

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada Limited Liability
Company; THARALDON MOTELS II,
INC., a North Dakota corporation; and
GARY D. THARALDSON,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,

Respondents

and

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J.
SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE
DEVELOPMENT WEST, INC., a Nevada
corporation; ASPHALT PRODUCTS
CORPORATION D/B/A APCO
CONSTRUCTION, a Nevada corporation,

Real Parties in Interest.

Case No.: 57641

District Court Case: A579963

**SUPPLEMENTAL APPENDIX OF
Real Parties in Interest
SCOTT FINANCIAL CORPORATION and BRADLEY J. SCOTT
VOLUME II**

J. Randall Jones (1927)
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*Attorneys for Real Parties in Interest SCOTT
FINANCIAL CORPORATION and
BRADLEY J. SCOTT*

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EXHIBIT N

DISTRICT COURT
CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C., a Nevada)	
Limited Liability Company; THARALDSON MOTELS, II,)	
INC., a North Dakota corporation; and GARY D.)	Case No.
THARALDSON,)	A579963
)	Dept. No.
Plaintiffs,)	XIII
v.)	
SCOTT FINANCIAL CORPORATION, a North Dakota)	
corporation; BRADLEY J. SCOTT; BANK OF OKLAHOMA,)	
N.A., a national bank; GEMSTONE DEVELOPMENT WEST,)	
INC., a Nevada corporation; ASPHALT PRODUCTS)	
CORPORATION D/B/A APCO CONSTRUCTION, a Nevada)	
corporation; DOES INDIVIDUALS 1-100; and)	
ROE BUSINESS ENTITIES 1-100,)	
)	
Defendants.)	
<hr/>		
SCOTT FINANCIAL CORPORATION, a foreign)	
corporation,)	
)	Counterclaimant,
v.)	
GARY D. THARALDSON,)	
)	Counterdefendant.
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CONFIDENTIAL

VIDEOTAPED DEPOSITION OF JAMES SHEPPARD

VOLUME I

PAGES 1-123

LAS VEGAS, NEVADA

OCTOBER 29, 2010

REPORTED BY: HOLLY J. PIKE, CCR NO. 680, RPR, CSR
LST JOB NO. 129532

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1 Mr. Muckleroy say?

2 A. He just said, Really, what we'd like to do is just
3 have an opportunity to get together with you to ask you a
4 few questions, kind of explore, you know, what your role was
5 in the matter of ManhattanWest. I don't think at this time
6 there's going to be any need to actually put you guys
7 through depositions. Let's just get together, if you could,
8 and set a convenient time where you could come in and just
9 have a chat with the two of us.

10 So that was kind of the gist of the conversation.

11 Q. Do you recall him discussing at all with you what
12 the allegations were in the case at that time?

13 A. On the phone?

14 Q. Yes, sir.

15 A. Not in any detail. Not on the phone, no.

16 Q. So the next item references August 19th, 2010: We
17 met at Martin's office at 8:00 a.m. Martin met us in the
18 lobby and started discussing the people involved in the
19 case.

20 A. Yes.

21 Q. Now, what did Mr. Muckleroy tell you, again as
22 best you recall, because I know some of these times blend
23 together, but while you were still in the lobby, what did he
24 start to tell you?

25 A. Well, we were waiting for Mr. Morrill to arrive.

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SCOTT APP 000249

1 So Martin kind of filled us in on everything. You know, we
2 asked questions as well. So we said to Martin, What's the
3 nature of the lawsuit? So he told us. That's when we began
4 to hear, you know, these guys were con artists. They're
5 scum. They defrauded the system. They committed fraud.
6 And just on and on and on.

7 But first, before he got into that, he proceeded
8 to, I'll say stroke us a little bit by telling us they had
9 done their homework and found out we had integrity in the
10 industry and we were honest and verified through his
11 assistant, Korin, who knew of us in the business. And then
12 we got the diatribe after that.

13 Q. Okay.

14 A. Which proceeded into the conference room when
15 Mr. Morrill arrived.

16 Q. Now, before we get to Mr. Morrill arriving, you
17 made the comment that Mr. Muckleroy said they committed
18 fraud. Who was the "they" that he described?

19 A. The they, Brad Scott, the Edelsteins, both, just
20 they didn't really say anything about Bank of Oklahoma at
21 that point. I shouldn't say -- Martin didn't at that point,
22 anyway.

23 Q. The next line item in your timeline says, "When
24 Layne Morrill came in, we went into the conference room with
25 Martin. They filled us in on many different things about

1 all parties of which we had no knowledge of prior to that
2 meeting."

