

*Alma L. Quinn*

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718988 Tracie K. Lindeman



1 NOTC

2 HAROLD P. GEWERTER, ESQ.

3 Nevada Bar No. 499

4 HAROLD P. GEWERTER, ESQ., LTD.

5 2705 Airport Drive

6 North Las Vegas, NV 89032

7 Office: (702) 382-1714

8 Fax: (702) 382-1759

9 Attorneys for Defendant

10 Vincent Hesser

DISTRICT COURT

CLARK COUNTY, NEVADA

11 KENNEDY FUNDING, INC., a New Jersey  
12 corporation,

13 Plaintiff,

14 vs.

15 ONECAP PARTNERS MM, INC., a Nevada  
16 corporation; VINCENT W. HESSER, an  
17 individual; DOE INDIVIDUALS I through X; and  
18 ROE CORPORATIONS I through X,

19 Defendants.

CASE NO.: A582746

DEPT. NO.: XI

ONECAP PARTNERS MM, INC. and  
VINCENT HESSER'S NOTICE OF  
APPEAL

Hearing Date: N/A

Hearing Time: N/A

20 NOTICE is hereby given that ONECAP PARTNERS MM, INC. and VINCENT  
21 HESSER, Defendants above named, hereby appeal to the Supreme Court of Nevada from the  
22 Judgment entered in this action on the 18<sup>th</sup> day of February, 2010, attached hereto as Exhibit "1",  
23 and that certain Order granting Plaintiff KENNEDY FUNDING, INC.'s Motion for Summary  
24 Judgment, attached hereto as Exhibit "2".

25 DATED this 15 day of March, 2010.

26 HAROLD P. GEWERTER, ESQ., LTD.

*Harold P. Geworter*  
27 HAROLD P. GEWERTER, ESQ.

28 Nevada Bar No. 499

2705 Airport Drive

North Las Vegas, NV 89032

Attorney for Defendants OneCap Partners  
MM, Inc. and Vincent Hesser

**CERTIFICATE OF SERVICE**

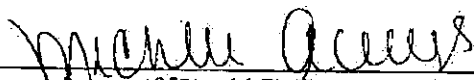
Certification is hereby made that a true and correct copy of the foregoing Notice of Appeal was served this 15<sup>th</sup> day of March, 2010, in the following manner:

  X   By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

       By being hand delivered to the following individuals at their last known address, this same date, as follows; and/or

       By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

Richard F. Holley, Esq.  
Ogonna M. Atamoh, Esq.  
Santoro, Driggs, Walch,  
Kearney, Holley & Thompson  
400 South Fourth Street, Third Floor  
Las Vegas, NV 89101  
Attorney for Plaintiff

  
An employee of Harold P. Gewerter, Esq., Ltd.

1 **NEOJ**  
2 RICHARD F. HOLLEY, ESQ.  
3 Nevada Bar No. 3077  
4 OGONNA M. ATAMOH, ESQ.  
5 Nevada Bar No. 7589  
6 SANTORO, DRIGGS, WALCH,  
7 KEARNEY, HOLLEY & THOMPSON  
8 400 South Fourth Street, Third Floor  
9 Las Vegas, Nevada 89101  
10 Telephone: 702/791-0308  
11 Facsimile: 702/791-1912

12 *Attorney for Kennedy Funding, Inc.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 KENNEDY FUNDING, INC., a New Jersey  
16 corporation,

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada  
20 corporation; VINCENT W. HESSER, an  
21 individual; DOE INDIVIDUALS I through X;  
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No: A582746  
Dept. No.: XI

**NOTICE OF ENTRY OF JUDGMENT**

24 YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP  
25 PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and  
26 entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of  
27 which is attached hereto

28 Dated this 22nd day of February, 2010.

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

RICHARD F. HOLLEY, ESQ. (NVSB #3077)  
OGONNA M. ATAMOH, ESQ. (NVSB #7589)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Kennedy Funding, Inc.*

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John D. Lamm

**CLERK OF THE COURT**

**JUDG**

**RICHARD F. HOLLEY, ESQ.**  
New York, N. Y.

Nevada Bar No. 3077

OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 5522

Nevada Bar No. 7589

SANTORO, DRIGGS, WALCH,  
KEARNEY

KEARNEY, HOLLEY & THOMPSON  
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Las Vegas, Nevada 89101

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

*Attorneys for Kennedy Funding, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey corporation,

**Plaintiff,**

Case No.: A582746  
Dept. No.: XI

Dept. No.: XI

**Y.**

ONECAP PARTNERS MM, INC., a Nevada corporation; VINCENT W. HESSER, an individual; DOE INDIVIDUALS I through X; and ROE CORPORATIONS I through X,

**Defendants.**

**JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER**

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

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SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

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1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as  
2 Exhibit "1", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for  
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good  
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly  
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of  
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing  
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount  
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00  
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment  
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent  
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's  
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in  
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's  
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest  
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan  
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted  
24 from the judgment amount and accruing interest entered herein against DEFENDANTS  
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

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IT IS FURTHER ORDERED that the Court expressly directs the entry of a final judgment, as there is no just reason for delay.

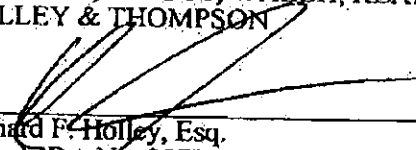
IT IS SO ORDERED.

Dated this 17 day of February, 200<sup>10</sup>9.

  
DISTRICT COURT JUDGE *EKE*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonia M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*

# EXHIBIT "1"

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

STW

1 **ORDER**

2 RICHARD F. HOLLEY, ESQ.  
3 Nevada Bar No. 3077  
4 OGONNA M. ATAMOH, ESQ.  
5 Nevada Bar No. 7589  
6 SANTORO, DRIGGS, WALCH,  
7 KEARNEY, HOLLEY & THOMPSON  
8 400 South Fourth Street, Third Floor  
9 Las Vegas, Nevada 89101  
10 Telephone: 702/791-0308  
11 Facsimile: 702/791-1912

12 *Attorneys for Kennedy Funding, Inc.*

**FILED**

NOV - 4 2009

*John A. Hoffman*  
CLERK OF COURT

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 KENNEDY FUNDING, INC., a New Jersey  
16 corporation,

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada  
20 corporation; VINCENT W. HESSER, an  
21 individual; DOE INDIVIDUALS I through X;  
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746  
Dept. No.: XI

24 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

25 Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment  
26 ("Motion for Summary Judgment"), having come on for hearing on October 27, 2009, at 9:00  
27 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on  
28 behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W.  
HESSER ("Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs,  
Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances  
having been made. The Court having heard the argument of counsel and having reviewed and  
examined the papers, pleadings and records on file in the above-entitled matter, including  
Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin Wolfer, filed



1 September 22, 2009, Defendants' Opposition to Motion for Summary Judgment, filed on or  
2 about October 6, 2009, and Plaintiff's Reply in Support of the Motion for Summary Judgment,  
3 filed October 20, 2009, and good cause appearing therefore;

4 Pursuant to the findings of fact and conclusions of law placed on the record at the hearing  
5 and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil Procedure, and good  
6 cause appearing, this Court enters summary judgment against Defendants and rules as follows:

7 **FINDINGS OF UNDISPUTED FACTS**

8 1. The Court makes these findings of fact by construing the pleadings and proof in  
9 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

10 2. There is no genuine issue of material fact that there was a binding contract  
11 between Plaintiff Kennedy Funding, Inc. and OneCap Partners 2, LLC ("OneCap Partners"),  
12 entitled the "Loan and Security Agreement" (the "Loan Agreement") dated June 15, 2006, for  
13 OneCap Partners' purchase of unimproved real property consisting of 78.74+ acres of raw land  
14 located along Casino Drive and the Colorado River in Laughlin, Nevada 89029, Clark County  
15 Assessor Parcel Numbers 264-25-101-001 and 264-25-201-001 (the "Property") for a purchase  
16 price of TWELVE MILLION DOLLARS (\$12,000,000.00).

17 3. There is no genuine issue of material fact that the Loan Agreement is evidenced  
18 by a Promissory Note dated June 15, 2006, in the amount of \$12,000,000.00, made by OneCap  
19 Partners payable to Kennedy Funding as agent of the Lenders.

20 4. There is no genuine issue of material fact that OneCap Partners executed and  
21 delivered to Kennedy Funding a Deed of Trust with Security Agreement, Financing Statement  
22 for Fixture Filing and Assignment of Rents ("Deed of Trust") against the Property, which was  
23 recorded on June 15, 2006, with the Clark County Recorder's Office as Instrument No.  
24 20060615-0005324.

25 5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen II,  
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Attornment  
27 Agreement ("Subordination Agreement") in which the Option Holder agreed to subordinate its  
28 limited option to purchase the Property to Kennedy Funding's Deed of Trust.

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1           6.     There is no genuine issue of material fact that as additional security for the loan,  
2     OneCap Partners executed and delivered to Kennedy Funding, an Assignment of Leases and  
3     Rents dated June 14, 2006 and recorded June 15, 2006, with the Clark County Recorder's Office  
4     as Instrument No. 20060615-0005325, and an Assignment of Licenses, Contracts, Plans,  
5     Specifications, Surveys, Drawings and Report dated June 15, 2006 (Assignment of Licenses").

