

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed

June 27 2012 12:14 p.m.

Tracie K. Lindeman

**In Re Manhattan West Mechanic's Lien
Litigation**

APCO CONSTRUCTION, INC., a Nevada
corporation, *et al.*,

Petitioners,

vs.

The Honorable Susan W. Scann, Judge,
Eighth Judicial District Court, Clark County,
Nevada,

Respondent,

and

SCOTT FINANCIAL CORPORATION, a
North Dakota Corporation, *et al.*,

Real Parties in Interest.

Original Petition

APPENDIX

Volume 8 (Supplemental)

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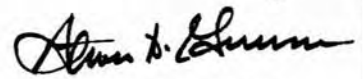
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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION,)
Plaintiff,)
vs.) CASE NO. A571228
GEMSTONE DEVELOPMENT WEST) DEPT. XXIX
INC.,)
Defendant.)

BEFORE THE HONORABLE SUSAN SCANN
DISTRICT COURT JUDGE

TRANSCRIPT RE: HEARING

WEDNESDAY, JUNE 6, 2012

APPEARANCES:

For Scott Financial Corp.: GLENN F. MEIER, ESQ.
J. RANDALL JONES, ESQ.

For Various Lien Claimants: ERIC ZIMBELMAN, ESQ.
RICHARD L. PEEL, ESQ.
CARY B. DOMINA, ESQ.
DANIEL F. POLSENBERG, ESQ.

For APCO Construction and Hydropressure: WADE B. GOCHNOUR, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 APPEARANCE CONTINUED:

2 For Insulpro: ERIC DOBBERSTEIN, ESQ.
3 (Via telephone)

4 For Tri City Drywall and MARISA MASKAS, ESQ.
5 Northstar Concrete:

6 For Alex Edelstein: DAVID MERRILL, ESQ.

7 For WGH Acquisitions: DAVID A. CARROLL, ESQ.

8 For Ready Mix Inc.: BRIAN K. BERMAN, ESQ.

9 For the Tharaldson Parties: MARK E. FERRARIO, ESQ.
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1 LAS VEGAS, NEVADA

WEDNESDAY, JUNE 6, 2012

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:01:21)

4
5 (Called to order.)

6 THE COURT: Good morning. You may be seated. APCO
7 Construction versus Gemstone Development. This is Case Number
8 08A571228. Good morning.

9 (Court and clerk confer.)

10 MR. ZIMBELMAN: Morning, Your Honor.

11 THE COURT: Good morning. If we have appearances?

12 MR. MEIER: Glenn Meier, Randall Jones, and Brad
13 Scott on behalf of Scott Financial Corporation.

14 THE COURT: Okay.

15 MR. JONES: Your Honor, just for the record, Brad
16 Scott is the clients, Your Honor.

17 THE COURT: Right.

18 MR. ZIMBELMAN: Your Honor, Eric Zimbelman on behalf
19 of various lien claimants that Peel Brimley firms represents.

20 THE COURT: Okay.

21 MR. GOCHNOUR: Morning, Your Honor. Wade Gochnour
22 on behalf of APCO Construction and Hydropressure.

23 THE COURT: Okay.

24 MR. PEEL: Good morning, Your Honor. Richard Peel
25 on behalf of various lien claimants.

1 MR. DOMINA: Cary Domina also representing the same
2 lien claimants.

3 MR. POLSENBERG: And Dan Polsenberg too, Your Honor,
4 specially appearing for the Peel Brimley various parties.

5 THE COURT: Oh, why specially appearing?

6 MR. ZIMBELMAN: Because --

7 MR. POLSENBERG: Because I'm not really appearing in
8 the --

9 THE COURT: Because you're special or?

10 MR. POLSENBERG: Well --

11 MR. ZIMBELMAN: Mr. Polsenberg is the attorney --

12 MR. POLSENBERG: -- special in the educational
13 sense.

14 MR. ZIMBELMAN: I'll let Dan speak for --

15 THE COURT: Okay.

16 MR. POLSENBERG: Yeah, I -- I'll be involved in the
17 writ petition and any of those issues, so I will be --

18 THE COURT: Oh I see.

19 MR. POLSENBERG: -- really appearing in the supreme
20 court cases, but not in the district court cases.

21 THE COURT: Okay. So you're just getting an
22 education here?

23 MR. POLSENBERG: A special education, Your Honor.

24 MR. ZIMBELMAN: Yes.

25 THE COURT: Okay. All right. Did we miss anybody

1 else?

2 MS. MASKAS: Sorry. Marisa Maskas --

3 MR. DOBBERSTEIN: Eric Dobberstein, Your Honor, on
4 conference call for Insulpro.

5 THE COURT: Okay.

6 MS. MASKAS: Marisa Maskas for Tri City Drywall and
7 Northstar Concrete --

8 THE COURT: You have to speak close to a microphone
9 because we have a recorder so we can't pick you up.

10 MS. MASKAS: Marisa Maskas for Tri City Drywall and
11 Northstar Concrete.

12 MR. MERRILL: And David Merrill on behalf of Alex
13 Edelstein.

14 THE COURT: Okay.

15 MR. MEIER: Your Honor, Mr. Jones is really going to
16 address the motion. There is one thing I wanted to remind the
17 Court of before he started because it relates to a hearing
18 where he wasn't present. But the Court may recall that some
19 time ago at one of our status conferences, the issue of
20 selling the property came up and in fact at that point it was
21 the lien claimants who were raising the issue of selling the
22 property, talking about how important it was to preserve the
23 value that exists in that property while it was there, and as
24 I recall -- I didn't have an opportunity to review the minutes
25 from that hearing, but as I recall, it was Mr. Gochnour, Mr.

1 Dachelet, and Mr. Gebhart who were leading that charge, so I
2 think it's kind of curious that the -- what I would agree was
3 a legitimate point that they were raising back then that the
4 value of this property needs to be preserved now apparently in
5 their eyes is not such a concern.

6 MR. ZIMBELMAN: Can I --

7 MR. MEIER: And with that I'll let Mr. Jones --

8 MR. ZIMBELMAN: Can I respond to that before Mr.
9 Jones proceeds, Your Honor?

10 THE COURT: You may briefly.

11 MR. ZIMBELMAN: Briefly. First of all, I -- and I
12 apologize because I don't have a full knowledge of the history
13 of this case. Mr. Gebhart, as you know has been lead counsel
14 for us, is in trial and can't be here today. You know, we did
15 ask for some additional time for this hearing for that reason.
16 It was rejected. I've had to come up to speed pretty quickly.
17 I don't know anything about what Mr. Meier was just discussing
18 and if that was going to be an issue for you to consider
19 today, it would have been nice to have in a brief, in a motion
20 that we could have had an opportunity to prepare for and
21 respond to.

22 THE COURT: Well, perhaps I set this hearing too
23 soon. I get these motions for orders shortening time and the
24 deadline that the people are concerned about has already
25 passed. It said May 18th is when the zoning was up, so I

1 thought well, we're not in a hurry. Then we get -- you know,
2 what hurry are we really in? And then I get a anxious call
3 saying we need to set this sooner rather later, but then
4 nobody has a chance to really brief it.

5 I just got -- my law clerk just handed me something
6 which obviously I haven't read. So it's tough for all of us
7 to be prepared and I can't -- I'm not really sure based upon
8 the order shortening time why we have to have it today, so
9 maybe you could start by addressing that, Mr. Jones.

10 MR. JONES: I'd be happy to do my best, Your Honor,
11 and also by the way, let me thank the Court for putting this
12 on first. As I think the Court was aware, as soon --

13 THE COURT: Actually there's only two matters on
14 this morning so it worked out well.

15 MR. JONES: Well we're in front of Judge Denton --

16 THE COURT: At nine anyway.

17 MR. JONES: -- in trial right now, ironically, on a
18 related case with a guarantor and the lender, Scott Financial,
19 are suing over --

20 THE COURT: Oh, okay.

21 MR. JONES: -- the same property.

22 In any event, the urgency, Your Honor, and I was
23 hoping that the purchaser was going to be able to make it this
24 morning. They indicated they were going to try. They were
25 traveling when I spoke to them. Their attorney -- local

1 attorney is Steve Rice. In any event, the urgency is this,
2 Judge. We have --

3 MR. CARROLL: Randall. I am here on behalf of Rice
4 Silbey Reuther & Sullivan --

5 MR. JONES: Oh, I'm sorry, I --

6 MR. CARROLL: -- on behalf of the purchaser. David
7 Carroll from Rice Silbey Reuther & Sullivan on behalf of WGH
8 Acquisitions, the purchaser.

9 THE COURT: Okay, do we have others to check in on
10 this case?

11 MR. BERMAN: Yes, Your Honor, Brian Berman on behalf
12 lien claimant, Ready Mix Inc.

13 THE COURT: Okay.

14 MR. FERRARIO: Mark Ferrario for the Tharaldson
15 related parties, Your Honor.

16 THE COURT: Okay.

17 MR. JONES: In any event, Your Honor, the sale of
18 this property is extremely tenuous. What's happened is we --
19 just so you know the history of this and I think it's
20 important for you to understand. When my clients were found
21 not to be the -- in the priority position, we still were
22 trying to talk to the lien claimants about selling the
23 property because of -- we knew these permits were going to be
24 expiring in not too distant future. This was the beginning of
25 this year when the county told my client unequivocally we're

1 done with you, we're not going to extend this any more.