3 A. They told us the nature of the lawsuit.

4 Q. According to them, what was the nature of the
5 lawsuit?

6 A. That our letters --

7 Q. Let me ask you if I can be specific as to who was
8 talking when you're telling me what happened.

9 A. Sure. And they both were talking about this.
10 They both chimed in.

11 Q. Mr. Morrill and Mr. Muckleroy?

12 A. Yes, yes. Basically the gist of it was that
13 nobody felt that our letters should have been checked off as
14 being sufficient in order to release construction financing.
15 And, you know, that's how they began. And the intent was,
16 during the conversation, to have us down play our own
17 letters. That was an effort on Layne's part.

18 Q. Just so I'm clear about this. If I understand
19 what you're saying, that Mr. Morrill was attempting to get
20 you to somehow agree with him that your prequalification
21 letters were really not valid prequalification letters?

22 A. Absolutely, yes.

23 MR. ARONSON: Objection. Form.

24 BY MR. JONES:

25 Q. And that he, I take it, was quite forceful in his

1 BY MR. JONES:

2 Q. And they're still trying to get you to do it;
3 right?

4 MR. ARONSON: Form.

5 THE WITNESS: Yes.

6 BY MR. JONES:

7 Q. The next entry is the next day at the bottom of
8 your page of your timeline, September 9, 2010, Called Layne
9 again to let him know we were not going to sign the
10 documentation and did not appreciate the unprofessionalism.

11 Did you personally speak to Mr. Morrill?

12 MR. ARONSON: Form.

13 THE WITNESS: Yes.

14 BY MR. JONES:

15 Q. Tell me about that conversation, in your own
16 words.

17 A. Well, I think you'll see on the next page that
18 Layne had called back and we had a conversation.

19 Q. Let's go to that, then.

20 A. Okay.

21 Q. The next entry reads, September 9 of 2010, Layne
22 returned a call to our cell phone and I reiterated what I
23 left on the voice message. At that time he instructed me
24 for mine and Vicki's own good to destroy any and all e-mails
25 and correspondence between us as it would shorten our

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SCOTT APP 000252

1 deposition time with the other attorneys?

2 A. Yes. He said, From now on let's communicate by
3 phone and if I were you, ha, ha, ha, I would get rid of
4 those e-mails because, if you are deposed, it would maybe
5 take half the time.

6 Q. So did you get the impression that he was telling
7 you to, essentially, destroy evidence?

8 A. Absolutely.

9 MR. ARONSON: Objection. Form.

10 THE WITNESS: It was pretty clear.

11 BY MR. JONES:

12 Q. What did you think about that?

13 A. I think at that point I was anxious to tell other
14 people what's going on. I was pretty upset by it.

15 Q. Well -- go ahead?

16 A. His attempt in that conversation was to, You know
17 what, Jim, you're right, the letters should stand on their
18 own. I mean, yeah, you can go ahead and do that. I agree
19 with you. You know what? The affidavit should be in our
20 own words, but if I were you, I would get rid of those
21 e-mails, otherwise the depositions may take twice as long,
22 yeah.

23 Q. Again, Mr. Morrill is telling you this?

24 A. Yes.

25 Q. He tells you the reason you should destroy that

1 evidence?

2 A. Yes.

3 MR. ARONSON: Objection. Form.

4 BY MR. JONES:

5 Q. But did you believe that was really the reason he
6 thought you should destroy the evidence, for your good, or
7 did you believe it was for his good?

8 MR. ARONSON: Objection. Form.

9 THE WITNESS: I think it was pretty obvious it was
10 for his good, yeah.

11 BY MR. JONES:

12 Q. Was there anything in those e-mails that you were
13 concerned about or felt was inappropriate or wrong in any
14 way, shape or form?

15 A. Yes.

16 Q. That you had written?

17 A. Oh, no.

18 Q. What about Mr. Morrill?

19 A. Absolutely.

20 MR. ARONSON: Objection. Form.

21 THE WITNESS: He was trying to twist our arm into
22 signing an affidavit in his own words, not ours.

23 BY MR. JONES:

24 Q. I want to ask you some follow-up questions about
25 that, then.

1 Based upon all this whole experience, going all
2 the way back to the first meeting you had with Mr. Muckleroy
3 and Mr. Morrill, do you feel, especially considering the
4 totality of everything that had happened up to this point,
5 September 9th of 2010, that Mr. Muckleroy and Mr. Morrill
6 were trying to pressure you or intimidate you into signing
7 false affidavits?

