

# **EXHIBIT 3**

# **EXHIBIT 3**

**FILED**

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Howard W. Conyers

Clerk of the Court

Transaction # 154047

**4050**

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(775) 329-5900

Attorney for Third Party Plaintiffs

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

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU JR. and SONIA 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.

JOHN ILIESCU, JR. and SONIA ILIESCU, as  
Trustees of the JOHN ILIESCU, JR. AND  
SONNIA ILIESCU 1992 FAMILY TRUST  
AGREEMENT; JOHN ILIESCU, JR.,  
individually; SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

Case No. CV07-01021

Dept. No. B6

Consolidated with

Case No. CV07-00341

Dept. No. B6

v.

CONSOLIDATED PACIFIC DEVELOPMENT, INC., a Nevada Corporation; DECAL OREGON, INC., an Oregon Corporation; CALVIN BATY, individually; JOHN SCHLEINING, individually; HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, a Nevada professional corporation, dba HALE LANE; KAREN D. DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; and DOES I through X,

Third-Party Defendants.

**STIPULATION TO STAY PROCEEDINGS AGAINST DEFENDANT HALE LANE AND TO DISMISS CLAIMS AGAINST DEFENDANTS DENNISON, HOWARD AND SNYDER WITHOUT PREJUDICE**

Third-party plaintiffs John Iliescu, Jr. and Sonia Iliescu, individually and as trustees of the John Iliescu Jr. and Sonia Iliescu Family Trust, hereby stipulate with the following Third-party defendants: Hale Lane Peek Dennison & Howard, a Professional Corporation, dba "Hale Lane," Karen D. Dennison, R. Craig Howard and Jerry M. Snyder as follows:

**RECITALS**

A. Third-Party Plaintiffs have commenced a third-party action in this matter against the above named attorneys and their law firm employer asserting claims arising out of an attorney/client relationship between third-party plaintiffs and these third-party defendants, including claims of legal malpractice arising from both litigation and transactional issues.

B. Questions have arisen regarding whether any of these claims have "accrued" so as to allow this present filing, or rather, whether the claims are premature in light of the uncertainty of the outcome of claims by and between plaintiffs and defendants who have asserted these third-party claims.

C. Guided by the law as established under Nevada Medical Liability Insurance

Co. v. Semenza, 104 Nev. 666, 668, K.J.B., Inc. v. Drakulich, 107 Nev. 367 (1991) and Kopicko v. Young, 114 Nev. 1333 (1998), and having agreed that the claims have not yet "accrued", the parties have agreed to the terms of this stipulation and urge the court to enter an order consistent herewith.

### STIPULATION

1. All claims asserted against the individually named third-party defendants, Karen D. Dennison, R. Craig Howard and Jerry M. Snyder, shall be dismissed, without prejudice. Third-party plaintiffs may, but need not, refile the claims currently asserted or any other claims against these individual third-party defendants only upon the entry of final judgment regarding plaintiff's claims.

2. All claims asserted against Hale Lane shall be stayed for all purposes, including discovery and trial, pending the final resolution of all claims asserted by plaintiffs against defendants.

3. Notwithstanding the imposition of this stay, Hale Lane shall participate in any settlement conference if ordered to do so by the court, may file dispositive motions and points and authorities in support of or in response thereto, and may participate in court hearings consistent herewith.

4. The undersigned affirm that this document does not contain the social security number of any person.

Dated: March 6, 2008

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Downey Brand LLP  
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By

  
Sallie B. Armstrong

Attorney for Third-Party Plaintiffs

Dated: March 6, 2008

Lemons, Grundy & Eisenberg  
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By

  
David R. Grundy

Attorneys for Third-Party Defendants  
Hale Lane, Dennison, Howard and Snyder

# **EXHIBIT 2**

# **EXHIBIT 2**

**FILED**

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**Code 3880**

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Attorney for John Iliescu, Jr.  
and Sonnia Iliescu and The John  
Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 1

v.

Consolidated with:

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,

Case No.: CV07-00341

Dept. No.: 1

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS. /

**OPPOSITION AND RESPONSE TO THIRD PARTY DEFENDANT**

**HALE LANE'S MOTION FOR SUMMARY JUDGMENT**

**REGARDING THIRD PARTY CLAIMS BY JOHN ILIESCU**

COME NOW, Defendants John Iliescu, Jr., and Sonnia Iliescu,  
individually, and as Trustees of the John Iliescu, Jr. and

1 Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through  
2 their counsel Thomas J. Hall, Esq., and in opposition and in  
3 response to the Third Party Defendant Hale Lane's Motion for  
4 Summary Judgment Regarding Third-Party Claims by John Iliescu  
5 hereby informs the Court as follows.

6  
7 **A. Discussion.**

8 Inasmuch as the subject Motion is directed solely to the  
9 single allegation contained in paragraph 59-60 in the Third  
10 Party Complaint, Iliescu has no objection to striking the phrase  
11 "they failed to advise Iliescu to record a Notice of  
12 Nonresponsibility." As set forth in the Motion to Amend Third  
13 Party Complaint filed herewith, the remaining allegations of the  
14 Third Party Complaint stand, as augmented, in that the Hale Lane  
15 law firm was negligent in certain other regards including the  
16 fact that they failed to advise Iliescu that by signing Addendum  
17 No. 3, Iliescu became a Participating Seller and therefore  
18 subjecting the Property to lien.  
19

20 **B. General Facts.**

21 Iliescu owns four parcels of real property situated between  
22 Court Street in the City of Reno, County of Washoe, State of  
23 Nevada, known as APN 011-112-03, 011-112-07 and 011-112-12 and  
24 Defendant John Iliescu, Jr., is the owner of APN 011-112-06 as  
25 his sole and separate property (collectively the "Property").  
26 See, Complaint ¶ 6.  
27  
28

