

Document Code: 3660

HOY CHRISSINGER & KIMMEL, PC

Michael D. Hoy (NV Bar 2723)
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Reno, Nevada 89519
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Attorneys for: 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; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Applicants,

v.

MARK B. STEPPAN,

Respondent.

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

Reply in Support of Motion to Strike Jury Demand

Mark B. Steppan ("Architect") hereby replies to the July 26, 2013 Opposition to
Motion to Strike or Limit Jury Demand ("Opposition") as follows:

Memorandum of Points and Authorities

The only issue raised in Architect's July 11, 2013 "Motion to Strike or Limit Jury Demand" is whether John and Sonnia Iliescu (the "Iliescus") are entitled to a jury trial on an equitable claim to foreclose a mechanics lien. The July 26, 2013 Opposition mentions this issue in passing (page 3), but devotes most of its text to unrelated issues. Indeed, the primary focus of the Opposition appears to be the Iliescus' attempt to re-litigate whether the Architect's mechanics lien is invalid because Architect failed to file a pre-lien notice. *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990) holds that no pre-lien notice is required if the owner had actual knowledge of certain facts. The Iliescus argue that they are entitled to a jury trial to determine the Iliescus' actual knowledge under *Fondren*. But, this issue was already litigated and decided more than four years ago on cross-motions for partial summary judgment. *See* Order (June 22, 2009), Exhibit 1.

Even if the *Fondren* issue had not already been decided on summary judgment, property owners facing foreclosure of a mechanics lien would still not be entitled to a jury trial. The law is crystal clear that there is no right to a jury trial in a claim to foreclose a mechanics lien. *Close v. Isbell Construction Company*, 86 Nev. 524, 471 P.2d 257 (1970). The issue is not whether an issue is legal versus factual. The issue is that a lien foreclosure action is an equitable, statutory claim: "[t]he foreclosure of liens is an equity matter, and no right to trial on equity matters existed at common law." *Id.* at 529, 471 P.2d at 261 (West Headnote 3).

The Opposition mostly focuses on the pre-lien notice issue previously adjudicated. The Opposition essentially claims that Architect "waived" the mechanics lien by relying on the Iliescus' actual knowledge rather than giving a pre-lien notice, and argues that Iliescus

1 are entitled to a jury trial on the affirmative defense of waiver. Again, there is no right to a
2 jury trial in an equitable case. The only affirmative defenses to an equitable claim are
3 equitable. The Opposition cites no authority for the bizarre assertion that a defendant
4 would be entitled to a jury trial on an affirmative defense, but not on the affirmative claim.

5 The Opposition insists that the Iliescus are entitled to a jury trial to determine
6 whether Steppan (personally and through his sub-consultants) complied with the design
7 contract. The Iliescus are not parties to the design contract, so Steppan and the Iliescus
8 have not sued one another for breach of contract. The Court has determined that the
9 Architect's mechanics lien secures the amount due under the design contract. Thus, the
10 only issue for trial is the state of completion of the design work. The Architect completed
11 the Schematic Design phase of the work, and is therefore entitled to 20 percent of the
12 overall fee stipulated in the design contract. Although this is a factual issue, there is no
13 right to a jury trial on the issue. Further, this issue is undisputed. The Iliescus have already
14 conceded that expert testimony is required to determine whether Architect completed the
15 Schematic Design Phase. Exhibit 2, Response to Request for Admission No. 4 ("...
16 Respondent does not have sufficient sophistication or knowledge to [admit or deny
17 whether the Schematic Design Phase was completed]"); Exhibit 3, Response to
18 Interrogatory No. 1 ("Do you contend that the Schematic Design Phase was completed?"
19 Answer: "Unknown as I am not an architect.").
20
21

22 The Iliescus have not proffered any expert testimony on this issue. By contrast,
23 Architect has offered the expert report of local architect Brad Van Woert, who concluded
24 that the Architect completed the Schematic Design phase. See Exhibit 4.
25

1 The Opposition represents that Iliescus are proceeding with indemnity claims
2 against Consolidated Pacific Development (“CPD”) and Decal Oregon, Inc. (“Decal”)
3 Opposition, page 3. CPD filed an answer on February 22, 2008. On March 18, 2010, the
4 Court granted Judith Otto’s motion to withdraw representation of CPD. Since that time,
5 CPD has been unrepresented. The Secretary of State has revoked the entity’s corporate
6 status, which casts doubt on the company’s ability to defend itself. On December 18, 2007,
7 Stephen Harris filed a Notice of Appearance on behalf of Decal. However, it does not appear
8 that Decal ever filed an answer.

9 The Iliescus have taken no steps to obtain a default, default judgment, or summary
10 judgment against either CPD or Decal. It makes no sense to empanel a jury to hear the
11 Iliescus’ uncontested indemnity claims against these defunct entities. It makes complete
12 sense to bifurcate these indemnity claims, and enter judgment on them after the Court
13 determines the amount secured by the lien. Based on the written Indemnity agreement,
14 Exhibit 5, it appears that Iliescus would be entitled to a judgment for the amount of the lien,
15 costs, and attorney fees.

16 Finally, the Opposition represents that the legal malpractice claims are stayed. In
17 fact, the Court previously entered defense summary judgment on those claims. Exhibit 6.
18 The claims are “stayed” only because there is no final, appealable judgment in the case, and
19 because the malpractice targets were willing to participate in settlement conferences.
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Summary and Request for Relief

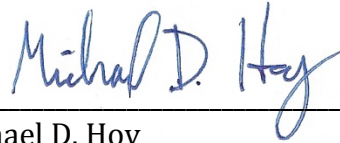
As a matter of law, the Iliescus have no right to a jury trial on any factual issues arising from the Architect's claim to foreclose the mechanics lien. The Court should therefore strike the Iliescus' jury demand.

Privacy Certification

Undersigned certifies that this Reply and the attached exhibits contain no social security numbers.

Dated August 6, 2013.

HOY CHRISSINGER & KIMMEL, PC



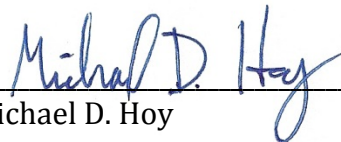
Michael D. Hoy

Certificate of Service

Pursuant to NRCP 5(b), I hereby certify that I am counsel of record in this case and that on August 5, 2013, I served a true and correct copy of the foregoing Opposition to (1) Motion for Continuance and (2) Motion to Extend Expert Disclosure Dates by:

Depositing a copy of the same for mailing, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following: C. Nicholas Pereos, Esq., 1610 Meadow Wood lane, Suite 202, Reno, Nevada 89502; and

Dated: August 6, 2012



Michael D. Hoy

Table of Exhibits

- | | |
|----|--|
| 1 | |
| 2 | 1 June 22, 2009 Order |
| 3 | 2 Responses to Requests for Admissions |
| 4 | 3 Answers to Interrogatories |
| 5 | 4 May 24, 2013 Expert Report and Disclosure – Brad Van |
| 6 | Woert, AIA |
| 7 | 5 Indemnity Agreement |
| 8 | 6 September 1, 2011 Order granting defense summary |
| 9 | judgment on legal malpractice claims |
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Joey Orduna Hastings
Clerk of the Court
Transaction # 3903327

Exhibit 2

AA0601

1 **DISC**

2 Gordon M. Cowan (SBN# 1781)
3 Law Office of Gordon M. Cowan
4 Mailing: P.O. 17952
5 Reno, NV 89511
6 Phone 775 786 6111
7 Fax 775 786 9797

8 *Attorney for Plaintiffs* JOHN & SONNIA
9 ILIESCU and ILIESCU FAMILY TRUST

10 **IN THE SECOND JUDICIAL DISTRICT COURT**
11 **WASHOE COUNTY, NEVADA**

12 JOHN ILIESCU, JR.; SONNIA SANTEE
13 ILIESCU; JOHN ILIESCU JR. and
14 SONNIA SANTEE ILIESCU as TRUSTEES
15 of the JOHN ILIESCU, JR. and SONNIA
16 ILIESCU 1992 FAMILY TRUST,

Consolidated Case Nos.
CV07-00341 and
CV07-01021

Dept No. 10

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant. /

17 **AND CONSOLIDATED ACTION AND**
18 **RELATED THIRD-PARTY CLAIMS**

19 **RESPONSES TO REQUESTS FOR ADMISSIONS**
20 **BY JOHN ILIESCU, Jr. AS TRUSTEE**

21 Pursuant to NRCP Rule 36, Plaintiff JOHN ILIESCU, JR. as a Trustee for, and
22 on behalf of the JOHN ILIESCU, JR. and SONNIA ILIESCU 1992 FAMILY TRUST
23 ("Iliescu"), answer Mark B. Steppan's Requests for Admissions, as follows:

24 **REQUEST NO. 1:**

25 Please admit that the document previously produced and bates numbered
26 STEPPAN2742 - 2755 is a true and correct copy of the AIA Document B141-1977 Part
27 1, with Addendum No. 1 ("Design Contract, Part I") for Steppan to provide certain
28 design services for a project that is the subject of this litigation, and otherwise known as
Wingfield Towers.

RESPONSE:

Respondent has no personal knowledge concerning the architectural contract

1 signed by Steppan. Upon investigation of the files provided in these proceedings,
2 Respondent has no reason to believe that this contract is not the contract signed by
3 Steppan for the design services required of Steppan by the developer but lacks the
4 knowledge to Admit that this is the only contract between the parties. The Respondent
5 denies the remainder of this Request not specifically referenced herein.

6 REQUEST NO. 2:

7 Please admit that the document previously produced and bates-numbered 2756-
8 2766 is a true and correct copy of the AIA Document B141-1997 Part 2, with Addendum
9 No. 1 ("Design Contract, Part II") for Steppan to provide certain design services for a
10 project that is the subject of this litigation, and otherwise known as Wingfield Towers.

11 RESPONSE:

12 Respondent has no personal knowledge concerning the architectural contract
13 signed by Steppan. Upon investigation of the files provided in these proceedings,
14 Respondent has no reason to believe that this contract is not the contract signed by
15 Steppan for the design services required of Steppan by the developer but lacks the
16 knowledge to Admit that this is the only contract between the parties. The Respondent
17 denies the remainder of this Request not specifically referenced herein.

18 REQUEST NO. 3:

19 Please admit that Design Contract, Part II, section 2.4.2.1 defines the "Schematic
20 Design Phase" for purposes of determining 20 percent of the architect's fee under Design
21 Contract, Part 1.

22 RESPONSE:

23 Respondent by reason of legal consultation admits that Section 2.4.2.1 defines the
24 Schematic Design documents. Respondent admits that the initials SD is probably intended
25 to refer to schematic design documents discussed in Section 2.4.2 of Part II. The
26 Respondent denies the remainder of this Request not specifically referenced herein.

27 REQUEST NO. 4:

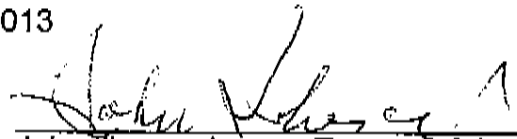
28 Please admit that the Schematic Design phase, as defined in Design Contract,

1 Part II, section 2.4.2.1 was completed.

2 RESPONSE:

3 After reasonable inquiry and review of the materials to the file through discovery,
4 this Respondent does not have sufficient sophistication or knowledge by which to admit
5 to this request. Accordingly, this Respondent is unable to admit or deny the same.

6 DATED this 11th day of July 2013

7 
8 John Iliescu, Jr. as a Trustee of the JOHN
9 ILIESCU, JR. and SONNIA ILIESCU 1992
10 FAMILY TRUST

11 Submitted by
12 GORDON M. COWAN, ESQ. (Nev. 1781)
13 LAW OFFICE OF GORDON M. COWAN
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(d), I certify that I am employed at 10775 Double R Blvd.,
3 Reno, Nevada 89521, and on this date I served the foregoing document(s) on all
parties to this action by:

4 X Placing an original or true copy thereof in a sealed envelope with postage
5 prepaid in the United States Mail at Reno, Nevada, following ordinary business
practices;

6 Personal delivery;

7 Facsimiles to:

8 Mike Hoy, Esq., Mike Kimmel, Esq. 775.786.7426
David Grundy, Esq., Alice Mercado, Esq. 775.786.9716
9 Gregory Wilson, Esq. 775.786.7764

10 Reno-Carson Messenger Service;

11 Certified Mail with Return Receipt Requested.

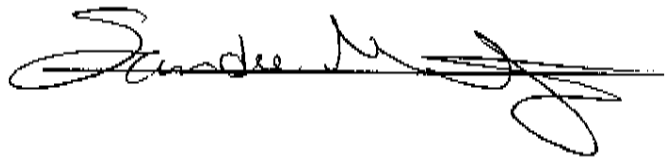
12 addressed as follows:

13 Michael D. Hoy Esq.
Hoy Chrissinger Kimmel
4741 Caughlin Parkway Ste. 4
14 Reno, NV 89519

15 Gregory F. Wilson
417 W. Plumb Ln.
16 Reno NV 89509

17 David Grundy, Esq.
Lemons Grundy Eisenberg
18 6005 Plumas St 3rd Floor
Reno NV 89519
19

20 DATED this 11th day of July 2013

21 
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Joey Orduna Hastings
Clerk of the Court
Transaction # 3903327

Exhibit 3

AA0606

1 **DISC**

2 Gordon M. Cowan (SBN# 1781)
3 Law Office of Gordon M. Cowan
4 Mailing: P.O. 17952
5 Reno, NV 89511
6 Phone 775 786 6111
7 Fax 775 786 9797

8 *Attorney for Plaintiffs* JOHN & SONNIA
9 ILIESCU and ILIESCU FAMILY TRUST

10 **IN THE SECOND JUDICIAL DISTRICT COURT**
11 **WASHOE COUNTY, NEVADA**

12 JOHN ILIESCU, JR.; SONNIA SANTEE
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14 SONNIA SANTEE ILIESCU as TRUSTEES
15 of the JOHN ILIESCU, JR. and SONNIA
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Dept No. 10

Plaintiffs,

vs.

17 MARK B. STEPPAN,

18 Defendant.

19 AND CONSOLIDATED ACTION AND
20 RELATED THIRD-PARTY CLAIMS

21 **ANSWERS TO INTERROGATORIES, FIRST SET**
22 **BY JOHN ILIESCU, Jr. AS TRUSTEE**

23 Pursuant to NRCP Rule 33, Plaintiff JOHN ILIESCU, JR. as a Trustee for, and
24 on behalf of the JOHN ILIESCU, JR. and SONNIA ILIESCU 1992 FAMILY TRUST
25 ("Iliescu"), answer Mark B. Steppan's Interrogatories, Set One, as follows:

26 **INTERROGATORY NO. 1:**

27 Do you contend that the Schematic Design Phase was completed? If your answer is
28 "No," please answer the following subparts:

- 29 A. Describe each element of the Schematic Design Phase that you conted
30 was not competed.
- 31 B. Give the name, address, and phone number of each person who has
32 advised yoyu that the element of the Schematic Design Phase was not
33 completed;

1 C. Identify each document upon which ou will rely in motion practice, at trial,
2 or otherwise to establish that the leement of the Schematic Design Phase
3 was not completed.

4 ANSWER:


5 Unknown as I am not an architect.

6 A. Object to this subparagraph as it calls for work product of counsel.

7 B. None at this time

8 C. See objection to A.

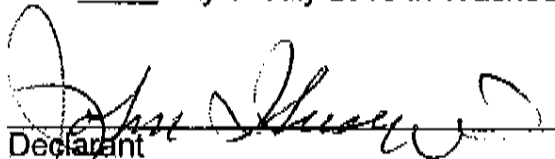
9 DATED this 11th day of July 2013

10
11 
12 John Iliescu, Jr. as a Trustee of the JOHN
13 ILIESCU, JR. and SONNIA ILIESCU 1992
14 FAMILY TRUST

15
16 **VERIFICATION**

17 I, John Iliescu as a Trustee of the JOHN ILIESCU, JR. and SONNIA ILIESCU
18 1992 FAMILY TRUST declare under penalty of perjury under the laws of the State of
19 Nevada, that the foregoing answers to interrogatories are true and correct except for
20 those matters stated therein on information and belief, and as to those matters, I
21 believe them to be true.

22 THIS DECLARATION is executed this 11th day of July 2013 in Washoe
23 County, Nevada.

24 
25 Declarant

26 Submitted by
27 GORDON M. COWAN, ESQ. (Nev. 1781)
28 LAW OFFICE OF GORDON M. COWAN

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(d), I certify that I am employed at 10775 Double R Blvd.,
5 Reno, Nevada 89521, and on this date I served the foregoing document(s) on all
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11 Facsimiles to:

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14 Gregory Wilson, Esq. 775.786.7764

15 Reno-Carson Messenger Service;

16 Certified Mail with Return Receipt Requested.

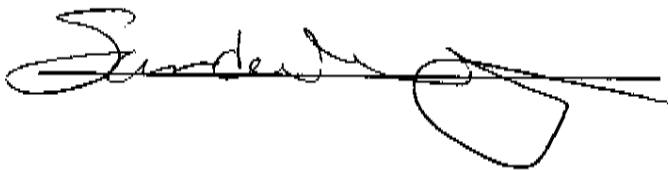
17 addressed as follows:

18 Michael D. Hoy Esq.
19 Hoy Chrissinger Kimmel
20 4741 Caughlin Parkway Ste. 4
21 Reno, NV 89519

22 Gregory F. Wilson
23 417 W. Plumb Ln.
24 Reno NV 89509

25 David Grundy, Esq.
26 Lemons Grundy Eisenberg
27 6005 Plumas St 3rd Floor
28 Reno NV 89519

DATED this 11th day of July 2013



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Transaction # 3903327

Exhibit 4

AA0610

Document Code: 1610

HOY CHRISSINGER & KIMMEL, PC

Michael D. Hoy (NV Bar 2723)
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519
(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**

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

v.

MARK B. STEPPAN,

Respondent.

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

Disclosure of Expert Witness

Mark B. Steppan hereby discloses the following expert witness pursuant to NRCP

16.1(a)(2)(A):

///

///

///

K. Brad Van Woert III, AIA
VanWoertBigotti Architects
1400 S. Virginia Street, Suite C
Reno, Nevada 89502
(775) 328-1010

Mr. Van Woert's background, qualifications, and fee rates will be served separately on all parties to this action, along with Mr. Van Woert's expert report.

Mr. Van Woert will opine on whether the design and technical work completed by Mark Steppan to date meets the level of completeness for the Schematic Design Phase.

Privacy Certification

This document does not contain any social security numbers.

Dated this 24th day of May, 2013

HOY | CHRISSINGER | KIMMEL

/s/ Michael D. Hoy

Michael D. Hoy
Attorneys for Mark Steppan

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hoy Chrissinger Kimmel PC, and that on the 24th day of May, 2013, I served a true and correct copy of **DISCLOSURE OF EXPERT WITNESS; REPORT OF K. BRAD VAN WOERT III, AIA; K. BRAD VAN WOERT III, AIA RESUME AND STANDARD OFFICE RATES** by depositing a copy of the same for mailing enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

Gordon Cowan, Esq.
COWAN LAW OFFICE
P.O. Box 17952
Reno, NV 89511
*Attorney for Plaintiffs John and Sonia Iliescu
and Iliescu Family Trust*

Gordon Cowan
COWAN LAW OFFICE
10775 Double R Blvd.
Reno, NV 89521-8956

David R. Grundy, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, NV 89519
*Attorneys for Jerry Snyder, Hale Lane Peek
Dennison Howard, R. Howard and Karen
Dennison*

DATED this 24TH day of May, 2013.



An employee of Hoy Chrissinger Kimmel PC

May 24, 2013

Mr. Michael Hoy, Attorney
Hoy Chrissinger Kimmel PC
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519

Re: Steppan/Fisher Friedman v. Iliescu

Dear Mr. Hoy:

At your request I have reviewed the design documents for the Wingfield Towers, a project designed in 2006 by Mark Steppan/Fisher Friedman Associates. The project is located in Reno, Nevada on 1.42 acres bounded by Arlington Avenue, Island Avenue, and Court Street, next to the Truckee River. It is a project comprising approximately 1 million square feet, 499 residential units, appropriate parking and other ancillary support functions.

The focus of my review centered on the determination of whether the design and technical work completed to date meets the level of completeness for the Schematic Design Phase. The documents reviewed are listed in the Exhibit A of this letter as well as other items, most particularly, the PowerPoint presentation to the City of Reno dated September 2006 and the "Reno Fly-Through" animation dated May 4, 2006. Also reviewed were documents from the structural engineer, Ron Klemencic, C&B Consulting Engineers for mechanical systems, and glass curtain wall advisement from Viracon. These key documents have also been added to Exhibit A.

It is my opinion that the design and technical documents produced by Mark Steppen/Fisher Friedman meet or exceed the standards for a Schematic Design Phase package. The basis for this opinion is the comparison of the work to two documents related to this project. The first document is the actual AIA contract document B141 - 1997 Parts 1 & 2, dated 31 October 2005. Section 2.4.2.1 of Part 2 of the contract defines the scope of a Schematic Design submittal:

The Architect shall provide Schematic Design Documents base on the mutually agreed upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combination of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

The second document is the AIA Architect's Handbook of Professional Practice, section 3.6.3 Design Phases, Schematic Design:

Schematic Design

AIA Document B141 identifies the first phase of services as schematic design. While different projects, clients, and design teams have slightly different definitions of the completion of this phase, certain objectives and products are commonly agreed upon.

Schematic design establishes the general scope, conceptual design, and scale and relationship among the components of the project. The primary objective is to arrive at a clearly defined, feasible concept and to present it in a form that achieves client understanding and acceptance. The secondary objectives are to clarify the project program, explore the most promising alternative design solutions, and provide a reasonable basis for analyzing the cost of the project.

Typical documentation at the end of this phase can include

A site plan

Plans for each level

All elevations

Key sections

An outline specification

A statistical summary of the design area and other characteristics in comparison to the program

A preliminary construction cost estimate

Other illustrative materials - renderings, models, computer simulations, or additional drawings - needed to present the concept adequately

Drawings. These are typically presented at the smallest scale that can clearly illustrate the concept, perhaps 1/16"=1'-0" (1:200 in SI units) for larger buildings and 1/8"=1'-0" (1:100) or 1/4"=1'-0" (1:50) for smaller buildings and interiors.

Outline specifications. This is a general description of the work that indicates the major systems and materials choices for the project and provides the information necessary to communicate the appearance and function of the building.

Preliminary estimate of construction cost. The schematic design estimate usually includes a preliminary area analysis and a preliminary construction cost estimate. The level of detail is necessarily limited; the estimate may be broken down by major trades or systems (for example, foundations, structure, exterior closure, interior partitions and finishes, plumbing, mechanical, electrical, site work, and equipment). This may also include a preliminary analysis of the owner's budget, with recommendations for changes based on site, marketplace, or other unusual

conditions encountered in schematic design. It is common for preliminary cost estimates made at this stage to include contingencies for further design development, market contingencies, and changes during construction.

Other services. As part of schematic design, the architect may agree to provide life cycle cost analyses, energy studies, tenant-related design studies, other economic studies, special renderings, models, brochures, or promotional materials for the owner. These are included as "additional services" (in the AIA B141 form of the owner-architect agreement), or they may be chosen from a list of possible designated services (in the B163 form of owner-architect agreement).

Approvals. The final step in schematic design (and, for that matter, each design phase) is to obtain formal client approval - in writing if at all possible. If approval is given verbally, it is a good idea to send the client a letter confirming the architect's understanding of the approval. (You may ask the client to initial the letter and return a copy.) The importance of this step cannot be emphasized enough. The schematic design presentation has to be clear enough to gain both the understanding and the approval of the client.

Using these two standards of practice as the basis of comparison, it is evident that the Schematic Design package submitted for this project meets or exceeds this standard of professional care. I would classify this schematic design package as exemplary. It not only defines the technical aspects of the project but delineates the design through renderings and sketches to portray the actual human experience of being in and around the design. Particular note should be taken to the exhibits that make this Schematic Phase package exemplary:

Exhibit ST 1483 - renderings in context - drawings that show the project in its true city environment with photo montage and illustrative renderings.

Exhibit ST 3681 - living unit layouts - drawing floor plans of each unit with furniture and fixtures.

Exhibit ST 4109 - foam model - photographs of a physical form model made of foam set in its neighborhood context.

Exhibit ST 3378 - streetscape/signage - renderings of the project at street level that examines the pedestrian scale and proportion in relationship to street and river.

Exhibit ST 3170 - articulated landscape plan

City of Reno PowerPoint Presentation - a broad graphic and narrative explanation of the project with site plans, plans, elevations, shadow studies, renderings and technical data.

Reno Fly Through - an animated moving tour of the project that portrays the actual human experience of being in and around the project.

As stated earlier, it is my opinion that the materials and data submitted by Mark Steppan/Fisher Friedman meet the professionalism and standard of care required for a Schematic Design submission for a project such as Wingfield Towers.

Should you have any questions regarding this matter, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Brad Van Woert, III". The signature is stylized with a long horizontal line extending to the right.

PRESIDENT, VAN WOERT BIGGINS ARCHITECTS

Encl.: Exhibit A
Professional biography/experience of K. Brad Van Woert, III, AIA
Hour rate sheet

Exhibit A

Documents Examined

The investigation initially included a review of all documents produced by the parties, including documents produced as STEPPAN 0001 – 7103. References below are to bates numbers for STEPPAN production of documents. I have particularly reviewed the following documents:

Contract Documents:

AIA Document B141 – 1997 Part 1
Standard form of Agreement Between Owner and Architect,
With Addendum No. 1 (signed). [2742 – 2755]

AIA Document B141 – 1997 Part 2
Standard Form of Architect's Services,
With Addendum No. 1 (signed). [2756 – 2766]

Email (October 24, 2006) from Nathan Ogle reflecting a demand for payment fo the Schematic Design/Entitlements Phase [3861]

Development Entitlements:

October 5, 2006 letter from Claudia Hanson (City of Reno, Community Development) to Consolidated Pacific Development (with copy to John and Sonnia Iliescu) approving tentative map, special use permits, and other development entitlements. [0446-0453]

November 30, 2006 letter from Claudia Hanson (City of Reno, Community Development) to John and Sonia Iliescu approving tentative map, special use permits, and other development entitlements. [4009-4016]

Schematic Design Documents:

Project Description [2380]

Parking Calculations [2382]

Project Data Summary [2383]

Residential Tower SF Description [2384-2386]

South Elevation [2387]

North Elevation [2388]

North Elevation [2389]

East Elevation [2390]

West Elevation [2391]

West Elevation [2392]

Exhibit A

Documents Examined

West Elevation/Section [2393]
East Elevation/Section [2394]
Address Signage at Court Street [2395]
Address Signage at Island Avenue [2396]
Exterior Lighting Diagram [2397]
Topographic Survey [2398]
Site Plan [2399]
Podium Plan [2400]
Garage Plan @ + 30.08' [2401]
Garage Plan @ + 21.08' [2402]
Garage Plan @ + 12.08' [2403]
Garage Plan @ + 14.08' [2404]
Garage Plan @ - 5.92' [2405]
Garage Plan @ - 14.92' [2406]
Building 1 – Floor Plan: Floor 1 (Retail/Health Club) [2407]
Building 1 – Floor Plan: Floors 2 – 16 (Residential) [2408]
Building 1 – Floor Plan: Floor 17 (Residential/Mechanical) [2409]
Building 1 – Floor Plan: Floors 18 – 30 (Residential) [2410]
Building 1 – Floor Plan: Floors 31 – 37 (Residential) [2411]
Building 1 – Floor Plan: Floor 38 (Residential Townhouses – Lower) [2412]
Building 1 – Floor Plan: Floor 39 (Residential Townhouses – Upper) [2413]
Building 1 – Roof Plan [2414]
Building 2 – Floor Plan: Floor 1 (Office) [2415]
Building 2 – Floor Plan: Floors 2 – 3 (Office) [2416]
Building 2 – Floor Plan: Floors 4 – 20 (Residential) [2417]
Building 2 – Floor Plan: Floors 21 – 26 (Residential) [2418]
Building 2 – Floor Plan: Top Floor (Pool) [2419]
Building 2 – Roof Plan [2420]
Building Section A [2421]
Building Section B [2422]
Building Section C [2423]

Exhibit A

Documents Examined

Building Section D [2424]
Building Section E [2425]
Preliminary Grading and Drainage Plan [2426]
Preliminary Utility Plan [2427]
Text in Tentative Map & Special Use Permit Application [0318-0322]
Building Elevations and Sections [0412-0444]
Site Plan (Revised Tentative Map) [0323]
East Elevation/Section [0324]
West Elevation/Section [0325]
North Elevation [0326]
West Elevation [0757]
East Elevation – Building Two (next to Park Towers) [0758]
Public Plaza View from Court Street [0759]
Public Plaza View Podium Level looking North [0760]
North Side of Public Plaza/Podium Level looking North East [0761]
Island Drive Pedestrian Access [0762]
Pedestrian Connectivity [0763]
Garden Wall Close-up, North Elevation [0764]
Detail of space between Park Towers and Wingfield Towers [0765]
View looking South Across Wingfield Park [0766]
Looking Northeast from McCarran Blvd. at Caughlin Parkway [0767]
Looking West from Washoe Medical Center [0768]
Looking West from South Lake Street Bridge [0769]
Looking South (West Street at West Second Street) [0770]
Looking East from Elm Court at Lee Avenue [0771]
Looking East (Riverside Drive at Ralston Street) [0772]
Looking East [0773]
December 29, 2005 Schematic Design Documents [1734-1810]
January 6, 2006 Schematic Design Documents [1672-1732]
January 6, 2006 Schematic Design Documents [3170-3217]
January 17, 2006 Schematic Design Documents [1191-1234]

Exhibit A

Documents Examined

January 17, 2006 Schematic Design Documents [1547-1609]
January 17, 2006 Schematic Design Documents [1811-1931]
January 17, 2006 Schematic Design Documents [2550-2606]
January 17, 2006 Schematic Design Documents [3788-3832]
April 7, 2006 Schematic Design Documents [0679-0721]
April 7, 2006 Schematic Design Documents [0814-0826]
April 7, 2006 Schematic Design Documents [3891-3919]
April 12, 2006 Schematic Design Documents [1940-1999]
April 27, 2006 Schematic Design Documents [1521-1541]
April 27, 2006 Schematic Design Documents [2000-2014]
May 9, 2006 Schematic Design Documents [0913-0943]
May 24, 2006 Schematic Design Documents [2018-2049]
June 1, 2006 Schematic Design Documents [3788-3832]
Sketches [1475-1476]
Renderings in photographs of existing environment [1483-1492]
Renderings in photographs of existing environment [1543-1545]
South Elevation Along Court Street [1494]
North Elevation Along Island Avenue [1495]
Powerpoint Presentation (thumbnails for distribution) [ST0507 – 0533]
Powerpoint Presentation (full-size frames, many renderings) [ST0536 – 0678]
Powerpoint Slides Presentation [ST1344 – 1451]
Revised Tentative Map Sheet 1 [2344]
Revised Tentative Map Sheet S-1 [2345]
Revised Tentative Map Sheet S-2 [2346]
Revised Tentative Map Sheet S-3 [2347]
Revised Tentative Map Sheet S-4 [2348]
Revised Tentative Map Sheet S-5 [2349]
Revised Tentative Map Sheet S-6 [2350]
Revised Tentative Map Sheet S-7 [2351]
Revised Tentative Map Sheet S-8 [2352]
Revised Tentative Map Sheet S-9 [2353]

Exhibit A

Documents Examined

Revised Tentative Map Sheet S-10 [2354]
Revised Tentative Map Sheet S-11 [2355]
Revised Tentative Map Sheet S-12 [2356]
Revised Tentative Map Sheet S-13 [2357]
Revised Tentative Map Sheet S-14 [2358]
Revised Tentative Map Sheet S-15 [2359]
Revised Tentative Map Sheet S-16 [2360]
Revised Tentative Map Sheet S-17 [2361]
Revised Tentative Map Sheet S-18 [2362]
Revised Tentative Map Sheet G-1 [2363]
Revised Tentative Map Sheet U-1 [2364]
Shadow Study [ST0782 – 0788]
Special Use Permit Application (Jan 17, 2006)(Contains duplicate schematic design documents) [ST2365 – 2427]
View Study from Paladio [3238-3245]
Schematic Design Documents – Fisher Friedman [3681]
Floor Plans and Foam Model [4109-4115]
Photographs of Model [4270-81]
Renders in Aerial Photographs [4282-4293]
MEP documents ST3577
Structural notes ST3617
Notes - structural and MEP ST3679
City of Reno Power Point
Reno Fly-Through



washoe county sheriff's headquarters & jail



sisters of our lady of mount carmel



southern wine and spirits

resume
experience matters

K. Brad Van Woert III, AIA

president

role: principal-in-charge

Brad Van Woert has designed and seen built several hundred projects that make up the community. By blending both contextual historic observations and new age technologies, Brad's designs tend to be bold in form and very literal in their functional interpretation.

Brad has over 30 years in the design, programming, and development of contract documents for a variety of projects. His professional experience includes architectural designs ranging from small remodel projects to multi-million dollar facilities. Brad's designs have won numerous awards from the American Institute of Architects.

Brad has been involved in many remodels, additions, and new shopping center projects in both Nevada and California. Plan layouts, code compliance and overall design coordination has been a strength of the firm for many years.

Project experience:

UNR Medical Education Learning Lab, Reno, NV

Davidson Academy (Remodel/Addition to Jot Travis), Reno, NV

25 Washoe County Elementary Schools, Reno/Sparks, NV

Carson City Elementary Schools (Fremont & Mark Twain) Carson City, NV

University of Nevada, Reno, Mackay School of Mines, Reno, NV

Our Lady of Snows Catholic Church Addition, Reno, NV

VA Hospital Remodels & Additions, Reno, NV

Sisters of Our Lady of Mount Carmel, Reno, NV

Washoe County Jail & Sheriff's Headquarters, Reno, NV

Tri County Juvenile Detention Facility, Winnemucca, NV

Summit View Juvenile Detention Center, Las Vegas, NV

Washoe County Misdemeanor Center, Reno, NV

Scolari's Food & Drug Centers,

Caughlin Ranch

Fernley

Robb Drive

Mira Loma

Golden Valley

Sac N Save,

Oddie Blvd.

Pyramid Way

Education

University of Oregon

Bachelor of Architecture, 1972

Registrations

Nevada 1976 # 988

California 1978 C10063

Oregon 2004 #4870

Nevada Council Architectural Registration Board (NCARB)

Professional Affiliations & Awards

American Institute of Architects Northern Nevada

Sierra Arts Foundation – Board Member and Past President

University of Nevada, Reno – College of Engineering Advisory Board

University of Nevada - College of Arts & Science Advisory Board

AIA Nevada - Silver Medal 2009

AIA Nevada - Firm Award 2011

STANDARD OFFICE RATES

Revised January 1, 2011

Professional Services

Rates per Hour

Principal Architect	\$195.00
Senior Project Manager/Associate	\$142.00
Project Architect/Manager	\$120.00
Senior Draftsperson/Job Captain	\$110.00
Draftsperson	\$ 90.00
Administration/Clerical	\$ 80.00

Legal Services

Reports or Preparation for Testimony	\$300.00
Expert Testimony, Depositions, etc.	\$350.00
(A minimum of 4 hours will be invoiced for any given day.)	

Reimbursables

In-House Plots	
15x21	\$2.10/ea B&W; \$3.15/ea Color
24x36	\$2.10/ea B&W; \$3.15/ea Color
30x42	\$3.15/ea B&W; \$4.20/ea Color
Electronic Drawings	\$100.00 per sheet
Photo Copies 8 ½ x 11	\$0.10 per copy
Photo Copies 11 x 17	\$0.20 per copy
Color Prints 8 ½ x 11	\$1.25 per copy
Color Prints 11 x 17	\$1.60 per copy
Mileage	\$0.505 per mile

The following reimbursables are provided at cost + 15%

Long Distance (telephone and fax), Shipping, Outside Printing
Travel: Car Rental, Airfare, Lodging/Meals
Other outside professional services, specialty consultants, etc.

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).

9
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.
16

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

21 Dated this 23 day of August, 2013.

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.

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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 23 day of August, 2013, 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:

Gordon Cowan, Esq.
Cowan Law Office
P.O. Box 17952
Reno, NV 89511

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

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 23 day of August, 2013, 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:

GREGORY WILSON, ESQ.

DAVID GRUNDY, ESQ.

MICHAEL HOY, ESQ.


