Exhibit 5

MARK B STEPPAN, AIA, CSI, NCARB

ARCHITECT

April 25, 2008

Laura Bach
Nevada State Board of Architecture,
Interior Design and Residential Design
2080 E. Flamingo Road, Suite 120
Las Vegas, Nevada 89119

RE: NOTICE OF INVESTIGATION
CASE NUMBER: 08-019R
RESPONSE INFORMATION

Dear Laura,

It was a pleasure speaking with you over the telephone on April 22, 2008 in regards to the Notice of Investigation letter you sent to Rodney F. Friedman dated April 16, 2008. I will summarize our conversation and will start by pointing out I am licensed to practice architecture in the State of Nevada under Mark B. Steppan, AIA, CSI, NCARB.

The confusion with a Nevada Department of Transportation 2007-2008 Prequalification Program Application which was submitted in July of 2006, stems from the fact that the information provided, listing Fisher-Friedman Associates as the architect, was incorrectly input into the application by the then marketing coordinator. This person who prepared the application is no longer employed by me or Fisher-Friedman Associates.

My name appears on the application along with Fisher-Friedman Associates listed as the firm name. The firm name should have been Mark B. Steppan, AIA, CSI, NCARB. To add to any confusion, I am also an Executive Vice President for Fisher-Friedman Associates and am one of three members of the Board of Directors, along with Rodney Friedman and his wife. Bob Fisher has been retired since 1998.

Neither Rodney Friedman nor I have received any solicitations for work and we have not performed any architectural services for any party or for any potential projects as a result of submitting this Prequalification Package; nor has either of us provided any drawings to the Nevada Department of Transportation.

As was mentioned in our conversation, I am currently working on a project in Nevada, under the Nevada licensed firm name of Mark B. Steppan, AIA, CSI, NCARB and I am using Fisher-Friedman Associates as a design consultant. I understand that this is one of the correct ways of performing architectural services in Nevada.

For any future submittals of Prequalification Packages or any other solicitations for work; I or Fisher-Friedman Associates will respond with the correct registered entities name and will properly include such name on any and all forms and communications where required.

Included, per your request, is a copy of the Prequalification Application in question. If you have any questions or need more information please do not hesitate to contact me.

Yours truly,

Mark B. Steppan, AIA, CSI, NCARB

Cc: Main File

1485 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 f:510-420-0599

Exhibit 6

MARK B STEPPAN, AIA, CSI, NCARB

ARCHITECT

June 13, 2008

VIA FAX: 1.702.486.7304

Laura Bach
Nevada State Board of Architecture,
Interior Design and Residential Design
2080 E. Flamingo Road, Suite 120
Las Vegas, Nevada 89119

RE: NOTICE OF INVESTIGATION
CASE NUMBER: 08-019R
RESPONSE INFORMATION
ADDITIONAL INFORMATION

Dear Laura,

It was helpful speaking with you over the telephone on June 11, 2008 regarding your e-mail in respect to the Notice of Investigation currently in process. As we discussed I am licensed to practice architecture in the State of Nevada under Mark B. Steppan, AIA, CSI, NCARB. This is not the name of a corporation but an individual and thus not registered anywhere other than as an individual licensed to practice architecture in Nevada. I assume this explanation answers you and your supervisor's question on this item.

As requested please find attached a copy of the current in-place agreement for the project I am working on in Nevada. A standard AIA B141 Owner-Architect agreement has been used. This project is currently on hold.

If you have any questions or need more information please do not hesitate to contact me.

Yours truly,

Mark B. Steppan, AIA, CSI, NCARB

Cc: Main File

1485 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 f:510-420-0599

Exhibit 7

History of AB 262 - 1997

BDR 54-1446
Introduced:03/13/97
Introduced By: Ways and Means

Summary: Revises provisions governing practice of certain professions in groups. (BDR 54-1446)

03/13/97	Read first time. Referred to Committee on Ways and Means. To printer.
03/14/97	From printer. To committee: 4-10; 6-23
06/26/97	From committee: Amend, and re-refer to Committee on Commerce.
06/27/97	Read second time. Amended. Re-referred to Committee on Commerce. To printer.
06/28/97	From printer. To engrossment. Engrossed. First reprint. To committee: 6-28
06/30/97	From committee: Amend, and do pass as amended.
06/30/97	Placed on General File.
06/30/97	Read third time. Amended. To printer.
07/01/97	From printer. To re-engrossment. Re-engrossed. Second reprint.
07/01/97	Placed on General File.
07/01/97	Read third time. Passed, as amended. Title approved, as amended. To Senate.
07/01/97	In Senate. Read first time. Referred to Committee on Commerce and Labor. To committee: 7-3
07/03/97	From committee: Amend, and do pass as amended. Placed on Second Reading File.
07/03/97	Read second time. Amended. To printer.
07/04/97	From printer. To re-engrossment. Re-engrossed. Third reprint. Placed on General File.
07/04/97	Read third time. Passed, as amended. Title approved, as amended. To Assembly.
07/05/97	In Assembly.
07/05/97	Senate amendment concurred in.
07/05/97	To enrollment.
07/08/97	Enrolled and delivered to Governor.
07/16/97	Approved by the Governor.
07/16/97	Chapter 403.
07/21/97	Sections 7 and 8 of this act effective June 30, 1997. Sections 2 and 4 of this act effective 12:01 a.m. October 1, 1997. Remainder of this act effective October 1, 1997.

BILL SUMMARY

69th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

ASSEMBLY BILL 262
(Enrolled)

Assembly Bill 262 sets forth criteria allowing architects, registered interior designers, residential designers, professional engineers, and landscape architects to join or form a partnership, corporation, limited-liability company or other business organization or association with persons outside of their field of practice. The bill requires that the registered professional members control and own two-thirds of such a business organization or association. These companies are required to register with the State Board of Architecture, Interior Design and Residential Design. The bill specifies that every office or place of business of any such limited-liability company or business association must have an architect regularly working in the office who is a resident of this state, holds a Nevada certificate of registration, and is directly responsible for the administration of the architectural work conducted in the office. Business organizations or associations are responsible for any violation of the statutes made by new employees who are not registered by the state board. The measure also provides that the board may require an architect, interior designer, or residential designer to complete not more than 12 hours of continuing education per year as a condition for renewal of a certificate of registration.

The bill further requires city and county building departments and public bodies to provide the state board with written notice if a registered architect, interior designer, or residential designer submits plans that are substantially incomplete or submits plans for the same project that are rejected at least three times.

Portions of the bill become effective on June 30, 1997. Other portions of the measure are effective on October 1, 1997.

ASSEMBLY BILL NO. 262–COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE BUDGET DIVISION OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 13, 1997

Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing fees charged by state board of architecture, interior design and residential design. (BDR 54-1446)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION – Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the state board of architecture, interior design and residential design; revising the provisions governing the fees charged by the board; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 623.310 is hereby amended to read as follows:

623.310 The board shall, by regulation, adopt a fee schedule which may not exceed the following:

For an examination for a certificate	$800.00
For rewriting an examination or a part or parts failed	800.00
For *the initial issuance of* a certificate [of registration] [125.00]	*500.00*
For a temporary certificate [of registration]	500.00
For [initial registration or] *the* renewal of [registration] *a certificate*	300.00
For the late renewal of an expired certificate within 1 year after its expiration	220.00
For the late renewal of a certificate which has been expired for more than 1 year but not more than 3 years	300.00
For the restoration of a revoked certificate	500.00
[For change of address	5.00]
For *the* replacement of a certificate	30.00

For application forms ..... [25.00] *50.00*
[For photostatic copies, each sheet..... .25]
Sec. 2. This act becomes effective on July 1, 1997.

MINUTES OF THE ASSEMBLY COMMITTEE ON WAYS AND MEANS

Sixty-ninth Session
April 10, 1997

The Committee on Ways and Means was called to order at 7:45 a.m., on Thursday, April 10, 1997. Chairman Morse Arberry, Jr. presided in Room 3161 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry, Jr., Chairman
Mrs. Jan Evans, Vice Chairman
Mrs. Barbara Cegavske
Mrs. Vonne Chowning
Mr. Jack Close
Mr. Joseph Dini, Jr.
Ms. Chris Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Ms. Saundra (Sandi) Krenzer
Mr. John Marvel
Ms. Kathleen (Kathy) Von Tobel

COMMITTEE MEMBERS ABSENT:

Mr. Robert Price (Excused)

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Gary Ghiggeri, Deputy Fiscal Analyst
Brian Burke, Program Analyst

Gender Equity - Intercollegiate Activities

Dr. Joseph Crowley, President, University of Nevada, Reno, thanked the committee members for the opportunity to speak about the very important subject of Gender Equity - Intercollegiate Activities, a subject discussed in the joint hearing and more recently in joint subcommittee. Dr. Crowley noted the University of Nevada, Las Vegas (UNLV) and the University of Nevada, Reno (UNR) sought $250,000 per year per university ($1 million total for the biennium) primarily to meet federal Title IX gender equity requirements. The regent-approved gender equity plan which had been devised addressed the essential components of Title IX:

1. An overall way to achieve the goals of Title IX, with 3 alternate routes to the achievement of those goals: (a) to reach substantially proportional participation opportunities; (b) to fully and effectively accommodate the interests and abilities of student athletes of either gender; and (c) to

ASSEMBLY BILL 262 - Revises provisions governing fees charged by state board of architecture, interior design and residential design.

James L. Wadhams, representing the Nevada State Board of Architecture, Interior Design and Residential Design stated a lot of rearrangement had been done last session to create and regulate a new profession called Registered Interior Design. The new Registered Interior Design was added by the last legislative session. The board currently regulated three professions, Registered Interior Design, Residential Design, and Architecture. Each of those professions had slightly different systems of testing. AB 262 was requested in consultation with the Budget Division to try to clarify the pricing of the various services performed. What historically had been done with the board was the committee had set maximums and the board, by regulation and based upon its budget, developed a fee that offset the cost of the service performed.

Mr. Wadhams said on April 7, Gloria Armendariz, Executive Director, State Board of Architecture, Interior Design and Residential Design, had sent to the committee a description of what AB 262 intended to accomplish. Currently an applicant paid two separate fees for an initial registration, $220 for a 2-year biennial registration and $125 for the processing of the certificate, for a total of $345. The effect of the change would be to allow the board to charge a single fee rather than two separate fees. The price would be the same and could only change if the regulation itself were changed.

