

  
CLERK OF THE COURT

Electronically Filed  
Oct 02 2013 03:23 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOAS**  
Stanley W. Parry, Esq.  
2 Nevada Bar No. 1417  
Timothy R. Mulliner  
3 Nevada Bar No. 10692  
BALLARD SPAHR LLP  
4 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
5 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
6 Email: parrys@ballardspahr.com  
Email: mullinert@ballardspahr.com  
7 *Attorneys for Plaintiff/Appellant*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 AMERICA FIRST FEDERAL CREDIT  
UNION, a federally chartered credit union,

Case No.: A-13-679511-C

11 Plaintiff,

Dept. No.: XXX

12 v.

13 FRANCO SORO, and individual; MYRA  
14 TAIGMAN-FARRELL, an individual; ISAAC  
FARRELL, an individual; KATHY  
15 ARRINGTON, an individual; and AUDIE  
EMBESTRO, an individual; DOE Individuals 1  
16 to 10; and ROE Business Entities 1 to 10.

17 Defendants.

18 **NOTICE OF APPEAL**

19 Notice is given that America First Federal Credit Union appeals to the Supreme Court of  
20 Nevada from the Order Re: Defendants' Motion to Dismiss entered by the district court on  
21 September 9, 2013<sup>1</sup>.

22 BALLARD SPAHR LLP

23 By: /s/ Timothy R. Mulliner  
24 Stanley W. Parry  
25 Nevada Bar No. 1417  
Timothy R. Mulliner  
26 Nevada Bar No. 10692  
100 North City Parkway, Suite 1750  
27 Las Vegas, Nevada 89106  
*Attorneys for Plaintiff/Appellant*

28 <sup>1</sup> Notice of Entry was served on September 10, 2013.

Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I hereby certify that on the 27<sup>th</sup> day of September, 2013, a true  
3 and correct copy of the foregoing **NOTICE OF APPEAL** was served to the following in the  
4 manner set forth below:

5 I. Scott Bogatz, Esq.  
6 **BOGATZ LAW GROUP**  
7 3800 Howard Hughes Parkway, Suite 1850  
8 Las Vegas, NV 89169

9  Facsimile Transmission

10  U.S. Mail, Postage Prepaid

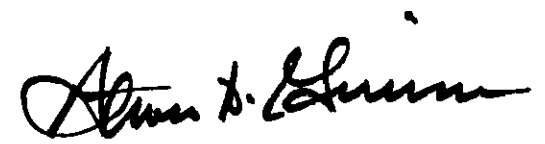
11  E-mail

12  Certified Mail, Receipt No. \_\_\_\_\_, return receipt requested

13   
14 an Employee of Ballard Spahr LLP

Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

1 **ASTA**  
Stanley W. Parry, Esq.  
2 Nevada Bar No. 1417  
Timothy R. Mulliner  
3 Nevada Bar No. 10692  
BALLARD SPAHR LLP  
4 100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617  
5 Telephone: (702) 471-7000  
Facsimile: (702) 471-7070  
6 Email: parrys@ballardspahr.com  
Email: mullinert@ballardspahr.com  
7 *Attorneys for Plaintiff/Appellant*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 AMERICA FIRST FEDERAL CREDIT  
UNION, a federally chartered credit union,

Case No.: A-13-679511-C

11 Plaintiff,

Dept. No.: XXX

12 v.

13 FRANCO SORO, and individual; MYRA  
14 TAIGMAN-FARRELL, an individual; ISAAC  
FARRELL, an individual; KATHY  
15 ARRINGTON, an individual; and AUDIE  
EMBESTRO, an individual; DOE Individuals 1  
16 to 10; and ROE Business Entities 1 to 10.

17 Defendants.

18 **CASE APPEAL STATEMENT**

19 **1. Party filing this Case Appeal Statement.**

20 This appeal and case appeal statement is filed on behalf of America First Federal Credit  
21 Union in the action above.