Sheila Mansfield

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE ELLIOTT SATTLER, DISTRICT JUDGE

10 --oOo--

11 MARK B. STEPPAN,)	
)	
12 Plaintiff,)	
)	
13 vs.)	Case No. CV07-00341
)	
14 JOHN ILIESCU, JR., et)	Department 10
15 al.,)	
)	
16 Defendants.)	

17
18 TRANSCRIPT OF PROCEEDINGS

19 HEARING

20 September 9, 2013

21 9:00 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 HOY, CHRISSINGER, KIMMEL
4 By: MICHAEL HOY, ESQ.
5 50 W. Liberty
6 Reno, Nevada

7 For the Defendant:

8 NICHOLAS PEREOS, ESQ.
9 Attorney at Law
10 1610 Meadow Wood Lane
11 Reno, Nevada
12
13
14
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24

1 RENO, NEVADA, September 9, 2013, 9:00 a.m.

2
3 --oOo--

4 THE COURT: This is the time set for the oral
5 argument in case number CV07-00341, John Iliescu, et al.,
6 versus Mark Steppan. The only issue that we have before the
7 Court today is Mr. Iliescu's motion for a continuance and
8 motion to extend expert disclosure date.

9 I will simply refer to the parties as Mr. Steppan
10 and Mr. Iliescu, simply because I think that will be much
11 easier given the way the cases have been joined with the
12 other matter that had been previously before the Court, that
13 being CV07-01021. So here on behalf of Mr. Steppan is
14 Mr. Hoy. Present on behalf of Mr. Iliescu is Mr. Pereos.

15 The Court has received and reviewed the pleadings
16 in the case. And I believe it was Mr. Hoy who requested oral
17 argument, but it is Mr. Pereos' motion, therefore, Mr. Pereos
18 if you'd like to proceed.

19 MR. PEREOS: Good morning, your Honor. I'm not
20 going to rehash the history of the case. I imagine the Court
21 has read it ad nauseam with regard to the various pleadings.

22 I would like to fill in some voids. When attorney
23 Tom Hall was representing Iliescu, he was faced with an issue
24 concerning the dismissal of all the lawsuits. And as a

1 result, even though he scheduled two expert witnesses, he
2 scheduled an appraiser as an expert, Mr. Johnson, and he also
3 scheduled the attorney Mike Springer as an expert. He never
4 went forward to get any of the reports, because the case was
5 basically thrown out of Court with the Court's disposition
6 that there was no compliance with the discovery rules.

7 Okay. Mr. Cowan takes the successor over from the
8 particular case and his primary focus is to get the case
9 reinstated on that and he was successful in getting the case
10 reinstated at all levels to include all the particular
11 parties.

12 Now, up to that point in time, there had been
13 discovery performed with regard to the lawsuit. And the
14 focus of the discovery by both the third party defendants, as
15 well as Iliescu's counsel has been attacking the quantitative
16 amount being sought by Steppan in connection with the
17 mechanic's lien.

18 And the argument was basically that under NRS
19 108.222, subsection one, subsection B, to be distinguished
20 from A, that the amount of fees that the architect would
21 receive absent the contract was going to be fair market
22 value. The legitimacy of that argument was predicated on the
23 fact that the contract provided that it was not to be for the
24 benefit of anybody else but the contracting party. And I

1 remind the Court that Iliescu was not a contracting party to
2 this case. He is the landowner. The contracting party was
3 the person to whom he sold the property to and that was
4 section 1.3.7.5.

5 So where prior counsel was going with the case was
6 two-fold. They would demonstrate that Mr. Steppan, the only
7 one licensed in Nevada, to be distinguished from the Fisher
8 Friedman firm that he was working for, okay, did not invest
9 enough time and energy in the case to warrant the claim of
10 \$1.8 million. Okay. And, furthermore, okay, that all the
11 other people that were not working under his business license
12 and what have you. And that's where the defense was and
13 that's where most of the deposition discovery was on that
14 when I read through all the depositions.

15 This Court comes down and it makes a decision and
16 the order for partial summary judgment is on May 8th. And in
17 that decision, the Court says, no, Iliescu, I'm going to hold
18 you to 108.222, subsection one, subsection A, that says you
19 are controlled by the contract and the contract identifies
20 that there is to be a fee. Now, I would bring to the Court's
21 attention that the basis for that ruling is section 1.5 of
22 the contract. And 1.5.1 discusses what the billing is on the
23 contract, not what has been earned on the contract.

24 But put that issue aside. I've got to live with

1 the order that I've got. And what happens now is the Court
2 says, sorry, we're not going into an issue of quantum meruit.
3 That's basically what the Court is saying. So the strategy,
4 when I get the case and I get the assignment. And for the
5 Court's benefit, I get the assignment was around June, as
6 I'll discuss who the experts were when I got a hold of them.

7 THE COURT: Mr. Pereos, let me interrupt you for a
8 moment, because I am familiar with the procedural history of
9 the case. And one of the issues that I raised or that I
10 included in the order and what I'd like really like you to
11 focus on this moment is your claim, assuming everything you
12 say is accurate, and I will, your claim is this, that I
13 entered an order on May 9th, which as you allege in your
14 moving papers shifted the focus or the landscape of the case
15 dramatically. Let's just, again, assume that's true.

16 You file a motion in July asking for a continuance
17 of an October trial date, because you need to find an expert
18 or experts. And so my question was, and what I wanted you to
19 address during the hearing, was what steps did you take or
20 your predecessor take from May 9th, the day you found out, as
21 you say, that the focus or the axis had shifted in this case,
22 what did you do from that day forward to get an expert? What
23 have you done since that day? What are your continuing
24 efforts to potentially get an expert? That's what my focus

1 is on. That's what I'm interested in hearing about regarding
2 the motion to continue.

3 MR. PEREOS: Okay. On that, when I looked at the
4 prior disclosures, I noticed that Mr. Johnson was disclosed.
5 He was disclosed. Steve Johnson was disclosed as an expert
6 back in August 31st, 2011. I get ahold of Mr. Clark. He
7 says, no, he didn't do a report. The reason he didn't do the
8 report, says Mr. Clark, the case went out the window before
9 Mr. Gordy Cowan resurrected it.

10 I then got ahold of Mr. Campbell. I spoke with
11 Mr. Campbell approximately the second or third week of July.
12 Joe Campbell, he's an MAI appraiser. I asked Mr. Campbell,
13 look, I want you to look at this project, because I want to
14 look at the viability of this project, whether or not this
15 project could ever have gotten off the ground.

16 I don't know where the Court lives, the judge
17 lives, but I want the Court to recognize that there were 400
18 condominium units approved on this project, two people per
19 unit. That would be 800 people living on 1.5 acres of land.
20 My first impression was this didn't make sense on that. When
21 they got the tentative approvals, there were 26 conditions
22 attached to the tentative approval, all of which were in
23 compliance.

24 So I get a hold of Mr. Campbell and I say, listen,

1 Mr. Campbell, I need to know whether or not this was a viable
2 project, whether or not it made economic sense. Mr. Campbell
3 gets back to me approximately ten days ago.

4 THE COURT: Stop, Mr. Pereos. My question was,
5 what happened between the 9th of May and theoretically this
6 moment right now in time? And if I understand your reply is,
7 you went back and looked, and the first contact you're having
8 with someone about the case as far as being an expert is not
9 at any time in May, not at any time in June, but in July.

10 MR. PEREOS: That's correct.

11 THE COURT: My question is, why did you wait? The
12 day the order comes down, May 9th, Mr. Cowan is representing
13 Mr. Iliescu, is that correct?

14 MR. PEREOS: That's correct.

15 THE COURT: So May 9th comes down, Mr. Cowan,
16 presumably, gets a copy of the order. I can pull it up on my
17 computer to find out when the order was sent or that it was
18 sent to Mr. Cowan, but one has to assume it was. So he's got
19 a copy of the order from May 9th. He knows what's going on.
20 I understand you say he's got physical issues, but he's not
21 mentally incapacitated.

22 So the Court sends out an order May 9th. Nothing
23 happens in the month of May. And you come in in June and
24 still nothing happens. Nothing happens until July, when

1 somebody finally picks up and say, wait, we need an expert on
2 this issue. And that's where, frankly, my focus is. And
3 then so July comes and you speak to the expert and he just
4 gets back to you ten days ago and tells you what?

5 MR. PEREOS: He tells me, approximately, that the
6 project would not pencil out, which is consistent with why
7 they never got any financing on this particular project.
8 What he works is he works up the numbers as to what it would
9 approximately take to sell off the project over a period of
10 time, that it would take to absorb the condominium units,
11 what the market conditions were on the thing. And he
12 basically says, it would not pencil out on that thing.

13 After he gets back to me, I tell him, I need a
14 report. I actually expected to get the report the latter end
15 of last week. I talked to Joe. He said he would get it to
16 me by the first part of this week.

17 I then get ahold of a mortgage expert, a mortgage
18 broker, and I discuss with him the viability of getting
19 financing on this project back at that particular time with
20 these particular numbers on that. Mark basically says, it's
21 not viable on that. Now, I don't --

22 THE COURT: So, Mr. Pereos, then in your moving
23 papers where you describe the fact, I believe it's in your
24 reply, that somehow that the plaintiff or, excuse me, that

1 Mr. Steppan wouldn't be prejudiced by a continuance, because
2 there's this possibility that the project itself would be
3 resurrected. Based upon what you're telling me now, that's
4 just not true. This project is just, for lack of a better
5 term, it's a dog, it's dead, it's not going to happen under
6 any circumstances. Is that accurate?

7 MR. PEREOS: The project is a dead project. What
8 I was saying in my reply argument was we were not
9 precipitating a delay because after the tentative permits
10 were approved, you can get extensions.

11 THE COURT: There were a number of them in this
12 case, like four years' worth of extensions.

13 MR. PEREOS: I believe there were two extensions.

14 THE COURT: Of two years each?

15 MR. PEREOS: I think one year each. Now, I may be
16 misspeaking, but I'm not sure, I don't have that committed to
17 memory. But I do believe there were two extensions. Both of
18 those extensions were at the request and the insistence of
19 the architect. They paid for the extensions, the purpose of
20 which was to keep the project alive. It serves Iliescu's
21 agenda to keep the project alive, as well.

22 After the second extension expired, that's when
23 the project died. That's what I discussed in the reply that
24 we were not the ones that were simply delaying this, we were

1 waiting to see if this project can be resurrected.

2 THE COURT: Okay.

3 MR. PEREOS: On that thing. So after
4 Mr. Campbell, I talked to Mr. Campbell, I start then -- I
5 also speak to or we get ahold of --

6 THE COURT: Hold on a second, Mr. Pereos. I just
7 want to clarify something. The issue of the extension is
8 actually first brought up in Mr. Hoy's opposition to your
9 motion and that's why I just flipped back through that
10 document as well. And so it's clear, it was the Iliescus who
11 were requesting the continuance or the extensions, not Mr.
12 Steppan, at least as I read this.

13 On page three of 11 of Mr. Hoy's opposition, it
14 states, the tentative map approval required the applicant,
15 parenthetically, the Iliescus, close paren, file a final map
16 within two years or November 30th of 2008. Even though the
17 developers had abandoned the project, the Iliescus filed an
18 application to extend the final map deadline by two years,
19 Exhibit 6. The Iliescus paid for the application to extend
20 the time, Exhibit 7.

21 The City of Reno notified the Iliescus of the
22 hearing on their application to extend time, Exhibit 8. The
23 City of Reno granted the Iliescus' application to extend the
24 time for a final map to November 30th of 2010, Exhibit 9.

1 Two years later, the Iliescus again, and again is underlined,
2 applied to extend the final map deadline by another year,
3 Exhibit 10. Again, the City of Reno granted the Iliescus
4 request, Exhibit 11. So I got the numbers a little bit
5 wrong. It's a total of three years, not four years. But
6 your representation that it was Mr. Steppan who was doing
7 that is not accurate. My recollection was correct, it was
8 the Iliescus who were trying to somehow keep this thing
9 afloat. That's my term, not anyone else's.

10 MR. PEREOS: If I may, your Honor, at the time of
11 trial, I will present written evidence, whereby Steppan
12 implores Iliescu in writing to sign the documents to extend.

13 THE COURT: That might be true, but the Iliescus
14 are the ones who did. It is completely, it may be a
15 different setting, but it was the Iliescus who were filling
16 out the paper work and trying to keep the project going.

17 MR. PEREOS: They have to, because they're the
18 owners of the project. I will also be in a position to
19 submit evidence showing that the checks for payment of the
20 extensions came out of the architectural firm.

21 THE COURT: Okay.

22 MR. PEREOS: Now, having said that, okay, after I
23 spoke, or after I got the communications from the
24 architect -- excuse me -- from the appraiser, I then go to

1 Don Clark. And we speak with Don Clark. We contacted
2 Mr. Clark around mid July. He's an architect. And one of
3 the things I asked Mr. Clark is what's the custom and
4 practice? What's the responsibility of the architect in
5 connection with a viable project? Does he just simply go off
6 and design a project, even if it's not viable? Okay. And to
7 that degree, the architectural contract addresses that issue
8 in article 2.1 that discusses the responsibilities of the
9 architect on that.

10 Clark comes back and basically submits the
11 proposition, no, he's got to basically not only review the
12 stuff, but also give some input as to the viability of the
13 project. Now, I'm not addressing the issue as to whether or
14 not the schematic design work was being done. I'm addressing
15 the issue as to the architect's performance under the
16 contract.

17 THE COURT: Again, Mr. Pereos, that's not the
18 issue. Your motion is you want to continue the trial because
19 you need more expert testimony.

20 MR. PEREOS: That's correct.

21 THE COURT: So you're describing what you want
22 your expert to testify to or the issues, but the point kind
23 of keeps escaping the argument, which is, why didn't this
24 happen before? Not what is expected to be testified to, but

1 why is it that this was not, this issue was not anticipated?
2 It seems to be that your argument is we never thought that
3 this was a possibility. And by we I mean yourself and if I
4 remember correctly the four or five different law firms or
5 attorneys who were representing Mr. Iliescu during the course
6 of this litigation.

7 You're basically just saying, we never thought of
8 that, and, therefore, we didn't plan for any of that and now
9 the Court has ruled and we need to somehow fix it. So my
10 question isn't what these people are going to testify to,
11 it's why didn't you think of it before? What steps have been
12 taken to rectify the situation now? Why should I grant a
13 continuance? Not some of the other stuff you're talking
14 about. So, go ahead, continue.

15 MR. PEREOS: Your Honor, I only got into the case
16 mid to late June. That's when I was first contacted. My
17 substitution only went on on July 13th. I cannot talk to
18 what the other attorneys were doing or thinking. All I can
19 do is surmise as to why Mr. Clark never went forward with
20 actually engaging the experts and thinking this and why
21 Mr. Cowan did not on that.

22 When I got into the case, I went through the
23 entire file relatively quickly, taking into consideration
24 this Court's order, and I started getting ahold of these

1 various people on that. But the actual discovery cutoff
2 date, okay, was due on May 24th for expert disclosure. I
3 wasn't even in the case on May 24th.

4 THE COURT: And then 30 days later for rebuttal
5 experts.

6 MR. PEREOS: Yes, 30 days later for the rebuttal
7 experts. I'm not in the case. I can't talk as to why, other
8 than to simply say, sure, Tom Clark must have engaged the
9 expert, because the case got thrown out. Gordy Cowan focused
10 his energies by basically resurrecting the case from the
11 appeal and didn't think far enough ahead in terms to the
12 trial. That's all I can say on those issues.

13 I can only address what I did when I got involved,
14 because that's the way I got the order focused on me, and I
15 can tell you who I spoke to when I spoke to them.

16 THE COURT: It sounds like based on the
17 representations you're making that you have spoken to experts
18 and that those conversations have occurred contemporaneously
19 with your involvement in the case and you have continued to
20 try at least to get some people to be able to testify as
21 experts during the trial.

22 MR. PEREOS: In fact, I've got commitments. What
23 happened on the particular legal issues, there's a legal
24 issue that this Court's going to have to address. And one of

1 the legal issues the Court has to address is whether or not,
2 okay, we got a pre-lien notice mandated by statute and that's
3 108.226, small letter six.

4 THE COURT: I'm not going to talk about that at
5 all today beyond saying this, Judge Adams ruled on that. I
6 was surprised about, in essence, the -- I was surprised about
7 the argument you were making, Mr. Pereos, in the sense that
8 the argument that you were presenting in your papers had
9 nothing to do with the motion that you were making was that
10 was just like an advisory opinion of Judge Adams. That was
11 just kind of like his thoughts on the issue. I don't believe
12 that at all. I believe that's the law of this case.

13 It's not something we're going to go back and
14 relitigate. There is an order in this case regarding that
15 specific issue. So if your thought is that at some point
16 during the trial, we're going to revisit what Judge Adams has
17 already clearly ordered, that's not going to happen, because
18 I think that the ruling has been made and it's done.

19 So to go back and say, and now we're going to
20 start talking about that all over again, it's somewhat -- it
21 just doesn't make sense to me, because it would eliminate the
22 whole point of filing the motion. Because you file a motion
23 and a judge would rule on it, and then the losing party gets
24 to say, well, okay, we're still going to talk about that.

1 No. The purpose of the motion is to resolve that legal
2 issue, and I believe that legal issue in this case has been
3 resolved. Presumably, if you don't think it was resolved
4 correctly, there certainly is an appellate process that's
5 involved. But to just to say, well, I don't think so, I want
6 to do it again, I don't think that's going to be happening
7 during the trial.

8 MR. PEREOS: If I may get some clarification from
9 the Court. When I read Judge Adams' ruling, Judge Adams
10 denied the motion to expunge the lis pendens based upon the
11 argument that Iliescu had actual knowledge. The argument was
12 that Iliescu did not. Judge Adams said, no, he had actual
13 knowledge. Okay. I don't read Judge Adams' opinion
14 addressing the mandated requirement that there had to be a
15 pre-lien notice in a residential project.

16 Now, if this Court reads that into the order and
17 says, that's the way I read the order of Judge Adams, I don't
18 revisit the issue. I've got to live with the decision of
19 this Court.

20 THE COURT: Which I believe Judge Adams' order
21 speaks for itself. I don't have it in front of me. But I
22 think it speaks for itself on the issue. Like I said, that
23 has nothing to do, frankly, with your motion for a
24 continuance. Again, as I read your motion, it's I didn't --

1 I came into the case late June, early July. I immediately
2 took steps to act upon my order regarding how the damages
3 would be assessed in this case. And I continue to take those
4 steps and attempt to be able to resolve this issue or to
5 litigate this issue. That's what the motion should be about,
6 not any of the other extraneous stuff that is going on.

7 And that Mr. Cowan was somehow unable to
8 appreciate the issue that was presented by my order when he
9 was still the attorney of record and did nothing about it
10 from May 9th until you came on to the case, and Mr. Pereos,
11 you said, I immediately began to act on what you perceive to
12 be a glaring weakness or possibly a completely missed issue
13 in the case. That's kind of where I see the whole thing.

14 MR. PEREOS: Well, if I may, your Honor, in terms
15 of showing my activity and my efforts, okay, I did speak to
16 two lawyers, thinking this was still an issue with regard to
17 the legitimacy of the mechanic's lien. And I did speak to
18 both lawyers, okay. I first spoke to Mike Johnson -- excuse
19 me -- Mike Springer was listed and I spoke to Mike, okay, in
20 early July. When he didn't do a report, I then actually
21 amended my disclosures to reference Karen Dennison and I
22 spoke with Dave Grundy representing Karen Dennison. I'm
23 simply saying that's what I did, because I still thought that
24 was an issue for the Court.

1 So if that's not an issue to the Court, the only
2 thing I have is in terms of the -- and the reason for my
3 continuance is for the expert disclosures on that. The only
4 thing I have left is to show the viability of a project and
5 whether or not the architect complied with his obligations
6 under the contract and those are the witnesses I already
7 discussed. That's all I've got. And I contacted them in the
8 first part of July.

9 THE COURT: Mr. Hoy.

10 MR. HOY: Thank you, your Honor, good morning.

11 THE COURT: Good morning.

12 MR. HOY: Let me just clarify a few factual things
13 to begin with. First of all, on the extensions of the
14 development entitlements with the City of Reno, Dr. Iliescu
15 and his wife Sonnia made the initial application to extend
16 the filing deadline for the final map by two years. That had
17 nothing to do with my client Steppan. The second time
18 Iliescu went before the city council to have this done, my
19 client was involved and did offer to pay the fee to the city
20 to have it extended.

21 I don't want to get into the settlement
22 negotiations too much, but one of the terms of the settlement
23 that Judge Adams negotiated between the parties was that
24 there would be further extensions and Dr. Iliescu elected

1 after that settlement conference not to continue on to extend
2 the project. So at this point, the entitlements are not in
3 place. They may be revived. They may not be revived. I'm
4 really not sure. That would depend on the city council
5 make-up at the time the application is remade.

6 Here's one of the problems that I've really
7 struggled with in responding to the motion. What is the
8 scope of the expert testimony that will be offered? Why do
9 we need additional time to get new experts? One of the, you
10 know, sort of fundamental principles in the evidence code is
11 that you can only have an expert when it's helpful to the
12 Court. And there are legion cases out there that talk about
13 people trying to bring in lawyers or other experts to tell
14 the judge what the law is. And the cases are pretty
15 universal that the trial judge is the expert on domestic law.
16 And so any attempt to bring in Michael Springer or anybody
17 else to tell your Honor what the law is, is simply futile.
18 That doesn't happen.

19 THE COURT: It would somewhat eliminate the need
20 for me if it were.

21 MR. HOY: It would. You could just have different
22 lawyers testify to a jury as opposed to arguing to a jury in
23 a jury case.

24 THE COURT: And I guess in the big picture, to

1 bring in other lawyers to testify on what the law should be
2 is not the elimination of the judge, it is kind of a buttress
3 of the actual lawyers who are already retained in the case.
4 That is the lawyers' jobs.

5 MR. HOY: Correct.

6 THE COURT: The retained attorneys' jobs are to
7 advise the Court about what they perceive to be the status of
8 the law, both statutorily and the caselaw. And then it's the
9 Court's job to interpret those or to read those and come to
10 some sort of conclusion. So to have some other lawyer come
11 in and have retained lawyer call hired lawyer to come in and
12 say what the law is, is just basically one more layer of a
13 pleading. Go ahead.

14 MR. HOY: So my position is it's futile to extend
15 any time periods for the purpose of bringing in experts to
16 tell the Court what the law is. Right.

17 So applying that general principle to the original
18 motion, one of the points that Dr. Iliescu wanted to make
19 with a new expert is to have somebody come before the Court
20 and say, look it, there's been a change in the law with
21 respect to notices of non-responsibility and those changes
22 happened in 2005, and those changes somehow affect the
23 pre-lien notice.

24 Well, that's futile for two distinct reasons.

1 Number one, you can't have expert testimony on the law. If
2 somebody wants to demonstrate what the law is before the
3 Court and wants to demonstrate what the legislative history
4 is, it's a very simple thing to just ask judicial notice of
5 the legislative history and then make your best argument
6 based on what the legislative history is.

7 From my perspective, it's a nonsensical argument.
8 The notice of non-responsibility is something that the owner
9 gives to the world to say, I'm not going to be responsible
10 for these improvements. The pre-lien notice is the notice to
11 the owner saying, hey, I'm going to do some work on your
12 property. And that issue has already been decided as your
13 Honor already pointed out.

14 The motion and the reply also talk about the point
15 that Steppan, Mr. Steppan personally didn't perform all the
16 work and, therefore, there's this legal argument that Mr.
17 Steppan can only have a mechanic's lien for the work he
18 personally did, not just the work that he supervised.

19 Again, that's a legal argument. That's an
20 interpretation of NRS Chapter 108, the first section applies
21 to mechanic's liens. The papers also talk about licensing
22 issues, talking about how some of these people who performed
23 some of the work were not licensed architects in Nevada, even
24 though they were under the responsibility and control of Mark

1 Steppan, who is a licensee in Nevada. Again, that's a legal
2 issue. That's not something that you bring in experts to
3 talk about.

4 The third area of expert testimony proposed is the
5 custom and the practice as to the fee alleged to have been
6 earned. Again, this something that is controlled by statute,
7 number one. And the statute says that if there is a written
8 contract, the written contract controls. So habit and custom
9 of other architects and how they compute their fees and how
10 they do their billing is really not before the Court. It's
11 not relevant. Because what is relevant is, what does the
12 written contract say in this case?

13 There was a point in the briefing where Dr.
14 Iliescu said we need an expert to review the work product and
15 give an opinion about the stage of completion of the work
16 that Steppan performed. And that would be a legitimate area
17 for expert testimony, although it hasn't been suggested so
18 far this morning.

19 On that point, your Honor, Mr. Steppan gave a
20 timely disclosure of Brad Van Woert's opinion. Mr. Van Woert
21 looked through all of the, they call them instruments of
22 service, but it's basically the drawings and specifications,
23 the videos and so forth. Yes, the phase called schematic
24 design has been completed by Steppan. There's no question

1 about that.

2 We provided that disclosure to Mr. Cowan on behalf
3 of Dr. and Mrs. Iliescu. Cowan then has 30 days to rebut
4 that. He has 30 days to go out and find an expert to come
5 back and say, no, I don't think that stage of completion was
6 actually satisfied, but he didn't do it.

7 On June 7th of this year, Mr. Cowan wrote to me
8 and said, geez, Mike, I haven't had a chance to go get
9 experts, can you please extend? This is all in my
10 declaration attached to the opposition. On June 10th, I
11 wrote back to say, you know, Gordy, I can't do it, here's
12 why, we're worried about yet another trial continuance and so
13 on and so forth, but you do have time to find a rebuttal
14 expert.

15 This morning, we hear about another area of
16 proposed expert testimony, that is, that Dr. Iliescu wants to
17 hire Joe Campbell as an appraiser to give testimony that this
18 project is not viable. The viability of the project today is
19 not really the issue, your Honor. Perhaps viability of the
20 project back at the time that the architects were doing all
21 of this work is relevant.

22 And I will represent to the Court that we have
23 trial exhibits ready to go where the developers, who were
24 dealing with Dr. and Mrs. Iliescu had several different

1 economic reports saying this project is absolutely viable.
2 So if we're really going to go down that path, we're going to
3 need a little bit of time to fully flesh that out. But
4 assuming that those preexisting reports come into evidence,
5 we will prove that the project was viable at the time.

6 THE COURT: Well, it might be an interesting
7 issue. I mean, we know hindsight being what it is -- well,
8 it would be interesting testimony to hear that this project
9 was viable at the time, which was 2006, 2005, I can't
10 remember the exact date when it was initially proposed. It
11 was viable then, but now we know today based on any number of
12 other projects in the area of a similar nature, that those
13 estimates might not have been accurate.

14 MR. HOY: Well, the project was approved by the
15 city council late in November of 2006.

16 THE COURT: 2006.

17 MR. HOY: At some point shortly after that, the
18 financial economy started to collapse.

19 THE COURT: Right. And this is a side point, I'm
20 sure, Mr. Hoy, but we know just based on the area, if you go,
21 you know, in one square mile around the location where this
22 building was going to be built, where this project was going
23 to be constructed, there are any number of hotels and other
24 structures that were converted into condominiums that were

1 not as successful based on those factors that you suggested,
2 the down-turn in the economy and the collapse of the housing
3 market, that those projects were not as successful as
4 anticipated.

5 MR. HOY: I guess my point, your Honor, would be
6 that it really is not relevant. Under the mechanic's lien
7 statute, if I'm an contractor and I build an apartment
8 complex for you and our contract says I get paid \$3 million
9 to build the apartment complex, you can't come into court six
10 years later and say, well, Mr. Hoy, I would love to have the
11 ability to pay you, but I can't, because I couldn't rent out
12 all of these apartments for what I hoped to rent them out
13 for. It doesn't diminish the amount that is secured by my
14 mechanic's lien one bit.

15 THE COURT: Well, I understand. I agree with you
16 about that. I wasn't trying to make the argument or indicate
17 that I would support the argument that you suggested, in
18 essence, that the mechanic has to provide the service and
19 then wait to see if his service has value at the conclusion
20 of the service. In essence, to build out the project and
21 then hope it works at the value, because then -- go ahead,
22 I'll stop talking.

23 MR. HOY: All right. So just to wrap it up real
24 quick, our argument is simply this, all of the expert

1 testimony that has been proposed, with one possible
2 exception, is completely futile. It's irrelevant to the
3 case. So let's not push back the trial any further for the
4 purpose of allowing expert testimony on matters that simply
5 are not going to affect the outcome of the case.

6 And, again, the only piece of expert testimony
7 that could affect the outcome of the case is testimony about
8 whether or not Steppan achieved completion of the schematic
9 design as defined in the design contract. That's it.

10 THE COURT: Mr. Pereos, would you like to make any
11 closing comments?

12 MR. PEREOS: Yes, your Honor, I would. The
13 evidence is going to demonstrate that this project was
14 initially contemplated as 256 condominium units. It went to
15 399 units, which means you had to raise the floors, you had
16 to meet parking requirements and what have you in order to
17 get the 399 units.

18 This discussion on the viability of the project
19 goes to show the architect's performance under the contract
20 and whether or not he's breached his obligations under the
21 contract to which my defense would be that he's not entitled
22 to his fee on that. Because when this Court made a partial
23 order for summary judgment saying I'm controlled by 108.222,
24 subsection one, subsection A, the only thing left for me to

1 do was simply to shoot holes in the argument that he didn't
2 get to the schematic design stage or alternatively to show he
3 didn't perform under the contract.

4 The Court has already told me we're not revisiting
5 the mechanic's lien so the whole idea with the lawyers is
6 moot. I wasn't going to introduce the lawyers' testimony for
7 the purposes of discussing the law, but to discuss the
8 history of the change to the mechanic's lien.

9 THE COURT: I think, Mr. Pereos, as Mr. Hoy
10 pointed out, to make it as simple as possible, that's your
11 job. It's not the job of some other attorney to come in.
12 You can certainly make the argument to the Court or to any
13 Court, not just to me, but to any Court about what the status
14 of the law is or how the law has evolved if that evolution
15 somehow applies to the case.

16 So I don't think that there would have been a need
17 at any time to bring in an attorney to discuss that as an
18 expert with the Court, because -- and I would make one other
19 observation. As we know, I've already ruled that this matter
20 will be a bench trial as opposed to jury trial and,
21 therefore, there doesn't need to be any explanation at all to
22 the jury about any of those issues. They can just simply be
23 arguments that are made to the Court.

24 MR. PEREOS: One final observation, if I may, your

1 Honor?

2 THE COURT: Certainly.

3 MR. PEREOS: It would seem to me to make a lot
4 more sense to realign the parties at this stage in the
5 proceedings, instead of Iliescu taking the defense position
6 in the case.

7 THE COURT: I think you're correct there, but,
8 again, given the fact it's going to be a bench trial rather
9 than a jury trial, I think I can do the mental gymnastics. I
10 know that the parties in their pleadings are often referring
11 to each other as plaintiffs and defendants interchangeably
12 based on the fact that these two cases were joined. And I
13 believe that in my order, I referred to Mr. Iliescu as the
14 defendant, Mr. Steppan as the plaintiff, even though in Mr.
15 Pereos' moving papers, Mr. Steppan is represented as the
16 defendant and Mr. Iliescu is represented as the plaintiff.
17 As we all know that in the end, this action is one brought by
18 Mr. Steppan regarding his mechanic's lien against Dr.
19 Iliescu. And I've referred to him as Mr. Iliescu a number of
20 times, not out of disrespect, just out of forgetting to say
21 Dr. Iliescu.

22 The problem I'm confronted with is this, number
23 one, I agree with Mr. Hoy, there is absolutely no reason to
24 bring in any expert attorney testimony in the case. And so

1 any expert evidence that would be offered by an attorney to
2 explain the law to me is irrelevant.

3 As the parties probably know, I was appointed to
4 the bench on March 18th, at least that was my first day, and
5 one of the obligations that I have by statute is that I must
6 attend the judicial college. What has occurred is that the
7 first judicial college available for me was in April and the
8 next one was the last week of September and the first week of
9 October. And so I'm scheduled to go to the judicial college.
10 I have to do that within a specific period of time. And,
11 therefore, I am not available when this trial is scheduled.

12 I have attempted to have one of my colleagues take
13 the case. I've talked to the chief judge about the
14 situation. And, unfortunately, there is no one else based on
15 schedules. And as we know, Department Six is not available,
16 because Judge Adams recused himself, Judge Berry has recused
17 herself. I believe the case after it was assigned to
18 Department Six was assigned to Department One and that's how
19 it wound up here. After Judge Berry recused herself, it
20 wound up in Department Ten then with Judge Elliott.

21 And so I have no desire, frankly, to continue the
22 case at this point, however, I have no choice but to continue
23 the case simply because there's no one who can conduct the
24 trial and I cannot be here.

1 The trial date in this case was set by the
2 parties, I believe, in September of last year, or maybe it
3 was in January. I can't remember from the pleadings that
4 Mr. Hoy, I think, gave me a chronology. It might have been
5 September of last year. Is that right?

6 MR. HOY: It would have been January, I believe,
7 but it was certainly before your Honor took the bench.

8 THE COURT: And so the case, unfortunately, has to
9 be continued. It is my desire that the case be continued for
10 as brief a period of time as possible. And I'm not
11 continuing it so other experts can go out and be retained.
12 That's not the reason that I'm doing this. It's simply
13 because I have to do this bench trial and I'm not available
14 to do it when it has been scheduled.

15 I do know, Mr. Hoy, that you did point out
16 correctly to the section in Chapter 108, I think it's
17 108.239, subsection eight, that says that mechanic's liens
18 are given preferential trial settings. And the problem is
19 that the 23rd I'm doing a criminal trial that will go for
20 sure. The two following weeks, I'm at the judicial college.
21 Three weeks after that, I am in a civil trial where the
22 defense is a pro per defendant, and so I don't know if the
23 three-week estimate is accurate. I personally think that the
24 trial counsel usually are better able to estimate the amount

1 of trial will take then pro se litigants. So I simply don't
2 know how long that case is going to take and then we're into
3 November.

4 What I will do is instruct the parties right now
5 to at the conclusion of this hearing to go and talk to my
6 judicial assistant about trial dates. It is my desire that
7 this trial be continued as briefly as possible,
8 acknowledging, number one, the fact that the case was
9 originally filed in 2007, and, number two, as Mr. Hoy has
10 pointed out, the plaintiff, Mr. Steppan, does have a right to
11 a preferential trial setting.

12 I am going to be present and available during the
13 holidays. I'm going to be here the beginning of the year
14 next year. So I don't want the parties when they set the
15 trial to think, well, this is Christmas week or it's
16 Thanksgiving week or something along those lines, I'll be
17 here. And it's not a jury trial, it is a bench trial, so the
18 parties can get together and decide what day better suits
19 them with that in mind. And I have briefly discussed the
20 issue with my judicial assistant and let her know to start
21 looking at dates to see where the schedule is.

22 Regarding the request to extend expert
23 disclosures, the Court has already made a ruling regarding
24 whether or not lawyers will be designated as experts to

1 testify to the status of the law. Mr. Pereos, what I will
2 permit you to do is to continue to try and retain an expert
3 and make an offer of proof to the Court on how that expert is
4 relevant to the case. And then I will make a decision
5 whether or not I believe that expert is relevant and is
6 evidence that should be presented at the trial in a
7 preliminary way.

8 And I will give Mr. Hoy the opportunity, assuming
9 I allow that expert to testify, then to have 30 days to
10 designate a rebuttal expert. But that's only if I decide
11 that you're going to get to call the expert. So you still
12 have the obligation to attempt to retain the expert and then
13 make an offer of proof to the Court as to why that expert is
14 necessary. And then I will make a determination whether that
15 expert can or cannot testify.

16 I don't believe that I'll need any motion practice
17 on the part of the attorneys, but if I do feel that motions
18 are appropriate, then I will certainly give the parties ample
19 notice and the opportunity to file a motion. Presumably,
20 Mr. Hoy, if you want to file to strike the designation of the
21 expert, you can do that.

22 So the big picture is I don't know how far out
23 this case is going to go. That's really up to the attorneys.
24 I do apologize both to Mr. Steppan and to Dr. and

1 Mrs. Iliescu, I presume everybody wants to get the case over
2 with, it was just frankly one of those things that happens
3 when new judges get appointed and some things change. I wish
4 there was something I could do. Frankly, I wish I could just
5 not go to the judicial college now and hear the trial and
6 resolve this case one way or the other, but I can't. I have
7 an obligation to go to the judicial college as a result of a
8 my appointment.

