

EXHIBIT “23”

1 **CODE: 2545**

2 C. NICHOLAS PEREOS, ESQ.

3 Nevada Bar No. 0000013

4 1610 Meadow Wood Lane, Suite 202

5 Reno, Nevada 89502

6 Tel: (775) 329-0678

7 G. MARK ALBRIGHT, ESQ.

8 Nevada Bar No. 001394

9 D. CHRIS ALBRIGHT, ESQ.

10 Nevada Bar No. 004904

11 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

12 801 South Rancho Drive, Suite D-4

13 Las Vegas, Nevada 89106

14 Tel: (702) 384-7111

15 Fax: (702) 384-0605

16 gma@albrightstoddard.com

17 dca@albrightstoddard.com

18 *Attorneys for Applicants/Defendants*

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

20 **IN AND FOR THE COUNTY OF WASHOE**

21 JOHN ILIESCU, JR., et al., Applicants,

22 vs.

23 MARK B. STEPPAN, Respondent.

CASE NO. CV07-00341

(Consolidated w/CV07-01021)

DEPT NO. 10

24 MARK B. STEPPAN,

25 Plaintiff,

26 vs.

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

Defendants.

AND RELATED CLAIMS.

**NOTICE OF ENTRY OF
VARIOUS ORDERS**

PLEASE TAKE NOTICE that the following Orders were entered by the Court in the above-captioned matter: (a) "Order Granting Motion for Partial Summary Judgment" on May 9, 2013, attached as **Exhibit "1"** hereto; (b) "Order Granting Motion to Strike or Limit Jury Demand" on

1 August 23, 2013, attached as **Exhibit "2"** hereto; (c) "Amended Order Regarding Plaintiff's Motion
2 for Costs" on December 12, 2014, attached as **Exhibit "3"** hereto; and (d) "Amended Order Regarding
3 Plaintiff's Motion for Attorney Fees" on December 12, 2014, attached as **Exhibit "4"** hereto.

4 DATED this 14th day of July, 2015.

5
6 By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

**ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT**

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111 / Fax: (702) 384-0605

gma@albrightstoddard.com

dca@albrightstoddard.com

C. NICHOLAS PEREOS, ESQ.

Nevada Bar No. 0000013

1610 Meadow Wood Lane, Suite 202

Reno, Nevada 89502

Tel: (775) 329-0678

Attorneys for Applicants/Defendants

16 **AFFIRMATION**

17 The undersigned does hereby affirm that the preceding document filed in the Second Judicial
18 District Court does not contain the social security number of any person.

19 DATED this 14th day of July, 2015.

20
21 By 

G. MARK ALBRIGHT, ESQ., #001394

D. CHRIS ALBRIGHT, ESQ., #004904

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111 / Fax: (702) 384-0605

gma@albrightstoddard.com

dca@albrightstoddard.com

C. NICHOLAS PEREOS, ESQ.

Nevada Bar No. 0000013

1610 Meadow Wood Lane, Suite 202

Reno, Nevada 89502

Tel: (775) 329-0678

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 15th day of July, 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **NOTICE OF ENTRY OF VARIOUS ORDERS**, to the following person:

Michael D. Hoy, Esq.
Nevada Bar No. 002723
HOY CHRISSINGER KIMMEL VALLAS, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com
Attorney for Plaintiff Mark Steppan

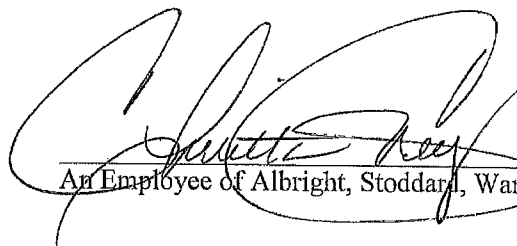
☐ Certified Mail
☒ Electronic Filing/Service
☐ Email
☐ Facsimile
☐ Hand Delivery
☐ Regular Mail

David R. Grundy, Esq.
Todd R. Alexander, Esq.,
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868
drgr@lge.net
tra@lge.net
*Attorneys for Third-Party Defendant
Hale Lane*

☐ Certified Mail
☒ Electronic Filing/Service
☐ Email
☐ Facsimile
☐ Hand Delivery
☐ Regular Mail

C. NICHOLAS PEREOS, ESQ.
Nevada Bar No. 0000013
1610 Meadow Wood Lane, Suite 202
Reno, Nevada 89502
Tel: (775) 329-0678
cpereos@att.net

☐ Certified Mail
☐ Electronic Filing/Service
☐ Email
☐ Facsimile
☐ Hand Delivery
☒ Regular Mail


An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

1. Order Granting Motion for Partial Summary Judgment, filed May 9, 2013
2. Order Granting Motion to Strike or Limit Jury Demand, filed August 23, 2013
3. Amended Order Regarding Plaintiff's Motion for Costs, filed December 12, 2014
4. Amended Order Regarding Plaintiff's Motion for Attorney Fees, filed December 12, 2014

EXHIBIT “22”

Document Code: 2540

HOY CHRISSINGER KIMMEL VALLAS, PC

Michael D. Hoy (NV Bar 2723)
50 W. Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000 (main)
Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe**

MARK B. STEPPAN,
Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,
Defendants.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Notice Of Entry Of Order

PLEASE TAKE NOTICE that on May 27, 2015, the Court entered the attached Order
Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior
Orders.

CERTIFICATE OF PERSONAL SERVICE

Pursuant to NRCP 5, undersigned counsel hereby certifies that on May 28, 2015 he
personally served a true and correct copy of this Notice of Entry of Order on C. Nicholas
Pereos, Ltd. at 1610 Meadow Wood Lane, Suite 202, Reno, Nevada 89502.

Privacy Certification

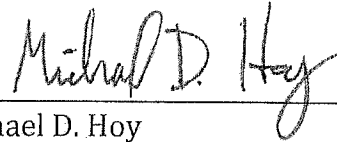
The undersigned affirms that this document does not contain any social security
numbers or other private information.



1 Dated May 28, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC

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



Michael D. Hoy
Attorneys for Mark B. Stepan


CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of Hoy Chrissinger Kimmel
Vallas, PC and that on May 28, 2015, I served a true and correct copy of this Notice of Entry
of Order by depositing the same for mailing enclosed in a sealed envelope upon which first
class postage was fully prepaid addressed to the following:

G. Mark Albright
D. Chris Albright
Albright Stoddard Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

DATED May 28, 2015.


Shondel Seth

Index of Exhibits

- 1 May 27, 2015 Order Denying Defendants' Motion for Court to Alter or Amend its
Judgment and Related Prior Orders

EXHIBIT “21”

Document Code: 2540

HOY CHRISSINGER KIMMEL VALLAS, PC

Michael D. Hoy (NV Bar 2723)

50 W. Liberty Street, Suite 840

Reno, Nevada 89501

(775) 786-8000 (main)

mhoy@nevadalaw.com

Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe**

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Defendants.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Notice Of Entry Of Order

PLEASE TAKE NOTICE that on March 13, 2015, the Court entered the following
Decision and Order Denying NRCP 60(b) Motion, a copy of which is attached hereto as
Exhibit "1."

//

//

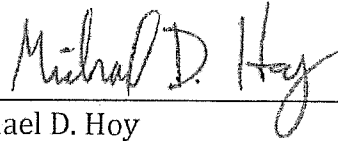
//

Privacy Certification

The undersigned affirms that this document does not contain any social security numbers or other private information.

Dated: March 13, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC



Michael D. Hoy
Attorneys for Mark B. Steppan



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hoy Chrissinger Kimmel Vallas, PC, and that on the 13th day of March, 2015, I served a true and correct copy of:

1. Notice of Entry of Decision and Order Denying NRCP 60(b) Motion;

by depositing the same for mailing enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

G. Mark Albright
D. Chris Albright
Albright Stoddard Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

DATED this 13th day of March 2015.



Shondel Seth



Index of Exhibits

Exhibit #	Description	# of Pages
Exhibit 1	Decision and Order dated 03-13-15	7



EXHIBIT “20”

Document Code: 2535

Michael D. Hoy (NV Bar 2723)
HOY CHRISSINGER KIMMEL VALLAS, PC
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com

Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada
In and For the County of Washoe**

Mark B. Steppan,

Plaintiff,

vs.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;
JOHN ILIESCU, JR. and SONNIA SANTEE
ILIESCU, as trustees of the John Iliescu, Jr.
and Sonnia Iliescu 1992 Family Trust,

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related Claims.

Notice of Entry of Judgment

TO: All parties and their counsel:

Please take notice that on February 26, 2015, the Court entered its Judgment,
Decree and Order for Foreclosure of Mechanics Lien. A true and correct copy of the
Judgment is attached as Exhibit 1.





Privacy Affirmation

Pursuant to WDCR 10(4), undersigned counsel affirms that this document does not contain any social security numbers.

Dated February 27, 2015.

Hoy Chrissinger Kimmel Vallas, PC

A handwritten signature in cursive script that reads "Michael D. Hoy".

Michael D. Hoy

Certificate of Service

I hereby certify that on February 27, 2015, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to the following:

G. Mark Albright and D. Chris Albright for John Iliescu, Jr. and Sonnia Iliescu, individually and as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

David Grundy, Todd Alexander, and Alice Campos Mercado for Jerry M. Snyder, Karen D. Dennison, R. Craig Howard, Hale Lane Peek Dennison Howard, and Holland and Hart

Gregory F. Wilson for John Schleining

I further certify that on February 27, 2015, I served the foregoing on

C. Nicholas Pereos for John Iliescu, Jr. and Sonnia Iliescu, individually and as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

by depositing the same for mailing enclosed in a sealed envelope with first class postage fully prepaid addressed to: C. Nicholas Pereos, 1610 Meadow Wood Lane, Suite 202, Reno, Nevada 89502.

Dated February 27, 2015.


Michael D. Hoy

Table of Exhibits

1 Judgment, Decree and Order for Foreclosure of Mechanics Lien

EXHIBIT “19”

FILED

Electronically

07-20-2009:02:11:48 PM

Howard W. Conyers

Clerk of the Court

Transaction # 908862

CODE: 2540
GAYLE A. KERN, LTD.
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
5421 Kietzke Lane, Suite 200
Reno, NV 89511
(775) 324-5930
Fax (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Respondent/Plaintiff Mark B. Steppan

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

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

DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

MARK STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

PLEASE TAKE NOTICE that on the 22nd day of June, 2009, an Order ("Order") was
entered in the above-captioned matter.

1 A copy of the Order is attached hereto as Exhibit "1."

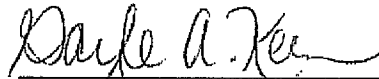
2 **AFFIRMATION**

3 **Pursuant to NRS 239B.030**

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

6 Dated this 20 day of July, 2009.

7 GAYLE A. KERN, LTD.

8 

9 GAYLE A. KERN, ESQ.

10 Attorneys for Respondent/Plaintiff Mark B. Steppan

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

TELEPHONE: (775) 324-5930

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify under penalty of perjury that I am an employee of the law offices of Gayle A. Kern, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

on the party(s) set forth below by:

 X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

 Personal delivery.

 Facsimile (FAX).

 Federal Express or other overnight delivery.

 Reno/Carson Messenger Service.

addressed as follows:

Stephen C. Mollath, Esq.
Prezant & Mollath
6560 S. W. McCarran Boulevard, Suite A
Reno, NV 89509

Gregory F. Wilson, Esq.
Wilson & Quint, LLP
417 West Plumb Lane
Reno, NV 89509

Stephen R. Harris, Esq.
Belding, Harris & Petroni, Ltd.
417 West Plumb Lane
Reno, NV 89509

DATED this 20th day of July, 2009.


TERESA A. GEARHART

EXHIBIT “18”

1 **2540**

2 David R. Grundy, Esq. SBN 864
3 LEMONS, GRUNDY & EISENBERG
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
7 Attorneys for Third Party Defendants

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 MARK B. STEPPAN,

12 Plaintiff,

CONSOLIDATED

13 vs.

Case No.: CV07-00341

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

Dept. No.: 10

19 Defendants.

20
21 JOHN ILIESCU, JR. and SONNIA ILIESCU,
22 as Trustees of the JOHN ILIESCU, JR. AND
23 SONNIA ILIESCU 1992 FAMILY TRUST
24 AGREEMENT; JOHN ILIESCU, JR.,
25 individually; SONNIA ILIESCU, individually,

26 Third-Party Plaintiffs,

27 vs.

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

Third-Party Defendants.

1 JOHN SCHLEINING,
2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD
5 PROFESSIONAL CORPORATION, a Nevada
6 Professional corporation, dba HALE LANE
and DOES XXI - XXX, inclusive,
7 Cross-Defendant.

8 JOHN SCHLEINING,
9 Third-Party Plaintiff,

10 vs.

11 HOLLAND & HART, LLP, a professional
12 corporation, R. CRAIG HOWARD and DOES
XXXI - XL, inclusive,
13 Third-Party Defendants.

14 NOTICE OF ENTRY OF ORDER

15
16 **PLEASE TAKE NOTICE** that the Second Stipulation to Stay Proceedings Against
17 Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison,
18 Howard and Snyder Without Prejudice was entered on February 14, 2013. A copy of said
19 Second Stipulation is attached hereto as **Exhibit 1**.

20 The undersigned affirms that this document does not contain the social security
21 number of any person.

22 Dated: April 9, 2013.

23
24
25 BY: 

26 David R. Grundy
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
27 Reno, Nevada 89519
Phone No.: (775) 786-6868
28 Attorneys for Third Party Defendants

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on April 9, 2013, I e-filed a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court through the Court's electronic filing system and notice will be sent electronically by the Court to the following:

MICHAEL D. HOY, ESQ.
for Mark Steppan

GREGORY WILSON, ESQ.
for John Schleining

The following people have not been served electronically and have been served by mail:

GORDON COWAN, ESQ.
10775 Double R Blvd.
P.O. Box 17952
Reno, NV 89521
786-6111

Attorney for John Iliescu, Jr. and
Sonnia Iliescu



Susan G. Davis

EXHIBIT “17”

CODE: 2540
Gregory F. Wilson, Esq.
Nevada Bar No. 2517
WILSON & QUINT LLP
417 West Plumb Lane
Reno, Nevada 89509
Telephone: 775-786-7600
Facsimile: 775-786-7764
Email: gfwilson@wilsonquint.com
Attorneys for John Schleining

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

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

Case No. CV07-00341

(Consolidated with
Case No. CV07-01021)

Dept. No. 10

AND RELATED CROSS-CLAIMS AND
THIRD-PARTY CLAIMS.

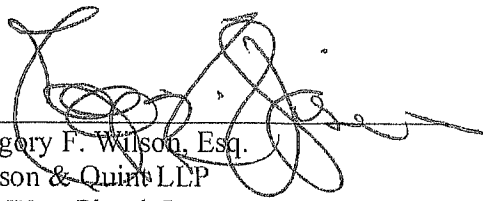
NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 5th day of January, 2012, this Court entered its
Stipulation and Order for Dismissal Without Prejudice of all Claims by John Schleining Against
Hale Lane Peek Dennison and Howard, Holland & Hart, LLP, and R. Craig Howard. A copy of
said order is attached hereto as Exhibit 1.

1 The undersigned does hereby affirm that the preceding document does not contain the
2 social security number of any person.

3 DATED this 6th day of January, 2012.

4 WILSON & QUINT LLP

5
6
7 
8 Gregory F. Wilson, Esq.
9 Wilson & Quint LLP
10 417 West Plumb Lane
11 Reno, Nevada 89509
12 Telephone: 775.786.7600
13 Facsimile: 775.786.7764
14 E-mail: gfwilson@wilsonquint.com

15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for John Schleining

CERTIFICATE OF SERVICE

I certify that I am an employee of Wilson & Quint LLP, and that on this date, pursuant to NRCP 5(b), I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court by using the ECF system, which served the following parties electronically:

David R. Grundy, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519

Thomas J. Hall, Esq.
Law Offices of Thomas J. Hall
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505

Michael D. Hoy, Esq.
Hoy & Hoy, P.C.
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519

DATED this 6th day of January, 2012.

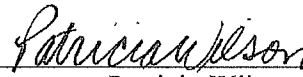

Patricia Wilson

EXHIBIT “16”

Document Code: 2540

HOY CHRISSINGER KIMMEL VALLAS, PC

Michael D. Hoy (NV Bar 2723)

50 W. Liberty Street, Suite 840

Reno, Nevada 89501

(775) 786-8000 (main)

Attorneys for: Mark B. Steppan

In the Second Judicial District Court of the State of Nevada

In and for the County of Washoe

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,
Defendants.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Notice Of Entry Of Order

PLEASE TAKE NOTICE that on May 27, 2015, the Court entered the attached Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders.

CERTIFICATE OF PERSONAL SERVICE

Pursuant to NRCP 5, undersigned counsel hereby certifies that on May 28, 2015 he personally served a true and correct copy of this Notice of Entry of Order on C. Nicholas Pereos, Ltd. at 1610 Meadow Wood Lane, Suite 202, Reno, Nevada 89502.

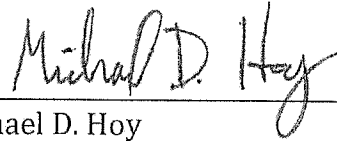
Privacy Certification

The undersigned affirms that this document does not contain any social security numbers or other private information.



1 Dated May 28, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC

2
3 

4 Michael D. Hoy
5 Attorneys for Mark B. Steppan

6 **CERTIFICATE OF SERVICE**

7 Pursuant to NRCP 5, I certify that I am an employee of Hoy Chrissinger Kimmel
8 Vallas, PC and that on May 28, 2015, I served a true and correct copy of this Notice of Entry
9 of Order by depositing the same for mailing enclosed in a sealed envelope upon which first
10 class postage was fully prepaid addressed to the following:
11

12 G. Mark Albright
13 D. Chris Albright
14 Albright Stoddard Warnick & Albright
15 801 South Rancho Drive, Suite D-4
16 Las Vegas, NV 89106

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

16 DATED May 28, 2015.

17 

18 Shondel Seth

19 **Index of Exhibits**

- 20 1 May 27, 2015 Order Denying Defendants' Motion for Court to Alter or Amend its
21 Judgment and Related Prior Orders
22
23
24
25
26
27
28



EXHIBIT “15”

2840

**In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe**

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Defendants.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Decision and Order Denying NRCP 60(b) Motion

The Court conducted a bench trial on December 9 - 12, 2013, and provided all parties the opportunity to present evidence and arguments. Following trial, the parties filed written supplemental trial briefs. The trial proceedings were transcribed, and the transcripts made available for the Court's review. On May 28, 2014, the Court entered its Findings of Fact, Conclusions of Law, and Decision ("Trial Decision"). Thereafter the parties filed and argued various post-trial motions relating to attorney fees, costs, and prejudgment interest.

1 On October 27, 2014, Defendants filed a "Motion for NRCP 60(b) Relief from Court's
2 Findings of Fact, Conclusions of Law and Decision and Related Orders" ("Motion"). The
3 motion was fully briefed, then submitted for review on December 17, 2014. The Court then
4 invited oral arguments, which took place on February 18, 2015 and February 23, 2015. In
5 oral arguments, the Movants/Defendants were represented by D. Chris Albright and the
6 Respondent/Plaintiff was represented by Michael D. Hoy.

7 The Court has fully reviewed and considered the Motion, the oral arguments, and
8 portions of the trial record referenced in the briefing and oral arguments. **For the reasons**
9 **below, the Motion is denied.**

10
11 1. Fraud as a basis for relief. The Motion invokes NRCP 60(b)(3), claiming that
12 Plaintiff is guilty of fraud. Generally, one seeking relief for fraud must prove each element
13 of fraud with clear and convincing evidence. *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115
14 (1975).¹ The same is true when a party seeks relief under Rule 60(b)(3).² Movants have
15 not offered any evidence of fraudulent representation or concealment either on the Court
16

17 ¹ See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998)(elements of
18 fraudulent representation). With respect to the false representation element, the
19 suppression or omission "of a material fact which a party is bound in good faith to
20 disclose is equivalent to a false representation, since it constitutes an indirect
representation that such fact does not exist. *Nelson v. Heer*, 123 Nev. 217, 225, 163
P.3d 420, 426 (2007).

21 ² See, e.g. *Ervin v. Wilkinson*, 701 F.2d 59, 61 (7th Cir. 1983). Because the Nevada
22 Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, federal
23 precedents interpreting and applying FRCP "are strong persuasive authority."
24 *Vanguard Piping v. Eighth Judicial District Court*, 129 Nev.Adv.Op. 63, 309 P.3d 1017,
1020 (Sept. 19, 2013). See also *Executive Management, Ltd. v. Ticor Title Ins. Co.*,
118 Nev. 46, 51, 38 P.3d 872, 875 (2002). "We may consult the interpretation of a
25 federal counterpart to a Nevada Rule of Civil Procedure as persuasive authority."
Humphries v. Eighth Judicial District Court, 129 Nev.Adv.Op. 85, 312 P.3d 848,
footnote 1 (November 7, 2013).

1 ("intrinsic" fraud) or on the Movants ("extrinsic" fraud). Further, the Court finds no
2 misconduct of the parties or counsel (a form of "intrinsic" fraud).

3 2. Excusable neglect as a basis for relief. The Motion refers to timecards
4 recorded by Steppan and other employees of Fisher Friedman Associates ("FFA") for work
5 performed on the Wingfield Towers design project. The time cards were not offered at
6 trial. It is undisputed that Steppan produced the timecards in discovery on or about March
7 1, 2010, more than three years before the trial.³ In their reply,⁴ Movants argued that the
8 failure to offer the time cards at trial was "excusable neglect" within the meaning of NRCP
9 60(b)(1) because the timecards became relevant only when the Nevada Supreme Court
10 published its decision in *DJT Design, Inc. v. First Republic Bank*, 130 Nev.Adv.Op. 5, 318 P.3d
11 709 (Feb. 13, 2014) ("*DJT Design*"). Movants essentially point to the time cards as evidence
12 that Steppan only performed a small portion of the overall design work required by the
13 design contract (Trial Exhibits 6 and 7) or the supplemental work contracts (Trial Exhibits
14 19 – 21). Without the time cards, the trial record is complete that Steppan supervised the
15 design process. Assuming for the sake of argument that the time cards could have been
16 offered and admitted, the information on the time cards would not affect the application of
17 *DJT Design* to this case. Therefore, "excusable neglect" under NRCP 60(b)(1) would not
18 entitle Movants to relief.
19
20
21

22 ³ See Steppan's Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's
23 Findings of Fact, Conclusions of Law and Decision and Related Orders (eFlex
Document 4715768) ("Opposition"), Exhibit 8.

24 ⁴ See Movant's Reply Points and Authorities in Support of Their Motion for NRCP
25 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and
Related Orders (eflex Document 4737764).

1 3. Reconsideration. Movants suggest that relief under NRCP 60(b)(1) is
2 required to correct error in the Trial Decision. A motion for reconsideration is not a vehicle
3 for relitigating issues already decided by the Court, or presenting new evidence or
4 arguments that could have been presented to the Court before or during trial. *E.g. Davidson*
5 *v. Scully*, 172 F.Supp.2d 458, 462 (S.D.N.Y. 2001). A motion for reconsideration is
6 appropriate to traverse important evidence that was unavailable for trial or a substantive
7 change in the law after the trial. Although there are no grounds for reconsideration, the
8 Court has considered the impact of statutes and decisions on the facts of this case.

9
10 The Court previously found that Steppan was individually licensed in the State of
11 Nevada. Findings of Fact, ¶ 9. Further, Steppan was the project manager for the Wingfield
12 Towers project, and provided project management and oversaw the staff at Fisher
13 Friedman Associates in preparing the instruments of service for the Wingfield Towers
14 project. *Id.*

15 Steppan entered into several written design contracts with BSC Financial, LLC.
16 (Trial Exhibits 6, 7, 19, 20, 21). Steppan is contractually and professionally responsible for
17 all of the work performed under those contracts. Movants have not directed the Court to
18 any statute or precedent for the proposition that Steppan is unable to provide the design
19 services from unlicensed architects, so long as he maintains “responsible control” over the
20 design process.⁵ At trial, there was considerable examination and argumentation about
21 whether Steppan maintained “responsible control.” Nothing in the Motion persuades the
22 Court that Steppan failed to maintain “responsible control.”
23

24
25 ⁵ “Responsible control” is defined in NRS 623.029 and National Council of
Architectural Registration Boards (“NCARB”) Rules of Conduct 5.2. The Findings of
Fact did not use the term “responsible control.”

