

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF NEVADA, a
Nevada Banking corporation,

Appellant,

vs.

MURRAY PETERSEN, an
individual,

Respondent.

SUPREME COURT CASE NO. 66568

District Court Case No. A-13-680012-C

Electronically Filed
Feb 09 2015 02:02 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

**From the Eighth Judicial District Court
The Honorable Kenneth Cory, District Judge**

JOINT APPENDIX

SUPPLEMENT¹

DOCUMENT NAME	DATE FILED	VOLUME	PAGE
Commissioner's Decision on Request for Exemption	6/24/2013	I	JA 114 - JA 119
Court Minutes of Minute Order re Plaintiff's Rule 59e Motion to Alter or Amend Judgment	7/2/2014	IV	JA 688
Court Minutes re Motion to Amend Judgment	6/23/2014	IV	JA 687

¹ The document bolded below was inadvertently excluded from the Parties' Joint Appendix.

DOCUMENT NAME	DATE FILED	VOLUME	PAGE
Court Minutes re Plaintiff's Motion for Summary Judgment and Defendant's Opposition to Motion for Summary Judgment Crossmotion for Summary Judgment	4/15/2014	III	JA 545
Court Minutes re Pretrial Conference	5/8/2014	III	JA 595
Defendant's Answer to Complaint	5/20/2013	I	JA 110 - JA 113
Defendant's Opposition to Motion for Summary Judgment Crossmotion for Summary Judgment	3/21/2014	III	JA 417 - JA 433
Defendant's Opposition to Motion to Alter or Amend	6/6/2014	IV	JA 663 - JA 677
Defendant's Opposition to Motion to Strike Jury Demand	9/17/2013	I	JA 141 - JA 151
Defendant's Reply to Opposition to Defendant's Motion for Summary Judgment	4/9/2014	III	JA 522 - JA 544
Defendant's Supplemental Points and Authorities in support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment	7/3/2014	IV	JA 689 - JA 691
Findings of Fact, Conclusions of Law and Judgment	5/8/2014	III	JA 596 - JA 599
Joint Case Conference Report	7/25/2013	I	JA 120 - JA 127
Notice of Appeal	9/22/2014	IV	JA 704 - JA 717
Notice of Entry of Order	5/9/2014	SUPP	JA 759 – JA 764

DOCUMENT NAME	DATE FILED	VOLUME	PAGE
Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment and Order Granting Defendant's Countermotion for Summary Judgment	5/9/2014	III	JA 602 - JA 605
Notice of Entry of Order Denying Plaintiff's Rule 59e Motion to Alter or Amend Judgment	9/18/2014	IV	JA 700 - JA 703
Notice of Entry of Stipulation and Order regarding Plaintiff's Motion for Summary Judgment	3/7/2014	III	JA 413 - JA 416
Notice of Entry of Stipulation and Order regarding the fair market value of property, tried by the Court, no transfer of case	12/16/2013	I	JA 157 - JA 160
Order Denying Plaintiff's Motion for Summary Judgment and Order Granting Defendant's Countermotion for Summary Judgment	5/8/2014	III	JA 600 - JA 601
Order Denying Plaintiff's Rule 59e Motion to Alter or Amend Judgment	9/17/2014	IV	JA 698 - JA 699
Order Setting Civil Jury Trial and Pretrial Procedures	8/16/2013	I	JA 131 - JA 133
Plaintiff's Complaint	4/12/2013	I	JA 001 - JA 107
Plaintiff's Motion for Summary Judgment	1/16/2014	II	JA 161 - JA 410
Plaintiff's Motion to Strike Jury Demand	9/11/2013	I	JA 134 - JA 140
Plaintiff's Reply in support of Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment	4/3/2014	III	JA 434 - JA 521
Plaintiff's Reply in support of Motion to Strike Jury Demand	10/7/2013	I	JA 152 - JA 154