8 MR. ARONSON: Objection. Form.

9 THE WITNESS: Of course. Yeah, the affidavits
10 were composed by him and he wanted his own words in our
11 affidavit. Of course I objected strongly in every
12 conversation I had.

13 BY MR. JONES:

14 Q. And did you feel that they were attempting,
15 essentially, to intimidate you into signing these things?

16 MR. ARONSON: Objection. Form.

17 THE WITNESS: Yeah, they were using the affidavit
18 in lieu of, You know what, if you do this you're probably
19 not going to be deposed. It was using that against, You
20 guys don't want to be dragged through all that. We get it.
21 We understand. Let's just do the affidavit and that
22 probably will be the end of it. So, sure.

23 BY MR. JONES:

24 Q. When you didn't want to sign it because you
25 weren't comfortable with the language that Mr. Morrill had

1 chosen, did you feel that he was attempting to -- the manner
2 in which he tried to follow up to get you to sign it was
3 trying to pressure you to sign that?

4 A. Yeah. I think he realized --

5 MR. ARONSON: Objection. Form.

6 THE WITNESS: It was pretty clear to me he had
7 realized at that point that he went down the wrong path of
8 trying to convince us and pressure us to sign the affidavit,
9 sure.

10 BY MR. JONES:

11 Q. I don't know if you can speak to this, but do you
12 think that your wife was essentially more intimidated by
13 this process that they were using than you were?

14 MR. ARONSON: Form.

15 THE WITNESS: I was probably more upset and that's
16 further down the line too. So, yeah, I was more upset about
17 it. You know, it was unprofessional. It was unethical at
18 the very least. Vicki was pretty upset by it, yeah.

19 BY MR. JONES:

20 Q. Let's look at the next note in your timeline.
21 September 14th, 2010, Martin and Korin contacted me on the
22 cell phone together to let me know that Vicki would be
23 receiving a subpoena and the date of October 1st at 9:00
24 a.m. was set. Do you recall that?

25 A. Yes.

Allen D. Blum

CLERK OF THE COURT

ORDER

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

14 CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability company;
15 THARALDSON MOTELS II, INC., a North
Dakota corporation; and GARY D.
16 THARALDSON,

17 Plaintiffs,

18 v.

19 SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J.
20 SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE DEVELOPMENT
21 WEST, INC., a Nevada corporation;
ASPHALT PRODUCTS CORPORATION
22 D/B/A APCO CONSTRUCTION, a Nevada
corporation; DOE INDIVIDUALS 1-100; and
23 ROE BUSINESS ENTITIES 1-100,

24 Defendants.

25
26 **AND RELATED COUNTERCLAIMS**

27 CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability company;
28

Case No. A579963
Department No. 13
Consolidated With
Case No. A-10-609288-C

**ORDER GRANTING DEFENDANTS'
JOINT MOTION TO COMPEL
DEPOSITION TESTIMONY**

1 THARALDSON MOTELS II, INC., a North
2 Dakota corporation; and GARY D.
3 THARALDSON,

4 Plaintiffs,

5 v.

6 ALEXANDER EDELSTEIN, an individual,

7 Defendant.

8 This matter came before this Court for hearing on July 6, 2010, regarding Defendants Scott
9 Finaicila Corporation, Bradley J. Scott, and Bank of Oklahoma, N.A.'s Joint Motion to Compel
10 Deposition Testimony.

11 Martin Muckleroy of Cooksey, Toolsen Gage, Duffy & Woog appeared on behalf of Plaintiffs
12 Club Vista Financial Services, L.L.C., Tharaldson Motels II, Inc., and Gary D. Tharaldson. J.
13 Randall Jones of Kemp, Jones & Coulthard, LLP appeared on behalf of Defendants Scott Financial
14 Corporation and Bradley J. Scott. Ann Marie McLoughlin of Lewis and Roca LLP appeared on
15 behalf of Defendant Bank of Oklahoma, N.A. Gwen Rutar Mullins of Howard & Howard appeared
16 on behalf of APCO Construction. P. Kyle Smith appeared on behalf of Alexander Edelstein.

17 Having considered the parties' briefs, pleadings and other court filings in this matter, and
18 having considered argument of counsel, and good cause appearing,

19 **IT IS HEREBY ORDERED,**

20 1. Defendants Scott Financial Corporation, Bradley J. Scott, and Bank of Oklahoma,
21 N.A.'s Joint Motion to Compel Deposition Testimony, going to factual things is GRANTED.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

2. Defendants' request for sanctions is DENIED because the issue can be confusing when talking about information derived by a witness; however going forward, the Court expects that witnesses will not be instructed not to answer questions going to their factual understanding.