1 In *DTJ Design*, a Colorado corporation contracted with a Nevada developer to
2 provide architectural services for a Las Vegas subdivision. The corporation recorded a lien
3 in its name, and then commenced litigation to establish the priority of the lien over a deed
4 of trust securing a construction and development loan. *DTJ Design* held that the
5 corporation could not maintain the action for several reasons. First, the company failed to
6 comply with NRS 80.010(1). Second, the company was not licensed to practice architecture
7 in Nevada. The corporation argued that one of its principal architects, Thorpe, was
8 individually licensed in Nevada. The court held, "...Thorpe's individual status has no
9 bearing on whether DTJ, a separate entity, may bring or maintain an action for
10 compensation of its services." 318 P.3d at 711. Further, Thorpe could not theoretically be
11 the lien claimant and plaintiff because he did not sign the design contract (on behalf of the
12 corporation or otherwise), and was not a "co-principal" on the project until a year after the
13 design contract was signed. In this case, Steppan signed the contract as an individual.
14 Steppan is the plaintiff. *DTJ Design* is not controlling.

16 *Nevada National Bank v. Snyder*, 108 Nev. 151, 826 P.2d 560 (1992) – a decision that
17 existed long before this case was commenced – likewise does not compel a defense
18 judgment. In *Snyder*, two out-of-state design firms entered into design contracts. *Snyder*
19 held that these foreign corporations could not commence lien foreclosure suits because
20 they both failed to comply with NRS 80.030. After the case commenced, the trial court
21 granted a motion by Depner Architects & Planners, Inc. to substitute Mr. Depner, an
22 individual, for the corporation. The *Snyder* court found substitution was improper because
23 the corporation, and not the individual, invoiced for all work, prepared the constructing
24 drawings, employed all individuals who created the drawings, brought a prior appeal in the
25

1 corporate name, and commenced the action. 108 Nev. at 155, 826 P.2d at 562. These facts
2 differ from the present case in that Steppan, the individual, was always the contract
3 architect, the lien claimant, and the plaintiff.

4 Movants have also argued that Steppan may only assert a lien for the work that he
5 personally performed. NRS 108.222(1)(a) provides that one may claim a lien for work
6 "furnished by or through the lien claimant." Again, Steppan individually signed the design
7 contracts and was contractually bound to perform all of the services required by those
8 contracts. Further, within the meaning of NRS 108.226(2)(c), the "name of the person by
9 whom [Steppan] was employed or to whom [Steppan] furnished the material or
10 equipment" was the developer entity identified in the design contracts.
11

12 If one claims a lien for services that can only be provided by a licensed professional,
13 the lien claimant must allege and prove licensure. NRS 108.222(2). To foreclose a lien for
14 architectural services, the plaintiff must be licensed. NRS 623.357. Again, it is undisputed
15 that Steppan, the lien claimant and foreclosure plaintiff, was duly licensed. The licensure of
16 Fisher Friedman Associates is not relevant under these statutes.

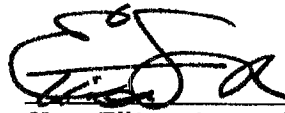
17 Movants have argued that the design contracts are a sham in the sense that Fisher
18 Friedman Associates, not Steppan, was truly the contracting party. Therefore, Movants
19 argue, the licensure of Fisher Friedman Associates is relevant.
20

21 As set forth above, in the Trial Decision, and in the Court's observations during oral
22 arguments, Steppan was free to engage unlicensed individuals or firms to help deliver the
23 design services required by contract so long as he maintained "responsible control."
24 During trial, Steppan described his work on the project, and several times reiterated that
25 he exercised "responsible control" over the process. Movants offered no evidence at trial

1 or in support of the Motion to rebut this testimony.⁶ Therefore, the licensure of Fisher
2 Friedman Associates as an entity was not and is not germane to the disposition of the lien
3 claim prosecuted by Steppan as an individual.

4 **Accordingly, the Motion is DENIED.**

5 Dated March 13, 2015.

6
7 

8 Hon. Elliott A. Sattler
9 District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22

23
24 ⁶ The Court notes that, at trial, Movants presented expert testimony of architect
25 Donald J. Clark, AIA. IV Trial Transcript, pp. 854-898. Mr. Clark offered no opinion
that Steppan did nor did not exercise "responsible control." IV Trial Transcript, pp.
854-892.

EXHIBIT “14”

1880

**In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe**

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Defendants.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

**Judgment, Decree and Order for
Foreclosure of Mechanics Lien**

Based upon the Findings of Fact, Conclusions of Law, and Decision (May 28, 2014, E-flex Transaction #4451229), Order Regarding Plaintiff's Motion for Costs (September 5, 2014, E-flex Transaction #4594487), Order Regarding Plaintiff's Motion for Attorney Fees (September 8, 2014, E-flex Transaction #4595799), Order Regarding Reconsideration of Attorney Fees (December 10, 2014, E-flex Transaction 4729999), and the rulings regarding the computation of prejudgment interest during the June 12, 2014 hearing reflected in the hearing transcript at pages 21 and 22.

1 IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

2 1. Plaintiff Mark B. Steppan shall take judgment on the Notice and Claim of Lien
3 recorded on November 7, 2006 as Document 3460499 in the official records of the Washoe
4 County Recorder, as amended by the Amended Notice and Claim of Lien recorded May 3,
5 2007 as Document 3528313, and as further amended by the Second Amended Notice and
6 Claim of Lien recorded November 8, 2013 as Document 4297751 for the following
7 amounts:

8	A.	Principal.....	\$1,753,403.73
9	B.	Prejudgment interest.....	\$2,527,329.23
10	C.	Attorney fees.....	\$233,979.50
11	D.	Costs	<u>\$21,550.99</u>
12	Total	\$4,536,263.45

13 2. Pursuant to NRS 108.239(10), the real property described as Assessor Parcel
14 Number 011-112-03, 011-112-06, 011-112-07, and 011-112-12, and more particularly
15 described in Exhibit A hereto (the "Property") shall be sold in satisfaction of the Plaintiff's
16 mechanics lien in the amounts specified herein.

17 3. Pursuant to NRS 108.239(10), Plaintiff Mark B. Steppan shall cause the
18 Property to be sold within the time and in the manner provided for sales on execution for
19 the sale of real property.

20 4. The costs of the sale shall be deducted from the gross proceeds, and the
21 balance shall constitute the Net Sale Proceeds.

22 5. Pursuant to NRS 108.239(11), if the Net Sale Proceeds are equal to or exceed
23 the Lienable Amount, then the Lienable Amount shall be disbursed to Plaintiff Mark B.
24
25

1 Steppan, and the surplus shall be disbursed to Defendants John Iliescu, Jr. and Sonnia
2 Iliescu as trustees of the John Iliescu Jr. and Sonnia Iliescu Trust.

3 6. If the Net Sale Proceeds are less than the Lienable Amount, then all of the Net
4 Sale Proceeds shall be disbursed to Plaintiff Mark B. Steppan. Within 30 calendar days after
5 the sale, Steppan may by motion seek additional relief pursuant to NRS 108.239(12).
6 Defendants reserve all rights regarding any additional relief including, but not limited to,
7 the arguments in the Defendants' Motion for Relief From Court's Attorneys' Fees and Costs
8 Orders and For Correction, Reconsideration, or Clarification of Such Orders to Comply with
9 Nevada Mechanic's Lien Law (filed September 15, 2014, e-Flex Transaction 4606433).
10

11 7. Certain third party claims by the Defendants, against a third-party
12 defendants, remain pending in this lawsuit, which have been stayed by prior stipulations of
13 the parties. The Court determines that there is no just reason for delay and,
14 notwithstanding any remaining claims against other parties herein, this Judgment is
15 certified as final pursuant to NRCP 54(b) with respect to the parties hereto and the claims
16 between them.

17 DATED February 26, 2015.

18
19 

20 Hon. Elliott A. Sattler,
21 District Judge
22
23
24
25

EXHIBIT “13”

1 CODE: 3025

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 JOHN ILIESCU, JR; ET AL.,

9 Defendants.
10 _____/

11
12 **AMENDED ORDER REGARDING PLAINTIFF'S MOTION FOR ATTORNEY FEES**

13 Presently before the Court is a MOTION FOR ATTORNEY FEES ("the Motion") filed
14 by the Plaintiff MARK B. STEPPAN ("the Plaintiff") on June 20, 2014. An OPPOSITION TO
15 MOTION FOR ATTORNEYS FEES ("the Opposition") was filed by JOHN ILIESCU, JR. and
16 SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992
17 FAMILY TRUST ("the Defendants") on July 9, 2014. A REPLY IN SUPPORT OF MOTION
18 FOR ATTORNEY FEES ("the Reply") was filed by the Plaintiff on July 11, 2014, and the
19 matter was contemporaneously submitted to the Court for consideration. A SUPPLEMENTAL
20 REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES ("the Supplement") was filed by
21 the Plaintiff on July 18, 2014.

22
23 A four day bench trial was conducted beginning on December 9, 2013, in the above
24 entitled matter. The Plaintiff was suing to foreclose on a mechanics lien for architectural
25 services provided to, among other parties, the Defendants. The trial concluded on December 12,
26 2013. The Court issued its FINDINGS OF FACTS, CONCLUSIONS OF LAW AND

1 DECISION on May 28, 2014. The Motion seeks recoupment of attorney fees in the amount of
2 \$161,727.50 associated with the perfecting of the Plaintiff's mechanic lien pursuant to NRS
3 108.237(1). The total sums are supported by numerous exhibits documenting the work
4 completed on the case through and following trial. The total amount includes fees for both
5 current counsel, HOY CHRISSINGER & KIMMEL, PC and previous counsel, KERN
6 ASSOCIATES. The Opposition disputes the amount owing.
7

8 A district court may award attorney fees in limited circumstances. "[T]he district court
9 may not award attorney fees absent authority under a statute, rule or contract." Albios v.
10 Horizon Communities, Inc., 122 Nev. 490, 417, 132 P.3d 1022, 1028 (2006)(citing, Allianz
11 Insurance Company v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993)). "NRS
12 108.237(1) entitles the prevailing mechanic's lien claimant to the enforcement proceedings'
13 costs, including reasonable attorney fees." Barney v. Mt. Rose Heating & Air Conditioning, 124
14 Nev. 821, 823, 192 P.3d 730, 732 (2008). This amount includes all fees incurred to enforce a
15 mechanic's lien before the judgment is satisfied and the lien is discharged or released. Id. The
16 Court notes that an award of attorney fees in a mechanics lien case is *mandatory*. NRS
17 108.237(1) states the court "shall" award attorney fees. "Shall" imposes a duty to act. NRS
18 0.025(1)(d).
19

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 The trial court must determine what "reasonable" attorney fees are. The court looks to
2 four factors to make this determination:

3 (1) the advocate's qualities, including ability, training, education, experience,
4 professional standing, and skill; (2) the character of the work, including its difficulty,
5 intricacy, importance, as well as the time and skill required, the responsibility imposed,
6 and the prominence and character of the parties when affecting the importance of the
7 litigation; (3) the work performed, including the skill, time, and attention given to the
8 work; and (4) the result - whether the attorney was successful and what benefits were
9 derived.

10 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). These
11 factors continue to be applicable today, and courts are required to provide "sufficient reasoning
12 and findings in support of its ultimate determination." Schuette v. Beazer Homes Holdings
13 Corp., 121 Nev. 837, 865, 124 P.3d 530, 549 (2005). The district court may apply a "loadstar"
14 approach in determining what a reasonable amount of fees are. A loadstar amount involves the
15 multiplying the number of hours reasonably spent on the case by a reasonable hourly rate. Id.,
16 121 Nev. at 864, 124 P.3d at 549 (citing, Herbst v. Humana Health Insurance of Nevada, 105
17 Nev. 586, 590, 781 P.2d 762, 764 (1989)). The Court makes the following findings, based on a
18 review of all the pleadings, papers, and authorities filed in the case to the date of this ORDER, as
19 well as the Court's analysis of the issues presented in the case and the trial noted above.

20 The Advocate's Qualities: All of the attorneys in this case, including counsel for the
21 Defendants, are very qualified. The firm of HOY CHRISSINGER & KIMMEL, PC, is well
22 known in Nevada. Each of the attorneys is highly qualified to represent clients in all areas
23 required in the subject litigation. Further, the hourly rate is at, or possibly below, the rate
24 charged by similar counsel in the area. An identical statement can be made about the quality of
25 Gail Kern ("Kern") at KERN ASSOCIATES. The Opposition's position regarding the work of
26 opposing counsel, specifically Kern, is not supported by the record.

1 The Character of the Work: The Court has reviewed every pleading in this case.¹
2 Further, the Court presided over the trial. The Court finds that counsel for the Plaintiff presented
3 a clean and well organized trial. There were numerous pre-trial issues that were raised by both
4 the Plaintiff and the Defendants: they were resolved in the Plaintiff's favor. There were
5 numerous contracts, drawings, plans, and other building permits that each attorney had to be
6 familiar with in order to present the case to the Court. This was all done with exceptional skill.
7 The Court is not clear how it would weigh the "prominence and character of the parties when
8 affecting the importance of the litigation". The subject matter of the litigation involved the Reno
9 City Council and various local planning authorities. The proposed development was valued by
10 the parties at \$180,000,000.00; therefore, it was very important litigation. Had the development
11 gone through to completion it would have totally changed the skyline of the City of Reno.
12 Wingfield Towers would have been a significant infusion of money to the local economy and the
13 local construction industry. The character of the parties was all of high quality.

14
15
16 The Court finds that the Defendants' claim that this was a "simple" mechanics lien case
17 is not supported by the record. Further, as noted in the Supplement, the Defendants have taken a
18 contrary position in other pleadings. The Court finds that the inconsistent positions are not
19 tenable: this was a very complex case with numerous issues of great complexity.

20 The Work Performed: As noted, *supra*, the work performed in this case was very high
21 quality. The briefs were well researched, lucid, and well argued. The trial presentation was
22 streamlined and well-organized. The billing sheets are consistent with the type of work the
23 Court has observed. Further, the Court does not find that they are excessive.

24
25
26 ¹ This matter was originally assigned to the Honorable Brent T. Adams. Judge Adams
recused himself from this case. The undersigned reviewed the totality of the case in preparation
for trial. Further, the undersigned presided over much of the pre-trial motion practice.

1 The Result: the Plaintiff has prevailed in the litigation in all relevant aspects. The Court
2 also notes that the Defendants made an offer of judgment to resolve the proceedings in the
3 amount of \$25,000.00: this is less than 2% of the final judgment awarded by the Court. The
4 result could not conceivably been better for the Plaintiff.

5 The Opposition directs the Court to Herbst, supra, Kerr v. Screen Extras Guild, Inc., 526
6 F.2d 67 (9th Cir. 1975) and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir.
7 1974), as support for the proposition that the Court should consider a total of twelve additional
8 and/or different factors than those approved in Brunzell. The argument is not persuasive.
9 Barney, supra, is a case directly on point with the issues raised in the Motion: the applicability
10 of attorney fees in a mechanics lien case. The Nevada Supreme Court applied the Brunzell four
11 factor test. This is the controlling state of the law.

12 Now, therefore, it is hereby ORDERED that attorney fees in these proceedings are fixed
13 in the amount of \$233,979.50 (\$161,727.50 for Hoy Chrissinger Kimmel, PC and \$72,252.00 for
14 Kern & Associates, Ltd.). The Court finds that the fees are reasonable and in accordance with
15 controlling case law, NRS 108.237(1), and the quality of the work provided based on a loadstar
16 analysis.

17 DATED this 12 day of December, 2014.

18
19
20
21 
22 _____
23 DISTRICT JUDGE

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

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 12 day of December, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

G. Mark Albright, Esq.
801 S. Rancho Drive, Suite D-4
Las Vegas, NV 89106

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 12 day of December, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL D. HOY, ESQ.


Sheila Mansfield

EXHIBIT “12”

1 CODE: 3025

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341

Dept. No. 10

8 JOHN ILIESCU, JR; ET AL.,

9 Defendants.

10 _____ /
11
12 **AMENDED ORDER REGARDING PLAINTIFF'S MOTION FOR COSTS**

13 Presently before the Court is a MOTION FOR COSTS ("the Motion") filed by MARK B.
14 STEPPAN ("the Plaintiff") on June 20, 2014. A VERIFIED MEMORANDUM OF COSTS
15 ("the Memorandum") was attached to the Motion as an exhibit and also filed separately on June
16 20, 2014. An OBJECTION TO COURT COSTS ("Objection I") was filed by JOHN ILIESCU,
17 JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILLIESCU
18 1992 FAMILY TRUST ("the Defendants") on June 27, 2014. A SECOND OBJECTION TO
19 COURT COSTS ("Objection II") was filed by the Defendants on June 27, 2014. The
20 Defendants filed an OPPOSITION TO MOTION FOR COSTS ("the Opposition") on July 9,
21 2014. The Plaintiff filed a REPLY IN SUPPORT OF MOTION FOR COSTS ("the Reply") on
22 July 11, 2014, and contemporaneously submitted the matter for the Court's consideration.

23
24 A four day bench trial was conducted beginning on December 9, 2013, in the above
25 entitled matter. The Plaintiff was suing to foreclose on a mechanics lien for architectural
26 services provided to, among other parties, the Defendants. The trial concluded on December 12,

1 2013. The Court issued its FINDINGS OF FACTS, CONCLUSIONS OF LAW AND
2 DECISION on May 28, 2014. The Motion seeks recoupment of costs associated with the
3 perfecting of the Plaintiffs mechanics lien pursuant to NRS 108.237(1). The total sums reflected
4 in the Memorandum are \$21,550.99. The Opposition takes umbrage with both the itemization of
5 the costs and the applicability of NRS 108.237. The Opposition contends that the more
6 restrictive language contained in NRS 18.005 controls the Court's analysis regarding this issue.
7

8 The issues presented in the pleadings are those of statutory interpretation. The Motion
9 seeks to apply a statute specific to the area of law in question: the foreclosure of mechanic's
10 liens. The Opposition relies on the more general (and more restrictive) statute that addresses
11 costs of litigation.

12 When two statutory provisions conflict, [the Nevada Supreme Court] employs the rules
13 of statutory construction, Williams v. Clark County District Attorney, 118 Nev. 473, 484,
14 50 P.2d 536, 543 (2002), and attempts to harmonize conflicting provisions so that the act
15 as a whole is given effect, In re Eric L., 123 Nev. 26, 31, 153 P.3d 32, 35 (2007).
16 Statutes are interpreted so that each part has meaning. Leven v. Frey, 123 Nev. 399, 405,
17 168 P.3d 712, 716 (2007). Therefore, when a scheme contains a general prohibition
contradicted by a specific permission, "the specific provision is construed as an exception
to the general one." RadLAX Gatgeway Hotel, L.L.C. v. Amalgamated Bank, 566 U.S.
_____, 132 S.Ct. 2065, 2071, 182 L.Ed.2d. 967 (2012).

18 State v. Eighth Judicial District Court (Logan D.), 129 Nev. Adv. Op. 52, 306 P.3d 369, 380-81
19 (2013).

20 "[I]t is an accepted rule of statutory construction that a provision which specifically
21 applies to a given situation will take precedence over one that applies only generally." Nevada
22 Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)(citing, Sierra Life Ins. Co.
23 v. Rottman, 95 Nev. 654, 656, 601 P.2d 56, 57-58 (1979) and W.R. Co. v. City of Reno, 63 Nev.
24 330, 172 P.2d 158 (1946)). "A specific statute controls over a general statute." State of Nevada
25 Tax Commission, ex rel. Nevada Department of Taxation v. American Home Shield of Nevada,
26

1 Inc., 127 Nev. Adv. Op. 31, 354 P.3d 601, 605 (2011). *See also*, State of Nevada Department of
2 Taxation v. Masco Builder, 129 Nev. Adv. Op. 83, 312 P.3d 475, 478 (2013). “Statutes must be
3 construed as a whole, and phrases may not be read in isolation to defeat the purpose behind the
4 statute.” Masco, 129 Nev. Adv. Op. ___, 312 P.3d at 478.

5 “[T]he mechanic’s lien statutes are remedial in character and should be liberally
6 construed.” Leher McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 1115, 197
7 P.3d 1032, 1041 (2008)(*citing*, Las Vegas Plywood v. D&D Enterprises, 98 Nev. 378, 380, 649
8 P.2d 1367, 1368 (1982)). The legislative purpose behind the mechanic’s lien is to ensure
9 payment for services provided. “[P]ublic policy strongly supports the preservation of laws which
10 give the laborer and material man security for their claims.” Lehrer, 124 Nev. at 116, 197 P.3d
11 at 1041(*citing*, Wm. R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578, 938
12 P.2d 372, 375-76 (1997)).

13
14
15 Underlying the policy in favor of preserving laws that provide contractors secured
16 payment for their work and materials is the notion that contractors are generally in
17 a vulnerable position because they extend large blocks of credit; invest significant
18 time, labor, and materials into a project; and have any number of workers vitally
19 depend upon them for eventual payment. We determine that this reasoning is
20 persuasive as it accords with Nevada’s policy favoring contractors’ rights to
21 secured payment for labor, materials, and equipment furnished.

22 Id.

23 It is clear that the more specific statute, NRS 108.237(1), would control under these
24 circumstances. Mechanic’s liens are intended to assist contractors collect the fees associated
25 with their work. It stands to reason that the legislature also intended that they be awarded the
26 costs associated with the litigation required to collect those fees. Further, the Court would note
that its obligation to award costs under these circumstances is mandatory. NRS 108.237(1) states
that the court “shall” award costs. “Shall” imposes a duty to act. NRS 0.025(1)(d).

1 The Opposition cites the Court to Bobby Berosini, Ltd. v. People for the Ethical
2 Treatment of Animals, 114 Nev. 1348, 971 P.2d 383 (1998) and Gilman v. Nevada State Board
3 of Veterinary Medical Examiners, 120 Nev. 263, 89 P.3d 1000 (2004)(*disapproved of on other*
4 *grounds by, Nassiri v. Chiropractic Physicians Board*, 130 Nev. Adv. Op. 27, 327 P.3d 487
5 (2014)) in support of the proposition that the costs must be documented, reasonable, necessary
6 and not an approximation of the costs incurred. The Court agrees with these propositions.
7 Further, the Court finds that the documentation provided by the Plaintiff sufficiently
8 demonstrates the specificity required by the Nevada Supreme Court. The Opposition specifically
9 objects to the \$3,800.00 the Plaintiff seeks as a cost for the use of an expert. The Court would
10 note that the objection is predicated on NRS 18.005(5). This section is part of the general
11 "costs" statutory framework. The Court is relying upon the more specific statute, as noted *supra*.
12 Therefore, the expert fees are part of the "costs of the proceedings * * * as the court may find to
13 be justly due and owing to the lien claimant." NRS 108.237(1).¹

14
15
16 Now, therefore, it is hereby ORDERED that costs in these proceedings are fixed in the
17 amount of \$21,550.99 as more specifically delineated in the Memorandum.

18 DATED this 11 day of December, 2014.

19
20 
21 DISTRICT JUDGE

22
23
24 ¹ The Court would find that the excess expert witness fees would be appropriate even if
25 NRS 18.005(5) were to be applied. That statute allows for the allocation of expert fees in excess
26 of the statutory cap of \$1,500.00 if the Court determines "that the circumstances surrounding the
expert's testimony were of such necessity as to require the larger fee." *See also, Gilman, supra*.
The Court heard the testimony of the expert in question and finds that the fees associated with
his services are necessary.

1
2
3
4
5
6
7
8
9
10
11
12
13

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 12 day of December, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

G. Mark Albright, Esq.
801 S. Rancho Drive, Suite D-4
Las Vegas, NV 89106

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 12 day of December, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL D. HOY, ESQ.