22 **2. Judge issuing the decision, judgment or order appealed from.**

23 The Honorable District Judge Jerry A. Weiss, Eighth Judicial District Court, Clark  
24 County, Department XXX

25 **3. Parties to the proceedings in the district court.**

26 America First Federal Credit Union Plaintiff  
27 Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Respondents  
28 Kathy Arrington, Audie Embestro

Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

1 **4. Parties involved in this appeal.**

2 America First Federal Credit Union Appellant

3 Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Respondents  
4 Kathy Arrington, Audie Embestro

5 **5. The name, law firms, addresses and telephone numbers of all counsel on appeal, and**  
6 **the party or parties they represent.**

7 Stanley W. Parry, Esq.  
8 Timothy Mulliner, Esq.  
9 BALLARD SPAHR LLP  
10 100 N. City Pkwy., #1750  
11 Las Vegas, Nevada 89106  
12 *Attorneys for Appellant*

13 I. Scott Bogatz, Esq.  
14 Charles Vlastic, Esq.  
15 BOGATZ LAW GROUP  
16 3800 Howard Hughes Pkwy., Ste. 1850  
17 Las Vegas, NV 89169  
18 *Attorneys for Respondent*

19 **6. Whether respondents were represented by appointed or retained counsel in the**  
20 **district court.**

21 Respondents were represented by retained counsel in the district court.

22 **7. Whether appellant was represented by appointed or retained counsel in the district**  
23 **court.**

24 Appellant was represented by retained counsel in the district court.

25 **8. Whether appellant was granted leave to proceed in forma pauperis in the district**  
26 **court.**

27 Appellant was not granted leave to proceed in district court *in forma pauperis*.

28 **9. The date the proceedings commenced in district court.**

This action commenced with the filing of a Complaint on April 4, 2013.

**10. Brief description of the nature of the action and result in district court.**

This is a deficiency action filed by Plaintiff/Appellant. The district court granted Defendants/Respondents' Motion to Dismiss on the basis that the court lacked subject matter jurisdiction.

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

**11. Whether the case has been the subject of a previous appeal.**

This matter has not been the subject of a previous appeal.

**12. Whether the appeal involves child custody or visitation.**

There are no child custody or visitation issues in this case.

**13. Whether the appeal involves the possibility of settlement.**

It is counsel's belief there is a possibility of settlement.

BALLARD SPAHR LLP

By: /s/ Timothy R. Mulliner  
Stanley W. Parry  
Nevada Bar No. 1417  
Timothy R. Mulliner  
Nevada Bar No. 10692  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106

*Attorneys for Plaintiff/Appellant*

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I hereby certify that on the 27<sup>th</sup> day of September, 2013, a true and correct copy of the foregoing **CASE APPEAL STATEMENT** was served to the following in the manner set forth below:

I. Scott Bogatz, Esq.  
BOGATZ LAW GROUP  
3800 Howard Hughes Parkway, Suite 1850  
Las Vegas, NV 89169

Facsimile Transmission

U.S. Mail, Postage Prepaid

E-mail

Certified Mail, Receipt No. \_\_\_\_\_, return receipt requested

  
an Employee of Ballard Spahr LLP

Ballard Spahr LLP  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

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

DEPARTMENT 30  
**CASE SUMMARY**  
**CASE NO. A-13-679511-C**

**America First Federal Credit Union, Plaintiff(s)**  
vs.  
**Franco Soro, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 30**  
Judicial Officer: **Wiese, Jerry A**  
Filed on: **04/04/2013**  
Conversion Case Number: **A679511**

CASE INFORMATION

**Statistical Closures**  
09/09/2013 Motion to Dismiss (By Defendant)

Case Type: **Breach of Contract**  
Subtype: **Other Contracts/Acc/Judgment**  
Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	A-13-679511-C
Court	Department 30
Date Assigned	04/04/2013
Judicial Officer	Wiese, Jerry A



PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>America First Federal Credit Union</b>	<b>Parry, Stanley Warren</b> <i>Retained</i> 7024717000(W)
<b>Defendant</b>	<b>Arrington, Kathy</b> Removed: 09/09/2013 Dismissed	<b>Bogatz, I. Scott</b> <i>Retained</i> 702-776-7000(W)
	<b>Embestro, Audie</b> Removed: 09/09/2013 Dismissed	<b>Bogatz, I. Scott</b> <i>Retained</i> 702-776-7000(W)
	<b>Farrell, Isaac</b> Removed: 09/09/2013 Dismissed	<b>Bogatz, I. Scott</b> <i>Retained</i> 702-776-7000(W)
	<b>Soro, Franco</b>	<b>Bogatz, I. Scott</b> <i>Retained</i> 702-776-7000(W)
	<b>Taigman- Farrell, Myra</b> Removed: 09/09/2013 Dismissed	<b>Bogatz, I. Scott</b> <i>Retained</i> 702-776-7000(W)

DATE

EVENTS & ORDERS OF THE COURT


INDEX

04/04/2013	 <b>Complaint</b> Filed By: Plaintiff America First Federal Credit Union <i>Complaint</i>
04/04/2013	Case Opened
06/19/2013	 <b>Affidavit of Service</b> Filed By: Plaintiff America First Federal Credit Union <i>Affidavit of Service</i>
06/25/2013	 <b>Affidavit of Service</b>