Ms. Giunchigliani stated the temporary certificate fee seemed like a large increase, from $0 to $500, and asked for an explanation. Mr. Wadhams stated line 8 of AB 262 indicated a temporary certificate fee would remain; he saw no non-italicized numbers so it remained at $500 for which it was currently provided. Ms. Giunchigliani stated staff's information indicated it was at $0 and increased to $500 and asked for clarification. Mr. Wadhams stated he would be happy to work with staff for clarification. Ms. Giunchigliani commented the information the committee had was the initial issuance of certificate currently at $125 and increased to $500; temporary certificate currently at $0 and increased to $500; change of address, currently $5 decreased to $0; application forms $25 increased to $50; and photostatic copies decreased from $0.25 to $0 per sheet. The only disagreement Mr. Wadhams saw was on line 8 which indicated that number remained the same. Ms. Giunchigliani asked Mr. Wadhams to clarify that statement. She asked if any of the increased dollars in AB 262 had been included in the budget. Mr. Wadhams stated the amount the board adopted by regulation, which was less than virtually all of those maximums, had been included in the budget. Mr. Wadhams explained if AB 262 was to pass, only one fee would be charged that would be a total of $345, the same as before.

Chairman Arberry asked how the proposed Nevada fees compared to Nevada's neighboring states. Mr. Wadhams stated it was his understanding that those fees were generally comparable throughout the United States. Architecture was interesting in the regard that there existed some 4,000 registered architects plus the registered interior designers and the residential designers. Registration in the state did not require residency. The culpability was very important for the national registration system used here. Mr. Wadhams stated he could verify that if the committee wanted a specific answer. Chairman Arberry stated yes, and wanted to know how Nevada compared to the rest of the United States.

Regarding fee increases, Chairman Arberry asked if they were a result of the board's operating expenses or why had they wanted to increase the fees. Mr. Wadhams stated he was not prepared to discuss the budgetary aspect of the

bill, but would be happy to obtain that information and submit it in writing to the staff.

Mike Hillerby, representing the American Institute of Architects, Nevada, stated members always expressed concern when their fees increased. The institute had talked at length at the last board meeting and decided the best opportunity was to work within the board structure with whatever regulations the committee passed to ensure they justified any fee increases. The institute wanted to see its board strong enough to regulate the profession and protect the public. Mr. Hillerby stated he had a letter from the state board which acknowledged the combination of the fees and its actual impact on new registrants. The members also expressed the desire to make it as easy and as inexpensive as possible for the new registrants who had just spent about $1,000 to take an examination and had just gotten started. If there was a way that fee could be spread over the existing architects who had been in business for a while, and there were quite a number of those in the state and out-of-state as well, that was something the institute would talk to the board about.

With no further testimony, Chairman Arberry declared the hearing on AB 262 closed.

BUDGET CLOSINGS

MANSION MAINTENANCE - PAGE 8

Mark Stevens, Fiscal Analyst, Legislative Counsel Bureau, stated E-125 requested a new administrative secretary position that was recommended in the Governor's budget. Questions had been raised during the budget hearing as to whether maintenance of buildings and grounds recommended in E-125 could be reduced based on the upcoming mansion renovation. The Budget Division indicated that E-125 maintenance of the buildings and grounds amount should be retained in the budget and would not be impacted by the upcoming renovation. However, the Budget Division recommended the one-shot appropriation could be reduced and when that one-shot went through that amendment could be made. Mr. Stevens stated there were no adjustments to the budget, there would be an adjustment in the one-shot appropriation. The only other items he mentioned were some of the additions that were included in the budget. Staff had no recommendation.

* * * * * * * * * * *

MRS. EVANS MOVED BUDGET APPROVAL WITH THE APPROPRIATE ADJUSTMENT MADE TO THE ONE-SHOT APPROPRIATION.

MR. HETTRICK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY BY THOSE PRESENT. MR. DINI AND MR. GOLDWATER WERE NOT PRESENT DURING THE VOTE.

BUDGET CLOSED.

* * * * * * * * * * *

COMMISSION ON WOMEN - PAGE 14

Mr. Stevens stated testimony had been heard on January 31, 1997, and referred to the appropriate section of those minutes which read as follows:

MINUTES OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Sixty-ninth Session
June 23, 1997

The Committee on Ways and Means was called to order at 7:40 a.m., on Monday, June 23, 1997. Chairman Morse Arberry, Jr. presided in Room 3137 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry, Jr., Chairman
Mrs. Jan Evans, Vice Chairman
Mrs. Barbara Cegavske
Mrs. Vonne Chowning
Mr. Jack Close
Mr. Joseph Dini, Jr.
Ms. Chris Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Mr. John Marvel
Mr. Robert Price
Ms. Kathleen (Kathy) Von Tobel

COMMITTEE MEMBERS ABSENT:

Ms. Saundra (Sandi) Krenzer (Excused)

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Gary Ghiggeri, Deputy Fiscal Analyst

Chairman Arberry opened the hearing on A.B. 82.

ASSEMBLY BILL 82 - Authorizes state treasurer to appoint and employ certain deputies and assistants. (BDR 10-642)

Bob Seale, State Treasurer, advised he would speak on behalf of A.B. 82, indicating the bill would bring several issues in line with the budget. On line 3 of the bill, the title of the deputy cashier had been changed to deputy of operations; the bill would also add a deputy of investments, a deputy of cash management, and change the position of assistant to the State Treasurer from a classified to an unclassified position. Mr. Seale stated the former positions were already in effect and would have no impact on the budget. The most substantive part of the legislation would be the change of the assistant to the State Treasurer from a classified to an unclassified position.

There being no further testimony on A.B. 82, Chairman Arberry closed the hearing. The next item for committee consideration was A.B. 321.

Mr. Close asked that the motion include the recommendations in the memorandum of June 22, 1997 from Debbra King, Program Analyst, (Exhibit D). Chairman Arberry advised that would be done.

MOTION PASSED UNANIMOUSLY BY THOSE PRESENT; ASSEMBLYWOMAN KRENZER WAS NOT PRESENT FOR THE VOTE.

****

The next item was A.B. 262.

ASSEMBLY BILL 262 - Revises provisions governing practice of certain professions in groups. (BDR 54-1446)

Mr. Stevens advised A.B. 262 dealt with the State Board of Architecture. There had been an amendment proposed on the bill, and staff had attempted to put together a synopsis for the committee, which basically consisted of two options. The first option would be an amendment regarding initial issuance and initial certificate of registration issued by the Board, raising the ceiling to $500. The board indicated it would not change the current charge of $345, but the ceiling figure would allow it to go higher if the board deemed necessary. The second option would be to extract the fee completely, and pass the bill. If that was the committee's decision, the board would request the bill be re-referred to the Assembly Committee on Commerce.

****

MR. DINI MOVED TO AMEND AND RE-REFER A.B. 262 TO ASSEMBLY COMMITTEE ON COMMERCE.

MR. GOLDWATER SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY BY THOSE PRESENT; ASSEMBLYWOMAN KRENZER WAS NOT PRESENT FOR THE VOTE.

****

The next item for committee consideration was A.B. 342.

ASSEMBLY BILL 342 - Revises provisions governing electronic supervision. (BDR 16-1177)

Mr. Stevens stated the bill had recently been heard by committee, and an amendment had been proposed.

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MS. GIUNCHIGLIANI MOVED TO AMEND AND DO PASS A.B. 342.

MR. HUMKE SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY BY THOSE PRESENT; ASSEMBLYWOMAN KRENZER WAS NOT PRESENT FOR THE VOTE.

****

SECOND READING AND AMENDMENT

Assembly Bill No. 262.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 914.

Amend the bill as whole by deleting sections 1 and 2 and adding new sections designated sections 1 through 4, following the enacting clause, to read as follows:

"Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Architects, registered interior designers, residential designers, professional engineers and landscape architects may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants outside of their field of practice, or with nonregistrants, if control and two-thirds ownership of the business organization or association is held by persons registered in this state pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2. If a partnership, corporation, limited-liability company or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:

(a) Demonstrate to the board that it is in compliance with all provisions of this section.

(b) Pay the fee for a certificate of registration pursuant to NRS 623.310.

(c) Qualify to do business in this state.

(d) If it is a corporation, register with the board and furnish to the board a complete list of all stockholders when it first files with the board and annually thereafter within 30 days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each stockholder.

(e) If it is a partnership, limited-liability company or other form of business organization or association, register with the board and furnish to the board such information analogous to that required by paragraph (d) as the board may prescribe by regulation.

3. A partnership, corporation, limited-liability company or other form of business organization or association practicing under the provisions of this section may not perform, promote or advertise the services of a registrant unless that registrant is an owner of the business organization or association.

4. As used in this section, "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a business organization or association.

9

Sec. 2. NRS 623.350 is hereby amended to read as follows:

623.350 1. [This chapter does not prevent firms, partnerships, corporations or associations of architects, registered interior designers, professional engineers and landscape architects, or any combination thereof, from practicing as such, if each director, stockholder and officer of the corporation and each partner or associate of the firm, partnership or association is registered pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2.] Every office or place of business of any [firm,] partnership, corporation , *limited-liability company or other business organization* or association engaged in the practice of architecture [must] *pursuant to the provisions of section 1 of this act shall* have an architect who is a resident of this state and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and directly responsible for the administration of the architectural work conducted in the office or place of business.

[3.] The provisions of *this* subsection [2] do not apply to [firms,] partnerships, corporations , *limited-liability companies or other business organization* or associations engaged in the practice of architecture at offices established for construction administration.

2. A registrant practicing in a business organization or association which holds a certificate issued pursuant to section 1 of this act remains subject to NRS 89.220.

3. If a nonregistrant, or a registrant who is not an owner, employed by or affiliated with a business organization or association which holds a certificate issued pursuant to section 1 of this act is found by the board to have violated a provision of this chapter or a regulation of the board, the board may hold the business organization or association and the registrants who are owners responsible for the violation.

Sec. 3. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

A city or county building inspector, or other officer performing the functions of that position, shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the city or county officer at least three times.

Sec. 4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

A public body shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the public body at least three times.".

Amend the title of the bill to read as follows: "An Act relating to architecture; revising provisions for practice in groups; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows: "Summary—Revises provisions concerning architecture. (BDR 54-1446)".

Assemblyman Arberry moved the adoption of the amendment.

Remarks by Assemblyman Arberry.

Amendment adopted.

Assemblyman Arberry moved that Assembly Bill No. 262 be re-referred to the Committee on Commerce.

Motion carried.

Bill ordered reprinted, engrossed and to the Committee on Commerce.

Assembly Bill No. 519.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 857.

Amend section 1, page 1, by deleting lines 2 through 4 and inserting: "the Health Division of the Department of Human Resources the sum of $50,000 for continuation of the program developed by the perinatal substance abuse subcommittee of the Advisory Board on Maternal and Child Health.".

Amend the title of the bill to read as follows: "An Act making an appropriation to the Health Division of the Department of Human Resources for the continuation of the program developed by the perinatal substance abuse subcommittee of the Advisory Board on Maternal and Child Health; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows: "Summary—Makes appropriation to Health Division of Department of Human Resources for continuation of program developed by perinatal substance abuse subcommittee of Advisory Board on Maternal and Child Health. (BDR S-1691)".

Assemblywoman Krenzer moved the adoption of the amendment.

Remarks by Assemblywoman Krenzer.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

ASSEMBLY BILL NO. 262–COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE BUDGET DIVISION OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 13, 1997

Referred to Committee on Ways and Means

SUMMARY—Revises provisions concerning architecture. (BDR 54-1446)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION – Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to architecture; revising provisions for practice in groups; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Architects, registered interior designers, residential designers, professional engineers and landscape architects may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants outside of their field of practice, or with nonregistrants, if control and two-thirds ownership of the business organization or association is held by persons registered in this state pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2. If a partnership, corporation, limited-liability company or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:

(a) Demonstrate to the board that it is in compliance with all provisions of this section.

(b) Pay the fee for a certificate of registration pursuant to NRS 623.310.

(c) Qualify to do business in this state.

(d) If it is a corporation, register with the board and furnish to the board a complete list of all stockholders when it first files with the board and annually thereafter within 30 days after the annual meeting of the

stockholders of the corporation, showing the number of shares held by each stockholder.

(e) If it is a partnership, limited-liability company or other form of business organization or association, register with the board and furnish to the board such information analogous to that required by paragraph (d) as the board may prescribe by regulation.

3. A partnership, corporation, limited-liability company or other form of business organization or association practicing under the provisions of this section may not perform, promote or advertise the services of a registrant unless that registrant is an owner of the business organization or association.

4. As used in this section, "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a business organization or association.

Sec. 2. NRS 623.350 is hereby amended to read as follows:

623.350 1. [This chapter does not prevent firms, partnerships, corporations or associations of architects, registered interior designers, professional engineers and landscape architects, or any combination thereof, from practicing as such, if each director, stockholder and officer of the corporation and each partner or associate of the firm, partnership or association is registered pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2.] Every office or place of business of any [firm,] partnership, corporation , *limited-liability company or other business organization* or association engaged in the practice of architecture [must] *pursuant to the provisions of section 1 of this act shall* have an architect who is a resident of this state and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and directly responsible for the administration of the architectural work conducted in the office or place of business.

[3.] The provisions of *this* subsection [2] do not apply to [firms,] partnerships, corporations , *limited-liability companies or other business organization* or associations engaged in the practice of architecture at offices established for construction administration.

2. A registrant practicing in a business organization or association which holds a certificate issued pursuant to section 1 of this act remains subject to NRS 89.220.

3. If a nonregistrant, or a registrant who is not an owner, employed by or affiliated with a business organization or association which holds a certificate issued pursuant to section 1 of this act is found by the board to have violated a provision of this chapter or a regulation of the board, the board may hold the business organization or association and the registrants who are owners responsible for the violation.

Sec. 3. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

A city or county building inspector, or other officer performing the functions of that position, shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the city or county officer at least three times.

Sec. 4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

A public body shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the public body at least three times.

FLOOR MINUTES OF THE
ASSEMBLY COMMITTEE ON COMMERCE

Sixty-ninth Session
June 28, 1997

The Committee on Commerce was called to order at 12:30 p.m., on Saturday, June 28, 1997, behind the bar of the Assembly. Chair, Barbara Buckley, Assemblymen Amodei, Braunlin, Evans, Close, Herrera, and Segerblom were in attendance.

ASSEMBLY BILL 262- **Revises provisions governing practice of certain professions in groups.**

ASSEMBLYWOMAN SEGERBLOM MOVED TO AMEND AND DO PASS AS AMENDED A.B. 262.

ASSEMBLYWOMAN BRAUNLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT.

With no further business, the meeting adjourned at 12:40 p.m.

RESPECTFULLY SUBMITTED

Jane Baughman

Jane Baughman, Committee Secretary

APPROVED BY:

Assemblywoman Barbara Buckley, Chair

DATE 8-1-97

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required to be paid by that enterprise; providing certain rights for the payers of those fees and taxes; making various other changes concerning taxation; and providing other matters properly relating thereto.".

Assemblyman Price moved the adoption of the amendment.

Remarks by Assemblyman Price.

Assemblyman Price moved that Senate Bill No. 424 be taken from the Second Reading File and placed on the Chief Clerk's desk.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Ways and Means:

Assembly Bill No. 665—An Act relating to public employees; making appropriations from the state general fund and the state highway fund to the state board of examiners for increases in the salaries of certain employees of the State of Nevada; increasing the salaries of certain employees; and providing other matters properly relating thereto.

Assemblyman Arberry moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 262.

Bill read third time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 981.

Amend section 1, page 1, line 6, after "*registrants*" by inserting "*and licensees*".

Amend section 1, page 1, line 7, by deleting "*nonregistrants,*" and inserting: "*persons who are not registered or licensed,*".

Amend section 1, page 1, line 8, after "*registered* " by inserting "*or licensed* ".

Amend section 1, page 2, by deleting line 10 and inserting: "*or licensee unless that registrant or licensee is an owner of the business organization or*".

Amend sec. 2, page 2, line 21, after "registered" by inserting "or licensed".

Amend sec. 2, page 2, line 35, after "*registrant* " by inserting "*or licensee*".

Amend sec. 2, page 2, by deleting line 38 and inserting:

"*3. If a person who is not registered or licensed, or a registrant or licensee who is not an owner, and who is employed by*".

Amend sec. 2, page 2, line 42, after "*registrants*" by inserting "*and licensees*".

Amend the bill as a whole by renumbering sections 3 and 4 as sections 5 and 6 and adding new sections designated sections 3 and 4, following sec. 2, to read as follows:

"Sec. 3. NRS 623A.250 is hereby amended to read as follows:

623A.250 *1.* A firm, partnership, corporation or association may engage in the practice of landscape architecture if:

[1.] *(a)* All work is under the supervision and direction of a certificate holder;

[2.] *(b)* The name or names of all certificate holders appear in the name of the firm, partnership, corporation or association;

[3.] *(c)* The name of the certificate holder appears on all papers or documents used in the practice of landscape architecture; and

[4.] *(d)* All instruments of service are signed by the certificate holder.

2. Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.

Sec. 4. NRS 625.261 is hereby amended to read as follows:

625.261 1. Except as otherwise provided in this section:

(a) A firm, partnership, corporation or other person engaged in or offering to engage in the practice of engineering or land surveying in this state shall employ full time at least one professional engineer or professional land surveyor, respectively, at each place of business where such work is or will be performed; and

(b) All engineering or land-surveying work done at a place of business must be performed under a professional engineer or professional land surveyor, respectively, who has been placed in responsible charge of the work and who is employed full time at that particular place of business.

2. If the only professional engineer or professional land surveyor employed full time at a place of business where engineering or land-surveying work is performed ceases to be employed at that place of business, during the 30 days next following his departure:

(a) The place of business is not required to employ full time a professional engineer or professional land surveyor; and

(b) The professional engineer or professional land surveyor placed in responsible charge of engineering or land-surveying work performed at the place of business is not required to be employed full time at that place of business.

3. Except as otherwise provided in subsection [4:] *5:*

(a) A firm, partnership, corporation or other person who performs or offers to perform engineering services in a certain discipline at a particular place of

business shall employ full time at that place of business a professional engineer licensed in that discipline.

(b) Each person who holds himself out as practicing a certain discipline of engineering must be licensed in that discipline or employ full time a professional engineer licensed in that discipline.

4. *Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.*

5. The provisions of this section do not apply to a firm, partnership, corporation or other person who:

(a) Practices professional engineering for his benefit and does not engage in the practice of professional engineering or offer professional engineering services to other persons; or

(b) Is engaged in the practice of professional engineering or land surveying in offices established for limited or temporary purposes, including offices established for the convenience of field survey crews or offices established for inspecting construction.".

Amend the bill as a whole by adding a new section designated sec. 7, following sec. 4, to read as follows:

"Sec. 7. Sections 2 and 4 of this act become effective at 12:01 a.m. on October 1, 1997.".

Amend the title of the bill to read as follows: "An Act relating to professions; revising the provisions governing the practice of architects, registered interior designers, residential designers, professional engineers and landscape architects in groups; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows: "Summary—Revises provisions governing practice of certain professions in groups. (BDR 54-1446)".

Assemblywoman Buckley moved the adoption of the amendment.

Remarks by Assemblywoman Buckley.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 476.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

ASSEMBLY BILL NO. 262–COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE BUDGET DIVISION OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 13, 1997

Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing practice of certain professions in groups. (BDR 54-1446)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION – Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to professions; revising the provisions governing the practice of architects, registered interior designers, residential designers, professional engineers and landscape architects in groups; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Architects, registered interior designers, residential designers, professional engineers and landscape architects may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed, if control and two-thirds ownership of the business organization or association is held by persons registered or licensed in this state pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2. If a partnership, corporation, limited-liability company or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:

(a) Demonstrate to the board that it is in compliance with all provisions of this section.

(b) Pay the fee for a certificate of registration pursuant to NRS 623.310.

(c) Qualify to do business in this state.

(d) If it is a corporation, register with the board and furnish to the board a complete list of all stockholders when it first files with the board and annually thereafter within 30 days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each stockholder.

(e) If it is a partnership, limited-liability company or other form of business organization or association, register with the board and furnish to the board such information analogous to that required by paragraph (d) as the board may prescribe by regulation.

3. A partnership, corporation, limited-liability company or other form of business organization or association practicing under the provisions of this section may not perform, promote or advertise the services of a registrant or licensee unless that registrant or licensee is an owner of the business organization or association.

4. As used in this section, "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a business organization or association.