6           7.     There is no genuine issue of material fact that to further secure payment of the  
7     Note, on June 14, 2006, Defendant Vincent Hesser ("Hesser") and Defendant OneCap Partners  
8     MM, Inc. ("OneCap Partners MM") ("collectively "Defendants") executed personal  
9     unconditional guaranties of the loan to Kennedy Funding.

10          8.     There is no genuine issue of material fact that at the time of the transaction  
11     between OneCap Partners, Hesser was the President of OneCap Partners and OneCap Partners  
12     MM.

13          9.     There is no genuine issue of material fact that OneCap Partners also granted a  
14     properly perfected security interest to Kennedy Funding by way of a UCC-1 Financing  
15     Statement filed with the Clark County Recorder's Office on June 15, 2006 as Instrument No.  
16     20060615-0005326.

17          10.    There is no genuine issue of material fact that OneCap Partners and Defendants  
18     executed an Environmental Indemnity Agreement in favor of Kennedy Funding, under which  
19     they agreed to indemnify Kennedy Funding for noncompliance of environmental laws.

20          11.    There is no genuine issue of material fact that OneCap Partners defaulted under  
21     the Note and Deed of Trust by failing to make its monthly installment payment of \$250,000.00.

22          12.    There is no genuine issue of material fact that OneCap Partners is in default under  
23     the Deed of Trust for failure to provide Kennedy Funding with current proof of liability  
24     insurance and for failure to timely pay its tax obligations relating to the Property.

25          13.    There is no genuine issue of material fact that OneCap Partners transferred its  
26     interest in the Property to Nevada Ueno Mita, LLC ("Nevada Ueno"), and under the Deed of  
27     Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Ueno was a  
28     default.

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1 14. Plaintiff's Motion for Summary Judgment was properly served on September 23,  
2 2009, Defendants' Opposition to Plaintiff's Motion for Summary Judgment was properly served  
3 on or about October 6, 2009, and Plaintiff's Reply in Support of Motion for Summary Judgment  
4 was properly served on October 20, 2009.

5 CONCLUSIONS OF LAW

6 1. Nevada law requires that to show a breach of contract, one must show (1) the  
7 existence of a valid contract, (2) a breach, and (3) damages as a result of the breach. See  
8 Richardson v. Jones, 1 Nev. 405 (Nev. 1865); see also Saini v. Int'l Game Tech, 434 F.Supp.2d  
9 913, 923 (D. Nev. 2006) (holding that "the failure to perform one's obligations within the  
10 express terms of an agreement constitutes a literal breach of contract.").

11 2. In this case, the contract was clear and unambiguous, and Defendants breached  
12 the contract entered into with Defendants OneCap Partners MM and Hesser.

13 3. The contract between Plaintiff and Defendants was valid, binding, and  
14 enforceable.

15 4. Defendants breached the contract by failing to make the April 2008 payment, and  
16 failing to make any payments since defaulting on the Note in satisfaction of the Loan  
17 Agreement..

18 5. Defendants' conduct was a material breach of the contract and Plaintiff has been  
19 damaged by said breaches.

20 ORDER GRANTING SUMMARY JUDGMENT

21 1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND  
22 DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED as to liability only.

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SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

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2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT an evidentiary hearing will be scheduled to address the exact amount of damages to be assessed against Defendants and in favor of Plaintiff.

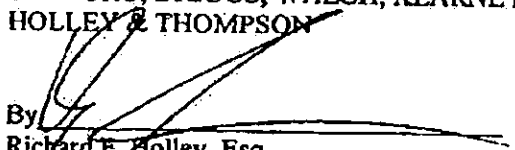
IT IS SO ORDERED.

Dated this 4 day of November, 2009.

ELIZABETH GOFF GONZALEZ  
DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*


CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February, 2010, and pursuant to NRC  
5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**

**OF ENTRY OF JUDGMENT**, postage prepaid and addressed to:

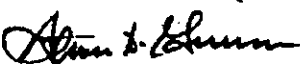
Harold P. Gewerter  
Harold P. Gewerter, Esq., Ltd.  
2705 Airport Drive  
North Las Vegas, NV 89032

*Attorneys for Defendants*

  
An employee of Santoro, Driggs, Walch,  
Kearney, Holley & Thompson

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CLERK OF THE COURT

1 **ORDR**  
2 RICHARD F. HOLLEY, ESQ.  
3 Nevada Bar No. 3077  
4 Ogonna M. Atamoh, ESQ.  
5 Nevada Bar No. 7589  
6 SANTORO, DRIGGS, WALCH,  
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9 Las Vegas, Nevada 89101  
10 Telephone: 702/791-0308  
11 Facsimile: 702/791-1912

12 *Attorneys for Kennedy Funding, Inc.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 KENNEDY FUNDING, INC., a New Jersey  
16 corporation,

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada  
20 corporation; VINCENT W. HESSER, an  
21 individual; DOE INDIVIDUALS I through X;  
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746  
Dept. No.: XI

24 **ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR**  
25 **SUMMARY JUDGMENT**

26 Plaintiff KENNEDY FUNDING, INC.'s ("Plaintiff's") evidentiary hearing for damages  
27 arising from Plaintiff's Motion for Summary Judgment ("Motion for Summary Judgment") came  
28 before the Court on November 5, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm  
Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM,  
INC. ("Onecap") and VINCENT W. HESSER ("Hesser") (collectively "Defendants"), and  
Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley &  
Thompson appeared on behalf of Plaintiff, with no other appearances having been made.

1 Kim Vaccarella testified at the evidentiary hearing on behalf of Plaintiff regarding  
2 Plaintiff's calculations of damages, and Defendants cross-examined Ms. Vaccarella. Matthew  
3 Lubawy testified on behalf of Defendants and Plaintiff cross-examined Mr. Lubawy. During  
4 oral argument at the hearing, Defendants raised for the first time the propriety of Plaintiff's  
5 authorization to commence the above-captioned action on behalf of the Co-Lenders. At the  
6 conclusion of the hearing, this Court ordered further briefing on the issue of Plaintiff's authority  
7 to proceed on behalf of the Co-Lenders and ordered supplemental briefing on that issue to be  
8 filed by Plaintiff no later than November 19, 2009, and any responsive pleading on that issue  
9 from Defendants no later than December 3, 2009. This Court scheduled an in-chambers hearing  
10 for December 4, 2009, to address the issue of Plaintiff's authority to proceed on behalf of the Co-  
11 Lenders.

12 On November 19, 2009, Plaintiff filed the Supplemental Declaration of Kevin Wolfer in  
13 support of its position that Plaintiff had authority to proceed on behalf of the Co-Lenders, and on  
14 or about December 2, 2009, Defendants filed their Clarified Supplemental Damages Submission.

15 The Court having heard the argument of counsel and testimony of witnesses, and having  
16 reviewed and examined the papers, pleadings and records on file in the above-entitled matter,  
17 including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin  
18 Wolfer, filed September 22, 2009, Defendants' Opposition to Motion for Summary Judgment,  
19 filed on or about October 6, 2009, Plaintiff's Reply in Support of the Motion for Summary  
20 Judgment, filed October 20, 2009, the Affidavit of Ogonna M. Atamoh, Esq., filed November 3,  
21 2009, the Declaration of Kim Vaccarella filed November 3, 2009, the memorandum of Costs and  
22 Disbursements filed November 3, 2009, the Supplemental Declaration of Kevin Wolfer filed  
23 November 19, 2009, and Defendants Clarified Supplemental Damages Submission filed on or  
24 about December 2, 2009, and good cause appearing therefore;

25 Pursuant to the findings of fact and conclusions of law placed on the record at the  
26 Evidentiary Hearing and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil  
27 Procedure, and good cause appearing, and this Court having previously entered an Order  
28

Granting Plaintiff's Motion for Summary Judgment as to liability only on November 4, 2009, this Court enters summary judgment against Defendants as to damages and rules as follows:

### FINDINGS OF FACTS

1. The Court makes these findings of fact by construing the pleadings and proof in the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

2. This order incorporates by reference the Findings of Undisputed Facts previously entered by this Court on November 4, 2009, pursuant to the Order Granting Motion for Summary Judgment in favor of Plaintiff.

3. There is no genuine issue of material fact that Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to the respective Co-Lenders Agreements as referenced in and submitted with the Supplemental Declaration of Ken Wolfer filed on November 19, 2009, and that Plaintiff has kept the Co-Lenders apprised of the status of the Borrower's bankruptcy case and the above-captioned Guarantor Action.

4. This order incorporates the Court's previous determination that the above-captioned action against the Defendants is not limited due to the inability of the lender to proceed with foreclosure as a result of the settlement in the bankruptcy proceeding with Debtor Nevada Ueno Mita, LLC ("Debtor in bankruptcy"), Bankruptcy Case No. 08-25487-BAM.

5. There is no genuine issue of material fact that the deficiency damages to be awarded to plaintiff consist of general damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

### CONCLUSIONS OF LAW

1. Plaintiff established the amount of damages due and owing from Defendants in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total amount of \$16,843,912.09.

2. Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to the Co-Lenders Agreement as referenced in the Supplemental Declaration of Ken Wolfer filed on November 19, 2009.



**ORDER GRANTING SUMMARY JUDGMENT**

1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED in its entirety.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Plaintiff is awarded monetary damages against Defendants and in favor of Plaintiff consisting of damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT in the event the Debtor in bankruptcy satisfies the indebtedness owing to Plaintiff, Plaintiff will cease its efforts to enforce the judgment against Defendants.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Defendants' ability to make a claim against the Debtor in bankruptcy is not impeded as a result of the Defendants' satisfaction of the obligation to Plaintiff.

**IT IS SO ORDERED.**

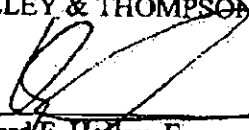
Dated this 17 day of February, 2010.

  
DISTRICT COURT JUDGE

*ZKC*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February 2010, and pursuant to NRCPS(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, postage prepaid and addressed to:

Harold P. Gewerter  
Harold P. Gewerter, Esq., Ltd.  
2705 Airport Drive  
North Las Vegas, NV 89032

*Attorneys for Defendants*

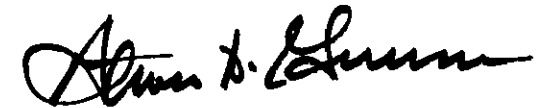


An employee of Santoro, Driggs, Walch,  
Kearney, Holley & Thompson

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

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CLERK OF THE COURT

1 **ASTA**  
2 **HAROLD P. GEWERTER, ESQ.**  
3 **Nevada Bar No. 499**  
4 **HAROLD P. GEWERTER, ESQ., LTD.**  
5 **2705 Airport Drive**  
6 **North Las Vegas, NV 89032**  
7 **Telephone: (702) 382-1714**  
8 **Fax: (702) 382-1759**  
9 **Attorneys for Defendants**  
10 **OneCap Partners MM, Inc. and**  
11 **Vincent W. Hesser**

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **KENNEDY FUNDING, INC., a New Jersey**  
11 **Corporation,**

12 **Plaintiff,**

13 **vs.**

14 **ONECAP PARTNERS MM, INC., a Nevada**  
15 **corporation; VINCENT W. HESSER; an**  
16 **individual, DOE INDIVIDUALS I through X,**  
17 **and ROE CORPORATIONS I through X,**

18 **Defendants.**

**CASE NO.: A582746**  
**DEPT. NO.: XI**

**CASE APPEAL STATEMENT**

**Hearing Date: N/A**  
**Hearing Time: N/A**

19 1. Name of Appellant filing this Case Appeal Statement: OneCap Partners MM, Inc.  
20 and Vincent W. Hesser.

21 2. Identify the Judge issuing the decision, judgment, or order appealed from:  
22 Honorable Judge Elizabeth Gonzalez.

23 3. Identify all parties to the proceedings in the District Court (the use of et al. to  
24 denote parties is prohibited): Plaintiff: Kennedy Funding, Inc. Defendant: OneCap Partners  
25 MM, Inc. and Vincent W. Hesser.

26 4. Identify all parties involved in this appeal (the use of et al. to denote parties is  
27 prohibited): Plaintiff: Kennedy Funding, Inc. Defendant/Appellant: OneCap Partners MM, Inc.  
28 and Vincent W. Hesser.

1           5.       Set forth the name, law firm, address, and telephone number of all counsel on  
2 appeal and identify the party or parties whom they represent:

3           Counsels for Appellant:       Harold P. Gewerter, Esq.  
4   Harold P. Gewerter, Esq., Ltd.  
5   2705 Airport Drive  
6   North Las Vegas, NV 89032  
7   Telephone: (702) 382-1714

8           Counsel for Respondents:   Richard F. Holley, Esq.  
9   Ogonna M. Atamoh, Esq.  
10    Santoro Driggs Walch Kearney Holley & Thompson  
11    400 S. Fourth Street, Third Floor  
12    Las Vegas, NV 89101  
13    Telephone: (702) 791-0308

14           6.       Indicate whether Appellant was represented by appointed or retained counsel in  
15 the District Court: The Appellant Vincent Hesser was represented by retained counsel in the  
16 District Court.

17           7.       Indicate whether Appellant is represented by appointed or retained counsel on  
18 appeal: The Appellant is being represented by retained counsel on appeal.

19           8.       Indicate whether Appellant was granted leave to proceed in forma pauperis, and  
20 the date of entry of the District Court Order granting such a leave: Leave was not granted to  
21 proceed *in forma pauperis*.

22           9.       Indicate the date the proceedings commenced in the District Court (e.g., date  
23 complaint, indictment, information, or petition was filed): Complaint filed February 13, 2009.

24           DATED this 15 day of March, 2010.

25   HAROLD P. GEWERTER, ESQ., LTD.

26     
27   HAROLD P. GEWERTER, ESQ.

28   Nevada Bar No. 499  
29   2705 Airport Drive  
30   North Las Vegas, NV 89032  
31   Attorney for Defendants OneCap Partners  
32   MM, Inc. and Vincent Hesser

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**CERTIFICATE OF SERVICE**

Certification is hereby made that a true and correct copy of the foregoing Case Appeal Statement was served this 15<sup>th</sup> day of March, 2010, in the following manner:

  X   By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

       By being hand delivered to the following individuals at their last known address, this same date, as follows; and/or

       By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

Richard F. Holley, Esq.  
Ogonna M. Atamoh, Esq.  
Santoro Driggs Walch Kearney Holley &  
Thompson  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101

  
An employee of Harold P. Gewerter, Esq., Ltd.

# CASE SUMMARY

CASE No. 09A582746

**Kennedy Funding Inc**  
**vs**  
**Onecap Partners MM Inc, Vincent Hesser**

§  
§  
§  
§  
§

Location: **Department 11**  
Judicial Officer: **Gonzalez, Elizabeth**  
Filed on: **02/13/2009**  
Conversion Case Number: **A582746**

## CASE INFORMATION

Case Type: **Business Court**  
Sub Type: **Other Business Court Matters**  
Case Flags: **Appealed to Supreme Court**

## DATE

## CASE ASSIGNMENT

### Current Case Assignment

Case Number 09A582746  
Court Department 11  
Date Assigned 02/13/2009  
Judicial Officer Gonzalez, Elizabeth

## PARTY INFORMATION

<b>Plaintiff</b>	<b>Kennedy Funding Inc</b>	<i>Lead Attorneys</i> <b>Holley, Richard F.</b> <i>Retained</i>	7027910308
<b>Defendant</b>	<b>Hesser, Vincent W</b> Removed: 03/15/2010 Change of Status	<b>Gewerter, Harold Phillip</b> <i>Retained</i>	702-382-1714
	<b>Onecap Partners MM Inc</b> Removed: 03/15/2010 Change of Status	<b>Gewerter, Harold Phillip</b> <i>Retained</i>	702-382-1714
<b>Conversion Extended Connection Type</b>	<b>No Convert Value @ 09A582746</b> Removed: 04/24/2009 Converted From Blackstone		












## DATE

## EVENTS & ORDERS OF THE COURT

## INDEX

02/13/2009	Complaint <i>COMPLAINT FILED Fee \$151.00</i>	<i>09A5827460001.tif</i> <i>pages</i>
02/13/2009	Initial Appearance Fee Disclosure Filed By: Plaintiff Kennedy Funding Inc <i>INITIAL APPEARANCE FEE DISCLOSURE</i>	<i>09A5827460002.tif</i> <i>pages</i>
03/11/2009	Summons Filed by: Plaintiff Kennedy Funding Inc <i>SUMMONS - ONECAP PARTNERS MM INC</i>	<i>09A5827460005.tif</i> <i>pages</i>
03/13/2009	Answer Filed By: Defendant Onecap Partners MM Inc	<i>09A5827460003.tif</i> <i>pages</i>

**CASE SUMMARY**  
**CASE No. 09A582746**

	<i>DEFENDANTS ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES</i>	
03/13/2009	Answer  Filed By: Defendant Hesser, Vincent W <i>DEFENDANTS ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES</i>	<i>09A5827460004.tj</i> <i>pages</i>
03/13/2009	Initial Appearance Fee Disclosure  Filed By: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>INITIAL APPEARANCE FEE DISCLOSURE</i>	<i>09A5827460006.tj</i> <i>pages</i>
03/19/2009	Summons  Filed by: Plaintiff Kennedy Funding Inc <i>SUMMONS -VINCENT W HESSER</i>	<i>09A5827460007.tj</i> <i>pages</i>
04/17/2009	Commissioner's Decision On Request For Exemption  <i>COMMISSIONERS DECISION ON REQUEST FOR EXEMPTION</i>	<i>09A5827460008.tj</i> <i>pages</i>
04/29/2009	 Commissioner's Decision on Request for Exemption - Granted <i>Commissioner's Amended Decision on Request for Exemption</i>	
05/08/2009	 Notice of Change of Address  Filed By: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>Notice of Change of Address of Harold P Gewerter Esq</i>	
07/14/2009	 Joint Case Conference Report  Filed By: Plaintiff Kennedy Funding Inc	
09/03/2009	 Stipulation  <i>Stipulation to Extend Expert Disclosure Deadlines</i>	
09/08/2009	 Scheduling Order	
09/22/2009	 Motion for Summary Judgment  Filed By: Plaintiff Kennedy Funding Inc	
09/22/2009	 Declaration  Filed By: Plaintiff Kennedy Funding Inc <i>Declaration of Kevin Wolfer</i>	
09/23/2009	 Certificate of Mailing  Filed By: Plaintiff Kennedy Funding Inc	
10/07/2009	 Opposition to Motion For Summary Judgment  Filed By: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>Defendants' Opposition to Plaintiff's Motion For Summary Judgment</i>	
10/12/2009	 Order Setting Civil Non-Jury Trial  <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>	
10/20/2009	 Reply in Support  Filed By: Plaintiff Kennedy Funding Inc	