DEPARTMENT 30  
**CASE SUMMARY**  
**CASE NO. A-13-679511-C**


Filed By: Plaintiff America First Federal Credit Union  
*Affidavit of Service\_Franco Soro*

06/27/2013

 Affidavit of Service


Filed By: Plaintiff America First Federal Credit Union  
*Affidavit of Service*

06/27/2013

 Affidavit of Service


Filed By: Plaintiff America First Federal Credit Union  
*Affidavit of Service*

07/01/2013

 Affidavit of Service


Filed By: Plaintiff America First Federal Credit Union  
*Affidavit of Service-Audie Embestro*

07/09/2013

 Acceptance of Service


Filed By: Plaintiff America First Federal Credit Union  
*Acceptance of Service*

07/29/2013

 Initial Appearance Fee Disclosure

Filed By: Defendant Soro, Franco  
*Initial Appearance Fee Disclosure*

07/29/2013

 Motion to Dismiss

Filed By: Defendant Soro, Franco  
*Motion to Dismiss*

08/20/2013

 Opposition

Filed By: Plaintiff America First Federal Credit Union  
*Opposition to Defendant's Motion to Dismiss*

08/22/2013

 Receipt of Copy


Filed by: Plaintiff America First Federal Credit Union  
*Receipt of Copy of Opposition to Motion to Dismiss*

08/27/2013

 Reply

Filed by: Defendant Soro, Franco  
*Reply in Support of Motion to Dismiss*

08/29/2013

 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Wiese, Jerry A)

*Defendants' Motion to Dismiss*

09/09/2013


 Order

*Order Re: Defendants' Motion to Dismiss*

09/09/2013

**Order of Dismissal** (Judicial Officer: Wiese, Jerry A)  
Debtors: America First Federal Credit Union (Plaintiff)  
Creditors: Franco Soro (Defendant), Myra Taigman- Farrell (Defendant), Isaac Farrell (Defendant), Kathy Arrington (Defendant), Audie Embestro (Defendant)  
Judgment: 09/09/2013, Docketed: 09/16/2013




09/10/2013

 Notice of Entry of Decision and Order

Filed By: Defendant Soro, Franco  
*Notice of Entry of Decision and Order Granting Defendants' Motion to Dismiss*



DEPARTMENT 30  
**CASE SUMMARY**  
**CASE NO. A-13-679511-C**

09/17/2013	 Memorandum of Costs and Disbursements Filed By: Defendant Soro, Franco <i>Verified Memorandum of Costs</i>
09/27/2013	 Notice of Appeal Filed By: Plaintiff America First Federal Credit Union <i>Notice of Appeal</i>
09/27/2013	 Case Appeal Statement Filed By: Plaintiff America First Federal Credit Union <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
------	-----------------------

<b>Defendant</b> Arrington, Kathy	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 10/1/2013</b>	<b>0.00</b>
<b>Defendant</b> Embestro, Audie	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 10/1/2013</b>	<b>0.00</b>
<b>Defendant</b> Farrell, Isaac	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 10/1/2013</b>	<b>0.00</b>
<b>Defendant</b> Taigman- Farrell, Myra	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 10/1/2013</b>	<b>0.00</b>
<b>Defendant</b> Soro, Franco	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 10/1/2013</b>	<b>0.00</b>
<b>Plaintiff</b> America First Federal Credit Union	
Total Charges	493.00
Total Payments and Credits	294.00
<b>Balance Due as of 10/1/2013</b>	<b>199.00</b>

- County, Nevada

XXX

Case No.  
(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): America First Federal Credit Union

Defendant(s) (name/address/phone): Franco Soro, Myra Taigman-Farrell, Issac Farrell, Kathy Arrlington, Audie Embestro, DOE Individuals 1 - 10 and ROE Business Entites 1 - 10

Attorney (name/address/phone): Timothy R. Mulliner, Esq., Ballard Spahr LLP, 100 North City Parkway, Suite 1750, Las Vegas, NV 89101

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

**Arbitration Requested**


**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<p style="text-align: center;"><b>Negligence</b></p> <input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input checked="" type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

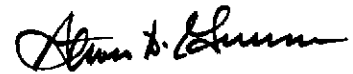
**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

4-4-13  
Date

  
Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union,**

**Plaintiff,**

**vs.**

**FRANCO SORO, an individual; MYRA TAIGMAN-FARRELL, an individual; ISAAC FARRELL, an individual; KATHY ARRINGTON, an individual; AUDIE EMBESTRO, an individual; DOES 1 through 10; ROE ENTITIES I through X,**

**Defendants.**

**Case No.: A679511  
Dept. No.: XXX**

**ORDER RE:  
DEFENDANTS' MOTION  
TO DISMISS**

**INTRODUCTION AND FINDINGS OF FACT.**

This matter stems from a business agreement, entered into in approximately 2002. At that time, America First apparently entered into a Business Loan Agreement whereby America First agreed to lend and Defendants agreed to borrow, approximately \$2,900,000.00 for business purposes. On or about the same date, a Commercial Promissory Note was executed, and it was secured by a Trust Deed with Assignment of Rents.

America First apparently went through the process of a non-judicial foreclosure of the subject Clark County, Nevada, property, and now seeks a deficiency judgment for the remaining amount which is allegedly owing.

On 7/29/13, the Defendants filed a Motion to Dismiss before this Court, arguing that this court does not have subject matter jurisdiction over this matter, due to the parties' agreement, which stipulates to the jurisdiction of the State of Utah. Plaintiff filed an Opposition on 8/20/13, and the Defendants filed a Reply on 8/27/13. This matter

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Judgment on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial
<input checked="" type="checkbox"/> Mot to Dis (by def)	<input type="checkbox"/> Transferred	

RECEIVED

SEP 09 2013

CLERK OF THE COURT

47

1 came on before this Court on August 29, 2013. Plaintiff was represented by Tim  
2 Mulliner, Esq., and Defendant was represented by Charles Vlastic, Esq. The Court heard  
3 oral argument, but took the matter under advisement because the Court had not had the  
4 opportunity to review the Defendant's Reply brief prior to the hearing, as a copy had not  
5 been provided to chambers and Odyssey did not show a copy, even at the time of the  
6 hearing. The Court has now had an opportunity to review all of the pleadings, and enters  
7 the following Order.

8 The Defendants' Motion to Dismiss is based on NRCP 12(b)(1) and NRCP  
9 12(h)(3). Those Rules read in pertinent part as follows:

10 ... the following defenses may at the option of the pleader be made by motion:  
11 (1) lack of jurisdiction over the subject matter.<sup>1</sup>

12 Whenever it appears by suggestion of the parties or otherwise that the court  
13 lacks jurisdiction of the subject matter, the court shall dismiss the action.<sup>2</sup>

14 The Business Loan Agreement in this case contained language as follows:

15  
16 **Applicable Law.** This Agreement (and all loan documents in connection with  
17 this transaction) shall be governed by and construed in accordance with the  
18 laws of the State of Utah.

19 **Jurisdiction.** The parties agree and submit themselves to the jurisdiction of  
20 the courts of the State of Utah with regard to the subject matter of this  
21 agreement.<sup>3</sup>

22 The Commercial Promissory Note contained language as follows:

23 If there is a lawsuit, Borrower(s) agrees to submit to the jurisdiction of the  
24 court in the county in which Lender is located.<sup>4</sup>

---

25  
26  
27 <sup>1</sup> NRCP 12(b)(1).

<sup>2</sup> NRCP 12(h)(3).

<sup>3</sup> See Business Loan Agreement at pg. 6.

<sup>4</sup> See Commercial Promissory Note at pg. 3.

1 The Trust Deed contained language as follows:

2 This Trust Deed shall be construed according to the laws of the State of NV.  
3 Notwithstanding any provision herein or in said note, the total liability for  
4 payments in the nature of interest shall not exceed the limits now imposed by  
the applicable laws of the State of NV.<sup>5</sup>

5 Although the Trust Deed includes language indicating that Nevada law applies,  
6 the Trust Deed is simply security for the Promissory Note.<sup>6</sup>

7 Plaintiff's attempt to obtain a deficiency judgment is an action based upon the  
8 Business Loan Agreement and the Commercial Promissory Note, not based on the Trust  
9 Deed. The Plaintiff has already foreclosed on the subject property.

10 Plaintiffs argue that the language contained in the Loan Agreement and in the  
11 Promissory Note constitutes a "consent" to jurisdiction in Utah, but does not indicate that  
12 "exclusive jurisdiction" is in Utah. Plaintiff cites to a 5<sup>th</sup> Circuit case for the proposition  
13 that, "For a forum selection clause to be exclusive, it must go beyond establishing that a  
14 particular forum will have jurisdiction and must clearly demonstrate the parties' intent to  
15 make that jurisdiction exclusive."<sup>7</sup>

16 Defendants argue that "forum selection clauses should not be rendered  
17 meaningless by allowing parties to disingenuously back out of their contractual  
18 obligations through attempts at artful pleading."<sup>8</sup> Defendants argue that the Loan  
19 Agreement and the Note contain a forum selection clause, which is fully enforceable.