DATED this 1st day of December, 2010.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

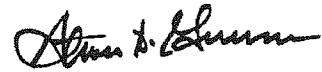
Submitted by

COOKSEY, TOOLSEN GAGE, DUFFY & WOOG

By:

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CLERK OF THE COURT

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Special Master

DISTRICT COURT

CLARK COUNTY, NEVADA

CLUB VISTA FINANCIAL SERVICES, L.L.C.
a Nevada limited liability company;
THARALDSON MOTELS II, INC., a North
Dakota corporation; and GARY D.
THARALDSON,

Plaintiffs,

v.

SCOTT FINANCIAL CORPORATION, a North
Dakota corporation; BRADLEY J. SCOTT;
BANK OF OKLAHOMA, N.A., a national
bank; GEMSTONE DEVELOPMENT WEST,
INC., a Nevada corporation; ASPHALT
PRODUCTS CORPORATION D/B/A APCO
CONSTRUCTION, a Nevada corporation; DOE
INDIVIDUALS 1-100; and ROE BUSINESS
ENTITIES 1-100,

Defendants.

CASE NO.: A579963
DEPT. NO.: XIII

**SPECIAL MASTER RECOMMENDATION AND DISTRICT COURT ORDER
COMPELLING PLAINTIFFS TO PRODUCE ATTORNEYS K. LAYNE MORRILL
AND MARTIN A. ARONSON TO TESTIFY AS TO FACTUAL MATTERS
SUPPORTING PLAINTIFFS' CLAIMS**

This litigation concerns claims and counterclaims among the various parties, entities and
lenders related to the failed Manhattan West condominium construction project. At least some of

1 the Plaintiffs are alleged to have signed personal guarantees for funds advanced for the construction
2 project that have not been repaid.

3 During deposition testimony of Gary Tharaldson, at numerous citations,¹ Mr. Tharaldson
4 testified that he was completely unaware of the facts upon which his Complaint was based. He
5 further testified that the Complaint was drafted by his attorneys based upon knowledge that the
6 attorneys determined from reviewing numerous documents.
7

8 Q: ...other than your lawyers, are you aware of who else might have
9 personal knowledge about the - - the factual allegations in this
10 complaint other than, say, Mr. Kucker?

11

12 A: No, I don't. (Gary Tharaldson deposition, volume III, page 633, lines
13 8-14 May 13, 2010).

14 Q: Do you have any knowledge of whether the GMP agreement allows
15 for change orders for any plan changes made after a certain date?

16 A: I didn't read them, so I don't know. My attorneys filed the complaint
17 based on things that they studied and all the documents they got. And
18 that's how they arrived at this scenario we're talking about. (Gary
19 Tharaldson deposition, volume IV, page 1102, lines 8-14, September
20 8, 2010).

21 Q: You said at some point a recommendation was made that a suit should
22 be brought against my client personally and you approved that
23 lawsuit?

24 A: Yes. Based on what they told me.

25 Q: In providing your approval to go forward, did you look at any of the
26 evidence that your attorneys had amassed against my client?

27 A: I took their word on what they had told me was accurate. (Gary
Tharaldson deposition, volume V, page 1197, lines 7-15, September
9, 2010).

A dispute arose during a Fargo, North Dakota deposition of Mr. Kucker and the District Court,

¹Referenced in the Scott Financial Corporation and Bradley J. Scott Opposition to Motion
for Protective Order, Table of Citations, pages 4-8.

1 the Honorable Judge Mark R. Denton was contacted by telephone. The dispute concerned numerous
2 questions asked of Mr. Kucker regarding the drafting of the Complaint in this litigation which resulted
3 in objections as to attorney-client privilege and attorney-work product. The Court ordered the witness
4 to answer noting, "...COURT finds that if Plaintiff wants to proceed with allegations that make them
5 (the attorneys) the source of those allegations, factual information will have to be disclosed; witnesses
6 should answer questions as to the allegations made."