2 The code has changed dramatically since those
3 permits were issued. And so my client did an analysis that
4 indicated that the code changes would require significant
5 retrofit of the building. So -- not to mention the additional
6 time and expense it would take to get new engineers involved
7 and then have the plans reviewed, get new permits pulled which
8 would all be a detriment to the sale price of the property.
9 That was our belief. So we started talking to the lienholders
10 about this very concept.

11 My client has spent almost \$4 million, \$4 million
12 Your Honor, preserving this property for the benefit of
13 whoever gets it. That's been after the lien claimants filed
14 their liens and after the project failed.

15 THE COURT: What did the \$4 million go for?

16 MR. JONES: It goes for property taxes which I
17 believe have been -- they're -- by the way, a million -- over
18 a million two hundred thousand dollars in property taxes that
19 are currently past due. The property is delinquent because
20 the banks have decided to stop funding this black hole, so to
21 speak. They've already paid well I think over \$2 million in
22 taxes to date.

23 In addition, the cost of securing the property was
24 over a hundred thousand dollars a month between insurance --
25 just so you know, until this prospective purchaser bought the

1 property, the insurance had lapsed. So the property was
2 sitting there uninsured, which by the way --

3 THE COURT: What is the condition of the property?
4 I'm not familiar with it.

5 MR. JONES: Just --

6 THE COURT: How far along is it?

7 MR. JONES: Sure. Sure. It's -- Your Honor, if you
8 ever care to if you -- you're driving on the 215, on the
9 curve, it's on the west side of the 215 as you look west at
10 about Russell Road. In fact, it's basically on --

11 THE COURT: Okay.

12 MR. JONES: -- Russell Road. You'll see the high
13 rise portion of this building. There's a couple of low rise
14 buildings and then a high rise building which was the main
15 condominium building. I think it's 8 to 10 storeys. And the
16 upper storeys are still open. They have not been enclosed.

17 THE COURT: Oh, okay.

18 MR. JONES: So it's about 70 to 80 percent complete.
19 So you have this partially finished product sitting out there
20 that's been -- at the expense of my client and the banks, they
21 fenced the property, they've hired full-time, 24-hour
22 security, and I think the Court certainly can understand what
23 would happen to that property if it was left -- and in fact,
24 I'll tell the Court there was a trespasser on the property
25 about less than a month ago who died.

1 So there's issues right now and what happened is
2 this spring the banks finally said look, we're done. We are
3 not going to continue to pour money into this black hole with
4 no end in sight. We know the permits are expiring. We got to
5 do something or we're just going to let the property go and
6 it's going to be -- because I can tell you, and I'd be happy
7 to have any one of these lawyers for the lien claimants stand
8 up and deny this, that none of them want to pay the expense of
9 protecting this property.

10 So what we did is we had a meeting. We called the
11 meeting with all the lienholders and said look, here's the
12 problem. There's a great expense. What we would ask is let's
13 try to sell the property before these permits expire because
14 we all know that it's going to cause a substantial diminution
15 of the value of this property if we lose those permits.

16 My client would like to have some assurance, because
17 right now it's up in the air who's going to end up with a
18 priority, to get paid back off the top at least some of the
19 expense they've already incurred in consideration for
20 continuing to pay these expenses on an ongoing basis while the
21 appeal's going. We thought that was a fair deal. We had
22 meetings with all of the lien claimants' counsel and a lot of
23 their clients in my office. And we discussed it and we
24 thought we had some kind of a deal where they would agree to
25 have some portion of that money that was realized from the

1 sale be given back to my client.

2 Now I'll tell the Court right now not every lien
3 claimant was in agreement, but I will also tell the Court that
4 a majority were. We had a disagreement as to the amount of
5 the money that would be held back and went back and forth and
6 ultimately my recollection of events was the lien claimants
7 said you're asking for too much money to be held back off the
8 top. If we ultimately, meaning the lien claimants, win, then
9 we don't want to agree to pay you that money off the top
10 because then it's our property.

11 And so now the time's been ticking. This is over
12 the last three months. The permits are coming up to expire.
13 We've got to do something so I talked to my --

14 THE COURT: Haven't they expired already? I mean,
15 according to your motion they have.

16 MR. JONES: They have and I'll get to that, Judge,
17 and I'll tell you --

18 THE COURT: Okay.

19 MR. JONES: -- that's what the urgency is here of
20 this problem. We get to the point where the -- we know these
21 lien claimants or, excuse me, these permits are going to
22 expire, so we say look -- I talked to my client said you're
23 better off doing a winner take all than, you know, for sure we
24 going to -- we're lose the permits and then if you do end up
25 winning the priority issue on appeal, you're going to get

1 property that's worth half its value now. That -- and by the
2 way, we understand this is not the greatest time to sell this
3 property under any circumstances. But with the loss of the
4 permits, we know it's going to -- the value's going to
5 plummet.

6 So with notice to the lien claimants, we sent out a
7 letter saying we're going to sell the property subject to
8 approval of the court. And here's what we're going to do.
9 We're proposing to put the money in an escrow and let the
10 winner take all on appeal. And some people wrote back and
11 said we're not agreeable with that, we -- okay, well fine, so
12 we'll go -- we'll go to Judge Scann when that comes up.

13 We go to the sale. There are multiple bidders.
14 There was conditions about qualifying for the bid. Ultimately
15 it narrowed down I think five companies that were potentially
16 qualified to bid which were things like they had to provide
17 proof of funds so that they could actually buy this property.
18 And they had to assume -- sign off on the purchase and sale
19 agreement. They had to understand the problem with the
20 permits. By the way, this was -- the final bid was only about
21 a week before the permits expired. That's how jammed up in
22 time we were getting.

23 We ended up with what we thought were two qualified
24 bidders and because this is going to come up today this
25 BondRok bidder. And so -- and by -- we hired -- my client

1 hired Grubb & Ellis. They interviewed several potential
2 realtors. We hired Grubb & Ellis is the one that we thought
3 was best able to advise us in this process. They advertise --
4 everything from the *Wall Street Journal*. They went out on the
5 internet. They put it out every way they could to try to make
6 sure they reached the greatest number of potential bidders and
7 some very significant developers in this -- local developers
8 were bidders.

9 I think that Jeff Fine, Mark Fine's son, they bid \$7
10 million, Judge. That's all they were willing to offer with
11 the permits as -- just as an example.

12 And we ended up with -- the highest bid was I think
13 about \$17 million and my client told Grubb & Ellis -- this was
14 on the Thursday, a week before the permits expired -- we don't
15 think the banks will accept that number. And the -- Grubb &
16 Ellis talked to the two bidders that we understood were
17 qualified and one of them came up to \$18,050,000, the other
18 one came up to 18 million.

19 My client conditionally accepted the 18,050,000-
20 dollar bid, talked to the banks the next morning which was a
21 Friday. The banks listened to the discussion, agreed to vote
22 to accept that bid subject to this process, and then we put
23 out the note to everybody telling everybody what we've done,
24 all the lienholders.

25 In the meantime, the following Monday we get a

1 letter from this other bidder saying we bid -- we'll bid up
2 now \$21,500,000, which of course my client would like to take.
3 That's a lot more money.

4 We consulted with Grubb & Ellis and they said those
5 people never provided the proof of funds which was a condition
6 precedent to the successful bid of this property. We looked
7 at the documentation. We agreed with them, we followed their
8 advice, and we accepted that bid as the only bid that was
9 actually met the qualifications. BondRok apparently decided
10 that it was going to try to interfere with this deal and --

11 THE COURT: Is that the 21 million-dollar bidder?

12 MR. JONES: That's the letter they sent out and said
13 hey, we've -- just so you know lienholders, we think we've got
14 the winning bid and we want the property and it's a whole lot
15 more money.

16 I sent a letter to BondRok's counsel saying you
17 better be careful what you ask for because if you -- we
18 understand your bid was disqualified and you're interfering
19 with a contract to the tune of \$18 million.

20 BondRok, as you'll note, did not make an appearance
21 this morning. Their counsel is not here and I've had
22 confirmation from their counsel, Mr. Jeffrey Steffen, that --
23 of the --

24 MR. MEIER: Fennemore Craig.

25 THE COURT: Hutchison --

1 MR. JONES: -- Fennemore Craig firm --
2 THE COURT: Oh, uh-huh.
3 MR. JONES: -- that they're not going to come here
4 and they're not going to say anything.
5 THE COURT: Is there somebody here?
6 MR. STEFFEN: Yeah. Jeff Steffen, Fennemore Craig,
7 BondRok's counsel.
8 THE COURT: Oh.
9 MR. STEFFEN: I wasn't going to make an
10 appearance --
11 MR. JONES: Well --
12 MR. STEFFEN: -- but if you're going to bring me up,
13 then --
14 MR. JONES: Well that's fine.
15 THE COURT: Okay.
16 MR. JONES: I just like to know if BondRok's going
17 to say that they're going to pay and if they'll put up the
18 money right here in open court because as far as we know,
19 they've been disqualified, they've never offered to put up the
20 money, and if they did, Your Honor, at this point, they
21 couldn't get the property because the permits, as you
22 suggested, have expired.
23 And here's the deal, Judge. Since we had a
24 successful bidder, we gave them authority because they asked
25 us for it and they put up a half a million dollars of a

1 nonrefundable deposit, which by the way, BondRok did not do as
2 well.