20 In Defendant's Reply, they argue that, "In Nevada, promissory notes on real  
21 estate loans are typically secured by deeds of trust on property," and that "The note  
22 represents the right to the repayment of the debt, while the [deed of trust] . . . represents  
23

24  
25 <sup>5</sup> See Trust Deed, paragraphs 25-26, at pg. 5.

26 <sup>6</sup> See pg. 2 of the Commercial Promissory Note.

27 <sup>7</sup> See pgs. 4-5 of Plaintiff's Opposition, citing to *City of New Orleans v. Municipal Admin. Services*, 376  
F.3d 501, 504 (5<sup>th</sup> Cir. 2004). Note that Plaintiff also cites to *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817  
F.2d 75 (9<sup>th</sup> Cir. 1987), for the same proposition.

28 <sup>8</sup> See Defendant's Motion at pg. 5, citing to *The M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12-15  
(1972); *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. \_\_\_, 251 P.3d 690, 693 (2011).

1 the security interest in the property that is being used to secure the note.”<sup>9</sup>

2 Defendants further argue that in Nevada, “parties are free to contract, and the  
3 courts will enforce their contracts if they are not unconscionable, illegal, or in violation of  
4 public policy.”<sup>10</sup> Further, the Nevada Supreme Court has held that as long as a forum  
5 selection clause has been “obtained through ‘freely negotiated’ agreements and [is] not  
6 ‘unreasonable and unjust,’ it should be enforced.”<sup>11</sup>

7 **CONCLUSIONS OF LAW.**

8 This Court concludes, based upon the evidence presented, that the Loan  
9 Agreement and the Promissory Note contain language which clearly expresses the  
10 parties’ intent to submit litigation relating to the Agreement and the Note, to the  
11 jurisdiction of the State of Utah. This Court finds that while the language of such  
12 documents could have more clearly made such forum selection “exclusive,” nonetheless,  
13 the language clearly enough identifies Utah as the forum which they selected for  
14 purposes of subject matter jurisdiction. Because the property which provided security for  
15 the loan, was already foreclosed upon, the language contained in the Trust Deed is no  
16 longer relevant. This Court will not attempt to second guess the intent of the parties, or  
17 the clear language of the contract, but will instead enforce the contract as written.  
18 Whether or not the Plaintiff has a valid claim for a deficiency judgment in the State of  
19 Utah, under the laws of the State of Utah, and pursuant to the Loan Agreement and the  
20 Promissory Note, is for a Utah court to decide.

21 . . . .

22 . . . .

23 . . . .

24 . . . .

---

25 <sup>9</sup> See Defendant’s Reply at pg. 3, citing *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 254  
26 (2012).

27 <sup>10</sup> See Defendant’s Reply at pg. 5, citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226-227  
(2009).

28 <sup>11</sup> See Defendant’s Reply at pg. 6, citing *Tandy Computer Leasing, a Div. of Tandy Electronics, Inc. v. Terina’s Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8, (1989).

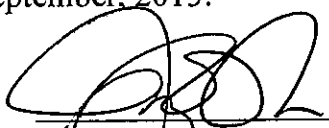
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER.**

Based upon the foregoing, and good cause appearing,

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss is hereby  
**GRANTED.**

DATED this 6 day of September, 2013.

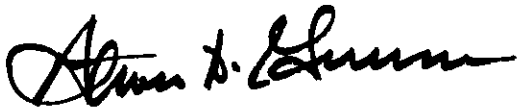


---

JERRY A. WIESE II  
DISTRICT COURT JUDGE, DEPT. XXX





  
CLERK OF THE COURT

1 **NOED**  
2 **Bogatz Law Group**  
3 I. SCOTT BOGATZ, ESQ.  
4 Nevada Bar No. 3367  
5 CHARLES M. VLASIC III, ESQ.  
6 Nevada Bar No. 11308  
7 3800 Howard Hughes Parkway, Suite 1850  
8 Las Vegas, Nevada 89169  
9 Telephone: (702) 776-7000  
10 Facsimile: (702) 776-7900  
11 sbogatz@isbmv.com  
12 cvlasic@isbmv.com  
13 *Attorneys for Defendants*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

11 AMERICA FIRST FEDERAL CREDIT  
12 UNION, a federally chartered credit union,  
13 Plaintiff,

Case No.: A-13-679511-C  
Dept. No.: XXX

14 vs.

