judgment voiding Margolin’s
16 lien was based on violation of NRS 17.150(4). Thus, Margolin’s request to “dismiss” summary
17 judgment in favor of Judgment Creditors is legally flawed.

18 Nor is there language under § 349(b) authorizing dismissal of the Adversary
19 Proceeding.

20 Finally, even assuming § 349(b) provides support for Margolin’s request, cause exists to
21 limit relief to apply against Debtor only given the absence of any dilatory conduct on the part
22 of Judgment Creditors. Indeed, since entry of summary judgment, Judgment Creditors have
23 worked diligently to work out a compromise of remaining claims pending in the Adversary
24 Proceeding with counsels for Margolin and Chapter 15 Debtor.

25 Accordingly, Judgment Creditors respectfully request that the Court deny Margolin’s
26 Amended Motion to Dismiss to the extent Margolin seeks relief from the favorable summary
27 judgment entered in the Adversary Proceeding and/or dismissal of the Adversary Proceeding.

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LEGAL ARGUMENT**A. MARGOLIN'S REQUEST TO DISMISS ADVERSARY PROCEEDING AND SUMMARY JUDGMENT ENTERED IN FAVOR OF JUDGMENT CREDITORS SHOULD BE STRICKEN UNDER LR 9014(C)(1)**

As a threshold matter, Margolin's request is supported by bare citation to 11 U.S.C. §349(b) without any factual support or analysis. *See* LR 9014(c)(1) (The motion must state fact on which it is based...); *see also* Bankr. No. 38, at 6:20-23. In fact, none of the offending conduct/omission alleged in Margolin's Amended Motion are attributable to Judgment Creditors. Rather, Margolin's Amended Motion is limited to discussing obligations and dilatory conduct of the Chapter 15 Debtor, Foreign Representative and/or counsel for said representative. *See generally* Bankr. No. 38, at 4:10-6: 23. Indeed, counsel for Judgment Creditor (Yanxiong Li, Esq.) has reached out to both counsels for Margolin (Matthew Francis, Esq. and Arthur Zorio, Esq.) and Foreign Representative (Jeffrey L. Hartmann, Esq.) to resolve remaining claims pending in the Adversary Proceeding so parties may move forward with this Bankruptcy Case. Upon this Court's request, Judgment Creditor will submit these emails for the Court's review in camera due to their confidential nature as settlement related communications. Thus, Margolin's requested relief, to the extent it prejudices Judgment Creditors, lack any factual support, and should be stricken without consideration.

B. §349(b) DOES NOT APPLY TO SUMMARY JUDGMENT VOIDING LIEN BASED ON VIOLATION OF NRS 17.150(4)

Even if the Court considers Margolin's request for relief of matters adjudicated in the Adversary Proceeding, Margolin's request still fails because §349(b) does not afford legal support for Margolin's request to set aside judgment voiding lien based on violation of NRS 17.150(4). Initially, 11 U.S.C. § 349(b)(1) is inapposite because, on its face, the statute is limited to "any lien voided under section 506(d) of [Title 11 or Bankruptcy Code]." Section 506(d) generally entitles the Debtor (not Creditor) to strip-down a portion of the lien or strip-off a second lien that is wholly unsecured by any equity in Debtor's real property. **This, however, is not the substantive basis upon which summary judgment was entered in the Adversary**

1 **Proceeding voiding Margolin's lien; rather, the operative judgment is based on Margolin's**
2 **failure to comply with state law requirements for creating his judgment lien under NRS**
3 **17.150(4).** Similarly, § 349(b)(2) also does not support Margolin's request. 11 U.S.C. §
4 349(b)(2) incorporates four substantive basis, all of which rooted in Bankruptcy Code
5 provisions, for voiding liens: § 522(i)(1) (trustee's right to avoid transfers or recover setoffs); §
6 542 (trustee's right to compel turnover of non-estate property); § 550 (trustee's right to avoid
7 fraudulent transfers against non-debtor transferee); or § 553 (creditor's right to offset a mutual
8 debt against debtor's claim against said creditor). However, nothing in plain language of §
9 349(b)(2) suggests it also applies to judgments based on violation of state statutory
10 requirements for creating a judgment lien. Finally, there is no reference to any legal basis for
11 dismissing adversary claims by one creditor against another creditor in § 349(b).