DOCUMENT NAME	DATE FILED	VOLUME	PAGE
Plaintiff's Reply in support of Rule 59e Motion to Alter or Amend Judgment	6/16/2014	IV	JA 678 - JA 686
Plaintiff's Rule 59e Motion to Alter or Amend Judgment	5/23/2014	IV	JA 606 - JA 662
Plaintiff's Supplemental Brief re Lavi v. Eighth Judicial District Court	7/28/2014	IV	JA 692 - JA 697
Scheduling Order	8/2/2013	I	JA 128 - JA 130
Stipulation and Order re the fair market value of property, tried by the Court, no transfer of case	12/13/2013	I	JA 155 - JA 156
Stipulation and Order regarding Plaintiff's Motion for Summary Judgment	3/6/2014	III	JA 411 - JA 412
Summons to Murray Peterson with the Affidavit of Service	4/23/2013	I	JA 108 - JA 109
Transcript of Proceedings re All Pending Motions	5/7/2014	III	JA 546 - JA 594
Transcript of Proceedings re Plaintiff's Rule 59e Motion to Alter or Amend Judgment	9/26/2014	IV	JA 718 - JA 758

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On February 9, 2015, I caused to be served a true and correct copy of the foregoing **JOINT APPENDIX SUPPLEMENT** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

/s/ Ruby Lengsavath

An Employee of Snell & Wilmer L.L.P.



CLERK OF THE COURT

Richard McKnight, Esq.
Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882

DISTRICT COURT

CLARK COUNTY, NEVADA

BANK OF NEVADA, a Nevada banking
corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case No A-13-680012-C

Dept. No I

Date:

Time:

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings Of Fact, Conclusions Of Law And
Judgment was entered by the Clerk of Court on the 8th day of May 2014, a copy of which is
attached.

DATED this 9th day of May 2014.

THE MCKNIGHT LAW FIRM, PLLC

By:  /s/ Richard McKnight

Richard McKnight, Esq.

State Bar No. 1313

528 S. Casino Center Blvd., #335

Las Vegas, NV 89101

Attorneys for Murray Petersen

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

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of May 2014, I mailed first-class, postage paid, a true and correct copy of the foregoing Notice Of Entry Of Order to the following:

Michael D. Stein, Esq.
Brian R. Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
Las Vegas, NV 89169
Attorneys for Bank of Nevada

/s/ Gwen Kopang
An Employee of The McKnight Law Firm, PLLC



CLERK OF THE COURT

1 FFCL
2 Richard McKnight, Esq.
3 Nevada Bar No. 001313
4 THE MCKNIGHT LAW FIRM, PLLC
5 528 S. Casino Center Blvd., #335
6 Las Vegas, Nevada 89101
7 Phone: 702-388-7185
8 Fax: 702-589-9882

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

BANK OF NEVADA, a Nevada banking
corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case No A-13-680012-C

Dept. No I

Date: 4/15/2014
Time: 9:00 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Plaintiff's motion for summary judgment and Defendant's counter motion for summary judgment having come on regularly for hearing this 15th day of April 2014; Richard McKnight, Esq. appearing on behalf of Defendant Petersen and Michael Stein, Esq. and Brian Reeve, Esq. appearing on behalf of Plaintiff Bank of Nevada the court sets forth the following undisputed material facts, Conclusions of Law and Judgment:

1. Red Card, LLC ("Red Card") executed a Promissory Note (Note A) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of \$1,444,898 with interest on the unpaid principal balance from the date of the Note until paid ("Note A").

2. Red Card executed a Promissory Note (Note B) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of \$1,092,591 with interest on the unpaid principal balance from the date of the Note

1 until paid ("Note B").

2 3. Red Card, as Grantor, executed a First Deed of Trust dated March 30, 2011 for
3 the benefit of Bank of Nevada.

4 4. The First Deed of Trust was recorded in Clark County, Nevada, on March 31,
5 2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

6 5. The First Deed of Trust encumbered the land described in Exhibit A attached
7 to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada
8 89145 bearing Assessor Parcel No. 138-28-401-009 (the "Property").