8 Defendants then scheduled depositions of Plaintiffs' attorneys, Morrill and Aronson. Attorneys
9 for Morrill and Aronson have filed Opposition Briefs in an effort to preclude those depositions. In fact,
10 counsel for Morrill and Aronson were successful in obtaining a Minute Order from the Superior Court
11 of Maricopa County, Arizona, quashing Subpoenas served on Morrill and Aronson for their depositions
12 in that county. Morrill and Aronson argued that the Nevada Court cannot ignore the ruling of the
13 Arizona Court. These Special Master Recommendations, however, are directed to the Plaintiffs to
14 produce factual witnesses under the Plaintiffs' control. If the Plaintiffs cannot produce those witnesses
15 or those witnesses refuse to testify, that can be considered as a discovery matter, including the issuance
16 of appropriate District Court Orders for sanctions in this Nevada litigation. Additionally, Morrill and
17 Aronson have submitted themselves as counsel in this litigation by formal Court Order granting their
18 Motions to Associate.

21 Gary Tharaldson has testified on numerous occasions that his counsel were the individuals with
22 the factual information utilized to draft the Complaint in this action. In fact, the testimony of Mr.
23 Tharaldson is that there was no communication between him and his attorneys, but that the attorneys
24 simply gathered the facts and drafted the Complaint based upon the facts **known only to the attorneys.**

26 Both parties to this discovery dispute cite the case of *Shelton v. American Motors Corp.* 805,
27 F.2d 1223 (8th Cir.1986). The test in the *Shelton* decision is that to depose Plaintiffs' counsel, that
counsel must be the only source of the information sought, which is relevant and non-privileged and

1 crucial to the case. Mr. Tharaldson himself has admitted that only his attorneys, Morrill and Aronson,
2 are familiar with the facts that were utilized to draft the Complaint. Consequently, those witnesses
3 should be deposed regarding the factual issues that were utilized to draft the Complaint.

4
5 Appropriate respect is given to the Maricopa County Superior Court which issued the Order
6 granting the Motion to Quash the Subpoenas for Morrill and Aronson in that jurisdiction although there
7 is no substantive explanation for the grounds for that ruling. The Plaintiffs and Plaintiffs' counsel,
8 however, are subject to the ramifications of pursuing a lawsuit in Clark County, Nevada, including the
9 District Court discovery requirements which enforce the Nevada Rules of Civil Procedure. Even the
10 individual attorneys involved in this discovery dispute have submitted themselves to the jurisdiction
11 of this District Court. On April 7, 2009, Martin A. Aronson was associated as counsel for the Plaintiffs
12 in this litigation. On March 27, 2009, K. Layne Morrill was associated as counsel for the Plaintiffs in
13 this litigation.
14

15 Based upon the briefing submitted, with exhibits, IT IS RECOMMENDED that the Court enter
16 the following Order:

17 1. That the Motion for Protective Order to preclude the depositions of Plaintiffs' counsel, K.
18 Layne Morrill and Martin A. Aronson, is denied;

19
20 2. That Aronson and Morrill may be deposed regarding factual issues that are at issue in this
21 lawsuit, including all factual issues referenced in the Plaintiffs' Complaint;

22 3. That the Plaintiffs shall have ten days from the service of this Order to submit objections to
23 the District Court to the Special Master Recommendations;

24 4. That if timely objections are submitted to the District Court, these Recommendations and the
25

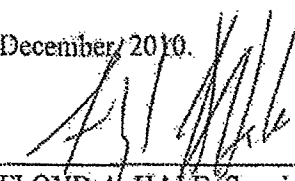
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27 ///

1 Order approving these Recommendations will be Stayed until a ruling is issued by the District Court.

2 RECOMMENDED this 7th day of December, 2010.

3
4 By:


FLOYD A. HALE, Special Master
Nevada Bar No. 1873
2300 W. Sahara #900
Las Vegas, NV 89102

5
6
7 IT IS SO ORDERED this 10th day of December, 2010.

8
9 By:


DISTRICT COURT JUDGE 

10
11 CERTIFICATE OF FACSIMILE

12
13 I hereby certify that on the 13th day of December, 2010, I faxed a true and correct copy
14 of the foregoing to the following:

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By: 

Employee of JAMS

* * * Communication Result Report (Dec. 13. 2010 10:33AM) * * *

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Date/Time: Dec. 13. 2010 10:19AM

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		3856001		OK	
		9498351		OK	
		19185842729		OK	
		5671568		OK	
		3186501		OK	

Reason for error

E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

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 6 Las Vegas, NV 89102
 7 Ph: (702) 437-5267
 8 Fax: (702) 437-5267
 9 Special Master

DISTRICT COURT
 CLARK COUNTY, NEVADA

10 CLUB VISTA FINANCIAL SERVICES, L.L.C.
 11 a Nevada limited liability company;
 12 THARALDSON MOTORS II, INC., a North
 13 Dakota corporation; and GARY D.
 14 THARALDSON,

CASE NO.: A579963
 DEPT. NO.: XII

Plaintiff,

v.