9 So that will be the order of the Court. The
10 parties are instructed to meet with my judicial assistant.
11 If you want to go meet with her right now, if you have your
12 trial calendars available or your schedules available, she's
13 available. If not, all I will say is that the parties will
14 meet with my judicial assistant by the close of business this
15 Friday and establish a date when this case will go to trial.

16 I'm not a huge fan of drawing big lines in the
17 sand and saying this case will not be continued under any
18 circumstances from this point forward, because I can never
19 anticipate what those circumstances may be. But it is my
20 desire and my firm belief that the next date that is set for
21 this case will be the date that it goes to trial, absent some
22 unforeseen and very dramatic circumstances. I can't imagine
23 what would happen that would make me continue this trial
24 again. I think the case needs to get going. So that will be

1 the order of the Court. Court's in recess.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 10 of the
7 above-entitled Court on September 9, 2013, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the hearing in the matter of MARK B.
10 STEPPAN, Plaintiff, vs. JOHN ILIESCU, JR., et al.,
11 Defendants, Case No. CV07-00341, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 36, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 16th day of June 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

Document Code: 3975

HOY CHRISSINGER & KIMMEL, PC

Michael D. Hoy (NV Bar 2723)
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519
(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**

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,

Applicants,

v.

MARK B. STEPPAN,

Respondent.

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

Trial: December 9, 2013

NRCP 16.1(a)(3) Disclosure Statement

Mark B. Steppan hereby makes the following pretrial disclosures:

A. Trial Witnesses

Steppan expects to present testimony by the following witnesses:

Mark B. Steppan
7 Freelon Street
San Francisco, California 94107
(415) 762-8388

Rodney Friedman
1485 Park Avenue
Emeryville, California 94608
(415) 435-3956

Brad Van Woert
1400 South Virginia Street
Reno, Nevada 89502
(775) 328-1010

John Iliescu, Jr. (subpoena)
100 North Arlington Avenue
Reno, Nevada 89501
Phone number unknown

Sonnica Iliescu (subpoena)
100 North Arlington Avenue
Reno, Nevada 89501
Phone number unknown

Richard Johnson (subpoena)
5255 Longley Lane, Suite 105
Reno, Nevada 89511
(775) 823-8877

David Snelgrove (subpoena)
Land Planomics
4225 Great Falls Loop
Reno, Nevada 89511
(775) 737-8910

Steppan will call the following witnesses if the need arises:

Maryann Infantino
First Centennial Title Company of Nevada
1450 Ridgeview Drive, Suite 100
Reno, Nevada 89519
(775) 689-8510

1 Susan Fay
2 7 Freelon Street
3 San Francisco, California 94107
4 (415) 762-8388

5 Gayle A. Kern
6 5421 Kietzke Lane, Suite 200
7 Reno, Nevada 89511
8 (775) 324-5930

9 Stephen C. Mollath
10 6560 SW McCarran Boulevard, Suite A
11 Reno, Nevada 89509
12 (775) 786-3011

13 Karen D. Dennison
14 5441 Kietzke Lane, Second Floor
15 Reno, Nevada 89511
16 (775) 327-3000

17 Craig Howard
18 5441 Kietzke Lane, Second Floor
19 Reno, Nevada 89511
20 (775) 327-3000

21 Eugenia Kokunina
22 661 Sierra Rose Drive
23 Reno, Nevada 89511
24 (775) 954-2020

25 William G. Kimmel
1281 Terminal Way, Suite 205
Reno, Nevada 89502
(775) 323-6400

Lynette R. Jones
One East First Street, Second Floor
Reno, Nevada 89501
(775) 334-2032

B. Deposition Testimony

Steppan may offer deposition testimony of the following witnesses: John Iliescu, Jr., Richard Johnson, David Snelgrove, Karen Dennison, Craig Howard, Jerry Snyder, Joseph Campbell, and Donald J. Clark. All depositions have been recorded stenographically.

C. Trial Exhibits

Steppan may offer the following documents as trial exhibits:

Ref	Date	Description
PEX001	10/31/2005	Standard Form of Agreement Between Owner and Architect, AIA Document B141 – 1997, Part 1 and Part 2 [STEPPAN7498-7519]
PEX002	04/21/2006	Addendum No. 1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect. [STEPPAN7520-7522]
PEX003	Form	AIA A201-1997 General Conditions of the Contract
PEX004	05/31/2006	Letter agreement for Project 0515-02 (Building Massing Model Exhibits)
PEX005	05/31/2006	Letter agreement for Project 0515-03 (Adjacent Church Parking Studies) [STEPPAN4361-4363]
PEX006	08/10/2006	Letter agreement for Project 0515-05 (City Staff Meeting (Vern Kloos) Requested Studies [STEPPAN3251]
PEX007	08/10/2006	Letter agreement for Project 0515-06 (Video Fly-through Edits)
PEX008	08/10/2006	Letter agreement for Project 0515-07 (Garage Waterproofing Consultant).
PEX009	10/12/2005	Nevada State Board of Architecture renewal notice to Mark Steppan [STEPPAN 4353]
PEX010	11/07/2006	Notice and Claim of Lien, WCR 3460499 (Certified Copy)
PEX011	05/03/2007	Amended Notice and Claim of Lien, WCR 3528313 (Certified Copy)
PEX012	11/08/2013	Second Amended Notice and Claim of Lien, WCR 14297751.
PEX013	10/25/2005	Letter proposal from Mark Steppan to Anthony Iamesi with transmittal of B141 form. [STEPPAN4372-4391]
PEX014	11/14/2005	Memorandum from Sarah Class to Calvin Baty [STEPPAN2769-2770]
PEX015	11/18/2005	Email memorandum from Sarah Class to Calvin Baty [STEPPAN2772-2773]
PEX016	11/29/2005	Email memorandum from Sarah Class to Sam Caniglia [HL75]
PEX017	12/20/2005	Mark B. Steppan (Nathan Ogle) response to owner issues on AIA contract. [STEPPAN3363-3365]
PEX018	11/15/2005	Letter Agreement to commence certain services on hourly basis. [STEPPAN4370-4371]
PEX019	02/27/2006	Design Presentation Services Budget Evaluation [STEPPAN3358]
PEX020	12/14/2005	Design Services Continuation Letter. [STEPPAN2837]

1	Ref	Date	Description
2	PEX021	02/07/2006	Design Services Continuation Letter. [STEPPAN2831]
3	PEX022	03/24/2006	Design Services Continuation Letter [STEPPAN2884]
4	PEX023	10/01/2005	Market Assessment [STEPPAN0044-0143]
5	PEX024	05/01/2006	Fiscal and Economic Impact Analysis [STEPPAN1288-1334]
6	PEX025	02/23/2007	Kimmel Appraisal [STEPPANILIESCU369-377]
7	PEX030	11/22/2005	Invoice 22258 (Project 0515-01) [STEPPAN3308-3309]
8	PEX031	12/20/2005	Invoice 22282 (Project 0515-01) [STEPPAN3306-3307]]
9	PEX032	01/12/2006	Invoice 22299 (Project 0515-01) [STEPPAN3304-3305]
10	PEX033	01/13/2006	Invoice 22300 (Project 0515-01) [STEPPAN3302-3303]
11	PEX034	02/23/2006	Invoice 22315 (Project 0515-01) [STEPPAN7104-7105]
12	PEX035	03/22/2006	Invoice 22331 (Project 0515-01) [STEPPAN7106-7107]
13	PEX036	04/19/2006	Invoice 22352 (Project 0515-01) [STEPPAN7108-7109]
14	PEX037	05/18/2006	Invoice 22367 (Project 0515-01) [STEPPAN7119-7120]
15	PEX038	05/18/2006	Invoice 22384 (Project 0515) [STEPPAN7116-7118]
16	PEX039	06/20/2006	Invoice 22385 (Project 0515)
17	PEX040	07/19/2006	Invoice 22408 (Project 0515)
18	PEX041	08/23/2006	Invoice 22430 (Project 0515)
19	PEX042	09/21/2006	Invoice 22452 (Project 0515)
20	PEX043	10/25/2006	Invoice 22468 (Project 0515)
21	PEX044	11/21/2006	Invoice 22481 (Project 0515)
22	PEX045	09/19/2007	Invoice 22622 (Project 0515)
23	PEX046	11/22/2005	Invoice 22259 (Project 0515-R)
24	PEX047	12/20/2005	Invoice 22283 (Project 0515-R)
25	PEX048	01/18/2006	Invoice 22301 (Project 0515-R)
	PEX049	02/23/2006	Invoice 22316 (Project 0515-R)
	PEX050	07/19/2006	Invoice 22412 (Project 0515-R)
	PEX051	08/23/2006	Invoice 22430 (Project 0515-R)
	PEX052	09/21/2006	Invoice 22454 (Project 0515-R)
	PEX053	06/20/2006	Invoice 22385 (Project 0515-02)
	PEX054	07/19/2006	Invoice 22409 (Project 0515-02)
	PEX055	06/20/2006	Invoice 22386 (Project 0515-03)

1	Ref	Date	Description
2	PEX056	07/19/2006	Invoice 22410 (Project 0515-03)
3	PEX057	09/21/2006	Invoice 22467 (Project 0515-03)
4	PEX058	08/23/2006	Invoice 22431 (Project 0515-05)
5	PEX059	09/21/2006	Invoice 22453 (Project 0515-05)
6	PEX060	10/25/2006	Invoice 22469 (Project 0515-05)
7	PEX061	11/21/2006	Invoice 22482 (Project 0515-05)
8	PEX062	11/21/2006	Invoice 22498 (Project 0515-06)
9	PEX063	10/25/2006	Invoice 22471 (Project 0515-07)
10	PEX064	Current	Assessor's Parcel Map 011-11
11	PEX065	04/04/1996	Deed from Iliescu to Iliescu Trust (WCR2418237, 01/20/2000) [APN 011-112-03]
12	PEX066	10/27/1999	Deed from Iliescu Profit Sharing Plan to Iliescu (WCR 2472304, 06/11/2000) [APN 011-112-06]
13	PEX067	03/05/2010	Deed from Iliescu to Iliescu Trust (WCR3861299, 03/18/2010) [APN011-112-06]
14	PEX068	04/04/1996	Deed from Iliescu to Iliescu Trust (WCR2418222, 01/28/2000) [APN011-112-12]
15	PEX069	04/04/1996	Deed from Iliescu to Iliescu Trust (WCR2418243, 01/28/2000) [APN011-112-07]
16	PEX070	07/14/2005	Proposal from Consolidated Pacific Development to Richard Johnson [ILIESCU017-018]
17	PEX071	07/14/2005	Proposal from Consolidated Pacific Development to Richard Johnson (with handwriting) [ILIESCU582-583]
18	PEX072	07/21/2005	Land Purchase Agreement (signed by buyer/offeror) [ILIESCU020-041]
19	PEX073	07/21/2005	Land Purchase Agreement (signed by seller) [ILIESCU042-063]
20	PEX074	08/01/2005	Addendum No. 1 [ILIESCU065-068]
21	PEX075	08/02/2005	Addendum No. 2 [ILIESCU070-071]
22	PEX076	10/09/2005	Addendum No. 3 [ILIESCU090-105]
23	PEX077	09/19/2006	Addendum No. 4 [ILIESCU137-138]
24	PEX078	12/02/2007	Addendum No. 5 [STEPPAN5070-5073]
25	PEX079	03/25/2008	EMAIL Regarding Addendum No. 6 [STEPPAN5453]
	PEX080	05/20/2008	EMAIL Regarding additional extension [STEPPAN5463]

Ref	Date	Description
PEX081	Undated	Project Description [STEPPAN2380]
PEX082	01/17/2006	Parking Calculation [STEPPAN2382]
PEX083	01/17/2006	Project Data Summary [STEPPAN2383]
PEX084	01/13/2006	Residential Tower SF Description [STEPPAN2384-2386]
PEX085	01/17/2006	South Elevation [STEPPAN2387]
PEX086	01/17/2006	North Elevation [STEPPAN2388]
PEX087	01/17/2006	North Elevation [STEPPAN2389]
PEX088	01/17/2006	East Elevation [STEPPAN2390]
PEX089	01/17/2006	West Elevation [STEPPAN2391]
PEX090	01/17/2006	West Elevation [STEPPAN2392]
PEX091	01/17/2006	West Elevation/Section [STEPPAN2393]
PEX092	01/17/2006	East Elevation/Section [STEPPAN2394]
PEX093	01/17/2006	Address Signage at Court Street [STEPPAN2395]
PEX094	01/17/2006	Address Signage at Island Avenue [STEPPAN2396]
PEX095	01/17/2006	Exterior Lighting Diagram [STEPPAN2397]
PEX096	09/25/2005	Topographic Survey [STEPPAN2398]
PEX097	01/17/2006	Site Plan [STEPPAN2399]
PEX098	01/17/2006	Podium Plan [STEPPAN2400]
PEX099	01/17/2006	Garage Plan at 30.08 feet [STEPPAN2401]
PEX100	01/17/2006	Garage Plan at 21.08 feet [STEPPAN2402]
PEX101	01/17/2006	Garage Plan at 12.08 feet [STEPPAN2403]
PEX102	01/17/2006	Garage Plan at 3.08 feet [STEPPAN2404]
PEX103	01/17/2006	Garage Plan at -5.92 feet [STEPPAN2405]
PEX104	01/17/2006	Garage Plan at -14.92 feet [STEPPAN2406]
PEX105	01/17/2006	Building 1 Floor Plan Floor 1 (Retail, Health Club) [STEPPAN2407]
PEX106	01/17/2006	Building 1 Floor Plan Floors 2 – 16 (Residential) [STEPPAN2408]
PEX107	01/17/2006	Building 1 Floor Plan Floor 17 (Residential, mechanical) [STEPPAN2409]
PEX108	01/17/2006	Building 1 Floor Plan Floors 18-30 (Residential) [STEPPAN2410]
PEX109	01/17/2006	Building 1 Floor Plan Floors 31-37 (Residential) [STEPPAN2411]
PEX110	01/17/2006	Building 1 Floor Plan Floor 38 (Residential Townhouses – Lower)

1	Ref	Date	Description
2			[STEPPAN2412]
3	PEX111	01/17/2006	Building 1 Floor Plan Floor 39 (Residential Townhouses – Upper)
4			[STEPPAN2413]
5	PEX112	01/17/2006	Building 1 Roof Plan [STEPPAN2414]
6	PEX113	01/17/2006	Building 2 Floor Plan – Floor 1 (Office) [STEPPAN2415]
7	PEX114	01/17/2006	Building 2 Floor Plan – Floors 2-3 (Office) [STEPPAN2416]
8	PEX115	01/17/2006	Building 2 Floor Plan – Floors 4-20 (Residential) [STEPPAN2417]
9	PEX116	01/17/2006	Building 2 Floor Plan – Floors 21-26 (Residential) [STEPPAN2418]
10	PEX117	01/17/2006	Building 2 Roof Plan [STEPPAN2419]
11	PEX118	01/17/2006	Building 2 Floor Plan Top Floor (Pool) [STEPPAN2420]
12	PEX119	01/17/2006	Building Section A [STEPPAN2421]
13	PEX120	01/17/2006	Building Section B [STEPPAN2422]
14	PEX121	01/17/2006	Building Section C [STEPPAN2423]
15	PEX122	01/17/2006	Building Section D [STEPPAN2424]
16	PEX123	01/17/2006	Building Section E [STEPPAN2424]
17	PEX124	01/17/2006	Preliminary Grading and Drainage Plan [STEPPAN2426]
18	PEX125	01/17/2006	Preliminary Utility Plan [STEPPAN2427]
19	PEX126	5/15/2006	Revised Tentative Map – Index Sheet [STEPPAN2344]
20	PEX127	5/15/2006	Revised Tentative Map – Sheet S-1 [STEPPAN2345]
21	PEX128	5/15/2006	Revised Tentative Map – Sheet S-2 [STEPPAN2346]
22	PEX129	5/15/2006	Revised Tentative Map – Sheet S-3 [STEPPAN2347]
23	PEX130	5/15/2006	Revised Tentative Map – Sheet S-4 [STEPPAN2348]
24	PEX131	5/15/2006	Revised Tentative Map – Sheet S-5 [STEPPAN2349]
25	PEX132	5/15/2006	Revised Tentative Map – Sheet S-6 [STEPPAN2350]
	PEX133	5/15/2006	Revised Tentative Map – Sheet S-7 [STEPPAN2351]
	PEX134	5/15/2006	Revised Tentative Map – Sheet S-8 [STEPPAN2352]
	PEX135	5/15/2006	Revised Tentative Map – Sheet S-9 [STEPPAN2353]
	PEX136	5/15/2006	Revised Tentative Map – Sheet S-10 [STEPPAN2354]
	PEX137	5/15/2006	Revised Tentative Map – Sheet S-11 [STEPPAN2355]
	PEX138	5/15/2006	Revised Tentative Map – Sheet S-12 [STEPPAN2356]
	PEX139	5/15/2006	Revised Tentative Map – Sheet S-13 [STEPPAN2357]

Ref	Date	Description
PEX140	5/15/2006	Revised Tentative Map – Sheet S-14 [STEPPAN2358]
PEX141	5/15/2006	Revised Tentative Map – Sheet S-15 [STEPPAN2358]
PEX142	5/15/2006	Revised Tentative Map – Sheet S-16 [STEPPAN2359]
PEX143	5/15/2006	Revised Tentative Map – Sheet S-17 [STEPPAN2361]
PEX144	5/15/2006	Revised Tentative Map – Sheet S-18 [STEPPAN2362]
PEX145	5/15/2006	Revised Tentative Map – Sheet G-1 [STEPPAN2362]
PEX146	05/15/2006	Revised Tentative Map – Sheet U-1 [STEPPAN2364]
PEX147	05/04/2006	Reno Fly-through (movie)
PEX148	12/09/2005	HVAC Systems Comparison [STEPPAN3577-3583]
PEX149	11/02/2005	Schematic Floor Plans, foam models, etc. [STEPPAN4109-4115]
PEX150	Undated	Photographs of foam models [STEPPAN4270-4281]
PEX151	Undated	Shadow study: building renderings in aerial photo [STEPPAN4282-4293]
PEX152	Undated	Renderings in environment [STEPPAN1483-1492]
PEX153	Undated	Renderings in environment [STEPPAN1543-1545]
PEX154	Undated	Sketches [STEPPAN1475-1479]
PEX155	01/17/2006	South Elevation Along Court Street [STEPPAN1494]
PEX156	01/17/2006	North Elevation Along Island Avenue [STEPPAN1495]
PEX157	12/05/2005	Living unit layouts [STEPPAN3682]
PEX158	Undated	Shadow Study [STEPPAN1406-1451]
PEX159	01/17/2006	Site Plan, Elevations in color [STEPPAN7389-7397]
PEX160	05/08/2006	Reno City Presentation (Power Point and PDF Formats)
PEX161	01/17/2006	Application for Special Use Permit [STEPPAN2365-2518]
PEX162	02/07/2006	Application for Tentative Map and Special Use Permit [STEPPAN2519-2740]
PEX163	05/07/2006	Application for Tentative Map and Special Use Permit [STEPPAN2100-2364]
PEX164	06/26/2006	Memo from Denny Peters re Application Review [STEPPAN0488-0490]
PEX165	7/31/2006	Letter from Wood Rogers to City of Reno [STEPPAN0468-0487]
PEX166	08/07/2006	Letter from Wood Rogers to Vern Kloos [STEPPAN0461-0487]
PEX167	09/26/2006	Denny Peters memo to Claudia Hanson re Planning Commission

Ref	Date	Description
		Considerations [STEPPAN0390-0397]
PEX168	10/05/2006	Letter from Reno Planning Commission to Consolidated Pacific Development [STEPPAN0446-0453]
PEX169	11/30/2006	Letter from Reno City Council to John and Sonnia Iliescu re approval of application for tentative map and special use permits. [STEPPAN4009-4016][STEPPAN7376-7383]
PEX170	10/09/2008	Application to City of Reno to extend final map deadline and receipt for filing fee. [STEPPAN7436-7454]
PEX171	11/24/2008	Letter from City of Reno to John and Sonnia Iliescu approving two-year extension for final map. [STEPPAN7384-7385]
PEX172	10/11/2010	Application to City of Reno to extend final map deadline. [STEPPAN7368-7399]
PEX173	11/12/2010	Letter from City of Reno to John and Sonnia Iliescu approving one-year extension for final map. [STEPPAN7398-7399]
PEX174	04/11/2007	Email from MaryAnn Infantini (First Centennial Title) with demand and lien release. [ILIESCUE399]
PEX175	04/12/2007	Escrow Instructions (Iliescu Transaction, with payoff of lien) [ILIESCU432-46]
PEX176	04/17/2007	Supplemental Escrow Instructions (Iliescu Transaction) [ILIESCU440]
PEX177	12/17/2007	Escrow Instruction to extend closing to 12/17/2007 for \$100,000 [STEPPAN5074-5075]
PEX178	04/23/2007	Email from First Centennial re accrual of interest. [ILIESCU489]
PEX179	04/20/2007	Memo from Richard Johnson disclaiming commission on value of penthouse. [ILIESCU488]
PEX180	04/18/2007	Assignment of Rights from Consolidated Pacific Development to BSC Investments, LLC [ILIESCU473-475] [HL751-753]
PEX181	07/30/2007	David Snelgrove Affidavit [ILIESCU578-580]
PEX182		15-day notice of intent to lien [HL757-758]
PEX183	01/17/2007	Waiver of conflict letter [HL2116-2120]
PEX184	12/08/2006	Request for payoff demand on lien. [HL694-697]
PEX185	Various	Hale Lane Bills showing review of AIA contract
PEX186	04/17/2007	Operating Agreement of Wingfield Towers, LLC [HL2132-2160]
PEX187	04/17/2007	Bill of Sale and Assignment [HL1880-1882]
PEX188	04/18/2007	Purchase and Sale Agreement [HL1900-1918]


Ref	Date	Description
PEX189	04/19/2007	Buyers Closing Statement [HL1820]
PEX190	01/17/2007	Waiver of Conflict Letter [HL2116-2120]
PEX191	10/17/2007	Email from Karen Dennison to Tim Lukas: Addendum No. 3 contains indemnity against lien. [HL837-845]

Privacy Certification

Undersigned certifies that the foregoing disclosure statement does not contain any social security numbers.

Dated November 8, 2013,

HOY CHRISSINGER KIMMEL, PC


Attorneys for Mark B. Steppan

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an employee of Hoy Chrissinger Kimmel, PC and that on November 8, 2013 I electronically filed a true and correct copy of this Motion for Partial Summary Judgment with the Clerk of the Court by using the ECF system, which served the following counsel electronically: Gregory Wilson, Alice Campos Mercado, Thomas Hall, Stephen Mollath, David Grundy. I also hand-delivered a true and correct copy of this Motion for Partial Summary Judgment to:

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane
Reno, Nevada 89502

November 8, 2013.

s/s Shondel Seth

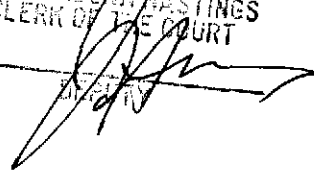
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DC-9900050978-003
JOHN ILIESCU ETAL VS. MARK S. 6 Pages
District Court 11/08/2013 04:01 PM
Washoe County 3695
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FILED

2013 NOV -8 PM 4:01

JOEY ORDUYAN HASTINGS
CLERK OF THE COURT

BY 

CODE: 3695
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFFS

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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

AND RELATED MATTERS.

Case No.: CV07-00341
(Consolidated w/ CV07-01021)

Dept. No.: 10

**PLAINTIFFS' PRE-TRIAL
DISCLOSURE**

Trial Date: 10/7/13

COMES NOW, John Iliescu, Jr. and Sonnia Iliescu, by and through their counsel,
C. Nicholas Pereos, Ltd., hereby submits the following disclosures pursuant to NRCP
16.1(a)(3) as follows:

A. NAMES AND ADDRESSES OF WITNESSES

1. John Iliescu, Jr., c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane,
Ste, 202, Reno, NV 89502.
2. Sonnia Iliescu, c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane, Ste,
202, Reno, NV 89502.
3. Karen Dennison, c/o Holland & Hart,
4. R. Craig Howard, c/o Holland & Hart,
5. Richard Johnson, The Johnson Group, 5255 Longley Lane, Reno, Nevada
89511; 10631 Professional Circle, #A, Reno, Nevada 89521.

- 1 6. Sam Caniglia, 512 10th Street, Sacramento, CA 95814
- 2 7. John Schneilling, c/o of Gregory Wilson, Esq., 1495 Ridgeview Drive, Suite
- 3 120, Reno, NV 89519.
- 4 8. Joseph S. Campbell, 2820 Erminia Road, Suite 101, Reno, Nevada 89523.
- 5 9. Donald J. Clark, 250 Bell Street, Reno, Nevada 89503.
- 6 **B. TESTIMONY PRESENTED BY DEPOSITION TRANSCRIPT**
- 7 None at this time.
- 8 **C. IDENTIFICATION OF EXHIBITS**
- 9 1. Report from Sullivan (Steppan 0044 to 0410).
- 10 2. Fee Agreements:
- 11 a. 5/31/06 - Steppan 3227-3229
- 12 b. 5/31/06 - Steppan 3219-3221
- 13 c. 2/27/06 - Steppan 3148
- 14 d. 11/15/05 - Steppan 2897-2898
- 15 e. 11/15/05 - Steppan 4370-4371
- 16 f. 5/31/06 - Steppan 4361-4363
- 17 g. 5/31/06 - Steppan 4358-4360
- 18 h. 9/1/06 - Steppan 4355
- 19 i. Email - Steppan 3861-3864
- 20 j. Letter 6/16/06 - Steppan 0944
- 21 k. Email - Steppan 0305
- 22 l. Email - Steppan 0306
- 23 m. Email - Steppan 0293
- 24 n. Email - Steppan 0294
- 25 o. Email - Steppan 0295
- 26 p. Letter - Steppan 5193
- 27 3. Traffic Analysis, 02/06 - Steppan 0194-0257.
- 28 4. Traffic Analysis, 05/06 - Steppan 0258-0287.

- 1 5. Project Study by Wood Resources dated 2/7/06 - Iliescu 00145-00200.
- 2 6. BSC Rendition Towers - Steppan 2365-2427.
- 3 7. BSC Mixed Use Towers - Steppan 2519-2640.
- 4 8. Emails - Steppan 0161, Steppan 0174.
- 5 9. Site Feasibility Study - Steppan 2246-2259
- 6 10. Unit Descriptions
- 7 Steppan 1824-1905
- 8 Steppan 1919 - 2038
- 9 Steppan 3124-3129
- 10 Steppan 3880-3915
- 11 Steppan 6261
- 12 11. Approvals
- 13 Steppan 5202-5209
- 14 Steppan 5194-5201
- 15 Steppan 4009-4017
- 16 Steppan 3851-3859
- 17 Steppan 0446-0453
- 18 Steppan 0722-0744
- 19 Steppan 0446-0453
- 20 Steppan 0798-0806
- 21 Steppan 5988-6014
- 22 Iliescu 000203-000255
- 23 12. City of Reno receipt. (ILIESCU 000644)
- 24 13. 9/1/06 letter from Steppan to Decal Custom Homes. (ILIESCU 000645)
- 25 14. 12/26/07 email from Caniglia to Iliescu. (ILIESCU 000646)
- 26 15. 9/25/08 letter from Caniglia to Johnson. (ILIESCU 000647)
- 27 16. 10/9/08 letter from Steppan to Iliescu. (ILIESCU 000648)
- 28 17. Notice of Claim of Lien dated 11/7/06. (Steppan - FCT - 827 through 830.)

- 1 18. AIA Document B141 - 1997 Part 1 dated 10/31/05. (Steppan 2742 - 2755.)
2 AIA Document B141 - 1997 Part 2 dated 10/31/05. (Steppan 2756 - 2766.)
3 19. 11/30/06 letter to John & Sonnia Iliescu from City Clerk, City of Reno.
4 (Steppan 4009 - 4016.)
5 20. Invoices Fischer Friedman Associates to BSC Financial (2006). (Steppan
6 7591 - 7628.)
7 21. Article from AIA Architects Handbook of Professional Practice Section 3.6.3.
8 22. 9/30/13 letter from Don Clark to C. Nicholas Pereos.
9 23. Don Clark report dated 9/30/13.
10 24. Joe Campbell report dated 10/10/13.
11 25. Response by Defendant Mark Steppan to Interrogatories propounded by
12 Plaintiffs, Iliescu, dated October 18, 2013, Set No. One.
13 26. Invoices for Wingfield Towers (2005-2007) (See List to Exhibit B to Answers
14 to Interrogatories in No. 25 above.
15 27. Additional invoices and corrections due to typos to the List of Invoices for
16 Wingfield Towers, No. 26 above. (See **Exhibit "1"** attached hereto.)

17 The undersigned affirms that the foregoing pleading does not contain a social
18 security number.

19 DATED this 8th day of November, 2013.


C. NICHOLAS PEREOS, LTD.

20
21 By: 
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23 1610 MEADOW WOOD LANE, #202
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ATTORNEY FOR PLAINTIFFS

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Michael Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
4741 Caughlin Parkway, Suite 4
Reno, NV 89519
775/786-8000
Attorney for Mark Steppan


Sandra Martinez

SCHEDULE OF EXHIBITS

**Exhibit "1" Additional Invoices and
Corrected List**

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ORIGINAL

FILED

CV07-00341
JOHN ILIESCU ETAL VS. MARK B. STEPPAN
District Court 12/02/2013 09:09 AM
Washoe County NV
4210

CODE: 4210
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2013 DEC -2 AM 9:09

JOEY GADUNA HASTINGS
CLERK OF THE COURT

BY

ATTORNEYS FOR DEFENDANTS

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

Defendants.

AND RELATED MATTERS.

Case No.: CV07-00341
(Consolidated w/ CV07-01021)

Trial Date: December 9, 2013
Dept. No.: 10

**DEFENDANTS' TRIAL
STATEMENT**

A. STATEMENT OF FACTS

On July 29, 2005, John Iliescu, Jr., et al. (hereinafter referred to as "Iliescu") entered into a sales contract with Consolidated Pacific Development for the sale of property in Reno, Nevada. As part of the sales agreement, Iliescu was to receive a credit towards the purchase price for a new penthouse in the residential condominium project. In order to facilitate the terms of this transaction, Iliescu engaged the law firm of Hale Lane. Despite the language contained in the contract of sale, it was assigned to another legal entity with the knowledge and cooperation of the Hale Lane firm as they also represented the assignee.

Iliescu had knowledge that an architect was to be engaged as one of the addendums to the contract contemplated that Iliescu would work with the architect for purposes of facilitating his acquisition of a penthouse unit which would then apply towards

1 the purchase price. However, the contract of sale with Consolidated Pacific does not
2 reference the name and address of the architect. It only references the use of an architect.
3 Without the knowledge and consent of Iliescu, the purchase contract was assigned to BSC
4 Investments. BSC Investments engages Fisher Friedman Associates. Mark Steppan is
5 affiliated with Fisher Friedman Associates.

6 The first meeting with the architect and the developer (now BSC Investments) was
7 approximately in September 2005. The terms of the architect's engagement were
8 controlled by letters of engagement first executed around September / October 2005.
9 During this time frame, the parties could not agree upon the language of the AIA contract
10 and the subject contract was not signed until the end of April 2006. Prior to that time, there
11 were letters of understanding and engagement so that the architect could pursue forward
12 movement with regard to the project. The architect had no agreement with Iliescu nor did
13 he ever discuss the matter with Iliescu or his real estate agent prior to the execution of the
14 AIA contract in April 2006.

15 Although the architectural engagement was signed by Mark Steppan, the evidence
16 with demonstrate that most of the work was performed by Fisher Friedman Associates with
17 whom Mark Steppan was employed. Steppan recognized that only a Nevada licensed
18 architect could work on the project. Since the AIA contract had not yet been signed, the
19 work performed by Fisher Friedman was pursuant to the engagement letters. Fisher
20 Friedman would bill for the work on an hourly basis and would be paid for the work. In fact,
21 they were paid approximately \$480,000.

22 Under the AIA contract that was signed, the architect fee was discussed at 5.75%
23 of the construction cost if the project was built, to wit, \$180,000,000. The AIA contract
24 discussed a twenty percent (20%) fee upon completion of the schematic design phase.
25 By the time the architect contract was signed, there was already a delinquency in the
26 billing. After the AIA contract was signed, the architect changed his methodology of billing
27 to now reflect a percentage of the twenty percent (20%) of the 5.75% fee even though the
28 evidence will demonstrate that most of the work done by the architect had already been

1 submitted to the governmental agencies several months earlier and the project was not yet
2 built. Following the signature on the AIA contract, the architect billed in monthly increases
3 reflecting an increase in the percentage of the twenty percent (20%) of the 5.75% even
4 through the work load fails to reflect that this accelerated billing amount had been
5 completed. The lien was filed in November 2006. Shortly before the filing of the lien, the
6 architect billings reflected that the total twenty percent (20%) of the 5.75% was then due
7 and owing. Steppan's justification for the lien amount is their argument that they are
8 entitled to twenty percent (20%) of the 5.75% of the total construction cost for the
9 completion of the project since they completed the schematic design phase of the project
10 even though the contract does not indicate that they have earned that fee.

11 A reading of the architectural contract does not demonstrate that the architect has
12 "earned" a 5.75% fee or any percentage thereof. Article 1.5 of the contract discusses
13 compensation. Section 1.51 indicates that the architect services shall be computed as
14 follows:

15 "5.75% of the total construction cost including contractors profit
16 and overhead... The total construction cost of the project will
17 be evaluated at the completion of the project in order to
18 determine final payment for basic architectural services. Any
19 amount over the original estimated total construction cost of
20 approximately \$160,000 shall be paid for architectural services
based upon the agreed upon 5.75% fee. Any amount under
the original estimated total construction cost of approximately
\$160,000 shall be credited for architectural services based on
the agreed upon 5.75% fee."

21 In April 2006, the parties agreed that 5.75% of the total construction cost will be the fee of
22 the architect if the project were built. The total construction cost has yet to be evaluated.
23 Albeit, the parties estimated that the total construction cost would be \$180 million by
24 addendum. The parties to the contract are Steppan and BSC Financial. It is not John
25 Iliescu. In fact, the contract specifically provides:

26 "Nothing contained in this agreement shall create a contractual
27 relationship with ... either the owner or architect." (Section
28 1.3.7.5)

///

1 The owner is defined as BSC Financial. Furthermore, Iliescu could never be a party to this
2 contract and receive its benefits. Revised Paragraph 1.3.7.9 of the contract provided:

3 "The architect and the owner shall not assign this agreement
4 without the written consent of the other party or assignment
thereof shall be void."

5 The parties also agreed that if the owner chooses not to proceed with the project the fees
6 of the architect will be paid as they are incurred for entitlements. This event took place!
7 The architect billed the owner as he was incurring fees and the owner was paying the
8 same. Article 1.5.1 provides:

9 "In the event that the owner chooses not to proceed with the
10 construction of the project, the fees associated with retaining
said entitlements will be paid as incurred in the due course of
11 the project..."

12 Although the project never went forward because of financing issues, it is the same as if
13 the owner choose not to proceed with the construction of the project. By no means is
14 Iliescu acknowledging that it falls into the shoes of the owner under the terms of the
15 contract but there is a clear provision in the contract addressing the issue of compensation
16 if the project does not go forward. The evidence will demonstrate that the architect was
17 paid for the work that they performed.

18 **B. STATEMENT OF ADMITTED FACTS.**

19 See Stipulation filed herewith.

20 **C. ISSUES OF LAW**

21 **1. The contract is interpreted by intent and custom.**

22 The primary guidelines in interpreting a contract is the intent of the parties United
23 States v. Moorman, 338 U.S. 457 (1950). In interpreting a contract, the cardinal rule is to
24 ascertain the intention of the parties. Victory Investment Corp. v. Muskogee Electric
25 Traction Co., 150 F.2d 889 (1945). The intention of the parties to a contract governs the
26 Court in its interpretation of a contract and in ascertaining the rights and obligations of the
27 parties to the contract. Van Doren v. Tjader, 1 Nev. 380 (____).