9 6. Red Card, as Grantor, executed a Second Deed of Trust dated March 30, 2011
10 for the benefit of Bank of Nevada.

11 7. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1,
12 2011 as Instrument No. 2011004010000103, Official Records, Clark County, Nevada and also
13 encumbered the Property.

14 8. Under the Loan Documents, an Event of Default has occurred if Red Card fails
15 to make any payment when due under the Loan.

16 9. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of
17 Bank of Nevada.

18 10. Under the terms of the Commercial Guaranty, Petersen absolutely and
19 unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as
20 defined therein, of Red Card to Bank of Nevada, and the performance and discharge of all Red
21 Card's obligations under the note and the related documents, as defined therein.

22 11. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S
23 WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS
24 40.430.

25 12. Red Card failed to make the monthly payments due on September 30, 2011,
26 and all subsequent payments ("Payment Default"). Petersen, as Guarantor, did not make the
27 required payments under the Loan as agreed in the Commercial Guaranty.

28

13. Plaintiff caused its legal counsel to provide Red Card and Petersen written Notice of Defaults and Acceleration and Demand for Payment and Cure (the "Letter of Default").

14. In the Letter of Default, Plaintiff's counsel reminded Red Card and Petersen that the entire unpaid principal balance under the Note with all accrued and unpaid interest was immediately due and that the breaches not related to the "Indebtedness" had to be cured.

15. On December 22, 2011, Plaintiff recorded a "Notice of Breach and Election to Sell Under Deed of Trust" in Clark County, Nevada as Instrument No. 201112220000692 pursuant to the First Deed of Trust and Second Deed of Trust.

16. Plaintiff filed its Complaint in this action on April 12, 2013. The amount of indebtedness due as of that date was \$3,099,798.29.

17. On June 18, 2013, the Property was sold via trustee's sale with Plaintiff purchasing the Property for the sum of \$1,400,000. The Plaintiff took ownership through a credit bid at the trustee's sale.

18. On December 13, 2013, this Court entered a Stipulation and Order pursuant to which Plaintiff and Petersen agreed that the fair market value of the Property, as of the commencement of this action, was \$1,990,000.

19. NRCp 7(b)(1) provides that “[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.”

20. On January 16, 2014 Plaintiff filed its motion for summary judgment.

21. Petersen filed his Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Counter Motion for Summary Judgment on March 20, 2014 and mailed it on the same day. Although filed, the court clerk rejected the filing for fees and the motion had to be refiled, the opposition was timely mailed.

CONCLUSIONS OF LAW

1. The Court concludes that NRS 40.455(1) applies in guarantor deficiency

1 actions.

2 2. Plaintiff did not file an application within six months of the trustee's sale under
3 NRS 40.455(1).

4 3. The court did not understand the citation of *Lavi v. Eighth Judicial Dist. Court*
5 *of State ex rel. County of Clark*, 2013 WL 3278563, to be cited as precedent but rather as a
6 means for dispute settling.

7 4. Petersen's opposition to the Bank's Motion for Summary Judgment was
8 timely.

9 5. Defendant, Murray Petersen, is entitled to judgment in his favor on his motion
10 for summary judgment.

11 DATED this 7 day of May 2014.

12 
13 District Court Judge ⁴³

14 SUBMITTED BY:

15 THE MCKNIGHT LAW FIRM, PLLC

16 By: 

17 Richard McKnight, Esq.
18 Nevada State Bar No. 1313
19 528 S. Casino Center Blvd. #335
20 Las Vegas, Nevada 89101
21 Attorneys for Defendant Murray Petersen

22 APPROVED AS EMBODYING THE ORDER OF THE COURT:

23 SNELL & WILMER, LLP.

24 By: 

25 Michael D. Stein, Esq.
26 Nevada State Bar No. 4760
27 Brian R. Reeve, Esq.
28 Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada