

1 GORDON M. COWAN, ESQ. (SBN 1781)
2 Law Office of Gordon M. Cowan
3 P.O. Box 17952
4 Reno, NV 89511
Voice 775.786.6111
Fax 775.786.9797

Electronically Filed
Jun 28 2012 03:06 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

5 *Attorney for John Iliescu, Jr., Sonnia Iliescu*
6 *individually and as Trustees of the John Iliescu,*
7 *Jr. & Sonnia Iliescu 1992 Family Trust*

8 **IN THE SUPREME COURT of the STATE OF NEVADA**

9
10 JOHN ILIESCU, JR.; SONNIA SANTEE
11 ILIESCU; JOHN ILIESCU JR. and
12 SONNIA SANTEE ILIESCU as TRUSTEES
of the JOHN ILIESCU, JR. and SONNIA
ILIESCU 1992 FAMILY TRUST

13 Cross-Appellants,

Case No 60036

14 vs.

15 HALE LANE PEEK DENNISON &
16 HOWARD PROFESSIONAL CORP.,

17 Cross-Respondents. /

AND RELATED APPEAL /

18 **MOTION TO REMAND**

19 Cross-Appellants above-named, through counsel, Gordon M. Cowan, Esq.,
20 move to remand the Cross Appeal filed January 19, 2012 in the Nevada Supreme Court
21 by JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU, JOHN ILIESCU JR. and SONNIA
22 SANTEE ILIESCU as TRUSTEES of the JOHN ILIESCU, JR. and SONNIA ILIESCU
23 1992 FAMILY TRUST JOHN ("Iliescu"), back to the Second Judicial District Court, Case
24 No. CV07-00341, Dept. 10 ("District Court"), for decision.¹

25 This motion is based on the "Order Certifying Intent to Grant Motion for
26 _____

27 ¹ Iliescu's Notice of Cross Appeal was filed January 17, 2012 in the Second
28 Judicial District Court in consolidated case no. CV07-00341 (consolidated with CV10-
01012) and was transmitted to the Nevada Supreme Court January 19, 2012.

1 Reconsideration” entered June 7, 2012 in District Court, a copy of which is
2 at **EXHIBIT 1** attached. This motion is made in accordance with *Foster v. Dingwell*, 228
3 P.3d 453, 455-56 (2010).

4
5 ***Background***

6 These consolidated cases were initiated when a California based architect
7 (Steppan) sought \$2+ million in professional architectural fees (on a “contract” not
8 “earned” basis) in a mechanics’ lien claim he pursued against Iliescu. Iliescu never
9 contracted for Steppan’s services. Iliescu merely owns the property against which
10 Steppan pursues his mechanics lien. Iliescu had sold the property to the one who dealt
11 directly with Steppan. Iliescu received the property back when the purchaser could not
12 perform the terms of the purchase. Iliescu received it back with the lien in place.

13 Iliescu had hired purportedly top-notch real estate transaction lawyers to help
14 protect his interests in the sale of the property. The lawyers neglected to cause a
15 “notice of nonresponsibility” to be filed which could have protected their clients’
16 (Iliescu’s) interests against the very mechanics’ lien that Iliescu now faces. The lawyers
17 also made changes in the sales transaction which transformed their clients Iliescu into
18 persons who were no longer considered “disinterested” and who could no longer obtain
19 protection against a lien from such a notice.

20 Following the filing of the mechanics’ lien claim against Iliescu, Iliescu answered
21 the complaint and filed a third party action against the lawyers for professional
22 negligence. The lawyer defendants remaining in the case are the cross-respondents
23 above-named (“Hale Lane”).