Sec. 2. NRS 623.350 is hereby amended to read as follows:

623.350 1. [This chapter does not prevent firms, partnerships, corporations or associations of architects, registered interior designers, professional engineers and landscape architects, or any combination thereof, from practicing as such, if each director, stockholder and officer of the corporation and each partner or associate of the firm, partnership or association is registered or licensed pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2.] Every office or place of business of any [firm,] partnership, corporation , *limited-liability company or other business organization* or association engaged in the practice of architecture [must] *pursuant to the provisions of section 1 of this act shall* have an architect who is a resident of this state and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and directly responsible for the administration of the architectural work conducted in the office or place of business.

[3.] The provisions of *this* subsection [2] do not apply to [firms,] partnerships, corporations , *limited-liability companies or other business organization* or associations engaged in the practice of architecture at offices established for construction administration.

2. A registrant or licensee practicing in a business organization or association which holds a certificate issued pursuant to section 1 of this act remains subject to NRS 89.220.

3. If a person who is not registered or licensed, or a registrant or licensee who is not an owner, and who is employed by or affiliated with a business organization or association which holds a certificate issued pursuant to section 1 of this act is found by the board to have violated a

provision of this chapter or a regulation of the board, the board may hold the business organization or association and the registrants and licensees who are owners responsible for the violation.

Sec. 3. NRS 623A.250 is hereby amended to read as follows:

623A.250 *1.* A firm, partnership, corporation or association may engage in the practice of landscape architecture if:

[1.] *(a)* All work is under the supervision and direction of a certificate holder;

[2.] *(b)* The name or names of all certificate holders appear in the name of the firm, partnership, corporation or association;

[3.] *(c)* The name of the certificate holder appears on all papers or documents used in the practice of landscape architecture; and

[4.] *(d)* All instruments of service are signed by the certificate holder.

2. Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.

Sec. 4. NRS 625.261 is hereby amended to read as follows:

625.261 1. Except as otherwise provided in this section:

(a) A firm, partnership, corporation or other person engaged in or offering to engage in the practice of engineering or land surveying in this state shall employ full time at least one professional engineer or professional land surveyor, respectively, at each place of business where such work is or will be performed; and

(b) All engineering or land-surveying work done at a place of business must be performed under a professional engineer or professional land surveyor, respectively, who has been placed in responsible charge of the work and who is employed full time at that particular place of business.

2. If the only professional engineer or professional land surveyor employed full time at a place of business where engineering or land-surveying work is performed ceases to be employed at that place of business, during the 30 days next following his departure:

(a) The place of business is not required to employ full time a professional engineer or professional land surveyor; and

(b) The professional engineer or professional land surveyor placed in responsible charge of engineering or land-surveying work performed at the place of business is not required to be employed full time at that place of business.

3. Except as otherwise provided in subsection [4:] *5:*

(a) A firm, partnership, corporation or other person who performs or offers to perform engineering services in a certain discipline at a particular

place of business shall employ full time at that place of business a professional engineer licensed in that discipline.

(b) Each person who holds himself out as practicing a certain discipline of engineering must be licensed in that discipline or employ full time a professional engineer licensed in that discipline.

4. *Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.*

5. The provisions of this section do not apply to a firm, partnership, corporation or other person who:

(a) Practices professional engineering for his benefit and does not engage in the practice of professional engineering or offer professional engineering services to other persons; or

(b) Is engaged in the practice of professional engineering or land surveying in offices established for limited or temporary purposes, including offices established for the convenience of field survey crews or offices established for inspecting construction.

Sec. 5. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

A city or county building inspector, or other officer performing the functions of that position, shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the city or county officer at least three times.

Sec. 6. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

A public body shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the public body at least three times.

Sec. 7. Sections 2 and 4 of this act become effective at 12:01 a.m. on October 1, 1997.

Roll call on Assembly Bill No. 252:

YEAS — 42.

NAYS — None.

Assembly Bill No. 252 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 262.

Bill read third time.

Remarks by Assemblywoman Buckley.

Roll call on Assembly Bill No. 262:

YEAS — 42.

NAYS — None.

Assembly Bill No. 262 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 265.

Bill read third time.

Remarks by Assemblymen Arberry and Chowning.

Roll call on Assembly Bill No. 265:

YEAS — 42.

NAYS — None.

Assembly Bill No. 265 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 286.

Bill read third time.

Remarks by Assemblyman Perkins.

Roll call on Assembly Bill No. 286:

YEAS — 42.

NAYS — None.

Assembly Bill No. 286 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 320.

Bill read third time.

Remarks by Assemblymen Gustavson, Freeman, Chowning, Collins, Ernaut and Evans.

Roll call on Assembly Bill No. 320:

YEAS — 30.

NAYS — Buckley, Chowning, Evans, Freeman, Goldwater, Koivisto, Krenzer, Nolan, Ohrenschall, Perkins, Segerblom, Williams — 12.

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Sixty-ninth Session
July 3, 1997

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 7:00 a.m., on Thursday, July 3, 1997, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Kathy Augustine
Senator Dean A. Rhoads
Senator Joseph M. Neal, Jr.
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Vance Hughey, Committee Policy Analyst
Beverly Willis, Committee Secretary

OTHERS PRESENT:

Douglas Dirks, General Manager, State Industrial Insurance System (SIIS)
Lenard Ormsby, General Counsel, State Industrial Insurance System (SIIS)
James L. Wadhams, Lobbyist, Nevada State Board of Architecture
Ron Swirczek, Administrator, Division of Industrial Relations (DIR), Department of Business and Industry
Robert Barengo, Lobbyist, Nevada State Board of Medical Examiners
Bill Gregory, Lobbyist, Nevada State Medical Association
Harvey Whittemore, Lobbyist, Nevada Resort Association
Douglas R. Ponn, Lobbyist, Executive Director, Governmental and Regulatory Affairs, Sierra Pacific Power Company
Judy M. Sheldrew, Commissioner, Public Service Commission of Nevada (PSC)

The hearing was closed on A.B. 609 and opened on A.B. 363.

ASSEMBLY BILL 363: Revises provisions governing making of stage productions and motion pictures within this state. (BDR 18-1290)

SENATOR NEAL MOVED TO INDEFINITELY POSTPONE A.B. 363.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR AUGUSTINE, SENATOR SCHNEIDER AND SENATOR SHAFFER WERE ABSENT FOR THE VOTE.)

* * * * *

The hearing was closed on A.B. 363 and opened on A.B. 262.

ASSEMBLY BILL 262: Revises provisions governing practice of certain professions in groups. (BDR 54-1446)

James L. Wadhams, Lobbyist, Nevada State Board of Architecture, presented a proposed amendment to A.B. 262 (Exhibit C). Mr. Wadhams explained the rationale behind this proposed amendment and gave reasons for its late appearance to the committee. Senator Townsend expressed concerns over lack of time to have a proper amendment drafted before sending A.B. 262 to the Senate for a final vote.

SENATOR RHOADS MOVED TO AMEND AND DO PASS A.B. 262 WITH THE PROPOSED AMENDMENT.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR AUGUSTINE AND SENATOR SHAFFER WERE ABSENT FOR THE VOTE.)

* * * * *

The hearing was closed on A.B. 262 and opened on A.B. 165.

Proposed Amendment to AB 262, Second Reprint

Submitted by Jim Wadhams

Amend the bill as a whole by renumbering sec. 7 as sec. 8 and adding a new section, designated sec. 7, following sec. 8, to read as follows:

"**Sec. 7.** Section 1 of Assembly Bill No. 105 of this session is hereby amended to read as follows:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

The board may, by regulation, require each architect, interior designer or residential designer who holds a certificate of registration pursuant to the provisions of this chapter to complete not more than 12 hours per year of continuing education as a condition to the renewal of his certificate.".

Amend sec. 7, page 4, line 38, by deleting "Sections" and inserting:

"1. This section and section 7 become effective upon passage and approval or on June 30, 1997, whichever occurs earlier.

2. Sections 1, 3, 5 and 6 become effective on October 1, 1997.

3. Sections".

3971 EXHIBIT C 26

Amend the summary of the bill to read as follows:

"Summary—Makes various changes to provisions governing regulation of certain motor carriers. (BDR 58-1755)".

Senator O'Donnell moved the adoption of the amendment.

Remarks by Senator O'Donnell.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 262.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 1161.

Amend the bill as a whole by renumbering sec. 7 as sec. 8 and adding a new section, designated sec. 7, following sec. 6, to read as follows:

"Sec. 7. Section 1 of Assembly Bill No. 105 of this session is hereby amended to read as follows:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

The board may, by regulation, require each architect, interior designer or residential designer who holds a certificate of registration pursuant to the provisions of this chapter to complete not more than 12 hours per year of continuing education as a condition to the renewal of his certificate.".

Amend sec. 7, page 4, line 38, by deleting "Sections" and inserting:

"1. This section and section 7 become effective upon passage and approval or on June 30, 1997, whichever occurs earlier.

2. Sections 1, 3, 5 and 6 become effective on October 1, 1997.

3. Sections".

Amend the title of the bill, third line, after "groups;" by inserting: "clarifies provision regarding annual requirement of continuing education for architects, interior designers and residential designers;".

Senator Townsend moved the adoption of the amendment.

Remarks by Senator Townsend.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 429.

Bill read second time.

The following amendment was proposed by the Committee on Finance.

Amendment No. 1124.

Amend section 1, page 2, line 24, by deleting "$290,000" and inserting "$319,000".

ASSEMBLY BILL NO. 262–COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE BUDGET DIVISION OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 13, 1997

Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing practice of certain professions in groups. (BDR 54-1446)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION – Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to professions; revising the provisions governing the practice of architects, registered interior designers, residential designers, professional engineers and landscape architects in groups; clarifies provision regarding annual requirement of continuing education for architects, interior designers and residential designers; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Architects, registered interior designers, residential designers, professional engineers and landscape architects may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed, if control and two-thirds ownership of the business organization or association is held by persons registered or licensed in this state pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2. If a partnership, corporation, limited-liability company or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:

(a) Demonstrate to the board that it is in compliance with all provisions of this section.

(b) Pay the fee for a certificate of registration pursuant to NRS 623.310.

(c) Qualify to do business in this state.

(d) If it is a corporation, register with the board and furnish to the board a complete list of all stockholders when it first files with the board and annually thereafter within 30 days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each stockholder.

(e) If it is a partnership, limited-liability company or other form of business organization or association, register with the board and furnish to the board such information analogous to that required by paragraph (d) as the board may prescribe by regulation.