15 SCOTT FINANCIAL CORPORATION, a North
 16 Dakota corporation; BRADLEY J. SCOTT;
 17 BANK OF OKLAHOMA, N.A., a national
 18 bank; ORESTONE DEVELOPMENT WEST,
 19 INC., a Nevada corporation; ASPHALT
 20 PRODUCTS CORPORATION d/b/a AFPO
 21 CONSTRUCTION, a Nevada corporation; DOE
 22 INDIVIDUALS 1-100; and ROE BUSINESS
 23 ENTITIES 1-100,

Defendants.

SPECIAL MASTER RECOMMENDATION AND DISTRICT COURT ORDER
COMPELLING PLAINTIFFS TO PRODUCE ATTORNEYS KLAYNE MORRILL
AND MARTIN A. ARONSON TO TESTIFY AS TO FACTUAL MATTERS
SUPPORTING PLAINTIFFS' CLAIMS

This litigation concerns claims and counterclaims among the various parties, entities and
 lenders related to the failed Manhattan West condominium construction project. At least some of

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DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability
company; THARALDSON MOTELS II,
INC., a North Dakota corporation;
and GARY D. THARALDSON,

CASE NO. A579963-B
DEPT. NO. XIII

Plaintiff(s),

vs.

(Consolidated with
A608563; A609288)

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY
J. SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE DEVELOPMENT
WEST, INC., a Nevada corporation;
ASPHALT PRODUCTS CORPORATION D/B/A
APCO CONSTRUCTION, a Nevada
corporation,

Date: January 18, 2011
Time: 9:00 a.m.

Defendant(s).

DECISION

THIS MATTER having come before the Court on January 18,
2011 for hearing on, *inter alia*, Defendant/Counterclaimaint Scott
Financial Corporation's Motion for Summary Judgment Regarding
Plaintiffs' First, Second, and Third Claims for Relief and on
Defendant Bank of Oklahoma, N.A.'s Motion for Partial Summary
Judgment on Plaintiffs' First Claim for Relief (Fraudulent
Misrepresentation) and Second Claim for Relief (Fraudulent
Concealment/Fraudulent Omissions), and the Court, having
considered the papers submitted in connection with such item(s)
and heard the arguments made on behalf of the parties and then
taken the matter under advisement for further consideration;

CLERK OF THE COURT

JAN 25 2011

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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

SCOTT APP 000267

1 C. Conclusion.

2 Counsel for the Scott Defendants is directed to submit
3 a proposed order consistent with A(1) above.
4

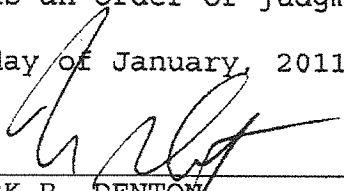
5 Counsel for Plaintiffs is directed to submit a proposed
6 order consistent with A(2) above.

7 Counsel for Defendant Bank of Oklahoma is directed to
8 submit a proposed order consistent with B. above.

9 In addition, such proposed orders should be submitted to
10 opposing counsel for approval/disapproval. Instead of seeking to
11 litigate any disapproval through correspondence directed to the
12 Court or to counsel with copies to the Court, any such
13 disapproval should be the subject of motion practice.

14 This Decision is a summary of the Court's analysis of
15 the matter and sets forth the Court's intended disposition on the
16 subject, but it anticipates further order of the Court to make
17 such disposition effective as an order or judgment.

18 DATED this 25th day of January, 2011.

19
20 
21 MARK R. DENTON
22 DISTRICT JUDGE

23 CERTIFICATE

24 I hereby certify that on or about the date filed, this
25 document was e-served or a copy of this document was placed in
26 the attorney's folder in the Clerk's Office or mailed to:
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Attn: Jennifer K. Hostetler, Esq.

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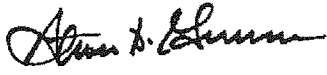
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Attn: Gwen Rutar Mullins, Esq.

SMITH LAW OFFICE
Attn: P. Kyle Smith, Esq.


LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

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DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

CLUB VISTA FINANCIAL SERVICES,)
L.L.C., a Nevada limited liability)
company; THARALDSON MOTELS II,)
INC., a North Dakota corporation;) CASE NO. A579963-B
and GARY D. THARALDSON,) DEPT. NO. XIII

Plaintiff(s),

vs.