12
13 Accordingly, this Court should deny Margolin's request to set aside the judgment
14 voiding lien based in NRS 17.150(4) and dismissal of Adversary Proceeding.

15 **C. EVEN IF THIS COURT GRANTS RELIEF REQUESTED PURSUANT TO**
16 **§349(B), CAUSE EXISTS TO SHIELD JUDGMENT CREDITOR'S INTEREST**
17 **AND RIGHTS IN THE SUMMARY JUDGMENT AND ADVERSARY**
18 **PROCEEDING FROM ENFORCEMENT OF RELIEF GRANTED TO**
19 **MARGOLIN**

20 § 349(b) is not mandatory, and the Court, for cause, may limit the scope of any order to
21 clarify that relief is limited against the Chapter 15 Debtor, Foreign Representative, and/or
22 counsel, **and not against Judgment Creditors.** *See, e.g.,* 11 U.S.C. § 349(b) ("Unless the
23 court, for cause, orders otherwise,..."); *see also In re Johnson*, 565 B.R. 417, 425, 77 Collier
24 Bankr. Cas. 2d 624, 63 Bankr. Ct. Dec. 249, 2017 WL 874972 (Bankr. C.D. Cal. 2017) (Code
25 does not strictly require dismissal of a Chapter 11 case to be a hard reset); *accord Florida*
26 *Peach Corp. v. C.I.R.*, 90 T.C. 678, 683, 90 T.C. No. 41, Tax Ct. Rep. (CCH) 44689, Tax Ct.
27 Rep. Dec. (P-H) 90.41, 1988 WL 31439 (1988) (It would appear, however, that the impact of
28 section 349(b)(2) of the Bankruptcy Code is limited by the language enumerating the sections to
which section 349(b) applies).

1 “Cause’ under § 349(b) means an acceptable reason.” *Matter of Sadler*, 935 F.2d 918,
2 921, 60 USLW 2036, 24 Collier Bankr. Cas. 2d 2017, 21 Bankr. Ct. Dec. 1385, Bankr. L. Rep.
3 P 74071, 1991 WL 115587 (7th Cir. 1991). Desire to make an end-run around a statute is not
4 an adequate reason. *See id.* In *Standard State Bank*, the appellate court rejected the
5 government’s contention that dismissal of a chapter 11 case reinstated its tax lien. *United States*
6 *v. Standard State Bank*, 905 F.2d 185, 186, 66 A.F.T.R.2d 90-5093, 59 USLW 2026, 90-2
7 USTC P 50485, 1990 WL 70940 (8th Cir. 1990). There, the government and mortgagee bank
8 disagreed over priority of their claim to certain property of the estate. *Id.* The Bankruptcy court
9 decided this dispute in favor of the mortgagee bank. *Id.* at 186-87. In reviewing the
10 Bankruptcy court’s decision, the Eighth Circuit Court of Appeals concluded that sufficient
11 cause existed to preclude reinstatement of the government’s lien based on statutory
12 presumptions regarding effects of section 349(b) dismissal. *Id.* at 187-88.

14 Here, even if section 349(b)’s presumption applies to summary judgment quieting title
15 in favor of Judgment Creditors and against Margolin entered in the related Adversary
16 Proceeding (it does not), cause exists to reject Margolin’s request to reinstate the its defective
17 lien in violation of NRS 17.150(4). As mentioned, the judgment does not fall within any of the
18 enumerated substantive grounds for lien/transfer avoidance. Moreover, like in *Standard State*
19 *Bank*, Margolin received ample notice and opportunity to litigate the issues surrounding his
20 defective lien. There is no special windfall accruing to Judgment Creditors that warrants
21 reinstating Margolin’s lien as the relief granted in favor of Judgment Creditors was based on
22 failure of Margolin to properly create a judgment lien, rather than Judgment Creditor’s abuse of
23 bankruptcy process.

24 Accordingly, the circumstances surrounding the summary judgment in favor of
25 Judgment Creditors and against Margolin constitutes sufficient cause to deny reinstatement of
26 Margolin’s lien/vacating summary judgment entered in the Adversary Proceeding.

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28

CONCLUSION

1 For reasons stated above, this Court should deny Margolin's request to set aside summary
2 judgment in favor of Judgment Creditors and dismiss the pending Adversary Proceeding.

3 DATED this 17th day of September, 2019.

4 WRIGHT, FINLAY & ZAK, LLP

5 /s/ Yanxiong Li, Esq.

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