Sheila Mansfield

EXHIBIT “11”

1 CODE: 3370

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 JOHN ILIESCU, ET AL.,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 MARK STEPPAN,

9 Defendants.

10
11
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

13 A four day bench trial was conducted beginning on December 9, 2013, in the above
14 entitled matter. The Plaintiff, MARK B. STEPPAN ("Steppan") was suing to foreclose on a
15 mechanics lien for architectural services provided to, among other parties, the Defendants JOHN
16 ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA
17 ILIESCU 1992 FAMILY TRUST ("Iliescu"). The trial concluded on December 12, 2013. The
18 parties were permitted to submit post-trial briefs no later than January 3, 2014. Steppan and
19 Iliescu both submitted post-trial briefs. The transcript of the proceedings was available to the
20 Court at the end of February, 2014. The Court has received and reviewed all the exhibits
21 admitted during the trial, the testimony of the witnesses, the stipulations entered into by the
22 parties, and all of the other pleadings, papers, and orders previously entered in these proceedings
23 and makes the following findings of fact, conclusions of law and decision following bench trial
24 pursuant to NRCP 52.
25
26

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

I. FINDINGS OF FACT

1. Iliescu owned four parcels of land in downtown Reno, Washoe County, Nevada, ("the property") as more fully described by the parties in the TRIAL STIPULATION filed on December 6, 2013. Iliescu desired to sell and/or develop the property.
2. Illiescu retained the services of Richard K. Johnson ("Johnson") to act as his broker in the sale and/or development of the property. Johnson has been licensed as a real estate broker for over 25 years. He has been a member of the Nevada Real Estate Commission and is a principle in the Johnson Group, a real estate firm in Washoe County, Nevada.
3. Johnson had worked for Illiescu for over five years. Johnson had sold property for Illiescu prior to the deal that became the subject of the matter *sub judice*. Johnson worked for Illiescu on a commission basis.
4. Johnson was in contact with Sam Caniglia ("Caniglia") regarding the purchase of the property. Caniglia represented Consolidated Pacific Development, Inc. ("CPD"). CPD wanted to purchase the property and develop it by placing mixed-use structures on the land. The property would be both commercial and residential.
5. Johnson received a letter from Caniglia on behalf of CPD proposing a purchase of the property. The letter was marked and admitted as exhibit 66. Johnson had been speaking with Caniglia on behalf of Illiescu prior to the receipt of the letter. The letter describes the numerous "advantages" of dealing with CPD, including financing "tentatively arranged and * * * in place well before the project is approved (by the City of Reno)" and "Architect and Engineers in place ready to start work." The parties agreed on a purchase price of \$7,500,000.00 and Illiescu would be entitled to a condominium in the development as well as other inducements. Illiescu and CPD executed numerous

1 addendums to the land purchase agreement that increased the sales price of the property
2 and provided additional inducements to Illiescu. Illiescu was represented by both
3 Johnson and legal counsel at various times during the negotiations for the sale of the
4 property.

- 5
6 6. The development contemplated by Illiescu, Caniglia, and CPD was known as Wingfield
7 Towers.
- 8 7. The sale of the property never came to pass. The property was in escrow on a number of
9 occasions and non-refundable deposits were paid to Illiescu; however, CPD and/or its
10 assigns were never able to secure funding for the purchase of the property or the
11 development contemplated thereon.
- 12 8. CPD transferred its interest in the property to Baty Schleming Investments, LLC
13 ("BSC"). Caniglia represented both CPD and BSC during times relevant to these
14 proceedings. Johnson believed that BSC and CPD were all the same people.
- 15
16 9. Steppan is, and at all times relevant to these proceedings was, an architect licensed to
17 practice in the State of Nevada. Steppan was employed at all times relevant to these
18 proceedings by the firm of Fisher Friedman Associates ("FFA"). FFA's offices were in
19 California. Steppan was the only architect at FFA licensed to practice in Nevada. FFA
20 was an internationally recognized architectural firm. FFA had developed many mixed-
21 use, residential and commercial properties. Steppan was the project manager of the
22 Wingfield Towers project. Steppan provided project management and oversaw the staff
23 at FFA in preparing the instruments of service for the Wingfield Towers project.
- 24
25 10. Steppan entered into an AIA Document B141 Agreement ("the contract") with BSC to
26 design Wingfield Towers. The contract had one addendum. Of note, the contract called

1 for an overall estimated construction cost of \$160,000,000.00. The addendum increased
2 the estimated construction cost to \$180,000,000.00. The Court finds that the later fee is a
3 conservative estimate given the scope of the project and the testimony of the witnesses
4 during the trial. The contract was signed by Steppan and BSC. Illiescu is not a party to
5 the contract. The responsibilities of the parties in the event of failure to complete the
6 project are clearly set out in § 1.3.8 of the contract.

7
8 11. Steppan would be paid based on a schedule established in § 1.5.1 of the contract.

9 Specifically, Steppan would be entitled to 5.75% of the total construction cost including
10 contractors profit and overhead. Steppan would earn his fee at the completion of five
11 separate stages of design and construction. Steppan would earn 20 % of his fee at the
12 completion of the schematic design phase ("SD")(this stage includes the City of Reno
13 entitlement process); 22 % at the completion of the design development phase ("DD");
14 40 % at the construction documents phase ("CD"); 1% at the bid/negotiate phase; and
15 17 % at the construction administration phase ("CA"). The criteria for the SD phase were
16 established § 2.4.2.1. The "cost of the work" as defined in § 1.3.1.1 of the contract is the
17 total cost or, to the extent the project is not completed, the estimated cost to the owner of
18 all the elements of the project designed or specified by the architect. The contract was
19 signed executed on October 31, 2005. There was an Addendum to the contract executed
20 on April 21, 2006. Steppan worked on the Wingfield Towers project prior to the signing
21 of the contract and the signing of the addendum. The parties were concerned about
22 losing the opportunity for certain entitlements on the project; therefore, Steppan worked
23 on an hourly basis pursuant to certain "stop gap" agreements entered into between
24 himself and Caniglia. The SD phase was completed and Wingfield Towers was able to
25
26

1 secure the required entitlements and project approval from the Reno Planning
2 Commission and the Reno City Council.

3 12. Rodney Friedman ("Friedman") testified at the trial. Friedman is a principal at FFA. FFA
4 was a design consultant on the Wingfield Towers project. Friedman initially had contact
5 with Caniglia about the Wingfield Towers project. Friedman established that the 5.75%
6 fee was discussed from the inception of the project. The billing for the project was on an
7 hourly basis while the parties finalized the details of the contract.
8

9 13. Kenneth VanWoert ("VanWoert") testified at the trial. VanWoert is an architect. The
10 Court found that VanWoert was qualified to testify as an expert in the proceedings.
11 VanWoert reviewed all the work done by Steppan and determined that the SD phase of
12 the project had been completed. VanWoert opined that even though the documents were
13 "prepared" by a firm other than Steppan they would go toward the SD phase because the
14 design was done by Steppan. VanWoert opined that the instruments of service (those
15 items that represent the design of the building) were done by Steppan. VanWoert did
16 acknowledge that there were changes in the overall composition of the building (the size
17 and composition of units for example); however, these modifications did not alter his
18 belief that Steppan had completed the SD phase.
19

20 14. Illiescu was aware that the instruments of service were being produced. Illiescu may not
21 have known, at all times, Steppan's name; however, there is no doubt in the Court's mind
22 that Illiescu was aware of the work being done by Steppan (a third party) on behalf of
23 Caniglia, CPD and/or BSC. Specifically, Illiescu was present when a video showing the
24 impact of the project was shown to the Reno City Council. He was aware of the nature
25 and scope of the project to include the production of models and drawings that evidenced
26

1 how the buildings would look and the impact they would have on the surrounding
2 community. All of the instruments of service were produced by Steppan at or through
3 FFA.

4 15. Illiescu consented to the request and/or extension of the entitlements granted to build
5 Wingfield Towers. The entitlements were extended numerous times.

6
7 16. Steppan was not paid for his services as contemplated by the contract. There were
8 numerous emails sent to Caniglia and others detailing the failure to pay the sums due. On
9 November 7, 2006, Steppan filed a mechanic's lien against the property. Steppan did not
10 provide Illiescu with pre-lien notice. The lien was removed at the request of the
11 developers so the project could go forward before the Reno Planning Commission and/or
12 the Reno City Council for approval with no encumbrances on the property.

13
14 17. Illiescu acknowledged during the trial that in the land purchase agreement between
15 Illiescu and Caniglia, that Caniglia had the authority to act in a way that may expose the
16 property in question to a mechanics lien. *See*, exhibit 68, ¶31. Illiescu knew that there
17 would be architects, engineers, and other service providers in order to get the Wingfield
18 Towers process underway. Illiescu acknowledged that he was at the homeowner's
19 association meetings, *infra*, the Reno Planning Committee meeting and the Reno City
20 Council meeting regarding the Wingfield Towers project. Illiescu is an experienced real
21 estate owner. He is familiar with the notice of non-responsibility process and mechanic's
22 liens based on previous business dealings as a landlord.

23
24 18. Both Dr. John Illiescu and Sonnia Illiescu signed an "OWNER AFFIDAVIT" that were
25 part of the applications presented to the various agencies that evidence that Caniglia had
26 authorization to act as agent in the development of their property. The affidavits were

1 included along with the instruments of service produced by Steppan as part of the overall
2 application for Wingfield Towers. The affidavits were part of the Special Use Permit
3 Application and the Tentative Map & Special Use Permit Application. Ronald David
4 Snelgrove ("Snelgrove") was employed at Wood Rogers during the times relevant to
5 these proceedings. Snelgrove was present when Illiescu signed the affidavits. Snelgrove
6 discussed the project with Illiescu and showed him pictures from the instruments of
7 service. Illiescu was present with Snelgrove at downtown homeowner's association
8 meetings to discuss the impact of the Wingfield Towers project. During these
9 presentations a "PowerPoint" demonstration was shown with FFA and Steppan's name
10 present as the architects. The "fly through" of the impacted area and the "PowerPoint"
11 were admitted into evidence. Snelgrove was also present at a party thrown by Illiescu
12 after the successful presentation to the Reno City Council. Friedman and Steppan were
13 present at this party.
14

- 15
16 19. Steppan established that there were agreements between himself and the developer that
17 were outside both the contract and the "stop gap" agreement. These documents were
18 admitted at the trial. Steppan also established the billing system used by FFA during the
19 "stop gap" period and for the non-contract services provided. The description of the non-
20 contract services and the billing statements were admitted as exhibits 19 through 30.
21 Caniglia never objected to any of the billing provided by Steppan, to include the "stop
22 gap" billing and the non-contract services. Further, Caniglia never objected to the
23 amount of the mechanic's lien, *supra*. Steppan waived any right to additional fees that
24 may have been earned pursuant to § 1.3.8.7 as "Termination Expenses". Steppan is only
25
26

1 requesting payment for those sums due as a result of completing the SD phase of the
2 project and those other sums billed for non-contract services.

3 20. Steppan's first contact with Illiescu was during the special use permit application.
4

5 II. CONCLUSIONS OF LAW

- 6
- 7 1. "A mechanic's lien is a statutory creature established to help ensure payment for work or
8 materials provided for construction or improvements on land." In re: Fountainebleau Las
9 Vegas Holdings, 128 Nev. Adv. Op. 53, 289 P.3d 1199, 1210 (2012). The statutory
10 framework applicable to the mechanic's and material man's liens is codified in chapter
11 108 of the Nevada Revised Statutes.
- 12 2. "[T]he mechanic's lien statutes are remedial in character and should be liberally
13 construed." Leher McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102,
14 1115, 197 P.3d 1032, 1041 (2008)(*citing*, Las Vegas Plywood v. D&D Enterprises, 98
15 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)).
- 16 3. The legislative purpose behind the mechanic's lien is to ensure payment for services
17 provided. "[P]ublic policy strongly supports the preservation of laws which give the
18 laborer and material man security for their claims." Lehrer, 124 Nev. at 116, 197 P.3d at
19 1041(*citing*, Wm. R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578,
20 938 P.2d 372, 375-76 (1997)).

21
22
23 Underlying the policy in favor of preserving laws that provide contractors secured
24 payment for their work and materials is the notion that contractors are generally in
25 a vulnerable position because they extend large blocks of credit; invest significant
26 time, labor, and materials into a project; and have any number of workers vitally
depend upon them for eventual payment. We determine that this reasoning is
persuasive as it accords with Nevada's policy favoring contractors' rights to
secured payment for labor, materials, and equipment furnished.

Id.

- 1 4. "Substantial compliance with the technical requirements of the lien statutes is sufficient
2 to create a lien on the property where * * * the owner of the property receives actual
3 notice of the potential lien claim and is not prejudiced." Fronden v. K/L Complex, LTD.,
4 106 Nev. 705, 709, 800 P.2d 719, 721 (1990)(*citing*, Board of Trustees v. Durable
5 Developers, Inc., 102 Nev. 401, 410, 724 P.2d 736, 743 (1986)). *Accord*, Hardy
6 Companies Inc. v. SNMARK, LLC, 126 Nev. Adv. Op. 49, 245 P.3d 1149 (2010).
- 7 5. "The purpose of the pre-lien statute is to put the owner on notice of work and materials
8 furnished by *third persons* with whom he has no direct contact. If the owner fails to file a
9 notice of non-responsibility within the time provided in the law, *after knowledge of the*
10 *construction*, the statute provides that the construction is at the instance of the owner."
11 Fronden, 102 Nev. at 709, 800 P.2d at 721(*citing*, Matter of Stanfield, 6 B.R. 265, 269
12 (Bankr.D.Nev. 1980)(emphasis in the original).
- 13 6. "... [A]ctual knowledge requires that the owner has to have been reasonably made aware
14 of the identity of the third party seeking to record and enforce a lien." Hardy, 126 Nev.
15 Adv. Op. 49, 245 P.3d at 1157.
- 16 7. "The purpose underlying the notice requirement is to provide the owner with knowledge
17 that work and materials are being incorporated into the property. The failure to serve the
18 pre-lien notice does not invalidate a mechanics' or materialmen's lien where the owner
19 received actual notice." Fronden, 106 Nev. at 710, 800 P.2d at 721.
- 20 8. "Failure to either fully or substantially comply with the mechanic's lien statute will
21 render a mechanic's lien invalid as a matter of law." Hardy, 126 Nev. Adv. Op. 49, 245
22 P.3d at 1155 (*citing*, Schofield v. Copeland Lumber, 101 Nev. 83, 86, 692 P.2d 519, 521
23 (1985)).
24
25
26

- 1 9. "Fron den is still good law." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1154. 2003 and
2 2005 legislative amendments to NRS chapter 108 have not altered the validity of the pre-
3 lien notice analysis previously announced by the Nevada Supreme Court. *See generally*,
4 Hardy, supra.
- 5 10. "An owner who witnesses the construction, either firsthand or through an agent, cannot
6 later claim a lack of knowledge regarding future lien claims." Hardy, 126 Nev. Adv. Op.
7 49, 245 P.3d at 1157 (*citing, Fron den, supra*).
- 8 11. A contract that is unambiguous shall not be the subject of parole evidence. "Under the
9 parole evidence rule, extrinsic evidence cannot be introduced to aid the court in
10 interpreting a contract unless the contract contains ambiguities." Margrave v. Dermody
11 Properties, Inc., 110 Nev. 824, 829, 878 P.2d 291, 294 (1994)(internal citations omitted).
12 "A contract is ambiguous when it is subject to more than one *reasonable* interpretation."
13 Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407
14 (2007)(emphasis added)(*citing, Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510
15 (2003)).
- 16 12. The Court finds that the contract admitted during the trial is clear on their face and
17 unambiguous in its terms. The Court further finds that the terms of that contract
18 contemplate Steppan being entitled to 20 % of 5.75 % of \$180,000,000.00 (the agreed
19 upon estimated cost of service) at the conclusion of the SD phase. The Court finds by a
20 preponderance of the evidence that the SD phase was completed. To interpret the
21 contract in any other way would be unreasonable. Steppan would have to wait until the
22 completion of all stages of the contract prior to determining the amount owed if the Court
23 were to give the terms the meaning suggested by Illiescu. Further, that would place the
24
25
26

1 obligation to pay completely in the hands of the developer: should the developer
2 abandon the project at any time the actual amount of construction would never be known,
3 and Steppan would never be able to establish his lien amount. This is unreasonable. The
4 parties agreed on an approximate amount as the basis for the services provided. Further,
5 the Court finds that the parties contemplated an adjustment (up or down) depending on
6 the actual cost of the completed development. The Court finds that the \$180,000,000.00
7 estimate to be conservative based on the testimony of the experts at the trial. The Court
8 further finds that Steppan has proven the non-contract expenses by a preponderance of
9 the evidence. Steppan is entitled to those sums as more fully set out in the Second
10 Amended Notice and Claim of Lien filed with the Washoe County Recorder on
11 November 8, 2013, and admitted during the trial as exhibit 3. Steppan has established
12 that he is entitled to a mechanic's lien.
13
14

- 15 13. The Court finds by a preponderance of the evidence that Steppan has proven that Illiescu
16 was aware of the third party services he was providing. Illiescu was in attendance during
17 numerous presentations where the instruments of service containing Steppan's name were
18 presented. He personally saw the instruments of service. Illiescu negotiated repeatedly
19 for specific inducements in Wingfield Towers. Further, Illiescu knew that an architect
20 would be employed to design Wingfield Towers. Illiescu signed affidavits giving
21 Caniglia the right to negotiate on his behalf. While there was no pre-lien notice provided,
22 none was required.
23
24
25
26

1
2 **IT IS ORDERED**, that the parties shall contact the Judicial Assistant for Department 10
3 within 5 days from the date of this ORDER to set a hearing to establish the final amount
4 owed as a result of the mechanic's lien, to include applicable interest.
5

6 DATED this 28 day of May, 2014.

7 
8 DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 28 day of May, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 28 day of May, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL D. HOY, ESQ.


Sheila Mansfield

EXHIBIT “10”

1 CODE: 3025

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 JOHN ILIESCU, ET AL.,

6 Plaintiff,

7 vs.

Case No. CV07-00341

Dept. No. 10

8 MARK STEPPAN,

9 Defendants.
10 _____ /

11
12 **ORDER GRANTING MOTION TO STRIKE OR LIMIT JURY DEMAND**

13 Presently before the Court is a MOTION TO STRIKE OR LIMIT JURY DEMAND
14 (hereinafter "the Motion") filed by the Defendant Mark P. Steppan (hereinafter "the Defendant")
15 on July 11, 2013. An OPPOSITION TO MOTION TO STRIKE OR LIMIT JURY DEMAND
16 (hereinafter "the Opposition") was filed by the Plaintiffs John Iliescu, Jr. and Sonnia Santee
17 Iliescu individually and in their capacity as trustees for the John Iliescu, Jr. and Sonnia Iliescu
18 1992 Family Trust (hereinafter "the Defendants") on July 26, 2013. A REPLY IN SUPPORT
19 OF MOTION TO STRIKE JURY DEMAND (hereinafter "the Reply") was filed on August 6,
20 2013, and the matter was contemporaneously submitted to the Court for consideration. Trial is
21 scheduled for October 7, 2013.

22 The only issue raised in the Motion is whether a jury is required to resolve the issues
23 remaining before the Court^[1]. The Motion directs the Court to Close v. Isbell Construction
24

25 ^[1] The pleadings note that there are remaining claims and/or parties that are the subject of
26 this litigation. Specifically, Calvin Eugene Baty, Jr., Consolidated Pacific Development, and
DeCal Oregon, Inc. (hereinafter, "the third parties"). See generally, the Motion at pages 2
through 3 and the Opposition at page 3. It would appear that the status of the third parties is
unknown by the Plaintiff and the Defendants. It is unknown if the claims will be contested;

1 Company, 86 Nev. 524, 571 P.2d 257 (1970), as support for the proposition that foreclosure suits
2 for mechanics liens (such as the one that is the subject of the case under consideration) are
3 matters of equity and therefore are not afforded the requirement of a jury trial. *See, Close*, 86
4 Nev. at 529, 471 P.2d at 260-61. The Nevada Supreme Court has recently cited to Close in
5 unpublished opinions and it would appear to the Court that Close is still applicable to cases such
6 as that under consideration. *See also, Harmon v. Tanner Motor Tours*, 79 Nev. 4, 377 P.2d 622
7 (1963), Johnston v. De Lay, 63 Nev. 1, 158 P.2d 547 (1945) and Crosier v. McLaughlin, 1 Nev.
8 348 (1865).

10 The Opposition does not disagree with two propositions: 1) this case is one for the
11 foreclosure of a mechanics lien (the Opposition, page 6, line 11); and 2) Close is controlling (the
12 Opposition, page 3, lines 19 through 20). The remaining portions of the Opposition are attempts
13 to "re-litigate" a previously entered order in this case that disposed of the remaining claims
14 between the Plaintiff and the Defendants. These arguments are not persuasive or responsive to
15 the central issue raised in the Motion.

17 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Motion is GRANTED.

18 The trial on the issue of foreclosure of the mechanics lien will be a bench trial. No jury is
19 required.

20 Dated this 23 day of August, 2013.

21
22 
23 DISTRICT JUDGE

24
25
26 however, it would appear from the representations of the Plaintiff and the Defendant that the
third parties will not be contesting the claims against them.

1
2
3 **CERTIFICATE OF MAILING**

4 Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial
5 District Court of the State of Nevada, County of Washoe; that on this 23 day of August, 2013, I
6 deposited in the County mailing system for postage and mailing with the United States Postal
7 Service in Reno, Nevada, a true copy of the attached document addressed to:

8 Gordon Cowan, Esq.
9 Cowan Law Office
10 P.O. Box 17952
11 Reno, NV 89511

12 Gordon Cowan, Esq.
13 10775 Double R Blvd.
14 Reno, NV 89521

15 C. Nicholas Pereos, Esq.
16 1610 Meadow Wood Lane, Suite 202
17 Reno, NV 89502

18 **CERTIFICATE OF ELECTRONIC SERVICE**

19 I hereby certify that I am an employee of the Second Judicial District Court of the State of
20 Nevada, in and for the County of Washoe; that on the 23 day of August, 2013, I electronically
21 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
22 electronic filing to the following:

23 GREGORY WILSON, ESQ.

24 DAVID GRUNDY, ESQ.

25 MICHAEL HOY, ESQ.

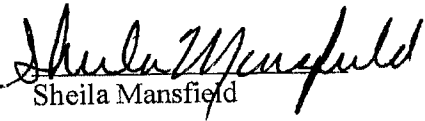
26 
27 Sheila Mansfield
28

EXHIBIT “9”

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

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

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

AND RELATED MATTERS.

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

Dept. No: 10

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

Presently before the Court is a Motion For Partial Summary Judgment filed by Defendant MARK B. STEPPAN (hereinafter "Defendant") on October 21, 2011. On February 11, 2013, Plaintiffs JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY (hereinafter "Plaintiff") filed an Opposition To Motion For Partial Summary Judgment. On February 21, 2013, Defendant filed a Reply In Support Of Motion For

1 Partial Summary Judgment. On April 2, 2013, Defendant filed a Request For Submission, thereby
2 submitting the matter for the Court's consideration.

3 Summary judgment should be granted only when, based upon the pleadings and discovery on
4 file, no genuine issue of material fact exists for trial and the moving party is entitled to judgment as a
5 matter of law. NRCP 56(c). A genuine issue of material fact exists when a reasonable jury could
6 return a verdict in favor of the nonmoving party. *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d
7 789, 790 (1998). Summary judgment is properly regarded not as a disfavored procedural shortcut,
8 but rather as an integral part of civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317,
9 327 (1986).

10 The evidence and any reasonable inferences drawn from it must be viewed in a light most
11 favorable to the nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184
12 (2000). However, the nonmoving party may not avoid summary judgment by relying "on the
13 gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno Newspapers, Inc.*, 118
14 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284,
15 302, 662 P.2d 610, 621 (1983). The nonmoving party must, by affidavit or otherwise, set forth
16 specific facts demonstrating the existence of a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57
17 P.3d at 87.

18 After reviewing the facts of this case, and based upon the evidence available for trial, the
19 Court believes that partial summary judgment is appropriate. Plaintiff has failed to demonstrate to
20 the Court the existence of any genuine issue of material fact. On June 22, 2009, the Honorable Brent
21 Adams entered an Order denying Plaintiff's Motion For Partial Summary Judgment. In that Motion,
22 Plaintiff argued that they were never served with notice of right to lien as required under NRS
23 108.245(1). They also argued that they did not have actual notice of construction on the project or of
24 the identity of the Respondent. The Court in that case found that even though Plaintiff alleged they
25 did not know the identity of the architects who were working on the project, they had actual
26 knowledge that Defendant and his firm was performing architectural services on the project.

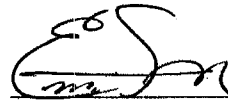
27 In this case, Defendant moves for partial summary judgment stating that where, as here, the
28 Lien Claimant's compensation is fixed by an express contract, the lien secures the amount specified

1 in the contract. NRS 108.222(1)(a). Defendant further asserts that as a matter of law, the secured
2 amount is not equal to either a subjective value to the landowner or a hypothetical market value for
3 services rendered.

4 This Court agrees with Defendant, that as a matter of law, the mechanic's lien secures the
5 fixed fee specified in Lien Claimant's written contract.

6 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendant's Motion For Partial
7 Summary Judgment is **GRANTED**.

8
9 DATED this 8 day of May 2013.

10
11 

12 ELLIOTT A. SATTLER
13 District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

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

GREGORY WILSON, ESQ. for JOHN SCHLEINING

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

THOMAS HALL, ESQ. for JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN
ILIESCU, JR. & SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, and JOHN ILIESCU,
JR., individually

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

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

MICHAEL HOY, ESQ. for MARK STEPPAN

And mailed, postage paid to the following:

Gordon Cowan, Esq.
Cowan Law Office
P.O. Box 17952
Reno, NV 89521

DATED this 9 day of May, 2013.


SHEILA MANSFIELD
Judicial Assistant

EXHIBIT “8”

1 Code 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 JOHN ILIESCU JR., et al.,

Case No. CV07-00341

10
11 Plaintiffs,

Dept. No. 6

12 vs.

13 MARK B. STEPPAN,

14
15 Respondent.
16 _____/

17 AND ALL RELATED MATTERS.
18 _____/

ORDER

19 The action stems from a question of if the Applicants had knowledge the
20 Respondent and his firm were performing architectural services for the benefit of the project
21 in question. The Applicants ("Applicants" or "Iliescu") filed a motion for partial summary
22 judgment on Mark Steppan's ("Respondent") claim for foreclosure of mechanic's lien. The
23 Respondent opposed the motion and filed a cross motion for partial summary judgment to
24 foreclose on the mechanic's lien.

25 The Applicants argue that they were never served with notice of right to lien as
26 required under NRS 108.245(1). They further argue the Applicants did not have actual
27 notice of construction on the project or of the identify of the Respondent. *Fondren v. K/L*
28 *Complex Ltd.*, 106 Nev. 75, 800 P.2d 719 (1990).

//

1 The Respondent argues that Iliescu did have actual notice from the land sale
2 agreement that the buyer would be hiring several design professionals, including architects.
3 Iliescu was also made aware at the public meetings that the Respondent was the architect
4 for this project. Since the Applicants knew that the construction project was underway, they
5 should have filed a notice of non-responsibility as required under NRS 108.234. See
6 *Fondren supra* at 721. The Respondent also alleges that the Applicants' counsel reviewed
7 the contract on the project and therefore had knowledge of the architect's identity and this
8 knowledge is imputed to the Applicants. *Lange v. Hickman*, 92 Nev. 41, 544 P.2d 1208
9 (1976).

10 The Applicants respond that the Respondent did not even attempt to comply with the
11 statutory requirements which results in a lack of substantial compliance. *Las Vegas*
12 *Convention & Visitors Auth. v. Miller*, 124 Nev. Adv. Rep.62, 191 P.3d 1138 (2008). The
13 Applicants further argue that there has been no evidence to prove that Iliescu has actual
14 knowledge of the Respondent's architectural services. Iliescu also argues that there is a
15 question whether Iliescu's prior counsel had Respondent's information in mind when it was
16 acting on Iliescu's behalf.

17 "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,
18 answers to interrogatories, admissions, and affidavits, if any, that are properly before the
19 court demonstrate that no genuine issue of material fact exists, and the moving party is
20 entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev.
21 2005).

22 "A factual dispute is genuine when the evidence is such that a rational trier of fact
23 could return a verdict for the nonmoving party." *Id.*

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

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

DATED: This 22 day of June, 2009.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 11 day of June, 2009, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

SALLIE ARMSTRONG, ESQ.

GAYLE KERN, ESQ.

Further, I certify that I deposited in the county mailing system for postage and
mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing
addressed to:

Stephen C. Mollath, Esq.
Prezant & Mollath
6560 SW McCarran Blvd., Ste. A
Reno NV 89509

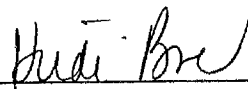

Heidi Boe
Judicial Assistant

EXHIBIT “7”

1 **4050**
2 David R. Grundy, Esq. SBN 864
3 LEMONS, GRUNDY & EISENBERG
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
7 Facsimile: (775) 786-9716

8 Attorneys for Third Party Defendants

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11
12 **IN AND FOR THE COUNTY OF WASHOE**

13 MARK B. STEPPAN,

14 Plaintiff,

15 vs.

16 JOHN ILIESCU JR. and SONNIA ILIESCU, as
17 Trustees of the JOHN ILIESCU, JR. AND SONNIA
18 ILIESCU 1992 FAMILY TRUST AGREEMENT,
19 et al.,

20 Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: 10

21 JOHN ILIESCU, JR. and SONNIA ILIESCU, as
22 Trustees of the JOHN ILIESCU, JR. AND SONNIA
23 ILIESCU 1992 FAMILY TRUST AGREEMENT, et al.,

24 Third-Party Plaintiffs,

25 vs.

26 CONSOLIDATED PACIFIC DEVELOPMENT, INC., a
27 Nevada Corporation; DECAL OREGON, INC., an
28 Oregon Corporation; CALVIN BATY, individually;
29 JOHN SCHLEINING, individually; HALE LANE PEEK
30 DENNISON AND HOWARD PROFESSIONAL
31 CORPORATION, a Nevada professional
32 corporation, dba HALE LANE; KAREN D.
33 DENNISON; R. CRAIG HOWARD; JERRY M.
34 SNYDER; and DOES I thru X,

35 Third-Party Defendants.

36 **SECOND STIPULATION TO STAY PROCEEDINGS AGAINST DEFENDANT**
37 **HALE LANE AND ORDER TO STAY AND TO DISMISS CLAIMS AGAINST DEFENDANTS**
38 **DENNISON, HOWARD AND SNYDER WITHOUT PREJUDICE**

39 Third party plaintiffs John Iliescu, Jr. and Sonia Iliescu, individually and as trustees of
40 the John Iliescu Jr. and Sonia Iliescu Family Trust (collectively "Iliescu") hereby stipulate with

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 the following Third party defendants: Hale Lane Peek Dennison & Howard, a Professional
2 Corporation, dba "Hale Lane," and Karen D. Dennison, R. Craig Howard and Jerry M. Snyder
3 ("Hale Lane Partners") as follows:

4 **RECITALS**

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

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

14 C. Guided by the law as established under *Nevada Medical Liability Insurance Co.*
15 *v. Semenza*, 104 Nev. 666, 668, *K.J.B., Inc. v. Drakulich*, 107 Nev. 367 (1991) and *Kopicko v.*
16 *Young*, 114 Nev. 1333 (1998), the parties have agreed to the terms of this stipulation and urge
17 the court to enter an order consistent herewith.

18 D. These parties entered into a stipulation to stay the case on or about December
19 13, 2007; however, no Order was entered thereon.

20 **STIPULATION**

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

26 2. All claims asserted against Hale Lane shall be stayed for all purposes, including
27 discovery and trial, pending the final resolution of all claims asserted by plaintiffs against
28 defendants, and the unstayed claims asserted by and among all other parties.

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

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

7 Dated: Jan 31, 2013
November 2012

8 GORDON COWAN, ESQ.
9 Attorney for Third Party Plaintiffs

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

10 G. M. Cowan
11
12 MICHAEL D. HOY, ESQ.
13 Attorney for Plaintiff Mark Steppan

By David R. Grundy
David R. Grundy
Attorneys for Third Party Defendants
Hale Lane, Dennison, Howard and Snyder

14 Michael D. Hoy 11 Feb 2013
15

16 ORDER

17 It is ordered:

18 1. All claims asserted against the Hale Lane Partners are hereby dismissed without
19 prejudice;

20 2. These proceedings are hereby stayed as against Hale Lane for all purposes until
21 such time as a final judgment is entered in the primary case between plaintiff, Steppan, and
22 defendant, Iliescu, *provided that*, during such stay, (a) Hale Lane shall participate in any
23 settlement conference if ordered to do so by the court; (b) Hale Lane may assert dispositive
24 motions against Iliescu and file points and authorities in support thereof; and (c) Hale Lane
25 may participate in court hearings consistent herewith.

26 DATED: February 13, 2013

27 LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

28 [Signature]
DISTRICT JUDGE

EXHIBIT “6”

CODE: 3995

Gregory F. Wilson, Esq.

Nevada Bar No. 2517

WILSON & QUINT LLP

417 West Plumb Lane

Reno, Nevada 89509

Telephone: 775.786.7600

Facsimile: 775.786.7764

Email: gfwilson@wilsonquint.com

Attorneys for John Schleining

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Case No. CV07-00341

Plaintiff,

(Consolidated with
Case No. CV07-01021)

v.

Dept. No. 10

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

Defendants.

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

**STIPULATION AND ORDER
FOR DISMISSAL WITHOUT PREJUDICE
OF ALL CLAIMS BY JOHN SCHLEINING AGAINST HALE LANE PEEK DENNISON
AND HOWARD, HOLLAND & HART, LLP, AND R. CRAIG HOWARD**

1 **STIPULATION FOR DISMISSAL WITHOUT PREJUDICE**

2 This Stipulation is entered into by and between Cross-Claimant and Third-Party Plaintiff
3 JOHN SCHLEINING on the one hand ("SCHLEINING") and Cross-Defendant HALE LANE PEEK
4 DENNISON AND HOWARD, Third-Party Defendant HOLLAND & HART, LLP and Third-Party
5 Defendant R. CRAIG HOWARD on the other hand (collectively "HALE LANE").

6 This action, Case No. CV07-01021 consolidated with Case No. CV07-00341, is referred to as
7 the "Action".

8 SCHLEINING and HALE LANE are collectively referred to as the "Parties."

9 The Parties hereby stipulate, by and through their counsel of record, as follows:

10 1. SCHLEINING's Cross-Claim and Third-Party Complaint against HALE LANE filed
11 September 2, 2009 in the Action ("Complaint") shall be dismissed WITHOUT PREJUDICE with each
12 of the Parties to bear their own attorney fees and costs, except as provided in paragraph 2 below;

13 2. In the event SCHLEINING files a subsequent action against HALE LANE, arising
14 from the events, acts or omissions alleged in the Complaint ("Subsequent Action"), HALE LANE
15 shall have the right to seek their costs as defined in NRS 18.005 ("Costs") incurred in this Action as
16 though the court had granted HALE LANE's August 16, 2011 pending motion for summary judgment
17 against SCHLEINING. Such request shall be made by filing a memorandum of costs with the court
18 presiding over the Subsequent Action. SCHLEINING waives any claim that the memorandum of
19 costs was untimely. SCHLEINING reserves the right to move that HALE LANE's costs be retaxed.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 IT IS SO STIPULATED.

2 Dated: December 22, 2011

3 WILSON & QUINT LLP

4
5 By: 

6 Gregory F. Wilson

7 417 West Plumb Lane
8 Reno, Nevada 89509
9 Telephone: 775.786.7600
Attorneys for John Schleining

10 Dated: December 22, 2011

11 LEMONS, GRUNDY & EISENBERG

12
13
14 By: 

15 Christopher M. Rusby

16 6005 Plumas Street 3rd Floor
17 Reno, Nevada 89519
18 Telephone: 775.786.6868
19 Attorneys for Hale Lane Peek Dennison and
Howard, Holland & Hart, LLP and R. Craig
Howard

20 **ORDER**

21 The Court, having considered the foregoing Stipulation of the Parties, and good cause
22 appearing,
23

24 IT IS SO ORDERED.

25 Dated: December 25, 2012

26 
27 DISTRICT COURT JUDGE
28

NRS 239B.030 AFFIRMATION

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

Dated: December 22, 2011

By: _____

Gregory F. Wilson

WILSON & QUINT LLP
417 West Plumb Lane
Reno, Nevada 89509
Telephone: 775.786.7600
Attorneys for John Schleining

EXHIBIT “5”

1 CODE: 3025

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341

Dept. No. 10

8 JOHN ILIESCU, JR., et al.,

9 Defendants.
10 _____/

11
12 **ORDER DENYING DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND**
13 **ITS JUDGMENT AND RELATED PRIOR ORDERS**

14 Presently before the Court is a DEFENDANTS' MOTION FOR COURT TO ALTER
15 OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS ("the Motion"). The
16 Motion was filed by the Defendants JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU, JOHN
17 ILIESCU, JR., SONNIA SANTEE ILIESCU as trustees of the JOHN ILIESCU, JR. AND
18 SONNIA ILIESCU 1992 FAMILY TRUST ("the Defendants") on March 10, 2015. The
19 Plaintiff MARK B. STEPPAN ("the Plaintiff") filed an OPPOSITION TO DEFENDANTS'
20 MOTION TO ALTER OR AMEND JUDGMENT AND RELATED ORDERS ("the
21 Opposition") on March 11, 2015. The Defendants filed a REPLY POINTS AND
22 AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO ALTER OR AMEND
23 JUDGMENT AND RELATED ORDERS ("the Reply") on March 20, 2015. The Motion was
24 submitted to the Court for consideration on March 26, 2015.
25
26

1 These proceedings arise out of a bench trial conducted December 9-12, 2013. The trial
2 was an action to enforce a mechanic's lien. The Court entered its FINDINGS OF FACT,
3 CONCLUSIONS OF LAW AND DECISION ("FFCLD") on June 28, 2014. The Court ruled in
4 favor of the Plaintiff. There has been extensive post-trial motion practice. Specifically, the
5 Court entered a DECISION AND ORDER DENYING NRCP 60(b) MOTION on March 13,
6 2015. The pending Motion re-argues issues previously raised in the trial and during the
7 subsequent motion practice, but using a different rule of civil procedure. The Court has
8 thoroughly reviewed the previous pleadings, the entire record of the trial to include all of the
9 exhibits admitted and the transcript thereof, the case law that has been announced post-trial,¹ and
10 the previous arguments of counsel on these issues. The Motion will be denied.

11
12 The Motion is predicated primarily on NRCP 59(e).² In *Stevo Design, Inc. v. SBR*
13 *Marketing, Ltd.*, 919 F.Supp.2d 1112 (D.Nev. 2013), Judge Hicks analyzed the requirements for
14 relief under FRCP 59(e), the Federal counterpart to NRCP 59(e). Federal decisions involving the
15 Federal Rules of Civil Procedure provide persuasive authority when examining the Nevada Rules
16 of Civil Procedure. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). The
17 Federal Court held a motion to alter or amend a judgment under rule 59(e) is, "an extraordinary
18 remedy which should be used sparingly." *Id.*, 919 F.Supp. at 1117 (citing, *McDowell v.*
19 *Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999)). The Court went on to hold that this
20 infrequent relief is granted in the following limited situations:

21
22 (1) where the motion is necessary to correct "manifest errors of law or fact upon which
23 the judgment rests;" (2) where the motion is necessary to present newly discovered or
24 previously unavailable evidenced; (3) where the motion is necessary to "prevent manifest

25 ¹ See generally, *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. Adv.
26 Op. 57, 331 P.3d 850 (Nov. 2014) and *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv.
Op. 5, 318 P.3d 709 (Feb. 2014).

² The Motion also cites NRCP 52(b).

1 injustice;" and (4) where the amendment is justified by an intervening change in
2 controlling law.

3 *Id.* (citing, *Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)).

4 A court's findings regarding a materialman's lien must be "supported by substantial
5 evidence." *Simmons*, 331 P.3d at 855-56. "Substantial evidence" is that evidence which "a
6 reasonable mind might accept as adequate to support a conclusion." *Id.*, 331 P.3d at 356 (citing,
7 *Yamaha Motor Co. U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)). The
8 Motion raises no issue that has not previously been fully briefed and a disposition rendered. The
9 Court still finds that the FFCLD is the appropriate conclusion in these proceedings. The Court
10 believes that the FFCLD is supported by substantial evidence. The Court finds that there is no
11 manifest injustice in the FFCLD; nor is there manifest error in the decision in this case. The
12 Court has considered the subsequent opinions of the Nevada Supreme Court referenced by the
13 parties and concludes they do not alter the Court's analysis in any way.³

14
15 Now, therefore, it is ORDERED that the DEFENDANTS' MOTION FOR COURT TO
16 ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS is hereby DENIED.

17 DATED this 27 day of May, 2015.

18
19 
20 DISTRICT JUDGE

21
22
23
24
25
26 ³ The Motion does not allege that there is any "newly discovered or previously
unavailable" evidence for the Court to consider.

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

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 27 day of May, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 27 day of May, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL D. HOY, ESQ.

G. MARK ALBRIGHT, ESQ.


Sheila Mansfield

EXHIBIT “4”

1 **CODE: 3665**

2 C. NICHOLAS PEREOS, ESQ. (No. 0000013)
3 1610 Meadow Wood Lane, Suite 202
4 Reno, Nevada 89502
5 Tel: (775) 329-0678

6 G. MARK ALBRIGHT, ESQ. (No. 001394)
7 D. CHRIS ALBRIGHT, ESQ. (No. 004904)
8 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
9 801 South Rancho Drive, Suite D-4
10 Las Vegas, Nevada 89106
11 Tel: (702) 384-7111
12 Fax: (702) 384-0605
13 gma@albrightstoddard.com
14 dca@albrightstoddard.com
15 *Attorneys for Applicants/Defendants*

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

17 **IN AND FOR THE COUNTY OF WASHOE**

18 MARK B. STEPPAN,

19 Plaintiff,

20 vs.

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

27 Defendants.

CASE NO. CV07-00341
(Consolidated w/CV07-01021)

DEPT NO. 10

**DEFENDANTS' MOTION FOR COURT
TO ALTER OR AMEND ITS JUDGMENT
AND RELATED PRIOR ORDERS**

28 And all original prior consolidated case(s).

29 COMES NOW, John Iliescu, Jr., individually and John and Sonnia Iliescu, as trustees of the
30 John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement (jointly hereinafter the "Iliescu
31 Defendants" or "Defendants" or "Movants"), as the Defendants in the second of these two
32 consolidated cases, and, pursuant to NRCP 52(b) and NRCP 59(e), hereby move this Court to Alter
33 and Amend its February 26, 2015 Judgment, Decree and Order for Foreclosure of Mechanic's Lien
34 ("Judgment") as well as its May 28, 2014 Findings of Fact, Conclusions of Law, and Decision

1 ("Decision") and its June 9, 2009 and May 9, 2013 Partial Summary Judgment Orders as well as its
2 prior Orders with respect to awards of costs and attorneys' fees (jointly "Orders"). The Judgment and
3 the other related Orders described above uphold a mechanic's lien and allow a foreclosure thereon,
4 which mechanic's lien should instead be invalidated. This Motion is made and based upon the points
5 and authorities in support hereof, filed concurrently herewith, the exhibits thereto, the papers and
6 pleadings on file with this Court and any argument made with respect thereto at any hearing of this
7 matter.

8 DATED this 10th day of March, 2015.

9
10
11 By 

12 G. MARK ALBRIGHT, ESQ. (NV Bar No. 001394)
13 D. CHRIS ALBRIGHT, ESQ. (NV Bar No. 004904)
14 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
15 801 South Rancho Drive, Suite D-4
16 Las Vegas, Nevada 89106
17 Tel: (702) 384-7111 / Fax: (702) 384-0605

18 I. STATEMENT OF FACTS

19 A. The Defendants Agree to Sell Their Land.

20 Movants/the Iliescu Defendants are the owners of certain vacant real property located in
21 downtown Reno, as described in the Judgment (the "Property"). Movants entered into a Land
22 Purchase Agreement and certain related Addendums to sell the Property to Consolidated Pacific
23 Development, Inc. Trial Exhibits (hereinafter "TE") 68, 69, 70, 71. The purchaser planned to build
24 a multi-use high-rise development (the "Wingfield Towers") at the Property, and subsequently joined
25 and assigned its rights to an entity known as Baty, Schleming Investments, LLC. Decision at ¶¶ 2-8.
26 (The purchaser entity or entities are jointly hereinafter referred to as "BSC" or "Developer").

27 B. The Developer Hires FFA to Provide Design Services.

28 While the Property was in escrow, certain principals of the Developer negotiated with Rodney
Friedman, the sole owner (Exhibit "1" hereto, Deposition Transcript of Stepan at pp. 7-13; Trial
Transcript - hereinafter "TT" 266, 346-47) of a California architectural firm known as Fisher Friedman

1 Associates ("FFA") to design the Wingfield Towers. (TT 212; 229; 417-18; Decision at ¶12). FFA
2 was not registered to perform architectural services in Nevada and Rodney Friedman was not licensed
3 to perform such services in Nevada (Decision at ¶9), such that these negotiations violated NRS
4 623.182. FFA had one employee who held a Nevada license: Friedman's son-in-law (Exh. "1" at pp.
5 12-13), Mark Steppan (Decision at ¶9), who had resided in California and worked for FFA his entire
6 career (Defendant's Trial Statement, filed December 4, 2013, at ¶14).

7
8 Due to Steppan's Nevada license, and because, to avoid liability, Friedman never signed *any*
9 agreements (TT 267 l. 21 - 268 l. 2), once the negotiations were complete, Friedman had Steppan sign
10 the architectural contract (TT 351 l.20 - 352 l.2) for FFA's planned architectural work. Three types
11 of contracts were ultimately claimed or involved: (i) a November 15, 2005 hourly fee letter agreement
12 (TE 14), intended as a "stop-gap" agreement until a final AIA Agreement could be signed; (ii) an AIA
13 B141-1997 Agreement (TE 6) (hereinafter the "AIA" Agreement), which, once signed, was to become
14 effective October 31, 2005 and thereby supplant the hourly letter agreement (TE 6 at Steppan 4116)
15 but which was actually signed on April 21, 2006 (TE 6 at Steppan 4130) and which called for
16 payments on a percentage basis, tied to the anticipated construction costs of the development; and (iii)
17 certain unsigned "add-on" agreements, for additional work outside the direct scope of the AIA (TE 19,
18 20, 21, 22). The Iliescu Defendants were not parties to the architectural contracts. (Decision at ¶ 10).

19 **C. FFA Performs Services and Records a Lien.**

20 FFA and its employees, including Steppan, provided design work for BSC's planned Wingfield
21 Towers development. After learning that the Developer was having problems obtaining financing,
22 FFA completed the structural design phase of its work, so as to reach a milestone which would allow
23 it to seek flat fee compensation, based on the percentage of the contract up to that phase. FFA then
24 procured BSC's signature on the AIA Agreement, without thereafter performing any more work
25 thereunder (Exh. "1" at p. 255), and then recorded a mechanic's lien in Steppan's name (TT 336; 343-
26 348). Financing for the project was never obtained, escrow never closed, and no on-site improvements
27 ever commenced. This suit, listing only one cause of action, for foreclosure of the lien, was then filed.
28

II. ANALYSIS

A. Legal Standards.

A motion to amend under NRCP 52(b), including to challenge “the sufficiency of the evidence supporting the findings” is to be filed within “10 days after service of written notice of entry of judgment.” NRCP 59(e) allows a motion to alter or amend a judgment to be made within that same time period. Relief may be granted under NRCP 59 where an aggrieved party’s substantial rights have been materially affected (*Edwards Indus. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035-37, 923 P.2d 569 (1996)) or on the basis of plain error or manifest injustice (*Frances v. Plaza Pac. Equities*, 109 Nev. 91, 847 P.2d 722 (1993)), or where the decision is manifestly contrary to the evidence (*Avery v. Gilliam*, 97 Nev. 181, 183, 625 P.2d 1166 (1981)).

In mechanic’s lien cases, a “district court’s findings must be supported by substantial evidence” meaning evidence “a reasonable mind might accept as adequate to support a conclusion.” *Simmons Self Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. Adv. Op 57, 331 P.3d 850, 855-856 (November 24, 2014). A lien claimant has the burden to “plead and prove” the statutorily required elements of his own architectural lien claim “as part of [his] prima facie case seeking compensation for . . . architectural services at trial” --*DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 710, 130 Nev. Adv. Op. 5 (February 13, 2014). *See also, Schofield v. Copeland Lumber Yards*, 101 Nev. 83, 84, 692 P.2d 519, 520 (1985) (“Compliance with the provisions of the lien statutes is placed at issue by the complaint for foreclosure.”)

“A district court may reconsider a previously decided issue if . . . the decision is clearly erroneous,” including on the basis of “new clarifying case law.” *Masonry and Tile Contractors Assoc. v. Jolley, Urga, Wirth and Woodbury*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Similarly, a court has the authority to change a prior order if it is “persuaded by the rationale of . . . newly cited authority” or if it is “more familiar with the case” or its facts and law. *Harvey’s Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095, 1097 (1980).

1 **B. Key Legal Questions.**

2 Although Steppan signed the contract documents and was identified as the purported "Contract
3 Architect" thereon, and the mechanic's lien and this suit were filed in his name, "Steppan's"
4 Mechanic's Lien must fail, as a Nevada mechanic's lien claimant may only lien for the value of
5 services provided "by or through" the lien claimant. NRS 108.222(1)(a) or (b). This means that a
6 Nevada mechanic's lien claimant may lien for (i) his own work, or (ii) that of his employees or (iii)
7 that of his hired subcontractors, but he cannot lien for someone else's work, or for that of someone
8 else's hired employees or hired subcontractors. This is demonstrated by *Nevada National Bank v.*
9 *Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 562-64 (1992) (partially abrogated on other grounds by
10 *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)) which held that it was
11 error for a district court to allow an individual member of a foreign architectural firm to act as the
12 plaintiff foreclosing the architectural firm's mechanic's lien, including because (a) the relevant
13 invoices were submitted on behalf of the foreign firm, not the individual; (b) the architectural drawings
14 were prepared by the foreign entity, not the individual; (c) the persons who prepared those drawings
15 were employees of the foreign architectural firm, *not* of the individual, etc.

16
17 To prove up a valid lien at trial, "lien claimant" and Plaintiff Steppan therefore needed to
18 demonstrate by a preponderance of substantial evidence that the lien was for unpaid amounts owed *to*
19 *Steppan* for *his* services (as alleged in Paragraph 9 of "his" Complaint) "furnished by" him or
20 furnished by *his* employees or *his* subproviders, acting "through" him as their customer or employer.
21 To do so, Steppan needed to prove both that (1) he was the contract architect in more than name and
22 (2) that he retained FFA to work for him as his subcontractor, such that FFA's and its employees' work
23 was performed "through" Steppan. As shown below, Steppan failed on both counts. (3) Furthermore,
24 even if Steppan had demonstrated that he was a proper lien claimant for FFA's work, that work was
25 performed by FFA illegally, as a foreign architectural firm not authorized to perform work in Nevada,
26 in any event, under NRS Chapter 623, and could not properly be the basis of any lien. (4) In addition,
27 Steppan failed to substantially comply with Nevada lien statutes when he attempted to perfect his lien
28

1 claim.

2 Based on these four points, this Court should alter and amend its Decision, Judgment, and the
3 related orders, and should invalidate the Steppan lien.

4 **C. Steppan Was the Contract Architect In Name Only.**

5 (i) ***Plaintiff's and His Employer's Own Trial Testimony Contradicted any Evidence that***
6 ***Steppan Was the "Contract Architect."***

7 The only evidence supporting a claim that Steppan was the contract architect was: (1) his
8 signature on the architectural contracts negotiated by Friedman; and (2) Steppan's own oral testimony
9 claiming that he had supervised and exercised "responsible control" over FFA's and its employees'
10 work.

11 However, the trial evidence showed that Steppan's signature on the agreements was directed
12 by Friedman (TT 351 l. 20 - TT 332 l. 2), the person who actually negotiated the same, on behalf of
13 FFA. Steppan's testimony of having supervised the work was pre-rebutted by the testimony of
14 Steppan's boss at FFA, Friedman, who testified twice, that *he* was the person supervising all of the
15 work (TT 258, ll 3-9; TT 269-70), and that Steppan would only have done so if Friedman were ever
16 away from the office. *Id.* This does not appear to have ever occurred, given that Friedman logged
17 three to four times more hours on the project than did Steppan. *See*, Defendant's October 27, 2014
18 Motion for NRCP 60(b) Relief, at page 22 lines 5-14 and the exhibits attached thereto, incorporated
19 herein by reference.

20 Steppan's claim to have exercised "responsible control" of the work was also undermined by
21 his explanations, provided twice during his trial testimony, of what "responsible control" meant to him.
22 For example, prior to first indicating that he exercised responsible control, Steppan testified that his
23 personal definition of that phrase "in [his] mind" is "supervision of the project **as it's approaching**
24 **a time for sealing and signing**" (TT 639 at ll. 21-24)¹ a point in time which was never reached on this
25 project (TT 269, ll. 12-15). Likewise, at TT pages 777 l. 22 through 778 l. 2, Steppan again claimed
26 that the "type of full oversight" required of an architect of record who will one day stamp and sign the
27

28

¹All emphasis and all bracketed language within trial transcript quotations are added, throughout this brief.

1 design documents, "occurs at the time of building permit submission".

2 However, the relevant rules governing the architectural profession, including NCARB Rule
3 5.2 (which has been adopted in Nevada), does not define responsible control as oversight which can
4 wait until, or become more substantive, later in the project, but instead indicates that responsible
5 control requires detailed oversight from the outset, "during . . . preparation" of the work product:
6 "[o]ther review . . . of technical submissions **after they have been prepared** by others **does not**
7 **constitute the exercise of responsible control** because the reviewer has neither control over nor
8 detailed professional knowledge of the content of such submissions **throughout their preparation.**"
9 [Emphasis added.]

10
11 Even if Steppan *had* played a supervisory role on the project, this does not mean he was the
12 contract architect. Steppan's role (even as described in testimony designed to bolster his claimed level
13 of involvement) was admitted by Steppan to be "on behalf of Fisher-Friedman Associates" as to work
14 "performed by Fisher-Friedman Associates" (TT 785, ll. 7-23), rather than being described as work
15 which Steppan did *on behalf of the client*, with FFA's work then being done on behalf of Steppan as
16 FFA's alleged customer, as should have been the case if Steppan were working for BSC, and FFA was
17 working for him.

18 (ii) ***By Contrast, the Evidence that Steppan Was Merely the Nominal Contract Architect***
19 ***Was Overwhelming.***

20 The evidence indicating that Steppan was merely the *nominal* contract architect, but in fact
21 played no such *substantive* role, is, by contrast, overwhelming: As stated above, Steppan merely signed
22 but did not negotiate the contract. Furthermore, the original stop-gap proposal letter and subsequent
23 stop-gap agreement provided a list of 28 categories of employees allegedly employed by the Contract
24 Architect. TE 9; TE 14. Inasmuch as Steppan had no employees of his own, the 28 categories of
25 Contract Architect employees listed were all, in fact, FFA employee categories, such that the actual
26 contract architect whose employees would be doing the work was FFA. Similarly, as the work
27 commenced, invoices were sent to the developer which were initially sent on "Mark A. Steppan"
28 letterhead but which likewise listed several categories of personnel performing the work, all of which

1 were categories of FFA employees, not of Steppan employees! TE 24. The time billed by Steppan,
2 for example, who was the "Executive Vice President" of FFA (TT 37 l. 1) its second highest ranking
3 official (Exh. "1" at p. 13), is therefore shown on the invoices as that of the "Executive Vice President"
4 whereas Friedman's time is shown, above Steppan's, as that of the "Principal/Officer" billing at a
5 higher rate than Steppan even though the initial invoices' letterhead claims that this is an invoice
6 submitted by some purported entity or proprietorship named Mark A. Steppan. TE 24. Thus, Steppan
7 is not even listed on *Steppan* Letterhead invoices as the "Principal/Officer" of his own purported
8 entity, and he does not even have the highest rates on what are supposedly *his* proprietorship's
9 invoices. Furthermore, the invoices were sent by FFA, and showed FFA's address at the bottom, and
10 an email address for Steppan of "Mark@fisherfriedman.com." *Id.* Steppan indicated at trial that this
11 Steppan letterhead was utilized merely to maintain the "form" that Steppan was the Contract Architect.
12 TT 673 at ll. 2-4. However, all of the payments from the Developer made under the initial invoices
13 and credited on later invoices **were paid directly to FFA**, and not to Steppan (TT 670-71) and
14 Steppan admitted he never expected to be paid directly, as a true contract architect would have been
15 (TT 673), such that the substance of the relationships was always very different from this "form."

17 Eventually, the invoices started being sent, accurately, on FFA letterhead, which reflected the
18 reality of who was actually performing the work, being paid directly, and expecting payment for the
19 work (latter part of TE 24 and 26; all of TE 25). Indeed, after the AIA Agreement was signed, no
20 further work thereunder was completed. Rather, all that then occurred is that the new, substantially
21 higher, invoices were sent, rebilling on a flat fee percentage-basis, for the same work which had
22 already previously been performed and billed. Exh. "1", at p. 255 ll. 14-21. These new invoices were
23 all on FFA letterhead (TE 25), and corresponded to the amount of the final Mechanic's Lien in
24 Steppan's name, for these FFA invoices. TE 3.

25 From the outset, the contract billing number was an FFA numbering system number and all of
26 the invoices were generated internally at FFA, which also made all decisions as to how time allocations
27 on the invoices should be treated, with the fees on the invoices being based on FFA's employees'
28

1 work, and with FFA, not Steppan, maintaining all project files. (Exh. "1" at pp. 18 and 67 and 304;
2 TT 381-382; 668-670; Decision at ¶19). Steppan did not create the design work product and contract
3 drawings, which he indicated were primarily created by Friedman and FFA employee David Tritt (Exh.
4 "1" at pp. 21; 256-57). FFA's employee Nathan Ogle, not Steppan, was listed on the invoices as the
5 Project Manager. TE 24-26. Steppan did not seek out and hire the other subcontractor professionals,
6 which was done by Friedman and FFA. TT 262-63; Exh. "1" at p. 85. Steppan, by contrast, had
7 essentially two roles: to sign the contracts and to someday sign and stamp the final architectural
8 renderings, which day never arrived. TT 780; 785.

9
10 Steppan did not set up any independent method for working on the Wingfield Towers project,
11 distinct from his other work for and as an employee of FFA, but handled it "the same way I handle my
12 oversight on other projects" as an in-house employee for FFA (TT 639 at ll. 11-13), even though this
13 was the only time he had ever signed as the named contractor for FFA's work. TT 735 ll. 4-15.
14 Although he apparently claimed to be working as some sort of Nevada independent contractor to BSC,
15 there is no evidence that Steppan obtained a local business license, or became registered with the
16 State's taxation department, or took any of the other necessary steps to fulfill such a Nevada role.
17 Instead, Steppan remained an FFA employee throughout the work performed on the contracts,
18 receiving his regular salary, and he was not anticipating any special bonuses or profit sharing on this
19 job. Exh. "1" at pp. 85-86; Decision at ¶9.

20 Even though Steppan had signed in order for FFA to benefit from his *Nevada* license,
21 Steppan's name was not even referenced as the architect in submissions to local Nevada entities
22 (which instead listed the architect for the project, and its contact person, as FFA and Nathan Ogle), or
23 on Nevada extension requests (in the name of Rodney Friedman). TE 35 at p. Steppan 2371; TE 36,
24 TE 37; TE 51 at Steppan 7404; TT 183-84; 320-21; 763-764. Steppan admitted that such submissions
25 were accurate, based on his relative lack of involvement compared to Ogle and Friedman. TT 764-
26 769. Nor was Steppan aware of a single e-mail which would show he had any communications with
27 anyone external from FFA (such as Nevada governmental entities or the client Developer) on the
28

1 project. TT 757-58. Nor, despite his sole Nevada license, was it even anticipated that Steppan would
2 have been the on-site architect in Nevada during construction. TT 421 ll. 5-20.

3 Further evidence and legal arguments as to Steppan being only a nominal contract architect,
4 who played no such actual role, are set forth in the Defendant's October 27, 2014 Motion for Relief
5 under NRCP 60(b), at pages 2-25, and 28-39 thereof, and in the Reply filed in support thereof on
6 December 16, 2014 at pages 1-2; and 7-20, all of which analysis, together with the exhibits referenced
7 therein, are hereby incorporated herein by reference.

8
9 **D. FFA Performed Its Work Directly for the Developer, Under a Direct Contractual**
10 **Relationship With the Developer, and Was Never "Hired" or "Retained" by Steppan, for**
11 **Steppan to Lien for FFA's Work (and Indeed, Never Claimed Otherwise at Trial).**

12 (i) ***The Instant Case Was Pursued on Behalf of FFA and Is Thus Barred By Post-Trial***
13 ***Case Law.***

14 The *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 709, 130 Nev. Adv. Op. 5 (Feb.
15 13, 2014) decision, issued after trial, summarized its holding at the beginning of the opinion as
16 follows: "regardless of whether a foreign firm employs a registered architect [the applicable provisions
17 of NRS Chapter 623] mandate that the firm be registered in Nevada in order to maintain an action on
18 **the firm's behalf.**" [Emphasis added] Although the present action was brought under the name of
19 Steppan, as the purported lien claimant and plaintiff hereunder, it was repeatedly acknowledged
20 throughout trial that this case was in fact brought on FFA's behalf, as the real party in interest.

21 See, e.g., TT 237 ll. 7-14 (under questioning by his own counsel Friedman acknowledges that
22 his firm (i.e., FFA) was promised payment by the developer under the AIA); TT 336, ll. 10-15
23 ([Questioning by Plaintiff's Counsel Michael D. Hoy to Friedman]: "Q: Was **your company** [i.e.,
24 FFA] motivated to record the mechanic's lien on November 7, 2006 . . . ? A: Yes."); TT 343 l. 6 -
25 348 l. 124 (Friedman acknowledges, under questioning by Defendant's counsel Mr. Pereos as to why
26 "**your company caused the lien to be recorded**" that "**we** were going to file a lien in case" the deal
27 didn't go forward, and further acknowledges that he is financing this litigation, as he has a financial
28 interest therein, having retained the lien claim pursued herein from FFA upon selling that entity). See,
also, TT 323-325 (Friedman's colloquy with the Court as to Friedman's rights under what he describes

1 as his AIA Contract).

2 Similarly, during Steppan's trial testimony, the parties and the Court recognized that this suit
3 was brought in order for FFA, not Steppan, to obtain compensation. *See, e.g.*, TT 656 at ll. 15-21
4 ("The Court [to Steppan, during testimony regarding the add-on contracts]: So it is something **you**
5 **would be reimbursed – and by 'you,' of course, I mean Fisher-Friedman and Associates –**
6 reimbursed for separately? The Witness [Steppan]: Yes."); TT 658 ll. 19-24; TT 660 ll 15-16; TT 663-
7 664 (Hoy questions and Steppan responses regarding whether "Fisher-Friedman Associates" did the
8 work in question and billed for the same to the developer); TT 659, at ll. 21-22 and 677 at ll. 10-13
9 (Court, in admitting unsigned add-on contract exhibits notes without contradiction from Plaintiff or
10 his counsel that "whether or not **Fisher-Friedman Associates** is entitled to compensation" based on
11 these admitted exhibits is the question to be adjudicated). Although this case was not prosecuted in
12 the name of the real party in interest, as it should have been under NRCP 17, no one at trial provided
13 any evidence to explain why Steppan's name on the contract suddenly made FFA's work, which FFA
14 performed directly for the customer, BSC, lienable.

16 (ii) ***FFA Was Working Directly For the Customer and Was Never Shown to have been***
17 ***Retained by Steppan or Working for Steppan.***

18 Even if Steppan were, somehow, more than a nominal contract architect, it is clear that FFA
19 performed its work under its own direct relationship with the Developer, BSC and was never "retained
20 by" Steppan as *his* subprovider. Friedman negotiated the terms directly with the Developer, as stated
21 above. Moreover, when the AIA Agreement was finally executed, on April 21, 2006, but with an
22 effective date of October 31, 2005, it listed FFA as a **direct party** to that Agreement. (TE 6 at
23 Steppan4127.) This was consistent with the fact that FFA's employees had been doing the work, and
24 FFA had been getting paid directly for that work, by BSC, from the outset. TT 670-71.

25 Furthermore, (i) FFA was not mentioned at the location in the AIA contract (§ 1.1.3.5.) where
26 the architect's consultants are to be identified—despite claiming to be acting as a "design consultant";
27 (ii) the portion of the AIA Contract—the Addendum—which did list FFA, listed FFA as a direct party
28 to the agreement, not a subcontractor to Steppan; (iii) a direct FFA relationship with BSC/Consolidated

1 is verified by Steppan's testimony that "both" he and FFA were working for the customer, rather than
2 he working for the customer and retaining FFA to work under him (Exh. "1" hereto, at p. 257); (iv)
3 **no written agreement exists** or was even claimed to have been entered into substantiating that
4 Steppan ever retained FFA, either as a design consultant or in any other capacity, even though the AIA
5 Agreement was to be in effect for 32 months (TE 6 at section 1.1.2.6.) such that any subcontract to
6 provide the services thereunder would need to have been in writing under Nevada's statute of frauds
7 (NRS 111.220(i)) and any claimed oral subcontract agreement by which Steppan allegedly hired FFA
8 was otherwise "**void**" under the language of that statute (not that any testimony or evidence concerning
9 the existence of any such oral retention agreement or the terms thereof, was ever offered at trial either).
10

11 (v) No evidence was provided at trial that any invoices were ever delivered from FFA to its
12 purported customer, Steppan; (vi) nor were any payments ever claimed to have been made by Steppan
13 to his purported subprovider "design consultant" FFA; (vii) despite the payment liability which would
14 exist if Steppan had ever retained FFA, no demands or suits for payment were ever filed by FFA
15 against Steppan, before or after expiration of the applicable four year statute of limitations for suit on
16 an unwritten obligation. The post-trial assertion that Steppan "hired" FFA is an open farce.

17 That FFA was never hired by Steppan but was hired by and had a direct contractual relationship
18 with the Developer, BSC, was acknowledged throughout trial. For example, Plaintiff's own counsel
19 Mr. Hoy, in questions to Friedman regarding Friedman and his firm FFA ("you" "your firm") elicited
20 answers from Friedman regarding he and FFA ("I" "we" "us" "our") that: Tony Iamesi (an early
21 member of the Developer group) hired Friedman/FFA to do the project based on their proposal to
22 Iamesi (TT p. 212, ll 21-23, TT 229); the developer client never disputed the invoices sent by
23 Friedman's firm (TT 232-33); the developer assisted FFA in locating mistakes in FFA's invoices (TT
24 232-33) "the **developer agency** or entity with respect to the Wingfield Towers project in Reno did
25 actually **commit to pay** a fee to **your firm** based on a percentage . . . ? A: Correct." (TT 237 ll. 7-14);
26 the stop-gap hourly fee letter agreement authorized Friedman ("you") to proceed with the work (TT
27 242, ll 7-22); the developer, BSC, asked Friedman to go study city staff questions and FFA billed BSC
28

1 for doing so (TT 250-51); the designs were created by Friedman's firm FFA which also retained its
2 own longstanding subcontractors for assistance (TT 262-263); Friedman's firm was to be paid pursuant
3 to the provisions of the AIA Agreement signed by the developer, which Friedman testified "we" (i.e.,
4 his firm, FFA) "signed," demonstrating Friedman's awareness of Steppan's signature being on behalf
5 of FFA; and it was Friedman's expectation that he (the owner of FFA) would be paid on the terms
6 outlined under the AIA Agreement. TT 325, 11 3-14; TT 417; 11 1-21.

7
8 That FFA was working directly for the Developer and not for Steppan was also reiterated
9 during testimony elicited from Defendants' trial counsel, Mr. Pereos, and from this Court. *See, e.g.,*
10 TT 241, 11. 4-7; TT 247, 11. 14-18; TT 342-344 (in which, under questioning from Pereos, Friedman
11 acknowledges that his firm was paid by the developer, and that he considers the AIA Agreement to be
12 FFA's--"our"-- Agreement); TT 368-69 (the work product belonged to FFA and could not be obtained
13 by the seller of the property without FFA's--"our"-- approval); TT 373 11. 13-15 (Friedman knew from
14 the outset that Friedman's "client, the developer" was not the owner of the property); TT 436 11. 1-5
15 (Friedman acknowledges that Friedman and the developer orally modified the AIA Contract [which
16 Friedman could obviously only do if his company FFA was a party thereto]).

17 Plaintiff's counsel, Mr. Hoy's questions of Mr. Steppan during trial, and Steppan's answers,
18 likewise demonstrated that the Plaintiff understood that FFA was working directly for the Developer
19 and had not been hired by Steppan. Steppan considers FFA "our firm" (TT 634 at l. 20) and bore
20 testimony throughout trial as to what "we" "us" and "our firm" at FFA were doing, rather than using
21 pronouns such as I, me, or my indicating that he was acting in any independent capacity. "The FFA
22 general time" was tracked for billing the client (TT 651 l. 19 et. seq.) The time parameters under the
23 AIA Agreement were "negotiated between Fisher-Friedman and the client" (TT 715 at 11. 21-24). Sam
24 Caniglia (of the Developer), rather than Steppan, was "the main contact person between Fisher-
25 Friedman and Associates and the developer on the other hand" (TT 784).

26
27 Hence, **any ruling by this Court that FFA was working for Steppan, having been retained**
28 **by Steppan, as opposed to FFA being involved in a direct contractual relationship with the**

1 Customer, for whom its work was provided and from whom it obtained direct payments, is not
2 only unsupported by *any* trial evidence, but constitutes a finding which Plaintiff never even
3 directly sought or directly alleged to be the case during trial! Steppan cannot, however, lien for
4 work FFA performed directly for the customer.

5 FFA, not Steppan, was the only potential claimant who could possibly have shown that it was
6 the party "by or through" whom the work was performed. That FFA could not bring such a lien claim
7 in its name due to the prohibitions of NRS 108.222(2), as it was not licensed in Nevada to provide the
8 architectural services being liened for, does not somehow give FFA the right to have an individual firm
9 member's name be used to pursue a lien on FFA's behalf. *See, Nevada Nat'l Bank v. Snyder*, 108 Nev.
10 at 157, 862 P.2d at 562-64. Further evidence that FFA worked directly for the lien claimant, and not
11 for Steppan, and further analysis of the legal implications of that fact, is set forth in the Defendant's
12 October 27, 2014 Motion for Rule 60(b) relief, at pp. 1-8; and 25-39, as well as in pages 1-2, and pp.
13 7-20 of the Reply brief in support thereof, which are incorporated herein by reference.

14
15 **E. FFA Performed Its Work Illegally and Steppan Therefore Cannot Lien for the Same.**

16 Even if it were Steppan's subcontractor, FFA was not authorized to perform architectural work
17 in Nevada in any event. NRS 623.180(1)(a) (only Nevada registered architects may practice
18 architecture in Nevada). *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 710-712, 130 Nev.
19 Adv. Op. 5 (2014) (foreign architectural firm which was not registered in Nevada and [like FFA] was
20 not owned by two-thirds Nevada licensees so as to become so registered, could not legally provide
21 architectural services in Nevada). FFA and its employees were clearly providing architectural services
22 and not mere consulting, and FFA's employees were not employed by Steppan, such that the
23 exemptions to this rule, as found at NRS 623.330(1)(a) do not apply. *See*, previously filed Reply in
24 Support of Defendant's Rule 60(b) Motion at pages 16-18, incorporated herein by reference.

