

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 FRONT SIGHT MANAGEMENT LLC, a  
3 Nevada Limited Liability Company,

4 Petitioner,

5 vs.

Electronically Filed  
Dec 20 2019 04:04 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6 THE EIGHTH JUDICIAL DISTRICT  
7 COURT OF THE STATE OF NEVADA,  
8 IN AND FOR THE COUNTY OF CLARK;  
9 and THE HONORABLE TIMOTHY C.  
10 WILLIAMS, DISTRICT COURT JUDGE,

No.: 80242

Dist. Ct. Case No: A-18-781084-B

11 Respondents,

12 and

13 LAS VEGAS DEVELOPMENT FUND  
14 LLC, a Nevada Limited Liability Company;  
15 EB5 IMPACT CAPITAL REGIONAL  
16 CENTER LLC, a Nevada Limited Liability  
17 Company; EB5 IMPACT ADVISORS  
18 LLC, a Nevada Limited Liability Company;  
19 ROBERT W. DZIUBLA, individually and  
20 as President and CEO of LAS VEGAS  
DEVELOPMENT FUND LLC and EB5  
IMPACT ADVISORS LLC; JON  
FLEMING, individually and as an agent of  
LAS VEGAS DEVELOPMENT FUND  
LLC and EB5 IMPACT ADVISORS LLC;  
LINDA STANWOOD, individually and as  
Senior Vice President of LAS VEGAS  
DEVELOPMENT FUND LLC and EB5  
IMPACT ADVISORS LLC,

Real Parties in Interest.



1 Defendants' counsel's office by that date.

2 On October 29, 2019, Petitioner filed and served Plaintiff's Motion to  
3 Quash Subpoenas ("Plaintiff's Motion to Quash"). (See PA XIV, 02952-02970.)  
4 Plaintiff's Motion to Quash sought an order quashing the Bank of America  
5 subpoena under NRCP 26(c)(1) because the subpoena's requests are overly broad  
6 on their face because they seek irrelevant documents and are, therefore, unduly  
7 burdensome. Plaintiff's Motion to Quash also sought an order quashing the  
8 subpoena to Lucas Horsfall, et al. under NRCP 26(c)(1) and 45(c)(3), and the  
9 Supreme Court of Nevada's decision in *McNair v. Eighth Judicial Dist. Court*,  
10 110 Nev. 1285, 885 P.2d 576 (Nev. 1994).

11 On November 6, 2019, Defendants filed Defendants' Opposition to  
12 Plaintiff's Motion to Quash Subpoenas to Third Parties Bank of America and  
13 Lucas Horsfall, Murphy & Pindroh, LLP ("Opposition to Plaintiff's Motion to  
14 Quash"). (See PA XV, 02971-03147.) The Opposition to Plaintiff's Motion to  
15 Quash argued, *inter alia*, that Petitioner lacked standing to file Plaintiff's Motion  
16 to Quash and that Petitioner had contractually waived the undiscoverable nature of  
17 its tax returns by executing a lending agreement between Petitioner and Defendant  
18 LVDF.

19 On November 15, 2019, Petitioner filed its Reply in support of Plaintiff's  
20 Motion to Quash. (See PA XVI, 03153-03268.)

1 On November 26, 2019, the Court heard Plaintiff's Motion to Quash and  
2 verbally denied the motion and verbally granted Defendants' request that Bank of  
3 America and Lucas Horsfall respond to the respective subpoenas within ten days.  
4 A written Order was signed and Notice of Entry of that order was provided on  
5 December 6, 2019. (See PA XVIII, 03681-03686.)

6 A motion for stay has already been made already the district court, and the  
7 district court denied the motion by way of a verbal order given on December 18,  
8 2019. The district court's reasons given during that December 18, 2019 hearing  
9 were that the district court could limit any alleged harm to Front Sight by limiting  
10 the use of the documents Defendants seek to receive by fashioning a protective  
11 order. The district court was further convinced that Section 5.10 of the  
12 Construction Loan Agreement permitted Defendant LVDF access to the  
13 information.<sup>1</sup> Notice of entry of that Order has not yet been filed.

14 **II.**

15 **LEGAL ARGUMENT**

16 A motion to stay a district court order pending the outcome of a writ  
17 petition to the Supreme Court of Nevada must be made first in district court, as a

18 \_\_\_\_\_  
19  
20 <sup>1</sup> These representations are made pursuant to Front Sight's counsel's memory. The transcript of the hearing is not yet available.

1 general rule. See NRAP 8(a)(1)(A). That motion was denied; this motion  
2 follows. Nevada’s appellate courts “will generally consider” four factors when  
3 considering a motion to stay:

- 4 (1) whether the object of the . . . writ petition will be defeated if the stay  
or injunction is denied;
- 5 (2) whether . . . petitioner will suffer irreparable or serious injury if the  
stay or injunction is denied;
- 6 (3) whether respondent/real party in interest will suffer irreparable or  
serious injury if the stay or injunction is granted; and
- 7 (4) whether . . . petitioner is likely to prevail on the merits in the . . . writ  
petition.