3 They went down to the county -- they retained Thomas
4 and Mack as their local consultant to help with the
5 development of this property. So you know as well, this
6 company has also developed I believe more of distressed
7 condominium projects in Las Vegas than any other party.
8 That's at least what they've explained to me. So these are
9 legitimate developers who actually know what they're doing.

10 They went to the county and they spoke with a number
11 of people at the county, including Mr. Ron Lynn who you may
12 know, the head of the building department, and -- because of
13 the time crunch they were dealing with. We have a 60-day
14 close of escrow with this company conditioned upon -- the only
15 condition we have at this point is that we can deliver a clear
16 title. That's the only condition of the sale for the
17 \$18,050,000.

18 Ron Lynn said look, I will tell you -- and this is a
19 handshake deal and I think Mr. Carroll will tell you this as
20 well that -- I think he might have been at that meeting. I'm
21 not sure. I know his client was because I spoke to his client
22 about it; that they have a handshake deal with the Clark
23 County that says even though those permits have expired, when
24 you close on the property, we will grandfather in the permits
25 for you. They felt comfortable with that because they have

1 done a similar deal on another project here in Las Vegas, so
2 they were willing to accept that risk. We are -- as far as
3 I'm aware, no other party is in a position to do that.

4 So my concern is, Judge, and the urgency of this is
5 we now have a very precarious situation. The permits have
6 expired. We have one party who has -- they are still willing
7 to do this deal based on their agreement with the county. If
8 we don't get that on, the deal is off, the permits are done,
9 and this property value will plummet.

10 So what we want to do, which is -- I think this is
11 the perfect example of cutting off your nose to spite your
12 face. Invoking a statute that is not appropriate or I think
13 even relates to the situation we have here, NRS 108.2413, et
14 seq. --

15 THE COURT: And why is that? Why doesn't it relate?

16 MR. JONES: Well, here's why I think it does not
17 relate, Judge, because it talks about -- it contemplates a
18 circumstance where a owner of property that has mechanic liens
19 wants to sell the property.

20 THE COURT: Well, here we are.

21 MR. JONES: And the owner -- but the owner isn't
22 willing to put up the money. My client has said any money
23 available from this security -- from this property, all of the
24 money, with whatever interest can be earned, will be yours if
25 you win.

1 THE COURT: I didn't find a statute that addressed a
2 situation where the value of the collateral is less than the
3 amount of the bond -- the liens.

4 MR. JONES: Well, collectively it is and so that's
5 an interesting question --

6 THE COURT: Well, that sounds like reality, but --

7 MR. JONES: Well I don't know. We don't know -- I
8 don't know what the total number of these objectors add up to.
9 If all of the lien claimants object, then you're right. If
10 all of them don't, maybe not. But here's the deal. The value
11 of the property -- there's no evidence -- this Court has and I
12 -- I understand this was done on order shortening time. I
13 believe the best indicator of the value of the collateral is a
14 arm's --

15 THE COURT: Ready, willing, and able.

16 MR. JONES: -- arm's length transaction between two
17 parties. That is the best indicator. I'm happy to give the
18 Court the entire sheet of all the bids we got, including down
19 to the final bid numbers of the last four or five qualified
20 bidders, and the final bid that was accepted was \$18,050,000.

21 BondRok, by the way, bid \$18 million. That was
22 their highest bid, even though we found out later they were
23 not qualified under the terms of the bid, but some of these
24 bids were as low as I said \$7 million for this property.

25 So here's the deal, Judge. What are we going to do?

1 My position is this: We were trying to do this because we
2 think it's the right thing to do for everybody. They're not
3 willing to put up the money to continue to protect the
4 property. We know that for a fact. We've asked them that;
5 they refused to do it. So the property will be wasted.
6 There's no evidence that the property is worth more than the
7 purchase price that's been agreed to so far. There is no --
8 there's no current evidence that the property would be worth
9 more or the same amount of money if the permits are allowed to
10 expire. There are currently back taxes due so the property is
11 at this point at risk.

12 THE COURT: Is it in the name of the county yet or
13 not?

14 MR. JONES: It is not yet in the name of the county.
15 And we -- by the way, we know security -- oh, I'll tell the
16 Court one other thing. In good faith because these parties
17 want this property, the WGH bidders or buyers, they've gone
18 out at their own expense, even though it's their risk right
19 now, and bought insurance for this property, so now the
20 property's at least insured so if it burns down, at least it's
21 protected in that sense.

22 If it -- if the security is gone and I can assure
23 this Court that the banks are going to refuse to continue to
24 pay for the security -- and by the way, which -- exactly which
25 lienholder I wonder is going to actually step up to the plate

1 and pay this hundred thousand dollar plus a month cost, which
2 excludes taxes by the way, had nothing to do with taxes, for
3 the property if my clients stop paying for it. So not only we
4 have a risk of vandalism, which I hope this Court would
5 recognize is a very real risk at this point in time, we also
6 have the risk of arson or fire, somebody -- even if it's
7 accidental and burning down the property.

8 So what is our solution? To try to go to all the
9 lienholders and say look, it's a very bad situation for
10 everybody. Here's a way to protect us all under the difficult
11 circumstances. Why can't we work together?

12 Now, Your Honor, I will also tell this Court that
13 I'm going to -- I wanted to do this in a way that I thought
14 was fair and reasonable to all the parties. If not, this
15 Court has now ruled that my client has priority. I think
16 that's a well-reasoned rule. I know this Court thought about
17 this a whole lot because the Court went back and forth on this
18 issue, and I think the Court came to the right conclusion and
19 I think the supreme court is going to follow the California
20 law. I think that's the most fair and equitable way to do it.
21 I think California -- the California Supreme Court thought
22 long and hard about this issue before it made its well-
23 reasoned opinion and I think you followed it for the same
24 reason.

25 But we don't know what's going to happen with that,

1 but here's my point. You have ruled on a summary judgment
2 that my client has priority. So right now these lienholders
3 are holding up what this Court has ruled as a matter of law is
4 the priority of my client. That's a little different than
5 what's contemplated by NRS 108.2413 in the sense that I
6 believe what the statute is contemplating is a situation where
7 you have a lienholder coming in, filing a lien, and the
8 property owner says well, hey, we'll worry about the liens
9 later, I want to sell the property now.

10 Now we're at a whole different stage of the
11 litigation. The Court has ruled that my client has priority
12 over this property.

13 There is an appeal pending. You asked that no stay
14 -- no bond be posted and who was the bond to be posted by,
15 Judge? Think about that. The bond was not going to be posted
16 by my client. My client was the winner. The idea would be
17 the bond would be posted by the loser. In this case, the
18 loser is all of the lienholders.

19 So we are now back before this Court to say either
20 allow us to put this money in escrow for everybody's benefit
21 or we're going to ask for the more draconian ruling that we
22 want to now liquidate our judgment -- we won on liability.
23 The next move is to ask you to liquidate it on damages.

24 The damages in this case are \$18,050,000 and we know
25 that because we have a bonafide contract entered into by

1 parties in an arm's length transaction. So if they refuse to
2 do this, nicely, in a way that doesn't cost them money, then
3 I'm going to ask you to make them post a bond for the judgment
4 we have against them in the amount of, actually, one and a
5 half times the \$18.5 (sic) million which I believe is what's
6 required under the statute.

7 And if they don't do it, Your Honor, then what I'm
8 going to ask you to do is allow me to execute on the judgment
9 for failure to post the bond. That to me is what is
10 contemplated by the statutes. That is not what's contemplated
11 by the statutes they've raised. I believe it's irrelevant now
12 because we now have a summary judgment.