**CASE SUMMARY**  
**CASE No. 09A582746**

	<i>Reply in Support of Motion for Summary Judgment</i>
10/27/2009	 <b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Events: 09/22/2009 Motion for Summary Judgment <i>Pltf's Motion for Summary Judgment</i>
11/03/2009	 Declaration <i>Declaration of Kim Vaccarella</i>
11/03/2009	 Affidavit <i>Affidavit of Ogonna M. Atamoh, Esq.</i>
11/03/2009	 Memorandum of Costs and Disbursements <i>Memorandum of Costs and Disbursements</i>
11/04/2009	 Order Granting Filed By: Plaintiff Kennedy Funding Inc <i>Order Granting Plaintiff's Motion for Summary Judgment</i>
11/04/2009	<b>Summary Judgment</b> (Judicial Officer: Gonzalez, Elizabeth) Debtors: Onecap Partners MM Inc (Defendant), Vincent W Hesser (Defendant) Creditors: Kennedy Funding Inc (Plaintiff) Judgment: 11/04/2009, Docketed: 11/06/2009 Comment: certain claim
11/05/2009	 Receipt of Copy <i>Receipt of Copy</i>
11/05/2009	 <b>Hearing</b> (9:30 AM) (Judicial Officer: Gonzalez, Elizabeth) <b>11/05/2009, 12/04/2009</b> <i>Summary Judgment hearing on Damages</i>
11/05/2009	 Notice of Entry of Order Filed By: Plaintiff Kennedy Funding Inc
11/19/2009	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Events: 10/12/2009 Order Setting Civil Non-Jury Trial
11/19/2009	 Declaration Filed By: Plaintiff Kennedy Funding Inc <i>Supplemental Declaration of Kevin Wolfer</i>
12/03/2009	 Request Filed by: Plaintiff Kennedy Funding Inc <i>Request to Strike Defedants' Clarified Supplemental Samages Submission</i>
12/03/2009	 Supplemental Filed by: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>Defendants' Clarified Supplemental Damages Submission</i>
12/22/2009	 Order Denying Filed By: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>Order Denying Plaintiff's Request to Strike</i>



# CASE SUMMARY

CASE No. 09A582746

01/05/2010	 Notice of Entry of Order Filed By: Defendant Onecap Partners MM Inc; Defendant Hesser, Vincent W <i>Notice of Entry of Order Denying Plaintiff's Request to Strike</i>
02/04/2010	 <b>Calendar Call</b> (9:15 AM) (Judicial Officer: Gonzalez, Elizabeth) Events: 10/12/2009 Order Setting Civil Non-Jury Trial
02/05/2010	 <b>Status Check</b> (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>MINUTE ORDER</i>
02/08/2010	<b>CANCELED Bench Trial</b> <i>Vacated - per Judge</i>
02/18/2010	 Order Filed By: Plaintiff Kennedy Funding Inc <i>Order Awarding Damages Pursuant to Plaintiff's Motion for Summary Judgment</i>
02/18/2010	 Judgment Filed By: Plaintiff Kennedy Funding Inc <i>Judgment against OneCap Partners MM, Inc. and Vincent W. Hesser</i>
02/18/2010	<b>Judgment Plus Interest</b> (Judicial Officer: Gonzalez, Elizabeth) Debtors: Onecap Partners MM Inc (Defendant), Vincent W Hesser (Defendant) Creditors: Kennedy Funding Inc (Plaintiff) Judgment: 02/18/2010, Docketed: 02/23/2010 Total Judgment: 16,843,912.09
02/23/2010	 Notice of Entry of Order Filed By: Plaintiff Kennedy Funding Inc <i>Notice of Entry of Order</i>
02/23/2010	 Notice of Entry of Judgment Filed By: Plaintiff Kennedy Funding Inc <i>Notice of Entry of Judgment</i>
03/15/2010	 Case Appeal Statement Filed By: Defendant Hesser, Vincent W <i>Case Appeal Statement</i>
03/15/2010	 Notice of Appeal Filed By: Defendant Hesser, Vincent W <i>Onecap Partners MM Inc and Vincent Hesser's Notice of Appeal</i>

## DATE

## FINANCIAL INFORMATION

**Defendant** Hesser, Vincent W

Total Charges

24.00

Total Payments and Credits

0.00

**Balance Due as of 3/18/2010**

**24.00**

**Conversion Extended Connection Type** No Convert Value @ 09A582746

Total Charges

285.00

Total Payments and Credits

285.00

**Balance Due as of 3/18/2010**

**0.00**

# CASE SUMMARY

CASE No. 09A582746

**Plaintiff** Kennedy Funding Inc  
Total Charges  
Total Payments and Credits  
**Balance Due as of 3/18/2010**

200.00  
200.00  
**0.00**

ORIGINAL

CIVIL COVER SHEET

County, Nevada

Case No.

(Assigned by Clerk's Office)

AJ82746

X1

**I. Party Information**

Plaintiff(s) (name/address/phone):

Kennedy Funding, Inc., a New Jersey corporation

Defendant(s) (name/address/phone):

Onecap Partners MM, Inc., a Nevada corporation  
Vincent W. Hesser, an individual

Attorney (name/address/phone):

Santoro, Driggs, Walch, Keamey, Holley & Thompson, 400 S. 4<sup>th</sup> St., 3<sup>rd</sup> Fl.  
Las Vegas, NV 89101; 702-791-0308

Attorney (name/address/phone):

Unknown

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

**Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence - Auto</b> <input type="checkbox"/> <b>Negligence - Medical/Dental</b> <input type="checkbox"/> <b>Negligence - Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence - Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

**Probate**

**Other Civil Filing Types**

<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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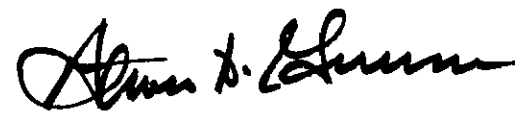
**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices NRS 598 <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input checked="" type="checkbox"/> Other Business Court Matters
--	---	--

February 13, 2009  
Date

Signature of initiating party or representative

**JUDG**  
RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

  
CLERK OF THE COURT

*Attorneys for Kennedy Funding, Inc.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER**

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as  
2 **Exhibit "1"**, and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for  
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good  
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly  
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of  
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing  
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount  
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00  
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment  
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent  
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's  
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in  
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's  
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest  
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan  
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted  
24 from the judgment amount and accruing interest entered herein against DEFENDANTS  
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

26 ...


27 ...

28 ...

1 IT IS FURTHER ORDERED that the Court expressly directs the entry of a final  
2 judgment, as there is no just reason for delay.

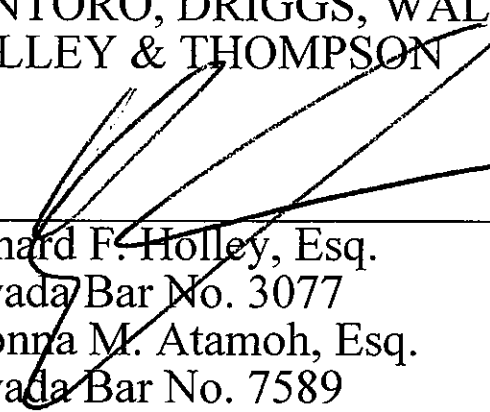
3 IT IS SO ORDERED.