3. A partnership, corporation, limited-liability company or other form of business organization or association practicing under the provisions of this section may not perform, promote or advertise the services of a registrant or licensee unless that registrant or licensee is an owner of the business organization or association.

4. As used in this section, "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a business organization or association.

Sec. 2. NRS 623.350 is hereby amended to read as follows:

623.350 1. [This chapter does not prevent firms, partnerships, corporations or associations of architects, registered interior designers, professional engineers and landscape architects, or any combination thereof, from practicing as such, if each director, stockholder and officer of the corporation and each partner or associate of the firm, partnership or association is registered or licensed pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2.] Every office or place of business of any [firm,] partnership, corporation , *limited-liability company or other business organization* or association engaged in the practice of architecture [must] *pursuant to the provisions of section 1 of this act shall* have an architect who is a resident of this state and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and directly responsible for the administration of the architectural work conducted in the office or place of business.

[3.] The provisions of *this* subsection [2] do not apply to [firms,] partnerships, corporations , *limited-liability companies or other business organization* or associations engaged in the practice of architecture at offices established for construction administration.

2. A registrant or licensee practicing in a business organization or association which holds a certificate issued pursuant to section 1 of this act remains subject to NRS 89.220.

3. If a person who is not registered or licensed, or a registrant or licensee who is not an owner, and who is employed by or affiliated with a business organization or association which holds a certificate issued

pursuant to section 1 of this act is found by the board to have violated a provision of this chapter or a regulation of the board, the board may hold the business organization or association and the registrants and licensees who are owners responsible for the violation.

Sec. 3. NRS 623A.250 is hereby amended to read as follows:

623A.250 *1.* A firm, partnership, corporation or association may engage in the practice of landscape architecture if:

[1.] *(a)* All work is under the supervision and direction of a certificate holder;

[2.] *(b)* The name or names of all certificate holders appear in the name of the firm, partnership, corporation or association;

[3.] *(c)* The name of the certificate holder appears on all papers or documents used in the practice of landscape architecture; and

[4.] *(d)* All instruments of service are signed by the certificate holder.

2. Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.

Sec. 4. NRS 625.261 is hereby amended to read as follows:

625.261 1. Except as otherwise provided in this section:

(a) A firm, partnership, corporation or other person engaged in or offering to engage in the practice of engineering or land surveying in this state shall employ full time at least one professional engineer or professional land surveyor, respectively, at each place of business where such work is or will be performed; and

(b) All engineering or land-surveying work done at a place of business must be performed under a professional engineer or professional land surveyor, respectively, who has been placed in responsible charge of the work and who is employed full time at that particular place of business.

2. If the only professional engineer or professional land surveyor employed full time at a place of business where engineering or land-surveying work is performed ceases to be employed at that place of business, during the 30 days next following his departure:

(a) The place of business is not required to employ full time a professional engineer or professional land surveyor; and

(b) The professional engineer or professional land surveyor placed in responsible charge of engineering or land-surveying work performed at the place of business is not required to be employed full time at that place of business.

3. Except as otherwise provided in subsection [4:] *5:*

(a) A firm, partnership, corporation or other person who performs or offers to perform engineering services in a certain discipline at a particular

place of business shall employ full time at that place of business a professional engineer licensed in that discipline.

(b) Each person who holds himself out as practicing a certain discipline of engineering must be licensed in that discipline or employ full time a professional engineer licensed in that discipline.

4. *Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.*

5. The provisions of this section do not apply to a firm, partnership, corporation or other person who:

(a) Practices professional engineering for his benefit and does not engage in the practice of professional engineering or offer professional engineering services to other persons; or

(b) Is engaged in the practice of professional engineering or land surveying in offices established for limited or temporary purposes, including offices established for the convenience of field survey crews or offices established for inspecting construction.

Sec. 5. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

A city or county building inspector, or other officer performing the functions of that position, shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the city or county officer at least three times.

Sec. 6. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

A public body shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the public body at least three times.

Sec. 7. Section 1 of Assembly Bill No. 105 of this session is hereby amended to read as follows:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

The board may, by regulation, require each architect, interior designer or residential designer who holds a certificate of registration pursuant to the provisions of this chapter to complete not more than

12 hours per year of continuing education as a condition to the renewal of his certificate.

Sec. 8. 1. This section and section 7 become effective upon passage and approval or on June 30, 1997, whichever occurs earlier.

2. Sections 1, 3, 5 and 6 become effective on October 1, 1997.

3. Sections 2 and 4 of this act become effective at 12:01 a.m. on October 1, 1997.

7-4-97

Assembly Bill No. 170 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 191.

Bill read third time.

Remarks by Senator Rawson.

Roll call on Assembly Bill No. 191:

YEAS—19.

NAYS—O'Connell, Rhoads—2.

Assembly Bill No. 191 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 262.

Bill read third time.

Roll call on Assembly Bill No. 262:

YEAS—21.

NAYS—None.

Assembly Bill No. 262 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 333.

Bill read third time.

Remarks by Senators Regan, O'Donnell and Porter.

Senator Regan requested that the following remarks be entered in the Journal.

SENATOR REGAN:

Mr. President, I wish to express my support for the amended version of Assembly Bill No. 333. One point of this bill deserves mention. It clears up emphasis on our legislative intent. This bill clearly allows the City of North Las Vegas to formulate its own stand-alone franchise or agreement with a private monorail just as Clark County and the City of Las Vegas may do. There was some confusion yesterday about this issue which now has been clarified. With respect to the powers of local government, of and in Clark County, all are on equal legal footing and their ability to create a stand-alone franchise or internal agreement for installation or operation of monorails is a result of Assembly Bill No. 333. It is a good bill and I wish to express my support for the measure.

SENATOR O'DONNELL:

Thank you, Mr. President. Also, for legislative intent, this bill is the result of no small measure of compromise. The casino industry resorts that objected to this bill now accept it, subject however to very definite understandings which they believe are reflected in the most recent set of amendments. It is the understanding of these resorts, and my understanding as

Assembly Bill No. 262–Committee on Ways and Means

CHAPTER 403

AN ACT relating to professions; revising the provisions governing the practice of architects, registered interior designers, residential designers, professional engineers and landscape architects in groups; clarifies provision regarding annual requirement of continuing education for architects, interior designers and residential designers; and providing other matters properly relating thereto.

[Approved July 16, 1997]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Architects, registered interior designers, residential designers, professional engineers and landscape architects may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed, if control and two-thirds ownership of the business organization or association is held by persons registered or licensed in this state pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2. If a partnership, corporation, limited-liability company or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:

(a) Demonstrate to the board that it is in compliance with all provisions of this section.

(b) Pay the fee for a certificate of registration pursuant to NRS 623.310.

(c) Qualify to do business in this state.

(d) If it is a corporation, register with the board and furnish to the board a complete list of all stockholders when it first files with the board and annually thereafter within 30 days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each stockholder.

(e) If it is a partnership, limited-liability company or other form of business organization or association, register with the board and furnish to the board such information analogous to that required by paragraph (d) as the board may prescribe by regulation.

3. A partnership, corporation, limited-liability company or other form of business organization or association practicing under the provisions of this section may not perform, promote or advertise the services of a registrant or licensee unless that registrant or licensee is an owner of the business organization or association.

4. As used in this section, "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a business organization or association.

Sec. 2. **NRS 623.350** is hereby amended to read as follows:

623.350 1. [This chapter does not prevent firms, partnerships, corporations or associations of architects, registered interior designers, professional engineers and landscape architects, or any combination thereof, from practicing as such, if each director, stockholder and officer of the corporation and each partner or associate of the firm, partnership or association is registered or licensed pursuant to the applicable provisions of this chapter, chapter 623A or chapter 625 of NRS.

2.] Every office or place of business of any [firm,] partnership, corporation , *limited-liability company or other business organization* or association engaged in the practice of architecture [must] *pursuant to the provisions of section 1 of this act shall* have an architect who is a resident of this state and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and directly responsible for the administration of the architectural work conducted in the office or place of business.

[3.] The provisions of *this* subsection [2] do not apply to [firms,] partnerships, corporations , *limited-liability companies or other business organization* or associations engaged in the practice of architecture at offices established for construction administration.

2. A registrant or licensee practicing in a business organization or association which holds a certificate issued pursuant to section 1 of this act remains subject to NRS 89.220.

3. If a person who is not registered or licensed, or a registrant or licensee who is not an owner, and who is employed by or affiliated with a business organization or association which holds a certificate issued pursuant to section 1 of this act is found by the board to have violated a provision of this chapter or a regulation of the board, the board may hold the business organization or association and the registrants and licensees who are owners responsible for the violation.

Sec. 3. **NRS 623A.250** is hereby amended to read as follows:

623A.250 *1.* A firm, partnership, corporation or association may engage in the practice of landscape architecture if:

[1.] *(a)* All work is under the supervision and direction of a certificate holder;

[2.] *(b)* The name or names of all certificate holders appear in the name of the firm, partnership, corporation or association;

[3.] *(c)* The name of the certificate holder appears on all papers or documents used in the practice of landscape architecture; and

[4.] *(d)* All instruments of service are signed by the certificate holder.

2. Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.

Sec. 4. **NRS 625.261** is hereby amended to read as follows:

625.261 1. Except as otherwise provided in this section:

(a) A firm, partnership, corporation or other person engaged in or offering to engage in the practice of engineering or land surveying in this state shall employ full time at least one professional engineer or professional land surveyor, respectively, at each place of business where such work is or will be performed; and

(b) All engineering or land-surveying work done at a place of business must be performed under a professional engineer or professional land surveyor, respectively, who has been placed in responsible charge of the work and who is employed full time at that particular place of business.

2. If the only professional engineer or professional land surveyor employed full time at a place of business where engineering or land-surveying work is performed ceases to be employed at that place of business, during the 30 days next following his departure:

(a) The place of business is not required to employ full time a professional engineer or professional land surveyor; and

(b) The professional engineer or professional land surveyor placed in responsible charge of engineering or land-surveying work performed at the place of business is not required to be employed full time at that place of business.

3. Except as otherwise provided in subsection [4:] *5:*

(a) A firm, partnership, corporation or other person who performs or offers to perform engineering services in a certain discipline at a particular place of business shall employ full time at that place of business a professional engineer licensed in that discipline.

(b) Each person who holds himself out as practicing a certain discipline of engineering must be licensed in that discipline or employ full time a professional engineer licensed in that discipline.