13 But, Judge, we don't want to do that. We would --

14 THE COURT: So --

15 MR. JONES: -- much rather say let's put it in
16 escrow --

17 THE COURT: Well you don't have a judgment, per se.
18 You'd have to foreclose, wouldn't you?

19 MR. JONES: We would, Judge.

20 THE COURT: I mean, the judgment --

21 MR. JONES: We only have a --

22 THE COURT: -- the order has to do with priority.

23 MR. JONES: We only have an interlocutory judgment
24 on --

25 THE COURT: Right.

1 MR. JONES: -- priority.
2 THE COURT: Right.
3 MR. JONES: That's my point. I would then come back
4 to you. I would assume that your rulings would be consistent
5 that if we have priority, then we're entitled to the
6 property --
7 THE COURT: You're entitled to foreclose.
8 MR. JONES: We're entitled to foreclose.
9 THE COURT: Right.
10 MR. JONES: Then we can make them post a bond --
11 THE COURT: The lenders are entitled to foreclose.
12 I guess --
13 MR. JONES: The lenders are entitled to foreclose.
14 Then we would ask you to make them post a bond which is not
15 discretionary. They've got 10 days to seek a stay. And then
16 if they don't get it, then they have to post a supersedeas
17 bond.
18 Judge, we're not trying to do that. We are not
19 trying to do that. We are not asking you to make the
20 draconian decision. We are simply asking you to say look, it
21 makes sense here, it's the fairest thing to do, it protects
22 them as -- more than I think they're entitled to be protected,
23 but we don't want to fight over it. We don't want to have to
24 argue about whether we get a judgment and get to foreclose on
25 it and they have to post a bond.

1 Time is wasting. We have a buyer who is not going
2 to go through with this if they don't get to close on the
3 property and go back to the county and get their permits.
4 That's the urgency --

5 THE COURT: And every cent other than the
6 commissions and closing costs would go -- would be held?

7 MR. JONES: Every dime -- and we've pointed that out
8 to them. We've told them what the commission is. I think
9 it's \$400,000.. Every dime would go into a court-controlled,
10 interest-bearing account that would not be touched pending a
11 final order of the Court after any appropriate appeals have
12 been exhausted.

13 So that's why we're here, Judge. We're not here to
14 try to put a hammer on these lienholders. We could -- we
15 think we could based upon the rulings of this Court. We don't
16 want to do that. We think this is a much more reasonable
17 alternative and candidly, I don't understand their position.
18 We've tried to explain this to them. We think it makes a lot
19 of sense and that it's -- as I said earlier, this is the
20 proverbial situation of cutting off your nose to spite your
21 face.

22 So I'm anxious to hear -- I've seen their brief, the
23 one brief. I haven't seen the other ones either and I do
24 understand this was on an order shortening time --

25 THE COURT: Right.

1 MR. JONES: -- but it's my understanding that most
2 of the other briefs are essentially joinders of Mr. Brimley's
3 brief --

4 THE COURT: Well, I've seen Mr. Brimley's brief and
5 I just got one joinder --

6 MR. JONES: Or Mr. Peel's brief I guess it is.

7 THE COURT: -- so I don't know if there are any
8 others out there.

9 MR. JONES: But the point is, Judge, is that I don't
10 know what else they're going to say than what they've said
11 here. They've invoked the statute. I see what the statute
12 says. I don't think it applies in this circumstance because
13 we now have an interlocutory judgment which we will then seek
14 to finalize which is a completely different circumstance than
15 at the beginning of the case when a property owner has liens
16 and wants to sell the property. I understand that. Makes
17 sense you got to protect the lienholders. But I also believe
18 we're protecting the lienholders under this scenario in a way
19 they're not even entitled to.

20 And that's what's so frustrating about this, Judge.

21 So --

22 THE COURT: Well, let me hear from the lienholders.

23 MR. JONES: -- that's why we ask you to do what
24 we're asking you to do. Thank you.

25 THE COURT: Okay.

1 MR. ZIMBELMAN: Thank you, Your Honor. First of
2 all, I'll tell Mr. Jones why we won't play ball with them. We
3 have liens. That is the single sole and most important right
4 that a contractor in this state owns. That's our power, the
5 only one we have --

6 THE COURT: You have liens and under the statute you
7 would be required to foreclose your lien and realize against
8 the property first --

9 MR. ZIMBELMAN: Absolutely.

10 THE COURT: -- before you get a judgment against the
11 owner.

12 MR. ZIMBELMAN: That's correct.

13 THE COURT: So in a sense what -- well, go --

14 MR. ZIMBELMAN: Right.

15 THE COURT: I mean, we're -- it'd be like shorts- --
16 taking that step prejudgment.

17 MR. ZIMBELMAN: Well, the short answer is this: You
18 did rule on priority --

19 THE COURT: Right.

20 MR. ZIMBELMAN: -- but you did not rule that our
21 liens are invalid. Our liens continue and are in place --

22 THE COURT: Yeah, we don't have a final judgment in
23 this case.

24 MR. ZIMBELMAN: -- and subject to a decision of the
25 supreme court that you've allowed us, graciously, to take up

1 and that we are in the process of taking up.

2 THE COURT: Right.

3 MR. ZIMBELMAN: Mr. Polsenberg, as you know, has
4 been retained --

5 THE COURT: Okay. But why do you not want to -- why
6 don't you want the sale to go through?

7 MR. ZIMBELMAN: Two reasons. One, there isn't
8 enough money.

9 THE COURT: But is there any real argument that the
10 property's worth any more than what the sale price is?

11 MR. ZIMBELMAN: Yeah. How about \$21 million offered
12 by BondRok, Your Honor?

13 THE COURT: Well, does Bond- -- has BondRok put up
14 proof of funds?

15 MR. ZIMBELMAN: My understanding is that they have
16 done so and for whatever reason -- let me back up a minute,
17 Your Honor. I think there were three points I wanted to make
18 to you --

19 THE COURT: Okay.

20 MR. ZIMBELMAN: -- this morning, okay? One is we're
21 brought here on a manufactured emergency that is --

22 THE COURT: Why do you think it --

23 MR. ZIMBELMAN: -- that is not enabling us time to
24 investigate some of the statements that have been made this
25 morning, let alone what's actually in their brief and

1 supported by affidavits. I --

2 THE COURT: Yeah.

3 MR. ZIMBELMAN: Eighty, ninety percent of what I
4 heard from Mr. Jones isn't in their brief. It's not in --

5 THE COURT: I agree.

6 MR. ZIMBELMAN: -- their affidavits.

7 THE COURT: I agree.

8 MR. ZIMBELMAN: It's utter hearsay and what's in
9 their briefs is utter hearsay. Can I just point to a couple
10 of issues? There's only one affidavit that matters and that
11 is that of Mr. Smith, Peter Smith, the former chief operating
12 officer of Gemstone, who by the way is providing an affidavit
13 on behalf of -- I guess of the banks. And I would ask the
14 question who does Mr. Jones represent here? The banks don't
15 own this property. How can they sell it?

16 Secondly, at paragraph 10 -- excuse me, let's start
17 at paragraph 9 of --

18 THE COURT: Let me --

19 MR. ZIMBELMAN: -- Mr. Smith's affidavit.

20 THE COURT: I need to find it. Let's see.

21 MR. ZIMBELMAN: It's Exhibit B to --

22 THE COURT: Where -- what's the --

23 MR. ZIMBELMAN: It's Exhibit B to their papers, Your
24 Honor.

25 THE COURT: Well I don't have any tabs, so what's

1 the page -- do we have a Bate number?

2 MR. ZIMBELMAN: APP320.

3 THE COURT: Okay, thank you. Okay, I have it.

4 MR. ZIMBELMAN: All right. Paragraph 9 Mr. Smith
5 states: "However, in December 2011, Clark County informed me
6 that no further extensions would be granted." The implication
7 of the brief and of Mr. Jones's statements to you today are
8 somehow that this conversation occurred recently. The
9 evidence is that this conversation occurred in December.

10 THE COURT: That's exactly what this says,
11 December --

12 MR. ZIMBELMAN: Right.

13 THE COURT: -- 2011.

14 MR. ZIMBELMAN: They're trying to make you believe
15 that there was some recent conversation with the county.
16 They're also trying to make you believe that there was some
17 indication by the county that they would be willing to allow
18 these now expired permits to somehow be recreated --

19 THE COURT: But if those people want to take the
20 risk, I mean they're taking the risk.

21 MR. ZIMBELMAN: Well so was BondRok. And BondRok
22 has indicated in their letter that they would do the same
23 thing and they're offering \$21 million and they feel for
24 whatever reason that Grubb & Ellis simply cast them aside.

25 Grubb & Ellis received a bid from them. Then went

1 back and asked for further bids from them. Why would they ask
2 for further bids from them if they weren't a qualified bidder?
3 It doesn't make any sense at all and I can -- I can't speak
4 for BondRok, but I can tell you that our investigation reveals
5 that BondRok was more than prepared to pay the entire amount
6 -- this is a cash deal -- that they informed Grubb & Ellis of
7 the fact, and that for whatever reason, Grubb & Ellis who by
8 the way, Your Honor, where is Grubb & Ellis today? Where is
9 the affidavit from Grubb & Ellis? I am --

10 THE COURT: Are they here?

11 MR. ZIMBELMAN: I am very disappointed --

12 THE COURT: They're not here?

13 MR. ZIMBELMAN: I have --

14 THE COURT: No Grubb & Ellis?

15 MR. ZIMBELMAN: There's no one here on their behalf.
16 There's no affidavit filed on their behalf. There is hearsay
17 upon hearsay upon hearsay about what Grubb & Ellis did, said
18 or intends to do. I mean, if this isn't a perfect example of
19 a manufactured crisis intended to avoid an examination of the
20 facts, this is it.