15 FRANCO SORO, an individual; MYRA  
16 TAIGMAN-FARRELL, an individual;  
17 ISAAC FARRELL, an individual; KATHY  
18 ARRINGTON, an individual; AUDIE  
EMBESTRO, an individual; DOES 1  
through 10; ROE ENTITIES I through X,  
Defendants.

19 **NOTICE OF ENTRY OF DECISION AND ORDER GRANTING DEFENDANTS'**  
20 **MOTION TO DISMISS**

21 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that a Decision and Order  
22 Granting Defendants, FRANCO SORO, MYRA TAIGMAN-FARRELL, ISAAC FARRELL,  
23 KATHY ARRINGTON, and AUDIE EMBESTRO (hereinafter collectively referred to as  
24 "Defendants")'s Motion to Dismiss was filed in the above-entitled matter on the 9th day of  
25 September, 2013, a copy of which is attached hereto as **Exhibit A**.

26 ...

27 ...

28 ...

**BOGATZ LAW GROUP**  
3800 Howard Hughes Parkway, Suite 1850  
Las Vegas, Nevada 89169  
(702) 776-7000 FAX: (702) 776-7900

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

Dated this 10th day of September, 2013.

BOGATZ LAW GROUP

By:           /s/ Charles M. Vlastic  
I. Scott Bogatz, Esq.  
Nevada Bar No. 3367  
Charles M. Vlastic III, Esq.  
Nevada Bar No. 11308  
3800 Howard Hughes Parkway, Suite 1850  
Las Vegas, Nevada 89169  
*Attorneys for Defendants*

**CERTIFICATE OF MAILING**

I hereby certify that on the 10th day of September, 2013, I served a copy of the foregoing  
**NOTICE OF ENTRY OF DECISION AND ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS** upon each of the parties by depositing a copy of the same in a sealed  
envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and  
addressed to:

Stanley W. Parry, Esq.  
Timothy R. Mulliner, Esq.  
BALLARD SPAHR LLP  
100 North City Parkway, Suite 1750  
Las Vegas, NV 89106  
*Attorneys for Plaintiff*

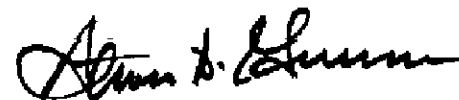
and that there is a regular communication by mail between the place of mailing and the place(s)  
so addressed.

          /s/ Jaimie Stilz-Outlaw  
An employee of Bogatz Law Group

**EXHIBIT A**

**EXHIBIT A**

Electronically Filed  
09/09/2013 03:45:53 PM



CLERK OF THE COURT  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
CLARK COUNTY, NEVADA**

**AMERICA FIRST FEDERAL CREDIT )  
UNION, a federally chartered credit union, )**

**Plaintiff, )**

**vs. )**

**FRANCO SORO, an individual; MYRA )  
TAIGMAN-FARRELL, an individual; )  
ISAAC FARRELL, an individual; KATHY )  
ARRINGTON, an individual; AUDIE )  
EMBESTRO, an individual; DOES 1 through )  
10; ROE ENTITIES I through X, )**

**Defendants. )**

**Case No.: A679511  
Dept. No.: XXX**

**ORDER RE:  
DEFENDANTS' MOTION  
TO DISMISS**

**INTRODUCTION AND FINDINGS OF FACT.**

This matter stems from a business agreement, entered into in approximately 2002. At that time, America First apparently entered into a Business Loan Agreement whereby America First agreed to lend and Defendants agreed to borrow, approximately \$2,900,000.00 for business purposes. On or about the same date, a Commercial Promissory Note was executed, and it was secured by a Trust Deed with Assignment of Rents.

America First apparently went through the process of a non-judicial foreclosure of the subject Clark County, Nevada, property, and now seeks a deficiency judgment for the remaining amount which is allegedly owing.