1 Iliescu desired to sell this Property.

2 On July 29, 2005, Iliescu entered into a Purchase Agreement  
3 for the sale of the Property. See Exhibit 1 attached to the  
4 Motion for Partial Summary Judgment filed April 17, 2008. The  
5 Purchase Agreement was subsequently amended by four addendums<sup>1</sup>.  
6 See Purchase Agreement and Addendums, attached as Exhibit 1 to  
7 Motion for Partial Summary Judgment filed April 17, 2008.  
8 Pursuant to the Purchase Agreement, Iliescu agreed to sell the  
9 Property to Consolidated Pacific Development, Inc., ("CPD"), for  
10 \$7,500,000.00, plus other consideration. The cash amount was  
11 later increased to \$7,876,000.00 by Addendum No. 4.  
12

13 As part of the Purchase Agreement, Iliescu was to receive a  
14 condominium located within the Project CPD proposed to build and  
15 several parking spaces. Id at ¶ 39(H). The Purchase Agreement  
16 was made expressly contingent on the Buyer obtaining certain  
17 Governmental Approvals. Specifically, the Hale Lane law firm  
18 drafted Addendum No. 3, which expressly provided under paragraph  
19 39(F) the following conditions and requirements:  
20

21 7. Paragraph 39(F) is hereby amended and restated as  
22 follows:

23 This offer is conditioned upon, as conditions  
24 precedent ("Conditions Precedent"), Buyer obtaining,  
25 at Buyer's expense, all necessary approvals  
26 ("Governmental Approvals") for the construction of a  
27 mixed use residential and commercial high rise

28 <sup>1</sup> Addendum No. 1 was entered into on August 1, 2005. Addendum No. 2 was  
entered into on August 2, 2005. Addendum No. 3 was entered into on October  
8, 2005. Addendum No. 4 was entered into on September 18, 2006.

1 condominium project on the Property approximately 28  
2 stories in height (the "Project") within 270 days  
3 after August 3, 2005, as such time period may be  
4 extended pursuant to Paragraph 1.2 above, including  
5 but not limited to:

- 6 (1) Any required height, setback or other variances;  
7 (2) Any required special use permit;  
8 (3) Any required zoning or land use designation  
9 changes;  
10 (4) Any required master plan amendment;  
11 (5) An approved tentative condominium map for the  
12 Project; and  
13 (6) Any required design approvals.

14 In addition, Buyer shall obtain, at Buyer's sole cost  
15 and expense, all approvals for the Boundary Line  
16 Adjustment (as defined in Paragraph 8 of this Third  
17 Addendum).

18 Buyer shall use its best efforts and reasonable  
19 diligence to satisfy all Conditions Precedent  
20 described in this Paragraph 39(F) prior to close of  
21 escrow.

22 [Emphasis added.]

23 Iliescu understood that the Buyer of the Property intended  
24 to construct residential condominium units and in pursuit of  
25 paragraph 39(F) quoted above, Iliescu did execute Owner  
26 Affidavits on January 17, 2006, appointing and authorizing Sam  
27 Caniglia, a principal within the Buyer's group, to file  
28 development applications with and obtain Governmental Approvals  
from the City of Reno for the Property. See, Exhibit 9 to Third  
Party Defendant Hale Lane's Motion for Summary Judgment  
Regarding Third Party Claims by John Iliescu filed on March 30,  
2011.

1 As stated in Hale Lane's Motion for Summary Judgment, Karen  
2 D. Dennison of the Hale Lane law firm prepared Addendum No. 3  
3 (Motion, page 3, lines 14-19):

4 Ms. Dennison prepared Addendum No. 3, which sought to  
5 clarify the agreement in several respects. (Ex. 1, at  
6 ¶¶ 18 through 19; see also Addendum No. 3 attached as  
7 Exhibit 7.) Of particular importance for purposes of  
8 this motion, Addendum No. 3 explained that obtaining  
9 the necessary entitlements was a "condition  
precedent." (Ex. 7, at no. 7.) It also mandated that  
the developer "use its best efforts and reasonable  
diligence to satisfy all Conditions Precedent."

10 In addition, John Iliescu attended the City of Reno  
11 Planning Commission and City of Reno Council meetings where the  
12 Project was reviewed and approved, thereby gaining all  
13 Governmental Approvals as called for in paragraph 39(F).

14 In the meantime, once the Purchase Agreement was signed,  
15 Caniglia, for the Buyer, sought out a reputable architect to  
16 help obtain the Governmental Approvals. Nevada architect Mark B.  
17 Steppan and his California firm, Fisher-Friedman & Associates,  
18 were retained by Caniglia on a time and materials basis to  
19 conceptually design the Project, to prepare certain schematic  
20 drawings and to present these drawings to the Reno Planning  
21 Commission and the Reno City Council in support of gaining the  
22 Governmental Approvals.

23 The Buyer paid \$430,870.00 to Fisher-Friedman & Associates  
24 on a time and materials basis. The Buyer later signed a more  
25 extensive architectural agreement with Steppan that gave rise to  
26  
27  
28

1 the filing of the Notice of Lien herein on November 7, 2006, as  
2 Document 3460499, Washoe County Records, in the amount of  
3 \$1,783,548.85. An Amended Notice of Claim and Lien was recorded  
4 on May 3, 2007, as Document 3528313, Washoe County Records.  
5 See, Plaintiff's Complaint ¶ 12.

6  
7 At no time did the Hale Lane law firm discuss with or  
8 advise Iliescu as to the effect or implication of requiring  
9 Iliescu to become a Participating Seller in this sales  
10 transaction. Moreover, the Hale Lane law firm was specifically  
11 retained to "fine tune" the sales agreement originally prepared  
12 by Realtor Richard K. Johnson to "better reflect the parties'  
13 intentions". Hale Lane Motion for Summary Judgment, page 3,  
14 lines 10-12. Iliescu's intention was to sell the Property, not  
15 to expose the Property to lien caused by the Buyer. See  
16 Affidavit of John Iliescu attached hereto as Exhibit 1.