(Consolidated with
A608563; A609288)

SCOTT FINANCIAL CORPORATION, a)
North Dakota corporation; BRADLEY)
J. SCOTT; BANK OF OKLAHOMA, N.A., a)
national bank; GEMSTONE DEVELOPMENT)
WEST, INC., a Nevada corporation;)
ASPHALT PRODUCTS CORPORATION D/B/A)
APCO CONSTRUCTION, a Nevada)
corporation,)

Date: January 20, 2011
Time: 9:00 a.m.

Defendant(s).

DECISION

THIS MATTER having come before the Court on January 20,
2011 for hearing on, *inter alia*, Defendant Bank of Oklahoma,
N.A.'s Motion for Partial Summary Judgment on Plaintiffs' Third
(Constructive Fraud), Seventh (Breach of Fiduciary Duty), and
Eleventh (Breach of the Covenant of Good Faith and Fair Dealing)
Claims for Relief and on Defendants/Cross-Claimants Scott
Financial Corporation and Bradley J. Scott's Motion for Summary
Judgment on Tharaldson's and Tharaldson Motels II Inc.'s Third
and Seventh Claim for Relief, and for Partial Summary Judgment on
their Eleventh Claim for Relief (Re Fiduciary Duty), and the
Court, having considered the papers submitted in connection with

CLERK OF THE COURT

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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

SCOTT APP 000271

1 such item(s) and heard the arguments made on behalf of the
2 parties and then taken the matter under advisement for further
3 consideration;

4
5 Given the number of motions that the Court is now
6 hearing in this case and the time constraints involved and the
7 need for prompt decisions in light of the quickly approaching
8 trial date, the Court must be brief in announcing its rulings.
9 It will thus look to counsel who are directed to submit proposed
10 orders to fill in interstices consistent with briefing and
11 argument that the Court has accepted in its rulings.

12 NOW, THEREFORE, the Court decides the submitted issues
13 as follows:

14 A. Bank of Oklahoma's Motion.

15 The Court is persuaded that there are no genuine issues
16 of material fact going to the subject causes of action and that
17 Defendant is entitled to partial judgment as a matter of law
18 relative thereto. Accordingly, the Motion is GRANTED.

19 B. Scott Defendants' Motion.

20
21 1. The Court agrees that the Motion relative to the
22 specific Plaintiffs against whom it is made is meritorious as to
23 the Seventh Claim for Relief regarding breach of fiduciary duty,
24 and the same is GRANTED IN PART as to that claim for relief
25 against those Plaintiffs.

26 2. However, in light of the past relationship between
27
28

1 the parties and the complexities of the transactions and
2 statements made by Scott Defendants pertaining to such
3 relationship, the Court cannot say that there are no genuine
4 issues regarding the Third (constructive fraud) and Eleventh
5 (breach of implied covenant of good faith and fair dealing)
6 Claims for Relief, and the Motion is thus DENIED IN PART as to
7 those claims.
8

9 C. Conclusion.

10 Counsel for Defendant Bank of Oklahoma is directed to
11 submit a proposed order consistent with A. above.

12 Counsel for the Scott Defendants is directed to submit
13 a proposed order consistent with B(1) above.

14 Counsel for Plaintiffs is directed to submit a proposed
15 order consistent with B(2) above.

16 In addition, such proposed orderx should be submitted to
17 opposing counsel for approval/disapproval. Instead of seeking to
18 litigate any disapproval through correspondence directed to the
19 Court or to counsel with copies to the Court, any such
20 disapproval should be the subject of motion practice.
21

22 This Decision is a summary of the Court's analysis of
23 the matter and sets forth the Court's intended disposition on the
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1 subject, but it anticipates further order of the Court to make
2 such disposition effective as an order or judgment.

3 DATED this 25th day of January, 2011.

4 
5
6 MARK R. DENTON
DISTRICT JUDGE

7
8 CERTIFICATE

9 I hereby certify that on or about the date filed, this
10 document was e-served or a copy of this document was placed in
11 the attorney's folder in the Clerk's Office or mailed to:

12 COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
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14 Martin A. Aronson, Esq.
One E. Camelback Road, Suite 340
15 Phoenix, AZ 85012

16 MARQUIS & AURBACH
17 Attn: Terry A. Coffing, Esq.

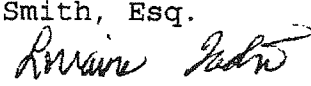
18 John D. Clayman, Esq.
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19 Tulsa, OK 74103

20 LEWIS AND ROCA
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24 HOWARD & HOWARD
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25 SMITH LAW OFFICE
26 Attn: P. Kyle Smith, Esq.