4 Dated this 17 day of February 200<sup>10</sup>~~9~~.

5  
6   
DISTRICT COURT JUDGE *EKE*

7  
8 Submitted by:

9 SANTORO, DRIGGS, WALCH, KEARNEY,  
10 HOLLEY & THOMPSON

11 By   
12 Richard F. Holley, Esq.  
13 Nevada Bar No. 3077  
14 Ogonna M. Atamoh, Esq.  
15 Nevada Bar No. 7589  
16 400 S. Fourth Street, Third Floor  
17 Las Vegas, NV 89101  
18 *Attorneys for Plaintiff*

# EXHIBIT “1”

**ORDR**

RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Kennedy Funding, Inc.*

**FILED**

**NOV - 4 2003**

*Alfred J. Johnson*  
CLERK OF COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment ("Motion for Summary Judgment"), having come on for hearing on October 27, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances having been made. The Court having heard the argument of counsel and having reviewed and examined the papers, pleadings and records on file in the above-entitled matter, including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin Wolfer, filed





1 September 22, 2009, Defendants' Opposition to Motion for Summary Judgment, filed on or  
2 about October 6, 2009, and Plaintiff's Reply in Support of the Motion for Summary Judgment,  
3 filed October 20, 2009, and good cause appearing therefore;

4 Pursuant to the findings of fact and conclusions of law placed on the record at the hearing  
5 and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil Procedure, and good  
6 cause appearing, this Court enters summary judgment against Defendants and rules as follows:

7 **FINDINGS OF UNDISPUTED FACTS**

8 1. The Court makes these findings of fact by construing the pleadings and proof in  
9 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

10 2. There is no genuine issue of material fact that there was a binding contract  
11 between Plaintiff Kennedy Funding, Inc. and OneCap Partners 2, LLC ("OneCap Partners"),  
12 entitled the "Loan and Security Agreement" (the "Loan Agreement") dated June 15, 2006, for  
13 OneCap Partners' purchase of unimproved real property consisting of 78.74+ acres of raw land  
14 located along Casino Drive and the Colorado River in Laughlin, Nevada 89029, Clark County  
15 Assessor Parcel Numbers 264-25-101-001 and 264-25-201-001 (the "Property") for a purchase  
16 price of TWELVE MILLION DOLLARS (\$12,000,000.00).

17 3. There is no genuine issue of material fact that the Loan Agreement is evidenced  
18 by a Promissory Note dated June 15, 2006, in the amount of \$12,000,000.00, made by OneCap  
19 Partners payable to Kennedy Funding as agent of the Lenders.

20 4. There is no genuine issue of material fact that OneCap Partners executed and  
21 delivered to Kennedy Funding a Deed of Trust with Security Agreement, Financing Statement  
22 for Fixture Filing and Assignment of Rents ("Deed of Trust") against the Property, which was  
23 recorded on June 15, 2006, with the Clark County Recorder's Office as Instrument No.  
24 20060615-0005324.

25 5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen II,  
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Attornment  
27 Agreement ("Subordination Agreement") in which the Option Holder agreed to subordinate its  
28 limited option to purchase the Property to Kennedy Funding's Deed of Trust.



1           6.       There is no genuine issue of material fact that as additional security for the loan,  
2 OneCap Partners executed and delivered to Kennedy Funding, an Assignment of Leases and  
3 Rents dated June 14, 2006 and recorded June 15, 2006, with the Clark County Recorder's Office  
4 as Instrument No. 20060615-0005325, and an Assignment of Licenses, Contracts, Plans,  
5 Specifications, Surveys, Drawings and Report dated June 15, 2006 (Assignment of Licenses").

6           7.       There is no genuine issue of material fact that to further secure payment of the  
7 Note, on June 14, 2006, Defendant Vincent Hesser ("Hesser") and Defendant OneCap Partners  
8 MM, Inc. ("OneCap Partners MM") ("collectively "Defendants") executed personal  
9 unconditional guaranties of the loan to Kennedy Funding.

10          8.       There is no genuine issue of material fact that at the time of the transaction  
11 between OneCap Partners, Hesser was the President of OneCap Partners and OneCap Partners  
12 MM.

13          9.       There is no genuine issue of material fact that OneCap Partners also granted a  
14 properly perfected security interest to Kennedy Funding by way of a UCC-1 Financing  
15 Statement filed with the Clark County Recorder's Office on June 15, 2006 as Instrument No.  
16 20060615-0005326.

17          10.      There is no genuine issue of material fact that OneCap Partners and Defendants  
18 executed an Environmental Indemnity Agreement in favor of Kennedy Funding, under which  
19 they agreed to indemnify Kennedy Funding for noncompliance of environmental laws.

20          11.      There is no genuine issue of material fact that OneCap Partners defaulted under  
21 the Note and Deed of Trust by failing to make its monthly installment payment of \$250,000.00.

22          12.      There is no genuine issue of material fact that OneCap Partners is in default under  
23 the Deed of Trust for failure to provide Kennedy Funding with current proof of liability  
24 insurance and for failure to timely pay its tax obligations relating to the Property.

25          13.      There is no genuine issue of material fact that OneCap Partners transferred its  
26 interest in the Property to Nevada Ueno Mita, LLC ("Nevada Ueno"), and under the Deed of  
27 Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Ueno was a  
28 default.

1           14. Plaintiff's Motion for Summary Judgment was properly served on September 23,  
2 2009, Defendants' Opposition to Plaintiff's Motion for Summary Judgment was properly served  
3 on or about October 6, 2009, and Plaintiff's Reply in Support of Motion for Summary Judgment  
4 was properly served on October 20, 2009.

5                           **CONCLUSIONS OF LAW**

6           1. Nevada law requires that to show a breach of contract, one must show (1) the  
7 existence of a valid contract, (2) a breach, and (3) damages as a result of the breach. See  
8 Richardson v. Jones, 1 Nev. 405 (Nev. 1865); see also Saini v. Int'l Game Tech, 434 F.Supp.2d  
9 913, 923 (D. Nev. 2006) (holding that "the failure to perform one's obligations within the  
10 express terms of an agreement constitutes a literal breach of contract.").

11           2. In this case, the contract was clear and unambiguous, and Defendants breached  
12 the contract entered into with Defendants OneCap Partners MM and Hesser.

13           3. The contract between Plaintiff and Defendants was valid, binding, and  
14 enforceable.

15           4. Defendants breached the contract by failing to make the April 2008 payment, and  
16 failing to make any payments since defaulting on the Note in satisfaction of the Loan  
17 Agreement..

18           5. Defendants' conduct was a material breach of the contract and Plaintiff has been  
19 damaged by said breaches.

20                           **ORDER GRANTING SUMMARY JUDGMENT**

21           1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND  
22 DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED as to liability only.

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2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT an evidentiary hearing will be scheduled to address the exact amount of damages to be assessed against Defendants and in favor of Plaintiff.

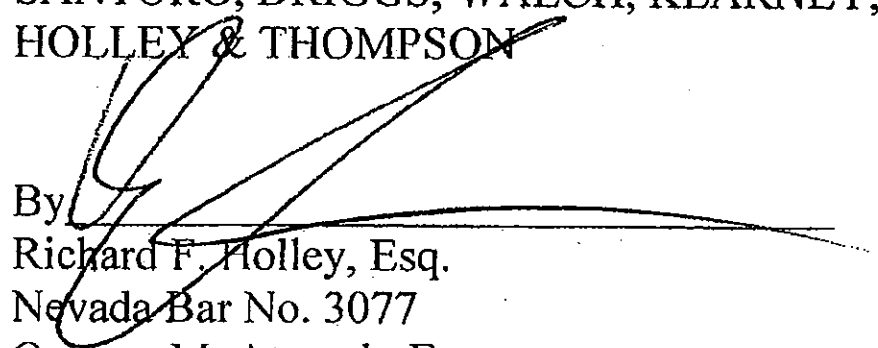
**IT IS SO ORDERED.**

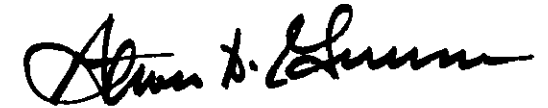
Dated this 4 day of November, 2009.

ELIZABETH GOFF GONZALEZ  
DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*



CLERK OF THE COURT

**NEOJ**  
RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorney for Kennedy Funding, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.


Case No: A582746  
Dept. No.: XI

**NOTICE OF ENTRY OF JUDGMENT**

YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of which is attached hereto

Dated this 22nd day of February, 2010.

**SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON**



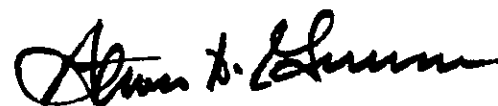
RICHARD F. HOLLEY, ESQ. (NVSB #3077)  
OGONNA M. ATAMOH, ESQ. (NVSB #7589)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Kennedy Funding, Inc.*

ORIGINAL

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**JUDG**

RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912



CLERK OF THE COURT

*Attorneys for Kennedy Funding, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER**

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

Summ. Judg.

<input checked="" type="checkbox"/>	U.S. District Court
<input checked="" type="checkbox"/>	Voluntary Dis.
<input checked="" type="checkbox"/>	Involuntary (stay)
<input checked="" type="checkbox"/>	Judgt on App Award
<input checked="" type="checkbox"/>	Min to Dis. (Jett)
<input checked="" type="checkbox"/>	High Court
<input checked="" type="checkbox"/>	Final Dis.
<input checked="" type="checkbox"/>	Settled
<input checked="" type="checkbox"/>	Dismissed
<input checked="" type="checkbox"/>	Other

1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as  
2 **Exhibit "1"**, and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for  
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good  
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly  
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of  
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing  
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount  
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00  
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment  
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent  
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover  
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's  
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in  
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's  
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest  
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan  
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted  
24 from the judgment amount and accruing interest entered herein against DEFENDANTS  
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

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IT IS FURTHER ORDERED that the Court expressly directs the entry of a final judgment, as there is no just reason for delay.