17  
18 As set forth in the instant Motion for Summary Judgment and  
19 the Motion to Amend filed concurrently herewith, once Iliescu,  
20 as Seller, actively participated in the effort to gain  
21 Governmental Approvals, the Property was lienable. That is  
22 exactly what was provided for in the Hale Lane drafted Addendum  
23 No. 3. Iliescu was not advised otherwise, to his substantial  
24 damage.

25  
26 While Iliescu believes that Stepan's lien claim is  
27 unfounded and that Stepan has been sufficiently paid for all  
28

1 the services he rendered, nevertheless, a lien still exists on  
2 the Property and must be dealt with. The Court by its Order  
3 entered June 22, 2009, found:

4 The Applicants, specifically Iliescu, viewed the  
5 architectural drawings as well as attended meetings  
6 where the design team presented the drawings. The  
7 Court finds even though Iliescu alleges he did not  
8 know the identity of the architects who were working  
9 on the project, he had actual knowledge that the  
Respondent and his firm were performing architectural  
services on the project.

10 Accordingly, the motion for partial summary judgment  
11 is denied. The cross motion for summary judgment is  
granted.

12 Because the Court has determined on cross-motions for  
13 summary judgment that Iliescu had actual knowledge that a  
14 designer and his firm were performing architectural services for  
15 the Project, Iliescu, as owner of the Property, could not avoid  
16 the lien by simply recording a Notice of Non-Responsibility.  
17 Further, because Iliescu participated in obtaining Governmental  
18 Approvals, he became what is known as a Participating Seller.  
19 By the very cases Hale Lane cites in the Motion for Summary  
20 Judgment, and cited in the Motion to Amend filed herewith, the  
21 Property became lienable. Iliescu was unprotected and unguarded.  
22 Because of the fault of the Hale Lane law firm, the Property has  
23 been lienied and, therefore, the Hale Lane law firm must  
24 indemnify Iliescu.  
25  
26  
27  
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1 The recording of a Notice of Non-responsibility by a  
2 Participating Seller is ineffective. The Hale Lane law firm did  
3 not inform Iliescu of this result at the time Addendum No. 3 was  
4 drafted, presented to Iliescu and signed.

5 **B. Conclusion.**

6 It is respectfully requested that Hale Lane's Motion for  
7 Summary Judgment be denied. By its own Motion, Hale Lane admits  
8 that it drafted and prepared the Addendum which placed the  
9 Property in jeopardy of potential lien claims caused by the  
10 Buyer's hired vendors and service providers. Here, the Property  
11 would not be protected by an owner's recorded Notice of Non-  
12 Responsibility. The Hale Lane law firm did not so advise the  
13 Property owner, Iliescu, and did not draft Addendum No. 3 to  
14 properly reflect the parties' intentions to protect the Property  
15 from lien.  
16  
17

18 The undersigned does hereby affirm that the preceding  
19 document does not contain the social security number of any  
20 person.

21 \\\

22 \\\

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28

**FILED**

Electronically  
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Howard W. Conyers  
Clerk of the Court  
Transaction # 2437236

**Code 3880**

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Attorney for John Iliescu, Jr.  
and Sonnia Iliescu and The John  
Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 10

v.

Consolidated with:

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

Case No.: CV07-00341

Dept. No.: 10

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS. /

**OPPOSITION TO SUPPLEMENT TO THIRD PARTY DEFENDANT**

**HALE LANE'S MOTION FOR SUMMARY JUDGMENT**

**REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

COME NOW, Defendants John Iliescu, Jr., and Sonnia Iliescu,  
individually, and as Trustees of the John Iliescu, Jr. and

1 Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through  
2 their counsel Thomas J. Hall, Esq., and hereby file their  
3 Opposition to Supplement to Third Party Defendant Hale Lane's  
4 Motion for Summary Judgment Regarding Third-Party Claims by John  
5 Iliescu ("Supplement") as follows.

6  
7 **A. Historical Note.**

8 On February 14, 2007, this case was originally initiated  
9 with the filing of an Application for Release of Lien.

10 On February 11, 2008, Plaintiff Steppan's then counsel,  
11 Gayle A. Kern, Esq., filed a Notice of Early Case Conference.

12 On February 19, 2008, Gayle A. Kern, Esq., filed an Amended  
13 Notice of Early Case Conference, setting the Early Case  
14 Conference for February 21, 2008.

15  
16 According to the Hale Lane law firm, Iliescu and Hale Lane  
17 "stipulated to stay the proceedings against Hale Lane pending  
18 final resolution of the claims asserted by Steppan against  
19 Iliescu." Exhibit 15 to the Supplement.

20 On March 7, 2008, a Stipulation to Stay Proceedings Against  
21 Hale Lane Law Firm and to Dismiss Claims Against Defendants  
22 Dennison, Howard and Snyder Without Prejudice was filed.

23  
24 On October 7, 2009, the Hale Lane law firm filed its  
25 Answer, nearly two (2) years following commencement of this  
26 case. At the time the Answer was filed, a Settlement Conference  
27 was scheduled for January 14, 2010.

1 On December 10, 2009, a Stipulation and Order to continue  
2 Settlement Conference was filed and the Settlement Conference  
3 was postponed until March 18, 2010.

4 From the record, it appears a Settlement Conference was  
5 held on March 31, 2010, but the case was not settled at that  
6 time.  
7

8 On August 31, 2010, an Application for Setting was filed  
9 and the trial in this matter was then scheduled for October 3,  
10 2011.

11 On March 28, 2011, Stephen Mollath, Esq., withdrew as  
12 counsel for Iliescu.

13 On May 26, 2011, Iliescu filed a Request for Settlement  
14 Conference.  
15

16 On July 15, 2011, the parties held a telephonic Settlement  
17 Conference, but again the case was not settled at that time.