25 Accordingly, *even if* Steppan were the contract architect and *even if* he did hire, retain, and
26 subcontract with FFA, FFA's work was still performed in Nevada illegally and the lien for the same
27 must still be rejected. *See, e.g., Holm v. Bramwell*, 67 P.2d 114 (Cal. Ct. App. 1937) (Prime
28

1 Contractor's mechanic's lien claim could not include advances which had been paid by Prime
2 Contractor to an unlicensed subcontractor).

3 **F. Lien Perfection Problems.**

4 This Court should also alter and amend the Orders and Decision and Judgment sought to be
5 reevaluated herein, on the basis of FFA's many failures to substantially comply with the methods
6 required to perfect the so-called "Steppan" lien, as described in the facts and legal analysis set forth
7 in Defendants' prior October 27, 2014 Rule 60(b) Motion, at pages 30-45 thereof, which are
8 incorporated herein by reference.
9

10 **V. CONCLUSION**

11 For the reasons set forth above, in order to comply with Nevada law, this Court's Decision and
12 Judgment and related pre-trial and post-trial Orders and Partial Summary Judgments must be altered
13 and amended to invalidate, rather than to uphold, the so-called "Steppan" lien, and the Court should
14 instead enter a new judgment in favor of the Defendants, rejecting Plaintiff's lien, and his lien
15 foreclosure lawsuit, in its entirety.

16 DATED this 10th day of March, 2015.

17
18 By 

19 G. MARK ALBRIGHT, ESQ. (NV Bar 001394)
20 D. CHRIS ALBRIGHT, ESQ. (NV Bar 004904)
21 **ALBRIGHT, STODDARD, WARNICK ALBRIGHT**
22 801 South Rancho Drive, Suite D-4
23 Las Vegas, Nevada 89106
24 Tel: (702) 384-7111 / Fax: (702) 384-0605
25 gma@albrightstoddard.com
26 dca@albrightstoddard.com

27 C. NICHOLAS PEREOS, ESQ. (NV Bar 000013)
28 1610 Meadow Wood Lane, Suite 202
Reno, Nevada 89502
Tel: (775) 329-0678
Attorneys for Applicants/Defendants

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

AFFIRMATION

The undersigned does hereby affirm this 10th day of March, 2015, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.



G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111

Fax: (702) 384-0605

gma@albrightstoddard.com

dca@albrightstoddard.com

C. NICHOLAS PEREOS, ESQ.

Nevada Bar No. 000013

1610 Meadow Wood Lane, Suite 202

Reno, Nevada 89502

Tel: (775) 329-0678

Attorneys for Applicants/Defendants

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT,
5 STODDARD, WARNICK & ALBRIGHT, and that on this 10th day of March, 2015, service was
6 made by the ECF system to the electronic service list, a true and correct copy of the foregoing
7 **DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND**
8 **RELATED PRIOR ORDERS,** and a copy mailed to the following person:

9 Michael D. Hoy, Esq.
10 HOY CHRISSINGER KIMMEL P.C.
11 50 West Liberty Street, Suite 840
12 Reno, Nevada 89501
13 mhoym@nevadalaw.com
14 *Attorney for Mark Steppan*

15 ☐ Certified Mail
16 ☒ Electronic Filing/Service
17 ☐ Email
18 ☐ Facsimile
19 ☐ Hand Delivery
20 ☐ Regular Mail

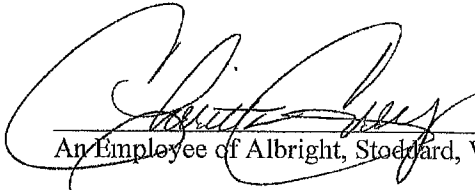
21
22
23
24
25
26
27
28

An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT “3”

ORIGINAL

FILED

2007 SEP 27 PM 3:59

RONALD E. LONGSTIN, JR.

BY: *[Signature]*

DEPUTY

CODE \$1130
CODE 4180
PREZANT & MOLLATH
STEPHEN C. MOLLATH (BAR NO. 922)
6560 S.W. McCarran Boulevard, Suite A
Reno, NV 89509
Telephone: (775) 786-3011
Facsimile: (775) 786-1354

DOWNEY BRAND LLP
SALLIE ARMSTRONG (BAR NO. 1243)
427 W. Plumb Lane
Reno, NV 89509
Telephone: (775) 329-5900
Facsimile: (775) 786-5443

Attorneys for John Ilescu, Jr. and Sonnia Ilescu and The
John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

Case No. ~~CV07-01021~~

Department No. B6

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

Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Consolidated with:

Case No. CV07-00341

Department No. B6

1 Corporation; DECAL OREGON, INC., an
2 Oregon Corporation; CALVIN BATY,
3 individually; JOHN SCHLEINING,
4 individually; HALE LANE PEEK
5 DENNISON AND HOWARD
6 PROFESSIONAL CORPORATION, a
7 Nevada professional corporation, dba
8 HALE LANE; KAREN D. DENNISON;
9 R. CRAIG HOWARD; JERRY M.
10 SNYDER; and DOES I thru X,

11 Third-Party Defendants.

12 **ANSWER AND THIRD PARTY COMPLAINT**

13 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND 14 FOR DAMAGES**

15 Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and
16 Sonnia Iliescu 1992 Family Trust Agreement, and John Iliescu individually, by and through their
17 attorneys Prezant & Mollath and Downey Brand LLP, hereby answer the COMPLAINT TO
18 FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES ("Complaint")¹, filed by Plaintiff
19 Mark Steppan, on May 4, 2007, and in support thereof, states as follows:

20 **GENERAL ALLEGATIONS**

21 1. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.

23 2. Admitted.

24 3. The allegations of Paragraph 3 are legal conclusions to which no response is
25 required and/or Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.

27 4. The allegations of Paragraph 4 are legal conclusions to which no response is
28 required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

¹ Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Complaint.

- 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

3

5
6

8
9
10
11

13

15

17

20
21
22
23

27

1 limit the legal basis upon which any affirmative defense to the allegations of the Complaint is
2 asserted.)

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that the claim for relief fails to constitute any claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

9 As an affirmative defense to each and every claim for relief, Defendants are informed and
10 believe and on that basis allege that the Plaintiff lacks standing, because he failed to comply with
11 the provisions of NRS 108.221 et seq.

12 **THIRD AFFIRMATIVE DEFENSE**

13 (Statute of Limitations and Statutory Requirements)

14 As an affirmative defense to each and every claim for relief, Defendants are informed and
15 believe and on that basis allege that each and every claim for relief is barred by the statute of
16 limitations in that Plaintiff failed to follow statutory requirements in connection with his
17 mechanic's lien.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Laches)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believes and on that basis allege that each and every claim for relief is barred, in whole or in part,
22 by the equitable doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Privilege)

25 As an affirmative defense to each and every claim for relief, Defendants are informed and
26 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
27 in part, by the doctrines of privilege.

28 **SIXTH AFFIRMATIVE DEFENSE**

(Justification)

As an affirmative defense to each and every claim for relief, Defendants are informed and

1 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
2 in part, by the doctrines of justification.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
7 in part, by principles of equity and fairness.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

10 As an affirmative defense to each and every claim for relief, Defendants are informed and
11 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
12 in part, by the doctrine of unclean hands.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

15 As an affirmative defense to each and every claim for relief, Defendants are informed and
16 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
17 in part, by the doctrine of consent and/or acquiescence.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
22 in part, by the doctrine of estoppel.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

25 As an affirmative defense to each and every claim for relief, and while denying that
26 Plaintiff has incurred any damages, Defendants are informed and believe and thereon allege that
27 Plaintiff has failed to act reasonably to mitigate, minimize or avoid damages, if any there be. As
28 a result, Plaintiff's recovery, if any, should be barred or reduced.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

3 As an affirmative defense to each and every claim for relief, Defendants are informed and
4 believe and on that basis allege that Plaintiff has failed to join indispensable parties.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

7 As an affirmative defense to each and every claim for relief, Defendants allege that each
8 and every claim for relief thereof is barred, in whole or in part, by waiver.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

11 As an affirmative defense to each and every claim for relief thereof, Defendants allege
12 that each and every claim for relief thereof is barred, in whole or in part, as the allegations of the
13 Complaint are uncertain to include the amount claimed as Plaintiff's lien.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

16 As an affirmative defense to each and every claim for relief, Defendants are informed and
17 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
18 by the intentional acts, omissions, commissions and/or intentional conduct of the Plaintiff, and/or
19 his respective agents, representatives, attorneys and employees, if any.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

22 As an affirmative defense to each and every claim for relief, Defendants are informed and
23 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
24 by reason of the Plaintiff's failure to do equity.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

27 As an affirmative defense to each and every claim for relief, Defendants are informed and
28 believe and on that basis allege that Plaintiff is not entitled to any attorney fees or costs of suit.

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by way of his Complaint;
2. Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. Defendants be awarded his costs of this suit;
4. Defendants be awarded attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiffs, by and through counsel, Prezant & Mollath and Downey Brand, LLP, allege:

The Parties

1. Third Party Plaintiffs John Iliescu, Jr. and Sonnia Iliescu (hereinafter referred to as Iliescu or Third Party Plaintiffs) are residents of Washoe County, Nevada, and are the Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement.

2. Third Party Plaintiff John Iliescu, Jr. is an individual and a resident of Washoe County, Nevada.

3. Third Party Plaintiff Sonnia Iliescu is an individual and a resident of Washoe County, Nevada.

4. Third Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation.

5. Third Party Defendant DeCal Oregon, Inc. is an Oregon corporation and the successor, by name, to DeCal Custom Homes and Construction, Inc.

6. Third Party Defendant Indemnitor Calvin Baty is an individual and a resident of Oregon.

7. Third Party Defendant Indemnitor John Schleining is an individual and a resident of Oregon.

8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").

9. Third Party Defendants Karen D. Dennison, R. Craig Howard and Jerry M. Snyder are attorneys licensed to practice law in the State of Nevada and are partners and associates of Hale Lane (hereafter referred to individually as "Dennison", "Howard" and "Snyder").

10. Third Party Defendants, Does I through X, are persons or entities who participated in the acts alleged herein, or received the proceeds of the acts alleged herein, whose names or identities are not yet known to Third Party Plaintiffs. Third Party Plaintiffs reserve the right to amend this complaint after the identities and nature of their involvement becomes known.

11. Third Party Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein, all Third Party Defendants, including Does I through X (collectively "Third Party Defendants"), were and are the agent, employee and partner of each of the remaining Third Party Defendants, and were, in performing the acts complained of herein, acting within the scope of such agency, employment, or partnership authority.

General Allegations

12. Third Party Plaintiffs are the owners of the real property assigned Washoe County Assessors Parcel Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12, also commonly known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada and 223 Court Street, Reno, Nevada (all collectively, the "Property").

13. On or about July 14, 2005, Richard K. Johnson of the Metzker Johnson Group, real estate brokers for Iliescu (hereinafter referred to as Johnson) was contacted by Consolidated Pacific Development, Inc. ("CPD"), and its President Sam Caniglia, with an offer to purchase the Property ("Offer"), for \$7,500,000.00.

14. On or about July 21, 2005, Johnson prepared a "Land Purchase Agreement that was subsequently executed by Mr. Caniglia for CPD on July 25, 2005.

15. On or about July 29, 2005, the Johnson Defendants prepared a revised "Land Purchase Agreement" ("Purchase Agreement") that was submitted to and executed by Iliescu on August 3, 2005.

16. The Purchase Agreement also incorporated an Addendum No. 1 dated August 1, 2005, and executed by Iliescu on August 3, 2005, and an Addendum No. 2 dated August 2, 2005.

1 and executed by Iliescu on August 3, 2005. Addendum No. 2 specifically provided, and the
2 parties contemplated, that the Purchase Agreement would be reviewed, "fine tuned" and clarified
3 by legal counsel retained by Iliescu before finalization.

4 17. On or about August 11, 2005, unbeknownst to Iliescu, CPD had unilaterally
5 purported to assign and transfer all of its interests in the Purchase Agreement to an entity known
6 as DeCal Custom Homes and Construction ("DeCal").

7 18. On or before September 22, 2005, pursuant to Addendum No. 3, Iliescu retained
8 the Hale Lane law firm to review, "fine tune", clarify and, in all respects, advise Iliescu relative to
9 the Purchase Agreement.

10 19. An Addendum No. 3 to the Purchase Agreement was thereafter prepared by Karen
11 D. Dennison of the Hale Lane law firm. Addendum No. 3 was executed by Iliescu and CPD on
12 or about October 8, 2005 and provided that, in certain circumstances, CPD could assign its
13 interests in the Purchase Agreement to another entity. The assignment referred to in Paragraph 17
14 above, however, was not addressed, disclosed or contained in Addendum No. 3.

15 20. On or before December 14, 2005, the Hale Lane law firm undertook to represent
16 both Iliescu and Purchasers Calvin Baty and Consolidated Pacific Development, Inc. in relation to
17 obtaining the necessary entitlements on the property as contemplated by the Purchase Agreement.
18 A copy of the December 14, 2005 Waiver of Conflict letter is attached hereto and marked Exhibit
19 "A". A major component of the entitlement was the work and drawings of an architect.

20 21. The Hale Lane law firm never discussed with or advised Iliescu at any time to
21 record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property
22 would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD
23 as contemplated by the Purchase Agreement. On October 31, 2005, unbeknownst to Iliescu, an
24 architect, Mark Steppan, AIA, entered into a contract with BSC Financial, LLC in relation to the
25 property subject to the Purchase Agreement.

26 22. Despite being aware and/or involved in the purported assignment to DeCal and
27 representing the purchaser in connection with the entitlement process, the Hale Lane law firm
28 never advised or discussed with Iliescu the assignment, whether DeCal was an appropriate

1 assignee and purchaser of the Property, whether it had the means and financial viability to close
2 the sale, whether or how the purported assignment to DeCal affected Iliescu's interests under the
3 Purchase Agreement and the existence of BSC Financial, LLC as it may relate to the property and
4 Purchase Agreement and the October 31, 2005 contract with Mark Steppan, AIA..

5 23. Iliescu first became aware of the DeCal assignment on or about October 2, 2006 in
6 connection with a TMWA consent form related to the development application for the property
7 with the City of Reno (Case No. LDC06-00321, Wingfield Towers). The original Owner's
8 Affidavit of Iliescu that accompanied the City of Reno application made reference to only CPD
9 and Sam Caniglia.

10 24. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien on the
11 property in the sum of \$1,783,548.00. A copy of said Notice and Claim of Lien is attached hereto
12 and marked Exhibit "B". The Hale Lane law firm never informed Iliescu that there was a dispute
13 with the project architect over non-payment for his services.

14 25. On November 28, 2006, the Wingfield Towers project (Case No. LDC06-00321)
15 was approved by the Reno City Council. The Clerk's Letter of Approval was issued November
16 30, 2006.

17 26. The Mechanic's Lien recorded by Mark Steppan, AIA on November 7, 2006 made
18 reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that employed Mark Steppan,
19 AIA and who furnished the work and services in connection with Iliescu's property. Prior to said
20 date, Iliescu had no knowledge of the existence of or involvement of BSC Financial, LLC relative
21 to the property.

22 27. At some point subsequent to August 10, 2005, without the knowledge and/or
23 consent of Iliescu, Consolidated Pacific Development, Inc. and DeCal Custom Homes &
24 Construction transferred or assigned their interest in the Land Purchase Agreement to BSC
25 Financial, LLC. The Hale Lane law firm never informed Iliescu of any such assignment or even
26 the existence of BSC Financial, LLC.

27 28. As of December 14, 2005, and at all times thereafter, BSC Financial, LLC,
28 Consolidated Pacific Development, Inc., DeCal Custom Homes & Construction, Calvin Baty and

1 John Schleining (all related entities or persons) were represented in connection with the property
2 and project referred to in this litigation by the Hale Lane law firm. At the same time, the Hale
3 Lane law firm represented Iliescu.

4 29. An Addendum No. 4 to the Purchase Agreement was prepared by the Hale Lane
5 law firm on or about September 18, 2006, and executed by Iliescu and CPD on or about
6 September 19, 2006. Again, in said Addendum, there was no disclosure of or reference to DeCal
7 or BSC Financial, LLC.

8 30. The Hale Lane law firm also represented Iliescu in regard to a) the Mechanic's
9 Lien recorded by Mark Steppan, AIA, and b) closing the Land Purchase Agreement. During said
10 time, the Hale Lane law firm did not advise Iliescu of the nature and extent of the problems that
11 existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark
12 Steppan, AIA, the inherent conflicts that now existed between Iliescu, the inter-related Buyers as
13 referred to above, and the complications of the transaction.

14 31. On or about December 8, 2006, as a result of the recordation of the Mechanic's
15 Lien by Mark Steppan, AIA, the Hale Lane law firm and R. Craig Howard prepared an Indemnity
16 Agreement for their clients referred to in Paragraph 28 above. A copy of said Indemnity
17 Agreement is attached hereto and marked Exhibit "C". Said Indemnity Agreement was submitted
18 to Iliescu on December 12, 2006. Again, the Hale Lane law firm did not advise Iliescu of the
19 problems that existed as set forth in the above paragraphs.

20 32. On or about December 26, 2006, the Hale Lane law firm drafted a Conflict of
21 Interest Waiver Agreement and submitted it to Iliescu and BSC Financial, LLC for signature.
22 The Agreement was executed by the parties. A copy of said Agreement is attached hereto and
23 marked Exhibit "D". The Hale Lane law firm never advised Iliescu that the conflict of interest
24 that existed might not be waivable, nor did it advise Iliescu of the problems that now existed as
25 set forth in the above paragraphs.

26 33. Thereafter, the Hale Lane law firm embarked upon a course of advising Iliescu and
27 preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.
28 Such conduct included dealing with the Mechanic's Lien of Mark Steppan, AIA, recommending

1 to and obtaining Iliescu's consent to the assignment of the Land Purchase Agreement to BSC
2 Financial, LLC. Such consent was not in the best legal interests of Iliescu, given the existence of
3 the Mechanic's Lien and other problems as set forth in the above paragraphs.

4 34. On February 14, 2007, Jerry M. Snyder and the Hale Lane law firm, on behalf of
5 Iliescu, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No.
6 CV07-00341. Said Application is still pending. On May 4, 2007, Mark Steppan, AIA filed a
7 Complaint to Foreclose Mechanic's Lien and Damages in Case No. CV07-01021.

8 35. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007.

9 36. The Architect's Lien remains a cloud on Iliescu's title, Steppan has filed suit for
10 foreclosure of the Architect's Lien and seeks judicial foreclosure of his purported Architect's Lien
11 upon Iliescu's real property.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief—Against the Indemnitors Baty and Schleining)

14 37. Iliescu realleges and incorporates by reference Paragraphs 1 through 36 of this
15 Complaint, as if fully set forth herein.

16 38. A dispute and actual controversy has arisen and now exists between Iliescu and
17 Defendants regarding the rights, duties, and obligations of the parties.

18 39. Specifically, Iliescu is informed and believes, and based thereon allege, that the
19 Indemnitors, both pursuant to the Indemnity Agreement and an implied indemnity, owe Iliescu a
20 duty to defend this action and make Iliescu whole for any and all costs, damages, claims, or losses
21 suffered as a result of the Architect's Lien and the BSC Financial, LLC contract or agreement
22 with Steppan and its bankruptcy filing.

23 40. Iliescu is informed and believes, and based thereon allege, that the Indemnitors
24 dispute Iliescu's interpretation and assertion of rights.

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the
27 Indemnitors.
28

1 **SECOND CLAIM FOR RELIEF**

2 (Indemnification—Against the Indemnitors Batty and Schleining)

3 42. Iliescu realleges and incorporates by reference Paragraphs 1 through 41 of this
4 Complaint, as if fully set forth herein.

5 43. To the extent Iliescu is held liable for any and all costs or damages incurred as a
6 result of the Architect's Lien, and/or the loss of the Property to foreclosure, the bankruptcy filing,
7 and the acts and omissions of the Indemnitors, Iliescu is entitled to be completely indemnified by
8 the Indemnitors for any and all damages, including consequential, suffered by Iliescu.

9 **THIRD CLAIM FOR RELIEF**

10 (Breach of Contract – Against CPD and DeCal)

11 44. Iliescu realleges and incorporates by reference Paragraphs 1 through 43 of this
12 Complaint, as if fully set forth herein.

13 45. The Purchase Agreement is a valid and binding contract.

14 46. CPD is obligated under the terms of the contract as the original contracting party.

15 47. DeCal is obligated under the terms of the contract by virtue of the assignment to
16 DeCal.

17 48. Iliescu has performed, stands ready to perform, and has the ability to perform as
18 required under the terms of the Purchase Agreement.

19 49. Both CPD and DeCal have failed to, among other things, tender the remainder of
20 the purchase price for the Property due under the terms of the Purchase Agreement.

21 50. Iliescu has been harmed by CPD and DeCal's breaches of the Purchase Agreement
22 because they have been unable to obtain the benefit of their bargain, which includes, among other
23 things, consequential damages, interest on, and the principal of, the remainder of the purchase
24 price for the Property due under the terms of the Purchase Agreement and CPD and DeCal's
25 actions causing recordation of the Stepan Mechanic's Lien and their failure to indemnify Iliescu
26 therefrom.
27
28

1 **FOURTH CLAIM FOR RELIEF**

2 (Specific Performance—Against CPD and DeCal)

3 51. Iliescu realleges and incorporates by reference Paragraphs 1 through 50 of this
4 Complaint, as if fully set forth herein.

5 52. The Purchase Contract is a valid and binding contract, and is binding on both CPD
6 and DeCal.

7 53. CPD and DeCal have failed to satisfy their obligations under the Purchase
8 Agreement.

9 54. Iliescu is entitled to a decree of specific performance from the Court, requiring
10 CPD and DeCal to perform as required under the terms of the Purchase Agreement, by (1)
11 tendering the remainder of the purchase price due to Iliescu and (2) indemnifying Iliescu for any
12 damages, costs, or attorneys fees arising out of the contract with Stepan and the Architect's Lien.

13 **FIFTH CLAIM FOR RELIEF**

14 (Against the Hale Lane law firm, Dennison, Howard and Snyder – Professional Malpractice)

15 55. Iliescu realleges and incorporates by reference Paragraphs 1 through 54 of this
16 Complaint, as if fully set forth herein.

17 56. The Hale Lane law firm, Dennison, Howard and Snyder, as licensed attorneys and
18 counselors at law, owe Iliescu a duty to have a degree of learning and skill ordinarily possessed
19 by reputable licensed attorneys engaged in the type of transaction addressed herein, and owe
20 Iliescu a duty to use reasonable diligence and their best judgment in the exercise of skill and the
21 application of learning held by reputable licensed attorneys in Northern Nevada engaged in the
22 type of business and transactions described herein.

23 57. The Hale Lane law firm breached the duties enumerated above, and failed to
24 perform these duties, as addressed herein.

25 **SIXTH CLAIM FOR RELIEF**

26 (Against the Hale Lane law firm – Negligence)

27 58. Iliescu realleges and incorporates by reference Paragraphs 1 through 57 of this
28 Complaint, as if fully set forth herein.

1 59. The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
2 among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed
3 to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in
4 the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable
5 conflict of interest.

6 60. The Hale Lane law firm's negligence has damaged Iliescu, has caused them to
7 incur attorneys fees, and has resulted in the Mechanic's Lien and potential loss of the Property
8 through foreclosure.

9 61. The Hale Lane law firm owed a duty to Iliescu to exercise reasonable care in how
10 they handled the sale transaction, the Purchase Agreement, and their advice to Iliescu regarding
11 the Property, and breached that duty by way of the breaches and omissions set forth above.