24 The Hon. Brent Adams stayed the professional negligence matter against Hale
25 Lane until the underlying mechanics lien claim was completely litigated. In a recent
26 affidavit by the Hon. Brent Adams, he states,

27 “[t]hat claims against individual lawyers sued for professional
28 negligence were dismissed, and that ***claims against the***

1 ***defendant law firm was stayed “for all purposes,***
2 ***including discovery and trial, pending the final***
3 ***resolution of all claims asserted by plaintiffs against***
4 ***defendants.”***

5 See Judge Adams’ Affidavit at **EXHIBIT 2** attached. Emphasis added.

6 But the underlying lien claim was never fully litigated before Hale Lane’s counsel
7 sought summary judgment on the professional negligence claims after the matter was
8 reassigned from the Hon. Brent Adams to the Hon. Steve Elliott. Judge Elliott granted
9 Hale Lane’s summary judgment motion September 2, 2011 not knowing of the “stay.”¹

10 When Judge Elliott was recent advised of Judge Adams’ “stay” of the
11 professional negligence matter against Hale Lane, Judge Elliott entered the order
12 certifying his intent to grant Iliescu’s Motion for Reconsideration on the subject. See
13 Judge Elliott’s Order at **EXHIBIT 1** attached.

14
15 ***Reviewing Standard***

16 The Nevada Supreme Court maintains discretion to grant or deny a motion
17 seeking remand of an appeal back to the district court. See *Mack-Manley v. Manley*,
18 122 Nev. 849, 856, 138 P.3d 525, 530 (2006).

19 This Court recently clarified the remand procedure to be employed by a party
20 where it has become clear that the District Court is inclined to grant relief requested.
21 *Foster v. Dingwall*, 228 P.3d 453, 455-56 (Nev. 2010). Once the District Court has
22 certified its intent to grant the requested relief, it remains appropriate to move the
23 Nevada Supreme Court for remand to allow the District Court to enter its order granting
24 the requested relief. *Id.* If the only issue on appeal is the issue for which certification
25 occurred, the appeal may be dismissed. *Id.* Otherwise, where the appeal has raised

26
27 _____
28 ² Judge Elliott also denied Iliescu’s Motion for Reconsideration (brought for other
reasons by prior counsel) on October 19, 2011.

1 additional issues, the Nevada Supreme Court may order a limited remand solely to
2 address the certified issue. *Id.*

3
4 ***Discussion***

5 When Judge Elliott (in Dept. 10) entered summary judgment in favor of the
6 cross-respondent, he was without the benefit of knowledge as to what Judge Adams
7 (Dept 6) intended when he managed the progression of the case when in his
8 department many years. Judge Adams stayed the professional negligence third party
9 suit commensurate with the ruling in *Semenza v. Nevada Med. Liability Ins. Co.*, 104
10 Nev. 666, 667–68, 765 P.2d 184, 185 (1988) where damages in a professional
11 negligence claim are not known until after the resolution of the underlying claim giving
12 rise to the professional negligence.

13 Judge Adams' stay remained effective not just when Judge Adams retained the
14 case but also at all times thereafter until the lien claim would become resolved in its
15 entirety. The stay imposed by Judge Adams was never lifted before Hale Lane sought
16 its definitive relief against Iliescu, contrary to Judge Adams' stay.

17 The district court's advisory order at **EXHIBIT 1** follows the process set forth in
18 *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978). The district court recognized
19 its lack of jurisdiction to rule on Iliescu's reconsideration motion while divested of
20 authority during this appeal. See NRS § 177.155. Yet, the district court (Judge Elliott,
21 Dept. 10) has stated his clear intent to grant reconsideration once the case is remanded
22 from this Court, back to district court.

23 Iliescu's Motion for Leave to File Motion for Reconsideration provided Judge
24 Elliott (Dept. 10) the new evidence establishing a necessary reason to reconsider his
25 summary judgment order against Iliescu, which principally came from the Affidavit of
26 Hon. Brent Adams.

27 ///

28 ///

1 **Conclusion**

2 Although Iliescu did nothing wrong, nor did they harm others, the Iliescu family is,
3 nevertheless, being called upon to pay the debts of others. Iliescus' lawyers, who did
4 not advise them on how best to protect themselves from liens, unfairly skirted
5 responsibility when obtaining summary judgment on that part of the case that was to
6 have remained "stayed" to the conclusion of the architect's lien claim, according to
7 Judge Adams. The Iliescus are not deserving of such harsh results from Nevada
8 courts.