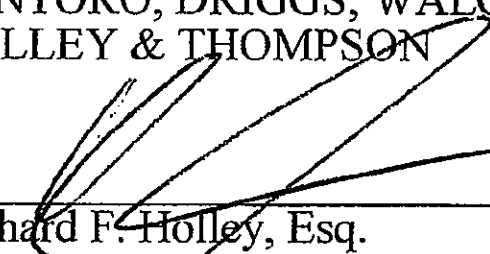
IT IS SO ORDERED.

Dated this 17 day of February 200<sup>10</sup>9.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE *ene*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
\_\_\_\_\_  
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*



# EXHIBIT “1”

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

SDW

**ORDR**

RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
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400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Kennedy Funding, Inc.*

**FILED**

**NOV - 4 2009**

*Clifford A. Johnson*  
CLERK OF COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment ("Motion for Summary Judgment"), having come on for hearing on October 27, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances having been made. The Court having heard the argument of counsel and having reviewed and examined the papers, pleadings and records on file in the above-entitled matter, including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin Wolfer, filed



1 September 22, 2009, Defendants' Opposition to Motion for Summary Judgment, filed on or  
2 about October 6, 2009, and Plaintiff's Reply in Support of the Motion for Summary Judgment,  
3 filed October 20, 2009, and good cause appearing therefore;

4 Pursuant to the findings of fact and conclusions of law placed on the record at the hearing  
5 and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil Procedure, and good  
6 cause appearing, this Court enters summary judgment against Defendants and rules as follows:

7 **FINDINGS OF UNDISPUTED FACTS**

8 1. The Court makes these findings of fact by construing the pleadings and proof in  
9 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

10 2. There is no genuine issue of material fact that there was a binding contract  
11 between Plaintiff Kennedy Funding, Inc. and OneCap Partners 2, LLC ("OneCap Partners"),  
12 entitled the "Loan and Security Agreement" (the "Loan Agreement") dated June 15, 2006, for  
13 OneCap Partners' purchase of unimproved real property consisting of 78.74+ acres of raw land  
14 located along Casino Drive and the Colorado River in Laughlin, Nevada 89029, Clark County  
15 Assessor Parcel Numbers 264-25-101-001 and 264-25-201-001 (the "Property") for a purchase  
16 price of TWELVE MILLION DOLLARS (\$12,000,000.00).

17 3. There is no genuine issue of material fact that the Loan Agreement is evidenced  
18 by a Promissory Note dated June 15, 2006, in the amount of \$12,000,000.00, made by OneCap  
19 Partners payable to Kennedy Funding as agent of the Lenders.

20 4. There is no genuine issue of material fact that OneCap Partners executed and  
21 delivered to Kennedy Funding a Deed of Trust with Security Agreement, Financing Statement  
22 for Fixture Filing and Assignment of Rents ("Deed of Trust") against the Property, which was  
23 recorded on June 15, 2006, with the Clark County Recorder's Office as Instrument No.  
24 20060615-0005324.

25 5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen II,  
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Attornment  
27 Agreement ("Subordination Agreement") in which the Option Holder agreed to subordinate its  
28 limited option to purchase the Property to Kennedy Funding's Deed of Trust.

1           6.       There is no genuine issue of material fact that as additional security for the loan,  
2 OneCap Partners executed and delivered to Kennedy Funding, an Assignment of Leases and  
3 Rents dated June 14, 2006 and recorded June 15, 2006, with the Clark County Recorder's Office  
4 as Instrument No. 20060615-0005325, and an Assignment of Licenses, Contracts, Plans,  
5 Specifications, Surveys, Drawings and Report dated June 15, 2006 (Assignment of Licenses").

6           7.       There is no genuine issue of material fact that to further secure payment of the  
7 Note, on June 14, 2006, Defendant Vincent Hesser ("Hesser") and Defendant OneCap Partners  
8 MM, Inc. ("OneCap Partners MM") ("collectively "Defendants") executed personal  
9 unconditional guaranties of the loan to Kennedy Funding.

10          8.       There is no genuine issue of material fact that at the time of the transaction  
11 between OneCap Partners, Hesser was the President of OneCap Partners and OneCap Partners  
12 MM.

13          9.       There is no genuine issue of material fact that OneCap Partners also granted a  
14 properly perfected security interest to Kennedy Funding by way of a UCC-1 Financing  
15 Statement filed with the Clark County Recorder's Office on June 15, 2006 as Instrument No.  
16 20060615-0005326.

17          10.       There is no genuine issue of material fact that OneCap Partners and Defendants  
18 executed an Environmental Indemnity Agreement in favor of Kennedy Funding, under which  
19 they agreed to indemnify Kennedy Funding for noncompliance of environmental laws.

20          11.       There is no genuine issue of material fact that OneCap Partners defaulted under  
21 the Note and Deed of Trust by failing to make its monthly installment payment of \$250,000.00.

22          12.       There is no genuine issue of material fact that OneCap Partners is in default under  
23 the Deed of Trust for failure to provide Kennedy Funding with current proof of liability  
24 insurance and for failure to timely pay its tax obligations relating to the Property.

25          13.       There is no genuine issue of material fact that OneCap Partners transferred its  
26 interest in the Property to Nevada Ueno Mita, LLC ("Nevada Ueno"), and under the Deed of  
27 Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Ueno was a  
28 default.

1           14. Plaintiff's Motion for Summary Judgment was properly served on September 23,  
2 2009, Defendants' Opposition to Plaintiff's Motion for Summary Judgment was properly served  
3 on or about October 6, 2009, and Plaintiff's Reply in Support of Motion for Summary Judgment  
4 was properly served on October 20, 2009.

5                                   **CONCLUSIONS OF LAW**

6           1. Nevada law requires that to show a breach of contract, one must show (1) the  
7 existence of a valid contract, (2) a breach, and (3) damages as a result of the breach. See  
8 Richardson v. Jones, 1 Nev. 405 (Nev. 1865); see also Saini v. Int'l Game Tech, 434 F.Supp.2d  
9 913, 923 (D. Nev. 2006) (holding that "the failure to perform one's obligations within the  
10 express terms of an agreement constitutes a literal breach of contract.").

11           2. In this case, the contract was clear and unambiguous, and Defendants breached  
12 the contract entered into with Defendants OneCap Partners MM and Hesser.

13           3. The contract between Plaintiff and Defendants was valid, binding, and  
14 enforceable.

15           4. Defendants breached the contract by failing to make the April 2008 payment, and  
16 failing to make any payments since defaulting on the Note in satisfaction of the Loan  
17 Agreement..

18           5. Defendants' conduct was a material breach of the contract and Plaintiff has been  
19 damaged by said breaches.

20                                   **ORDER GRANTING SUMMARY JUDGMENT**

21           1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND  
22 DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED as to liability only.

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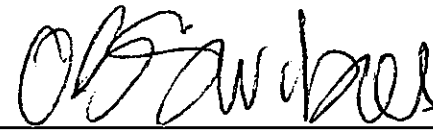
MS

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22nd day of February, 2010, and pursuant to NRCP  
5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE  
OF ENTRY OF JUDGMENT**, postage prepaid and addressed to:

Harold P. Gewerter  
Harold P. Gewerter, Esq., Ltd.  
2705 Airport Drive  
North Las Vegas, NV 89032

*Attorneys for Defendants*

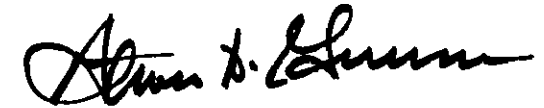


An employee of Santoro, Driggs, Walch,  
Kearney, Holley & Thompson

**ORDER**

RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Kennedy Funding, Inc.*



CLERK OF THE COURT

**DISTRICT COURT****CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff KENNEDY FUNDING, INC.'s ("Plaintiff's") evidentiary hearing for damages arising from Plaintiff's Motion for Summary Judgment ("Motion for Summary Judgment") came before the Court on November 5, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Hesser") (collectively "Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances having been made.



1 Kim Vaccarella testified at the evidentiary hearing on behalf of Plaintiff regarding  
2 Plaintiff's calculations of damages, and Defendants cross-examined Ms. Vaccarella. Matthew  
3 Lubawy testified on behalf of Defendants and Plaintiff cross-examined Mr. Lubawy. During  
4 oral argument at the hearing, Defendants raised for the first time the propriety of Plaintiff's  
5 authorization to commence the above-captioned action on behalf of the Co-Lenders. At the  
6 conclusion of the hearing, this Court ordered further briefing on the issue of Plaintiff's authority  
7 to proceed on behalf of the Co-Lenders and ordered supplemental briefing on that issue to be  
8 filed by Plaintiff no later than November 19, 2009, and any responsive pleading on that issue  
9 from Defendants no later than December 3, 2009. This Court scheduled an in-chambers hearing  
10 for December 4, 2009, to address the issue of Plaintiff's authority to proceed on behalf of the Co-  
11 Lenders.

12 On November 19, 2009, Plaintiff filed the Supplemental Declaration of Kevin Wolfer in  
13 support of its position that Plaintiff had authority to proceed on behalf of the Co-Lenders, and on  
14 or about December 2, 2009, Defendants filed their Clarified Supplemental Damages Submission.