8 NRAP 8(c). See also *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev.  
9 650, 657-59, 6 P.3d 982, 986-88 (2000) (providing and analyzing the four Rule  
10 8(c) factors). “We have not indicated that any one factor carries more weight than  
11 the others, although *Fritz Hansen A/S v. District Court* recognizes that if one or  
12 two factors are especially strong, they may counterbalance other weak factors.”  
13 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

14 Petitioner seeks a writ from this Court ordering the district court to stay  
15 enforcement of its Order Denying Plaintiff’s Motion to Quash Subpoenas to  
16 Plaintiff’s Bank and Accountant (notice of entry filed December 6, 2019), and  
17 prohibiting enforcement of Defendants’ subpoenas to Bank of America and Lucas  
18 Horsfall.

19 First, Petitioner’s petition for writ of mandamus and/or prohibition seeks,  
20

1 *inter alia*, a writ of mandamus and/or prohibition directing the district court to  
2 reverse any and all verbal or written orders denying Petitioner’s Motion to Quash  
3 Subpoenas to Bank of America and Lucas Horsfall, directing the district court to  
4 enter a formal, written order granting the Motion to Quash, and preventing  
5 enforcement of the subpoenas to Bank of America and Lucas Horsfall  
6 (“Subpoenas”). If this Court denies the motion to stay enforcement of any orders  
7 that authorize issuance and service of, and compliance with, the Subpoenas, the  
8 object of Petitioner’s writ petition seeking mandamus and/or prohibition regarding  
9 those very subpoenas would be defeated. The object of Petitioner’s writ petition  
10 is to stop Defendants from obtaining and/or utilizing those sensitive financial  
11 documents, and that object would be immediately defeated if this Court continues  
12 to allow enforcement of the Subpoenas where the Supreme Court of Nevada might  
13 direct the district court to grant Plaintiff’s Motion to Quash and other relief  
14 preventing issuance, service, and compliance with the Subpoenas. This factor  
15 supports a stay.

16 Second, Petitioner will suffer serious injury to its privacy interests in the  
17 sensitive financial information contained in its banking and accounting records,  
18 because Defendants have no legitimate need for the records in the context of this  
19 litigation, regardless of whatever contractual obligations Front Sight may or may  
20 not have under the CLA and other Loan Documents to provide these documents.

1 While Defendant LVDF might arguably have a contractual right to these  
2 documents, the information contained in the documents Defendants have  
3 collectively requested in the Subpoenas has no business being in the hands of the  
4 other Defendants. They are not parties to the CLA and other Loan Documents,  
5 the February 2013 Engagement Letter says absolutely nothing about an annual  
6 duty to provide banking and accounting records, and the specific contents of those  
7 records are irrelevant to the merits of any claim or defense to this action.

8         The district court dismissed LVDF's counterclaims for breach of contract  
9 and breach of the implied covenant of good faith and fair dealing, under the One-  
10 Action Rule, because LVDF elected to proceed with judicial foreclosure instead of  
11 suing for either of these two breach claims. CLA § 5.10(e), the provision that  
12 Defendants allege justifies discovery of Front Sight's financial and tax records,  
13 pertains to Front Sight's annual disclosures to LVDF under the CLA.

14         Moreover, because LVDF stopped lending money to Front Sight long  
15 before this litigation even began, LVDF is arguably in breach of its material  
16 obligation to lend "up to \$75 million" to Front Sight and is arguably liable for its  
17 failure to lend. Moreover, it is no secret that Front Sight will seek relief from the  
18 district court adjudicating whether LVDF and other Defendants fraudulently  
19 induced Front Sight into entering into the CLA, and to the extent the district court  
20 agrees, the CLA and other Loan Documents will be unenforceable against Front

1 Sight.

2       Should Defendants be allowed to enforce the Subpoenas, there is serious  
3 risk of injury to Front Sight because the wealth of sensitive financial and  
4 accounting records will be in the hands of persons and entities that have no  
5 legitimate interest in, or legitimate reason for possessing, such records. These  
6 sensitive records could reveal Front Sight's vendors, clients, dealings with  
7 members, sensitive personal information about employees and officers, and a  
8 whole array of other information that Front Sight is not otherwise publicizing or  
9 publishing.

10       Defendants only want to obtain this information to allow Defendants to  
11 accomplish their stated nefarious ends – to take over Front Sight's project and  
12 business. (See PA V, 00890.) Defendants have already shown they have no  
13 intention of keeping Petitioner's financial information private – they filed portions  
14 of Front Sight's tax returns in the public domain earlier in the litigation. This  
15 factor supports a stay.