28 ///

1 In interpreting the entire contract, the Court is to take into consideration the
2 circumstances in which the contract was signed. A contract must be interpreted by
3 considering all of its provisions with reference to the general subject to which they relate
4 and in light of contemporaneous facts and circumstances so as to arrive at an intention of
5 the parties at the time that the contract was made. Kennedy v. Schwartz, 13 Nev. 229
6 (____). Another way to state it is that the interpretation of a contract and the ascertaining
7 of the intention of the parties is to be considered within the frame of reference of the
8 subject matter, nature, object and purpose of the agreement. Mobile and M.R. Co. v.
9 Jurey, 111 U.S. 584 (1884). Words contained in a contract are to be interpreted in light of
10 all the circumstances and the intent and purposes to be achieved by the contract.
11 Restatement, Contract 2d, §202. In Nevada Ref. Co. v. Newton, 88 Nev. 333 (1972), our
12 Supreme Court reiterated that the Court must look at the relative position of the parties at
13 the time the contract was made and consider the object that was to be achieved when the
14 contract was made. In determining the character of a contract, the Court must weigh all
15 of its terms and provisions and the reasonable and natural results of the effect of the
16 language in order to gain a perception of the intent of the parties. Coles v. Summerville,
17 47 Nev. 306 (____). In achieving that effect, the Court may look beyond the form in which
18 the parties have cast their agreement and to the events that existed at the time of the
19 casting of the agreement. Heryford v. Davis, 102 U.S. 235 (1880). It is the substance of
20 the agreement rather than the form which should control the interpretation of the
21 document. Mutual Assurance Society v. Watts, 1 Wheat (U.S.) 279 (1816). In the case
22 of Holland v. Rock, 15 Nev. 340 (____), our Supreme Court indicated that one is not to
23 disregard the meaning of phrases such as "about" or "more or less". In interpreting what
24 was intended by those phrases, the Court is to look at the intention of the parties. The
25 significance of the ruling is that the Supreme Court felt that those phrases were significant
26 enough to be considered by the Court in interpreting the context of a contract.

27 ///

28 ///

1 The intent of the parties is determined at the time of entering into the contract.
2 Cedars-Sinai Medical Center v. State Board of Equalization, 162 Cal.App.3d 1182, 208
3 Cal.Rptr. 837 (1984). In April 2006, the parties sign a contract which is before approval of
4 the project but after most of the work has been done to secure the approval. At that time,
5 the parties agreed in Article 1.5.1 as follows:

6 "In the event that the owner chooses not to proceed with the
7 construction of the project, the fees associated with retaining
8 said entitlements will be as incurred in the due course of the
project..."

9 The evidence will clearly demonstrate that the fees incurred by the developer were paid
10 as he was billed for the work. There is more significance attached to this language when
11 the Court considers the fact that this provision of the contract was a specific addendum to
12 the contract negotiated between the parties.

13 In Shelton v. Shelton, 119 Nev. 492 (2003), our Supreme Court observed:

14 "The question of the interpretation of a contract when the facts
15 are not in dispute is a question of law. A contract is
16 ambiguous if it is reasonably susceptible to more than one
17 interpretation. The best approach for interpreting an
18 ambiguous contract is to delve beyond the express terms and
19 examine the circumstances surrounding the parties agreement
in order to determine the true mutual intention of the parties.
The examination includes not only the circumstances
surrounding the contract's execution but also subsequent acts
and declarations of the parties. Also, a specific provision will
qualify the meaning of a general provision." Id. at Page 497.

20 A rule of construction in contracts is that special words or provisions contained in
21 the contract supersede the general provisions contained in the contract: ejusdem generis.
22 Special provisions in a contract qualify that which is contained as general provisions in a
23 contract, and the special provisions control. Smoot v. United States, 237 U.S. 38 (1915).
24 When general words of a contract followed by a description of specific subjects, the
25 meaning of the general words ordinarily will be presumed to be limited to the enumerations
26 contained in the special subjects and include only those things contained in the special
27 subjects. State Farm Fire and Casualty Co. v. Rowland, 143 S.E.2d 193 (1965). When
28 the parties to an agreement reference a particular matter, those particular matters

1 supersede the general language of the contract. Where part of a contract is printed and
2 part of a contract is typed in, the portion that is typed in will control the printed portions of
3 the contract. The reason greater effect is given to the typed in portion of the contract than
4 the printed part is that the typed in words are the immediate language and terms selected
5 by the parties themselves for an expression of their meaning while the printed portion of
6 the contract is intended only for general use without reference to particular objects or aims
7 to be achieved. Thomas v. Taggart, 209 U.S. 385 (1908).

8 The language of the AIA contract does not indicate therein that the architect has
9 earned a 5.75% fee of \$180,000,000. On the contrary, Section 1.5.1 discusses the fee of
10 the architect to be at 5.75% of the total construction cost. The language clearly indicates
11 that the fee is based on the "total construction costs". If there is no construction cost
12 because the project is not built, then the language of Section 1.5.1 referenced
13 hereinabove controls. This factor is amplified when the Court reads the Paragraph of 1.5.1
14 which provides that the 5.75% fee is to be adjusted as the total construction cost is
15 adjusted.

16 "5.75% of the total construction cost including contractor's
17 profit and overhead.... The total construction cost of the
project will be evaluated at the completion of the project..."

18 The AIA contract provides that the 5.75% compensation advanced by Stepan is
19 controlled by the cost of the project. It provides alternatives if the Owner chooses not to
20 proceed. The Nevada Supreme Court observed that a contract is ambiguous if it is
21 reasonably susceptible to more than one interpretation. Margrave v. Dermody Properties,
22 110 Nev. 824, 827 (1994).

23 The evidence will demonstrate that the custom and trade in the industry for
24 purposes of securing financing is to provide your lender with a completed package
25 including the AIA contract so that you can include in the loan your architectural fees as well
26 as your costs to construct. Prior to the signing of the AIA contract, the architect was billing
27 for his fees. After the signing of the AIA contract, the architect billed based upon an
28 accelerated percentage every month of the twenty percent (20%) of the schematic design

1 aspect of the 5.75% of the \$180,000,000. Meanwhile, there will be no evidence justifying
2 this work having been performed after the contract is signed.

3 Words or words connected with a particular peculiar trade are to be given
4 significance as that which is called for in the custom in the industry. Moran v. Prather, 23
5 Wall (U.S.) 492 (1874). Usage or custom in a trade is to be considered in interpreting a
6 contract when the language is embodied in the contract. *Restatement of Contracts 2d*,
7 §222.

8 The Supreme Court in Galardi v. Naples, 129 Nev. Adv. Op. 33 (May 2013), observed
9 that a contract is ambiguous if the terms may reasonably be interpreted in more than one
10 way. It also went on to observe custom and practice can be considered by the trial court
11 in determining whether the contract provisions have an inherent ambiguity. *Restatement*
12 *of Contracts 2d*, §220, *Comment D* (1981). The Court went on to observe “ambiguity is not
13 required before evidence of trade usage ... can be used to ascertain or illuminate contract
14 terms.” *Id.*

15 Custom and Usage may be used to establish the terms of a contract. Worrington
16 v. Empey, 95 Nev. 136, 590 P.2d 1162 (1979). The Supreme Court recognized in Bianchi
17 v. Maggini, 17 Nev. 322 (1883) that custom in the industry controls the obligations of the
18 parties.

19 **2. Court's order granting partial summary judgment addressed the**
20 **argument of fair market value of services.**

21 Steppan filed a motion for partial summary judgment on October 21, 2011 asking
22 the Court to rule that the measuring stick for the services of the architect is controlled by
23 NRS 108.222(1)(a) as opposed to NRS 108.222(1)(b). Subsection (b) of the statute
24 discusses value of the lien to be “amount equal to the fair market value of such work”. In
25 order to eliminate that issue, Steppan filed the motion for partial judgment arguing that the
26 value of his services is controlled by the fixed fee of the AIA contract not fair market value.
27 Accordingly, Iliescu will present the defense within the parameters of that ruling. In that
28 same spirit, Iliescu will present no legal authorities unless requested by this Court to

1 support its argument that a pre-lien notice was required by NRS 108.226(6) given the
2 Court's indication in arguments on September 9, 2013 that the issue has already been
3 adjudicated and resolved by Judge Adams.

4 **3. Action to foreclose a lien.**

5 This action is an action to foreclose a lien. Any judgment to foreclose a mechanic's
6 lien herein will attach to the property for foreclosure. NRS 108.239(10). In an early
7 Nevada Supreme Court case of Rosina v. Trowbridge, 20 Nev. 105, 17 P. 751 (1888), the
8 Supreme Court observed that legal title to the property was in the name of the partnership
9 but the complaint to foreclose the lien was only against some of the partners in the
10 partnership. Notwithstanding, the foreclosure of the lien could be enforced against those
11 named Defendants who have an interest in the subject property. Accordingly, any
12 judgment for foreclosure of the mechanic's lien herein will be a judgment to foreclose
13 against the subject property.

14 The evidence will demonstrate that the mechanic's lien was recorded on November
15 7, 2006. The lien must be recorded within ninety (90) days of the last performance of work.
16 NRS 108.226. A lien must then be served within thirty (30) days after the recording. NRS
17 108.227. Lawsuit to foreclose the lien must commence within six (6) months after the date
18 on which the lien has been recorded. NRS 108.233. After the conclusion of the case, the
19 Court can issue a judgment for foreclosure against the property. NRS 108.239. Since the
20 mechanic's lien impacts the property described herein, any judgment is to be to that
21 property.

22 **D. SCHEDULE OF EXHIBITS**

23 A summary schedule of exhibits has been prepared and jointly agreed upon by
24 counsel.

25 **E. NAME AND ADDRESSES OF WITNESSES**

26 1. John Iliescu, Jr., c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane,
27 Ste, 202, Reno, NV 89502.

28 ///

1 2. Sonnia Iliescu, c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane, Ste,
2 202, Reno, NV 89502.

3 3. Karen Dennison, c/o Holland & Hart, 5441 Kietzke Lane, 2nd Floor Reno,
4 Nevada 89509.

5 4. R. Craig Howard, c/o Holland & Hart, 5441 Kietzke Lane, 2nd Floor Reno,
6 Nevada 89509.

7 5. Richard Johnson, The Johnson Group, 5255 Longley Lane, Reno, Nevada
8 89511; 10631 Professional Circle, #A, Reno, Nevada 89521.

9 6. Sam Caniglia, 512 10th Street, Sacramento, CA 95814

10 7. John Schneilling, c/o of Gregory Wilson, Esq., 1495 Ridgeview Drive, Suite
11 120, Reno, NV 89519.

12 8. Joseph S. Campbell, 2820 Erminia Road, Suite 101, Reno, Nevada 89523.

13 9. Donald J. Clark, 250 Bell Street, Reno, Nevada 89503.

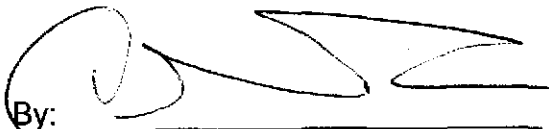
14 **F. CERTIFICATION**

15 Counsel certifies that discovery has been completed and that they have met and
16 conferred to discuss settlement.

17
18 ***The undersigned affirms that the foregoing pleading does not contain a social***
19 ***security number.***

20 DATED this 2 day of December, 2013.

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22 By: 
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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.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Trial: Monday, December 9, 2013
8:30 am

And Related cross-claims and third-party
claims.

Trial Statement

Mark B. Steppan submits his Trial Statement pursuant to WDCR 5.

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9	NRS 108.222.....	14, 15, 16
10	NRS 108.237.....	15, 16, 17
11	NRS 108.239.....	15
12	NRS 108.22104	24

Decisions

15	<i>Agricultural Aviation v. Clark County Board of Commissioners,</i>	
16	106 Nev. 396, 794 P.2d 710 (1990)	20
17	<i>Am. Cyanamid Co. v. Ring,</i>	
18	248 Ga. 673, 286 S.E.2d 1 (1982)	25
19	<i>Asset Recovery Contracting, LLC v. Walsh Const. Co. of Illinois,</i>	
20	2012 IL App (1 st) 101226, 980 N.E.2d 708,	
21	appeal denied 982 N.E.2d 767 (Ill. 2013).....	25
22	<i>Atkeson v. T & K Lands, LLC,</i>	
23	258 Or.App. 373, 309 P.3d 188 (2013).....	23
24	<i>Dickenson v. State, Department of Wildlife,</i>	
25	110 Nev. 934, 877 P.2d 1059 (1994)	21
	<i>Fitzgerald v. State ex rel. Adamson,</i>	
	987 S.W.2d 534 (Mo. App. 1999)	23

1	<i>Fondren v. K/L Complex, Ltd.</i>	
2	106 Nev. 705, 800 P.2d 719 (1990)	14
3	<i>Fraizier v. Superior Court</i> ,	
4	97 Cal.App.4 th 23, 118 Cal.Rptr.2d 129 (2002)	23
5	<i>Green v. Midland Mortgage Company</i> ,	
6	342 S.W.3d 686 (Tex.App. 2011)	23
7	<i>Margrave v. Dermody Properties, Inc.</i> ,	
8	110 Nev. 824, 878 P.2d 291 (1994)	20
9	<i>NGA #2 Ltd. Liab. Co. v. Rains</i> ,	
10	113 Nev. 1151, 946 P.2d 163 (1997)	20
11	<i>Shelton v. Shelton</i> ,	
12	119 Nev. 492, 78 P.3d 507 (2003).....	22
13	<u>Secondary Sources</u>	
14	3 C.J.S. Agency § 547	22

Claimed Facts

1. At all relevant times, John Iliescu, Jr. and Sonnia Iliescu, individually or as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (collectively "Iliescu") owned real property situated in Washoe County, Nevada, assessor parcel numbers 011-112-03, 011-112-06, 011-112-07, 011-112-12 (the "Property"). The parcels are more particularly described in a Trial Stipulation to be filed before trial.
2. The Property consists of four adjacent parcels, which are bounded by Island Avenue on the north and Court Street on the south.
3. Iliescu held the Property for investment, and with the intent to market the property for development. Iliescu engaged real estate broker Richard Johnson ("Johnson") to market the property.
4. Before 2005, Iliescu had received proposals to sell the Property to developers.
5. On or about July 14, 2005, Sam A. Caniglia, a principal in Consolidated Pacific Development, Inc. ("Consolidated"), sent Johnson a written proposal to buy the Property from Iliescu. [Exhibits 66, 67].
6. Following further negotiations, on or about August 3, 2005, Consolidated and Iliescu signed a Land Purchase Agreement. [Exhibit 68] At the same time, the parties signed Addendum No. 1 [Exhibit 69] and Addendum No. 2 [Exhibit 70] to the Land Purchase Agreement.
7. Addendum No. 2 to the Land Purchase Agreement provides,

Both parties agree that the Land Purchase Agreement needs to be fine tuned [sic] as to the specifics of the intended agreement before its finalization, and that legal clarification and documentation to achieve the full intent of both parties is spelled out. This shall be accomplished as

1 soon as possible within the time constraints of the Buyer, Seller, and legal
2 counsel of both parties.

3 8. Pursuant to Addendum No. 2 to the Land Purchase Agreement, Hale Lane
4 Peek Dennison & Howard ("Hale Lane") was engaged to review the Land Purchase
5 Agreement, interview the parties, and draft another addendum to complete the parties'
6 contract. Karen Dennison performed this work, and drafted Addendum No. 3 to Land
7 Purchase Agreement. [Exhibit 71]

8 9. The Land Purchase Agreement, as modified by Addenda Nos. 1, 2, and 3
9 provided for a purchase price consisting of \$7,500,000 cash at closing plus (a) a \$2,200,000
10 credit towards a penthouse condominium selected by Iliescu after construction drawings
11 are completed, (b) an easement for four parking spaces for personal use, (c) 500 square
12 feet of storage space, and (d) an easement for fifty-one contiguous, ground-level parking
13 spaces for Iliescu to use for the development and operation of Iliescu's adjacent medical
14 building, which Iliescu intended to convert to a restaurant or other commercial operation.

15 10. The Land Purchase Agreement, as modified by Addenda Nos. 1, 2, and 3
16 provided that closing would be delayed while Consolidated sought development
17 entitlements, and that Iliescu would receive non-refundable deposits during this period.

18 The deposits were as follows:
19

20	Initial deposit	\$25,000.00
	Within 30 days from August 3, 2005	\$75,000.00
21	Within 90 days from August 3, 2005	\$100,000.00
	Within 150 days from August 3, 2005	\$100,000.00
22	Within 210 days from August 3, 2005	\$100,000.00
	Within 270 days from August 3, 2005	\$100,000.00
23	Total advance deposits	\$500,000.00
24	Balance at close of escrow	\$7,000,000.00

1 11. Addendum No. 3 specifically contemplated that, prior to close of escrow and
2 transfer of title, the Property might be encumbered by mechanics liens. The parties agreed:

3 **Buyer agrees to keep the Property free from all liens** and to indemnify,
4 defend and hold harmless Seller, and its successors and assigns, from
5 any against any and all claims, actions, losses, liabilities, damages, costs
6 and expenses (including, but not limited to, attorneys' fees, charges and
7 disbursements) incurred, suffered by, or **claimed against Seller by**
8 **reason of any work performed with respect to the Property at the**
9 **instance or request of Buyer** or any damage to the Property or injury to
persons caused by Buyer and/or its agents, employees or contractors
arising out of or in any way connection with their entry upon the Property
and/or the performance of any inspections, tests or other activities
thereon. Buyer's obligations under this paragraph shall survive the
Closing or termination of the Agreement.

10 Addendum No. 3 [Exhibit 71], page 2, ¶ 5 (emphasis added).

11 12. At all times relevant to this litigation, Mark B. Steppan, AIA ("Steppan") was
12 licensed by the State of Nevada as a Registered Architect.

13 13. In 1979, the University of California (Berkeley) conferred upon Steppan a
14 bachelor of arts degree in architecture. Following examinations and practical work in the
15 profession, Steppan was first registered as an architect in approximately 1987.

16 14. Steppan began working for Fisher Friedman Associates ("FFA") during
17 college, worked full time for FFA in January 1980, and continued to work for FFA at all
18 times relevant to this case. Steppan was an executive vice president of FFA, and had
19 management duties as well as professional architecture duties.
20

21 15. As of October 1, 2005, Rodney Friedman, FAIA, was the most senior architect
22 at FFA. Steppan was the second most senior architect employed by FFA.

23 16. In October, 2005, Consolidated approached FFA to discuss a multi-use
24 development for the Property in Reno.
25

1 17. Following some preliminary negotiations, on October 25, 2005, Steppan sent
2 a proposal to Consolidated proposing to perform the design work for a fee of 5.75 percent
3 of the estimated construction cost. [Exhibit 9] At the time of the October 25, 2005
4 proposal, the parties did not have a budget for anticipated construction costs.

5 18. It is ordinary and customary in architecture to specify a fee based upon a
6 percentage of construction costs.

7 19. Steppan's October 25, 2005 proposal letter also proposed using an American
8 Institute of Architects ("AIA") standard form B141 as the basis for a design contract for the
9 proposed project. Thus, Exhibit 9 includes the transmittal of this standard form.

10 20. The scope of the proposed project was much too large to be designed and
11 coordinated by a single individual. Consolidated, Steppan, and FFA discussed, understood,
12 and agreed that Steppan (as a Nevada registered architect) would maintain "direct
13 supervision" and "responsible control" of the design process, and that FFA (an architecture
14 firm in which Steppan was an officer and employee) would be a design consultant
15 responsible for much of the design work.

16 21. After Steppan sent the October 25, 2005 proposal letter to Consolidated,
17 Consolidated submitted the B141 form to Hale Lane for review. A Hale Lane lawyer named
18 Sarah Class identified areas of concern to Consolidated in several written memoranda
19 dated in November, 2005. [Exhibits 10, 11, 12] Consolidated shared these concerns with
20 Steppan, who responded in writing on December 20, 2005. [Exhibit 13]

21 22. After December 20, 2005, Consolidated and Steppan continued to discuss
22 several concerns about the form of the design contract. They started drafting an addendum
23 to make changes to the standard AIA form. In a March 24, 2006 letter, Steppan wrote that
24
25

1 Steppan would "Implement the minor agreed to Addendum 1 Agreement items and
2 investigate the three items pending resolution for consequential damages, successors and
3 assigns and termination expenses." [Exhibit 17]

4 23. Effective October 31, 2005, BSC Financial, LLC c/o Consolidated Pacific
5 Development ("Developer") and Steppan entered into a Standard Form of Agreement
6 Between Owner and Architect ("Design Agreement"). [Exhibit 6]. The signatures on the
7 Design Agreement are not dated.

8 24. On or about April 21, 2006, Developer and Steppan signed Addendum No. 1
9 to the Design Agreement. [Exhibit 7]

10 25. While the Design Agreement was under review by Hale Lane, on December
11 14, 2005 Consolidated and Iliescu signed a letter acknowledging Hale Lane's joint
12 representation of Consolidated and Iliescu, and waiving the conflict of interest. [Exhibit 8].

13 26. Before Consolidated and Iliescu signed the waiver of conflict letter, Hale Lane
14 knew that Consolidated/Developer had engaged Steppan to provide design services with
15 respect to the Property, and that those design services could result in a lien on the
16 Property.
17

18 27. When Consolidated entered into the Land Purchase Agreement with Iliescu,
19 the Property was endowed with zoning favorable to high-rise development. That zoning
20 was about to expire in early 2006. It was therefore important to submit applications to the
21 City of Reno for development entitlements before the current zoning expired.

22 28. Steppan and FFA started work on the design before Developer and Steppan
23 signed the form Design Agreement. The design work commenced under a letter agreement
24 dated November 15, 2005. [Exhibit 14]. While the formal Design Agreement was under
25

1 review by Hale Lane, Steppan issued three Design Services Continuation Letters on
2 December 14, 2005 [Exhibit 15], February 7, 2006 [Exhibit 16], and March 24, 2006
3 [Exhibit 17]. These letters were designed to confirm that Steppan and FFA were
4 authorized to continue performing work on a design for the Property.

5 29. Pursuant to the November 15, 2005 Architectural Design Services
6 Agreement, Steppan and FFA invoiced for services provided based on hourly rates. These
7 invoices show project identification as 0515-01. [Exhibit 24]

8 30. After Developer and Steppan signed the Design Agreement, which specifies a
9 fee expressed as a percentage of the estimated and actual construction costs, with progress
10 payments based on a percentage of completion of certain phases of the design work,
11 Steppan and FFA began invoicing for the work on a percentage of completion basis per the
12 Design Agreement. [Exhibit 25]. The invoices provided a credit back to Developer for
13 payments received based on the earlier invoices for hourly billing.

14 31. Steppan and FFA also performed work that was in addition to the work
15 specified in the Design Agreement. This work was performed at the Developer's direction
16 and with the Developer's approval, and pursuant to written letter agreements. These letter
17 agreements authorized work for building massing models [Exhibit 19], study of parking for
18 the adjacent church [Exhibit 20], studies to answer questions posed by the City of Reno
19 Planning Commission staff [Exhibit 21] and to create a video fly-through of a computerized
20 rendering of downtown Reno buildings, streets, geologic features, and the improvements
21 proposed for the Property. [Exhibit 22]

22 32. Work for each classification of additional work was billed separately, on an
23 hourly basis. [Exhibits 27-30].
24
25

1 33. Pursuant to both the Design Agreement and the November 15, 2005 letter
2 agreement, Steppan and FFA also billed for reimbursable expenses. [Exhibit 26]

3 34. The Developer hired a civil engineering and planning firm called Wood
4 Rodgers to prepare applications to the City of Reno to obtain development entitlements for
5 the Property. David Snelgrove was an employee of Wood Rodgers, and coordinated much
6 of the applications, meetings with the City of Reno staff, and with Steppan and FFA.

7 35. The Developer also hired Solaegui Engineers, Ltd. to provide a Traffic Analysis
8 for the proposed project. [Exhibits 114, 115, 117]

9 36. The Developer also hired Pezzonella Associates, Inc. to provide a
10 geotechnical engineering report on the Property.

11 37. On January 17, 2006, Consolidated submitted a "Special Use Permit
12 Application" to the City of Reno. [Exhibit 35] The Special Use Permit Application includes
13 elevations, site plans, floor plans, and other designs by Steppan and FFA.

14 38. The Special Use Permit Application includes the following affidavit signed by
15 John Iliescu, Jr. and Sonnia Iliescu: "I am an owner of property/authorized agent involved
16 in this petition and that I authorize **Sam Caniglia** to request development related
17 applications on my property." [Exhibit 35, page STEPPAN 2368, 2369]

18 39. On February 7, 2006, Consolidated submitted a "Tentative Map & Special Use
19 Permit Application" to the City of Reno. [Exhibit 36] This application superseded the
20 January 17, 2006 application. The Special Use Permit Application includes elevations, site
21 plans, floor plans, and other designs by Steppan and FFA.

22 40. The Tentative Map Application includes the following affidavit signed by John
23 Iliescu, Jr. and Sonnia Iliescu: "I am an owner of property/authorized agent involved in this
24
25

1 petition and that I authorize **Sam Caniglia of Consolidated Pacific Development** to
2 request development related applications on my property.” [Exhibit 36, page STEPPAN
3 2521, 2522]

4 41. After the February 7, 2006 Tentative Map Application, Consolidated changed
5 the design of the proposed project, and compiled an amended application. [Exhibit 37].
6 Originally, the Developer proposed a project with 390 residential units, 550 parking spaces,
7 and office and commercial space. In the February 7, 2006 Tentative Map Application, the
8 Developer proposed 394 residential units and 550 parking spaces. In the subsequent
9 amendments, the Developer proposed 499 residential units and 824 parking spaces.
10

11 42. In order to increase the number of residential units from 390 to 499, the
12 Developer did not change the footprint or height of the proposed improvements. Instead,
13 the Developer changed the mix of the type of units, substituting more studio and one-
14 bedroom units for two- and three-bedroom units. This also increased the statutory parking
15 requirements, which required the Developer and Steppan/FFA to redesign the parking
16 garage to include car lifts.

17 43. On or about May 15, 2006, the Developer submitted a Revised Tentative Map.
18 [Exhibit 38] This revised tentative map shows 499 residential units. Although the Revised
19 Tentative Map is printed on Wood Rodgers plan sheets, all of the architectural design was
20 created by Steppan and FFA. The sheets for the grading and utility plans are signed and
21 sealed by Steven P. Strickland, a professional engineer employed by Wood Rodgers.
22

23 44. Steppan and other FFA employees attended meetings with City of Reno staff,
24 Reno neighborhood advisory boards, the Reno Planning Commission, and the Reno City
25 Council to explain and promote the design for the Property. Steppan and FFA also

1 prepared numerous renderings, computer models, a Powerpoint presentation [Exhibits 40,
2 41], a video fly-through [Exhibit 42], shadow studies [Exhibits 54, 55] and other
3 presentation materials. These presentation materials were well-received by the City of
4 Reno and the community, and materially contributed to approval of the application for a
5 tentative map for the Property.

6 45. John Iliescu, Jr. and Richard Johnson also attended neighborhood advisory
7 board meetings and meetings of the Reno Planning Commission and Reno City Council.
8 They both knew that Steppan and FFA were providing architectural design services and
9 presentation services in aid of the application for development entitlements.
10

11 46. On October 4, 2006, the Reno Planning Commission recommended approval
12 of the special use permit and tentative map for the Property. [Exhibit 47]

13 47. On November 15, 2006, the Reno City Council upheld the recommendation of
14 the Planning Commission, and approved the special use permit and tentative map for the
15 Property. [Exhibit 48]

16 48. John Iliescu, Jr. and Richard Johnson both attended the November 15, 2006
17 Reno City Council meeting with Rodney Friedman of FFA, as well as subsequent party to
18 celebrate the City Council's approval of the Special Use Permit and Tentative Map.

19 49. The Design Agreement (a) specifies a fee equal to 5.75 percent of the
20 estimated construction costs and (b) states that the estimated construction costs are \$180
21 million. Therefore, the total fee (subject to reconciliation for actual construction costs) is
22 \$10,350,000.
23
24
25

1 50. The Design Agreement allocates 20 percent of the fee to the Schematic
2 Design phase of the work. The Design Agreement defines the Schematic Design to include
3 City of Reno entitlements.

4 51. Steppan and FFA made progress on the Schematic Design starting in 2005.
5 Starting May 18, 2006, Steppan and FFA invoiced for progress on the Schematic Design
6 phase as follows:

7 May 18, 2006	23.25%	\$481,275
8 June 20, 2006	23.25%	\$481,275
9 July 19, 2005	28.10%	\$581,670
10 August 23, 2006	44.63%	\$923,841
11 September 21, 2006	61.16%	\$1,266,012
12 October 25, 2006	77.69%	\$1,608,183
13 November 21, 2006	100.00%	\$2,070,000

14 52. As a result of the grant of the Tentative Map application on November 15,
15 2006, the Schematic Design was 100 percent complete.

16 53. Steppan and FFA received no objections to the progress billings for
17 Schematic Design.

18 54. As a result of the City of Reno entitlements, the Property value was
19 immediately enhanced. In fact, on February 23, 2007, appraiser William G. Kimmel
20 appraised the Property with the entitlements at \$30 million. [Exhibit 93]

21 55. Iliescu understood that the Property value was enhanced because of the
22 entitlements approved by the City of Reno. Iliescu applied to the City of Reno to extend the
23 entitlements by delaying the deadline for recordation of a final subdivision map. The initial
24 application [Exhibit 49] was approved on November 24, 2008 [Exhibit 50], extending the
25 filing deadline to 2010. The second application [Exhibit 51] was granted on October 13,
2010 [Exhibit 53], extending the filing deadline by one more year.

1 56. While the Tentative Map & Special Use Permit Application was pending with
2 the City of Reno, on or about September 18, 2006, Consolidated and Iliescu executed
3 Addendum No. 4 to the Land Purchase Agreement. [Exhibit 72] In Addendum No. 4, the
4 parties agreed to a \$376,000 "Additional Extension Deposit" to be paid \$365,000 to Iliescu
5 and \$11,000 to Johnson to extend the closing date to April 25, 2007.

6 57. On November 7, 2006, Steppan recorded a Notice and Claim of Lien as
7 Document No. 3460499. [Exhibit 1]

8 58. The Notice and Claim of Lien was served on Iliescu within 30 days. NRS
9 108.227(1).
10

11 59. In April, 2007, Iliescu, Consolidated, and other parties prepared to close
12 escrow on the Land Purchase Agreement. The original buyer, Consolidated, assigned its
13 rights under the Land Purchase Agreement to its affiliate, BSC Investments, LLC. [Exhibit
14 88]. BSC Investments, LLC ("BSC") then entered into a Purchase and Sale Agreement and
15 Joint Escrow Instructions to sell the Property, along with the development entitlements, to
16 a new company called Wingfield Towers, LLC ("Wingfield"). [Exhibit 82].

17 60. Under the Iliescu – Consolidated Land Purchase Agreement, as modified by
18 Addenda Nos. 1 through 4, the purchase price to be paid to Iliescu was \$7,878,000. Exhibit
19 72] Under the BSC – Wingfield Purchase and Sale Agreement, the purchase price to be paid
20 to BSC Investments was \$24,282,000. [Exhibit 82] The parties, Hale Lane, First Centennial
21 Title Company, and Ticor Title of Nevada, Inc. prepared for a "double closing" so that
22 proceeds from the BSC-Wingfield transaction would be paid into the Iliescu-Consolidated
23 escrow to effectuate the transfer of the Property title.
24
25

1 61. As part of the preparation for close of escrow, First Centennial Title sent
2 Steppan's attorney a request for a payoff of the Mechanic's Lien: "I have been instructed to
3 pay your demand for the Claim of Lien filed 11/7/06 as document No. 3460499, Washoe
4 County Nevada Official Records involving property owned by John Iliescu, et al for work
5 performed for DeCal Homes, or one of their subsidiaries.... We ask that you complete and
6 sign the requested information below, and sign and have notarized the Lien Release
7 enclosed." Exhibit 89. As requested, Steppan signed and returned the payoff demand.
8 [Exhibit 99] As requested, Steppan's counsel signed and tendered a Discharge or Release of
9 Notice of Lien to escrow. [Exhibit 106]
10

11 62. The April 2007 "double escrow" never closed. Although the parties had
12 signed deeds, memoranda, and releases [Exhibits 105-108] the documents were never
13 recorded, title never transferred, and funds were never disbursed per the estimated closing
14 statements. [Exhibit 104]

15 63. After the April 2007 "double escrow" failed, Steppan recorded an Amended
16 Notice and Claim of Lien on May 3, 2007 as document 3528313, official records of the
17 Washoe County Recorder. [Exhibit 2] The original lien amount was \$1,783,548.85. The
18 amended lien amount was increased to \$1,939,347.51 to include accrued interest.
19

20 64. Even though the April 2007 transaction never closed, by September 25, 2007
21 Iliescu had received at least \$1,176,000 in non-refundable deposits under the Land
22 Purchase Agreement as amended. [Exhibit 102]

23 65. Effective December 2, 2007, Iliescu and Consolidated entered into Addendum
24 No. 5 to the Land Purchase Agreement. [Exhibit 73] Under Addendum No. 5, Iliescu
25 agreed to extend close of escrow to December 12, 2007 in consideration of a price

1 accretion of \$100,000, with the immediate transfer of \$100,000 in water rights. Addendum
2 No. 5 also increased Iliescu's credit towards a penthouse condominium from \$2,200,000 to
3 \$3,000,000.

4 66. On November 8, 2013, Steppan recorded a Second Amended Notice and
5 Claim of Lien. [Exhibit 3] The corrected lien seeks \$1,755,229.99 in principal. Through
6 December 9, 2013, Steppan seeks \$2,243,638.83 in accrued interest. [Exhibit 5]

7 **Admitted or Undisputed Facts**

8 Through counsel, the parties have filed a separate trial stipulation setting forth
9 agreed facts.

10 **Memorandum of Legal Points and Authorities**

11 **1. Introduction**

12 This trial follows an evidentiary hearing and several motions for partial summary
13 judgment. At the outset of the case, Iliescu argued that Steppan failed to perfect the
14 mechanics lien because he did not give a pre-lien notice. This Court disagreed, ruling that
15 Iliescu had actual knowledge that Steppan and FFA were performing architectural services,
16 so that no pre-lien notice was required under *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705,
17 800 P.2d 719 (1990). Order, June 22, 2009. This Court further held that, pursuant to NRS
18 108.222(1), Steppan's mechanics lien "secures the fixed fee specified in Lien Claimant's
19 written contract." Order, May 5, 2013. Therefore, Plaintiff Steppan contends that the only
20 issue remaining for trial is the computation of the principal and interest due pursuant to
21 Steppan's written contract.
22

23 Iliescu does not share Steppan's vision of the scope of this trial. Iliescu has signaled
24 an intention to re-litigate issues that are already decided. For example, Iliescu continues to
25

1 protest that, while Iliescu was aware that *some* design professionals were involved with the
2 development entitlements for the Property, Iliescu was not aware of the *particular*
3 architects involved. Iliescu has recently developed a new theory that Steppan's right to
4 receive a fee for design work was somehow contingent on actual construction of the
5 improvements designed. Iliescu further argues that the lien claimant can only recover up
6 to the liquidation value of the Property, and cannot obtain a personal judgment against the
7 landowner. These legal issues are discussed below.

9 **2. Statutory mechanics lien procedure**

10 NRS 108.239 sets forth procedures for actions to foreclose mechanics liens. The
11 Court must determine the amount of the lien, then "cause the property to be sold in
12 satisfaction of liens and the costs of sale..." NRS 108.239(10). The statute further
13 prescribes that a judgment creditor may cause the property to be sold in the same manner
14 provided for sales of real property pursuant to writs of execution. *Id.* Exhibit 1 to this Trial
15 Statement is a proposed form of judgment to comply with this statute.

16 If the proceeds from the sale exceed the amount of the judgment, the surplus is paid
17 to the property owner. NRS 108.239(11). If the proceeds from the sale do not satisfy the
18 amount of the judgment, then the judgment creditor is entitled to personal judgment
19 against the property owner for the deficiency (or "residue") if the property owner has been
20 personally summoned or appeared in the action. NRS 108.239(12). Steppan therefore
21 contends that the Court should order a sale of the Property. If the net sale proceeds are
22 less than the monetary amount of the judgment, Steppan must then apply to the Court for a
23 personal judgment against Iliescu.
24
25

3. Amount of the lien

The amount of the lien is comprised of these components: (a) the principal amount [determined under NRS 108.222], (b) prejudgment interest [NRS 108.237(2)], (c) the cost of preparing and recording the notice of lien [NRS 108.237(1)], (d) “the costs of the proceedings, including without limitation, reasonable attorney’s fees, the costs for representation of the lien claimant in the proceedings” [NRS 108.237(1)], and (e) “any other amounts as the court may find to be justly due and owing to the lien claimant” [NRS 108.237(1)]. Each of these elements is further described below:

A. Principal: The Design Agreement clearly provides that the Architect has earned a fee based on the progress of the work, and clearly allocates 20 percent of the total fee to the Schematic Design phase.