15 The Court having heard the argument of counsel and testimony of witnesses, and having  
16 reviewed and examined the papers, pleadings and records on file in the above-entitled matter,  
17 including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin  
18 Wolfer, filed September 22, 2009, Defendants' Opposition to Motion for Summary Judgment,  
19 filed on or about October 6, 2009, Plaintiff's Reply in Support of the Motion for Summary  
20 Judgment, filed October 20, 2009, the Affidavit of Ogonna M. Atamoh, Esq., filed November 3,  
21 2009, the Declaration of Kim Vaccarella filed November 3, 2009, the memorandum of Costs and  
22 Disbursements filed November 3, 2009, the Supplemental Declaration of Kevin Wolfer filed  
23 November 19, 2009, and Defendants Clarified Supplemental Damages Submission filed on or  
24 about December 2, 2009, and good cause appearing therefore;

25 Pursuant to the findings of fact and conclusions of law placed on the record at the  
26 Evidentiary Hearing and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil  
27 Procedure, and good cause appearing, and this Court having previously entered an Order  
28

1 Granting Plaintiff's Motion for Summary Judgment as to liability only on November 4, 2009,  
2 this Court enters summary judgment against Defendants as to damages and rules as follows:

3 **FINDINGS OF FACTS**

4 1. The Court makes these findings of fact by construing the pleadings and proof in  
5 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

6 2. This order incorporates by reference the Findings of Undisputed Facts previously  
7 entered by this Court on November 4, 2009, pursuant to the Order Granting Motion for Summary  
8 Judgment in favor of Plaintiff.

9 3. There is no genuine issue of material fact that Plaintiff has the express authority to  
10 act on behalf of the Co-Lenders pursuant to the respective Co-Lenders Agreements as referenced  
11 in and submitted with the Supplemental Declaration of Ken Wolfer filed on November 19, 2009,  
12 and that Plaintiff has kept the Co-Lenders apprised of the status of the Borrower's bankruptcy  
13 case and the above-captioned Guarantor Action.

14 4. This order incorporates the Court's previous determination that the above-  
15 captioned action against the Defendants is not limited due to the inability of the lender to proceed  
16 with foreclosure as a result of the settlement in the bankruptcy proceeding with Debtor Nevada  
17 Ueno Mita, LLC ("Debtor in bankruptcy"), Bankruptcy Case No. 08-25487-BAM.

18 5. There is no genuine issue of material fact that the deficiency damages to be  
19 awarded to plaintiff consist of general damages in the amount of \$16,802,025.64, attorneys fees  
20 in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor  
21 of Plaintiff and against Defendants in the amount of \$16,843,912.09.

22 **CONCLUSIONS OF LAW**

23 1. Plaintiff established the amount of damages due and owing from Defendants in  
24 the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the  
25 amount of \$2,131.45, for a total amount of \$16,843,912.09.

26 2. Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to  
27 the Co-Lenders Agreement as referenced in the Supplemental Declaration of Ken Wolfer filed  
28 on November 19, 2009.



**ORDER GRANTING SUMMARY JUDGMENT**

1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED in its entirety.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Plaintiff is awarded monetary damages against Defendants and in favor of Plaintiff consisting of damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT in the event the Debtor in bankruptcy satisfies the indebtedness owing to Plaintiff, Plaintiff will cease its efforts to enforce the judgment against Defendants.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Defendants' ability to make a claim against the Debtor in bankruptcy is not impeded as a result of the Defendants' satisfaction of the obligation to Plaintiff.

**IT IS SO ORDERED.**

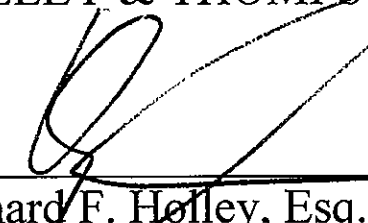
Dated this 17 day of February, 2010.

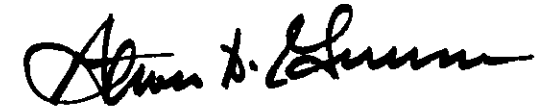
  
DISTRICT COURT JUDGE

*ZKC*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*



CLERK OF THE COURT

**NEO**  
RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorney for Kennedy Funding, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No: A582746

Dept. No.: XI

**NOTICE OF ENTRY OF ORDER**

YOU, and each of you, will please take notice that an ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT in the above-entitled matter was filed and entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of which is attached hereto.

Dated this 22nd day of February.

**SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON**

RICHARD F. HOLLEY, ESQ. (NVSB #3077)  
OGONNA M. ATAMOH, ESQ. (NVSB #7589)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

*Attorneys for Kennedy Funding, Inc.*

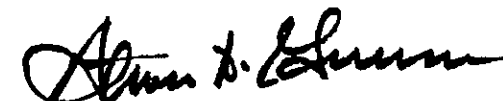
ORIGINAL

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02/18/2010 02:59:38 PM

**ORDR**

RICHARD F. HOLLEY, ESQ.  
Nevada Bar No. 3077  
OGONNA M. ATAMOH, ESQ.  
Nevada Bar No. 7589  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Kennedy Funding, Inc.*



CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey  
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada  
corporation; VINCENT W. HESSER, an  
individual; DOE INDIVIDUALS I through X;  
and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746  
Dept. No.: XI

**ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff KENNEDY FUNDING, INC.'s ("Plaintiff's") evidentiary hearing for damages arising from Plaintiff's Motion for Summary Judgment ("Motion for Summary Judgment") came before the Court on November 5, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Hesser") (collectively "Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances having been made.

1 Kim Vaccarella testified at the evidentiary hearing on behalf of Plaintiff regarding  
2 Plaintiff's calculations of damages, and Defendants cross-examined Ms. Vaccarella. Matthew  
3 Lubawy testified on behalf of Defendants and Plaintiff cross-examined Mr. Lubawy. During  
4 oral argument at the hearing, Defendants raised for the first time the propriety of Plaintiff's  
5 authorization to commence the above-captioned action on behalf of the Co-Lenders. At the  
6 conclusion of the hearing, this Court ordered further briefing on the issue of Plaintiff's authority  
7 to proceed on behalf of the Co-Lenders and ordered supplemental briefing on that issue to be  
8 filed by Plaintiff no later than November 19, 2009, and any responsive pleading on that issue  
9 from Defendants no later than December 3, 2009. This Court scheduled an in-chambers hearing  
10 for December 4, 2009, to address the issue of Plaintiff's authority to proceed on behalf of the Co-  
11 Lenders.

12 On November 19, 2009, Plaintiff filed the Supplemental Declaration of Kevin Wolfer in  
13 support of its position that Plaintiff had authority to proceed on behalf of the Co-Lenders, and on  
14 or about December 2, 2009, Defendants filed their Clarified Supplemental Damages Submission.

15 The Court having heard the argument of counsel and testimony of witnesses, and having  
16 reviewed and examined the papers, pleadings and records on file in the above-entitled matter,  
17 including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin  
18 Wolfer, filed September 22, 2009, Defendants' Opposition to Motion for Summary Judgment,  
19 filed on or about October 6, 2009, Plaintiff's Reply in Support of the Motion for Summary  
20 Judgment, filed October 20, 2009, the Affidavit of Ogonna M. Atamoh, Esq., filed November 3,  
21 2009, the Declaration of Kim Vaccarella filed November 3, 2009, the memorandum of Costs and  
22 Disbursements filed November 3, 2009, the Supplemental Declaration of Kevin Wolfer filed  
23 November 19, 2009, and Defendants Clarified Supplemental Damages Submission filed on or  
24 about December 2, 2009, and good cause appearing therefore;

25 Pursuant to the findings of fact and conclusions of law placed on the record at the  
26 Evidentiary Hearing and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil  
27 Procedure, and good cause appearing, and this Court having previously entered an Order  
28

1 Granting Plaintiff's Motion for Summary Judgment as to liability only on November 4, 2009,  
2 this Court enters summary judgment against Defendants as to damages and rules as follows:

3 **FINDINGS OF FACTS**

4 1. The Court makes these findings of fact by construing the pleadings and proof in  
5 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

6 2. This order incorporates by reference the Findings of Undisputed Facts previously  
7 entered by this Court on November 4, 2009, pursuant to the Order Granting Motion for Summary  
8 Judgment in favor of Plaintiff.

9 3. There is no genuine issue of material fact that Plaintiff has the express authority to  
10 act on behalf of the Co-Lenders pursuant to the respective Co-Lenders Agreements as referenced  
11 in and submitted with the Supplemental Declaration of Ken Wolfer filed on November 19, 2009,  
12 and that Plaintiff has kept the Co-Lenders apprised of the status of the Borrower's bankruptcy  
13 case and the above-captioned Guarantor Action.

14 4. This order incorporates the Court's previous determination that the above-  
15 captioned action against the Defendants is not limited due to the inability of the lender to proceed  
16 with foreclosure as a result of the settlement in the bankruptcy proceeding with Debtor Nevada  
17 Ueno Mita, LLC ("Debtor in bankruptcy"), Bankruptcy Case No. 08-25487-BAM.