21 THE COURT: I don't really see this as a
22 manufactured crisis if the -- you know, I've -- if there have
23 been discussions going on about this for several months, isn't
24 that the case? And the permit expired on May 18th, it's not
25 manufactured, something needs to be done.

1 MR. ZIMBELMAN: Well, if the permits have already
2 expired, the crisis has passed, Your Honor. Secondly --

3 THE COURT: That's what I was asking about, but
4 apparently --

5 MR. ZIMBELMAN: I mean --

6 THE COURT: -- somebody's willing to take the
7 chance.

8 MR. ZIMBELMAN: Well what they're saying is, Your
9 Honor --

10 THE COURT: Yeah.

11 MR. ZIMBELMAN: -- the permits have passed, but
12 based on hearsay we're coming to tell you that we think the
13 county will allow us to rejuvenate this. Oh, and we don't
14 think the county will allow anyone else to, namely BondRok.

15 THE COURT: Well I hear you saying that you think
16 that BedRok (sic throughout) is willing to take that risk as
17 well.

18 MR. ZIMBELMAN: I -- that's my understanding. So
19 that's the second --

20 THE COURT: Which there's some here to confirm.

21 MR. ZIMBELMAN: That's really the third issue. I
22 told you I had three issues today.

23 THE COURT: Okay.

24 MR. ZIMBELMAN: First, I think this is -- I think
25 we're being severely prejudiced by this being brought on a

1 shortened time and having to respond to hearsay that's not
2 supported and not being able to, you know, at least take a
3 deposition and find out what really happened here. Two -- or
4 three I told you I think the BondRok question needs to be
5 resolved. I think there has to be a bidding process that has
6 to figure out what's happened.

7 But third and most importantly -- my second most
8 important point is this: There is no statutory basis that
9 this Court has -- whether it's BondRok or whether it's the
10 buyer that's being proposed in this present motion, there is
11 no statutory basis for voiding our liens. Our liens are
12 valid. You have deemed an issue of priority, sure. But you
13 haven't --

14 THE COURT: Well, is it your contention that if I
15 ordered the sale, I would somehow void your liens?

16 MR. ZIMBELMAN: Well --

17 THE COURT: You'd still have the ability to get a
18 judgment against the owner.

19 MR. ZIMBELMAN: Our -- no, because --

20 THE COURT: You wouldn't?

21 MR. ZIMBELMAN: -- what they're asking you to do is
22 to waive and void our liens.

23 THE COURT: No.

24 MR. ZIMBELMAN: Our -- if they want to sell it
25 subject to our liens, that's fine with us.

1 THE COURT: No, what I understand they're asking me
2 to do is sell the property, transfer your liens to the
3 proceeds --

4 MR. ZIMBELMAN: Right.

5 THE COURT: -- and then to the extent that the
6 property's not worth more, you would be entitled to a personal
7 judgment against the owner.

8 MR. ZIMBELMAN: That's great, except that a personal
9 judgment is not a lien, Your Honor. And a personal judgment
10 against Gemstone? Why do we have -- why did we have to bring
11 lien claims, Your Honor, because Gemstone didn't pay?

12 THE COURT: Okay, but my point still is this: If
13 you follow the statutes, you're successful, you -- the supreme
14 court decides you're number one --

15 MR. ZIMBELMAN: Right.

16 THE COURT: -- you foreclose, what are you going to
17 get? You're going to get the value of the property, right?

18 MR. ZIMBELMAN: We get the value of the property of
19 whatever we can sell it for at that time, Your Honor.

20 THE COURT: Right.

21 MR. ZIMBELMAN: Whatever we can sell it for, not
22 whatever they think they could sell it for whatever back-room
23 deal they've done to procure a price that is at least three
24 and a half million lower than a -- an apparently successful
25 and stable and qualified bidder has put on the table. This

1 stinks to high heaven, Your Honor. This smells of bad fish --

2 THE COURT: Well it sounds to me like maybe what we
3 ought to do is have an evidentiary hearing. I mean, if you're
4 willing to -- if -- are you telling me that you would be
5 willing to do this if BedRok was the buyer?

6 MR. ZIMBELMAN: No. What I am telling you is that
7 if you choose to do this and the only way, by the way, that
8 you can do this legally, under the law, and with all due
9 respect to Your Honor, is to do what was suggested and that is
10 to --

11 THE COURT: To lift the stay?

12 MR. ZIMBELMAN: -- is to lift the stay because then
13 -- and then --

14 THE COURT: Well that's what they asked me to do, in
15 essence.

16 MR. ZIMBELMAN: -- and then they'd have to engage in
17 a foreclosure --

18 THE COURT: Yeah.

19 MR. ZIMBELMAN: -- process which they can't do
20 overnight, okay, so to the extent there's an emergency
21 involved, it's not going to be resolved by lifting the stay
22 because they have to go 120 days now. So that's not going to
23 solve their problem, number one.

24 THE COURT: Maybe not, but I guess what I'm trying
25 to get at is, you know, as a practical matter, how do the lien

1 claimants think that they're going to do better? Why is it
2 that you don't want to --

3 MR. ZIMBELMAN: Secondly we do think --

4 THE COURT: Yeah.

5 MR. ZIMBELMAN: -- even if you were to rule against
6 us on the question of the sale, we think there's three and a
7 half million dollars out there that's been left --

8 THE COURT: Okay.

9 MR. ZIMBELMAN: -- off the table, okay?

10 THE COURT: I hear that.

11 MR. ZIMBELMAN: So that's our -- but that's our --
12 understand please, that's our backup position.

13 THE COURT: That's your backup position --

14 MR. ZIMBELMAN: Our primary legal position is we
15 have a right to take this up to the supreme court. You've
16 already said so.

17 THE COURT: Right.

18 MR. ZIMBELMAN: And it says we can do that without
19 bond and I think that's appropriate. And the only bond that
20 is appropriate is the one they don't want to pay. They talked
21 about spending money on insurance and maintenance and so
22 forth. How about --

23 THE COURT: So how --

24 MR. ZIMBELMAN: -- the money for a bond -- simply
25 post a bond against our liens?

1 THE COURT: Well --

2 MR. ZIMBELMAN: That's what the statute says you can
3 do.

4 THE COURT: How much would they have to post under
5 your argument if the property were sold? Say we sell the
6 property. You're still asking for them to post additional
7 money.

8 MR. ZIMBELMAN: Right, the statute says that a lien
9 release bond must be one and a half times the value of the
10 liens.

11 THE COURT: Right.

12 MR. ZIMBELMAN: Now, we're certainly -- we certainly
13 recognize there may be some duplication. You know, you have
14 the general contractor's lien, you have the subcontractor's
15 liens. And they're perfectly valid even though there is
16 duplication, but we're certainly -- at least from my client's
17 perspective, to the extent there's some duplication there,
18 we're willing to stipulate and have a hearing --

19 THE COURT: Eliminate the duplication.

20 MR. ZIMBELMAN: -- and determine what the right
21 number is.

22 THE COURT: Yeah.

23 MR. ZIMBELMAN: You know, we don't want this -- we
24 don't want it to be overly burdensome --

25 THE COURT: Right.

1 MR. ZIMBELMAN: -- but the statute says you have to
2 post a bond one and a half times the value of the liens.
3 Simple as that you pay a fee for a bond and it's posted and
4 that's how we're secured. Not against the proceeds of a sale
5 that frankly we think is suspect at best. Not against a sale
6 of value that we haven't -- as the lien claimants who we
7 believe have a right to foreclose on the property and take
8 control of the property that we think is an appropriate value
9 for this property either today or in six months or a year,
10 however long it takes us to do this to get to the supreme
11 court and hopefully achieve a reversal --

12 THE COURT: Who's going to pay the carrying costs of
13 the property in the meantime?

14 MR. ZIMBELMAN: Well, that's not really my issue,
15 Your Honor, and I understand what --

16 THE COURT: Well but it's an issue that -- it should
17 be your issue because if nobody pays the carrying costs, what
18 we're going to have is a piece of property --

19 MR. ZIMBELMAN: The argument that they're doing this
20 for our benefit, Your Honor, I mean they're doing it for their
21 benefit.