Under NRS 108.222(1)(a), if the lien claimant agreed “by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work” then the principal amount of the lien is the unpaid agreed price. This Court previously held that Steppan’s mechanics lien secures the unpaid balance due under the Design Agreement, which specifies a fee based upon a percentage of the estimated construction cost.

Iliescu contends that the Design Agreement makes Steppan’s fee contingent on actual construction of the designed improvements. This legal argument is debunked below.

1 In addition to the Design Agreement fee, Steppan is also entitled to recover (a) the
2 amount of reimbursable expenses as specified in the Design Agreement and (b) hourly fees
3 for additional work that fell outside the scope of the Design Agreement. According to the
4 Design Agreement, page 10, § 1.5.4 [Exhibit 6, STEPPAN 7507] and the November 15, 2005
5 stop-gap letter agreement [Exhibit 14] reimbursable expenses are to be repaid with a 15
6 percent mark-up. Fees for work outside the scope of the Design Agreement are based on
7 agreed hourly rates. Design Agreement, page 10, § 1.5.2 [Exhibit 6, STEPPAN 7507];
8 additional work letters [Exhibits 19-22].
9

10 **B. Prejudgment interest**

11 Under NRS 108.237(2) controls the computation of prejudgment interest to include
12 the lien. Interest is calculated based upon:

- 13 (a) The rate of interest agreed upon in the lien claimant's contract; or
14 (b) If a rate of interest is not provided in the lien claimant's contract, interest
15 at a rate equal to the prime rate at the largest bank in Nevada, as ascertained
16 by the Commissioner of Financial Institutions, on January 1 or July 1, as the
17 case may be, immediately preceding the date of judgment, plus 4 percent, on
the amount of the lien found payable. The rate of interest must be adjusted
accordingly on each January 1 and July 1 thereafter until the amount of the
lien is paid.

18 Interest is payable from the date on which the payment is found to have been
19 due, as determined by the court.
20
21
22
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1 The Design Agreement provides that unpaid invoices accrue interest, beginning 30 days
2 after the invoice, at the rate of "1 & ½ % monthly." Design Agreement, page 10, §1.5.8
3 [Exhibit 6, STEPPAN 7507]. Arguably, the interest is compounded monthly. To simplify the
4 interest computation, Steppan claims simple interest on the Design Agreement fees at 18
5 percent per annum. For reimbursable expenses, Steppan claims interest based on the legal
6 rate of interest specified in NRS 108.237(2)(b). The prejudgment interest computation
7 through December 9, 2013 is set forth in Exhibit 5.

8
9 **C. Attorney fees and costs**

10 A lien claimant is entitled to recover attorney fees to prepare and record the lien, as
11 well as all of the fees incurred to represent the lien claimant in the foreclosure proceeding.
12 NRS 108.237(1). The lien claimant is also entitled to recover the costs of the suit. Because
13 the recoverable attorney fees and costs will continue to accrue through trial, Steppan will
14 present costs and attorney fees by post-trial motion.

15
16 **4. The Design Agreement does not make payment of the architect's**
17 **fee contingent on construction of the improvements on the**
18 **Property.**

19 The Design Agreement [Exhibit 6] provides for the architect's compensation in
20 Article 1.5.

21 § 1.5.1 For the Architect's services as described under Article 1.4,
22 compensation shall be computed as follows:

23 5.75% of the total construction cost including contractors profit and
24 overhead. Compensation will be billed monthly as a percentage complete
25 of each phase with the following assumptions: SD 20%, DD 22%, CD
40%, Bid/Negotiate 1% and CA 17%.

The Total Construction Cost of the project will be evaluated at the
completion of the project in order to determine final payment for basic
architectural services. Any amount over the original estimated Total

1 Construction Cost of approximately \$160,000,000 shall be paid for
2 architectural services based on the agreed upon 5.75% fee. Any amount
3 under the original estimated Total Construction Cost of approximately
\$160,000,000 shall be credited for architectural services based on the
agreed upon 5.75% fee....

4 Exhibit 6, page 9 [STEPPAN-007506]. By Addendum No. 1, the parties increased the
5 estimated Total Construction Cost from \$160 million to \$180 million. Exhibit 7, [STEPPAN-
6 007520]. The Addendum also clarifies that the abbreviations used in § 1.5 mean
7 Schematic Design, Design Development, Construction Documents, and Construction
8 Administration. Exhibit 7, § 1.5 [STEPPAN-007521].¹

9 The mechanics of this compensation scheme are clear: the Architect is entitled to
10 bill monthly for progress under each phase. Twenty percent of the overall fee is allocated
11 to Schematic Design. Therefore, completion of 50% of the Schematic Design phase entitles
12 the Architect to 10% of the overall fee (50% x 20% x Fee). Under the Design Contract,
13 once the construction is complete, the Architect's fee is increased or decreased based on a
14 difference between the cost estimates and the actual costs experienced. This reconciliation
15 is made in the Architect's final payment.

17 Iliescu argues that the Design Agreement makes the architect's right to collect any
18 part of the progress billing contingent upon completion of construction. The plain language
19 of the Design Agreement demonstrates the fallacy of this interpretation. The Design
20 Agreement specifies,

21 **§1.3.8.6** In the event of termination not the fault of the Architect, the
22 Architect shall be compensated for services performed prior to

23
24 ¹ These phases of work are described in detail in Article 2.4 of the Design Agreement.
25 Addendum No. 1 references the American Institute of Architect's Handbook of
Professional Practice to further define the work required under each p7521]hase.
Addendum No. 1, § 1.5.

1 termination, together with Reimbursable Expenses then due and all
2 Termination Expenses as defined in Section 1.3.8.7.

3 §1.3.8.7 Termination Expenses are in addition to compensation for the
4 services of the Agreement and include expenses directly attributable to
5 termination for which the Architect is not otherwise compensated, plus an
6 amount for the Architect's anticipated profit on the value of the services
7 not performed by the Architect.

8 Exhibit 6, page 8 [STEPPAN7505].² Clearly the Architect is entitled to be paid for work
9 performed before termination of the contract, even if the designed improvements are never
10 constructed. Further, in Addendum No. 1, the parties specifically provided for the
11 possibility that the development would not be built, providing that the Architect is to
12 receive the portion of fixed fee allocated to the work performed, whether or not the
13 improvements are ever built:

14 In the event that Owner chooses not to proceed with the construction of
15 the project, the fees associated with retaining said entitlements will be
16 paid as incurred in the due course of the project and will be applied to
17 aforementioned budgets as defined in the architects scope of work and
18 estimated value.

19 Exhibit 7, § 1.5.9.

20 Iliescu's proposed construction of the Design Agreement is contrary to the plain
21 language used by the parties and vetted by Hale Lane, joint legal counsel for both
22 Developer and Iliescu. If the parties had intended Iliescu's result, they could have easily
23 provided that the architect would not receive any fee unless and until the project was
24 completely constructed.

25 ² Steppan does not seek lost profits in this case, only the contract-specified fees for
the Schematic Design work and the additional work invoiced on an hourly basis.

1 **5. When a contract is unambiguous, the Court must give effect to the**
2 **language used by the parties and eschew “construing” the contract**
3 **based on custom or surrounding circumstances.**

4 In order to shoehorn its interpretation of the Design Agreement into this case,
5 Iliescu cites many cannons of contract construction. However, the rules of contract
6 interpretation are only useful when contracting parties have created an ambiguous
7 contract.

8 Under the parol evidence rule, the Court may not rely upon extrinsic evidence to
9 interpret a contract unless the contract contains ambiguities. *Margrave v. Dermody*
10 *Properties, Inc.*, 110 Nev. 824, 829, 878 P.2d 291, 294 (1994). The surrounding
11 circumstances are relevant only when the meaning is not clear from the contract itself. *See*
12 *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997). A contract is
13 ambiguous only if it is reasonably susceptible to more than one interpretation. *Agricultural*
14 *Aviation v. Clark County Board of Commissioners*, 106 Nev. 396, 398, 794 P.2d 710, 712
15 (1990).

16 The Design Agreement is certainly not ambiguous, and is not susceptible to the
17 interpretation proposed by Iliescu. The contract clearly provides that the architect will be
18 paid for the progress towards Schematic Design, whether or not the improvements are
19 ever constructed.

20
21 **6. The Court should refuse the proposed “industry custom” evidence**
22 **proposed by Iliescu.**

23 Iliescu does not merely propose an interpretation of the Design Agreement, but
24 further asserts that the “industry custom” is that a developer typically would not commit to
25 pay a fee based on the percentage of the anticipated construction costs until the developer

1 had arranged construction financing. This proposed evidence of industry custom would
2 directly contradict the express terms to which Steppan and Consolidated agreed.

3 Iliescu has not identified a witness to testify that Consolidated did not intend to pay
4 Steppan unless the improvements were built. On the other hand, it is undisputed that
5 Steppan and FFA billed for percentage completion of Schematic Design, that there was no
6 objection to the invoices, and that the parties intended to pay Steppan the entire lien
7 amount through the April 2007 escrow.
8

9 **7. Iliescu's interpretation of the Design Agreement is unreasonable**
10 **and inconsistent with the parties' conduct.**

11 Steppan contends that the Design Agreement is unambiguous, and therefore not
12 subject to interpretation. If the Court finds room for interpretation, it must prefer a
13 reasonable interpretation: "An interpretation which results in a fair and reasonable
14 contract is preferable to one that results in a harsh and unreasonable contract." *Dickenson*
15 *v. State, Department of Wildlife*, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994). It would
16 be unreasonable and harsh to interpret the Design Agreement to make payment of the
17 design fees contingent upon construction of the improvements. The architect's first task
18 was to develop a Schematic Design in support of an application to obtain development
19 entitlements. Steppan and FFA achieved this goal. Steppan and FFA had no control over
20 project financing or the decision to proceed with construction or abandon that process.
21

22 If the Design Agreement is ambiguous, the Court may also consider the parties' post-
23 contract conduct:

24 The best approach for interpreting an ambiguous contract is to delve beyond
25 its express terms and "examine the circumstances surrounding the parties'
agreement in order to determine the true mutual intentions of the parties."

1 This examination includes not only the circumstances surrounding the
2 contract's execution, but also subsequent acts and declarations of the parties.
3 *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003)(footnotes omitted; emphasis
4 added). Here, the Developer never objected to the lien claimant's invoices. When Iliescu
5 was about to close escrow in April, 2007, the parties indicated that Steppan's lien would be
6 paid. See Exhibits 98, 99, 106. There was no hint that Steppan would need to wait for
7 construction of the improvements before payment was forthcoming.

8 **8. Richard Johnson's knowledge is imputed to his principal, Iliescu.**

9 An agent's knowledge is imputed to the principal:

10 An agent's knowledge of matters within the scope of his or her authority is
11 imputed to the principal because it is presumed that such knowledge will be
12 disclosed to the principal for the principal's protection or guidance. In other
13 words, principals are presumed to have knowledge of all acts done and
14 declarations made by and to their agents when acting in relation to the
subject matter of the agency and within the scope of an actual or apparent
authority conferred.

15 3 C.J.S. Agency § 547. Iliescu engaged Richard Johnson as a real estate broker to market the
16 Property (and other land owned by Iliescu). Mr. Johnson dealt with the various developer
17 entities and individuals involved in the purchase of the Property. Johnson was involved in
18 the effort to obtain development entitlements for the Property. Mr. Johnson was,
19 effectively, Iliescu's eyes, ears, and mouth for many dealings that are germane to this
20 lawsuit. Therefore, Mr. Johnson's knowledge must be imputed to Iliescu.

21
22 **9. Hale Lane's knowledge is imputed to its clients, including Iliescu.**

23 The attorney-client relationship is likewise a agent-principal relationship so that the
24 attorney's knowledge is imputed to the client. *Atkeson v. T & K Lands, LLC*, 258 Or.App. 373,
25 309 P.3d 188 (2013); *Fitzgerald v. State ex rel. Adamson*, 987 S.W.2d 534 (Mo.App. 1999).

Further, “It has long been recognized that knowledge obtained by one member of a firm of lawyers is imputed to all the other members.” *Frazier v. Superior Court*, 97 Cal. App. 4th 23, 30, 118 Cal. Rptr. 2d 129, 134 (2002). Additionally, the attorney’s acts and omissions within the scope of the agency are regarded as the client’s acts or omissions. *Green v. Midland Mortgage Company*, 342 S.W.3d 686, 691 (Tex.App. 2011).

Hale Lane represented both Iliescu and the Developer with respect to the Property. See Exhibit 8 (December 14, 2005 waiver of conflict letter) and Exhibit 77 (January 17, 2007 waiver of conflict letter). Hale Lane drafted Addendum No. 3 to the Land Purchase Agreement, which included an indemnity against mechanics liens to protect Iliescu. Exhibit 71. Hale Lane studied the architectural design agreement proposed by Steppan, and made recommendations to Developer. Exhibits 10, 11, 12. Hale Lane drafted the December 8, 2006 Indemnity Agreement to protect Iliescu against Steppan’s lien. Exhibit 76. Hale Lane knew that the Developer engaged Steppan to provide architectural design to win development entitlements for the Property, and that knowledge is imputed to Iliescu.

10. By statute, the Developer is Iliescu’s agent.

NRS 108.22104 provides:

“Agent of the owner” means every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor or other person having charge or control of the property, improvement or work of improvement of the owner, or any part thereof.

The Land Purchase Agreement confers upon Consolidated Pacific Development, Inc. the right to seek development entitlements for the Property. See Addendum No. 3, ¶ 7 [Exhibit 71]. Further, Iliescu expressly authorized Sam Caniglia, a principal owner of Consolidated Pacific Development, to apply for development entitlements on behalf of

1 the Property owners. [Exhibits 35, 36] Thus, Consolidated fits squarely within the
2 definition of “Agent of the Owner.”

3 Sam Caniglia is also the individual who signed the Design Agreement [Exhibit 6],
4 Addendum No. 1 to the Design Agreement [Exhibit 7], and the letter agreements for
5 additional work [Exhibits 19, 20, and 21]. Therefore, for purposes of the lien statute, Mr.
6 Caniglia and Consolidated are “agents of the owner.” Caniglia’s knowledge is imputed
7 to Iliescu, and Caniglia’s action to engage Steppan to provide design services is binding
8 on Iliescu.
9

10
11 **11. Developer and Steppan are competent to fix the effective date of
their contract.**

12 Iliescu contends that the Design Agreement was signed on or about April 21, 2006,
13 and therefore could not control the architect’s compensation for work performed before
14 that signing. But the Design Agreement specifies that the effective date is October 31, 2005.
15 All of the evidence is that signing the Design Agreement was delayed by the lawyers’
16 review, and that the contracting parties always understood that the design fee would be
17 5.75 percent of the estimated construction cost.
18

19 The Court must enforce the effective date selected by the contracting parties:

20 We reiterate the long-standing observation of our courts that the date of
21 execution of a contract is not necessarily the date of the contract. “[I]t is
22 elementary that ordinarily a contract speaks from the day of its date,
23 regardless of when it was executed and delivered.” [] Illinois courts have
24 permitted the “relation back” theory of contract effectiveness: “that is,
25 contractual terms may be effective for a period before the contract is
executed, so long as such coverage is clear from the face of the contract.” []

1 *Asset Recovery Contracting, LLC v. Walsh Const. Co. of Illinois*, 2012 IL App (1st) 101226, 980
2 N.E.2d 708, 724 appeal denied, 982 N.E.2d 767 (Ill. 2013)(citations omitted). As the
3 Georgia Supreme Court summarized,

4 [T]he effective date of a contract is not the date of execution where the
5 contract expressly states that its terms are to take effect at an earlier date. "It
6 is elemental that contracting parties may agree to give retroactive effect... to
7 their contracts as they see fit. [] And, "[i]t is fundamental that where parties
8 to an agreement expressly provide that a written contract be entered into 'as
9 of' an earlier date than that on which it was executed, the agreement is
10 effective retroactively 'as of' the earlier date and the parties are bound
11 thereby ..." []

12 *Am. Cyanamid Co. v. Ring*, 248 Ga. 673, 674, 286 S.E.2d 1, 3 (1982)(citations omitted).

13 Summaries of Schedules

14 1. Exhibit 3, Steppan's Second Amended Notice and Claim of Lien, contains
15 schedules of invoices and payments received, and a recapitulation of the principal amounts
16 claimed.

17 2. Exhibit 5 is a schedule showing the computation of prejudgment interest.

18 3. Exhibits 24, 25, 26, 27, 28, and 29 contain invoices by project identification.

19 Each exhibit contains a summary schedule of the invoices within the exhibit.

20 Witnesses

21 Steppan expects to present testimony by the following witnesses:

22 Mark B. Steppan, AIA
23 7 Freelon Street
24 San Francisco, California 94107
25 (415) 762-8388

Rodney Friedman, FAIA
333 Bryant Street
San Francisco, CA 94107
(415) 435-3956

1 Brad Van Woert, AIA
2 1400 South Virginia Street
3 Reno, Nevada 89502
4 (775) 328-1010

5 John Iliescu, Jr. (subpoena)
6 100 North Arlington Avenue
7 Reno, Nevada 89501
8 Phone number unknown

9 Sonnia Iliescu (subpoena)
10 100 North Arlington Avenue
11 Reno, Nevada 89501
12 Phone number unknown

13 Richard Johnson (subpoena)
14 5255 Longley Lane, Suite 105
15 Reno, Nevada 89511
16 (775) 823-8877

17 David Snelgrove (subpoena)
18 Land Planomics
19 4225 Great Falls Loop
20 Reno, Nevada 89511
21 (775) 737-8910

22 Steppan will call the following witnesses if the need arises:

23 Maryann Infantino
24 First Centennial Title Company of Nevada
25 1450 Ridgeview Drive, Suite 100
Reno, Nevada 89519
(775) 689-8510

Susan Fay
7 Freelon Street
San Francisco, California 94107
(415) 762-8388

Gayle A. Kern
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
(775) 324-5930

Stephen C. Mollath
6560 SW McCarran Boulevard, Suite A
Reno, Nevada 89509
(775) 786-3011

Karen D. Dennison
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000

Craig Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000

Eugenia Kokunina
661 Sierra Rose Drive
Reno, Nevada 89511
(775) 954-2020

William G. Kimmel
1281 Terminal Way, Suite 205
Reno, Nevada 89502
(775) 323-6400

Lynette R. Jones
One East First Street, Second Floor
Reno, Nevada 89501
(775) 334-2032

Discovery Certification

Undersigned counsel certifies that all discovery has been completed.

Settlement Certification

Undersigned counsel certifies that, prior to filing this trial statement, he has personally met and conferred in good faith to resolve the case by settlement.

Motions in Limine

None. (This is a bench trial.)

Privacy Certification

Undersigned counsel certifies that this trial statement does not contain any social security numbers.

Dated December 4, 2013.

HOY CHRISSINGER KIMMEL



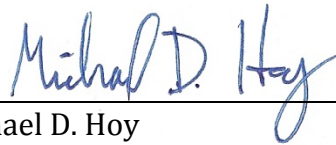
Michael D. Hoy
Attorneys for Mark B. Steppan

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an employee of Hoy Chrissinger Kimmel, PC and that on December 4, 2013 I electronically filed a true and correct copy of this Motion for Partial Summary Judgment with the Clerk of the Court by using the ECF system, which served the following counsel electronically: Gregory Wilson, Alice Campos Mercado, Thomas Hall, Stephen Mollath, David Grundy. I also hand-delivered a true and correct copy of this Motion for Partial Summary Judgment to:

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane
Reno, Nevada 89502

December 4, 2013.



Michael D. Hoy

Index to Exhibits

- 1 1 Proposed form of Judgment, Decree and Order for Foreclosure of Mechanics Lien

FILED
Electronically
12-04-2013:02:18:05 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4174965

Exhibit 1

Document Code:

**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.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related cross-claims and third-party
claims.

Judgment, Decree and Order for Foreclosure of Mechanics Lien

Based upon the pleadings, evidence, Findings of Fact, Conclusions of Law, Decision,
[and post-trial orders listed] herein,

IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff Mark B. Steppan shall take judgment on the Notice and Claim of Lien
recorded on November 7, 2006 as Document 3460499 in the official records of the Washoe
County Recorder, as amended by the Amended Notice and Claim of Lien recorded May 3,
2007 as Document 3528313, and as further amended by the Second Amended Notice and

1 Claim of Lien recorded November 8, 2013 as Document 4297751 for the following
2 amounts:

- 3 A. Principal (NRS 108.222)
- 4 B. Prejudgment Interest (NRS 108.237(2))
- 5 C. Attorney fees (NRS 108.237(1))
- 6 D. Costs (NRS 108.237(1))
- 7 Total
- 8 (the "Lienable Amount")

9

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

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

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

19 5. Pursuant to NRS 108.239(11), if the Net Sale Proceeds are equal to or exceed
20 the Lienable Amount, then the Lienable Amount shall be disbursed to Plaintiff Mark B.
21 Steppan, and the surplus shall be disbursed to Defendants John Iliescu, Jr. and Sonnia
22 Iliescu as trustees of the John Iliescu Jr. and Sonnia Iliescu Trust.
23
24
25

6. If the Net Sale Proceeds are less than the Lienable Amount, then all of the Net Sale Proceeds shall be disbursed to Plaintiff Mark B. Steppan. Within 30 calendar days after the sale, Steppan may by motion seek additional relief pursuant to NRS 108.239(12).

Dated December __, 2013.

Hon. Elliott Sattler,
District Judge

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346

Washoe County Case No. CV07-
00341

(Consolidated w/ CV07-01021)
Electronically Filed
May 12, 2016 04:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME III**

Appeal from the Second Judicial District Court of the State of Nevada
in and for the County of Washoe County
Case No. CV07-00341

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

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Counsel for Appellants

DOCUMENT INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
12	04/17/08	Applicants/Defendants' Motion for Partial Summary Judgment including Exhibits 2, 4, 5, 6, (first 24 pages of) 7, 10, 11, & (first 12 pages of) 12	II	AA0230-0340
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
23	07/11/13	Motion to Strike Jury or Limit Demand without Exhibits	III	AA0582-0586
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
32	12/06/13	Trial Stipulation	IV	AA0729-0735
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
	12/09/13	Trial Exhibit 1 [Original Lien Notice]		AA1730-1734
	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753
	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923
45	06/10/14	Hearing Brief Regarding Calculation of Principal and Interest	VIII	AA1924-1931

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
46	06/12/14	Minutes: Hearing on Final Amount Owed, Pursuant to the Order Filed on May 28, 2014 (Hearing Date - 06/12/14)	VIII	AA1932
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
64	06/23/15	Notice of Appeal By 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	X	AA2449-2453
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
68	12/16/15	Amended Notice of Appeal By 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	XI	AA2485-2489
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
		SUPPLEMENTAL DOCUMENTS¹		
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571

ALPHABETICAL INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
68	12/16/15	Amended Notice of Appeal By 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	XI	AA2485-2489
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
12	04/17/08	Applicants/Defendants' Motion for Partial Summary Judgment including Exhibits 2, 4, 5, 6, (first 24 pages of) 7, 10, 11, & (first 12 pages of) 12	II	AA0230-0340
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
45	06/10/14	Hearing Brief Regarding Calculation of Principal and Interest	VIII	AA1924-1931
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
46	06/12/14	Minutes: Hearing on Final Amount Owed, Pursuant to the Order Filed on May 28, 2014 (Hearing Date - 06/12/14)	VIII	AA1932
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
	12/09/13	Trial Exhibit 1 [Original Lien Notice]		AA1730-1734
	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
23	07/11/13	Motion to Strike Jury or Limit Demand without Exhibits	III	AA0582-0586
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnica Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnica Iliescu 1992 Family Trust Agreement	X	AA2449-2453
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624

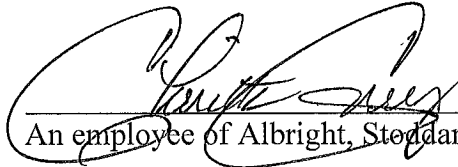
DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571
32	12/06/13	Trial Stipulation	IV	AA0729-0735

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME III**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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FILED

Electronically

05-22-2009:02:08:49 PM

Howard W. Conyers

Clerk of the Court

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Attorneys for Respondent 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.

Respondent/Plaintiff Mark Steppan ("Steppan"), by and through his counsel, replies to Applicants/Defendants' John Iliescu, Jr. and Sonnia Iliescu as Trustee of the John Iliescu, Jr. And Sonnia Iliescu 1992 Family Trust's, and John Iliescu ("Iliescu") (collectively "Defendants")

1 Opposition to Steppan's Cross-Motion for Partial Summary Judgment, and submits the following
2 Memorandum of Points and Authorities in support of his reply.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. INTRODUCTION

5 Steppan moved for partial summary judgment to foreclose on the mechanic's lien at issue
6 and raised several grounds upon which summary judgment in his favor is appropriate. Defendants
7 in opposition not only changed the issue but concomitantly failed to establish with either material
8 facts or law why the grounds raised by Steppan does not support a finding of summary judgment
9 in favor of Steppan.

10 Defendants acknowledged in two prior hearings and this Court agreed with no objection
11 from Defendants that the issue in this case "is simply whether or not the applicants [Defendants]
12 had actual knowledge that the respondent [Steppan] and the respondent's firm were performing
13 architectural services for the benefit of the real property which is the subject of the land purchase
14 agreement," Exhibit "3" to MSJ at 58. Defendants briefed the issue as such in their Motion for
15 Partial Summary Judgment ("Defendants' MSJ"). Despite these past actions, Defendants now have
16 come to the belated and erroneous conclusion that the purported issue is "what Steppan knew about
17 Iliescu and when he knew it." Plaintiff's Reply in Support of Motion for Partial Summary
18 Judgment and Opposition to Defendant's Cross-Motion for Partial Summary Judgment
19 ("Opposition"). That issue is not before this Court and is simply an effort to divert attention from
20 the conclusion that must be reached.

21 The only inference that can be drawn from this attempt at inserting a reward irrelevant
22 sissue is that Defendants cannot escape the indisputable conclusion that the facts and the law
23 support the following: Defendants had actual knowledge that Steppan performed architectural
24 services for the benefit of the Property and failed to file the required notice of nonresponsibility.
25 Even if this Court were to consider this new nonissue, it would still have to be resolved in favor
26 of Steppan where he has timely cured the alleged defects, except for the notice required under NRS
27 108.245, which is the only defect that cannot be cured. As to the NRS108-245 defect, *Fondren v.*
28 *K/L Complex*, supports a finding that Defendants' actual notice of the architectural services

provided for the benefit of the Property vitiates the notice requirement of NRS 108.245. *Id.*, 106 Nev. 705, 709 800 P.2d 719, 721 (1990),

Additionally, although Defendants had the opportunity in Defendants' MSJ and Opposition to provide an affidavit clearly and affirmatively stating that Iliescu did not know that architectural services were being provided for the benefit of the Property and that Iliescu never viewed any of the architectural drawings prior to the inception of this lawsuit to dispute David Snelgrove's statement that he recalls that Iliescu reviewed the architectural drawings at some point in time, they failed to do so. Iliescu's February 13, 2007 Affidavit is telling for what it does not specifically state and for its very specific choice of words.

Defendants bear the burden to record the requisite notice of nonresponsibility where they knew that architectural services were being provided for the benefit of the Property. The undisputed facts show that Defendants, in particular Iliescu, had such knowledge. The undisputed facts further show that Defendants' attorneys knew by no later than November of 2005 that BSC had retained Steppan's services for the benefit of the Property.

It remains undisputed that Defendants had information which would have led a reasonably prudent person to investigate the identity of the architects further. Defendants cannot forestall the entry of summary judgment in favor of Steppan in light of the prevailing facts and law.

II. DISCUSSION

A. The Issue Has Been and Remains as Follows: "Whether or not the [Defendants] had actual knowledge that [Steppan] and [his] firm were performing architectural services for the benefit of the real property which is the subject of the land purchase agreement." Exhibit "3" to MSJ at 58.

At the May 3, 2007 hearing on Defendants' Motion for Release of Mechanic's Lien, this Court stated the issue as "simply whether or not the [Defendants] had actual knowledge that [Steppan] and [his] firm were performing architectural services for the benefit of the real property which is the subject of the land purchase agreement." Exhibit "3" to MSJ at 58. Defendants did not object to the issue as phrased by this Court or offer any corrections. In fact, the majority of the arguments during this hearing were devoted to this very issue. *See generally id.*

1 In Defendants' MSJ, they recognized that at the February 22, 2008 mandatory pre-trial
2 conference all parties again agreed that "the issue of whether Defendants had actual knowledge
3 could be resolved by summary judgment." Defendants' MSJ at 5. They briefed only that issue in
4 Defendants' MSJ.

5 After receiving Steppan's Opposition to Motion for Partial Summary Judgment and Cross-
6 Motion for Partial Summary Judgment ("Steppan's Cross-Motion") and knowing their position is
7 precarious, Defendants belatedly and erroneously now contend that the purported issue is really
8 "what Steppan knew about Iliescu and when he knew it" and as such Steppan was allegedly
9 required to take the first step. Opposition at 3. In support of this nonissue, Defendants make a
10 number of irrelevant arguments.

11 Defendants initially state that "[m]echanic's lien statutes are enacted and construed to strike
12 a balance between the rights of workmen and materialmen who furnish labor and material for the
13 improvement of real estate against the unfairness arising from the foreclosure of mechanics liens
14 on property of unsuspecting owners" and cite a Minnesota case as well as a number of cases outside
15 of this jurisdiction. Opposition at 6 (emphasis added). As the undisputed facts clearly show,
16 Defendants do not qualify as "unsuspecting owners."

17 The Nevada Supreme Court has consistently held that Nevada's "mechanic's lien statutes
18 are remedial in character and should be liberally construed: that substantial compliance with the
19 statutory requirements is sufficient to perfect if the property owner is not prejudiced." *Las Vegas*
20 *Plywood & Lumber, Inc. D&D Enterprises*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982).
21 *Fondren*, 106 Nev. at 709, 800 P.2d at 721, makes clear that "knowledge that construction was
22 underway places the burden on [the owner] to file the notice of nonresponsibility." The cases
23 Defendants rely upon have no applicability as they are all outside of this jurisdiction. The one
24 Nevada case Defendants rely on for the proposition that substantial compliance requires a party
25 "to have at least attempted to satisfy each element in the statute" is not even a mechanic's lien case.
26 *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. Adv. Rep. 62, 191 P.3d, 1138, 1148
27
28

(2008).¹ Defendants rely on a case that involved a declaratory action challenging initiatives for the Education Enhancement Act, the Funding Nevada's Priorities Act, and the Taxpayer's Protection Act. *Id.*, 191 P.3d at 1138. Such misplaced reliance does not help Defendants.

Even if this Court decides to address the irrelevant issue belatedly and erroneously raised by Defendants, Steppan substantially complied with the requisite statutes. Defendants' arguments to the contrary are untenable.

NRS 108.226(6) provides that a lien may not be perfected and enforced unless the 15-day notice of intent to lien has been given with respect to the construction of a multi-family or single family residence. NRS 108.226(6). Subsection (7) provides that the provisions of subsection (6) "do not apply to the construction of any nonresidential construction project." NRS 108.226(7). The project involved a mix of commercial and residential. As such, the 15-day notice of intent to lien is not required. Despite this, Steppan complied with the requirement so that any alleged deficiency is irrelevant.

In fact, during the May 3, 2007 hearing, Steppan's counsel stated on the record that in her discussions with Defendants' counsel, both agreed that the real issue is the "NRS 108.245 pre-lien notice" because Steppan corrected any alleged defects under NRS 108.226(6) (even assuming it has any applicability) by serving a 15 Day Notice March 6, 2007 and an Amended Notice and Claim of Lien May 3, 2007. *See* Exhibit "3" at 15 to MSJ and 15 Day Notice and Amended Notice and Claim of Lien, collectively Exhibit "24" hereto. Thus, the only defect that cannot be corrected is the notice required under NRS 108.245. When provided with the opportunity to address Steppan's arguments at this hearing, Defendants' counsel did not dispute these representations. *See generally* Exhibit "3" at 44-58 to MSJ.

A review of the entire transcript from this hearing shows that Steppan, Defendants, and this Court correctly focused on the issue posed by the *Fondren* case: Did Defendants have actual notice

¹ It appears that this case discussed *Schofield v. Copeland Lumber*, which did involve a mechanic's lien. 101 Nev. 83, 692 P.2d 519 (1985). *Schofield* predated *Fondren* and involved a different issue (defects in the notice itself to the property owner). *Id.*, 692 P.2d at 519. That is not an issue before this Court. Defendants have not contended that the contents of the notice are somehow defective.

of the architectural services to be provided for the benefit of the Property to vitiate the notice requirement of NRS 108.245? *See generally id.* to MSJ. That is the issue before this Court.

B. Mechanic's Lien Law Is Remedial in Nature and Should Be Liberally Construed.

In opposition, Defendants do not dispute that the Nevada Supreme Court has consistently held that the state's mechanic's lien law is remedial in nature and should be liberally construed. They could only argue that lien statutes should not be construed to condone an alleged failure to comply with essential elements of the statute and failed to cite to even one applicable Nevada case directly on point to support their position.

Nor do Defendants dispute the legislative history regarding the Nevada Legislature's 2005 amendments to the mechanic's lien statutes where the minutes show that the intent and purpose of Nevada's mechanic's lien statutes is to "get people paid." *See* Exhibits "17" and "18" to Steppan's Cross-Motion. As the 2003 legislative history reveals, the burden is on disinterested owners, such as Defendants, to file a notice of nonresponsibility as soon as they become aware that any work is being performed on their property. Exhibit "17" at 8 to Steppan's Cross-Motion.

The 2003 legislative history is consistent with the Nevada Supreme Court's holding and reasoning in *Fondren*. 106 Nev. at 705, 800 P.2d at 719. To date, Defendants have yet to file a notice of nonresponsibility.

C. Iliescu Had Actual Knowledge of the Architectural Services to Be Provided for the Benefit of the Property.

1. Even Assuming Defendants Allegedly Did Not Know the Identity of Steppan and/or Fisher Friedman Associates, Defendants Had Information Which Would Have Led a Reasonably Prudent Person to Investigate Further.

Although the undisputed facts show the contrary, Defendants continue to maintain incorrectly that Iliescu allegedly had no actual knowledge of the architectural services to be provided for the benefit of the Property. Without a supporting affidavit, Defendants contend that "[i]t cannot be assumed that Iliescu would know that Steppan would or could assert a lien for services performed before the contract became binding on the parties . . ." and rely on paragraph 31 of the Agreement. Opposition at 4.

Paragraph 31 actually undermines Defendants' position. The express language of that paragraph undeniably shows that Defendants anticipated that there would and could be possible liens for services performed on the Property by as early as July of 2005: "Buyer shall indemnify, defend and hold Seller harmless from any lien, . . ." Exhibit "1" at 12 to MSJ. Ilescu is a sophisticated business man who deemed it necessary and prudent to retain one of the largest law firms in Nevada to represent Defendants in these transactions and to ensure that Defendants' interests are protected. On December 8, 2006, Defendants affirmed this provision by entering into an indemnity agreement with BSC.

In summary, the undisputed facts show the following:

1. On July 14, 2005, Defendants received an offer from CPD wherein CPD specifically informed them that architects are ready to start work. Exhibit "13" to Steppan's Cross-Motion.
2. On July 29, 2005 Defendants entered into a contract with CPD for the sale of the Property and paragraph 31 of the Agreement reveals that in the event liens are filed on the Property, the Buyer would indemnify Defendants. Exhibit "1" at 12 to MSJ.
3. After executing the Agreement, Defendants retained Hale Lane to represent them in connection with the sale and development of the Property.
4. On November 14, 2005 and November 29, 2005, Defendants' attorney reviewed, commented and revised a draft of the agreement between BSC and Steppan. Exhibit "15" and "22" to Steppan's Cross-Motion.
5. On January 17, 2006, Defendants executed "Owner Affidavits". The third page of this application identified certain parties, including Fisher Friedman Associates as the person to contact regarding the application. Exhibit "12" to MSJ.
6. The January 17, 2006 application included architectural drawings and identified Steppan as the architect and Fisher Friedman Associates as the architectural design consultant. *Id.*
7. Although the architectural drawings reflect dates of April 7, 2006, May 24, 2006, and June 1, 2006, Exhibit "10" to MSJ, David Snelgrove recollects that Ilescu saw

these drawings at some point in time. Exhibit "10" ¶ 7 to MSJ; *see also* Exhibit "2" at 31-32 to Opposition. Consistent with Mr. Snelgrove's recollection is Steppan's testimony that architectural drawings were available for viewing at the time Defendants signed the owner affidavits. *See* Exhibit "1" at 44 to Opposition.