18 5. There is no genuine issue of material fact that the deficiency damages to be  
19 awarded to plaintiff consist of general damages in the amount of \$16,802,025.64, attorneys fees  
20 in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor  
21 of Plaintiff and against Defendants in the amount of \$16,843,912.09.

22 **CONCLUSIONS OF LAW**

23 1. Plaintiff established the amount of damages due and owing from Defendants in  
24 the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the  
25 amount of \$2,131.45, for a total amount of \$16,843,912.09.

26 2. Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to  
27 the Co-Lenders Agreement as referenced in the Supplemental Declaration of Ken Wolfer filed  
28 on November 19, 2009.



**ORDER GRANTING SUMMARY JUDGMENT**

1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED in its entirety.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Plaintiff is awarded monetary damages against Defendants and in favor of Plaintiff consisting of damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT in the event the Debtor in bankruptcy satisfies the indebtedness owing to Plaintiff, Plaintiff will cease its efforts to enforce the judgment against Defendants.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Defendants' ability to make a claim against the Debtor in bankruptcy is not impeded as a result of the Defendants' satisfaction of the obligation to Plaintiff.

**IT IS SO ORDERED.**

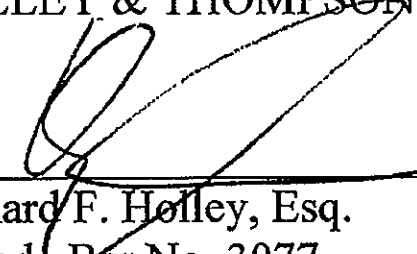
Dated this 17 day of February, 2010.

  
DISTRICT COURT JUDGE

*zke*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

By   
Richard F. Holley, Esq.  
Nevada Bar No. 3077  
Ogonna M. Atamoh, Esq.  
Nevada Bar No. 7589  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22nd day of February 2010, and pursuant to NRCP  
5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE  
OF ENTRY OF ORDER**, postage prepaid and addressed to:

Harold P. Gewerter  
Harold P. Gewerter, Esq., Ltd.  
2705 Airport Drive  
North Las Vegas, NV 89032

*Attorneys for Defendants*



An employee of Santoro, Driggs, Walch,  
Kearney, Holley & Thompson

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court****COURT MINUTES****October 27, 2009**

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09A582746

Kennedy Funding Inc

vs

Onecap Partners MM Inc, Vincent Hesser

---

**October 27, 2009****9:00 AM****Motion for Summary  
Judgment****Pltf's Motion for  
Summary Judgment****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Kathy Klein**RECORDER:** Jill Hawkins**REPORTER:****PARTIES**

**PRESENT:** Atamoh, Ogonna M. Attorney  
Gewerter, Harold Attorney  
Phillip

**JOURNAL ENTRIES**

- Colloquy regarding Bankruptcy Court delay. Arguments by Counsel. COURT stated its findings and ORDERED, Plaintiff's Motion for Summary Judgment, GRANTED IN PART as to the Liability and Court will set a hearing on the damages. Counsel to agree on a date certain.

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Business Court****COURT MINUTES****November 05, 2009**

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09A582746

Kennedy Funding Inc

vs

Onecap Partners MM Inc, Vincent Hesser

---

**November 05, 2009****9:30 AM****Hearing****Summary Judgment  
Hearing on Damages****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** ; Kathy Klein**RECORDER:** ; Jill Hawkins**REPORTER:****PARTIES****PRESENT:** Atamoh, Ogonna M. Attorney  
Gewerter, Harold Attorney  
Phillip**JOURNAL ENTRIES**

- Testimony and exhibits presented. (See worksheets). Court noted it heard sufficient testimony and reviewed paragraph 5 of the guarantee. Colloquy regarding exhibit one to the opposition containing the agreement of the settlement in the Bankruptcy Court. Court directed Ms. Atamoh to submit a supplemental declaration regarding the lenders, within two weeks. COURT ORDERED, matter CONTINUED to chambers for decision and Counsel to notify chambers if requesting arguments.

12/04/09 (CHAMBERS) SUMMARY JUDGMENT HEARING/DECISION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**November 19, 2009**

---

09A582746

Kennedy Funding Inc

vs

Onecap Partners MM Inc, Vincent Hesser

---

**November 19, 2009     9:00 AM             Status Check**

**HEARD BY:**    Gonzalez, Elizabeth

**COURTROOM:**    RJC Courtroom 14C

**COURT CLERK:**    Kathy Klein

**RECORDER:**    Jill Hawkins

**REPORTER:**

**PARTIES**

**PRESENT:**        Atamoh, Ogonna    M.    Attorney  
                         Gewerter, Harold    Attorney  
                         Phillip

**JOURNAL ENTRIES**

- Colloquy regarding the future hearing date for decision on the summary judgment hearing on damages, and the supplemental affidavit to be provided. Court noted all dates stand.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court****COURT MINUTES****December 04, 2009**

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09A582746

Kennedy Funding Inc

vs

Onecap Partners MM Inc, Vincent Hesser

---

**December 04, 2009****3:00 AM****Hearing****Summary Judgment  
hearing on Damages****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Kathy Klein**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- The Court having considered the Plaintiffs request to strike supplement and all related briefing DENIES the request. Mr. Gewerter to prepare and submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: H. Gewerter, Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Business Court

## COURT MINUTES

February 04, 2010

09A582746

Kennedy Funding Inc

VS

Onecap Partners MM Inc, Vincent Hesser

February 04, 2010

9:15 AM

## Calendar Call

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: ; Melissa Benson; Nicole McDevitt

RECORDER: Jill Hawkins

REPORTER:

## PARTIES

PRESENT: Atamoh, Ogonna M. Attorney  
Gewerter, Harold Attorney  
Phillip

## JOURNAL ENTRIES

- Counsel advised there was already a hearing for Summary Judgment and damages. Further, court has not given a ruling as to authority issue. Colloquy regarding briefings filed. Ms. Atamoh advised they are awaiting money for damages. COURT ORDERED, as there is an issue for authority, matter SET for Status Check.

2/5/10 3:00 AM STATUS CHECK: DETERMINATION OF AUTHORITY (CHAMBERS)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court****COURT MINUTES****February 05, 2010**

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09A582746

Kennedy Funding Inc

vs

Onecap Partners MM Inc, Vincent Hesser

---

**February 05, 2010****3:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Nicole McDevitt**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- The court having reviewed the supplemental briefing on the authority to proceed finds that the Plaintiff has authority to proceed on behalf of the coLenders. The Court has previously determined that the action against the guarantors is not limited due to the inability of the lender to proceed with foreclosure as a result of the settlement in the Bankruptcy proceeding with the Debtor in bankruptcy. Further the Court having previously granted partial summary judgment on liability for the obligation and having heard evidence of the amount of the deficiency awards damages in the amount of \$16,802,025.64 including attorneys fees of \$39,755 00 and costs \$2,131.45 totaling \$16.843.912.09 pursuant to the guaranty. In the event the Debtor in bankruptcy satisfies the indebtedness owing to Plaintiff, then Plaintiff will cease its efforts to enforce the judgment against the Defendants. Additionally this order does not impede Defendants ability to make a claim against Debtor in bankruptcy as a result of the satisfaction of the obligation. Counsel for Plaintiff is directed to submit proposed findings of fact and conclusions of law and a proposed judgment consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing, the evidentiary hearing, and argument. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment. All future dates are ordered vacated.

CLERK'S NOTE: Clerk notified parties telephonically of vacated trial and the above minute order has

PRINT DATE: 03/18/2010

Page 6 of 7

Minutes Date:

October 27, 2009

been distributed to: Ognna Attamoh, Esq. (Santoro, Driggs et el) and Harold Phillip Gewerter, Esq. (Gewerter Law Offices)



NOV 03 2029

Plaintiff's Exhibits

CASE NO. A582746

[illegible]

NOV 03 2009

Deft A EXHIBITS

CASE NO. A582746

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT



HAROLD P. GEWERTER, ESQ.  
2705 AIRPORT DRIVE  
NORTH LAS VEGAS, NV 89032

DATE: March 18, 2010  
CASE: A582746

RE CASE: KENNEDY FUNDINGS, INC. vs. ONECAP PARTNERS MM, INC.; VINCENT W. HESSER

NOTICE OF APPEAL FILED: March 15, 2010

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

---

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (2) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

ONECAP PARTNERS MM, INC. AND VINCENT HESSER'S NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER; NOTICE OF ENTRY OF JUDGMENT; ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

KENNEDY FUNDING, INC.,

Plaintiff(s),

vs.

ONECAP PARTNERS MM, INC.; VINCENT  
W. HESSER,

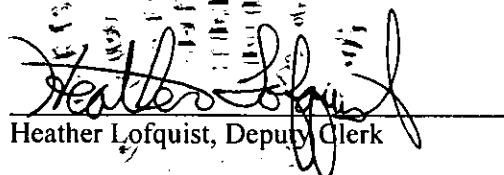
Defendant(s),

)  
)  
) Case No: A582746  
) Dept No: XI  
)  
)  
)  
)  
)  
)  
)

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 18 day of March 2010.

Steven D. Grierson, Clerk of the Court

  
Heather Lofquist, Deputy Clerk