22 THE COURT: Well I understand --

23 MR. ZIMBELMAN: They wouldn't do it --

24 THE COURT: And I understand that.

25 MR. ZIMBELMAN: -- if it wasn't for their benefit,

1 so --

2 THE COURT: But you've got to recognize that issue
3 going forward as well.

4 MR. ZIMBELMAN: I understand that issue, Your Honor,
5 but the lien -- there's nothing in the lien statute that says
6 that lien claimants have an obligation to do that and --

7 THE COURT: Well and there's nothing that says that
8 they do either.

9 MR. ZIMBELMAN: That's right. That's right.

10 THE COURT: So nobody --

11 MR. ZIMBELMAN: And they don't have to --

12 THE COURT: So say nobody does. Then what happens?

13 MR. ZIMBELMAN: Well, you know, unfortunately, Your
14 Honor, that's an area of the law that --

15 THE COURT: Somewhat lacking?

16 MR. ZIMBELMAN: -- there's no direction on and --

17 THE COURT: Yeah.

18 MR. ZIMBELMAN: -- it's unfortunate, but you can't
19 expect lien claimants, contractors, to pay these costs simply
20 to preserve their lien rights and there's nothing in the
21 statute that says we should do so. I mean, I hate to say --

22 THE COURT: Well and I understand that.

23 MR. ZIMBELMAN: -- the banks have money, but the
24 banks have money. I mean, we don't.

25 THE COURT: I'm trying to talk in somewhat -- trying

1 to be somewhat practical here. I mean, I --

2 MR. ZIMBELMAN: I understand.

3 THE COURT: -- I realize the law is what it is --

4 MR. ZIMBELMAN: Yeah.

5 THE COURT: -- but nevertheless, are you not
6 shooting yourself in the foot if this sale doesn't go through?

7 MR. ZIMBELMAN: We don't think so and I think it's
8 purely speculative to make that argument, Your Honor. I mean,
9 the reality is this property could be worth \$10 million more
10 by the time we get back from the supreme court.

11 THE COURT: But who's going to pay the carrying
12 costs and what's going to happen to the permits?

13 MR. ZIMBELMAN: Well there's nothing that -- the
14 permits? Who says -- okay. You need to have an --

15 THE COURT: That's an issue.

16 MR. ZIMBELMAN: You need to have an evidentiary --

17 THE COURT: I think --

18 MR. ZIMBELMAN: -- hearing before you decide that
19 question because --

20 THE COURT: I'm thinking that you're probably right
21 about that.

22 MR. ZIMBELMAN: -- I severely doubt that that's --

23 THE COURT: Yeah.

24 MR. ZIMBELMAN: -- a fact, okay?

25 MR. PEEL: Okay. If I may step in here.

1 MR. ZIMBELMAN: Please.
2 MR. PEEL: Your Honor, do you mind?
3 THE COURT: Oh no, I don't.
4 MR. PEEL: Richard Peel for the record. I just --
5 THE COURT: I'm no expert on mechanics liens so have
6 at it.
7 MR. PEEL: Well, I just --
8 THE COURT: But I've spent a lot of time in
9 bankruptcy court so this is starting to feel very familiar.
10 MR. PEEL: I just want to make a couple of points.
11 There are several different options that are available. We're
12 not saying they can't sell the property.
13 THE COURT: Okay.
14 MR. PEEL: They can sell the property, but it must
15 be subject to our liens. And they don't have a buyer that's
16 willing to do that. That's their dilemma. However --
17 THE COURT: Well, who would?
18 MR. PEEL: Okay, but --
19 THE COURT: I mean, that's not really even an issue.
20 MR. PEEL: All right, but there is a way to fix
21 this.
22 THE COURT: Okay.
23 MR. PEEL: And the way is this.
24 THE COURT: I'm listening.
25 MR. PEEL: You've got about \$25 million total in

1 mechanics lien claims if you take out the duplication from
2 what I understand.

3 THE COURT: Okay.

4 MR. PEEL: I may be wrong on that. It could be a
5 little bit higher, could be a little bit lower, but let's say
6 it's give or take 25. Our firm represents about 10 million of
7 that 25.

8 THE COURT: Okay.

9 MR. PEEL: And what they could do is they could go
10 ahead and proceed with the sale and put the sale proceeds in
11 the block trust account as they talked about, but at the same
12 time put up a bond for the remainder, which means that they'd
13 need to come up with the difference between the approximately
14 18 million that they'd put in the trust account and the
15 \$37,250,000 or thereabouts 500,000 that would be necessary in
16 order to fully secure the lien claimants.

17 So they could come up with a bond for the remainder
18 and that would be something that I think that my clients would
19 consider because it would put them in a situation where they'd
20 be fully secured. The main issue that we've got is that
21 essentially, there has not been any evidence as to the value
22 of this property other than one affidavit and then you've got
23 a couple of offers that have come in. This has been on a
24 hurried basis and from our perspective, we're very, very
25 concerned about having this property undersold.

1 You've also heard Mr. Jones talk about the fact that
2 they've spent three or four million dollars in preservation
3 costs. Well I can guarantee you as I'm standing here that if
4 you grant the motion that they have provided to this Court,
5 the first thing they're going to do right after that sale
6 takes place and those proceeds are put into that account is
7 file a separate motion to seek to be reimbursed for their
8 preservation costs.

9 THE COURT: Well they may do that. That's --

10 MR. PEEL: They may do that and so --

11 THE COURT: That's down the road speculative.

12 MR. PEEL: -- and that's down the road. And that
13 will even further dwindle the amount that's available to
14 properly secure the lien claimants.

15 Now I want to make this very clear. The lien
16 claimants have already put value into this property. They've
17 improved it to the tune of 25 million.

18 THE COURT: Right.

19 MR. PEEL: And I --

20 THE COURT: Twenty-five million that's unpaid.

21 MR. PEEL: Unpaid.

22 THE COURT: It's actually quite a bit more than
23 that --

24 MR. PEEL: Well sure.

25 THE COURT: -- in terms of the actual work that was

1 done.

2 MR. PEEL: Sure. And I suspect that the reason why
3 Your Honor in your prior ruling did not require a bond for
4 seeking of a writ upon appeal was because you took that into
5 consideration. Not sure, but I suspect that that's probably
6 the case. And it would add insult to injury to make us bond
7 it again, which is what they're asking for.

8 So if we go back to the statute, the statute only
9 provides five basises (sic) that this Court has for
10 recognizing the release of a lien against real property. One
11 is a waiver and release in the form set forth in 108.2453.
12 Another is an accord and satisfaction which we don't have
13 here. That's discussed in 108.245- -- excuse me, 108.2457. A
14 joint check. Don't have that. You have the issue of a bond
15 which we've discussed. And then you have a 108.2275 motion
16 for order to show cause and they haven't brought that.

17 So right now they don't have a legal basis for
18 getting these liens removed from the property. And just in
19 short, if they want to sell the property, they can sell the
20 property subject to the liens. If they want to get the liens
21 off, they can come back and they can try to cut a deal where
22 they bond a portion of the amount necessary to get us made
23 whole and put the proceeds in the trust account that they
24 talked about.

25 That would be my recommendation on how to get this

1 resolved. I feel like it's fair. I feel like it's
2 appropriate. And if the Court, in all due respect, feels that
3 there is some merit to their arguments, we would at least like
4 to have the opportunity of fully briefing this and having some
5 evidence as to what that value of the property is and what the
6 bidders have actually bid, because I do think to consider this
7 on an order shortening time when, by their own admission, the
8 permits have already expired and we're already beyond that
9 date --

10 THE COURT: Right.

11 MR. PEEL: -- I think that this is just silly. I
12 think it's nonsense for us to be even having this discussion
13 today in such a hurried fashion. And as we've indicated,
14 we've got counsel that's ready to go forward with our writ, as
15 the Court has allowed, so that we can challenge the issue of
16 priority --

17 THE COURT: You haven't filed the writ yet?

18 MR. PEEL: We're in the process of doing so, Your
19 Honor.

20 THE COURT: How much time do you have to do that?

21 MR. PEEL: You --

22 THE COURT: Is there --

23 MR. PEEL: According to your order, you did not put
24 a date --

25 THE COURT: Oh.

1 MR. PEEL: -- certain in the order for us to do it.
2 So we've been doing our best to try to get that prepared so we
3 could get that filed --
4 THE COURT: Because there's -- the statute doesn't
5 set a time.
6 MR. PEEL: The statute does not set a time.
7 THE COURT: Yeah, it's not like a notice of appeal.
8 MR. PEEL: No.
9 THE COURT: Yeah.
10 MR. MEIER: If I may, Your Honor, not to interrupt
11 Mr. Peel, but just on that point because he's correct that the
12 order does not prescribe --
13 THE COURT: Right.
14 MR. MEIER: -- a time to do that. However, you will
15 recall again that the representations from APCO were that the
16 petition was going to be prepared I think in a matter of about
17 two weeks and that was well over two weeks ago. I understand
18 now -- and no disparagement intended to Mr. Gochnour because
19 it seems like there's more cooks standing --
20 THE COURT: Well, but there --
21 MR. MEIER: -- around the pot now, but we need to --
22 THE COURT: And that -- but that's really a --
23 MR. MEIER: Well, I --
24 THE COURT: -- a side issue.
25 MR. MEIER: And my point is this process needs to

1 get moved along and perhaps the appropriate thing to do is to
2 amend your order to provide them with a date certain to file
3 their petition if you're not going to require them to bond it.

4 THE COURT: Okay.

5 (Counsel confer.)

6 THE COURT: Were you finished, Mr. --

7 MR. PEEL: Okay.

8 THE COURT: Oh.

9 MR. PEEL: I just talked to Mr. Polsenberg.

10 According to him, we need somewhere in the neighborhood of
11 about 30 days to get the writ submitted. That's about how
12 long it's going to take and at that point then we can proceed
13 with that process.