8. Defendants had not one but several opportunities to provide statements in an affidavit to dispute this fact but failed on all occasions to do so. Iliescu had an opportunity to provide an affidavit in Defendants' MSJ and Opposition stating that he had never seen any of these architectural drawings until the inception of this case and declined to do so. Instead, Defendants could only argue, without a supporting affidavit, that Iliescu could not have seen these drawings in January of 2006 because of the April, May and June, 2006 dates on them. Additionally, nothing in Iliescu's February 13, 2007 affidavit makes any of the necessary showing.
9. The only conclusion that can be drawn from these undisputed facts is that Iliescu viewed the architectural drawings at some point in time before the instant action. Such a conclusion is consistent with Mr. Snelgrove's testimony. Exhibit "2" at 31-32 to Opposition (drawings were available for viewing in January of 2006 when Iliescu signed the Owner Affidavits and Ms. Snelgrove remembers that Iliescu saw them); *see also* Exhibit "10" to MSJ.
10. Iliescu attended two public meetings where the design team presented the proposed project. Exhibit "4" ¶ 7 to MSJ. The very first slide of the presentation specifically identified Steppan as the architect and Fisher Friedman Associates as the design consultant. Exhibit "7" to MSJ.

An analysis of Iliescu's February 13, 2007 Affidavit is extremely revealing for what it does not specifically state and for its specific choice of words.

1. Although Iliescu may "not have been aware of whether or not BSC had retained a design team . . . and [sic] was never notified of the identity of BSC's design team," Iliescu did not state that he did not know that architects and engineers would be retained for the Project (indeed, the facts show that he must have known that CPD

would be retaining architects and engineers for the Project). Exhibit "3" ¶ 4 to MSJ (emphasis added).

2. Although Iliescu "attended two public meetings at which BSC's design team made a presentation . . . [and he] was not at any time introduced to any of the architects or engineers involved," Iliescu did not state that he did not see the first slide of the presentation or knew that architects and engineers had been hired for the Project. *Id.*
3. Although Iliescu has "never met Mr. Steppan, nor was [he] aware that [Steppan] was performing any work relative to the Property," Iliescu never stated that he did not know that architects would be hired for the Project. *Id.* ¶ 6.
4. Although Iliescu stated that his "review of the recorded lien was the first knowledge [he] had of the identity of any architect working on this property," he very carefully and intentionally did not state that he was not aware that architects had been hired. *Id.*

Iliescu's February 13, 2007 Affidavit and the chronology of events undeniably show that he knew that architectural services were necessary and would be provided for the benefit of the Property from the inception of the Agreement. These facts in addition to Hale Lane's actual knowledge that BSC had retained Steppan by November of 2005 undermines Defendants' argument that Steppan had completed the bulk of his work before Defendants knew that BSC was involved.

Although Defendants could have provided affidavits affirmatively stating that they never viewed the architectural drawings when they executed the owner affidavits in January of 2006 and that they absolutely had no knowledge that architectural services were provided for the benefit of the Property, they failed to do so. Instead, they direct this Court, in a footnote, to the deposition transcripts of Steppan, Mr. Snelgrove and Richard Johnson to support their claim that Defendants could not have had any actual knowledge. It is clear that these three individuals cannot testify as to what exactly Defendants actually knew or viewed. Such testimony would be pure speculation on the part of these deponents. For example, the fact that Steppan has never met Defendants does

1 not mean that Defendants did not know that architectural services were provided for the benefit of
2 the Property.

3 In light of these undisputed facts and *Fondren*, the only conclusion that can be reached is
4 that Defendants had actual knowledge of the architectural services provided for the benefit of the
5 Property and failed to record the required notice of nonresponsibility. *Fondren*. 106 Nev. at 705,
6 800 P.2d at 719. Iliescu could only state in his February 13, 2007 Affidavit that he did not know
7 the identity of the architects or that BSC had hired architects (the affidavit did not state that Iliescu
8 was not aware of whether or not BSC or CPD had retained a design team). As in *Fondren*, the fact
9 that Defendants may not have known about the specific names of the architects and designers
10 "misses the point." *Id.* at 709, 800 P.2d at 721.

11 Defendants knew that the buyers had to retain architects and designers as part of the
12 Agreement and this knowledge placed upon Defendants the burden to file the notice of
13 nonresponsibility. *Id.*, 800 P.2d at 721. It is inconceivable that Defendants would have this Court
14 believe that the Project could be developed without a team of architects and designers. Once
15 Defendants knew that architects and designers were working on the Project, they cannot remain
16 silent and disclaim all liability.

17 Since *Fondren*, the Nevada Legislature has made it even more difficult for owners to escape
18 liability. The statutes were amended and placed a much more onerous burden on them when filing
19 a notice of nonresponsibility. Defendants cannot, and do not, dispute this.

20 Defendant could only argue and cite to cases outside of this jurisdiction to support their
21 conclusion that imputed or substitutionary knowledge is purportedly insufficient. *Ryan v. Grayson*
22 *Serv. (In re Rincon Island Ltd. Partnership)*, involved a bankruptcy case regarding California's oil
23 and gas lien statutes. 253 B.R. 880 (Bankr. C.D. Cal. 2000). *In re Smith*, is a bankruptcy case
24 involving a hospital's adversary proceeding to recover unpaid medical expenses. 119 B.R. 714
25 (Bankr. D. N.D. 1990). *Comstock & Davis, Inc. v. G.D.S. & Assoc.*, involved the issue of whether
26 lienholders had actual knowledge of a preexisting mortgage so that the bank's mortgage was
27 superior to that of the lienholders. 481 N.W.2d 82 (Minn. Ct. App. 1992).
28

1 *Master Asphalt Co. v. Voss Construction Co.*, appears to be the only case that involves a
2 somewhat similar issue to the present one. 535 N.W.2d 359 (Minn. 1995). In that case, the issue
3 was whether or not a lessor should be responsible for liens that resulted from improvements the
4 lessee made to the lessor's property. *Id.* The lease agreement at issue there specifically stated that
5 the lessee was not authorized to commence improvements on the leased property. *Id.* Additionally,
6 the court applied Minnesota mechanic's lien statutes and concluded that a lessee is generally not
7 considered an agent of the lessor within the contemplation of the mechanic's lien statute. *Id.*

8 In contrast, Nevada's mechanic's lien statute NRS 108.22104 provides that "an agent of the
9 owner" includes a "lessee" who has "charge or control of the property." NRS 108.22104. While
10 the Minnesota case appears to address a similar issue, it lends Defendants no support whatsoever
11 in light of Nevada's specific mechanic's lien statutes and *Fondren*. Simply put, the cases relied
12 upon by Defendants have absolutely no applicability in light of *Fondren*.

13 In *Fondren*, Fondren knew that the tenant intended to remodel. *Id.* at 708, 800 P.2d at 721.
14 Similarly, Defendants knew that the buyer intended to build a condominium commercial project
15 and that the buyers had architects and engineers ready to start work.

16 Both Fondren and the tenant understood that substantial remodeling would be required
17 when the lease was negotiated. *Id.* at 709, 800 P.2d at 721. Similarly, both Defendants and the
18 buyer knew that the buyer intended to build a condominium project when the purchase agreement
19 was negotiated and that architectural and engineering services would be required.

20 The tenant apprized Fondren on the progress of the remodel and she approved specific
21 construction activities. *Id.*, 800 P.2d at 721. In the present case, the record shows that Iliescu
22 viewed the architectural drawings and attended two planning commission meetings where the
23 design team presented the proposed project.

24 Fondren's attorney regularly inspected the progress of the remodeling efforts. *Id.*, 800 P.2d
25 at 721. Defendants' attorney actually reviewed, commented on and revised the contract between
26 BSC and Steppan. *Fondren* is directly on point and Defendants failed to demonstrate otherwise.

27 Where the court in *Fondren* concluded that she had actual knowledge of the work
28 performed and this knowledge satisfied the notice requirement of NRS 108.245, this Court should

1 likewise hold that Defendants had actual knowledge of the architectural services provided for the
2 benefit of the Property. *Id.*, 800 P.2d at 721. Nothing in the record shows that Defendants had
3 absolutely no knowledge that architectural services were provided for the benefit of the Property.

4 **2. Defendants Reaped the Benefits of Steppan's Services.**

5 Steppan's services bestowed upon Defendants a benefit to the Property and they recognized
6 this benefit: "The architectural schematic drawings were necessary to obtain the land use
7 entitlements for the Project. The land use entitlements were approved by the City of Reno." Exhibit "20" ¶ B to Steppan's MSJ. Without the benefit of Steppan's architectural schematic
8 drawings, no entitlement exists to build the Project within the scope as approved.
9

10 There is no doubt that the approval process that resulted in entitlements to the Property
11 created significant value in the Property prior to any construction. Defendants do not dispute this.
12 They could only contend that in light of the economy, it is unlikely that a developer would want
13 to step in at this point in time to develop the Project. Opposition at 11.

14 By virtue of this argument, it is clear that Defendants acknowledge that the entitlements
15 have resulted in a benefit to the Property but for the fact of the slow economy it is unlikely that the
16 Project would be developed in the near future. The fact of the matter remains that the Property has
17 been enhanced by the approvals obtained through the zoning process. The slow economy does not
18 and should not excuse Defendants from their obligation and duty to file the required notice of
19 nonresponsibility. The slow economy is not an exception to excuse an owner's failure to file one.

20 Defendants further incorrectly argue that prejudice is allegedly present because a developer
21 gambled with the Property and walked away from the failed transaction and filed bankruptcy
22 leaving Defendants with nothing. Opposition at 10. This argument could possibly have some teeth
23 if Defendants could concomitantly show that they had absolutely no idea whatsoever what the
24 developer would be doing prior to the close of escrow.

25 The undisputed facts show that they have not and cannot make this showing. Defendants
26 knew architects were required in order for escrow to close. Armed with this knowledge and in an
27 effort to avoid liability for possible liens that could be asserted, Defendants even negotiated an
28 indemnity provision as part of the Agreement with CPD. At some point in time prior to the

1 inception of this lawsuit, Defendants viewed the architectural schematic drawings. In addition to
2 viewing the architectural schematic drawings, Defendants attended two planning commission
3 meetings where the design team presented the proposed project. Defendants were intimately aware
4 of the Project and its components and were actively involved. In light of these facts, it would be
5 extremely difficult for this Court to conclude that Defendants entered into an agreement with a
6 developer who “gambled” with the Property. Additionally, the failed transaction did not leave
7 Defendants with nothing, Defendants now have the entitlements to the Property.²

8 Lastly, Defendants attempt to distinguish *Duffield Construction, Inc. v. Baldwin*, 679
9 N.W.2d 477 (S.D. 2004), and *Thirteenth Street Corp. V. A-1 Plumbing & Heating Co.*, 640 P.2d
10 1130, 1136 (Colo. 1982), on the grounds that the owners in these two cases personally observed
11 some work being performed on the respective properties. These attempts are unavailing where it
12 is undisputed that Defendants knew that architects were required, personally viewed the
13 architectural drawings some time prior to the inception of this case, and attended two planning
14 commission meetings where the architects presented the proposed project.

15 In any event, Steppan relied on these two cases to support this Court’s statement that “[t]he
16 more you know, the greater your responsibility is.” Exhibit “3” at 17 to MSJ. Defendants have yet
17 to persuade this Court with any compelling facts or law as to why they had no responsibility to
18 investigate further in light of the facts in this case.

19 While Defendants may view the fact that payment of the lien is “prejudicial” to them, this
20 is not the “prejudice” contemplated by the case law in this jurisdiction. If that were the case, then
21 owners would never have to pay lien claimants as all such payments would involved financial
22 prejudice.

23 **3. Hale Lane’s Knowledge of the Identity of the Architectural firm Retained by**
24 **BSC Should be Imputed to Defendants.**

25 Defendants do not dispute the fact that Hale Lane knew the identity of the architectural firm
26 retained by BSC and failed to inform Defendants of this salient information. Nor do Defendants

27 ² During the course of this case, the Defendants extended the entitlements because
28 of their value.

1 dispute the legal discussion set forth in Steppan's Cross-Motion to support Steppan's argument that
2 Hale Lane's knowledge of the identity of the architectural firm retained by BSC should be imputed
3 to Defendants.

4 In a feeble effort to address this argument, Defendants could only make three irrelevant
5 contentions. First, Defendants contend that if it were not for Defendants' claim against Hale Lane,
6 the communications between Sarah Class to BSC regarding its contract with Steppan would not
7 have been produced and remained protected by the attorney-client privilege and that information
8 contained in confidential communications between an attorney and client are protected and should
9 not be shared with another client. Defendants could only offer one case in support of this first
10 argument, *Charleston Library Soc. v. Citizens & So. Nat'l Bank*, 23 S.E.2d 362 (S.C. 1942).

11 This case did not involve a situation where an attorney represented two clients - a dual
12 representation case in other words. *Id.* In that case the issue was whether an attorney's knowledge
13 could be imputed to the third party of which he was a trustee. *Id.* In response to this particular
14 issue, the court held that "notice to any attorney received while acting in and about his client's
15 business, is not notice to a third party or corporation of which such attorney happens also to be an
16 officer or director." *Id.* at 369. In any event, it is unclear how the identity of the architectural firm
17 hired by BSC qualifies as a confidential communication.

18 In Defendants' second argument, they ask this Court to excuse them from having to file a
19 notice of nonresponsibility due to their attorney's negligence in simultaneously representing
20 conflicting interests and due to their attorney's negligence in failing to protect them adequately
21 from the liens. Defendants waived any potential conflict when they signed an "Acknowledgment
22 of Waiver of Conflict" in December of 2005. Exhibit "23" to Steppan's Cross-Motion.

23 It is unclear why Steppan should bear the financial responsibility for Defendants' poor
24 decision in signing this waiver and allowing their counsel to represent an alleged conflicting
25 interest. It is also unclear why this Court should absolve Defendants of their duty to file a notice
26 of nonresponsibility due to their poor decision in signing this waiver and their attorney's alleged
27 negligence.
28

1 Steppan should not be prejudiced by Defendants' poor decision in signing the waiver and
2 from the negligence of their counsel. Defendants' waiver of the conflict and the negligence of their
3 counsel are issues between Defendants and Hale Lane. Steppan should not be dragged into that
4 dispute. Defendants have recourse against Hale Lane as evidenced by their lawsuit against the
5 firm. The issue in this case is whether Defendants knew that architectural services were being
6 provided for the benefit of the Property and failed to file a notice of nonresponsibility. The issue
7 of whether or not Hale Lane committed malpractice by failing to advise Defendants to file such a
8 notice is not for this Court to decide in Steppan's Cross-Motion. Nor is the issue of whether it was
9 prudent for Defendants to sign a waiver of conflict one for this Court to decide either.

10 Lastly, Defendants' attempts to forestall the entry of summary judgment in favor of Steppan
11 by stating that the question of whether Hale Lane had information in mind about Steppan when it
12 acted on Defendants' behalf is one of fact that cannot be resolved by summary judgment. This
13 argument makes absolutely no sense in light of the applicable law and facts cited in Steppan's
14 Cross-Motion.

15 The cases relied upon by Defendants show that notice of the identity of the architectural
16 firm acquired by Defendants' counsel is notice to Defendants. Defendants and BSC are chargeable
17 with notice of all facts, which are not confidential, Hale Lane acquires in the process of its dual
18 representation. Defendants have not and cannot show otherwise.

19 **D. The Participating Owner Doctrine Should Apply in this Case.**

20 Defendants make a number of arguments in their attempt to urge this Court not to apply the
21 participating owner doctrine. Defendants contend that unlike the lessor and lessee relationship,
22 BSC was required to assume all the costs of the development and as such if BSC failed to obtain
23 the approval or financing, Defendants would be left with the financial burden of a failed project
24 he did not initiate or control. It is unclear how this fact is unlike the lessor and lessee cases where
25 the lessees were required to assume the costs involved in making the improvements to the leased
26 property. In those cases, the lessors were left with the financial burdens of failed improvement
27 projects that they did not initiate or control either.
28

1 Defendants argue that unlike the lessees in the lessor and lessee cases, BSC had no
2 equitable interest in the Property until the zoning approval condition was met. This argument
3 ignores the undisputed fact that the Property remained in escrow until BSC obtained certain
4 governmental approval.

5 These arguments are untenable in light of NRS 108.22104. That statute defines "an agent
6 of the owner" for purposes of the mechanic's lien statutes:

7 "Agent of the owner" means every architect, builder, contractor, engineer,
8 geologist, land surveyor, lessee, miner, subcontractor or other person having charge
9 or control of the property, improvement or work of improvement of the owner, or
any part thereof.

10 NRS 108.22104 (emphasis added). In this case, it is clear the CPD and BSC had control of the
11 Property by virtue of paragraph 31 of the Agreement. This definition undeniably supports the
12 argument for the application of the participating owner doctrine under the specific facts of this case.

13 Defendants cite two cases for the proposition that the participating owner doctrine should
14 not apply, *Centerbrook, Architects & Planners v. Laurel Nursing Services, Inc.*, 620 A.2d 127
15 (Conn. 1993), and *Tuttle & Associates v. Gendler*, 467 N.W.2d 881 (Neb. 1991). These two cases
16 lend Defendants no support.

17 In *Centerbrook, Architects & Planners*, the court noted that prior case law applying
18 Connecticut's mechanic's lien statutes specifically stated that an owner's knowledge that work is
19 being performed does not subject the property to a mechanic's lien. 620 A.2d at 132. "[A]
20 landowner does not subject his property to a mechanic's lien by simply allowing work to be done
21 on it." *Id.* (quoting *Hall v. Peacock Fixture & Elec. Co.*, 474 A.2d 1100 (1984)). In light of
22 *Fondren*, the Connecticut case applying Connecticut law has no applicability.

23 In *Gendler*, the court found that the owner was never shown any of the documentation
24 reflecting the engineering services provided by the lien claimants and that the owner was not even
25 aware that the lien claimants existed prior to the action. 467 N.W.2d at 885. In stark comparison
26 to this matter, the undisputed facts show the following (1) Iliescu at some point in time prior to
27 the instant case viewed the architectural schematic drawings; (2) Defendants attended two planning
28 commission meetings where they viewed the proposal for the Project that was presented by the

1 architectural design team; and (3) Defendants were fully aware of the existence of architects and
2 that they would be required in order for BSC to obtain the necessary permits. *Gendler* has no
3 applicability by virtue of these important distinguishing facts.

4 Similar to *Fondren* where the lessor knowingly permitted the work to be performed on the
5 leased property pursuant to the direction of the lessee, the court in *Wanzer v. Smorgas-Brickan*
6 *Developers, Inc.*, held that the vendors of property could not escape the effects of liens filed against
7 the property when the vendees went bankrupt and failed to pay for the improvements on the
8 premises where the evidence showed that the vendors knowingly permitted the work to be
9 performed and failed to record something comparable to Nevada's notice of nonresponsibility. 264
10 N.E.2d 435, 438 (Ill. Ct. App. 1970). The court concluded that the vendors could not sit by in
11 ignorance of the work being performed on the property. *Id.*

12 Also similar to *Fondren*, the court further concluded that the evidence revealed that the
13 vendors had knowledge that the improvements to be made on the property were necessary prior to
14 the execution of the Agreement for Deed and that the vendor's agent had actual knowledge of this
15 as well. *Id.* at 437-38. "Even if the owners did not have actual knowledge, the knowledge of Mr.
16 Levis, the owner's agent is binding on the owners." *Id.* at 438. The court concluded that "[t]his
17 knowledge is not based on the agent's authority but on his knowledge and his duty to communicate
18 that knowledge to the owners." *Id.* Likewise, even assuming Defendants did not have actual
19 knowledge, Hale Lane did and Hale Lane's knowledge is binding on Defendants. This knowledge
20 is not based on Hale Lane's authority but on Hale Lane's knowledge and its duty to communicate
21 that knowledge to Defendants.

22 III. CONCLUSION

23 Defendants cannot escape the fact that *Fondren* remains good law and is directly on point.
24 The facts of this case are analogous to *Fondren*. Defendants knew that architectural services were
25 provided for the benefit of the Property and even anticipated that liens would be filed on the
26 Property prior to the close of escrow. Defendants also viewed the architectural drawings prior to
27 the instant case and attended meetings where the architectural design team presented the proposed
28 project. Armed with this knowledge, they cannot pull the wool over their eyes and escape liability.

1 Even assuming that they may not have known of the specific identity of the architect, *Fondren* tells
2 us that Defendants bore the burden of filing the nonresponsibility.

3 In any event, the compelling law and facts make clear that Defendants had actual
4 knowledge that BSC retained Steppan by as early as November of 2005 by virtue of Hale Lane's
5 knowledge. In a dual agent situation, the law dictates that knowledge of the dual agent is imputed
6 to both principals. Defendants have not shown by any compelling facts or law why this rule does
7 not pertain to them or how the identity of the architect retained by BSC constitutes confidential
8 information. Accordingly, partial summary judgment in favor of Steppan should be granted.


9 **AFFIRMATION**

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

11 The undersigned does hereby affirm that the preceding document, **MARK B. STEPPAN'S**
12 **REPLY TO OPPOSITION TO CROSS-MOTION FOR PARTIAL SUMMARY**
13 **JUDGMENT**, filed in the above-entitled case does not contain the social security number of any
14 person.

15 Dated this 22 day of May, 2009.

16 GAYLE A. KERN, LTD.

17 
18 GAYLE A. KERN, ESQ.
19 Attorneys for MARK STEPPAN
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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:

**MARK B. STEPPAN'S REPLY TO OPPOSITION TO CROSS-MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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:

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DATED this 22nd day of May, 2009.


AMBER A. GARREEL

INDEX OF EXHIBITS

MARK B. STEPPAN'S REPLY TO OPPOSITION TO CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Exhibit No.	Exhibit Description	No. of Pages in Exhibit
24	15-Day Notice and Amended Notice and Claim of Lien	8

EXHIBIT “24”

FILED
Electronically
05-22-2009:02:08:49 PM
Howard W. Conyers
Clerk of the Court
Transaction # 789096

EXHIBIT “24”

AFFIDAVIT OF MAILING

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Amy Hartley, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, and is an employee of Gayle A. Kern, Ltd, 5421 Kietzke Lane, Suite 200, Reno, Nevada. Affiant received the attached 15 Day Notice of Intent to Claim Lien, and on the 7th day of March, 2007 deposited in the United States mail at Reno, Nevada, a copy of the 15 Day Notice of Intent to Claim Lien, enclosed in a sealed envelope and sent by certified mail, return receipt requested, and first class mail, both fully prepaid, addressed to:

John and Sonnia Iliescu
200 Court Street
Reno, NV 89501
VIA CERTIFIED MAIL NO. 7006-3450-0000-0458-8776

John and Sonnia Iliescu
219 Court Street
Reno, NV 89501
VIA CERTIFIED MAIL NO. 7006-3450-0000-0458-8769

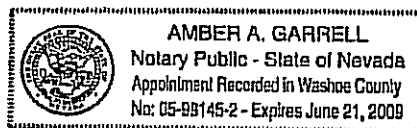
John and Sonnia Iliescu
260 Island Ave.
Reno, NV 89501
VIA CERTIFIED MAIL NO. 7006-3450-0000-0458-8752

John and Sonnia Iliescu
c/o Michael Morrisson, Esq.
1495 Ridgeview Drive
Reno, NV 89509
VIA CERTIFIED MAIL NO. 7006-3450-0000-0458-8745


AMY J. HARTLEY

SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2007.


NOTARY PUBLIC



SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John and Sonnia Iliescu
219 Court Street
Reno, NV 89501

2. Article Number

(Transfer from service label)

7006 3450 0000 0458 8769

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Stanary

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/8/07

D. Is delivery address different from Item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John and Sonnia Iliescu
260 Island Ave.
Reno, NV 89501

2. Article Number

(Transfer from service label)

7006 3450 0000 0458 8752

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Stanary

☒ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/8/07

D. Is delivery address different from Item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <i>X Hanary</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>John and Sonnia Iliescu 200 Court Street Reno, NV 89501</p>		<p>B. Received by (Printed Name) <i>X Hanary</i></p>	<p>C. Date of Delivery 3/8/07</p>
		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7006 3450 0000 0458 8776</p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <i>X J. Morrison</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>John and Sonnia Iliescu c/o Michael Morrison, Esq. 1495 Ridgeview Drive Reno, NV 89509</p>		<p>B. Received by (Printed Name) <i>J. Morrison</i></p>	<p>C. Date of Delivery 3/8/07</p>
		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7006 3450 0000 0458 8745</p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

COPY has not been compared
with the Original Document - WCFI

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

Recording Requested by:
Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

When Recorded Mail to:
Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

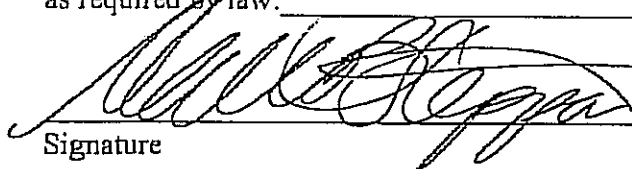
3528313
05/03/2007 11:32:12 AM
Requested By
GAYLE A KERN
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$18.00 RPTT: \$0.00
Page 1 of 5

CONFORMED COPY

AMENDED NOTICE AND CLAIM OF LIEN

☒ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: _____ (state specific law)


Signature

AIA, CSI, NCARB
Title

Mark Steppan

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030, Section 4.

This cover page must be typed or printed in black ink.

When Recorded Mail To:

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

APNs: 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

AMENDED 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), for a total principal balance of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FORTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85) 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 as of April 19, 2007, is the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), 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 as of April 19, 2007, the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), 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.

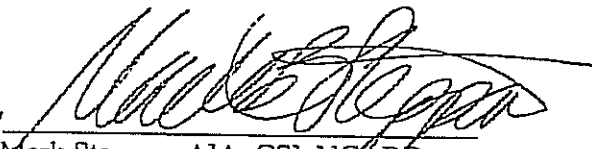
EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

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

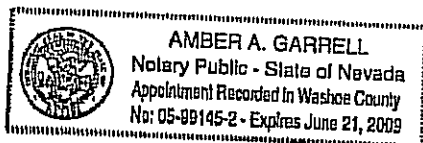
8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.


DATED: This 3rd day of May, 2007.

By 
Mark Steppan, AIA, CSI, NCARB

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on May 3rd, 2007 by Mark Steppan, AIA, CSI, NCARB.




NOTARY PUBLIC

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 Respondent.
15 _____/

16 AND ALL RELATED MATTERS.
17 _____/

ORDER

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

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

28 //

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

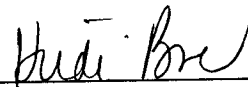
I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 12 day of June, 2009, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

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

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,

NOTICE OF ENTRY OF ORDER

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.

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

AA0512

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

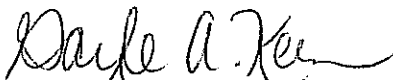
2 **AFFIRMATION**

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

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

INDEX OF EXHIBITS

Exhibit No.	Exhibit Description	No. of Pages in Exhibit
1	Order filed 6-22-09	4

ORIGINAL

FILED

2011 SEP -6 AM 9:42

HOWARD R. CONYERS
BY jt White
DEPUTY

Code 1580

Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 10

v.

Consolidated with:

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

Case No.: CV07-00341

Dept. No.: 10

Defendants.

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

DEFENDANT ILIESCUS' DEMAND FOR JURY TRIAL

TO: Clerk of the above-captioned Court.

Defendants John Iliescu, Jr., and Sonnia Iliescu,
individually, and as Trustees of the John Iliescu, Jr. and
Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through

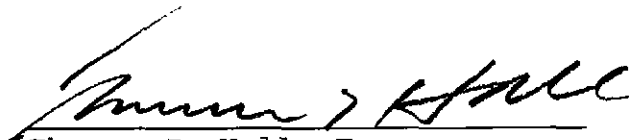
1 their counsel Thomas J. Hall, Esq., hereby demand that a trial
2 of the above-entitled action be heard before a jury.

3 Tender is herewith made of the sum of \$320.00 for the first
4 day of trial jury fees.

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

9 DATED this 3rd day of September, 2011.

10 LAW OFFICES OF THOMAS J. HALL
11

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Law Offices of Thomas J. Hall, and that on this date I 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:

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DATED this 6th day of September, 2011.


Misti A. Hale

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Attorneys for: 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;
JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU
as trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST

Applicants,

v.

MARK B. STEPPAN,

Respondent.

Case No. CV07-00341

Dept. No. B6

Consolidated with:

Case No. CV07-01021

Dept. No. B6

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

Motion for Partial Summary Judgment

Mark B. Steppan ("Steppan" or "Lien Claimant") moves for partial summary judgment on this point: Where, as here, the Lien Claimant's compensation is fixed by an express contract,

1 the lien secures the amount specified in the contract. NRS 108.222(1)(a). As a matter of law,
2 the secured amount is not equal to either a subjective value to the landowner or a hypothetical
3 market value for the services rendered.

4 This motion is based upon the following Memorandum of Points and Authorities,
5 attached declarations and exhibits, all pleadings and papers before the Court, and any further
6 evidence and arguments received by the Court in support of the motion.
7

8 **Memorandum of Points and Authorities**

9 **Introduction**

10 The Court already ruled that Steppan perfected a mechanics lien encumbering land
11 owned by John and Sonnia Iliescu ("Iliescu"). The remaining trial issue is a determination of the
12 principal, interest, and costs secured by the lien. As a matter of law, the principal amount is
13 controlled by the terms of a written contract specifying the Lien Claimant's compensation. NRS
14 108.222(1)(a). Here, it is undisputed that the Lien Claimant's contractual compensation was a
15 fixed fee, based upon a percentage of anticipated construction costs.
16

17 Movant anticipates that Iliescu, whose land is encumbered by the Mechanic's Lien, will
18 argue that the secured amount is based upon the fair market value of services rendered based
19 upon a lodestar calculation (hours worked multiplied by an hourly rate). Thus, pretrial guidance
20 on the legal standard for computing the secured amount will lead to the most efficient trial
21 presentation.
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Background facts

Iliescu owns four parcels in downtown Reno, between Island Avenue and Court Street. A development company called Consolidated Pacific Development¹ (“Developer”) made an offer to purchase Iliescu’s land to develop a high-rise condominium tower. To induce Iliescu to make the deal, the Developer represented that “Architects and Engineers [are] in place ready to start work.”

On August 3, 2005, Iliescu signed a Land Purchase Agreement with Developer. The Land Purchase Agreement contemplated that Developer would obtain development entitlements, construct and sell a 499-unit condominium tower. In exchange for the land, Iliescu was to receive \$7.5 million, a \$2.2 million credit towards the cost of a 3,750 square foot penthouse, 500 square feet of storage, four parking spaces for residential purposes, and 51 additional parking spaces in the tower parking garage to serve Iliescu’s adjacent retail, restaurant, and office development planned for an adjacent parcel. Pursuant to the Land Purchase Agreement, Iliescu received non-refundable “deposits” while the Developer continued development activities. Iliescu and Developer negotiated to extend the closing date in exchange for more fees.

The Developer engaged Lien Claimant as Architect. The written contract (“Design Contract”) provided that the Lien Claimant would perform work needed to obtain development entitlements and approvals for the project, provide architectural and engineering designs for all improvements, and provide construction administration services. Although Iliescu did not sign the Design Contract, the Design Contract was reviewed by Iliescu’s attorneys (Hale Lane) and modified for Iliescu’s benefit. Iliescu reviewed and approved the plans as part of submitting applications to the City of Reno. Further, this Court has already found:

¹ Consolidated Pacific Development transferred its interest in the property to BCS Financial, Inc., which is believed share common ownership and management with Consolidated Pacific Development. Here, the term “Developer” includes both Consolidated Pacific Development and BCS Financial, Inc.

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

6 Order, June 22, 2009, page 2, lines 24-28.

7 Even though the condominium tower was never constructed, Iliescu directly benefitted
8 from the Lien Claimant's work. On November 30, 2006, the City of Reno approved Iliescu's
9 application for a tentative map to develop the 499-unit condominium, and the new entitlements
10 greatly enhanced the value of Iliescu's land. On September 17, 2007, local appraiser William
11 Kimmel reported,

12 As a result of my investigation and analysis contained in this report is my opinion
13 that the market value of the subject land including all of the approvals and
14 entitlements as of September 24, 2007 is \$27,000,000.

15 In order to win these entitlements, Iliescu and the Developer relied on the Lien Claimant's work
16 to create a complete schematic design of two high-rise condominium towers, including detailed
17 floor plans, elevations, renderings, a massive scale model of downtown Reno, videos, and other
18 presentation materials. In addition, Iliescu received additional non-refundable deposits from
19 Developer because of the entitlements. Pursuant to the initial Land Purchase Agreement, Iliescu
20 received \$500,000 in non-refundable deposits. In Addendum No. 4, Iliescu and the Developer
21 agreed to a \$365,000 accretion to the purchase price and additional non-refundable deposit. So,
22 Iliescu received \$865,000 in non-refundable deposits.

23 Traditionally, real estate developers could finance property acquisition and construction
24 with non-recourse loans -- secured only by the land and improvements. As credit began to
25 tighten in 2006, the lenders demanded that the Developer's principals also sign personal
26 guarantees. We understand that the Developer received loan commitments to proceed with the
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1 project, but that individual principals in the Developer declined to personally guarantee the
2 loans.

3 Ultimately, the Developer abandoned the project and filed for bankruptcy protection. As
4 the Developer fell behind on installments to Lien Claimant and financing became uncertain, Lien
5 Claimant recorded a lien on the property benefitted by the design work. Lien Claimant recorded
6 an initial lien on November 7, 2006, and an amended lien on May 3, 2007.
7

8 Iliescu commenced this action by filing an Application for Release of Mechanic's Lien,
9 claiming that Lien Claimant had failed to perfect the lien. Case No. CV07-00341. The Lien
10 Claimant filed an action to foreclose the Mechanic's Lien. Case No. CV07-01021. The two
11 cases were consolidated. Iliescu and Lien Claimant filed cross-motions for summary judgment
12 to determine whether the lien was perfected. After briefing and hearings, on June 22, 2009, this
13 Court (Judge Adams) entered an order denying Iliescu's motion and granting Lien Claimant's
14 cross-motion. This Order resolves all questions about the enforceability of the mechanics lien.
15 Thus, the only remaining question is determination of the amount secured by the lien.
16

17 **Statement of Undisputed Facts**

18 1. Effective October 31, 2005, Developer entered into a written contract with Lien
19 Claimant ("Design Contract"). Exhibit 1 is a true and correct copy of the Design Contract.
20 Declaration of Mark B. Steppan, ¶ 2.
21

22 **Argument**

23 **Standard of Review**

24 Summary judgment is properly regarded as an integral part of civil procedure, not as a
25 disfavored procedural shortcut. *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030
26 (2005)(rejecting the "slightest doubt" standard and adopting standard in *Celotex Corp. v. Catrett*,
27 477 U.S. 317, 327 (1986)). If a movant has properly supported a summary judgment motion, the
28

nonmoving party may not avoid summary judgment by relying “on the gossamer threads of whimsy, speculation, and conjecture.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)). Rather, party opposing summary judgment must (a) by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial;² and (b) must show that he can produce evidence at trial to support his allegations.³ The party opposing summary judgment may not rest upon the mere allegations contained in his pleading to satisfy this burden. *Riley v. OPP IX, L.P.*, 112 Nev. 826, 830-31, 919 P.2d 1071, 1074 (1996)

The Design Contract specifies a fixed fee

The Design Contract stipulates that Lien Claimant will receive a flat fee:

§ 1.5.1 For the Architect’s services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% and CA 17%.

By Addendum, the Design Contract defines these abbreviated terms (SD, DD, CD, and CA).

Exhibit 2, § 1.5. Further, the contract provides,

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architect’s scope of work and estimated value.

Exhibit 2, § 1.5.1.⁴

² *E.g. Pegasus*, at 713, 57 P.3d at 87.

³ *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

⁴ The Design Contract provides that, in the event the design services are terminated, the Lien Claimant is entitled to anticipated profit on services not performed by the architect. Exhibit 1, § 1.3.8.7. Technically, the anticipated profit on work that was not performed is part of the Lien Claimant’s contractual fee. However, to avoid litigation about the issue, Lien Claimant does not presently contend that these lost profits are secured by the Mechanic’s Lien.

As a matter of law, the amount of the lien is measured by the express contract setting the fee.