4. *Architects, registered interior designers, residential designers, professional engineers and landscape architects may, in accordance with section 1 of this act, join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, or with persons who are not registered or licensed.*

5. The provisions of this section do not apply to a firm, partnership, corporation or other person who:

(a) Practices professional engineering for his benefit and does not engage in the practice of professional engineering or offer professional engineering services to other persons; or

(b) Is engaged in the practice of professional engineering or land surveying in offices established for limited or temporary purposes, including offices established for the convenience of field survey crews or offices established for inspecting construction.

Sec. 5. **Chapter 278 of NRS** is hereby amended by adding thereto a new section to read as follows:

A city or county building inspector, or other officer performing the functions of that position, shall notify the state board of architecture,

interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the city or county officer at least three times.

Sec. 6. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

A public body shall notify the state board of architecture, interior design and residential design in writing if a registered architect, interior designer or residential designer:

1. Submits plans for a project which are substantially incomplete; or

2. Submits plans for the same project which are rejected by the public body at least three times.

Sec. 7. Section 1 of Assembly Bill No. 105 of this session is hereby amended to read as follows:

Section 1. Chapter 623 of NRS is hereby amended by adding thereto a new section to read as follows:

The board may, by regulation, require each architect, interior designer or residential designer who holds a certificate of registration pursuant to the provisions of this chapter to complete not more than 12 hours per year of continuing education as a condition to the renewal of his certificate.

Sec. 8. 1. This section and section 7 become effective upon passage and approval or on June 30, 1997, whichever occurs earlier.

2. Sections 1, 3, 5 and 6 become effective on October 1, 1997.

3. Sections 2 and 4 of this act become effective at 12:01 a.m. on October 1, 1997.

Assembly Bill No. 611–Committee on Taxation

CHAPTER 404

AN ACT relating to taxes on retail sales; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to impose the tax on sales of items purchased by this state and local governments for resale to the public; contingently imposing analogous taxes on such sales; and providing other matters properly relating thereto.

[Approved July 16, 1997]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. At the general election on November 3, 1998, a proposal must be submitted to the registered voters of this state to amend the Sales and Use Tax Act, which was enacted by the 47th session of the legislature of the State of Nevada and approved by the governor in 1955, and subsequently approved by the people of this state at the general election held on November 6, 1956.

Exhibit 8

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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,

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.
_____/

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

DEPT. NO.: 6

SUPPLEMENTAL RESPONSE TO ILIESCU'S REQUEST TO STEPPAN FOR PRODUCTION OF DOCUMENTS

Respondent/Plaintiff, Mark B. Steppan ("Steppan"), by and through his attorneys, Gayle A. Kern, Ltd., pursuant to NRCP Rule 35, supplements the previous response to Iliescu's First Request to Steppan for Production of Documents as follows:

REQUEST FOR PRODUCTION NO. 1: Please produce copies of all billings, invoices, timesheets for all employees or individuals conducting the services, work records, costs expended (i.e., XEROX, messenger, computer time, postage, telephone, etc.) and any other billing record or memorandum which supports the billing and payment dated February 15, 2006, in the sum of $266,450.65 which commenced on or about October 31, 2005, the date of the Contract between STEPPAN and BSC Financial. A copy of said billing and payment is attached hereto and marked Exhibit 1.

RESPONSE:

Objection. This request is ambiguous. Without waiving such objection, Steppan alleges that Exhibit 1 is not a billing but rather is a copy of Check number 30089 from Decal Custom Homes & Construction, Inc.

Objection. This request is beyond the scope of the Nevada Rules of Civil Procedure; irrelevant; burdensome; requests confidential proprietary information; constitutes harassment; and not intended to lead to admissible evidence.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that Exhibit 1 lists the specific invoices paid by Check Number 30089, paid reimbursable expenses identified as: Invoice #22259 (STEPPAN 2802-2806); Invoice #22283 (STEPPAN2807-2812); Invoice #22301 (STEPPAN 2813-2821); Invoice #22258 (STEPPAN 3308-3309); and professional services identified as Invoice #22282 (STEPPAN 3306-3307); Invoice #22299 (STEPPAN 3304-3305); Invoice #22300 (STEPPAN 3302-3303).

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that there are no such documents except as previously produced documents including documents numbered STEPPAN 0001-7103, and specifically STEPPAN 2802-2806, STEPPAN 2807-2812, STEPPAN 2813-2821, STEPPAN 3308-3309, STEPPAN 3306-3307, STEPPAN 3304-3305, and STEPPAN 3302-3303 for the specific invoices in question. Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that the contract at issue is for a fee based on a percentage of total construction cost and no records were kept or maintained for billing purposes using timesheets for the architectural fees and costs set forth in the Notice of Lien recorded

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RENO, NEVADA 89511
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November 7, 2006 as Document No. 34604999 in the sum of $1,783,548.85 except as noted. Specifically, invoices for additional work beyond the scope of the contract and all approved by the client which was invoiced on an hourly basis with the invoices including the total of hours billed for each approved additional service. Prior to the execution of the contract, hours were recorded for billing purposes and these hours are clearly defined on the specific invoices until such time of the contract execution. These invoices were previously produced in STEPPAN 0001-7103. After the execution of the contract, the form of invoicing and record keeping changed from an hourly basis to a fee (invoice) based on a percentage of the total construction cost and records were no longer kept or maintained for billing purposes based on timesheets.

Without waiving all such objections previously made, timesheets still in existence are produced as STEPPAN 007122 - 007363. Steppan alleges that these records are irrelevant, inadmissible and have nothing to do with the claims or defenses in this case.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all billings, invoices, timesheets for all employees or individuals conducting the services, work records, costs expended (i.e., XEROX, messenger, computer time, postage, telephone, etc.) and any other billing record or memorandum which supports the billing dated August 31, 2006 (as set forth in Exhibit 2 attached hereto.

RESPONSE: Objection. This request is ambiguous. This request is beyond the scope of the Nevada Rules of Civil Procedure; irrelevant; burdensome; requests confidential proprietary information; constitutes harassment; and not intended to lead to admissible evidence.

Without waiving such objections, Respondent/Plaintiff Mark B Steppan alleges that there is no billing dated August 31, 2006. Exhibit 2 to the Request for Production is clearly identified as an Aging Report.

Without waiving such objections, please also refer to Invoice 22384 STEPPAN 7104-7105; Invoice 22408 (STEPPAN 7106-7107); Invoice 22430 (STEPPAN 7108-7109); Invoice #22432 (STEPPAN 7110-7111); Invoice #22412 (STEPPAN 7112-7113).

Without waiving such objections, please refer to the Response to Request for Production No. 1.

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Without waiving all such objections previously made, timesheets still in existence are produced as STEPPAN 007122 - 007363. Steppan alleges that these records are irrelevant, inadmissible and have nothing to do with the claims or defenses in this case.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all billings, invoices, timesheets for all employees or individuals conducting the services, work records, costs expended (i.e., XEROX, messenger, computer time, postage, telephone, etc.) and any other billing record or memorandum which supports all billings and their amount subsequent to August 31, 2006 and up to and including November 14, 2006.

RESPONSE:

Objection. This request is beyond the scope of the Nevada Rules of Civil Procedure; irrelevant; burdensome; requests confidential proprietary information; constitutes harassment; and not intended to lead to admissible evidence.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that there were seven invoices generated within this time frame. They were Invoice #22454 for reimbursable expenses (STEPPAN 7114-7115); Invoice #22468 billed for percentage complete basis against the main contract (STEPPAN 7116-7118); Invoice 22452 billed for percentage complete basis against the main contract (STEPPAN 7119-7121); Invoices #22453 for additional services billed on an hourly basis (STEPPAN 4406); Invoice #22469 for additional services billed on an hourly basis (STEPPAN 4407); Invoice 22467 for additional services billed on an hourly basis (STEPPAN 4403); Invoice #22471 for additional services billed on an hourly basis (STEPPAN 4412).

Without waiving such objections, please refer to the Responses to Request for Production No. 1 and 2.

Without waiving all such objections previously made, timesheets still in existence are produced as STEPPAN 007122 - 007363. Steppan alleges that these records are irrelevant, inadmissible and have nothing to do with the claims or defenses in this case.

REQUEST FOR PRODUCTION NO. 4: Please produce copies of all payment checks which support the billings referred to in Requests for Production Nos. 1, 2 and 3.

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RESPONSE:

Objection. This request is beyond the scope of the Nevada Rules of Civil Procedure; irrelevant; burdensome; requests confidential proprietary information; constitutes harassment; and not intended to lead to admissible evidence.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that Exhibit 1 to Iliescu's First Request to Steppan for Production of Documents which is a copy of the payment.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that Exhibit 2 is not a billing, it is an aging report. Please refer to the Response to Request for Production 2.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan alleges that Exhibit 3 are invoices which fall within this time frame all remain outstanding and there was no payment.

REQUEST FOR PRODUCTION NO. 5: Please produce copies of all billings, invoices, timesheets for all employees or individuals conducting the services, work records, costs expended (i.e., XEROX, messenger, computer time, postage, telephone, etc.) and any other billing record or memorandum which supports the architectural fees and costs set forth in the Notice of Lien recorded November 7, 2006 as Document No. 34604999 in the sum of $1,783,548.85.

RESPONSE:

Objection. This request is beyond the scope of the Nevada Rules of Civil Procedure; irrelevant; burdensome; requests confidential proprietary information; constitutes harassment; and not intended to lead to admissible evidence.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan refers to you to the Responses to Request for Production of Documents 1, 2, 3, and 4.

Without waiving such objections, Respondent/Plaintiff Mark B. Steppan further alleges that the City of Reno actions and documents relative to the approval of the project and the documents regarding the entitlements granted and sought by Iliescu are incorporated and that the billed percent of work performed to date at each invoice time period which was billed to the client

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on a monthly basis, the payment schedule, STEPPAN 3260 (prepared by the client with the full understanding of scope, extent and value of the completed or to be completed work) and the city approved entitlement drawings demonstrate the completeness and scope of work performed. All previously produced documents including those produced by Iliescu and STEPPAN 0001-7120. The payment schedule was generated by the client and approved and agreed to by Steppan. Invoicing was still done on a monthly basis for the percentage complete of the work regardless of the amount agreed to for payment on the payment schedule. This payment schedule was the proposal of payment regardless of the actual amounts invoiced as an accommodation to the client to facilitate payments.