12 WHEREFORE, Iliescu prays for judgment as follows:

13 1. For damages in an amount in excess of \$10,000.00 to compensate for the losses,
14 damages, and expenses incurred by Iliescu;

15 2. For a declaration that the Indemnitors are fully responsible for any and all costs or
16 damages suffered by Iliescu arising out of the Architect's Lien and/or the BSC Financial, LLC
17 contract or agreement with Steppan;

18 3. For a decree of specific performance requiring CPD and DeCal to perform as
19 required under the terms of the Purchase Agreement, to include damages and indemnification
20 from the Steppan Mechanic's Lien.

21 5. For attorneys' fees incurred in the prosecution of this action;

22 ///

23 ///

1 6. For costs of suit; and,

2 7. For such other and further relief as the court deems proper.

3
4 DATED this 27th day of September, 2007.

5 **PREZANT & MOLLATH**

6
7 By 

 Stephen C. Mollath, Esq.

8 and

9 **DOWNEY BRAND LLP**

10
11 By 

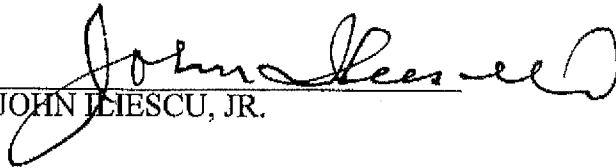
 Sallie Armstrong, Esq.

12 Attorneys for John Iliescu, Jr. and Sonnia Iliescu
13 and The John Iliescu, Jr. and Sonnia Iliescu
14 1992 Family Trust

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

3 JOHN ILIESCU, JR., being duly sworn, deposes and says:

4 That he is a Third Party Plaintiff herein; that he has read the foregoing Third Party
5 Complaint and knows the contents thereof, and that the same is true of his own knowledge,
6 except as to the matters therein stated to be alleged upon information and belief, and as to those
7 matters, he believes it to be true.

8 
9 JOHN ILIESCU, JR.

10 SUBSCRIBED AND SWORN to before me,
11 this 27th day of September, 2007.

12
13 
14 NOTARY PUBLIC



EXHIBIT A

HALE LANE

ATTORNEYS AT LAW

5441 Kietzka Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halelane.com

December 14, 2005

Edward Everett Hale
(1929-1993)
Steve Lane
J. Stephen Peck
Karen D. Dennison
R. Craig Howard
Stephen V. Norwood
Richard L. Elmore
Richard Swann
Robert C. Anderson
Alex J. Flanagan
James L. Kelly
Kelly Tinslin
N. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mullins
Roger W. Jeppson
Lance C. Earl
Jeremy J. Nork
David A. Garcia
Elissa F. Cadish
Timothy A. Liska
Frederick J. Schmidt
James Newman
Terry R. Seneca
Patrick J. Kelly
Scott D. Fleming
Scott Schorer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckertley
Frederick R. Balcher
Patricia C. Halstead
Matthew J. Kreutzer
Matthew B. Hippler
Bred M. Johnson
Bryce K. Kunkin
Douglas C. Flowers
Justin C. Jones
Nicole M. Vance
Kimberly R. Ritzky
Dora V. Djilavich
Simon Johnson
Sarah E. L. Cline
Helen E. Mandrosian

Of Counsel

Roy Farrow
Pauline Ng Lee
Andrew Pearl

*Admitted in New York
and New Jersey only

John Iliescu, Jr., an individual
Sonnia Santee Iliescu, an individual
John Iliescu, Jr. and Sonnia Iliescu,
as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

Calvin Baty, an individual
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonnia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm has been requested to act as special counsel to the buyers of the Property in obtaining the necessary entitlements for a condominium project to be developed on the Property.

With your consent, we will represent Calvin Baty, an individual ("Baty"), and Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated") in assisting in obtaining the condominium entitlements and any entity to be formed by them (Baty, Consolidated and such new entity being collectively referred to as "Buyer").

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 212-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

00MA1PCDOCSHLRND00CSH9662A1:00MA1PCDOCSHLRND00CSH9662A1

December 14, 2005
Page 2

HALE LANE
ATTORNEYS AT LAW

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the Property, this law firm will continue to represent Iliescu in such matter. It is also understood and agreed by Buyer that our representation of Buyer on this one matter will not preclude our representation of Iliescu in matters not involving the Property in the event that Buyer, or any of them, is an adversary to Iliescu on such other matters.

If you consent to our representation of Buyer as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the acknowledgement of your consent which follows and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Very truly yours,



Karen D. Dennison

KDD:csr

Acknowledgement

Iliescu and Buyer consent to joint representation in the above-referenced matter and waiver of any potential conflict is hereby given as of the date set forth below.

Iliescu:

Date: _____

John Iliescu, Jr., individually, and as Trustee of the
John Iliescu, Jr. and Sonnia Iliescu 1992 Family
Trust

Date: _____

Sonnia Santee Iliescu, individually, and as Trustee
of the John Iliescu Jr. and Sonnia Iliescu 1992
Family Trust

BSC Financial LLC:

BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

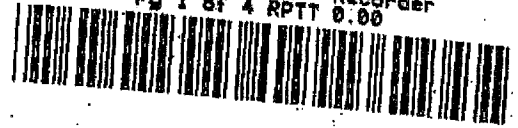
EXHIBIT B

When Recorded Mail To:

Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

DOC # 3460499
11/07/2008 04:21P Fee:17.00
BK1

Requested By
GAYLE A KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPTT 0.00



APN: 011-112-03; 011-112-06; 011-112-07; 011-112-12

GRANTEE'S ADDRESS:

Mark B. Steppan, AIA, CSI, NCARB
1485 Park Avenue, #103
Emeryville, CA 94608



NOTICE AND CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that Mark Steppan, AIA, CSI, NCARB claims a Mechanic's and Materialman's Lien upon the property hereinafter particularly described, which property is located in Washoe County, Nevada, and which claim is made pursuant to the laws of the State of Nevada, particularly Chapter 108 of the Nevada Revised Statutes, as amended, for the value of work, labor, materials and/or services furnished by lien claimant for the improvement of real property hereinafter particularly described, located in the County of Washoe, State of Nevada.

That the whole or real property hereinafter particularly described has been or is in the process of improvement and is reasonably necessary for the convenient use and occupation of said property.

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.
2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.
3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.



4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant is the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonio Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records; running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H. F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H. F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the true point of beginning.



SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.
APN: 011-112-03

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 140 feet; thence running Easterly at an angle of $90^{\circ}05''$ 75 feet; thence running Southerly at an angle $80^{\circ}55'$, 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.
APN: 011-112-06

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada, thence Easterly along the Northern line of Court Street, 125 feet, more or less to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 100219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of Said Boudwin parcel 140 feet to the point of beginning.
APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.

APN: 011-112-12



3460493
11/07/2006
4 of 4

8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.

DATED: This 7th day of November, 2006.

By Gayle A. Kern
Gayle A. Kern, Esq.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Gayle A. Kern, Esq., being first duly sworn, deposes and says that: I am the Attorney for Mark Steppan, the lien claimant in the foregoing Notice and Claim of Lien. I have read the above and foregoing Notice and Claim of Lien, know the contents thereof and state that the same is true based on the information provided by my client. I further state that I have been informed and based thereon believe that it contains, among other things, a correct statement of the demand of said lien claimant, after deducting all just credits and off-sets.

Gayle A. Kern
Gayle A. Kern, Esq.

SUBSCRIBED AND SWORN to before me
this 7th day of November, 2006.

Amber A. Garrell
Notary Public

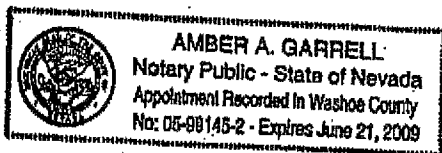


EXHIBIT C

INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.

BSC FINANCIAL, LLC, a limited liability
company

Dated: December 8, 2006

By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

EXHIBIT D

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halelane.com

December 26, 2006

John Iliescu, Jr., individually
Sonia Santee Iliescu, individually
John Iliescu, Jr. and Sonia Iliescu,
as Trustees of the John Iliescu, Jr.
and Sonia Iliescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

BSC Financial LLC
c/o DeCal Custom Homes
440 Columbia Blvd.
St. Helens, OR 97051

BSC Financial LLC
c/o Decal Nevada, Inc.
6121 Lakeside Drive, Suite 125
Reno, NV 89511

**Re: Wingfield Towers
Court Street/Island Avenue Condominium Project**

Dr. and Mrs. Iliescu and Messrs Baty, Caniglia and Schleining:

As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonia Iliescu, as Trustees of the John Iliescu, Jr. and Sonia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm also has an existing attorney-client relationship with Decal Custom Homes and BSC Financial LLC, the Buyers of the Property. BSC Financial LLC is referred to herein as "Buyer". Our law firm has been requested to act as counsel to both Iliescu and Buyers because of the unity of interest in resolving the dispute with the Architect for the Property involving the AIA Architectural Services Contract, and the mechanic's lien recorded by the Architect and related issues.

We will represent both Iliescu and Buyer jointly regarding the resolution of the mechanic's lien issue with the Architect. An Indemnity Agreement has been executed by Buyer

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

C:\Documents and Settings\Dick\My Documents\O&A\ILIESCU & CANIGLIA_FINAL\waiver ref\lein decal and iliescu.doc

December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

indemnifying the Seller as more fully set forth therein which includes provisions that Buyer is responsible, among other obligations, to pay this law firm's fees regarding the mechanic's lien issue with the Architect.

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the mechanic's lien issue, this law firm may continue to represent Iliescu in such matter. This law firm will continue to represent Iliescu in the closing of the purchase and sale of the Property transaction.

If you consent to our joint representation as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the Acknowledgement of your consent attached hereto and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Sincerely,

R. Craig Howard

RCH:dyt

1 CERTIFICATE OF SERVICE

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV
89509. On September 27, 2007, I served the attached document(s):

4 **ANSWER AND THIRD PARTY COMPLAINT**

- 5 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
6 number(s) set forth below on this date before 5:00 p.m.
- 7 ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s)
8 at the address(es) set forth below.
- 9 ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
10 postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed
11 as set forth below.
- 12 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
13 overnight delivery service company for delivery to the addressee(s) on the next
business day.
- 14 ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of
15 the document(s) listed above to the person(s) at the address(es) set forth below.

16 *Gayle Kern, Esq.*
17 *5421 Kietzke Lane, Suite 200*
18 *Reno, NV 89511*

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
22 motion of the party served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of Nevada that the above is
25 true and correct.

26 Executed on September 27, 2007, at Reno, Nevada.

27 
28 Kim Kakunes

1
2 **SECOND JUDICIAL DISTRICT COURT**
3 **COUNTY OF WASHOE, STATE OF NEVADA**
4

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document, **ANSWER AND**
8 **THIRD PARTY COMPLAINT**, filed in Case No. CV07-01021, consolidated with CV07-
9 00341.

10 ☒ Document does not contain the social security number of any person

11 **-OR-**

12 ☐ Document contains the social security number of a person as required by:

13 ☐ A specific state or federal law, to wit:
14

15 **-or-**

16 ☐ For the administration of a public program

17 **-or-**

18 ☐ For an application for a federal or state grant

19 **-or-**

20 ☐ Confidential Family Court Information Sheet (NRS 125-130, NRS 125.230 and
21 NRS 125B.055)

22 DATED this 22nd day of September, 2007.

23 **PREZANT & MOLLATH**
24


25 
26 By _____
27 Stephen C. Mollath, Esq.
28 Attorney for Iliescu

EXHIBIT “2”

2-4-1

FILED

2007 MAY -4 PM 12:51

RONALD A. LONGTIN, JR.

BY Y. Lloyd
DEPUTY

CODE \$1425
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
GAYLE A. KERN, LTD.
5421 Kietzke Lane
Reno, Nevada 89511
Phone: (775) 324-3930
Fax: (775) 324-1011
E-Mail: gaylekern@kernltd.com

Attorneys for MARK STEPPAN

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

MARK STEPPAN,

CASE NO.: CV07 01021

Plaintiff,

DEPT. NO.: 1

vs.

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

Defendants.

COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES

Plaintiff, MARK STEPPAN ("Plaintiff"), by and through his attorney, Gayle A. Kern,
Ltd., for his complaint against the defendants, above- named, does allege and aver as follows:

GENERAL ALLEGATIONS

1. Plaintiff is, and at all times herein mentioned was, an individual licensed as an
architect under the laws of the State of Nevada.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendants

GAYLE A. KERN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

1 7. On information and belief, Defendants entered into a Land Purchase
2 Agreement to sell the Real Property, and that such Land Purchase Agreement provided that
3 the purchasers had the right to develop and obtain improvements on the Real Property prior
4 to the close of escrow.
5

6 8. On or about April 2006, Plaintiff entered into a contract with the purchaser of
7 the Real Property to provide architectural services.
8

9 9. Pursuant to the contract with the purchaser, Plaintiff did supply the services
10 required of him under contract, however, Plaintiff has not been paid in full for the services.
11

12 10. There is now due, owing and unpaid as of April 19, 2007, from the Defendants,
13 for which demand has been made, the sum of \$1,939,347.51, together with interest until paid.
14

15 11. Plaintiff, in order to secure its claim, has perfected a mechanic's lien upon the
16 property described above by complying with the statutory procedure pursuant to NRS §
17 108.221 through NRS § 108.246 inclusive.

18 12. Plaintiff recorded its Notice of Lien on November 7, 2006, as Document No.
19 3460499 in the Office of the County Recorder of Washoe County, Nevada; a 15-day Notice
20 of Intent to Claim Lien was served on March 7, 2007; and Amended Notice and Claim of
21 Lien was recorded on May 3, 2007, as Document No. 3528313.
22

23 13. That pursuant to the provisions of NRS Chapter 108, Plaintiff is entitled to
24 recover its costs of recording and perfecting its mechanic's lien, interest upon the unpaid
25 balance at a rate of 24 percent per annum and reasonable attorney's fees and costs.
26

27 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, jointly and
28


severally, as follows:

As to Plaintiff's First Claim For Relief:

1. Judgment in a sum in excess of \$10,000.00, together with interest from April 19, 2007, until paid at the per diem rate of \$955.82;
2. Costs of recording and perfecting Notice of Claim of Lien, costs of suit incurred herein, and a reasonable attorney's fee;
3. That the sums set forth above be adjudged a lien upon the land and premises described herein, owned or reputedly owned by defendants and that the Court enter an order that the real property, land and improvements, or such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of the sale be applied to the payment of sums due the Plaintiff;
4. For such other and further relief as the Court may deem just and proper in the premises.

Dated this 4th day of May, 2007.

GAYLE A. KERN, LTD.


GAYLE A. KERN, ESQ.
Attorneys for MARK STEPPAN

GAYLE A. JRN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE (775) 324-5930

VERIFICATION

STATE OF CALIFORNIA)
: ss.
COUNTY OF _____)

I, MARK STEPPAN, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are thereon alleged on information and belief, and as to those matters I believe them to be true.

MARK STEPPAN

Subscribed and sworn to before me
this _____ day of May, 2007.

NOTARY PUBLIC

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

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document,
COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES filed in case
number to be assigned.

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 4th day of May, 2007.



GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
GAYLE A. KERN, LTD.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Facsimile: (775) 324-6173
E-mail: gaylekern@kernltd.com
Attorneys for MARK STEPPAN

GAYLE A. KERN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

CIVIL COVER SHEET

Washoe County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): **MARK STEPPAN**
DOB: _____

Defendant(s) (name/address/phone): **JOHN ILIESCU, JR.**
DOB: _____
AND SONNIA ILIESCU, as Trustees of
the JOHN ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT, ET AL.

Attorney (name/address/phone): **Gayle A. Kern, Esq.**
5421 Kietzke Ln. #200, Reno, NV
89511; (775) 324-5930

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"/> Landlord/Tenant - LT <input type="checkbox"/> Unlawful Detainer - UD <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure - FC <input checked="" type="checkbox"/> Liens - LE <input type="checkbox"/> Quiet Title - QT <input type="checkbox"/> Specific Performance - SP <input type="checkbox"/> Condemnation/Eminent Domain - CD <input type="checkbox"/> Other Real Property - RO <input type="checkbox"/> Partition - PT <input type="checkbox"/> Planning/Zoning - PZ	Negligence <input type="checkbox"/> Negligence - Auto - VP <input type="checkbox"/> Negligence - Medical/Dental - MD <input type="checkbox"/> Negligence - Premises Liability - SF (Slip/Fall) <input type="checkbox"/> Negligence - Other - NO	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle - VH <input type="checkbox"/> Other Torts/Product Liability - PL <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) - DF <input type="checkbox"/> Interfere with Contract Rights - IR <input type="checkbox"/> Employment Torts (Wrongful Term) - WT <input type="checkbox"/> Other Torts - TO <input type="checkbox"/> Anti-trust - AI <input type="checkbox"/> Fraud/Misrepresentation - FM <input type="checkbox"/> Insurance - IN <input type="checkbox"/> Legal Tort - LG <input type="checkbox"/> Unfair Competition - UC
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration - SU <input type="checkbox"/> General Administration - FA <input type="checkbox"/> Special Administration - SL <input type="checkbox"/> Set Aside Estates - SE <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee - TR <input type="checkbox"/> Corporate Trustee - TM <input type="checkbox"/> Other Probate - OP	<input type="checkbox"/> Construction Defect - CF <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction - BC <input type="checkbox"/> Insurance Carrier - BF <input type="checkbox"/> Commercial Instrument - CI <input type="checkbox"/> Other Contracts/Acct/Judg. - CO <input type="checkbox"/> Collection of Actions - CT <input type="checkbox"/> Employment Contract - EC <input type="checkbox"/> Guarantee - GU <input type="checkbox"/> Sale Contract - SC <input type="checkbox"/> Uniform Commercial Code - UN <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law - AO <input type="checkbox"/> Department of Motor Vehicles - DM <input type="checkbox"/> Worker's Compensation Appeal - SI <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court - TJ <input type="checkbox"/> Justice Court Civil Appeal - CA <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding - SS <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim - CM <input type="checkbox"/> Conversion of Property - CN <input type="checkbox"/> Damage to Property - DG <input type="checkbox"/> Employment Security - ES <input type="checkbox"/> Enforcement of Judgment - EJ <input type="checkbox"/> Foreign Judgment - Civil - FJ <input type="checkbox"/> Other Personal Property - PO <input type="checkbox"/> Recovery of Property - RE <input type="checkbox"/> Stockholder Suit - ST <input type="checkbox"/> Other Civil Matters - GC <input type="checkbox"/> Confession of Judgment - CJ <input type="checkbox"/> Petition to Seal Criminal Records - PS	

III. Business Court Requested (If you check a box below, you must check an additional box above to determine case type.)

- | | | |
|-----------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| <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) | |

5/4/07
Date

Gayle A. Kern
Signature of Initiating party or representative

See other side for family-related case filings.

EXHIBIT “1”

ORIGINAL

FILED

2007 FEB 14 PM 2:08

RONALD A. LONGTIN, JR.

BY  DEPUTY

1 \$3850

2 Jerry M. Snyder, Esq.
Nevada Bar Number 6830
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000; (775) 786-6179 (fax)
Attorney for Applicant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

10 JOHN ILIESCU JR., SONNIA SANTEE
11 ILIESCU AND JOHN ILIESCU JR. AND
12 SONNIA ILIESCU AS TRUSTEES OF THE
13 JOHN ILIESCU, JR. AND SONNIA ILIESCU
14 1992 FAMILY TRUST,

Applicants,

vs.

15 MARK B. STEPPAN,

Respondent.

Case No.

CV07 00341

Dept. No.

6

18 APPLICATION FOR RELEASE OF MECHANIC'S LIEN

19 Applicants John Iliescu Jr., Sonnia Santee Iliescu and John Iliescu Jr. and Sonnia Iliescu as
20 Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust ("the Iliescu") hereby file their
21 Application for Release of Mechanic's Lien.

22 I. INTRODUCTION

23 This matter arises out of a mechanic's lien which Respondent and lien claimant Mark Steppan
24 ("Steppan") recorded against certain real property owned by the Iliescus and being developed by BSC
25 Financial LLC ("BSC"). BSC apparently contracted with Steppan to provide the design for the
26 development. The parties proceeded pursuant to their contract, but a dispute arose regarding the
27 amounts due to Steppan for the completion of preliminary schematic designs. As a result, Steppan
28 recorded the instant mechanic's lien.

Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

DC-9900000632-292
CV07-00341
JOHN ILIESCU ETAL VS. MARK S. 6 Pages
District Court 02/14/2007 01:59 PM
\$3850
Washoe County

1 This lien is void and unenforceable because the putative lien claimant recorded the lien without
2 (1) providing notice of right to lien pursuant to NRS 108.245(6) (pre-lien notice) or (2) providing
3 notice of intent to lien under NRS 108.226(6). For these reasons, the mechanic's lien is facially
4 unenforceable and should be released.

5
6 **II. STATEMENT OF FACTS**

7 This matter arises out of a disagreement for the amounts due under an agreement between BSC
8 and Steppan for architectural design services. BSC is in the process of developing the Property,
9 located in downtown Reno, as a mixed-use development that would include the construction of high-
10 rise condominiums to be known as Wingfield Towers.

11 On July 29, 2005, the Iliescu entered into a contract with Consolidated Pacific Development,
12 Inc. ("CPD") for the sale of the Property. CPD subsequently transferred its interest in this property to
13 BCS Financial, Inc. ("BCS"). As of this date, this sale has not closed. Declaration of Dr. John Iliescu
14 ("Iliescu Decl.").

15 BSC is in the process of developing the Property into a residential condominium tower.
16 However, Dr. Iliescu has not been regularly apprised of the status of the development. BSC has not
17 informed him of the status of their development efforts. Although Dr. Iliescu attended certain public
18 meetings at which someone from the BCS design team made a presentation, at no time was he
19 introduced to any architect or engineer. Dr. Iliescu was never informed of the identity of any architect
20 or engineer working on the development project. Iliescu Decl. ¶ 4.

21 A dispute apparently arose between BSC and the architect, Mark B. Steppan. On November 7,
22 2006, Steppan recorded a mechanics lien against the Property. Iliescu Decl., Ex. 1. Through this lien,
23 Steppan claims to be owed an amount exceeding \$1.8 million. *Id.* However, Steppan never served a
24 Notice of Right to lien, as required by NRS 108.245(1). Likewise, Steppan never provided a 15-day
25 notice of intent to lien, as required by 108.226(6). Iliescu Decl., ¶ 6-7.

26 ///

27 ///

28 ///

///

1 **III. ARGUMENT**

2 **A. Steppan's Failure To Comply With Procedural Requirements Renders The**
3 **Subject Lien Unenforceable**

4 1. Standard for Removal of Lien Under NRS 108.2275

5 NRS 108.2275(1) specifically sets forth a procedure through which a property owner or party
6 in interest may apply to the court for an order releasing or expunging a mechanic's lien that is
7 frivolous, excessive, or was made without reasonable cause:

8 The debtor of the lien claimant or a party in interest in the premises
9 subject to the lien who believes the notice of lien is frivolous and was
10 made without reasonable cause, or that the amount of the lien is excessive,
11 may apply by motion to the district court for the county where the
property or some part thereof is situated for an order directing the lien
claimant to appear before the court to show cause why the relief requested
should not be granted.

12 Upon the filing of such an application, the district court is to issue an order setting the date for
13 a hearing on the motion. The petitioner seeking removal of the lien then serves the order, application
14 and other documents on the lien claimant. NRS 108.2275(2).