18 On July 15, 2011, undersigned counsel entered his Notice of  
19 Appearance in this case.

20 **B. Discussion.**

21 Defendant Hale Lane asks that Iliescu's claims be dismissed  
22 for failing "to file a case conference report within the  
23 required 240 days" under NRCP 16.1(e)(2). Hale Lane law firm  
24 argues in the Supplemental Motion that "absent any unique  
25 circumstances, a defendant who moves for dismissal pursuant to  
26 NRCP 16.1(e)(2) is not required to further demonstrate that any  
27  
28

1 prejudice resulted or was suffered due to the delay in filing  
2 the case conference report." [Emphasis added.] The simple nature  
3 of the claims involved in this case, in addition to the many  
4 third-party claims, coupled with the fact that it has been in  
5 litigation for nearly five (5) years should certainly be  
6 considered unique circumstances. The Hale Lane law firm has  
7 participated in the litigation since the time it was made a  
8 party on September 27, 2007, and has never raised the issue of a  
9 case conference report until nearly four (4) years later.  
10 Additionally, it was the Hale Lane law firm that requested a  
11 stay of the proceedings prior to the early case conference being  
12 held. See letter erroneously dated February 13, 2007, from  
13 David R. Grundy, Esq., attached hereto as Exhibit 1. (The second  
14 page of the letter presumably contains the correct date of  
15 February 13, 2008.)  
16  
17

18 Iliescu has filed their Motion to Amend Third Party  
19 Complaint on August 18, 2011, which has not been opposed.  
20 Inasmuch as the pleadings have not been finalized, there is  
21 still adequate time to hold another case conference with a case  
22 conference report to follow. In that vein, an attorneys'  
23 conference has been scheduled for August 31, 2011, to Meet and  
24 Confer regarding all pending motions. See e-mail correspondence  
25 attached hereto as Exhibit 2. A Motion for Jury Trial has been  
26  
27  
28

1 prepared and will be filed shortly and a trial setting has yet  
2 to be obtained.

3 Additionally, it was the desire of the parties to settle  
4 this matter with the assistance of Judge Adams. Prior to his  
5 refusal, Judge Adams could have required the parties to comply  
6 with NRCP 16.1(e)(2). However, settlement of all claims was at  
7 the forefront of the case for both Judge Adams and the parties,  
8 presenting yet another unique circumstance.

10 Furthermore, the Nevada Supreme Court clearly has a  
11 preference to decide all cases on the merits. See Hansen v.  
12 Universal Health Services, 112 Nev. 1245, 1247-48, 924 P.2d 1345  
13 (1996); Prince v. Dunn, 106 Nev. 100, 105, 787 P.2d 785 (1990);  
14 Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380  
15 P.2d 293 (1963).

17 **C. Conclusion.**

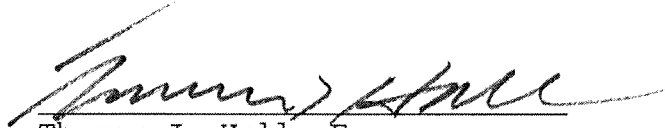
18 This case has been litigated for nearly four years and is  
19 finally approaching final resolution. It would be unnecessary  
20 for a case conference report to be filed at this time after the  
21 parties have been before Judge Adams on several occasions in  
22 attempts to resolve the issues. The presiding Judge was well  
23 aware of the claims and defenses of the parties. At this late  
24 date, the Court should be hesitant to dismiss the entire case  
25 based upon procedure rather than the underlying substantive  
26 issues and facts. The Court should have the opportunity to  
27

1 decide this case on its merits. The Hale Lane law firm's motion  
2 to dismiss Iliescu's claims should be denied and an exception to  
3 NRCP 16.1(e)(2) be made considering the many unique  
4 circumstances surrounding this matter.

5 The undersigned does hereby affirm that the preceding  
6 document does not contain the social security number of any  
7 person.  
8

9 DATED this 29<sup>th</sup> day of August, 2011.

10 LAW OFFICES OF THOMAS J. HALL

11  
12 

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14 Law Offices of Thomas J. Hall  
15 305 South Arlington Avenue  
16 Post Office Box 3948  
17 Reno, Nevada 89505  
18 Telephone: (775) 348-7011  
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20 Attorney for Iliescu  
21  
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# **EXHIBIT 1**

# **EXHIBIT 1**

**FILED**

Electronically

09-01-2011:08:30:02 AM

Howard W. Conyers

Clerk of the Court

Transaction # 2444422

1 Code: **3095**

2  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MARK B. STEPPAN,

10 Plaintiff,

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

12 vs.

Dept. No.: 10

13 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
14 as Trustees of the JOHN ILIESCU, JR. AND  
15 SONNIA ILIESCU 1992 FAMILY TRUST  
16 AGREEMENT; JOHN ILIESCU, individually;  
17 DOES I-V, Inclusive; and ROE  
18 CORPORATIONS VI-X, inclusive,

18 Defendants.

19  
20 AND RELATED MATTERS.

21 **ORDER GRANTING THIRD-PARTY DEFENDANT HALE LANE'S MOTION FOR**  
22 **SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

23 Presently before the Court is a Motion for Summary Judgment Regarding Third-Party  
24 Claims by John Iliescu, filed by Third-Party Defendants HALE LANE PEEK DENNISON AND  
25 HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and  
26 JERRY M. SNYDER (hereinafter collectively referred to as "Defendants") on March 30, 2011.  
27 Following, on July 22, 2011, Defendants filed a Supplement to Third-Party Defendant Hale  
28 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

1        Thereafter, on August 18, 2011, Third-Party Plaintiffs JOHN ILIESCU, JR. and  
2 SONNIA ILIESCU, individually, and as Trustee of the John Iliescu, Jr. and Sonnia Iliescu  
3 1992 Family Trust (hereinafter collectively referred to as "Plaintiffs") filed an Opposition  
4 and Response to Third-Party Defendant Hale Lane's Motion for Summary Judgment  
5 Regarding Third-Party Claims by John Iliescu. Subsequently, on August 29, 2011,  
6 Defendants filed a Reply in Support of Motion for Summary Judgment Regarding Third-  
7 Party Claims by John Iliescu. Contemporaneously with their Reply, Defendants also filed a  
8 Request for Submission, thereby submitting the matter for the Court's consideration. Later  
9 that same day, Plaintiffs filed an Opposition to Supplement to Third-Party Defendant Hale  
10 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