9 For these reasons, Iliescu respectfully requests the Court remand his appeal
10 back to district court based on Judge Elliott's order certifying his intent to grant Iliescu's
11 Motion for Reconsideration on the subject. See **EXHIBIT 1** attached.

12 RESPECTFULLY, this 28th day of June 2012

13 GORDON M. COWAN, ESQ. (Nev. 1781)
14 LAW OFFICE OF GORDON M. COWAN

15 s/

16 _____
17 *Attorneys for Plaintiffs*

18 **PRIVACY AFFIRMATION**

19 The undersigned does hereby affirm that the within document does NOT
20 contain the social security number of any person.

21 s/

22 _____
23 Gordon M. Cowan

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d), I certify that I am employed at 10775 Double R Blvd.,
3 Reno, Nevada 89521, and on this date I electronically filed a true and correct copy of
4 the foregoing document with the Clerk of the Court by using the ECF system, which
5 served the following parties electronically:

6 MICHAEL D. HOY
7 DAVID R. GRUNDY
8 ALICE CAMPOS MERCADO
9 GREGORY F. WILSON

and, on this date I served the individuals / parties listed below by:

10 X Placing an original or true copy thereof in a sealed envelope with postage
11 prepaid in the United States Mail at Reno, Nevada, following ordinary business
practices;

12 Personal delivery;

13 Facsimiles to:

Mike Hoy, Esq., Mike Kimmel, Esq.	775.786.7426
David Grundy, Esq., Alice Mercado, Esq.	775.786.9716
Gregory Wilson, Esq.	775.786.7764

15 Reno-Carson Messenger Service;

16 Certified Mail with Return Receipt Requested.

17 addressed as follows:

18
19 David Wasick
20 879 Mahogany Dr.
Minden NV 89423

21 DATED June 28, 2012

s/

22 _____
23 G.M. Cowan
24
25
26
27
28

Exhibit 1

Exhibit 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

JOHN ILIESCU, JR. and SONNIA ILIESCU,
as Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT; JOHN ILIESCU, individually;
DOES I-V, inclusive; and ROE
CORPORATIONS VI-X, inclusive,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Case No: CV07-00341
(Consolidated with CV07-01021)

Dept. No.: 10

AND RELATED MATTERS.

ORDER CERTIFYING INTENT TO GRANT MOTION FOR RECONSIDERATION

Presently before the Court is a Motion for Leave to file Motion for Reconsideration; or, Alternatively, Motion for Relief from Order entered September 1, 2011 Granting Third-Party Defendant's Motion for Summary Judgment filed by Plaintiffs JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY ("Iliescu"), on March 1, 2012. Following, on March 30, 2012, Third Party Defendant HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale Lane") filed an Opposition to

1 Iliescu's Second Motion for Leave to File Motion for Reconsideration. Thereafter, on April
2 24, 2012, Plaintiffs filed a Reply in Support of Motion for Leave to File Motion for
3 Reconsideration. That same day, on April 24, 2012, Plaintiffs filed a Request for
4 Submission, thereby submitting the matter for the Court's consideration.

5 On December 22, 2011, Defendant Stepan filed a Notice of Appeal, appealing this
6 Court's Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment
7 Regarding Third-Party Claims by John Iliescu entered in this action September 1, 2011.

8 Pursuant to NRS 177.155, the Nevada Supreme Court has sole jurisdiction over a
9 matter from the time an appellant files a Notice of Appeal until the Remittitur issues to the
10 district court. *Buffington v. State*, 110 Nev. 124, 126, 686 P.2d 643, 644 (1994). A motion
11 for reconsideration is not a tolling motion pursuant to NRAP 4(a)(2), and the district court
12 thus lacks jurisdiction to grant a motion for reconsideration after a timely notice of appeal
13 has been filed. *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 458, 874
14 P.2d 739, 741 (1994) (citing *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980
15 (1983)).