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28 LORRAINE TASHIRO
Judicial Executive Assistant
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MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK OF THE COURT

CLUB VISTA FINANCIAL SERVICES,)
L.L.C., a Nevada limited liability)
company; THARALDSON MOTELS II,)
INC., a North Dakota corporation;) CASE NO. A579963-B
and GARY D. THARALDSON,) DEPT. NO. XIII

Plaintiff(s),

vs.

(Consolidated with
A608563; A609288)

SCOTT FINANCIAL CORPORATION, a)
North Dakota corporation; BRADLEY)
J. SCOTT; BANK OF OKLAHOMA, N.A., a)
national bank; GEMSTONE DEVELOPMENT)
WEST, INC., a Nevada corporation;) Date: January 31, 2011
ASPHALT PRODUCTS CORPORATION D/B/A) Time: 9:00 a.m.
APCO CONSTRUCTION, a Nevada)
corporation,)

Defendant(s).

DECISION

THIS MATTER having come before the Court on January 31,
2011 for hearing on the Scott Defendants/Counterclaimants' and
Defendant Bank of Oklahoma's Motion (1) to Bifurcate Trial, and
(2) to Extend Time for Filing Motions *in Limine*; and (3) Renewed
Motion to Strike Jury Demand, with Joinder by Defendant APCO
Construction, and on Plaintiffs' Counter-Motion under Rule 39(c)
for Advisory Jury on All Claims not Triable of Right by Jury, and
the Court, having considered the papers submitted in connection
with such item(s) and heard the arguments made on behalf of the
parties and then taken the matter under advisement for further
consideration;

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

SCOTT APP 000275

1 NOW, THEREFORE, the Court decides the submitted issues
2 as follows:

3 The Court determines that the conspicuous upper case
4 jury waivers just above the signature lines for use by the
5 obviously sophisticated Mr. Tharaldson are valid and enforceable
6 as to all issues surrounding the validity and enforceability of
7 the guaranties. *Lowe Enterprises Residential Partners, L.P. v.*
8 *Eighth Judicial District Court ex. rel. County of Clark*, 118 Nev.
9 92, 100, 40 P.3d 405, 410 (2002). In this regard, the Court is
10 not directed to any North Dakota case law to the effect that the
11 right to a jury trial cannot be waived.
12

13 The Court has also determined that by bringing this
14 action, the guarantor plaintiffs can hardly complain that the
15 Court would attend to the guaranty issues first. The Court will
16 thus try the guaranty issues first in a bench trial.
17

18 In making this decision, the Court notes that confusion
19 and prejudice can best be avoided by such a bifurcation, and it
20 believes that issues will likely be narrowed with concomitant
21 judicial economy. *Amador v. Shuffle Master, Inc.*, 123 Nev. 613,
22 624, 173 P.3d 707, 714 (2007).

23 Finally, any motions *in Limine* that will pertain to the
24 jury phase should be allowed at a later time than the deadlines
25 now in force would otherwise permit.

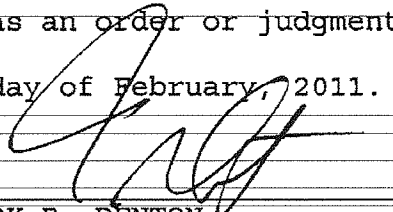
26 In sum, Defendants' Motion and Joinder are GRANTED in
27

1 all respects, and Plaintiffs' Counter-Motion is DENIED.

2 Counsel for Scott Defendants is directed to submit a
3 proposed order consistent with the foregoing after submitting the
4 same to opposing counsel for approval/disapproval. Instead of
5 seeking to litigate any disapproval through correspondence
6 directed to the Court or to counsel with copies to the Court, any
7 such disapproval should be the subject of motion practice.
8

9 This Decision is a summary of the Court's analysis of
10 the matter and sets forth the Court's intended disposition on the
11 subject, but it anticipates further order of the Court to make
12 such disposition effective as an order or judgment.

13 DATED this 4^R day of February, 2011.

14
15 
16 MARK R. DENTON
DISTRICT JUDGE

17 CERTIFICATE

18 I hereby certify that on or about the date filed, this
19 document was e-served or a copy of this document was placed in
20 the attorney's folder in the Clerk's Office or mailed to:
21

22 COOKSEY, TOOLLEN, GAGE, DUFFY & WOOG
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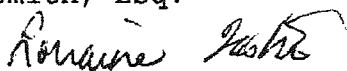
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SMITH LAW OFFICE
Attn: P. Kyle Smith, Esq.

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LORRAINE TASHIRO
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Dept. No. XIII

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