On 7/29/13, the Defendants filed a Motion to Dismiss before this Court, arguing that this court does not have subject matter jurisdiction over this matter, due to the parties' agreement, which stipulates to the jurisdiction of the State of Utah. Plaintiff filed an Opposition on 8/20/13, and the Defendants filed a Reply on 8/27/13. This matter

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Judgment on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial
<input checked="" type="checkbox"/> Mot to Dis (by def)	<input type="checkbox"/> Transferred	

RECEIVED  
SEP 09 2013  
CLERK OF THE COURT

1 came on before this Court on August 29, 2013. Plaintiff was represented by Tim  
2 Mulliner, Esq., and Defendant was represented by Charles Vlastic, Esq. The Court heard  
2 Mulliner, Esq., and Defendant was represented by Charles Vlastic, Esq. The Court heard  
3 oral argument, but took the matter under advisement because the Court had not had the  
4 opportunity to review the Defendant's Reply brief prior to the hearing, as a copy had not  
5 been provided to chambers and Odyssey did not show a copy, even at the time of the  
6 hearing. The Court has now had an opportunity to review all of the pleadings, and enters  
7 the following Order.

8 The Defendants' Motion to Dismiss is based on NRCP 12(b)(1) and NRCP  
9 12(h)(3). Those Rules read in pertinent part as follows:

10  
11 . . . the following defenses may at the option of the pleader be made by motion:  
12 (1) lack of jurisdiction over the subject matter.<sup>1</sup>

13 Whenever it appears by suggestion of the parties or otherwise that the court  
14 lacks jurisdiction of the subject matter, the court shall dismiss the action.<sup>2</sup>

15 The Business Loan Agreement in this case contained language as follows:

16 **Applicable Law.** This Agreement (and all loan documents in connection with  
17 this transaction) shall be governed by and construed in accordance with the  
18 laws of the State of Utah.

19 **Jurisdiction.** The parties agree and submit themselves to the jurisdiction of  
20 the courts of the State of Utah with regard to the subject matter of this  
21 agreement.<sup>3</sup>

22 The Commercial Promissory Note contained language as follows:

23 If there is a lawsuit, Borrower(s) agrees to submit to the jurisdiction of the  
24 court in the county in which Lender is located.<sup>4</sup>

25  
26  
27 

---

<sup>1</sup> NRCP 12(b)(1).

<sup>2</sup> NRCP 12(h)(3).

<sup>3</sup> See Business Loan Agreement at pg. 6.

<sup>4</sup> See Commercial Promissory Note at pg. 3.

1 The Trust Deed contained language as follows:

2 This Trust Deed shall be construed according to the laws of the State of NV.  
2 This Trust Deed shall be construed according to the laws of the State of NV.  
3 Notwithstanding any provision herein or in said note, the total liability for  
4 payments in the nature of interest shall not exceed the limits now imposed by  
the applicable laws of the State of NV.<sup>5</sup>

5 Although the Trust Deed includes language indicating that Nevada law applies,  
6 the Trust Deed is simply security for the Promissory Note.<sup>6</sup>

7 Plaintiff's attempt to obtain a deficiency judgment is an action based upon the  
8 Business Loan Agreement and the Commercial Promissory Note, not based on the Trust  
9 Deed. The Plaintiff has already foreclosed on the subject property.

10 Plaintiffs argue that the language contained in the Loan Agreement and in the  
11 Promissory Note constitutes a "consent" to jurisdiction in Utah, but does not indicate that  
12 "exclusive jurisdiction" is in Utah. Plaintiff cites to a 5<sup>th</sup> Circuit case for the proposition  
13 that, "For a forum selection clause to be exclusive, it must go beyond establishing that a  
14 particular forum will have jurisdiction and must clearly demonstrate the parties' intent to  
15 make that jurisdiction exclusive."<sup>7</sup>

16 Defendants argue that "forum selection clauses should not be rendered  
17 meaningless by allowing parties to disingenuously back out of their contractual  
18 obligations through attempts at artful pleading."<sup>8</sup> Defendants argue that the Loan  
19 Agreement and the Note contain a forum selection clause, which is fully enforceable.

20 In Defendant's Reply, they argue that, "In Nevada, promissory notes on real  
21 estate loans are typically secured by deeds of trust on property," and that "The note  
22 represents the right to the repayment of the debt, while the [deed of trust] . . . represents  
23

24  
25 <sup>5</sup> See Trust Deed, paragraphs 25-26, at pg. 5.

26 <sup>6</sup> See pg. 2 of the Commercial Promissory Note.

27 <sup>7</sup> See pgs. 4-5 of Plaintiff's Opposition, citing to *City of New Orleans v. Municipal Admin. Services*, 376  
28 F.3d 501, 504 (5<sup>th</sup> Cir. 2004). Note that Plaintiff also cites to *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817  
F.2d 75 (9<sup>th</sup> Cir. 1987), for the same proposition.

<sup>8</sup> See Defendant's Motion at pg. 5, citing to *The M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12-15  
(1972); *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. \_\_\_, 251 P.3d 690, 693 (2011).