16 Based on the above distinctions, this Court lacks jurisdiction to grant Plaintiffs'
17 Motion for Reconsideration. Nonetheless, the Nevada Supreme Court has held that a
18 district court may certify its intent to grant a motion for reconsideration if it would be
19 inclined to do so following remand by the Nevada Supreme Court. *See Huneycutt v.*
20 *Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978); *Foster v. Dingwall*, ___ Nev. ___, 228 P.3d
21 453 (2010) (clarifying and more fully explaining the certification process announced in
22 *Honeycutt*).

23 After having reviewed the evidence presented in Judge Adams' Affidavit, the Court is
24 inclined to Grant Leave to File Motion for Reconsideration of its September 1, 2011 Order
25 Granting Third-Party Defendants' Motion for Summary Judgment. Accordingly, the Court
26 hereby certifies its intent to grant the requested relief pursuant to *Huneycutt v. Huneycutt*,
27 94 Nev. 79, 575 P.2d 585.

1 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court certifies its intent
2 to **GRANT** Plaintiffs' Request for Leave to File Motion for Reconsideration.

3
4
5 **DATED** this 7 day of June, 2012.

6
7 
8 STEVEN P. ELLIOTT
9 District Judge

CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

ALICE CAMPOS MERCADO, ESQ. for KAREN DENNISON, JERRY SNYDER, R. HOWARD,
HALE LANE PEEK DENNSION HOWARD

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN
ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R.
HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

STEPHEN MOLLATH, ESQ. for JOHN ILIESCU, JR., SONNIA ILIESCU

DATED this 7 day of June, 2012.


HEIDI HOWDEN
Judicial Assistant

Exhibit 2

Exhibit 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU JR., SONNIA SANTEE
ILIESCU, AND JOHN ILIESCU JR. AND
SONNIA ILIESCU AS TRUSTEES OF
THE JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST,

CASE NO.: CV07-00341
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

MARK STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA
ILIESCU, as Trustees of the JOHN
ILIESCU, JR., AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT;
JOHN ILIESCU, individually; DOES I-
V, inclusive; and ROE
CORPORATIONS VI-X, inclusive.

Defendants.

AND RELATED ACTIONS.

///

///

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions
5 of this Affidavit are true.

6 1. I am a Judge in Department 6 of the Second Judicial District Court of the State of
7 Nevada.

8 2. On February 22, 2008, I conducted an in-chambers case management conference in
9 the above-referenced consolidated cases. Counsel representing all parties were present. After
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would
14 discuss additional case management; and (4) the property owner's claims against third-parties (for
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for
16 partial summary judgment.
17

18 3. As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel
19 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for
20 professional negligence were dismissed, and that claims against the defendant law firm was stayed
21 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by
22 plaintiffs against defendants."
23

24 4. Although the Court did not enter a written order under NRCP 16.1(f) designating the
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference
26 for purpose of managing the consolidated cases and staging discovery. At all times, your
27
28

1 undersigned District Court Judge and the lawyers practicing before me treated the case as one
2 managed by the Court under Rule 16. The Court did not expect any party to file an early case
3 conference report under Rule 16.1(e)(2).

4
5 5. When the Court entered its Order granting Steppan's motion for summary judgment,
6 it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the
7 cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be
8 released as it was a valid and lawful lien on the real property and the only issue remaining was the
9 amount of the Mechanic's Lien.

10
11 6. Consistent with the February 22, 2008 order in chambers, the parties set a
12 settlement/status conference for January 14, 2010.

13
14 7. On August 31, 2010, in accordance with the Court's order regarding the management
15 of the case and counsel agreement, counsel set the matter for trial.

16
17 **AFFIRMATION**

18
19 **Pursuant to NRS 239B.030**

20
21 The undersigned does hereby affirm that the preceding document filed in the above-entitled
22 case does not contain the social security number of any person.

23
24 DATED this ____ day of November, 2011.

25
26
27
28


HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.



NOTARY PUBLIC