16       Third, Defendants, especially those Defendants who are not parties to the  
17 CLA and other Loan Documents, will not suffer any irreparable or serious injury  
18 if this Court stays enforcement of any orders allowing the Subpoenas to be issued,  
19 served, and responded to. The requested stay is limited to enforcement of the  
20 Subpoenas; the litigation itself will continue. Defendant LVDF long ago alleged



1 Front Sight was in default. LVDF is the only party that arguably has any right,  
2 contractual or otherwise, to the documents under the CLA and other Loan  
3 Documents, and the remaining Defendants have zero right, contractual or  
4 otherwise, to these documents. None of the Defendants has a legitimate basis at  
5 all for using discovery mechanisms in their quest for seeking and obtaining the  
6 details contained in the banking and accounting records that the Subpoenas have  
7 requested. It follows, therefore, that none of them will suffer any legitimate injury  
8 whatsoever, let alone irreparable or serious injury, if this Court stays enforcement  
9 of the Subpoenas or its verbal and written orders denying Front Sight's Motion to  
10 Quash.

11 The only possible factual issues related to the documents sought in the  
12 Subpoenas are whether Front Sight had a contractual duty to provide the  
13 documents and, if so, whether Front Sight complied with that contractual duty or  
14 not. The specific details contained in the banking and account records requested  
15 in the Subpoenas are irrelevant to these two issues. Defendants should not be  
16 allowed to collectively utilize the Court's authority and power in order to  
17 collaterally enforce contractual rights (rights that belong to, if anyone, LVDF and  
18 not to any other Defendant) and get their hands on Front Sight's sensitive and  
19 private financial and accounting records. Because Defendants have no legitimate  
20 basis for seeking the documents requested in the Subpoenas, they necessarily will

1 suffer zero injury whatsoever from this Court issuing a stay.

2 Defendants' position that there is a USCIS reporting requirement for Front  
3 Sight to turn over its financial and accounting records to Defendant LVDF or any  
4 other Defendant is totally erroneous and false. Front Sight also intends to  
5 demonstrate to the district court that all that matters for USCIS is whether the  
6 Front Sight Project has created the requisite number of jobs; Front Sight's  
7 financial viability and history are not seriously at issue, nor are they relevant to  
8 any claims or defenses to this action such that Defendants need access to Front  
9 Sight's bank statements and accounting records to support those claims or  
10 defenses. In fact, EB5IC and the other Defendants have not reported the existence  
11 of this litigation to USCIS because, Defendant Dziubla said, "That's not one of  
12 the reporting fields [to the Form I-924A]." (See PA V, 00851.) This factor  
13 supports staying the enforcement of the Subpoenas.

14 Fourth, it is reasonably likely that Front Sight will succeed on its writ  
15 petition. Front Sight's burden here is *not* as high as the preponderance-of-the-  
16 evidence standard. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 – 67 (9th Cir. 2011)  
17 ("What is clear, however, is that to justify a stay, petitioners need not demonstrate  
18 that it is more likely than not that they will win on the merits."). With due respect  
19 to the district court, Front Sight has a reasonable likelihood of succeeding.

20 Front Sight has recently learned that Defendants prematurely served the

1 Lucas Horsfall subpoena during the time they were procedurally barred from  
2 doing so under NRCP 45(a)(4)(B)(iv). Front Sight has reason to believe  
3 Defendants prematurely served the Bank of America subpoena, too, although  
4 Defendants' counsel has not confirmed that suspicion and Bank of America  
5 refuses to provide any information to Petitioner. The premature service of one or  
6 both of these Subpoenas is troubling. While Front Sight acknowledges the district  
7 court ruled against it, certainly the first three factors strongly favor Front Sight  
8 and weigh heavily in favor of a stay.

9 If this matter is set in the ordinary course, the ten (10) days by which the  
10 recipients of the subpoenas must respond will have long passed and the documents  
11 Plaintiff asserts should not be discoverable by Defendants will have already been  
12 received by Defendants.

13 Based on the facts set forth in the Declaration of John P. Aldrich, Esq.,  
14 Petitioner respectfully requests that its Motion to Stay be heard as soon as  
15 practicable, and that in any event, the Court stays enforcement of the Order until  
16 this Motion is heard.

17 ///

18 ///

19 ///

20 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**III.**

**CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that the Court grant this Motion to Stay Regarding Subpoenas to Bank of America and Lucas Horsfall.

DATED this 20<sup>th</sup> day of December, 2019.

**ALDRICH LAW FIRM, LTD.**

/s/ John P. Aldrich  
John P. Aldrich, Esq.  
Nevada Bar No. 6877  
Matthew B. Beckstead, Esq.  
Nevada Bar No. 14168  
7866 West Sahara Avenue  
Las Vegas, Nevada 89117  
702-853-5490  
*Attorneys for Petitioner*



1 In addition, in compliance with NRAP 21(a)(1), a copy of this MOTION  
2 TO STAY ENFORCEMENT OF SUBPOENAS TO BANK OF AMERICA AND  
3 LUCAS HORSFALL, ET AL. will be hand-delivered to the chambers of the  
4 Honorable Timothy Williams, District Judge on December 23, 2019.

5  
6 /s/ T. Bixenmann  
7 An employee of Aldrich Law Firm, Ltd.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20