11        **I. Factual & Procedural Background**

12        This matter comes before the Court as the result of a 2005 property transaction that  
13 fell through, involving a parcel of property located in downtown Reno, which Plaintiffs  
14 owned and was to be developed by a group of developers headed by Consolidated Pacific  
15 Development, Inc. (hereinafter "Developers"). As part of that transaction, Plaintiffs agreed  
16 to sell the parcel of property at issue to the Developers, who would then use the property  
17 to construct a high-rise condominium project known as Wingfield Tower.

18        The Developers first contacted Plaintiffs about purchasing the parcel of property in  
19 July of 2005, when the Developers contacted Plaintiffs through their broker, Sam Canglia.  
20 Following this contact, on July 29, 2005, the Developers and Plaintiffs, acting without the  
21 assistance of counsel, executed a form agreement prepared by Dick Johnson in order to  
22 facilitate the sale of the property. That contract provided that Developers would purchase  
23 the property from Plaintiffs for \$7.5 million, with a \$500,000 non-refundable cash deposit  
24 to be paid to Plaintiffs in advance, as well as Plaintiffs receiving a 3,750 square foot  
25 penthouse and four parking spaces, valued at \$2.2 million, upon the completion of  
26 construction. However, the sale was contingent upon Developers obtaining the necessary  
27 entitlement and permits from the City of Reno, with which Plaintiffs were to assist.  
28 Furthermore, the Contract afforded Developers 270 days to obtain the requisite

1 entitlements, while allowing an extension of time at the cost of \$50,000 per 30 days;  
2 otherwise, the Developers would forfeit their \$500,000 deposit.

3       Following the execution of the form contract, the Parties realized that it was  
4 inadequate for the magnitude of the deal they were entering into. Consequently, the  
5 Parties elected to hire legal counsel to assist in supplementing the contract. As a result,  
6 Dick Johnson brought the contract to Ms. Dennison, who then prepared Addendum No. 3,  
7 which sought to clarify the contract and its terms. Included in these clarifications was a  
8 clause that recognized obtaining the necessary entitlements was a condition precedent to  
9 the completion of the sale, and that the Developers would use their "best efforts and  
10 reasonable diligence to satisfy all Conditions Precedent." Addendum No. 3 further specified  
11 Plaintiffs' interest in completing the sale because of their ability to select the penthouse of  
12 their choice. Following, on October 8, 2005, the Parties executed Addendum No. 3.

13       Thereafter, the Developers sought an architect to help in obtaining the required  
14 entitlements. In doing so, the Developers hired Fisher Friedman & Associates, to design  
15 the building, prepare the architectural plans, and present the information to the Reno City  
16 Council for approval, which it did. Nevertheless, during this process, Plaintiffs signed a  
17 conflict waiver permitting Defendants to assist Developers in obtaining the necessary  
18 entitlements. Moreover, Plaintiffs actively participated in the application process by  
19 submitting an affidavit permitting Developers to submit an application to the City of Reno  
20 on Plaintiffs' behalf and by attending all public hearings on the matter. Subsequently, the  
21 City acted to approve the project and authorized the necessary entitlements.

22       Then, some sixteen months following the commencement of the project, Developers  
23 defaulted when they were unable to obtain the necessary financing to conclude the sale of  
24 the property. As a consequence of this default, Developers were unable to pay Fisher  
25 Friedman & Associates for the services rendered. This caused Fisher Friedman &  
26 Associates to file a \$1.8 million mechanics lien against the property.

27       Following the recording of this lien, the Parties approached Defendants to help  
28 resolve the issue. In doing so, the Parties executed a second conflict waiver. Defendants

1 then brokered an indemnity agreement between the Parties, whereby Developers,  
2 including Co-Third Party Defendant John Schleining, agreed to indemnify Plaintiffs against  
3 any harm that might occur as a result of the lien. Furthermore, the indemnity agreement  
4 also provided that Developers would work to discharge the lien on Plaintiffs' behalf at no  
5 expense to Plaintiffs. As a result, acting on Plaintiffs' behalf, Defendants then filed an  
6 application for release of the lien. This in turn caused Fisher Friedman & Associates to file  
7 a complaint against Plaintiffs in order to foreclose on the lien.

8 Subsequently, on September 27, 2007, Plaintiffs filed their third-party complaint  
9 against Defendants, alleging causes of action for legal malpractice and negligence.  
10 Plaintiffs premised their third-party complaint on allegations that Defendants committed  
11 legal malpractice by failing to file a Notice of Nonresponsibility pursuant to NRS 108.234.  
12 Defendants have now moved for summary judgment on the matter, arguing that Plaintiffs'  
13 claims fail as a matter of law, as there is no evidence of causation or that Plaintiffs suffered  
14 damages. Moreover, Defendants assert that because Plaintiffs executed two conflict  
15 waivers, any claim relating to a conflict of interest must fail. Finally, Defendants assert that  
16 the Court should dismiss Plaintiffs' claims for failure to comply with NRCP 16.1.

## 17 **II. Standard of Review**

18 A court should only grant summary judgment when, based upon the pleadings and  
19 discovery on file, no genuine issue of material fact exists for trial and the moving party is  
20 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact  
21 exists when a reasonable jury could return a verdict in favor of the nonmoving party.  
22 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is  
23 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of  
24 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,  
25 2555 (1986).

26 In reviewing a motion for summary judgment, the Court must view the evidence,  
27 and any reasonable inference drawn there from, in the light most favorable to the  
28 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184

1 (2000). However, the nonmoving party may not avoid summary judgment by relying "on  
2 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*  
3 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*  
4 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving  
5 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of  
6 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

### 7 **III. Legal Analysis**

8 As noted above, Defendants presently seek an order from the Court granting  
9 summary judgment on Plaintiffs' claims for legal malpractice and negligence. Specifically,  
10 Defendants argue that the claims of Plaintiffs fail as a matter of law because Plaintiffs were  
11 not eligible to file a Notice of Nonresponsibility as they were "Interested Owners," and  
12 thus, no evidence of causation exists. In addition, Defendants assert that even if Plaintiffs  
13 were not "Interested Owners," no evidence of damages exists because Plaintiffs received a  
14 substantial benefit from the actions of Fisher Friedman & Associates, and because  
15 Defendants and Mr. Schleining have reached an agreement releasing the lien without any  
16 cost to Plaintiffs. Furthermore, Defendants assert that because Plaintiffs executed two  
17 conflict waivers, any claim relating to a conflict of interest must fail. Finally, as an  
18 alternative theory, Defendants assert that pursuant to NRCP 16.1(e), the Court should  
19 dismiss Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days  
20 following Defendants' appearance as required by NRCP 16.1(c).

21 In opposition to Defendants' arguments, Plaintiffs merely assert that Defendants  
22 breached the legal duties owed to Plaintiffs by failing to advise Plaintiffs to avoid actively  
23 participating in the sale of the property. In addition, Plaintiffs assert that the Court should  
24 not dismiss their claims pursuant to NRCP 16.1 because this matter has been ongoing for  
25 the past four years and there is still time to hold a case conference report. The Court will  
26 address each matter as follows:

27 ///

28 ///

1                   **a. Conflict of Interest**

2           As it pertains to Plaintiffs' claims regarding a conflict of interest, Defendants argue  
3 that such claims must fail as a matter of law because Plaintiffs suffered no compensable  
4 harm as a result of the conflict and because Plaintiffs knowingly executed two conflict  
5 waivers in accordance with NRPC 1.7(b), waving the conflict of which Plaintiffs now  
6 complain. To this argument, Plaintiffs have not raised any opposition. Accordingly, the  
7 Court must find that Defendants' Motion, as it relates to the conflict of interest claims, is  
8 meritorious. Accordingly, to the extent Defendants seek summary judgment on this issue,  
9 their Motion shall be granted.

10                   **b. Legal Malpractice & Negligence**

11           In order to recover under the theories of legal malpractice and negligence, Plaintiffs  
12 must demonstrate: (1) the existence of an attorney client relationship; (2) a duty owed to  
13 the client by the attorney to use such skill prudence, and diligence as lawyers of ordinary  
14 skill and capacity possess in exercising and performing the tasks which they undertake; (3)  
15 a breach of that duty; (4) that the lawyer's negligence was the proximate cause of the  
16 client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v.*  
17 *Nault*, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004). Accordingly, where there is no  
18 evidence of causation or damages, a claim for legal malpractice or negligence must fail as  
19 a matter of law.

20           In the instant case, Plaintiffs assert that Defendants breached the duty of care owed  
21 to Plaintiffs by failing to file a Notice of Nonresponsibility and by failing to advise Plaintiffs  
22 not to actively participate in the sale of the property at issue. Plaintiffs further assert that  
23 this caused them to suffer damages, in that Defendants' failure permitted Fisher Friedman  
24 & Associates to file a lien against Plaintiffs' property and forced Plaintiffs to incur the legal  
25 expenses of fighting that lien. In contrast, Defendants assert that when they became  
26 involved in the matter, Plaintiffs had already become active participants in the sale of the  
27 property, and therefore, there is nothing Defendants could have done to protect Plaintiffs'  
28 interests. Accordingly, the proper question before the Court is whether Plaintiffs were

1 eligible for the protections afforded by a Notice of Nonresponsibility at the time Defendants  
2 became involved in the case.

3 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from attaching  
4 to his property by filing a Notice of Nonresponsibility within three days after learning that  
5 improvements are being made to his property. However, in order to qualify as a  
6 "disinterested owner" the property owner must be one who: "(a) Does not record a notice  
7 of waiver as provided in NRS 108.2405; and (b) Does not personally or through an agent  
8 or representative, directly or indirectly, contract for or cause a work of improvement, or  
9 any portion thereof, to be constructed, altered or repaired upon the property or an  
10 improvement of the owner." NRS 108.234(7).

11 As applied to the instant matter, this Court must find that Plaintiffs were no longer  
12 "disinterested owners" at the time Defendants became involved in the case. This is  
13 because the undisputed evidence before the Court demonstrates that Plaintiffs entered into  
14 a contract with Developers for improvements to the property even before Defendants  
15 became involved in the matter. Plaintiffs negotiated and signed this contract by  
16 themselves. Furthermore, that contract contained language that required Plaintiffs to  
17 participate actively in the development of the property. Specifically, the language within  
18 the original contract made the offer contingent upon obtaining the necessary government  
19 approvals, with which Plaintiffs were required to assist. Moreover, the Court will note that  
20 as a result of those negotiations, Plaintiffs were to receive some \$7.5 million in payments  
21 and a penthouse valued at approximately \$2.2 million. Accordingly, these actions clearly  
22 demonstrate that Plaintiffs personally contracted for and were to benefit from the  
23 improvements to their property, thus making Plaintiffs "interested owners" before  
24 Defendants had any part in the matter.

25 It was only after Plaintiffs and Developers completed their negotiations that  
26 Defendants became involved in the matter in order to "fine tune" the agreement.  
27 However, because Plaintiffs had already become "interested owners" at that point in time,  
28 there is nothing Defendants could have said or done to avoid the existing contract. See

1 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 321, 130  
2 Cal.Rptr.2d 641 (2003); *see also Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933,  
3 934-35 (1916). Therefore, the Court must conclude that Defendants' alleged malpractice  
4 was not the cause of Plaintiffs' injuries. Furthermore, there is nothing more Plaintiffs could  
5 allege to fix this problem. Consequently, the Court believes that the grant of summary  
6 judgment in favor of Defendants is appropriate.

