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Tracie K. Lindeman
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In the Supreme Court of the State of Nevada

MARK B. STEPPAN,

Case No. 60036

Appellant,

vs.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;
John Iliescu, Jr. and Sonnia Santee Iliescu, as
trustees of the JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST,

Respondents.

And Related Cross-Appeal.

Reply in Support of Motion for Remand

Mark B. Steppan ("Steppan"), by and through his undersigned counsel, respectfully files the following reply in support of his Motion for Remand.

Introduction

The March 1, 2012 Opposition to Motion for Remand ("Opposition") provides no legal reason not to remand this case to the trial court. Instead, the Opposition superficially attacks the merits of the underlying claims and rulings that are not part of the district court's certification of intent to reconsider dismissal of Steppan's claims.

Reply Arguments

1. In its February 7, 2012 Order Certifying Intent to Grant Motion for Reconsideration, the District Court carefully analyzed its jurisdiction and meticulously followed

1 the procedures mandated by *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) and
2 *Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453 (Feb. 25, 2010). Appellant Steppan then
3 followed *Dingwall* and filed a motion for remand. The Opposition does not criticize District
4 Court's certification, or any procedural aspect of Appellant's motion for remand.

5 In *Dingwall*, the trial court denied a NRCP 62(b)(2) motion for relief from a judgment.
6 Even though the trial court certified that it would grant the motion, this Court refused to remand
7 for that purpose on grounds that the Rule 62 motion was untimely. In other words, granting
8 relief under Rule 62 would have been erroneous as a matter of law, so that a remand for that
9 purpose would have been futile. In this case, Respondents ("Iliescu") has provided no similar
10 reason why the case should not be remanded.
11

12 2. To bring this motion for remand within the *Dingwall* analysis, Iliescu would need
13 to demonstrate that the District Court will err as a matter of law by granting reconsideration. The
14 Opposition fails this task, and muddles the procedural background.
15

16 Developers entered into contracts with Iliescu to buy his land for construction of a high-
17 rise, mixed-use, commercial and residential tower. These developers entered into contracts with
18 Appellant, a licensed Nevada architect, to provide engineering to obtain development
19 entitlements, and to design the improvements. Both the developers and Iliescu claimed legal
20 representation by Holland and Hart. Both the developers and Iliescu are beneficiaries of the
21 design work. The District Court (Judge Adams) found that Iliescu knew the Appellant's identity
22 and that Appellant was performing design work.
23

24 After the financial and real estate development markets crashed, the developers failed to
25 pay for thousands of hours of design work. Appellant recorded a lien on the property. Iliescu
26 then hired Holland and Hart to file a statutory application to expunge the lien. Appellant then
27 filed a lien foreclosure action. The two actions were consolidated. Ultimately, the District Court
28

1 ruled that the lien was properly perfected and otherwise valid. Thus, we understand the only
2 issue remaining for trial regarding the lien is to determine the amount secured by the lien.

3 After Appellant sued to foreclose the lien, Iliescu sued the developers for indemnity, and
4 sued Holland and Hart for failing to protect his property against liens. Holland and Hart moved
5 for summary judgment on the malpractice and other claims. In a reply in support of the
6 summary judgment motion, Holland and Hart noted that no party in the case ever filed an early
7 case conference report under NRCP 16.1. The District Court granted a defense summary
8 judgment in favor of Holland and Hart on the merits of the malpractice claims.¹ The District
9 Court also noted that the failure to file the early case conference report was a separate reason to
10 dismiss the case without prejudice. (Obviously, a trial court cannot enter a defense judgment and
11 dismiss the claims at the same time.)
12

13 This order precipitated Iliescu's motion to dismiss the lien foreclosure action. The
14 District Court granted dismissal on that ground. Appellant then moved for reconsideration,
15 pointing out that under Judge Adams' management, discovery in the case had been managed as
16 complex litigation, even though there was no formal designation under NRCP 16.1(f). In fact,
17 Judge Adams met with counsel several times to manage the case, and even bifurcated discovery.
18

19 The Opposition focuses on the fact that the District Court stayed the malpractice claims
20 against Holland and Hart, but did not stay the lien foreclosure action. It is unclear how Iliescu
21 claims this affects the legal viability of dismissal of the lien foreclosure action under NRCP
22 16.1(e)(2).
23

24
25 ¹ In footnote 1, the Opposition states that "Iliescu's former lawyers sought summary judgment on the merits
26 of the professional negligence claim...." This is incorrect. Holland and Hart moved for a defense
summary judgment. Iliescu did not move for summary judgment against Holland and Hart.

27 The same footnote also says that Holland and Hart sought dismissal of Iliescu's claims when Dr. Iliescu
28 was unrepresented by counsel. This is also wrong. On July 15, 2011, Thomas Hall entered an appearance
on behalf of Dr. Iliescu. Holland and Hart filed its motion for summary judgment on July 22, 2011.

1 3. The Opposition complains that the entry of summary judgment in favor of
2 Holland and Hart, and against Iliescu, is unfair. “The Iliescus are not deserving of such harsh
3 results from Nevada courts.” Opposition, page 5, lines 14-15. The procedural fairness and
4 substantive merit of the summary judgment practice on the malpractice claims has nothing to do
5 with the decision to remand this case to the District Court to allow entry of an order that only
6 affects the claims between the property owner (Iliescu) and the lien claimant (Steppan).
7

8 4. The Opposition complains that Appellant “sharply insists on his \$2+ million fee
9 claim....” Again, this has nothing to do with the motion before the Court, which simply asks to
10 follow established procedures to remand the case. In any event, the Opposition is simply wrong
11 on substance. As a matter of law, if the lien claimant’s compensation is fixed by an express
12 contract, the lien secures the amount provided in that contract. NRS 108.222(1)(a). And,
13 further, the work performed by Appellant is “worth” exactly what was provided in the contract.
14 Indeed, the entitlements achieved through Appellant’s work allowed Dr. Iliescu to “earn” more
15 than \$800,000 in nonrefundable deposits paid by the developers.
16

17 **Conclusion and request for relief**

18 The Opposition offers no valid reason to deny the motion to remand the lien claimant’s
19 case to allow the District Court to reconsider dismissal, and to allow a trial to proceed on the
20 amount secured by the mechanics lien. Appellant therefore requests that this Court grant the
21 motion.
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Privacy Certification

Undersigned hereby certifies that the foregoing document does not contain any social security numbers.

March 5, 2012.



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Certificate of Service

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hoy & Hoy, PC, and that on the 5th day of March 2012, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court by using the ECF system, which served the following parties electronically:

DAVID R. GRUNDY

ALICE CAMPOS MERCADO

GREGORY F. WILSON

Further, I hereby certify that, on the date below, I served a true and correct copy of the foregoing document by depositing a copy of the same for mailing enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

Gordon Cowan
10775 Double R. Blvd.
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David Wasick
879 Mahogany Drive
Minden, Nevada 89423

DATED this 5th day of March, 2012.

/s/ Kelly Anderson
An employee of Hoy & Hoy