14 But again, I do think that that's the appropriate
15 remedy. It's the remedy that this Court previously recognized
16 and it would allow us to have the issue of priority resolved.
17 It would also allow us to resolve many of the things that they
18 say that they're entitled to. They don't have a judgment as
19 the Court correctly noted. They have a ruling on priority
20 that's not final yet. They've got a -- an argument that
21 they're entitled to the sale proceeds if they were to
22 foreclose, but they haven't foreclosed.

23 So with all due respect, these are the things that I
24 think that I would ask the Court to take into consideration.
25 Appreciate the time.

1 THE COURT: Okay.

2 Want to be -- Mr. Berman, you --

3 MR. BERMAN: Yes, thank you, Your Honor.

4 THE COURT: You need to stand close to the
5 microphone there.

6 MR. BERMAN: Thank you. We knew this motion was
7 coming because we received a letter from Mr. Jones stating
8 that he was going to come to court on an order shortening time
9 seeking to lift the stay to sell the property free and clear
10 and to require anybody objecting to post a bond for the amount
11 of the proceeds and -- or of the proposed sale. And I was
12 actually eagerly anticipating that motion because in my mind's
13 eye, I could not wrap my arms around the concept of what legal
14 authority supported those claims. And when I got the motion,
15 here's what I found; 14 pages without a single citation to a
16 statute, to a case, to a court rule, anything that would
17 authorize or empower the Court to grant the relief that
18 they're requesting in this motion.

19 EDCR 2.20 requires two things to accompany a motion,
20 points and authorities. And that rule goes on to say that the
21 absence of such a memorandum may be construed as an admission
22 that the motion is not meritorious, as cause for its denial or
23 as a waiver of all grounds not so supported.

24 Now, Mr. Peel's already run through the grounds on
25 which you can remove a mechanics lien from a piece of

1 property. We're outside of those. They used some magical
2 language that we hear every once in awhile, free and -- they
3 want you to authorize them to sell the property free and clear
4 of all liens and encumbrances. Well, you've -- you mentioned
5 to us that you do bankruptcy work. Where does that language
6 come from? It comes from 11 U.S.C. Section 363(f). We're not
7 in bankruptcy court and unless I took a wrong turn at the
8 metal detector, that has no application. It's not been
9 adopted as part of state law.

10 And when you've got a statute that tells them how
11 they remove this -- that's by bonding around a lien one and a
12 half times the face amounts of the liens -- coming into and
13 saying to the Court use your equitable powers to get around
14 that statute or that where the legislature has already spoken
15 and already filled up the field, I don't see how they get
16 there.

17 And as has been pointed out, we're sold -- we're not
18 sold out junior lienholders. All we are is reduced in
19 priority. And the question that we have to ask ourselves and
20 the answer to the question that people can't seem to give you
21 -- that you've posed several times and nobody seems to be able
22 to give you -- you have Judge Delaney who looked at -- take a
23 look at this. She made one decision.

24 THE COURT: Right.

25 MR. BERMAN: You took a look at it on the same

1 facts, on the same law, so on and so forth. You had a
2 different reading on it. My point is reasonable minds can
3 differ as to how this should play out. It's going up either
4 on a writ or at the end of the case on a final judgment and
5 the final word on this is going to be had by the Nevada
6 Supreme Court.

7 Now, maybe they're right. Maybe the lien claimants
8 are right. If the lien claimants are right and the property
9 is sold out from underneath us and the economy in Las Vegas is
10 improved over the course of the intervening years and so on
11 and so forth and all we're left is what they thought that they
12 could get for it under all these reasons that I'll go into for
13 a -- in a minute, what -- where does that leave us? And if
14 it's a gamble that we're -- we want to take, we're entitled to
15 take that gamble. And even if you say, as a judge and as a
16 practicing attorney, I think it's a bad bet, you can say that,
17 but if that's the bet we want to make, that's the bet we're
18 entitled to.

19 And as it sits right now, they can't convey better
20 title than they possess and nobody's going to buy it with our
21 liens in place. They had a chance to meet with the
22 lienholders and try and make some kind of deal and so on and
23 so forth and if you look at the history of this thing, you
24 know, on Valentine's Day while everybody else was out buying
25 flowers for their sweetie, we were all in Mr. Jones'

1 conference room trying to figure this all out. We had reached
2 a sort of tentative agreement that they were going to deduct
3 1.7 million out of the sale proceeds. A week later we get
4 their demand and that's ballooned by half a million dollars to
5 2.175 and --

6 THE COURT: Is that the issue that hung up the --

7 MR. BERMAN: Yeah. And --

8 THE COURT: And today they're saying they'll deposit
9 it all --

10 MR. BERMAN: And that extra half --

11 THE COURT: -- minus the cost of sale.

12 MR. BERMAN: Yeah. And that extra half a million
13 dollars was 9,000-dollar a month -- part of it was a 9,000-
14 dollar a month fee to Scott Financial, the movant here, to
15 line their own pockets at the lienholders' expense, so that's
16 why that went away.

17 And you've already heard -- I mean, you know, it
18 doesn't take a genius to figure this out. They didn't seek
19 all this relief at once because it's too much for the Court.
20 But in fact, they're going to be back here in a couple of
21 months with that \$4,347,000 they claim to have spent without
22 auth- -- without, you know -- or, they claim was necessary and
23 so on and so forth, and that's going to further reduce the
24 amount -- if the Court agrees that they're allowed to do it,
25 that's going to further decrease the amount that we're left

1 with and that's just not a deal that we're willing to take.

2 There's no evidentiary basis before the Court where
3 you -- in my opinion where you can make a determination of
4 what the fair market value of this is -- of this property is,
5 because Mr. Jones has conceded that the advertising period was
6 on a very condensed time frame and they did the best they
7 could under the circumstances. I don't offer up a criticism
8 on that point, but people don't buy a 20 million-dollar
9 distressed property with only 30 or 45 days to look at it.

10 Now, there is an appraisal. There's an appraisal
11 attached to the motion. That appraisal is dated May 19, 2010.
12 It's two years old. And this is one of the problems when you
13 do things like this on an order shortening time. I didn't
14 have time to prepare a brief on this --

15 THE COURT: Right.

16 MR. BERMAN: -- but I'd ask the Court to take
17 judicial notice that a two-year-old appraisal is worthless.
18 The argument could be made that the property's decreased in
19 value in the past two years, but from the things I read in the
20 paper, commercial activity is picking up substantially.

21 And then we've got the BondRok issue which has
22 already been mentioned.

23 THE COURT: Right.

24 MR. BERMAN: You know, BondRok claimed in the letter
25 that they sent to the lien claimants that they have in fact

1 met all of these requirements, that they've proven that they
2 were -- had the cash at hand. Now, how is Ready Mix Inc.
3 supposed to figure that out in seven days --

4 THE COURT: Right.

5 MR. BERMAN: -- between the filing of a motion and
6 today?

7 The movants may very well be correct that BondRok is
8 just a -- they're not a real player, they're just a tire
9 kicker and a pretender and they can't move forward with this,
10 or it could be that the 18 million is somebody's brother-in-
11 law with an undisclosed interest and they're giving him some
12 kind of sweetheart deal at the expense of everybody else. I'm
13 not accusing either party of that. What I'm telling you is we
14 don't know and we can't know. And it's unfair when there's
15 that kind of money at stake just to kind of brush it off to
16 the side as if it doesn't exist.

17 And in terms of the security, the real property
18 taxes, the insurance, and all that kind of stuff, it's the
19 owner's responsibility and if the lender's in priority
20 position, the lender should be the one that steps up to the
21 plate and pays those. And if the lender doesn't want to do
22 that, the lender is the one that's cutting off its nose to
23 spite its face. And it's certainly not the responsibility of
24 the lien claimants to either step up and do that or to
25 contribute to it.

1 So for those reasons, we just don't feel that we
2 ought to be here in court today on this particular application
3 supported by nothing more than some argument as to why they
4 think that this is in our best interest. Well, we can be the
5 judges of what's in our best interest and my client is not
6 signing up. We're not on board with this.

7 THE COURT: Well, I agree. I'm going to set an
8 evidentiary hearing, because I think we need more information
9 and we need more authorities, Mr. Jones, frankly.

10 Okay. I'm available on Thursday, the 14th, all day,
11 if that's a day that'll work for everybody.

12 MR. ZIMBELMAN: Your Honor, I know that -- and
13 again, Mr. Gebhart has been the lead on this and as we
14 indicated, he is in trial. He's got --

15 THE COURT: Yeah.

16 MR. ZIMBELMAN: -- two more trials still this month.
17 One that starts on the 15th. I'd be happy to step in, Your
18 Honor, but I'm in arbitration the next two weeks -- the entire
19 next two weeks. So if we could set it for the following week,
20 I'd be able to do it. The week of the 25th --

21 THE COURT: You mean the 20 -- 20th, 21st?

22 MR. ZIMBELMAN: 25th.

23 THE COURT: What does that look like?

24 MR. ZIMBELMAN: We'd like an opportunity to take a
25 deposition or two as well, Your Honor, before we have this --

1 THE COURT: Trial by ambush? I mean --

2 MR. ZIMBELMAN: Well, yeah, I -- we're talking about
3 information that we've --

4 THE COURT: Informal interviews?

5 MR. ZIMBELMAN: Well information we've heard today I
6 have no way of determining whether that's true or not and, you
7 know, taking a deposition during cross-examination is pretty
8 difficult.