7 **c. NRCP 16.1**

8 As a final matter, the Court will turn its attention to those NRCP 16.1 arguments  
9 raised by Defendants. Under this rule, once the parties hold their early case conference,  
10 the plaintiff must file a case conference report within 30 days thereof. NRCP 16.1(c); *see*  
11 *also Moon v. McDonald Carano & Wilson*, 245 P.3d 1138, 1139 (Nev. 2010). If the plaintiff  
12 fails to make such a filing within 240 days following the defendant's first appearance, upon  
13 motion or its own initiative, the Court may dismiss the case without prejudice as to that  
14 defendant. NRCP 16.1 (e)(2).

15 As applied to the instant matter, this Court must find that the claims of Plaintiffs are  
16 subject to dismissal pursuant to NRCP 16.1(e)(2). As the Court recognized above, it was  
17 on September 27, 2007, that Plaintiffs filed their third-party complaint against Defendants.  
18 However, because of a stipulation between the Parties, Defendants did not file their answer  
19 until October 7, 2009. Based on this date, Plaintiffs had at the latest, until June 4, 2010, to  
20 file their case conference report. Nevertheless, as of August 30, 2011, Plaintiffs have yet  
21 to file the required report. Accordingly, more than 690 days have passed since Defendants'  
22 appearance without Plaintiffs having filed their case conference report as required by NRCP  
23 16.1(c). Furthermore, Plaintiffs have not offered a single reason for their failure to do so.  
24 Instead, Plaintiffs merely assert that this matter has been ongoing for more than four years  
25 and that there is still time to file a report following another case conference. In the Court's  
26 view, such an argument is unpersuasive and fails to justify Plaintiffs' failure. Given this  
27 analysis, the Court is inclined to grant Defendants' Motion.

28 ///



**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

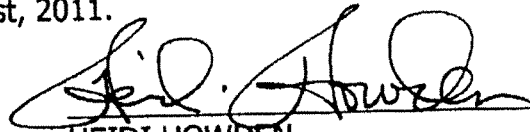
THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R.

HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 31 day of August, 2011.



HEIDI HOWDEN  
Judicial Assistant

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU JR. and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; HOLLAND & HART; KAREN DENISE DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; HALE LANE PEEK DENNISON HOWARD & ANDERSON; AND JOHN SCHLEINING,

Respondents.

JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT,

Appellants,

vs.

HOLLAND & HART; KAREN DENISE DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; HALE LANE PEEK DENNISON HOWARD & ANDERSON,

Respondents.

Electronically Filed  
Jul 10 2012 10:35 a.m.  
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Tracie R. Lindeman  
District Court Case No.  
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Clerk of Supreme Court

**OPPOSITION TO MOTION TO REMAND**

Cross-Respondents Holland & Hart (formerly known as Hale Lane Peek Dennison Howard & Anderson), Karen D. Dennison, R. Craig Howard and Jerry M. Snyder (collectively, "Hale Lane") submit the following points and authorities in opposition to the Motion to Remand filed on behalf of cross-appellants 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, filed on June 28, 2012 (collectively, “Iliescu”).

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

This is an appeal and cross-appeal from orders granting motions to dismiss and Hale Lane’s motion for summary judgment as to Iliescu’s third-party claims asserted against Hale Lane. The underlying case involves the foreclosure of a mechanic’s lien asserted against property owned by Iliescu for architectural services rendered by Mark Steppan.

While Iliescu has portrayed himself as a victim who “did nothing wrong” [Opposition to Motion for Remand, filed March 1, 2012], the facts reveal that Iliescu substantially benefitted from the architect’s work (through improvement of his property and cash). Unwilling to accept any responsibility for the lien or the attorneys’ fees he has incurred in defending against the mechanic’s lien, Iliescu filed a third-party complaint against the developer, a guarantor and against his former lawyers, Hale Lane. Summary judgment was granted in favor of Hale Lane on Iliescu’s claims based upon determinations of the substantive issues underlying Iliescu’s claims, not simply on the procedural grounds on which Iliescu’s Motion to Remand is premised. *See Order Granting Third-Party Defendant Hale Lane’s Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu*, a copy of which is attached as Exhibit 1.

Iliescu seeks a remand of this appeal based solely on the assertion that the former presiding district judge, Hon. Brent Adams, had stayed Iliescu's professional negligence claims against Hale Lane. Iliescu neglects to mention that the stay on which he now relies was not raised in his opposition to defeat Hale Lane's motion for summary judgment, nor did Iliescu make an NRCP 56(f) motion to postpone the ruling on the summary judgment motion because of the stay. *See Opposition and Response to Third Party Defendant Hale Lane's Motion for Summary Judgment*, and *Opposition to Supplement to Third Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu*, attached hereto collectively as Exhibit 2.

More importantly for purposes of the present Motion to Remand, Iliescu also neglects to mention that the stipulated stay did not preclude Hale Lane from filing a dispositive motion. *See Stipulation to Stay Proceeding Against Defendant Hale Lane and to Dismiss Claims against Defendants Dennison, Howard and Snyder Without Prejudice*, attached as Exhibit 3.

This is the second motion for remand filed in this court in the above-entitled matter, the first having been filed by Appellant Mark Steppan on February 17, 2012. Steppan's motion for remand was also made pursuant to *Foster v. Dingwell*, 228 P.3d 453 (2010), on the ground that the district court had indicated its intent to grant reconsideration of its order of dismissal for failure to comply with NRCP 16.1. The district court's stated intent was premised upon the affidavit of then-presiding district judge, Hon. Brent Adams, who expressed that the requirements of NRCP 16.1 had

been waived due to the complexity of the action. *See* Iliescu Motion to Remand, Exhibit 2, ¶4.