NRS 108.222 provides in relevant part:

NRS 108.222 Lien on property, improvements and construction disbursement account; amount of lien; lien not available to unlicensed contractor or professional who must be licensed to perform work.

1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, and any construction disbursement account established pursuant to NRS 108.2403, for:

(a) If the parties agreed, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, the unpaid balance of the price agreed upon for such work, material or equipment, as the case may be, whether performed, furnished or to be performed or furnished at the instance of the owner or the owner's agent; and

(b) If the parties did not agree, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, including, without limitation, any additional or changed work, material or equipment, an amount equal to the fair market value of such work, material or equipment, as the case may be, including a reasonable allowance for overhead and a profit, whether performed, furnished or to be performed or furnished at the instance of the owner or at the instance of the owner's agent.

Here, the Lien Claimant's compensation is defined in an express contract. Thus, the amount secured by the Mechanic's Lien is controlled by NRS 108.222(1)(a), and there is no reason to resort to subsection (b): the fair market value of the Lien Claimant's work is legally irrelevant to determine the amount secured by the Mechanic's Lien.

Conclusions and Request for Relief

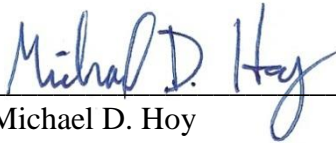
As a matter of law, the mechanic's lien secures the fixed fee specified in Lien Claimant's written contract. Because there is no factual dispute involved in this determination, Lien Claimant requests that the Court enter partial summary on this legal point.

Privacy Certification

Undersigned certifies that the foregoing document and does not contain the social security numbers of any person.

Dated October 21, 2011

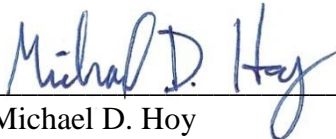
HOY & HOY, PC


Michael D. Hoy

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an attorney representing Mark B. Steppan in this litigation and that on October 21, 2011, I electronically filed and true and correct copy of the foregoing Motion for Partial Summary Judgment by using the ECF system, which served the following counsel electronically: Thomas J. Hall and Gregory F. Wilson.

Dated October 21, 2011


Michael D. Hoy

Index to Exhibits

Declaration of Mark B. Steppan (part of this document)

1. Standard Form of Agreement Between Owner and Architect
2. Notice and Claim of Lien
3. Amended Notice and Claim of Lien

Declaration of Mark B. Steppan

Mark B. Steppan declares:

1. Effective October 31, 2005, as "Architect" I entered into a written contract with BSC Financial, LLC to provide services for design, development, and construction of a mixed-use project that includes two high-rise towers. The project was bounded by North Arlington Avenue, Island Avenue, and Court Street, in Reno (the "Project").

2. The written design contract is contained in three documents: (a) AIA Document B141 - 1997 Part 1 (Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services), (b) AIA Document B141 - 1997 Part 2 (Standard Form of Architect's Services: Design and Contract Administration), and (c) a separate "Addendum No. 1 - Contractual Changes to AIA B141 Standard Agreement between Owner and Architect" (collectively "Design Contract") Exhibit 1 to my declaration is a true and correct copy of the Design Contract. My signature appears on each of these documents.

3. Exhibit 2 is a true and correct copy of a Notice and Claim of Lien prepared and recorded on my behalf. Exhibit 3 is a true and correct copy of an Amended Notice and Claim of Lien prepared and recorded on my behalf.

Under penalty of perjury under the laws of Nevada, California, and the United States of America, I declare that the

1 foregoing is true and correct based on my own personal
2 knowledge.

3 Executed at San Francisco, California on October 21, 2011.

4
5 
6 Mark B. Steppan

FILED

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JOEY ORRILL HASTINGS
CLERK OF THE COURT

BY  DEPUTY

2645

Gordon M. Cowan (SBN# 1781)
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Attorney for Plaintiffs JOHN & SONNIA
ILIESCU and ILIESCU FAMILY TRUST

IN THE SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

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,

Consolidated Case Nos.
CV07-00341 and
CV07-01021

Dept No. 10

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

AND CONSOLIDATED ACTION AND
RELATED THIRD-PARTY CLAIMS

OPPOSITION TO PARTIAL MOTION FOR SUMMARY JUDGMENT

Plaintiffs 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 ("Iliescu") oppose Mark Steppan's ("Steppan")
Motion for Partial Summary Judgment, filed October 21, 2011, as follows:

BACKGROUND

These consolidated cases were initiated when a California based architect
(Steppan) sought \$1.6+ million in professional architectural fees *vis-a-vis* a mechanics'
lien. The claim for contract damages is sought by Steppan from Iliescu.

Iliescu never contracted for Steppan's services. Iliescu merely owns the property
against which Steppan pursues his mechanics lien.

1 Iliescu sold property to Consolidated Pacific Development which transferred its
2 interest in the property to BSC Financial (described below). BSC Financial is the entity
3 that contracted for Steppan's architectural services, to complete a development project
4 (the "BSC project"). Iliescu received the property back when BSC Financial could not
5 perform the terms of the purchase. Iliescu now faces Steppan's mechanics lien.¹

6 From Iliescu, Steppan seeks the full contract sum for architectural services
7 called-for in the agreement between Steppan and BSC Financial. Steppan contends he
8 is entitled to the full contract sum rather than the reasonable value of the work
9 completed, or on a *quantum meruit* basis.

10 Steppan retained the California-based architectural firm, Fisher Friedman
11 Associates of Emeryville, California, to complete the architectural services called for in
12 the Steppan BSC contract for the BSC project. What architectural services were
13 rendered to the BSC contract were completed by Fisher Friedman, not Steppan.

14 BSC Financial made payments of about \$500,000.00 for architectural services
15 completed by the firm which did the work, Fisher Friedman Associates.

16 17 **UNDISPUTED FACTS**

18 The following facts should not be in reasonable dispute:

- 19 1. Steppan never contracted with Iliescu.
- 20 2. The contract from which Steppan seeks contract sums of about \$1.6+ million, is
21 between "BSC Financial LLC c/o Consolidated Pacific Development, Inc." as
22 "Owner," ("BSC Financial") and "Mark B. Steppan, AIA," as "Architect" (the
23 "Steppan-BSC contract").

24
25 ¹ Steppan's motion makes much adieu of the land purchase agreement between
26 Iliescu and Consolidated Pacific Development. This discussion may be relevant to
27 proving the validity of a lien, but it is not relevant here, to prove Steppan's entitlement to
28 contract sums from a contract in which Iliescu was never in privity.

To be clear, Steppan's entitlement to relief, if any, is based on Steppan's
contract for architectural services with BSC Financial (the "Steppan-BSC contract"), not
the land purchase agreement between Iliescu and Consolidated Pacific Development.
See Steppan's Exhibit 1.

See Steppan's Exhibit 1, bate no. 4116; and
signature pages at bate nos. 4125-26, 4129, 4137.

3. Both Steppan's "Notice and Claim of Lien" and "Amended Notice and Claim of Lien" admit the following:

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, Berkeley CA 94710....

See Notice, Steppan's Exhibit 2, ¶ no. 2.
See Amended Notice, Steppan's Exhibit 3, p.2 of 5, ¶ no. 2.

4. Also, Iliescu was never a contracting party with the California architect firm, (Fisher Friedman Associates, Emeryville, California) which is the firm that provided some architectural services to the BSC project.
5. The BSC project was never commenced. Not a single shovel of dirt was disturbed. Thus, the BSC project was never completed, partial or otherwise.
6. Architectural services called for in the Steppan-BSC contract were never completed, nor even substantially completed.
7. It is believed Steppan himself provided no architectural services to the property.
8. The architect firm using Steppan's Nevada license, Fisher Friedman Associates of Emeryville, California, provided some architectural services.
9. BSC Financial or Consolidated Pacific Development (the identified "owner" in the Steppan-BSC contract) paid sums of approximately \$500,000.00 for architectural services rendered to the BSC project by Fisher Friedman Associates.
10. The Steppan-BSC contract calls for the following:

For the Architect's services ... compensation shall be computed as follows:

5.75% of the total construction costs including contractors profit and overhead....

Steppan Exhibit 1, p.9 (bate no. 4124),
Article 1.5 "Compensation" ,2nd ¶.

1 The Total Construction Cost of the project will
2 be evaluated at the completion of the project in
3 order to determine final payment for basic
4 architectural services.

Steppan Exhibit 1, p.9 (bate no. 4124),
Article 1.5 "Compensation", 3rd ¶.

5 11. Iliescu is the owner of the property against which the claim of lien for contract
6 sums under the Steppan-BSC contract is asserted by Steppan.

7 12. The BSC project was not commenced, not because of the fault of Iliescu, nor
8 from fault of Steppan.

9 STANDARD OF REVIEW

10 **Summary Judgment**

11 A district court's grant of summary judgment is reviewed de novo. *George L.*
12 *Brown Ins. v. Star Ins. Co.*, 126 Nev. ____, ____, 237 P.3d 92, 96 (2010) (quoting
13 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). "Summary
14 judgment is appropriate when the moving party is entitled to judgment as a matter of
15 law and there is no genuine dispute of any material fact." *Dictor v. Creative*
16 *Management Services*, 126 Nev. ____, ____, 223 P.3d 332, 334 (2010). Facts are
17 reviewed in the light most favorable to the nonmoving party. *George L. Brown Ins.*, 126
18 Nev. at ____, 237 P.3d at 96. *J.E. Dunn Nw., Inc. v. Corus Const. Venture, LLC*, 127
19 Nev. ____, ____, 249 P.3d 501, 505 (Nev. 2011).

20 **Statutory Interpretation**

21 When the language of a statute is clear on its face, "this court will not go beyond
22 [the] statute's plain language." *Great Basin Water Network v. State Eng'r*, 126 Nev. ____,
23 ____, 234 P.3d 912, 918 (2010). If, however, a statute is ambiguous, the court examines
24 legislative history and interprets the statute "in light of the policy and the spirit of the
25 law, and the interpretation should avoid absurd results." *Westpark Owners' Ass'n v.*
26 *Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007) (quoting *Hunt v. Warden*, 111
27 Nev. 1284, 1285, 903 P.2d 826, 827 (1995)). "Statutory language is ambiguous if it is
28 capable of more than one reasonable interpretation." *In re Candelaria*, 126 Nev. ____,

_____, 245 P.3d 518, 520 (2010). *J.E. Dunn Nw., Inc. v. Corus Const. Venture, LLC*,
127 Nev. _____, _____, 249 P.3d 501, 505 (Nev. 2011).

DISCUSSION

NRS 108.222(1)(a) Does Not Give Steppan A Right to Collect Contract Sums Per a Mechanics Lien, Against One Not in Privity with the Architectural Services Contract

Steppan does not dispute Iliescu was never a party to the Steppan-BSC contract. There is no "privity of contract" between Steppan and Iliescu in Steppan-BSC contract for architectural services.

If Steppan can prove he completed work, then there would appear to be reasonable ground for his contending he may be entitled to the reasonable value of the work he completed, or to the "fair market value" of such work, or work he may have performed based on *quantum meruit* less "set offs." "Reasonable value," "fair market value" or *quantum meruit*, or whether Steppan is entitled to sums less "set offs" for payments made, or for any sum, are fact sensitive and should be resolved by the trier of fact.

Steppan does not seek relief based on "reasonable value" or "fair market value" of services rendered. Rather, Steppan's sole issue raised by his Partial Motion for Summary Judgment is to convince the court he is entitled to the full contract price of a sum exceeding \$1.6 million, against a non-contracting party to the Steppan-BSC contract.

Steppan relies entirely on NRS §108.222(1)(a) for his requested "contract sum" relief. This statute, unambiguously anticipates "parties" to be those who entered into the contract for those services. By the very nature of this provision, "privity of contract" is required if contract sums are sought. Section 1 of the statute provides as follows:

1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, and any construction disbursement account established pursuant to NRS 108.2403, for:

1 (a) If the parties agreed, by contract or otherwise, upon a
2 specific price or method for determining a specific price for
3 some or all of the work, material and equipment furnished or
4 to be furnished by or through the lien claimant, the unpaid
5 balance of the price agreed upon for such work, material or
6 equipment, as the case may be, whether performed,
7 furnished or to be performed or furnished at the instance of
8 the owner or the owner's agent;

NRS § 108.222(1)(a).

9 This unambiguous interpretation is enhanced where those who provide services
10 who are not able to rely on a contract for payment, may nevertheless do so while
11 relying on section 1(b) of the same statute which provides as follows:

12 (b) If the parties did not agree, by contract or otherwise,
13 upon a specific price or method for determining a specific
14 price for some or all of the work, material and equipment
15 furnished or to be furnished by or through the lien claimant,
16 including, without limitation, any additional or changed work,
17 material or equipment, an amount equal to the fair market
18 value of such work, material or equipment, as the case may
19 be, including a reasonable allowance for overhead and a
20 profit, whether performed, furnished or to be performed or
21 furnished at the instance of the owner or at the instance of
22 the owner's agent.

NRS § 108.222(1)(b).

23 No facts exist contrarily that Iliescu was not a party or in privity to the Steppan-
24 BSC contract. Iliescu is not mentioned in the Steppan-BSC contract.

25 Under these facts, if Steppan were entitled to sums for architectural services
26 rendered to the BSC project, his relief is best found in subsection (1)(b) of NRS 108.²
27 Under the law and on these facts, "privity" is not found and does not lend support to
28 Steppan's requested relief.

29 Nevada cases addressing the issue squarely are not found. In other jurisdictions,
30 Arizona by example, a materialman who has contracted with a contractor rather than
31 with the owner of the property has lien rights only for the "reasonable value" of what it
32 has furnished regardless of the price agreed with the contractor. *Parker v. Holmes*, 79
33 Ariz. 82, 85, 284 P.2d 455, 458 (1955). *Accord, United Metro Materials, Inc. v. Pena*

² Whether Steppan is entitled to sums or not because others, not Steppan,
actually performed architectural services, is a subject for another day.

1 *Blanca Properties, L.L.C.*, 197 Ariz. 479, 486, 4 P.3d 1022, 1029 (Ariz. App. 2000).

2
3 ***Steppan's Requested Relief Amounts to "Liquidated Damages"***
4 ***For Unperformed Services Not Contemplated by the Statute.***

5 ***In Other Jurisdictions a Lien Filed Before Completion of a Contract***
6 ***Is Limited to the Value of the Labor or Services Actually Furnished***
7 ***At the Time the Lien Is Filed Rather than the Full Contract Price Payable***
8 ***After Completion of the Contract***

9 There is no dispute the services under the Steppan-BSC contract were not
10 completed, nor were they substantially completed. The BSC project was never built.
11 The non-completion was not the fault of Iliescu. Nor, was the demise of the project the
12 fault of Steppan. Nonetheless, Steppan seeks the full contract amount from Iliescu. In
13 essence, Steppan seeks "liquidated damages" in sums contemplated by the Steppan-
14 BSC contract as if the contract and all work were fulfilled, when it was not.

15 In other jurisdictions deciding the issue, a lien filed before completion of a
16 contract is limited to the value of the labor or services actually furnished at the time the
17 lien is filed (and which enhanced the value of the land), rather than the full contract
18 price payable after completion of the contract.

19 By example, Arizona courts, following other jurisdictions, determining the
20 analogous issue, confirm that a lien filed before completion of a contract is limited to the
21 value of the labor or services actually furnished at the time the lien is filed (and which
22 enhanced the value of the land), rather than the full contract price payable after
23 completion of the contract.

24 A particular Arizona appellate decision best summarizes Arizona law and that of
25 other jurisdictions, as follows:

26 The statutory scheme requires as a predicate to lien rights
27 that labor be "done" or materials "furnished." A.R.S. § 33-
28 981(A). Between contracting parties, "it is a well-established
principle that upon *completion* of the contract ... a contractor
is entitled to a lien for the contract price." (Emphasis added).
Parker v. Holmes, 79 Ariz. 82, 284 P.2d 455 (1955); see
also Lanier v. Lovett, 25 Ariz. 54, 213 P. 391 (1923).
However, where the contract has been abandoned before
completion without fault on the part of the contractor, the
contractor is entitled to a lien only for the "reasonable value"

1 of the work done or services performed. *Parker*, 79 Ariz. at
2 83, 284 P.2d at 455 (citing *Surf Properties, Inc. v. Markowitz*
3 *Bros.*, 75 So.2d 298 (Fla.1955)).

4 The reasoning of the Florida Supreme Court in *Surf*
5 *Properties*, adopted by the Arizona Supreme Court in *Parker*
6 *v. Holmes*, evolved from facts analogous to those here. The
7 plaintiff contractor filed a lien for the full contract price,
8 including anticipated profits, on a partially performed
9 construction contract. The court found that the contractor's
10 loss of profits was properly excluded from the lien amount by
11 the trial court. The court reasoned that rules applicable to
12 breach of contract suits for computing damages do not
13 necessarily apply in suits to enforce contractors' liens.
14 Because the Florida statutory scheme, like the Arizona
15 statutory scheme, gives lien rights only for "work done and
16 materials furnished," overhead and profits were not within
17 the purview of the act. *Surf Properties*, 75 So.2d at 300-01;
18 see also *Withrow v. Wright*, 215 Ark. 654, 222 S.W.2d 809
19 (1949); *Rosebud Lumber & Coal Co. v. Holms*, 155 Neb.
20 688, 53 N.W.2d 82 (1952). This reasoning is in accord with
21 the majority rule in other jurisdictions:
22 [A] lien is regulated by the amount and value of the work
23 done, and not by any supposed profits contracted for. No
24 lien may be allowed for profits or commissions not earned,
25 as on labor not done or material not furnished, or on that
26 portion of the contract which is not completed.
27 57 C.J.S. *Mechanics' Liens* § 49 at 540 (1948 & Supp.1988)
28 (citations omitted); see also Annotation, *Amount for which*
Mechanic's Lien May be Obtained where Contract has been
Terminated or Abandoned by Consent of Parties or Without
Fault on Contractor's Part, 51 A.L.R.2d 1009 (1957 & Supp.1988).

Such reasoning is also in accord with the purpose underlying
the right of a mechanic or materialman. Because the
mechanic's services enhance the value of the land or
buildings, the mechanic should have direct access to the
land or buildings upon which the work was performed in
addition to any remedy he pursues by suing for breach of
contract. *Price v. Sunmaster*, 27 Ariz.App. 771, 558 P.2d
966 (1976); *Hayward Lumber and Inv. Co. v. Graham*, 104
Ariz. 103, 449 P.2d 31 (1968).

Thus, a lien filed before completion of a contract is limited to
the value of the labor or services actually furnished at the
time the lien is filed (and which enhanced the value of the
land), rather than the full contract price payable after
completion of the contract. *Genesee Lumber & Coal Co. v.*
Bonarrigo, 254 N.Y.S. 541, 233 App.Div. 455, *aff'd* 259 N.Y.
651, 182 N.E. 220 (1932). We agree and hold that liquidated
damages for unperformed services or anticipated profits are
not lienable under A.R.S. § 33-981.

Here, the parties do not factually dispute that Million did not
provide additional labor or services that would entitle it to the
full \$48,600 as his 12% fee of expended construction costs.

1 Nor does Million claim that the \$5,400 payment credited to
2 Fortunes' total contract price did not cover its 12% fee for
3 the labor and services that were actually provided to the
4 property. Million claims entitlement to this amount only under
a contract theory of liquidated damages. We hold that the
legislature has not recognized such a theory as part of the
statutory lien scheme.

5 *Fortune v. Superior Court In & For Maricopa County*, 159 Ariz. 549, 551-52,
6 768 P.2d 1194, 1196-97 (Az. App. 1989)

7 See also, *Tilt-Up Concrete, Inc. v. Star City/Fed., Inc.*, 582 N.W.2d 604, 612-14 (Neb.
8 1998); *McDonald v. Welch*, 176 N.W. 2d 846, 847 (Iowa 1970).

9 In the instant matter, even a strained or angled approach does not support
10 Steppan's requested relief. Iliescu was not a contracting party. Iliescu did not cause an
11 interruption to the subject of the contract. All architectural services contemplated in the
12 Steppan-BSC contract were not completed, nor is there a reasonable argument that
13 they were substantially completed.

14 Moreover, no Nevada case supports such a theory of "liquidated damages."

15 If, NRS 108.222 is somehow determined "ambiguous" on the issue, in light of the
16 policy and the spirit of the law, the interpretation of the court should avoid absurd
17 results. See, *Westpark Owners' Ass'n v. Dist. Ct. supra*.

18 CONCLUSION

19 For foregoing reasons, Iliescu respectfully requests Steppan's Partial Motion for
20 Summary Judgment be denied.

21 RESPECTFULLY, this 11th day of February 2013

22 GORDON M. COWAN, ESQ. (Nev. 1781)
23 LAW OFFICE OF GORDON M. COWAN

24 
25 _____
26 Attorneys for Plaintiffs Iliescu
27
28

AFFIRMATION
Pursuant to NRS 239B.030

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



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(d), I certify that I am employed at 10775 Double R Blvd., Reno, Nevada 89521, and on this date I served the foregoing document(s) on all parties to this action by:

☒ Placing an original or true copy thereof in a sealed envelope with postage prepaid in the United States Mail at Reno, Nevada, following ordinary business practices;

_____ Personal delivery;

_____ Facsimiles to:

Mike Hoy, Esq., Mike Kimmel, Esq.	775.786.7426
David Grundy, Esq., Alice Mercado, Esq.	775.786.9716
Gregory Wilson, Esq.	775.786.7764

_____ Reno-Carson Messenger Service;

_____ Certified Mail with Return Receipt Requested.

addressed as follows:

Michael D. Hoy Esq.
Hoy Chrissinger Kimmel
4741 Caughlin Parkway Ste. 4
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Gregory F. Wilson
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Reno NV 89509

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Lemons Grundy Eisenberg
6005 Plumas St 3rd Floor
Reno NV 89519

DATED this 11th day of February 2013



Document Code: 3795 (Reply)
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(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**

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,

Applicants,

v.

MARK B. STEPPAN,

Respondent.

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Reply in Support of Motion for Summary Judgment

Mark B. Steppan ("Steppan" or "Architect") hereby replies to the February 11, 2013
Opposition to Partial Motion for Summary Judgment:

Introduction

The parties already litigated the validity of Architect's mechanic's. In a June 22, 2009 Order, the Court ruled that Architect has a valid mechanic's lien for work performed by Steppan and his firm. The only question raised in the pending motion is how to determine the amount secured by that lien. When the lien claimant performs pursuant to a contract that specifies compensation, the lien secures the amount of the contractual compensation. NRS 108.222(1)(a). If the lien claimant performed without a contract, then the lien secures the reasonable value of the labor and materials supplied by the claimant.

1 NRS 108.222(1)(b). The Opposition concedes that Architect provided design services
2 under a written contract that specified the Architect's compensation. However, the
3 Opposition asserts that NRS 108.222(1)(a) controls the amount secured by the lien only if
4 the landowner signed the agreement. This legal position is unsupported by precedent,
5 contradicts the plain statutory language, and is wrong as a matter of law.

6 **Background**

7 The Opposition uses an incomplete and misleading statement of background facts in
8 an attempt to divert attention from the legal issue, and to invoke sympathy for Iliescu, who
9 is hardly a disinterested landowner. Dr. and Mrs. Iliescu ("Iliescu") entered into a Land
10 Purchase Agreement with BSC Financial, LLC ("Developer") to sell their land for: (a) \$7.5
11 million cash; (b) a \$2.2 million credit towards the cost of a penthouse atop the planned
12 condominium tower; (c) 500 square feet of storage; (d) four residential parking spaces;
13 and (e) 51 parking spaces to serve Iliescu's planned retail, restaurant, and office complex
14 on Iliescu's adjacent parcels. (Exhibit 1) Under the Land Purchase Agreement and its
15 addenda, Iliescu received \$865,000.

16 The Developer then entered into a Design Contract with Architect. (Exhibit 1 to
17 Motion). As is typical for design services, the Design Contract specifies a total fee based
18 upon a percentage of the total cost of construction. In this case, the fee was 5.75 percent of
19 the construction costs, estimated at \$180 million, or \$10,350,000. The Design Contract
20 further provides that 20 percent of the total fee is earned with the Schematic Design phase,
21 including City of Reno Entitlements. Architect completed the Schematic Design for the
22 project, and obtained City of Reno entitlements to proceed with the project. The
23 mechanic's lien, therefore, seeks 20 percent of the overall fee. The Opposition incorrectly
24 represents that the Architect is seeking the entire fee for the completed project, including
25 "lost profits" for work that was never performed. The lien only asserts a claim for the fee
26 earned when the Architect completed the Schematic Design phase.¹

27
28 ¹ Exhibit 3. A mechanic's lien does not secure lost profits on work that was not performed. *A. P. Ross Enterprises, Inc. v. Hynds Plumbing & Heating Co.*, 98 Nev. 7, 10, 639 P.2d 526, 528 (1982). However, the lien secures overhead and profit for

In this litigation, Iliescu attempted to avoid the lien altogether by falsely claiming that he had no knowledge of the Design Contract, and that he was a disinterested landowner. This Court found that Dr. Iliescu “had actual knowledge that [Architect] and his firm were performing architectural services on the project.”² In an Owner Affidavit, Iliescu appointed Sam Caniglia (a principal in the Developer) as the authorized agent to request development entitlements for the property.³ Iliescu and the Developer shared common counsel in the drafting and review of the Design Contract.⁴ Iliescu attended City of Reno hearings to review Architect’s schematic design.⁵ After the City of Reno approved the project, and during this litigation, Iliescu applied to the City of Reno to extend the entitlements procured through the Architect’s work. Even though the project was not built, Iliescu received \$865,000, plus development entitlements worth at least \$19 million.⁶ Iliescu even obtained indemnity from the Developer because of the Architect’s lien rights.⁷

Legal Argument

The amount of the lien is determined by the specific price in the lien claimant’s contract.

NRS 108.222 provides two methods for determining the amount secured by a mechanics lien. When a lien claimant performs under a contract that stipulates compensation, the lien secures the contract price. NRS 108.222(1)(a). If the lien claimant performs without a contract, the lien secures the reasonable value of the work performed. NRS 108.222(1)(b).

completed work. *California Commercial v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 148, 67 P.3d 328, 332 (2003). It was unnecessary for the Opposition to rely entirely on Arizona law to invoke these principles.

² Order, June 22, 2009, page 2, lines 24-18 (eFlex # 850528).

³ See Exhibits 6 and 7.

⁴ See Exhibit 4, a letter from counsel regarding the joint representation and waiver of conflict signed by Iliescu. Note that this waiver was signed in 2005, more than 11 months before Architect recorded a lien.

⁵ See Exhibit 8, July 30, 2007 Affidavit of David Snelgrove.

⁶ The project appraiser valued the project at \$27 million with the development entitlements created by Architect’s schematic design and planning work. This was \$19.5 million more than the sales price under the Land Sale Agreement.

⁷ See Exhibit 5 (Indemnity agreement)

1 The relevant portion of the Opposition rests solely on the point that Iliescu did not
 2 sign the Design Contract. For purposes of the lien statute, the Developer was Iliescu's
 3 agent:

4 "Agent of the owner" means every architect, builder, contractor, engineer,
 5 geologist, land surveyor, lessee, miner, subcontractor **or other person**
 6 **having charge or control of the property, improvement or work of**
 7 **improvement of the owner, or any part thereof.**

8 NRS 108.22104 (emphasis added). Thus, when a prime contractor signs a subcontractor,
 9 the subcontractor's lien secures the subcontract price because the prime contractor is an
 10 agent of the owner for purposes of the lien statute. Likewise, Iliescu placed the Developer
 11 in control of the design process. The Developer then contracted with the Architect. Iliescu
 12 did not sign the Design Agreement, and cannot be sued for breach of contract. But the
 13 Architect's lien on Iliescu's land (the validity of which is already established) secures
 14 payment of the compensation in the Design Contract as a matter of law.

15 Further, under the lien statute, "owner" is not limited to the owner of legal title of
 16 the property. Under NRS 108.22148(1)(e), "owner" includes "a person who claims an
 17 interest in less than a fee simple estate in the property." Under the Land Purchase
 18 Agreement, the Developer held equitable title to the land, and was therefore an "owner."⁸
 19 The Developer confirmed its claim of equitable ownership when it filed for bankruptcy
 20 reorganization.⁹

23 ⁸ When a seller and buyer enter into a contract to sell and purchase land, the buyer
 24 becomes vested with the equitable title to the property. *E.g. McCall v. Carlson*, 63
 25 Nev. 390, 407, 172 P.2d 171, 179 (1946). *McCall* distinguishes between an option
 26 contract and a purchase contract. An optionee acquires no equitable title until the
 27 option is exercised. 63 Nev. at 407-408, 172 P.2d at 179-180. Here, Developer
 28 entered into a Land Purchase Agreement that immediately established the buyer's
 equitable title. The purchase agreement was not submitted with the Architect's
 latest summary judgment motion. However, Iliescu's April 17, 2008 Motion for
 Partial Summary Judgment affirmatively establishes that Dr. Iliescu entered into the
 sales contract with Developer, Consolidated Pacific Development.

⁹ See Exhibit 2.

The Opposition's statutory interpretation is unsupported with precedent, and violates rules of statutory construction.

The Opposition asks the Court to apply NRS 108.222(1)(a) only where the landowner signs the mechanic's contract. This position is unsupported by any judicial precedent. Furthermore, the position would violate key canons of statutory interpretation.

First, the Nevada Supreme Court has repeatedly held that the mechanic's lien statute is remedial in character and must therefore be construed liberally in favor of the lien claimants. *E.g. In re Fontainebleau Las Vegas Holdings*, 128 Nev. Adv. Op. 53, 289 P.3d 1199, 1210 (October 25, 2012); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 826, 192 P.3d 730, 734 (2008).

The Court must read NRS 108.222(1)(a) in the context of the mechanic's lien statute and the subject matter as a whole. *McKay v. Board of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986). Further, the Court must consider the provisions of the lien statute as a whole, and reject an interpretation that will "render words or phrases superfluous or make a provision nugatory." *E.g. In re Estate of Melton*, 128 Nev. Adv. Op. 4, 272 P.3d 668, 674 (February 16, 2012). The interpretation championed by the Opposition would render NRS 108.222(1)(a) unnecessary to the overall scheme of the lien statute. Lien claimants who entered into direct contracts with the landowner already hold a direct cause of action (for breach of contract) against the landowner, and are entitled to recover the entire amount of the contract. A judgment lien is coextensive with contractual liability. Thus, NRS 108.222(1)(a) adds protection only to those lien claimants who lack direct contractual privity with the owner. If the Court interprets NRS 108.222(1)(a) to require that the landowner sign the contract in order to make it the basis for measuring the amount secured, the Court will effectively render the subsection meaningless as a practical matter.

Conclusions and Request for Relief

As a matter of law, the mechanic's lien secures the compensation specified in an agreement between a prime contractor and subcontractor, even if the owner did not sign the subcontract. Likewise, the Architect's lien secures payment of the compensation

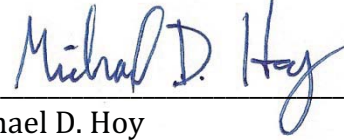
1 specified in the design contract between Architect and Developer, even if Iliescu did not
2 sign the design contract. The Court should therefore enter partial summary judgment on
3 this issue.

4 **Privacy Certification**

5 Counsel certifies that this brief and the attached exhibits do not contain any social
6 security numbers.

7 Dated February 21, 2013.

HOY CHRISSINGER KIMMEL, PC

8 
9
10

Michael D. Hoy

Certificate of Service

I hereby certify that on 02-21-2013, 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 SONNIA ILIESCU, JOHN ILIESCU, JR., TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU

MICHAEL HOY, ESQ. for MARK STEPPAN

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

DAVID GRUNDY, ESQ. for JERRY SNYDER, HALE LANE PEEK DENNISON HOWARD, R.

HOWARD, KAREN DENNISON, HOLLAND & HART, LLP

I certify that on February 21, 2013, I mailed a true and correct copy of the foregoing to:

Gordon Cowan
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P.O. Box 17952
Reno Nevada 89511-1034

Gordon Cowan
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10775 Double R. Boulevard
Reno Nevada 89521-8956

Gordon Cowan
180 Ox Yoke Lane
Reno, Nevada 89521


Elaine M. Eubanks

INDEX OF EXHIBITS

Exhibit No.	Document Description	No. of Pages
1	Land Purchase Agreement Between Iliescu and Developer, including addenda.	72
2	Notice of Claim to Right and Interest in Real Property, Filed by BSC Investments in the United States Bankruptcy Court, In re BSC Investments LLC, BK-N-07-50477	3
3	Original Notice and Claim of Lien; Amended Notice and Claim of Lien.	11
4	December 14, 2005 letter from joint counsel to Iliescu and Developer, followed by waiver of conflict of interest signed by Iliescu on December 15, 2005	5
5	Indemnity agreement between Iliescu and Developer	3
6	Special Use Permit Application	6
7	Tentative Map Application	6
8	Affidavit of David Snelgrove	4
9	Declaration of Michael Hoy	3

FILED

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02-21-2013:04:53:30 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3547598

Exhibit 2

Exhibit 2

1 STEPHEN R. HARRIS, ESQ.
2 BELDING, HARRIS & PETRONI, LTD.
3 Nevada Bar No. 001463
4 417 West Plumb Lane
5 Reno, Nevada 89509
6 Telephone: (775) 786-7600
7 Facsimile: (775) 786-7764
8
9 Attorney for Debtor

ELECTRONICALLY FILED BY
BELDING, HARRIS & PETRONI, LTD.

ON 4/25/07

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

IN RE:

BSC INVESTMENTS LLC,
an Oregon limited liability company,

Debtor.

BK-N-07-50477
(Chapter 11)

**NOTICE OF CLAIM TO RIGHT, TITLE
AND INTEREST IN REAL PROPERTY**

Hrg. DATE: N/A
and TIME:

COMES NOW, BSC INVESTMENTS LLC, an Oregon limited liability company, by and through its attorney STEPHEN R. HARRIS, ESQ. of BELDING, HARRIS & PETRONI, LTD., Debtor and Debtor-in-possession in the Chapter 11 case pending as Case No. BK-N-07-50477, in the United States Bankruptcy Court, Reno, Nevada, and hereby gives notice of its claim to right, title and interest in certain real property identified as APNs: 011-112-03, 06, 07 and 12, including water rights, in the City of Reno, County of Washoe, State of Nevada, according to the Land Purchase Agreement dated July 29, 2005, and as amended subsequent thereto, by and between John Iliescu, Jr. and Sonnia Santee Iliescu, individually and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Sellers"), and BSC Investments LLC, an Oregon limited liability company, as the assignee from the original Buyer, Consolidated Pacific Development, Inc., a Nevada corporation. By reason of the Voluntary Petition for Chapter 11

1 relief filed by BSC INVESTMENTS LLC, on April 25, 2007, the 11 U.S.C. §362(a) automatic
2 stay is in effect and operative.

3 Dated this 25th day of April, 2007.

4
5 STEPHEN R. HARRIS, ESQ.
6 BELDING, HARRIS & PETRONI, LTD.
7 417 West Plumb Lane
8 Reno, NV 89509

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Attorney for Debtor 

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3547598

Exhibit 4

Exhibit 4

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 14, 2005

Edward Everett Hale
(1929-1993)

Steve Lane
J. Stephen Peck
Karen D. Dennison
R. Craig Howard
Stephen V. Novacek
Richard L. Elmore
Richard Bennett
Robert C. Anderson
Alex J. Flanagan
James L. Kelly
Kelly Testolin
N. Patrick Flanagan
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Sarah E. L. Chao
Heleen 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) 322-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-8000 | Facsimile (775) 684-6001

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ILIESCU000133

AA0552

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

HALE LANE

ATTORNEYS AT LAW

100 West Liberty Street | Tenth Floor | Reno, Nevada 89501
Telephone (775) 3273000 | Facsimile (775) 7866179
Website: <http://www.halelane.com>

FACSIMILE TRANSMITTAL SHEET

FROM: Sarah E. L. Class, Esq. **DATE:** December 15, 2005
OUR FILE NO.: 20540-0002 **TOTAL NO. OF PAGES INCLUDING COVER:** 4
RE: Court Street/Island Avenue

SEND TO (NAME/COMPANY)	FACSIMILE NO.	TELEPHONE NO.
John and Sonnia Ilescu	775-322-4112	775-771-6263

MESSAGE: Greetings:
RETURN TO: Danielle Aragon

Once you have both executed the attached letter, please forward a copy by facsimile to 775-786-6179 and the original letter to us by U.S. Mail at your earliest convenience. If you have any questions, please do not hesitate to call. Thank you and have a wonderful trip.

