

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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

7 Petitioners,

8 vs.

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

13 Respondents,

14 and

15 SCOTT FINANCIAL CORPORATION, a  
16 North Dakota corporation; BRADLEY J.  
17 SCOTT; BANK OF OKLAHOMA, N.A., a  
18 national bank; GEMSTONE  
19 DEVELOPMENT WEST, INC., a Nevada  
20 corporation; ASPHALT PRODUCTS  
21 CORPORATION D/B/A APCO  
22 CONSTRUCTION, a Nevada corporation,

23 Real Parties in Interest.

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Tracie K. Lindeman  
Clerk of Supreme Court

Case No.: 57784

District Court Case: A579963

24 **BANK OF OKLAHOMA, N.A.'S JOINDER TO SCOTT FINANCIAL**  
25 **CORPORATION AND BRADLEY J. SCOTT'S LIMITED OPPOSITION**  
26 **TO EMERGENCY MOTION UNDER NRAP 27(e)**

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1 Real Party in Interest Bank of Oklahoma, N.A.(“BOK”) joins Scott Financial  
2 Corporation and Bradley J. Scott(together, the “Scott Parties”) in their Limited Opposition  
3 to Emergency Motion Under NRAP 27(e) filed June 21, 2011. BOK adopts and  
4 incorporates the arguments and authorities presented in the Opposition filed by Scott  
5 Financial and Bradley J. Scott as fully set forth herein.

6 As demonstrated in the Scott Parties’ Limited Opposition, and contrary to the  
7 statements made by Petitioners in their emergency motion, the District Court has already  
8 granted summary judgment in favor of BOK on all of the fraud claims brought by the  
9 Petitioners. The Order Granting BOK’s Motion for Summary Judgment, attached as Ex. A  
10 to the Scott Parties’ Limited Opposition, grants summary judgment to BOK as a matter of  
11 law as to Petitioners’ First Claim for Relief (for fraudulent misrepresentation) and their  
12 Second Claim for Relief (for fraudulent concealment/fraudulent omissions). In its ruling,  
13 the District Court found that BOK made no false representations or fraudulently concealed  
14 or omitted information, including information related to pre-sales, subordination of prior  
15 loans, the General Contractor Agreement, or the TM2I Guaranty. See Ex. A to the Scott  
16 Parties’ Limited Opposition, Order p. 4, ¶ 2. The District Court found that BOK did not  
17 intend to “deliberately cause harm or to deliberately deceive.” See *id.*, ¶ 3. The District  
18 Court found that BOK never induced Petitioners to rely on representations made by BOK  
19 because Petitioners were unaware of any representations at the time they themselves acted  
20 and that Petitioners did not justifiably rely upon any misrepresentation by BOK. See *id.*,  
21 ¶¶ 4 - 5. The District Court concluded that BOK was not liable for any alleged fraudulent  
22 misrepresentations or fraudulent concealment/omissions based upon an agency or apparent  
23 authority theory related to the Scott Parties because BOK’s appointment of the Scott  
24 Parties as BOK’s agent was strictly limited to servicing the Loan as set forth in Paragraph  
25 6(d) of the Participation Agreement. See *id.*, ¶ 6. And the District Court concluded that  
26 BOK was not responsible for the actions of the Scott Parties that occurred before the  
27 alleged agency relationship occurred. See *id.*, ¶ 8.  
28

1           Regrettably, the Plaintiffs have misstated the true picture of the proceedings below  
2 in a deliberate effort to obtain a level of review to which they are not entitled. For these  
3 reasons, BOK submits that the Petitioners' emergency motion under NRAP 27(e) is  
4 without legal and factual merit and that their petition for a stay of the proceedings before  
5 the District Court should be denied.

6           DATED this 21st day of June, 2011.

7                                   LEWIS AND ROCA LLP

8                                   By /s/ Von S. Heinz  
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing  
**BANK OF OKLAHOMA, N.A. JOINDER TO SCOTT FINANCIAL  
CORPORATION AND BRADLEY J. SCOTT'S LIMITED OPPOSITION TO  
EMERGENCYMOTION UNDER NRAP 27(e)** was made this date by efilng, at Las  
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DATED this 21st day of June, 2011.

/s/ Judith A. Vienneau  
An Employee of Lewis and Roca, LLP