Notably, Iliescu, who now seeks a remand to the district court, filed an opposition to Steppan's motion for remand in this court on March 1, 2012. In that opposition, Iliescu acknowledged that the adjudication in favor of Hale Lane was only "in part" because of Iliescu's failure to comply with NRCP 16.1. Nothing has changed procedurally to warrant Iliescu's inconsistent positions with regard to the remanding of this case to the district court. The order adjudicating Iliescu's claims against Hale Lane was premised on reasons *in addition to the procedural matters regarding the stay and the issue of non-compliance with NRCP 16.1* raised in Steppan's motion for remand.

Therefore, as to Hale Lane, and in the absence of an order on Steppan's motion for remand that would affect this court's jurisdiction, remand is not warranted and Iliescu's Motion to Remand should be denied.

## **II. LEGAL ANALYSIS**

A remand may be obtained when a party to an appeal believes a basis exists to alter, vacate or otherwise modify an order or judgment challenged on appeal after that appeal has been perfected. In that event, the party may seek to have the district court certify its intent to grant the requested relief, and thereafter the party may move this court to remand the matter to the district court for the entry of an order granting the requested relief. *Foster v. Dingwall*, 126 Nev. \_\_\_, 228 P.3d 453, 455 (2010).

Notably, even if the district court certifies that it intends to grant relief, the decision as to whether a motion for remand will be granted is within this court's

discretion. *Foster*, 228 P.3d at 457, citing *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006). Moreover, as Iliescu acknowledges, if the appeal raises issues other than those for which certification has been sought, remand of the entire case may be denied. *See* Motion to Remand, pp. 3-4; *see also Mack-Manley*, 122 Nev. at 856.

In this case, the court should exercise its discretion against granting Iliescu's motion for remand because the issue for which certification occurred has no bearing on the entry of summary judgment, and because it is not the only issue in this appeal.

As noted above, Hale Lane sought summary judgment on substantive legal grounds, showing that essential elements of Iliescu's legal malpractice/negligence claims were lacking as a matter of law. Applying the law to the undisputed evidence, the district court found that Hale Lane's alleged malpractice was not the cause of Iliescu's alleged injuries. *See* Exhibit 1, pp. 7-8. Manifestly, the fact that a stay was issued is not the key issue on appeal, if it is an issue at all.

Furthermore, the stay has no bearing on the entry of summary judgment. Iliescu contends that Judge Elliott did not know that Judge Adams had stayed the professional negligence claim in accordance with *Semenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1988), and that the stay was not lifted before Hale Lane sought summary judgment. Motion, p. 4. He does not say, however, how the stay would have affected the entry of summary judgment. Iliescu certainly cannot contend that the stay prevented him from opposing summary judgment, as he did not raise the stay as a defense, and he did not seek a postponement of the summary judgment proceedings as permitted by NRCP 56(f).

Most significantly, Iliescu's new lawyer has apparently overlooked the fact that the stay did not prohibit Hale Lane from seeking summary judgment or participating in dispositive motions. Rather, the stipulation giving rise to the stay stated:

2. All claims asserted against Hale Lane shall be stayed for all purposes, including discovery and trial, pending the final resolution of all claims asserted by plaintiffs against defendants.

3. Notwithstanding the imposition of this stay, Hale Lane shall participate in any settlement conference if ordered to do so by this court, *may file **dispositive motions** and points and authorities in support of or in response thereto, and may participate in court hearings consistent herewith.*

Exhibit 3, p. 3 (emphasis added).

Hale Lane's motion for summary judgment, a dispositive motion, was clearly unaffected by the stay. Thus, whether Judge Elliott did, or did not, know about the stay when he granted summary judgment does not affect the order granting summary judgment on the substantive claims, and certainly does not alter the fact that Iliescu did not, and cannot, establish the essential element of causation in his legal malpractice claims against Hale Lane.

Consequently, even if the district court is inclined to reconsider its dismissal order based on the Affidavit of Judge Adams, this court may nevertheless deny the motion for remand because the entry of summary judgment is not founded on the stay or on the lack of compliance with NRCP 16.1. It would be entirely unjust to Hale Lane to further delay the adjudication of the claims against it based upon motions for remand that are based upon procedural grounds which have no bearing on the


substantive reasons for granting summary judgment. Iliescu's Motion to Remand should, therefore, be denied.

### **III. CONCLUSION**

For the reasons state herein, and based upon the record before this court, cross-respondents HALE LANE PEEK DENNISON HOWARD & ANDERSON, KAREN DENISE DENNISON, R. CRAIG HOWARD and JERRY M. SNYDER respectfully request that cross-appellant Iliescu's Motion to Remand be denied.

DATED this 10<sup>th</sup> day of July, 2012

LEMONS, GRUNDY & EISENBERG

By:   
DAVID R. GRUNDY, Bar #864  
ALICE CAMPOS MERCADO, Bar #4555

Attorneys for Cross-Respondents HALE LANE  
PEEK DENNISON HOWARD & ANDERSON,  
KAREN DENISE DENNISON, R. CRAIG  
HOWARD and JERRY M. SNYDER

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10<sup>th</sup> day of July, 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Gordon M. Cowan  
Michael D. Hoy  
Michael Kimmel  
Gregory F. Wilson  
David R. Grundy

Sent by U.S. mail, postage prepaid, to:

David Wasick  
Settlement Judge  
879 Mahogany Drive  
Minden, NV 89423

  
\_\_\_\_\_

**EXHIBIT LIST**  
**to**  
***Opposition to Motion to Remand***  
**Supreme Court No. 60036**

<b><u>Exhibit No.</u></b>	<b><u>Document</u></b>
1	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu, filed September 1, 2011
2	Opposition and Response to Third Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third Party Claims by John Iliescu, filed October 18, 2011
3	Stipulation to Stay Proceedings Against Defendant Hale Lane and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice, filed March 7, 2008