1 the security interest in the property that is being used to secure the note.”<sup>9</sup>

2 Defendants further argue that in Nevada, “parties are free to contract, and the  
2 Defendants further argue that in Nevada, “parties are free to contract, and the  
3 courts will enforce their contracts if they are not unconscionable, illegal, or in violation of  
4 public policy.”<sup>10</sup> Further, the Nevada Supreme Court has held that as long as a forum  
5 selection clause has been “obtained through ‘freely negotiated’ agreements and [is] not  
6 ‘unreasonable and unjust,’ it should be enforced.”<sup>11</sup>

7 **CONCLUSIONS OF LAW.**

8 This Court concludes, based upon the evidence presented, that the Loan  
9 Agreement and the Promissory Note contain language which clearly expresses the  
10 parties’ intent to submit litigation relating to the Agreement and the Note, to the  
11 jurisdiction of the State of Utah. This Court finds that while the language of such  
12 documents could have more clearly made such forum selection “exclusive,” nonetheless,  
13 the language clearly enough identifies Utah as the forum which they selected for  
14 purposes of subject matter jurisdiction. Because the property which provided security for  
15 the loan, was already foreclosed upon, the language contained in the Trust Deed is no  
16 longer relevant. This Court will not attempt to second guess the intent of the parties, or  
17 the clear language of the contract, but will instead enforce the contract as written.  
18 Whether or not the Plaintiff has a valid claim for a deficiency judgment in the State of  
19 Utah, under the laws of the State of Utah, and pursuant to the Loan Agreement and the  
20 Promissory Note, is for a Utah court to decide.

21 . . . .  
22 . . . .  
23 . . . .  
24 . . . .

25 \_\_\_\_\_  
26 <sup>9</sup> See Defendant’s Reply at pg. 3, citing *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 254  
(2012).  
27 <sup>10</sup> See Defendant’s Reply at pg. 5, citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226-227  
(2009).  
28 <sup>11</sup> See Defendant’s Reply at pg. 6, citing *Tandy Computer Leasing, a Div. of Tandy Electronics, Inc. v. Terina’s Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8, (1989).

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


**ORDER.**

Based upon the foregoing, and good cause appearing,  
Based upon the foregoing, and good cause appearing,

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss is hereby

**GRANTED.**

DATED this 6 day of September, 2013.



---

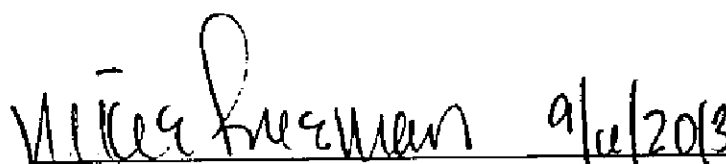
JERRY A. WIESE II  
DISTRICT COURT JUDGE, DEPT. XXX



**CERTIFICATE OF SERVICE**

I hereby certify that on or about this the 6th day of September, 2013, the forgoing was e-  
served, mailed, faxed or a copy was **placed in the attorney's folder** to the following:

- I. Scott Bogatz, Esq., Bogatz Law Group
- Stanley Warren Parry, Esq., Ballard Spahr

  
Vickie Freeman, JEA for Dept XXX

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





EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

STANLEY W. PARRY, ESQ.  
100 N. CITY PKWY., SUITE 1750  
LAS VEGAS, NV 89106-4617

DATE: October 1, 2013  
CASE: A679511

RE CASE: AMERICA FIRST FEDERAL CREDIT UNION vs. FRANCO SORO; MYRA TAIGMAN-FARRELL; ISAAC FARRELL; KATHY ARRINGTON; AUDIE EMBESTRO

NOTICE OF APPEAL FILED: September 27, 2013

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

---

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

“The district court clerk must file appellant’s notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12.”

Please refer to Rule 3 for an explanation of any possible deficiencies.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: DEFENDANTS' MOTION TO DISMISS; NOTICE OF ENTRY OF DECISION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

AMERICA FIRST FEDERAL CREDIT UNION,

Plaintiff(s),

vs.

FRANCO SORO; MYRA TAIGMAN-FARRELL; ISAAC FARRELL; KATHY ARRINGTON; AUDIE EMBESTRO,

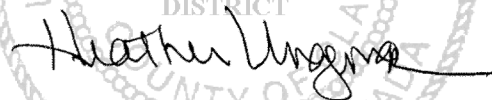
Defendant(s),

Case No: A679511  
Dept No: XXX

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 1 day of October 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