9 MR. JONES: Your Honor --

10 THE COURT: Well, it's been done.

11 Yes?

12 MR. ZIMBELMAN: It's been done, but --

13 MR. JONES: I've been involved in a lot of
14 evidentiary hearings. That's where you actually earn your fee
15 and you -- it happens every day. We have --

16 THE COURT: It's what happens if you're doing a
17 motion to expunge a lis pendens.

18 MR. JONES: I mean, these are seasoned lawyers.
19 They should be able to handle a little cross-exam in a
20 evidentiary hearing.

21 Judge, here's the problem -- whatever you want --
22 obviously it's Court's discretion. I didn't have a lot of
23 authority because I was hoping I'd get here and reason would
24 prevail. It obviously hasn't.

25 THE COURT: Right.

1 MR. JONES: And so I'm fine with the evidentiary
2 hearing. I understand what we're asking to do is significant.
3 So, you know, we'll do whatever we can to accommodate the
4 Court. Just so you know, and I want these other lawyers to
5 know, to the extent that -- and by the way, BondRok has never
6 intervened. They've not filed a separate action and I've been
7 told point blank by WGH if we were to accept an offer from
8 BondRok, which has never been forthcoming, they've never
9 offered to put up any money to this date, period, that WGH
10 would sue my client for specific performance.

11 THE COURT: Who's -- oh, WGH is the --

12 MR. JONES: Is the buyer.

13 THE COURT: Okay.

14 MR. JONES: So that's what I'm dealing with. Grubb
15 & Ellis -- we followed the advice of Grubb & Ellis and said
16 that their other bid was lower and it was disqualified. So on
17 that advice, we accepted the bid. Another party comes in
18 later says we're going to pay more, they -- where are they?
19 Why haven't they intervened? If they're really serious, but
20 secondly -- and I think it's because I've said if you want to
21 play that game, just be careful because we're going to sue you
22 for interference with contract if you're -- and they've
23 already, as far as I'm concerned, done that. They helped
24 create this firestorm.

25 But the point is, Judge, is that now my client's

1 stuck. My client doesn't own the property.

2 THE COURT: That's right.

3 MR. JONES: We have the buyer has signed off on the
4 purchase and sale agreement. Obviously, that was a
5 requirement so my client just has a lien security interest and
6 the buyer has signed the purchase and sale agreement so we
7 have to deal with this. But in any event, if the Court wants
8 to set it on the 14th -- well, if I -- I don't know if that
9 works for everybody or not. I'll do whatever I got to do to
10 be here if I'm not in trial on this other case, which I need
11 to get back over to.

12 (Court and clerk confer.)

13 MR. MEIER: Would be -- Your Honor, would it be all
14 -- at all possible to do it on the 13th? Or the 15th?

15 MR. JONES: The 13th I'm in trial --

16 THE COURT: The 13th --

17 MR. GOCHNOUR: Yeah, we --

18 MR. JONES: -- in front of Judge --

19 THE COURT: And I have motions so we only have half
20 a day on a Tuesday or Wednesday.

21 MR. GOCHNOUR: I was going to say it can't be the
22 13th anyway because --

23 MR. JONES: We're -- right.

24 MR. GOCHNOUR: -- Mr. Jones, myself, Mr. Ferrario
25 are all in the other trial relating to this matter.

1 THE COURT: How about the 21st or the -- how about
2 the 22nd? Do -- we don't have anything on the 22nd, do we?

3 MR. GOCHNOUR: Either of those would be fine with
4 me.

5 (Court and clerk confer.)

6 MR. PEEL: Your Honor, as I've indicated, Mr.
7 Gebhart has trial. He has two more still this month. Mr.
8 Zimbelman can do it, but he can't do it until the week of the
9 25th.

10 THE COURT: I'm gone that week. I'm going to the
11 Bar convention. So my availability right now is --

12 MR. PEEL: How about the 2nd or the 3rd?

13 THE COURT: Of July?

14 MR. PEEL: Yeah.

15 THE COURT: Well, the 2nd --

16 (Court and clerk confer.)

17 THE COURT: Okay, we could do the 2nd of July. Oh,
18 the 2nd is Monday, the 3rd is Tuesday. We've got a calendar
19 Tuesday morning so that gives us half a day.

20 MR. JONES: I'm -- I think -- Wade, are we going to
21 be in trial on the 3rd? I think --

22 MR. GOCHNOUR: It's my --

23 (Counsel confer.)

24 THE COURT: How long --

25 MR. FERRARIO: I think if you were going to set that

1 here, he would -- or Judge Denton would probably not force us
2 so --

3 MR. JONES: That's probably true.

4 THE COURT: Yeah.

5 MR. FERRARIO: -- yeah, because it's kind of a
6 wasted -- it's a floating day --

7 THE COURT: Okay.

8 MR. JONES: That's probably true.

9 THE COURT: So you're looking at the 2nd of July?
10 Because --

11 MR. JONES: Or the 3rd. Either one, Your Honor --

12 THE COURT: The 3rd, I have a motion calendar in the
13 morning so that means you'd only get half a day.

14 MR. ZIMBELMAN: We probably need most of the day,
15 unfortunately.

16 THE COURT: I'm thinking you're going to need a day.
17 You know, and if we had to bleed over into the afternoon of
18 the 3rd, that would be okay, but we wouldn't have a full day.

19 MR. ZIMBELMAN: Can we --

20 MR. JONES: I can do it the Monday, the 2nd. That's --
21 fine.

22 MR. ZIMBELMAN: Can we set --

23 THE COURT: Monday, the 2nd?

24 MR. ZIMBELMAN: Can we set aside the 2nd and then if
25 needs be, the afternoon of the 3rd?

1 THE COURT: We can move into the afternoon's --
2 MR. ZIMBELMAN: Thank you, Your Honor.
3 THE COURT: Yes. Okay, so July 2nd at 9:30 we'll
4 have our -- we'll begin an evidentiary hearing on this matter.
5 MR. GOCHNOUR: Your Honor, and again, I'd like to
6 revisit this, too. I hear Mr. Jones' argument, but I think it
7 makes sense if you just gave us like two, two-hour
8 depositions, that's not unreasonably burdensome to try to get
9 some --
10 THE COURT: It's probably not.
11 MR. GOCHNOUR: -- minuscule amount of discovery and
12 figure out what their position is other than what they're
13 going to tell us and what somebody gets up and suddenly says.
14 It's not that much and I don't think it causes --
15 THE COURT: That sounds reasonable.
16 MR. JONES: Well here --
17 THE COURT: Two, two-hour depositions?
18 MR. JONES: The problem I have, Judge, is that again
19 I'm in this other trial that's going to go off and on --
20 THE COURT: But there are other people in your firm.
21 MR. GOCHNOUR: Well --
22 MR. JONES: Well that's true. Other people could do
23 it.
24 MR. GOCHNOUR: But, Your Honor, that --
25 THE COURT: That's why you all have --

1 MR. GOCHNOUR: -- that other trial is --
2 THE COURT: -- more firms.
3 MR. GOCHNOUR: -- quite frankly, through this week,
4 Monday --
5 THE COURT: Yeah.
6 MR. GOCHNOUR: -- or, excuse me, Tuesday, Wednesday
7 of next week --
8 THE COURT: I'll grant you two, two-hour
9 depositions.
10 MR. GOCHNOUR: Okay.
11 MR. ZIMBELMAN: Thank you, Your Honor.
12 MR. FERRARIO: Your Honor, I think you should --
13 MR. PEEL: Thank you, Your Honor.
14 THE COURT: So that's two witnesses, two hours each.
15 MR. FERRARIO: I think you should force Mr. Jones to
16 do a couple eight-hour dep.
17 (Laughter.)
18 THE COURT: All right, we're in recess.
19 COUNSEL: Thank you, Your Honor.
20 THE COURT: Okay.
21 MR. JONES: Thank you again for, Your Honor, for
22 putting us on first.
23 THE COURT: You bet.
24 (THE PROCEEDINGS ADJOURNED AT 10:03:39.)
25 * * * * *

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the video proceedings in the above-
3 entitled case to the best of my ability.

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9 TRACY A. GEGENHEIMER, CERT*D
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CERTIFICATE OF SERVICE

I hereby certify that on this day, the 27th day of June 2012, I submitted the foregoing **Appendix Volume 8 (Supplemental)** to the Court (ftp) for filing and service via the Court's eFlex electronic filing system. According to the system, electronic notification will be sent to the following registered participants:

Beau Sterling

Gwen Mullins

Michael Gebhart

Wade Gochmour

J. Jones

Glenn Meier

2. Traditional means:

None.

/s/ Beau Sterling

BEAU STERLING