HALE LANE PEEK DENNISON AND HOWARD

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--ODMAIPCDQCSHLRNOQCSA9730411

ILIESCU000135

AA0554

Acknowledgement

The foregoing waiver of conflict is hereby given as of the date set forth below.

Iliescu:

Date: 12-15-05

John Iliescu, Jr.
John Iliescu, Jr.

Date: 12-15-05

Sonnia Santee Iliescu
Sonnia Santee Iliescu

Date: 12-15-05

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

Date: 12-15-05

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

Baty:

Date: _____

Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: _____

By: _____

Sam A. Caniglia, President

FILED

Electronically

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3547598

Exhibit 5

Exhibit 5

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.

R E C I T A L S :

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.

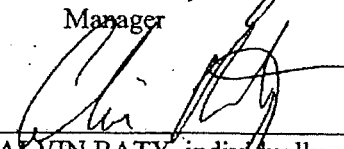
BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

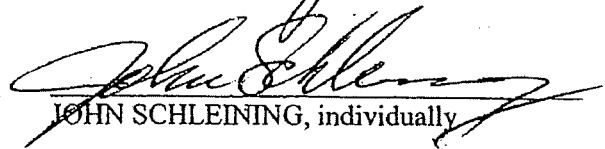
By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

FILED

Electronically

02-21-2013:04:53:30 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3547598

Exhibit 6

Exhibit 6

FILE / COPY OLD

RECEIVED

FEB 07 2006

FISHER FRIEDMAN ASSOCIATES

BSC Residential Towers



Special Use Permit Application

Prepared for:

Consolidated Pacific Development
932 Parker Street
Berkeley, CA 94710

January 17, 2006

AA0560

RENO DEVELOPMENT APPLICATION

ACTION REQUESTED:

(Please Check)

- ☐ ABANDONMENT
☐ ANNEXATION
☐ BOUNDARY LINE ADJUSTMENT
☐ MASTER PLAN AMENDMENT
☐ MINOR DEVIATION
☐ PARCEL MAP
☐ REVERSION TO ACREAGE
☐ SITE PLAN REVIEW
☒ SPECIAL USE PERMIT
☐ TENTATIVE MP
☐ WITH MAINTENANCE DISTRICT
☐ VARIANCE
☐ ZONING MAP AMENDMENT
☐ COOPERATIVE PLAN AMENDMENT

For Community Development Department Use Only:

CASE NUMBER:

Date Received _____

Time Received _____

PROJECT NAME: BSC Mixed-Use Residential TowersPROJECT DESCRIPTION: A mixed-use residential development.PROJECT ADDRESS: 260 Island Drive & 223 Court Street (2 additional parcels included, one on Island Drive and one on Court Street (address unavailable))PROPERTY SIZE: 1.36± acresASSESSOR'S PARCEL NO(S): 011-112-03, 06, 07 & 12ATTACH LEGAL DESCRIPTION OF PROPERTY.ZONING-EXISTING: CBPROPOSED: CBMASTER PLAN-EXISTING: TCPROPOSED: TCEXISTING LAND USE: VacantPROPERTY OWNER(S)NAME: John and Sonnia IliescuADDRESS: 219 Court Street
Reno, Nevada 89501

PHONE:

APPLICANT/DEVELOPER (S)NAME: Consolidated Pacific Development E-MAIL ADDRESS: Nathan@fisherfriedman.com

ATTN:

ADDRESS: 932 Parker Street
Berkley, CA 94710PHONE: (510) 548-6093PERSON TO CONTACTREGARDING APPLICATION:NAME: Fisher Friedman Associates.CONTACT: Nathan Ogle, AIAADDRESS: 1485 Park Avenue, Suite 103
Emeryville, CA 94608PHONE: (510) 420-1666FAX NO: (510) 420-0599

ALL PRINCIPALS IN THE FIRM SHALL BE IDENTIFIED.

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize SAM CAVIGLIA to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN 17, 2006, in RENO, Nevada.
(date) (City)

Name:

Sonia Iliescu
Sonia Iliescu

Title:

OWNER

Signed:

Sonia Iliescu

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize SAM CANIGLIA to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN 17 2006 in RENO, Nevada.
(date) (City)

Name:

Title:

Signed:

JOHN ILIESCU

John Iliescu

Owner

John Iliescu

APPLICANT AFFIDAVIT

I am the applicant involved in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 12, 2006, in Reno, Nevada.
(date) (City)

Name: Consolidated Pacific Development, Inc. cs
Sam A. Caniglia

Title: President

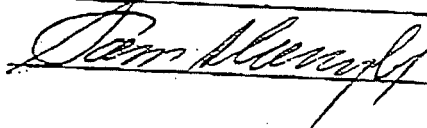
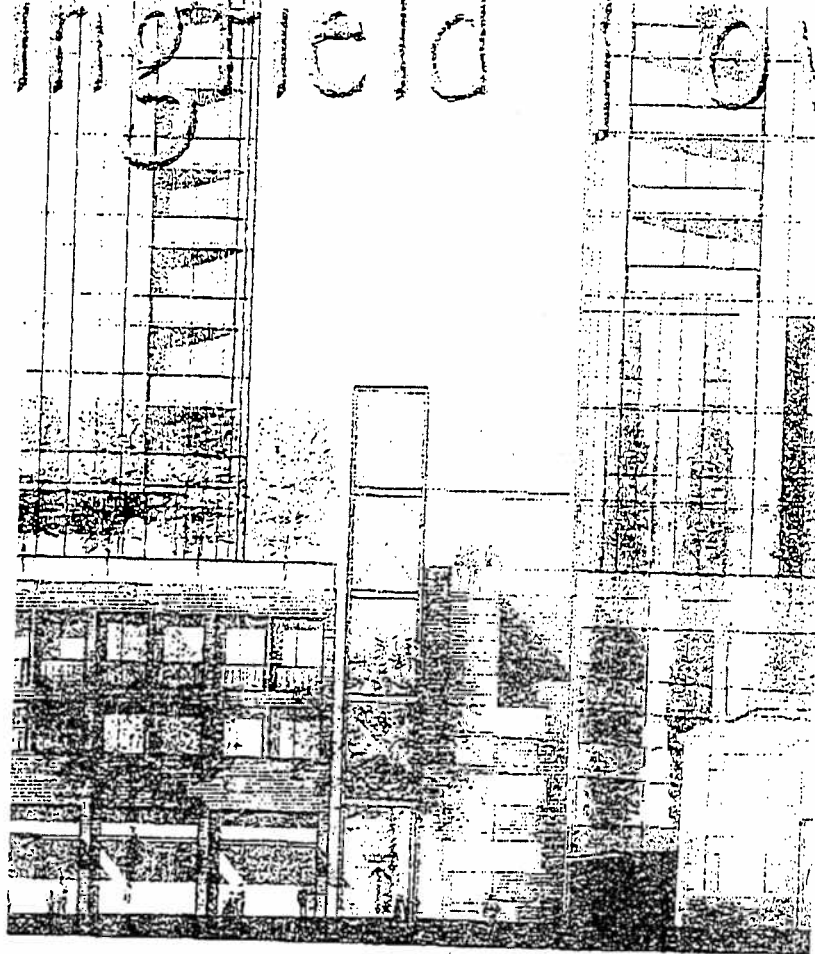
Signed: 

Exhibit 7

Exhibit 7

URGENT 5/07
CITY COUNCIL
PLANNING | APPROVED

Wingfield Towers



Tentative Map & Special Use Permit Application

Prepared for:

Consolidated Pacific Development
932 Parker Street
Berkley, CA 94710

Prepared by:



WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
575 Double Eagle Court Tel: 775.823.4068
Reno, NV 89521 Fax: 775.823.4066

February 7, 2006

RENO DEVELOPMENT APPLICATION

ACTION REQUESTED:

(Please Check)

- ☐ ABANDONMENT
☐ ANNEXATION
☐ BOUNDARY LINE ADJUSTMENT
☐ MASTER PLAN AMENDMENT
☐ MINOR DEVIATION
☐ PARCEL MAP
☐ REVERSION TO ACREAGE
☐ SITE PLAN REVIEW
☒ SPECIAL USE PERMIT
☒ TENTATIVE MP
☐ WITH MAINTENANCE DISTRICT
☐ VARIANCE
☐ ZONING MAP AMENDMENT
☐ COOPERATIVE PLAN AMENDMENT

For Community Development Department Use Only:

CASE NUMBER:

Date Received _____

Time Received _____

PROJECT NAME: Wingfield TowersPROJECT DESCRIPTION: A mixed-use residential development.PROJECT ADDRESS: 260 Island Drive & 223 Court Street (2 additional parcels included, one on Island Drive and one on Court Street (address unavailable))PROPERTY SIZE: 1.36± acresASSESSOR'S PARCEL NO(S): 011-112-03, 06, 07 & 12ATTACH LEGAL DESCRIPTION OF PROPERTY:ZONING-EXISTING: CBMASTER PLAN-EXISTING: TCEXISTING LAND USE: VacantPROPOSED: CBPROPOSED: TCPROPERTY OWNER(S)NAME: John and Sonnia IliescuADDRESS: 219 Court Street
Reno, Nevada 89501

PHONE:

APPLICANT/DEVELOPER (S)NAME: Consolidated Pacific Development E-MAIL ADDRESS: Nathan@fisherfriedman.com

ATTN:

ADDRESS: 932 Parker Street
Berkley, CA 94710PHONE: (510) 548-6093PERSON TO CONTACTREGARDING APPLICATION:NAME: Fisher Friedman Associates.CONTACT: Nathan Ogle, AIAADDRESS: 1485 Park Avenue, Suite 103
Emeryville, CA 94608PHONE: (510) 420-1666FAX NO: (510) 420-0599

ALL PRINCIPALS IN THE FIRM SHALL BE IDENTIFIED.

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize Sanic Engineering & Construction, Inc. to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan 31, 2006, in Reno, Nevada.
(date) (City)

Name:

Title:

Signed:

John Iliescu
President
John Iliescu

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize Star Capital, LLC and its Pacific Trust to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan 31, 2006, in Reed, Nevada.
(date) (City)

Name: Jonna Theresa
Title: Wife
Signed: Jonna Theresa

APPLICANT AFFIDAVIT

I am the applicant involved in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 2002, in RENO, Nevada.
(date) / (City)

Reynolds Plastic Developments
Name: Tom Reynolds
Title: PRESIDENT
Signed: Tom Reynolds

Exhibit 8

Exhibit 8

1030

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 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

DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

**AFFIDAVIT OF DAVID SNELGROVE IN SUPPORT OF
SUPPLEMENTAL RESPONSE TO APPLICATION FOR
RELEASE OF MECHANIC'S LIEN**

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, David Snelgrove, affiant herein, do hereby swear under penalty of perjury that the assertions of this Affidavit are true.

1. That I am employed by Wood Rogers and worked directly with the project design team inclusive of the project Architect and applicant regarding the Wingfield Towers development.

2. In connection with my work, I assisted in preparing the Special Use Permit Application dated January 17, 2006 and the Tentative Map and Special Use Permit Application dated February 7, 2006.

3. A true and correct copy of the Special Use Permit Application dated January 17, 2006 is attached hereto as Exhibit "A."

1 4. A true and correct copy of the Tentative Map and Special Use Permit Application
2 dated February 7, 2006 is attached hereto as Exhibit "B."

3 5. Included with the Special Use Permit Application dated January 17, 2006 and
4 Tentative Map and Special Use Permit Application dated February 7, 2006 are Owner Affidavits.
5 Accordingly, the Owners of the Real Property, Dr. and Mrs. Iliescu executed the Owner Affidavits
6 that were a part of the Applications.

7 6. Both Applications include the name of Fisher Friedman Associates and Nathan
8 Ogle, AIA, with an address of 1485 Park Avenue, Suite 103, Emeryville, CA 94608, phone number
9 510-420-1666 and fax number of 510-420-0599.

10 7. Both the January 17, 2006 and February 7, 2007 Applications contained building
11 elevations and/or building floor plans containing the name of the project architect, Mark Stepan,
12 AIA and the architectural design consultant Fisher Friedman Associates. It is my recollection that
13 Dr. Iliescu saw the architectural drawings as provided in the two applications at or about the time
14 of receipt of the Owner affidavits.

15 8. In connection with the Wingfield Towers Project, I attended numerous
16 neighborhood meetings. At some of these meetings, Dr. Iliescu was present. On information and
17 belief, I attended the following meetings and Dr. Iliescu was present.

Meeting	Date	Present
Arlington Towers HOA	July 27, 2006	Myself, Dr. Iliescu
Downtown Improvement Association	August 3, 2006	Myself, Dr. Iliescu

21 9. In connection with the Wingfield Towers Project, we made a concerted effort to
22 provide information to as many people as possible. In furthering that goal, the entire team working
23 on the Project produced a PowerPoint presentation and Fisher Friedman produced a 3-D Fly By.
24 I would present the PowerPoint presentation and/or the 3-D Fly By to various groups. A copy of
25 the PowerPoint presentation and the 3-D Fly By is attached hereto as Exhibits "C" and "D,"
26 respectively. A copy of a list of various meetings that I presented at, including either or both of the
27 PowerPoint and/or the 3-D Fly By is attached hereto as Exhibit "E."

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

TELEPHONE: (775) 324-5930

DATED this 30th day of July, 2007.


DAVID SNELGROVE

SUBSCRIBED AND SWORN to
before me this 30 day of July, 2007.


NOTARY PUBLIC

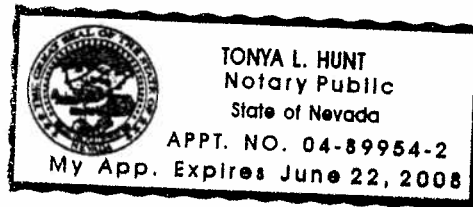


Exhibit 9

Exhibit 9

Declaration of Michael D. Hoy

Michael D. Hoy declares:

1. I am a Nevada lawyer and competent to give testimony on the following matters. I have personal knowledge of the following based upon my review of court filings received from prior counsel for Mark B. Steppan ("Architect").

2. Exhibit 1 to Architect's Reply in Support of Motion for Partial Summary Judgment ("Reply") is a true and correct copy of the Land Purchase Agreement between Iliescu and Consolidated Pacific Development, Inc., together with the addenda to the contract. This document was originally made part of the evidentiary record as Exhibit 1 to Iliescu's April 17, 2008 motion for partial summary judgment. The Land Purchase Agreement is not directly relevant to the legal issue presented in Architect October 21, 2011 Motion for Partial Summary Judgment, but is attached only to rebut the suggestion in the Opposition that Iliescu was a disinterested land owner who gained nothing because of the architectural, engineering, and land planning work that resulted in development entitlements for Iliescu's land.

3. Exhibit 9 to the Reply is a July 30, 2007 Affidavit of David Snelgrove. The affidavit was made a part of the evidentiary record when it was filed in support of Architect's Supplemental Response to Iliescu's Application for Release of the lien. That affidavit authenticated the Special Use Permit Application (Exhibit A to the affidavit, Exhibit 6 to the Reply) and the Tentative Map and Special Use Permit Application (Exhibit B to the Affidavit and Exhibit 7 to the Reply).

4. Exhibit 2 to the Reply is a Notice of Claim to Right, Title and Interest in Real Property in the Developer's bankruptcy. This document was made part of the evidentiary

1 record in this case as an exhibit to the May 3, 2007 Response to Iliescu's Application for
2 Release of Mechanic's Lien.

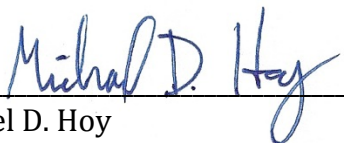
3 4. Exhibit 3 is a true and correct copy of the original lien notice (recorded
4 November 7, 2006 as WCR 3460499) and amended lien notice (recorded May 3, 2007 as
5 WCR 3528313). Iliescu first authenticated and offered the original lien notice in his
6 February 13, 2007 declaration. The amended lien notice was first authenticated and
7 offered in support of the Architect's Response to Iliescu's Application for Release of
8 Mechanic's Lien.

9 5. Exhibit 4 includes a December 14, 2005 letter from Karen Dennison to Iliescu
10 and the Developer regarding joint representation, and requesting a waiver of the conflict.
11 The document was first offered as Exhibit 21 to the Architect's February 3, 2009
12 Opposition to Iliescu's Motion for Summary Judgment. Exhibit 4 also includes the waiver of
13 conflict signed by Iliescu. The document was first offered as Exhibit 23 to the Architect's
14 February 3, 2009 Opposition to Iliescu's Motion for Summary Judgment.

15 6. Exhibit 5 is a December 8, 2006 Indemnity agreement protecting Iliescu
16 against the Architect's lien. The document was first offered as Exhibit 20 to the Architect's
17 February 3, 2009 Opposition to Iliescu's Motion for Summary Judgment.

18 I declare under penalty of perjury under Nevada law that the foregoing is true and
19 correct.
20

21 Dated February 21, 2013.

22
23
24 
25 Michael D. Hoy

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.

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

Dept. No: 10

AND RELATED MATTERS.

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 DATED this 8 day of May 2013.
9

10
11 

12 ELLIOTT A. SATTLER
13 District Judge
14
15
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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.

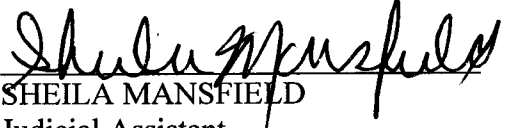
DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY
SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

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

Document Code: 2475

HOY CHRISSINGER & KIMMEL, PC

Michael D. Hoy (NV Bar 2723)
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519
(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**

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,

Applicants,

v.

MARK B. STEPPAN,

Respondent.

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

Trial: October 7, 2013

Motion to Strike or Limit Jury Demand

Mark B. Steppan hereby moves to strike or limit "Defendant Iliescus' Demand for
Jury Trial" filed September 6, 2011 ("Jury Demand"). [Exhibit 1] This motion is based on

1 the following Memorandum of Points and Authorities, all the pleadings and papers on file
2 with the Court, and any additional evidence and arguments offered in support of this
3 motion.

4 **Memorandum of Points and Authorities**

5 **Introduction**

6 After Plaintiff Mark Steppan ("Steppan") recorded a mechanics lien to secure
7 payment of design fees, John and Sonnia Iliescu ("Iliescu") sued to release the lien. That
8 relief was denied. Steppan sued to foreclose the lien.¹ Iliescu then filed an Answer and
9 Third Party Complaint seeking indemnity from certain parties. This is a summary of those
10 claims and parties:

11 1. Legal malpractice claims. Iliescu sued the Hale Lane law firm and several
12 individual lawyers for legal malpractice. Iliescu stipulated to stay the legal malpractice
13 claims. [Exhibit 2].

14 2. John Schleining. Iliescu alleged that John Schleining expressly contracted to
15 indemnify Iliescu against the lien. The Court dismissed Iliescu's claims against John
16 Schleining. [Exhibit 3].

17 3. Calvin Eugene Baty, Jr. Iliescu alleged that Mr. Baty also contracted to
18 indemnify Iliescu against the lien. Baty filed bankruptcy. *In re Calvin Eugene Baty, Jr.*, Case
19 No. 08-32573 (Bankr.D.Or.).

20 4. Consolidated Pacific Development. Iliescu sued Consolidated Pacific
21 Development ("CPD") for breach of contract. [Exhibit 4] Judith Otto filed an answer on
22

23
24
25 ¹ The Application for Release of Mechanics Lien was the initial filing in Case No. CV07-00341. Steppan's Complaint was the initial filing in Case No. CV07-01021. The two cases were consolidated by stipulation and ordered filed September 6, 2007.

1 behalf of CPD. [Exhibit 5] The Court subsequently granted Judith Otto's motion to
2 withdraw as attorney of record for CPD. [Exhibit 6] CPD is currently not represented.
3 Undersigned does not know whether Iliescu intends to present claims against CPD at the
4 trial.

5 5. DeCal Oregon, Inc. Iliescu sued DeCal Oregon, Inc. for breach of contract. On
6 December 18, 2007, Stephen Harris filed a "Notice of Appearance" on behalf of DeCal
7 Oregon. It does not appear that DeCal Oregon ever filed an answer. Undersigned does not
8 know whether Iliescu intends to present claims against DeCal Oregon at trial.

10 **Argument**

11 Iliescu has no right to a jury trial on Steppan's mechanics lien claim. *Close v. Isbell*
12 *Construction Company*, 86 Nev. 524, 529, 471 P.2d 257, 260-261 (1970). Iliescu may be
13 entitled to a jury on claims against the third-party defendants. However, it does not appear
14 that Iliescu intends to present any of those claims at the October 7, 2013 trial.

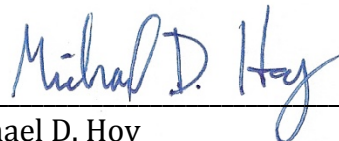
15 Steppan brings this motion to determine the right to a jury well in advance of trial in
16 order to make clear that the parties are not required to prepare jury instructions.

18 **Privacy Certification**

19 Undersigned certifies that this motion to Strike or Limit Jury Demand does not
20 contain any social security numbers.

21 Dated July 11, 2013.

HOY CHRISSINGER & KIMMEL, PC

22 

23 Michael D. Hoy
24 Attorneys for Mark B. Steppan
25

Certificate of Service

I certify that on July 11, 2013, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Gregory Wilson for John Schleining

Alice Campos Mercado for Jerry Snyder, Hale Lane Peek Dennison Howard, R. Howard, and Karen Dennison

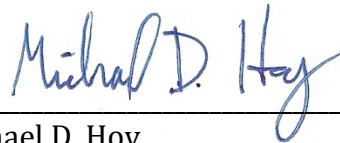
David Grundy for Jerry Snyder, Hale Lane Peek Dennison Howard, R. Howard, Karen Dennison, and Holland & Hart, LLP

I certify that on July 11, 2013, I mailed a true and correct copy of the forgoing to:

Gordon Cowan, Cowan Law Office, P.O. Box 17952, Reno, Nevada 89511 and 10775 Double R Boulevard, Reno, Nevada 89521

Dated July 11, 2013.

HOY CHRISSINGER & KIMMEL, PC



Michael D. Hoy
Attorneys for Mark B. Steppan

Table of Exhibits

- 1 Defendant Iliescus' Demand for Jury Trial
- 2 Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay
and Dismiss Claims against Defendants Dennison, Howard and Snyder without
Prejudice
- 3 Order Granting Third Party Defendant John Schleining's Motion to Dismiss
- 4 Answer and Third Party Complaint
- 5 Answer of Defendant Consolidated Pacific Development, Inc. to Third Party Plaintiffs'
Complaint
- 6 Order (Granting Motion to Withdraw as Attorney of Record)

ORIGINAL

FILED

2013 JUL 26 PM 2:02

JOEY GORDON HASTINGS
CLERK OF THE COURT

BY
DEPUTY

CODE:2645
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
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RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFFS

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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

AND RELATED MATTERS.

Case No.: CV07-00341
(Consolidated w/ CV07-01021)

Dept. No.: 10

**OPPOSITION TO MOTION TO
STRIKE OR LIMIT JURY
DEMAND**

Trial Date: 10/7/13

A. STATEMENT OF FACTS

These consolidated cases arose from a California based architectural firm (Steppan) seeking in excess of \$1 million in professional architect fees on a contract signed with the developer after the recording of a mechanic's lien against property owned by Iliescu. Iliescu never contracted for the services by the architect Steppan. Iliescu owns the property that Steppan seeks to foreclose. Iliescu had signed a contract to sell the property to a developer who appears to have engaged Steppan to perform the work for securing entitlements to develop the property as a multi-use property to include a high rise tower condominium building. After Steppan was not paid, he files a mechanic's lien and files a lawsuit to foreclose the mechanic's lien which in turn is joined with the lawsuit filed by Iliescu to remove the mechanic's lien.

After the unsuccessful attempt at removing the mechanic's lien, Iliescu files a malpractice lawsuit against the attorneys Hale Lane since they were engaged to protect

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Washoe County 2645
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1 his interest with regard to the sale of the properties. One of the claims against Hale Lane
2 was their failure to file and record a notice of non-responsibility, amongst other issues.
3 There was also a third party action filed by Iliescu against the principals of the buyer of the
4 property for an indemnity agreement that they executed after the recording of the
5 mechanic's lien.

6 Hale Lane files a lawsuit on behalf of Iliescu against the architect (Steppan) to
7 remove the mechanic's lien. They were unsuccessful in their attempts. After the first
8 hearing, Judge Adams ruled that there should be an opportunity for discovery before he
9 makes a final ruling concerning the application to remove a mechanic's lien. Thereinafter,
10 the first round of discovery occurred with numerous depositions and document exchanges.
11 Eventually, Judge Adams rules not to remove the mechanics lien thereby permitting the
12 case to go forward to trial. Another round of discovery and depositions occur. By reason
13 of extensive settlement negotiations conducted by Judge Adams he disqualifies himself
14 from any future handling of the subject litigation and the matter is reassigned to Judge
15 Elliot. The parties then move towards dismissal of the lawsuit and all the claims based
16 upon failure to comply with the requirements of NRCP 16.1. After the Court initially grants
17 the dismissal, the parties appeal. During the pending appeal, Judge Adams executes an
18 affidavit.

19 Given the fact that there had not yet been a resolution of the underlying Steppan
20 case, it was premature to pursue the legal malpractice case. Accordingly, the legal
21 malpractice case was stayed pending a resolution of the Steppan case. Semenza v.
22 Nevada Medical Liability Ins. Co., 104 Nev. 666, 765 P.2d 184 (1988).

23 The evidence will demonstrate that the Plaintiff works for an architectural firm
24 located in California. The California firm is not licensed to practice architecture in the
25 State of Nevada. However, the Plaintiff holds a Nevada license. As a result, the Plaintiff
26 is pursuing the case as opposed to the architectural firm. However, there is an issue
27 concerning the architecture practice as it relates to the fee alleged to have been earned
28 by the architect and whether there has been compliance with the contract. In other words,

1 the custom and practice of architecture is at issue.

2 The evidence will also show that the architect never served the pre-lien notice
3 under NRS 108.245 before the recording of the lien. A notice of non-responsibility under
4 NRS 108.234 requires specific information to be contained therein. (See subsection 3.)
5 This statute has evolved over the years with its last revision being in 2005. Before that
6 time, one could prepare a generic notice of non-responsibility without specific information
7 contained therein identifying that the owner of the property is not responsible for work
8 done by a contractor for whatever reason, such as, a lease agreement. However, NRS
9 108.234 no longer permits such a generic notice of non-responsibility. On the contrary,
10 it must contain specific information.

11 The third party complaint against the attorneys has been stayed pending the
12 outcome of this lawsuit as required by Semenza v. Nevada Medical Liability Ins. Co., Id.

13 The case against John Schleining was dismissed without prejudice.

14 The case against Consolidated Pacific Development is going forward. It is
15 anticipated that it will not be contested.

16 The case against Decal Oregon Inc. is going forward. It is anticipated that it will not
17 be contested.

18 **B. MEMORANDUM OF LAW**

19 We do not dispute the fact that the case of Close v. Isbell Construction Company
20 86 Nev. 524 (1970) has language indicating that a jury trial is not a matter of a right in an
21 equity case or upon issues of law which belong to the court. However, the context of the
22 Close case is not identical or similar to the context of the case herein. In Close v. Isbell
23 Construction Company, the dispute arose between the contractor and the owner of the
24 property who contracted with the contractor. The dispute in this case arises between the
25 owner of the property and the contractor/architect who contracted with the purchaser of the
26 property. We all agree that there was not privity of contract, whether it be oral or written,
27 between Iliescu and the Plaintiff. Iliescu was a named Defendant in the complaint to
28 foreclose the lien. In that complaint, Stepan is asking for a judgment presumably in the

1 lien amount. He also alleges in the complaint that a demand has been made upon the
2 Defendant without payment. (Paragraph 10.) Meanwhile, Iliescu never learned about the
3 lien until it was first recorded on November 7, 2006. The evidence will demonstrate that
4 there was never a pre-lien notice prior to the first recording of the lien on November 7,
5 2006 pursuant to NRS 108.245. In order to avoid this issue, Steppan's argument will be
6 that Iliescu had actual knowledge of his involvement falling within the exception provided
7 by the case of Fondren v. K/L Complex Ltd., 106 Nev. 705, 800 P.2d 719 (1990). The
8 Fondren case was decided before the amendments in NRS 108.234 which places the
9 burden on the owner to record a notice of non-responsibility. After the amendment, the
10 notice of non-responsibility must specifically contain the following information:

- 11 (a) name and addresses of disinterested owner and person
12 performing work;
- 13 (b) location of improvements;
- 14 (c) nature of the disinterested owner's interest in the
15 improvement and the property;
- 16 (d) date in which the disinterested owner first learned of the
17 work;
- 18 (e) date disinterested owner notified the lessee for
19 compliance with NRS 108.2403. See NRS 108.234
20 subsection #3. (Statute paraphrased)

21 Following the decision in Fondren, the Supreme Court decided the case of Hardy
22 Companies, Inc. v. SNMARK, LLC, 126 Nev. Adv. Op. 49, 245 P.3d 1149 (2010), the case
23 addresses the failure to file a pre-lien notice against the property owner. In the Hardy
24 case, the Supreme Court affirmed the holding in the Fondren case observing:

25 "An owner must have either pre-lien notice or actual
26 knowledge as described in Fondren in order to prevail in a lien
action against the owner."

27 The Supreme Court went on to observe that the notice and knowledge of the tenant was
28 not sufficient to be attributable to the owner.

1 "This Court has repeatedly held that mechanic lien statutes are
2 remedial in character and should be liberally construed, that
3 substantial compliance with the statutory requirements is
4 sufficient to perfect a lien if the property owner is not
5 prejudiced." Las Vegas Plywood v. D & D Enterprises, 98 Nev.
6 378, 649 P.2d 1367, 1368 (1982)

7 As this Court explained in Board of Trustees v. Durable
8 Developers, 102 Nev. 401, 724 P.2d 736 (1986), a lien
9 claimant substantially complies with NRS 108.245 pre-lien
10 requirement when the property owner has actual knowledge of
11 the potential lien claim and is not prejudiced. 102 Nev. at 410,
12 724 P.2d at 743. Failure to either fully or substantially comply
13 with the mechanic's lien statute will render a mechanic's lien
14 invalid as a matter of law. Schofield v. Copeland Lumber, 101
15 Nev. 83, 86, 692 P.2d 519, 521 (1985). Id. at 1151-1152.

16 Knowledge is defined by Black's Law Dictionary as "acquaintance with fact or truth." It has
17 also been defined as an act or state of knowing or understanding. Black's Law Dictionary,
18 Rev. 4th Ed. Page 1012. Actual is defined by Black's Law Dictionary as "real; substantial;
19 existing presently in fact; having a valid objective existence as opposed to that which is
20 merely theoretical or possible." Black's Law Dictionary, Rev. 4th Ed. Page 63.

21 It has been the repeated position of Iliescu in this case that he had no knowledge
22 of the existence of this specific architect that permitted him to meet the requirements of the
23 notices of non-responsibility under NRS 108.234. Clearly, this is a factual issue. The
24 Supreme Court went on to observe in the Hardy case the following:

25 "We conclude that summary judgments against O'Neil and
26 Hardy was improper. A genuine issue of material fact exists
27 regarding whether SNMARK had actual knowledge of the
28 potential lien claims of O'Neil and Hardy.

...

29 We conclude that actual knowledge requires that the owner
30 has to have been reasonable made aware of the identify of the
31 third party seeking to record and enforce the lien." Id. at 1157.

32 The Court went on to observe:

33 "[A] material issue of fact exists as to whether SNMARK had
34 actual knowledge of O'Neil's claim. Likewise, an issue of
35 material fact exists as to whether SNMARK had actual
36 knowledge of Hardy's potential lien claim." Id. at 1159.

37 This Court is going to be faced with a legal question of first impression: that is to say, the
38 impact of the Fondren decision as it relates to pre-lien notices required under NRS

1 108.245 coupled with the owner's responsibilities for a notice of non-responsibility under
2 NRS 108.234. In reaching that decision, the Court is going to need help on the pivotal
3 factual issue concerning the knowledge of the owner. Iliescu testified at his depositions
4 that he knew that there would be an architect required but did not have any knowledge as
5 to Steppan's personal involvement. This factual issue is pivotal in the application of the
6 law in this case. Steppan may argue that the knowledge of Iliescu's attorneys constitute
7 knowledge to Iliescu creating an obligation. Rather than place that burden on this Court
8 which in turn would impact the attorney malpractice case, Iliescu submits that the jury
9 should decide this factual issue in determining whether or not Steppan can meet that
10 threshold exception of the Fondren case of the "actual knowledge" of the owner.

11 Plaintiff is seeking to foreclose its mechanic's lien even though it did not comply with
12 the pre-lien notice. Iliescu's defense is that he did not have actual knowledge as to this
13 specific Plaintiff from which he can do a notice of non-responsibility. The defense is no
14 different then that of an affirmative defense. Although Nevada lacks any direct case on
15 the issue of affirmative defenses, the California courts have held that an affirmative
16 defense is an issue of fact for a jury. Under California law, waiver is an affirmative defense
17 and a question of fact for the jury. Insurance Co. of the West v. Haralambos Beverage
18 Co., 195 Cal.App.3d 1308, 241 Cal.Rptr. 427 (1987). Intel Corp v. Hartford Acc. & Indem.
19 Co., 952 F.2d 1551, 1559 (C.A.9 (Cal.), 1991).

20 "We hold that the record before the district court was
21 insufficient to support a summary judgment on TWA's claim for
22 tortious interference with business relations, both because
23 TWA failed to make out a necessary element of its prima facie
case, i.e., damages, and because ACE submitted evidence
sufficient to create a genuine issue of fact regarding its
affirmative defense of equitable estoppel."

24 TransWorld Airlines, Inc. v. American Coupon Exchange, Inc., 913 F.2d 676, 698 (C.A. 9,
25 (Cal.), 1990).

26 ///

27 ///

28 ///

1 Although the Nevada Supreme Court has not made any definitive issue on this point, the
2 inference is there.

3 "Chowdhry nevertheless claims that he achieved some benefit
4 from the suit in that the jury found that he had not abandoned
5 his patient. However, as points out by NLVH and Lapica, this
6 was not a claim asserted by Chowdhry. Instead, patient
7 abandonment was an affirmative defense which the jury
8 rejected."


9 Chowdhry v. NLVH, Inc., 109 Nev. 478, 851 P.2d 459, 464 (1993).

10 Additionally, there is the issue concerning compliance with the contract by the
11 architect. The architectural contract could not be signed on behalf of the California
12 architectural firm since it was not licensed in Nevada. The only one licensed in Nevada
13 was Steppan. The evidence will demonstrate that he used the resources of the California
14 architectural firm in fulfilling the work that which he alleges to have been completed to earn
15 twenty percent (20%) of this fee. Meanwhile, Steppan also received approximately
16 \$450,000 in payment towards his fees. Clearly, the firm was not licensed in Nevada.
17 Steppan was licensed in Nevada. Did the firm perform the work or did Steppan preform the
18 work? Another factual issue to be decided by a jury. As the owners of the land, Iliescu has
19 standing to attack the claims of Steppan that he has earned his fees. More importantly,
20 the Court is going to have to decide if the work that was done is in compliance with the
21 contract so that Steppan can earn the fee that he alleges to be due him. Once again, this
22 is another factual issue!

23 The undersigned affirms that the foregoing pleading does not contain a social
24 security number.

25 DATED this 25 day of July, 2013.

C. NICHOLAS PEREOS, LTD.

26 By: 
27 C. NICHOLAS PEREOS, ESQ.
28 1610 MEADOW WOOD LANE, #202
RENO, NEVADA 89502
(775) 329-0678
ATTORNEY FOR PLAINTIFFS

1 CERTIFICATE OF SERVICE BY MAIL

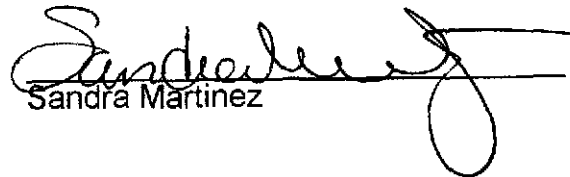
2 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am
3 an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for
4 mailing at Reno, Nevada, a true copy of the foregoing document addressed to:

5 Gregory Wilson, Esq.
6 GREGORY F. WILSON & ASSOCIATES, P.C.
7 1495 Ridgeview Drive, Suite 120
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DATED: 7-26-13


Sandra Martinez