15 Accordingly, where a lien claimant is not entitled to record or enforce the subject lien, the court
16 is to release or expunge the lien pursuant to NRS 108.2275. The Nevada Supreme Court has held that
17 where a lien claimant could not establish a statutorily valid lien claim, the district court erred by failing
18 to expunge the lien pursuant to NRS 108.2275. *See Crestline Inv. Group, Inc. v. Lewis*, 119 Nev. 365,
19 75 P.3d 363 (2003). In *Crestline*, an employee of the property owner placed a lien on the property for
20 unpaid wages. *Id.* The property owner moved to have the lien expunged under NRS 108.2275, but the
21 district court denied this motion and actually increased the amount of the lien. *Id.* On appeal by the
22 owner, the Nevada Supreme Court held that the district court erred in failing to expunge the lien
23 because the lien claimant had not shown that his labor improved the subject property, and therefore,
24 the lien was invalid under NRS 108.223. *Id.*

25 The Nevada Supreme Court has reasoned that "[t]he mechanics lien is a creature of statute,
26 unknown at common law." *Schofield v. Copeland Lumber Yards, Inc.*, 101 Nev. 83, 84, 692 P.2d 519,
27 520 (1985). "Strict compliance with the statutes creating the remedy is therefore required before a
28 party is entitled to any benefits occasioned by its existence.... If one pursues his statutory remedy by

1 filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the
2 statutory prerequisites giving rise to the cause of action." *Id.* quoting *Fisher Bros., Inc. v. Harrah*
3 *Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203 (1976). Although the Court has held that "where there is
4 substantial compliance with the lien statutes notices, liens and pleadings arising out of those statutes
5 will be liberally construed in order to effect the desired object," the Court also reasoned that it "did not
6 think that a notice of lien may be so liberally construed as to condone the total elimination of a specific
7 requirement of the statute." *Id.* at 85, 692 P.2d at 520. For example, in *Schofield v. Copeland Lumber*
8 *Yards, Inc.*, the Court concluded that the lien was invalid as a matter of law because the lien claimant
9 did not fully or substantially comply with the requirement to provide a statement of the terms, time
10 given and conditions of the contract. *Id.*

11
12 2. Steppan's Lien Should Be Removed Because He Did Not Provide the Required
13 Pre-Lien Notice

14 Pursuant to Section 108.245(1) of the Nevada Revised Statutes "[e]xcept as otherwise provided
15 in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of
16 NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or
17 performance of work or services under his contract, deliver in person or by certified mail to the owner
18 of the property a notice of right to lien."¹ NRS 108.245(3) provides that "no lien for . . . services
19 performed . . . may be perfected or enforced pursuant to NRS 108.221 to 108.246, unless notice has
20 been given."

21 Here, it is undisputed that Steppan claims to have a lien on the Property for architectural
22 services. However, Steppan did not provide any Notice of Right to Lien to Dr. Iliescu, the property
23 owner. Accordingly, pursuant to the unambiguous language of NRS 108.245, the lien Steppan
24 recorded is not enforceable.

25
26
27
28 ///

¹NRS 108.245(5) states that "[a] prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section." Therefore, subsection 5 does not apply in this case because Steppan did not contract directly with the Owners of the Property.

3. Steppan's Lien Should Be Removed Because He Did Not Provide the Required 15-Day Notice of Intent to Lien

Besides having to satisfy the requirements of providing the owner with notice of right to lien, a lien claimant must also comply with the notice provisions of NRS 108.226. Pursuant to NRS 108.226(6), "[i]f a work of improvement involves the construction, alteration, or repair of multi-family or single-family residences, a lien claimant, except laborers, **must serve a 15-day notice of intent to lien.**" (emphasis added). The statute outlines the required contents of the notice and the manner in which it must be served, and provides that "[a] notice of lien for materials or equipment furnished or for work or services performed, except labor, for a work of improvement involving the construction, alteration, or repair of multi-family or single-family residences **may not be perfected or enforced** pursuant to NRS 108.221 to 108.256, inclusive, **unless the 15-day notice of intent has been given.**" (emphasis added).

In the present case, Steppan's lien is statutorily invalid because there has been absolutely no attempt by Steppan to comply with the statutory notice requirements discussed above. First, Steppan did not deliver to the Iliescus a notice of right to lien at any time after he began performing under the AIA Agreement. Therefore, pursuant to NRS 108.245(6), Steppan has no right to record a lien on the Property for any of the services he has performed thus far under the AIA Agreement. Further, Steppan recorded the lien without delivering a Notice Of Intent to Lien, as required by NRS 108.226(6), to the Iliescus. Accordingly, Steppan has failed to provide both the required notice of right to lien and the required 15-day pre-lien notice. As a result, the mechanic's lien is invalid as a matter of law. Therefore, this Court is authorized to expunge Steppan's mechanic's lien pursuant to NRS 108.2275 because Steppan is not entitled to record or enforce the subject lien.

///

///

///

///

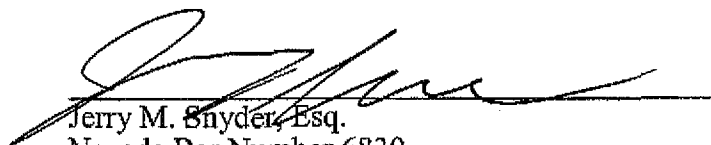
///

///

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Iliescus respectfully request that this Court grant their
3 Application for Release of Mechanic's Lien.

4 DATED: February 14, 2007.

5 

6 Jerry M. Snyder, Esq.
7 Nevada Bar Number 6830
8 Hale Lane Peek Dennison and Howard
9 5441 Kietzke Lane, Second Floor
10 Reno, Nevada 89511

11 *Attorney for Applicant*

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JOHN ILIESCU, JR., et al., Applicants,

vs.

MARK B. STEPPAN, Respondent.

No. 68346

Electronically Filed
Jul 16 2015 09:36 a.m.

Tracie K. Lindeman

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 10

County Washoe Judge Elliott A. Sattler

District Ct. Case No. CV07-00341 consolidated with CV07-01021

2. Attorney filing this docketing statement:

Attorney G. Mark Albright Telephone (702) 384-7111

Firm Albright, Stoddard, Warnick & Albright

Address 801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Client(s) See Attachment.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael D. Hoy, Esq. Telephone (775) 786-8000

Firm Hoy Chrissinger Kimmel Vallas, P.C.

Address 50 West Liberty Street, Suite 840
Reno, Nevada 89501

Client(s) Mark B. Steppan

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Mark B. Steppan v. John Iliescu, Jr., et al; [and related Cross-Appeal] Docket No. 60036
[dismissed and remanded on January 4, 2013].

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case involves a Mechanic's Lien for off-site architectural work recorded by Respondent against commercial real property owned by Appellants, which was in an escrow while the off-site services lienied for were performed, for the would-be purchaser, who failed to close. Case No. CV07-00341 was filed by Appellants as an Application to Release Mechanic's Lien. Case No. CV07-01021 was filed by Respondent as a Complaint to foreclose on the Mechanic's Lien. The Mechanic's Lien was upheld against the still unimproved Property on which no on-site work occurred, and a Judgment in excess of \$4.5 million was entered thereon.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

See Attachment.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: See Attachment.

13. Trial. If this action proceeded to trial, how many days did the trial last? 3

Was it a bench or jury trial? Bench

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from February 26, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served February 27, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing March 10, 2015

☒ NRCP 59 Date of filing March 10, 2015

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion May 27, 2015

(c) Date written notice of entry of order resolving tolling motion was served 5/28/15

Was service by:

☐ Delivery

☒ Mail

18. Date notice of appeal filed June 23, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(4)(B) & (C)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|----------------------------------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 108.2275(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

A final "Judgment, Decree & Order for Foreclosure of Mechanics Lien" as to the validity and amount of Respondent's lien has been entered, which finally adjudicates Respondent's lien lawsuit in Case No. CV07-0201, and which directs the sale of the property, and is therefore final and appealable under NRAP 3A(b)(1). See: *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 247 P.3d 1107 (Nev. 2011) (judgment adjudicating amount of mechanic's lien would have been final and appealable, if it had included an order directing the sale of the property). The Judgment in the present appeal did include an order directing the sale. In addition, the Judgment entered herein, by upholding the validity of the lien, finally adjudicated all of the Appellant's NRS 108.2275 claims under Case No. CV07-00341 such that it is appealable under NRS 108.2275(8) (indicating that an "appeal may be taken from an Order" entered thereunder).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

See Attachment.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

See Attachment.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

See Attachment.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

See Attachment.

(b) Specify the parties remaining below:

Third-Party Defendants Hale Lane Peek Dennison & Howard; Consolidated Pacific Development, Inc.; and DeCal Oregon, Inc.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

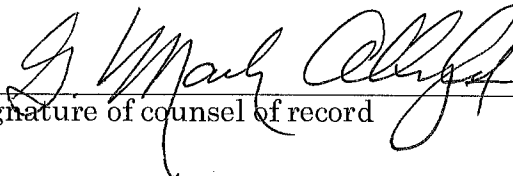
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

John Iliescu, Jr., et al.
Name of appellant

16 July 2015
Date

G. Mark Albright, Esq.
Name of counsel of record


Signature of counsel of record

Clark County, Nevada
State and county where signed

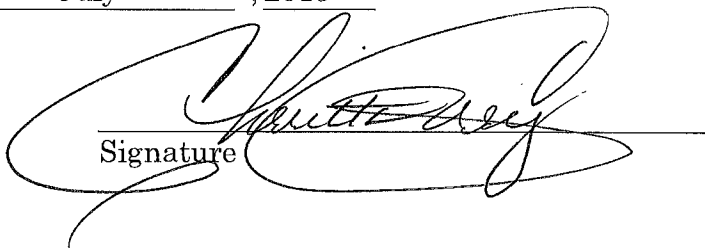
CERTIFICATE OF SERVICE

I certify that on the 16th day of July, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL VALLAS, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com

Dated this 16th day of July, 2015


Signature

2. Attorney filing this docketing statement (continued as to identification of Clients):

Client(s) John Iliescu, Jr., individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, as Trustees of the John Iliescu and Sonnia Iliescu 1992 Family Trust Agreement (the property owners of certain real property at issue in these mechanic's lien foreclosure proceedings).

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

First Issue on Appeal: Whether the district court erred in excusing the Respondent Lien Claimant's failure to provide the statutorily required NRS 108.245 notice of right to lien to the Appellants, by relying upon the "actual knowledge" exception to NRS 108.245, found in *Fondren v. K.L. Complex Limited Co.*, 106 Nev. 705, 800 P.2d 719 (1990), given that the Respondent lien claimant failed to establish any such knowledge by the substantial evidence required in mechanic's lien foreclosure cases, and also given that, pursuant to *Hardy Company, Inc. v. SMart, LLC*, 245 P.3d 1149 (Nev. 2010), the degree of actual knowledge sufficient to invoke the *Fondren* exception must be more than mere awareness of work being done, but must involve actual knowledge of the *identity* of the potential lien claimant, whereas the District Court's own findings in this case expressly indicate a lack of any clear showing as to when, if ever, the Iliescus knew of Steppan's identity.

Second Issue on Appeal. Whether the *Fondren* "actual knowledge" exception to the mandates of NRS 108.245 applies to an *architect* who fails to give the statutorily mandated notice, in conjunction with providing and subsequently liening *solely for offsite design services*, where no work of construction is commenced "upon" the property of which the owner could become aware.

Third Issue on Appeal. Whether the district court erred in upholding the lien despite the failure of the lien claimant to provide prior notice of intent to lien, 15 days before filing the same, as required by NRS 108.226(6), and by ignoring and excusing numerous other failures by the Lien Claimant, Respondent Steppan, to substantially comply with Nevada's Mechanic's Lien statutes.

Fourth Issue on Appeal. Whether a foreign architectural firm, not registered with Nevada's Architectural licensing board, and not owned by 2/3 Nevada licensees so as to be capable of becoming so registered, can evade the requirements of Nevada's architectural licensing statutes and the prohibitions set forth therein (and in *DTJ Design Inc. v. First Republic Bank*, 130 Nev. Adv. Op. 5, 318 P.3d 709 (2014)) against unregistered foreign architectural firms performing and liening for architectural work in Nevada, by taking the mere expedient of having a Nevada-licensed employee sign the architectural contract in question (and thereafter using that employee's name on the lien and on the lawsuit to foreclose the lien), even though the foreign architectural firm then conducts all interactions directly with the client, receives all payments from the client directly, and interacts directly with Nevada officials.

Fifth Issue on Appeal. Whether Steppan failed to meet his burden, as the lien claimant, to show by substantial evidence that the work for whose alleged value his lien was asserted, was work performed "by or through" him (i.e., by him, or by his employees who he hired, or by his subcontractors and subproviders who he retained), as required pursuant to NRS 108.222(1)(a) and (b), given the overwhelming evidence presented at trial (by Steppan himself and his counsel) that the lien is actually for the alleged value of services provided by Steppan's employer, Fisher Friedman Associates ("FFA" -- a foreign architectural firm not registered to provide licensed architectural services in Nevada and not owned by 2/3 Nevada licensees as required to become so licensed), which FFA services were not provided to Steppan as a subcontractor to Steppan who had been retained by Steppan; but, rather, were provided by FFA directly for the underlying customer (a would be purchaser of the Appellants' real property under an escrow which never closed) pursuant to a direct contractual relationship with that customer, as demonstrated by: (a) the lack of any written contract or billings or payments thereon, between Steppan and FFA to show that Steppan had ever retained FFA to work for Steppan; (b) FFA being listed as a direct party to the subject AIA Contract with the underlying customer, on the Addendum thereto; (c) FFA's owner at the time the work was performed, Rodney Friedman, testifying at trial that his company negotiated the contract, was promised by the underlying customer that FFA would be paid for the services, including change order additions thereto, and that he/FFA had orally modified that contract which he/FFA could only do as a party thereto; (d) the fact that the invoices which correspond to the amounts now being liened for in Steppan's name are FFA invoices, on FFA letterhead, sent by FFA directly to the underlying customer, showing prior payments made directly by that customer to FFA; (e) Rodney Friedman having testified that he was financing the litigation and that when he sold FFA (after the lawsuit was filed but before trial) he, Friedman, not "lien claimant" Steppan, retained the lien rights, from FFA, not from Steppan; and (f) other similar evidence, such that "Steppan's" lien is for FFA's services and the amount of FFA's most recent flat fee invoices thereon, not for Steppan's work and services, and not for FFA services provided as a Steppan-retained provider.

Sixth Issue on Appeal. Whether, pursuant to the reasoning of *Nevada National Bank v. Synder*, 108 Nev. 151, 826 P.2d 560, 562 (1992) (partially abrogated on other grounds by *Executive Management, Ltd. v. Ticor Title Insurance, Co.*, 118 Nev. 46, 38 F.3d 872 (2002)), Steppan should have been prevented from acting as the Plaintiff in a mechanic's lien foreclosure suit under a claim of acting as a sole proprietor Nevada architect, when his lien and suit were actually brought on behalf of an unlicensed foreign architectural firm, which provided its design services directly for the underlying Nevada customer, received payments directly from that customer, and where the lien is for the alleged value of designs and drawings created by the foreign architectural firm's employees (not Steppan's employees), and the amount sought in the Steppan lien is for the amounts remaining owing on unpaid invoices which were sent by the foreign architectural firm, on the foreign architectural firm's letterhead, directly to the customer.

Seventh Issue on Appeal. Whether it was error for the district court to allow the lien claimant to lien for work which was performed illegally by an alleged subprovider purportedly

retained by Steppan, when said subprovider was not licensed or registered with Nevada's Architectural Board to perform the work provided by it, and by its unlicensed employees, in Nevada, acting in a role which is not among the two listed exemptions to licensure recognized by Nevada's architectural licensing statutes.

Eighth Issue on Appeal. Whether the district court erred in establishing a lien claim amount on the basis of a flat fee percentage contract calculated against the cost of construction, where construction never even commenced, and where the flat fee percentage contract was not even in place at the time the work was performed, under a prior hourly fee agreement, the invoices under which were paid.

Ninth Issue on Appeal. Whether the district court erred in refusing to hear expert testimony regarding the date on which the flat fee agreement would become effective pursuant to the standards of the architectural industry.

Tenth Issue on Appeal. Whether the district court erred by including language in its judgment which misapprehends the meaning of NRS 108.239(12) and which suggests that the property owners may be held personally liable for the amount of the lien which is not able to be satisfied from the sale of the property, even though the property owners were not parties to the contract for the architectural services to be provided.

12. Other issues. Does this appeal involve any of the following issues?

This case raises constitutional due process issues under Nevada's mechanic's lien statutes, as it involves the standards of notice to which a property owner is entitled prior to losing property rights to a potential lien claimant. This case also raises questions of first impression and public policy as to the applicability of prior Nevada Supreme Court decisions under the mechanic's lien statutes to the liens of an architect providing solely off-site services, as well as issues of first impression and public policy under Nevada's Architectural licensing statute.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

John Iliescu, Jr., individually and John Iliescu Jr. and Sonnia Santee Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, as the Applicants in Case No. CV07-0341 and as the Defendants in Case No. CV-07-01021; Mark A. Steppan, the Respondent in Case No. CV07-00341 and the Plaintiff in consolidated Case No. CV-07-01021. Third-Party Defendants in Case No. CV07-010201: Consolidated Pacific Development, Inc., DeCal Oregon Inc., an Oregon corporation, Calvin Baty, Individually, John Schleining Individually, Hale Lane Peek Dennison & Howard, a Nevada Professional corporation; Karen D. Dennison; R. Craig Howard; Jerry M. Snyder.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The Third-Party Defendants Consolidated Pacific Development, Inc., DeCal Oregon Inc., an Oregon corporation, and Hale Lane Peek Dennison & Howard, a Nevada Professional corporation, are not a party to this appeal given that this appeal is with respect to the Court's February 26, 2015 Judgment, Decree, and Order for Foreclosure of Mechanic's Lien, which, in Paragraph 7 thereof, recognized the existence of pending Third-Party Claims, but nevertheless indicated that no just reason for delay existed, and its Judgment, Decree, and Order for Foreclosure of the Mechanic's Lien should be certified as final (and therefore appealable) under NRCP 54(b). Prosecution in the lower court of these third parties claims may therefore continue to proceed at this time (subject to confirming whether certain of the Third-Party Defendants still exist or have become defunct, as is believed to be the case), and subject to the terms of a Stipulation to Stay the claims against Third-Party Defendant Hale Lane Peek Dennison & Howard, which was entered herein on February 14, 2013.

Third-Party Defendant Calvin Baty is not a party to this appeal for the reasons stated above and also because, upon information and belief, he filed a Chapter 7 bankruptcy petition in Oregon on May 30, 2008, as Case No. 08-32573, in which a discharge was granted in September, 2010.

Third-party Defendant John Schleining is not a party to this appeal because the third-party claims against him were dismissed, *without prejudice*, on November 22, 2011, and are therefore not a part of this appeal.

Similarly, Third-Party Defendants Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder are not parties to this appeal because the third-party claims against them were dismissed, *without prejudice*, by stipulation and order entered February 14, 2013.

(Certain cross-claims for malpractice and third-party claims for indemnity asserted by John Schleining against Hale Lane Peek Dennison & Howard, were also dismissed *without prejudice* by stipulation entered on January 5, 2012, and are therefore no longer pending.)

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

John Iliescu, Jr., individually; John Iliescu Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (as Applicants in Case No. CV07-00341) sought to invalidate Mark A. Steppan's mechanic's lien under NRS 108.2275. This claim was adjudicated and denied on June 22, 2009 (via Order on Cross-Motions for Partial Summary Judgment) and on February 26, 2015 (via the final Judgment).

Mark A. Steppan (as the Plaintiff in consolidated Case No. CV-07-01021) filed a Complaint listing a single cause of action against the aforestated Iliescu parties: foreclosure of mechanic's lien upon

their property. This claim was partially adjudicated in Steppan's favor via Orders of Partial Summary Judgment entered on June 22, 2009, and on May 9, 2013, and via the final Judgment entered on February 26, 2015.

Third-party claims for indemnity were also asserted by the Iliescu parties, in Case No. CV-07-01021, against Consolidated Pacific Development, Inc. (not yet adjudicated); DeCal Oregon Inc., an Oregon corporation (not yet adjudicated); Calvin Baty, individually (stayed and then discharged in bankruptcy on May 30, 2008, and in September of 2010); and John Schleining individually (dismissed, *without prejudice*, on November 22, 2011).

Third-party claims for legal malpractice were also asserted by the Iliescu parties against Hale Lane Peek Dennison & Howard, a Nevada Professional corporation (not yet adjudicated stayed by stipulation entered February 14, 2013); Karen D. Dennison (dismissed *without prejudice* by stipulation and order entered February 14, 2013); R. Craig Howard (dismissed *without prejudice* by stipulation and order entered February 14, 2013); and Jerry M. Snyder (dismissed *without prejudice* by stipulation and order entered February 14, 2013).

Cross-claims for malpractice and third-party claims for indemnity were also asserted by John Schleining against Hale Lane which were dismissed *without prejudice* by stipulation and order entered on January 5, 2012.

This appeal does not involve any of the third-party claims but involves solely the claims between the Iliescu parties as the property owners and Mark Steppan as the lien claimant, pursuant to the February 26, 2015 ultimate Judgment thereon, appealed herein (and the prior and subsequent related orders also appealed from herein), which Judgment specifically recognized the existence of still pending third-party claims but nevertheless indicated in Paragraph 7 thereof that the Judgment in favor of Steppan as against the Iliescu parties is certified as final and there is no just reason for delay in its entry as final, pursuant to NRCp 54(b). *See*, Tab 14 at ¶7.

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

All claims between Appellants and Respondents were adjudicated, with the exception of a dispute between the parties which may arise after a sale of the lien property, as ordered by the court, if the sale value is inadequate to satisfy the judgment on the lien, as to the meaning of NRS 108.239(12), and whether any personal liability may be claimed against the Iliescus beyond the foreclosure sale value of the property, in that event. The district court has deferred that question for post-judgment lien foreclosure sale proceedings, should it then arise. *See*, Judgment, Tab 14, at ¶6.

The Appellants'/Iliescus' Third-Party Claims for indemnity/legal malpractice against the Third-Party Defendants, also remain pending.

INDEX OF ATTACHED FILE-STAMPED DOCUMENTS

<u>TAB</u>	<u>DOCUMENT</u>
------------	-----------------

- | | |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Application For Release of Mechanic's Lien, February 14, 2007 |
| 2. | Complaint to Foreclose Mechanic's Lien and for Damages, May 4, 2007 |
| 3. | Answer and Third Party Complaint (Answer to Complaint to Foreclose Mechanic's Lien and for Damages), September 27, 2007 |
| 4. | Defendants' Motion for Court to Alter or Amend its Judgment and Related Prior Orders, March 10, 2015 |
| 5. | Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders, May 27, 2015 |
| 6. | Stipulation and Order for Dismissal Without Prejudice of All Claims By John Schleining Against Hale Lane Peek Dennison and Howard, Holland & Hart, LLP, and R. Craig Howard, January 5, 2012 |
| 7. | Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice, February 14, 2013 |
| 8. | Order, June 22, 2009 |
| 9. | Order Granting Motion for Partial Summary Judgment, May 9, 2013 |
| 10. | Order Granting Motion to Strike or Limit Jury Demand, August 23, 2013 |
| 11. | Findings of Fact, Conclusions of Law and Decision, May 28, 2014 |
| 12. | Amended Order Regarding Plaintiff's Motion for Costs, December 12, 2012 |
| 13. | Amended Order Regarding Plaintiff's Motion for Attorney Fees, December 12, 2012 |
| 14. | Judgment, Decree and Order for Foreclosure of Mechanics Lien, February 26, 2015 |
| 15. | Decision and Order Denying NRCP 60(b) Motion, March 13, 2015 |
| 16. | Notice of Entry of Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders, May 28, 2015 |
| 17. | Notice of Entry of Stipulation and Order for Dismissal Without Prejudice of all Claims by John Schleining Against Hale Lane Peek Dennison and Howard, Hollard & Hart, LLP, and R. Craig Howard, January 6, 2012 |
| 18. | Notice of Entry of Order of the Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice, April 9, 2013 |
| 19. | Notice of Entry of Order, July 20, 2009 |
| 20. | Notice of Entry of Judgment, February 27, 2015 |
| 21. | Notice of Entry of Order of Decision and Order Denying NRCP 60(b) Motion, March 13, 2015 |
| 22. | Notice of Entry of Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders, May 28, 2015 |
| 23. | Notice of Entry of Various Orders, July 15, 2015 |