Without waiving all such objections previously made, timesheets still in existence are produced as STEPPAN 007122 - 007363. Steppan alleges that these records are irrelevant, inadmissible and have nothing to do with the claims or defenses in this case.

Dated this 1st day of March, 2010.

GAYLE A. KERN, LTD.

GAYLE A. KERN, ESQ.
Attorneys for Respondent/Plaintiff Mark B. Steppan

GAYLE A. KERN, LTD.
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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:

SUPPLEMENTAL RESPONSE TO ILIESCU'S REQUEST TO STEPPAN FOR PRODUCTION OF DOCUMENTS

on the party(s) set forth below by:

_____ 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.

__X__ 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

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

DATED this 1st day of March, 2010.

Teresa A Gearhart
TERESA A. GEARHART

GAYLE A. KERN, LTD.
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Exhibit 9

NCARB

RULES OF CONDUCT

2014 - 2015

AA2172

NCARB Mission
The National Council of Architectural Registration Boards protects the public health, safety, and welfare by leading the regulation of the practice of architecture through the development and application of standards for licensure and credentialing of architects.

Core Values
NCARB believes in:

- **Leadership** – Proactive, creative thinking, and decisive actions.
- **Accountability** – Consistent, equitable, and responsible performance.
- **Transparency** – Clear and accessible rules, policies, procedures, governance, and communication.
- **Integrity** – Honest, impartial, and well-reasoned action.
- **Collaboration** – Working together toward common goals.
- **Excellence** – Professional, expert, courteous, respectful, and responsive service.

NCARB is a nonprofit corporation comprising the legally constituted architectural registration boards of the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands as its members.

2014-2015 Rules of Conduct
National Council of Architectural Registration Boards
1801 K Street NW, Suite 700K
Washington, DC 20006
202/783-6500
www.ncarb.org

This document was revised in July 2014 and supersedes all previous editions.

2014 - 2015

RULES OF CONDUCT

INTRODUCTION

These rules of conduct are published by NCARB as a recommended set of rules for Member Boards having the authority to promulgate and enforce rules of conduct applicable to their registrants.

Immediately following the 1975 Annual Meeting, the Board of Directors charged the NCARB Committee on Professional Conduct with drafting a set of rules of conduct for use by Member Boards. The Committee worked on these rules over an 18-month period. Initially, the Committee searched the existing rules of several of its Member Boards. From this search a preliminary set of rules of conduct covering a multitude of matters was prepared. The preliminary rules were finally revised to a draft set of rules in February 1976. That draft was submitted to representatives of various governmental agencies and professional organizations in March 1976. On the basis of informal comment received at that time, the rules were again revised. In November 1976, another series of hearings with governmental officials was held and further revisions were made.

Thereafter, these rules were distributed broadly with requests for comment, and in February 1977 the Committee on Professional Conduct, taking into account the comments received, revised, and redrafted the rules into their present form. The rules were approved by the Member Boards at the 1977 Annual Meeting. At the 1982 NCARB Annual Meeting one amendment to these rules of conduct was approved, adding a new Section 5.1 and renumbering subsequent items accordingly.

Certain Committee assumptions are clarified as follows:

• It is the Committee's belief that a set of rules of conduct, which will be the basis for policing and disciplining members of the profession, should be "hard-edged" rules and should not include those precatory injunctions which are often found in a list of professional obligations. For example, the Committee believes that it is an obligation of all registered architects to assist interns in their development. But the Committee could not conceive of making the failure to perform that obligation the basis for revocation of registration, suspension of registration, or reprimand. Thus, the rules set forth below have all been subjected to the critical test of whether or not an architect violating any one of the rules should be subject to discipline. It is the Committee's judgment that the rules proposed are all rules for which it is appropriate to command compliance and threaten sanctions.

• The Committee views these rules as having as their objective the protection of the public and not the advancement of the interests of the profession of architecture. The Committee believes, however, the profession is advanced by requiring registration holders to act in the public interest. There are, however, various rules of conduct found in many existing state board rules which seem more directed at protecting the profession than advancing the public interest. Such a rule is the prohibition against allowing one architect to supplant another until he/she has adequate proof that the first architect has been properly discharged. Without doubt, such a rule makes the practice more civilized, more orderly, and, under some circumstances, exposes a client to less risk. On the other hand, it was frequently pointed out to the Committee that clients may often wish to verify the competence of a retained architect by engaging a second architect, and it hardly seems appropriate for governmental regulation to prevent that from occurring. Similarly, prohibitions against brokers selling architects' services, fee competition, advertising, free sketches, and the like, seem more appropriately included in professional ethical standards than in rules to be enforced by state agencies.

In protecting the public, there are two general areas of concern. First, non-architects (beginning with the client and including all other members of the construction industry) dealing with an architect should be protected against misrepresentation, fraud, and deceit. It has long been recognized as a proper function of government to protect the consumer of services from such wrongful behavior. Second, the users of a project on which the architect has worked must be protected from a building which is unsafe. This kind of protection by a governmental agency has an even longer history.

• The Committee sought to avoid burdening the architect with standards of conduct which were unreasonable to expect. At the same time, the Committee took into account the fact that the public views the architect or, in the case of an engineering project, the engineer as the only registered professional involved in a leadership position in the construction process, and relies on the registered professional to help safeguard the public interest. Rule 3.3, derived from a similar rule found in the Alaska State Board's rules of conduct, recognizes the special responsibility of the registered architect. In this regard, the architect is not unlike the lawyer who, while enjoined to defend vigorously the position of his/her client, must under certain circumstances abandon his/her partisan effort on behalf of his/her client by virtue of his/her duty as an officer of the court to advance the cause of justice. Similarly, accountants have in recent years been compelled to insist on positions that are not in their client's interest but that are necessary in order to provide the public with full disclosure. So the architect has a fiduciary duty to his/her client, while at the same time has a supervening duty to the public.

• As has been stated above, these rules are intended to point out those areas of behavior for which an architect risks being disciplined by his/her state board. The enforcement of these rules is the subject of a paper titled "Procedural Requirements for Discipline of Architects by State Architectural Registration Boards," prepared and distributed by the Professional Conduct Committee. Enforcement, of course, raises quite special problems. State registration boards are notoriously understaffed and underfunded. Nonetheless, the Committee believes the experience of some of our Member Boards in using available resources to assist in enforcement will provide guidance to other state boards that have despaired of being able to enforce rules of conduct in the past. The paper on enforcement suggests strategies by which the state boards can police the profession and can effectively enforce these rules. The Committee, however, does not believe that an infraction of each of these rules will yield the same punishment. Obviously, any disciplinary body takes into account a multitude of mitigating circumstances. In addition, a first infraction of some of the rules would, in all likelihood, not result in disciplinary action. For example, very few responsible and honorable architects avoid negligence completely in their careers. On the other hand, the board must have the right to discipline and, if necessary, revoke the registration of an architect with a demonstrated record of incompetence.

• The Committee struggled with the question of the necessary proximity between the act proscribed and the public interest involved. As an example, we can pick out three points on a line all leading to unsafe structures which the public clearly has an interest in preventing. The first point, for purposes of this illustration, is architects bidding against each other on the basis of fee. There is evidence that buildings constructed from the work of architects who have won the job on the basis of a low fee have more problems than buildings generally. As a second point on the line, buildings designed by architects who suffer from substantial physical or mental disabilities contain a much higher risk of defects than buildings generally. As a final point on the line, there is the architect who has been chronically negligent in his/her past projects and is likely to perform with similar negligence in the future. The Committee was compelled to ask itself whether the odds were sufficiently high in connection with the competitive bidding issue to warrant a registration board attempting to protect the public at that point on the line. A similar question was raised concerning the architect whose competence is physically or mentally impaired. In a sense, disciplining the architect after the defective building had been discovered was the least effective way of protecting the public. This kind of inquiry resulted in the Committee's deleting any reference to competitive bidding in its rules but retaining a rule concerning physical or mental disabilities on the grounds that the protection of the public required that the board have power to step in when it has evidence that such a condition exists and is likely to impair the competence of the architect. Similar inquiries were made in connection with many of the other rules set forth in this document.

GUIDELINES

RULE 1 COMPETENCE

1.1 In practicing architecture, an architect's primary duty is to protect the public's health, safety, and welfare. In discharging this duty, an architect shall act with reasonable care and competence, and shall apply the knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

COMMENTARY

Although many of the existing state board rules of conduct fail to mention standards of competence, it is clear that the public expects that incompetence will be disciplined and, where appropriate, will result in revocation of the license. Rule 1.1 sets forth the common law standard which has existed in this country for 100 years or more in judging the performance of architects. While some courts have stated that an architect, like the manufacturer of goods, warrants that his/her design is fit for its intended use, this rule specifically rejects the minority standard in favor of the standard applied in the vast majority of jurisdictions that the architect need be careful but need not always be right. In an age of national television, national universities, a national registration exam, and the like, the reference to the skill and knowledge applied in the same locality may be less significant than it was in the past when there was a wide disparity across the face of the United States in the degree of skill and knowledge which an architect was expected to bring to his/her work. Nonetheless, the courts have still recognized this portion of the standard, and it is true that what may be expected of an architect in a complex urban setting may vary from what is expected in a more simple, rural environment.

1.2 In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws and regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.

COMMENTARY

It should be noted that the rule is limited to applicable state and municipal building laws and regulations. Every major project being built in the United States is subject to a multitude of laws in addition to the applicable building laws and regulations. As to these other laws, it may be negligent of the architect to have failed to take them into account, but the rule does not make the architect specifically responsible for such other laws. Even the building laws and regulations are of sufficient complexity that the architect may be required to seek the interpretation of other professionals. The rule permits the architect to rely on the advice of such other professionals.

1.3 An architect shall undertake to perform professional services only when he/she, together with those whom the architect may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.

COMMENTARY

While an architect is licensed to undertake any project which falls within the definition of the practice of architecture, as a professional, the architect must understand and be limited by the limitations of his/her own capacity and knowledge. Where an architect lacks experience, the rule supposes that he/she will retain consultants who can appropriately supplement his/her own capacity. If an architect chooses to undertake a project where he/she lacks knowledge and where he/she does not seek such supplementing consultants, the architect has violated the rule.

1.4 No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

COMMENTARY
Here the state registration board is given the opportunity to revoke or suspend a license when the board has suitable evidence that the license holder's professional competence is impaired by physical or mental disabilities. Thus, the board need not wait until a building fails in order to revoke the license of an architect whose addiction to alcohol, for example, makes it impossible for that person to perform professional services with necessary care.

RULE 2 CONFLICT OF INTEREST

2.1 An architect shall not accept compensation in connection with services from more than one party on a project (and never in connection with specifying or endorsing materials or equipment) unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

COMMENTARY
This rule recognizes that in some circumstances an architect may receive compensation from more than one party involved in a project but that such bifurcated loyalty is unacceptable unless all parties have understood it and accepted it.

2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

COMMENTARY
Like 2.1, this rule is directed at conflicts of interest. It requires disclosure by the architect of any interest which would affect the architect's performance.

2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in connection with specifying or endorsing their products. As used herein, "compensation" shall not mean customary and reasonable business hospitality, entertainment, or product education.

COMMENTARY
This rule appears in most of the existing state standards. It is absolute and does not provide for waiver by agreement. Customary and reasonable business hospitality, entertainment, and product education, while not furnishing a clear definition of what is and is not allowed is nevertheless well understood by state ethics laws, company policies, and tax guidelines that wish to allow what is usual and appropriate in the industry in terms of dining, entertainment, and travel while ruling out lavish or excessive expenditures.

2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

COMMENTARY
This rule applies only when the architect is acting as the interpreter of building contract documents and the judge of contract performance. The rule recognizes that these roles are not inevitable and that there may be circumstances (for example, where the architect has an interest in the owning entity) in which the architect may appropriately decline to act in those two roles. In general, however, the rule governs the customary construction industry relationship where the architect, though paid by the owner and owing the owner his/her loyalty, is nonetheless required, in fulfilling his/her role in the typical construction industry documents, to act with impartiality.

RULE 3 FULL DISCLOSURE

3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statement or when he/she has an economic interest in the issue.

COMMENTARY

Architects frequently and appropriately make statements on questions affecting the environment in the architect's community. As citizens and as members of a profession acutely concerned with environmental change, they doubtless have an obligation to be heard on such questions. Many architects may, however, be representing the interests of potential developers when making statements on such issues. It is consistent with the probity which the public expects from members of the architectural profession that they not be allowed under the circumstances described in the rule to disguise the fact that they are not speaking on the particular issue as an independent professional but as a professional engaged to act on behalf of a client.

3.2 An architect shall accurately represent to a prospective or existing client or employer his/her qualifications, capabilities, experience, and the scope of his/her responsibility in connection with work for which he/she is claiming credit.

COMMENTARY

Many important projects require a team of architects to do the work. Regrettably, there has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his/her experience working under a more senior architect has every right to claim credit for the work which he/she did. On the other hand, the public must be protected from believing that the younger architect's role was greater than was the fact.

3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against the architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall

(i) report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations,

(ii) refuse to consent to the decision, and

(iii) in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/her services with reference to the project unless the architect is able to cause the matter to be resolved by other means.

In the case of a termination in accordance with Clause (iii), the architect shall have no liability to his/her client or employer on account of such termination.

COMMENTARY

This rule holds the architect to the same standard of independence which has been applied to lawyers and accountants. In the circumstances described, the architect is compelled to report the matter to a public official even though to do so may substantially harm the architect's client. Note that the circumstances are violations of building laws which adversely affect the safety of the finished project. While a proposed technical violation of building laws (e.g., a violation which does not affect the public safety) will cause a responsible architect to take action to oppose its implementation, the Committee specifically does not make such a proposed violation trigger the provisions of this rule. The rule specifically intends to exclude safety problems during the course of construction which are traditionally the obligation of the contractor. There is no intent here to create a liability for the architect in this area. Clause (iii) gives the architect the obligation to terminate his/her services if he/she has clearly lost professional control. The standard is that the architect reasonably believes that other such decisions will be taken notwithstanding his/her objection. The rule goes on to provide that the architect shall not be liable for a termination made pursuant to Clause (iii). Such an exemption from contract liability is necessary if the architect is to be free to refuse to participate on a project in which such decisions are being made.

3.4 An architect shall not deliberately make a false statement or fail deliberately to disclose accurately and completely a material fact requested in connection with his/her application for registration or renewal or otherwise lawfully requested by the board.

COMMENTARY

The registration board which grants registration or renews registration on the basis of a misrepresentation by the applicant must have the power to revoke that registration.

3.5 An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.

3.6 An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.

COMMENTARY

This rule has its analogue in the Code of Professional Responsibility for lawyers. Its thrust is consistent with the special responsibility which the public expects from architects.

3.7 An architect possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant, the Board and/or NCARB by responding appropriately regarding those qualifications when requested to do so. An architect shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. An architect shall not knowingly sign any verification document that contains false or misleading information.

RULE 4 COMPLIANCE WITH LAWS

4.1 architect shall not, in the conduct of his/her architectural practice, knowingly violate any state or federal criminal law.

COMMENTARY

This rule is concerned with the violation of a state or federal criminal law while in the conduct of the registrant's professional practice. Thus, it does not cover criminal conduct entirely unrelated to the registrant's architectural practice. It is intended, however, that rule 5.4 will cover reprehensible conduct on the part of the architect not embraced by rule 4.1. At present, there are several ways in which Member Boards have dealt with this sort of rule. Some have disregarded the requirement that the conduct be related to professional practice and have provided for discipline whenever the architect engages in a crime involving "moral turpitude."

The Committee declined the use of that phrase, as its meaning is by no means clearly or uniformly understood. Some Member Boards discipline for felony crimes and not for misdemeanor crimes. While the distinction between the two was once the distinction between serious crimes and technical crimes, that distinction has been blurred in recent years. Accordingly, the Committee specifies crimes in the course of the architect's professional practice, and, under 5.4, gives to the Member Board discretion to deal with other reprehensible conduct. Note that the rule is concerned only with violations of state or federal criminal law. The Committee specifically decided against the inclusion of violations of the laws of other nations. Not only is it extremely difficult for a Member Board to obtain suitable evidence of the interpretation of foreign laws, it is not unusual for such laws to be at odds with the laws, or, at least, the policy of the United States. For example, the failure to follow the dictates of the "anti-Israel boycott" laws found in most Arab jurisdictions is a crime under the laws of most of those jurisdictions; while the anti-Israel boycott is contrary to the policy of the government of the United States and following its dictates is illegal under the laws of the United States.

4.2 An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

COMMENTARY

Rule 4.2 tracks a typical bribe statute. It is covered by the general language of 4.1, but it was the Committee's view that 4.2 should be explicitly set out in the rules of conduct. Note that all of the rules under this section look to the conduct of the architect and not to whether or not the architect has actually been convicted under a criminal law. An architect who bribes a public official is subject to discipline by the state registration board, whether or not the architect has been convicted under the state criminal procedure.

4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other United States jurisdiction.

COMMENTARY

Here, again, for the reasons set out under 4.1, the Committee chose to limit this rule to United States jurisdictions.

4.4 An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. [States may choose instead to make specific reference to the "Federal Fair Labor Standards Act of 1938, as amended" and the "Equal Employment Opportunity Act of 1972, as amended" and to state laws of similar scope.] For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.

RULE 5 PROFESSIONAL CONDUCT

5.1 Each office engaged in the practice of architecture shall have an architect resident and regularly employed in that office.

5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if (a) the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and (b) the other architect's technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care.

COMMENTARY
This provision reflects current practice by which the architect's final construction documents may comprise the work of other architects as well as that of the architect who signs and seals professional submissions. The architect is permitted to apply his/her seal to work over which the architect has both control and detailed professional knowledge, and also to work prepared under the direct supervision of another architect whom he/she employs when the architect has both coordinated and reviewed the work.

5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

COMMENTARY
This provision refers to "private bribes" (which are ordinarily not criminal in nature) and the unseemly conduct of using gifts to obtain work. Note that the rule realistically excludes reasonable entertainment and hospitality and other gifts of nominal value.

5.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

COMMENTARY
Violations of this rule may involve criminal conduct not covered by 4.1, or other reprehensible conduct which the board believes should warrant discipline. A state board must, in any disciplinary matter, be able to point to a specific rule which has been violated. An architect who is continuously involved in nighttime burglaries (no connection to his/her daytime professional practice) is not covered by 4.1 (crimes committed "in the conduct of his/her architectural practice"). Serious misconduct, even though not related to professional practice, may well be grounds for discipline. Lawyers commenting on the rules had little trouble with the standard set in 5.4; it applies to conduct which would be characterized as wicked, as opposed to minor breaches of the law. While each board must "flesh out" the rule, murder, rape, arson, burglary, extortion, grand larceny, and the like would be conduct subject to the rule, while disorderly conduct, traffic violations, tax violations, and the like would not be considered subject to the rule.

5.5 An architect shall not make misleading, deceptive, or false statements or claims.

COMMENTARY
An architect who fails to accurately and completely disclose information, even when not related to the practice of architecture, may be subject to disciplinary actions if the board concludes that the failure was serious and material.

NCARB

2014-2015 Rules of Conduct
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

vs.

MARK B. STEPPAN, Respondent.

MARK B. 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.

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

DEPT NO. 10

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

COME NOW, the Iliescu Defendants / Movants,[1] and present these Reply Points and Authorities in support of their October 27, 2014 Motion (the "Motion" or "Mot") for NRCP 60(b) relief, in response to the Amended Opposition to that Motion (the "Opposition" or "Opp."[2]) filed by Plaintiff on December 4, 2014.

[1]All capitalized terms parenthetically defined in the Plaintiff's NRCP 60(b) Motion remain the same hereunder, including capitalized surnames and abbreviations or acronyms or document titles, and refer to the same persons and entities and documents herein as were referred to through those same defined terms established and used in that Motion.

[2]By stipulation, the parties have agreed that the Amended Opposition will be treated as the sole and exclusive Opposition filed by the Plaintiff, for purposes of this Reply.

I. INTRODUCTION AND SUMMARY

Defendants' Motion established (among other things) that Plaintiff Steppan's mechanic's lien for architectural services should be rejected, as it was not for work performed "by or through" Steppan, as required by Nevada's lien laws. Instead, Steppan was the "contract architect" in name only, without actually fulfilling that role; and no evidence existed to support the assertion that he ever retained FFA as his subprovider so as to claim that its work was performed "through" Steppan.

The Opposition may be summarized by the phrase: "Pay no attention to what's behind the curtain." The Plaintiff wishes this Court to accept his essential claims at face value, without requiring any evidentiary support: (1) that Steppan was the contract architect (because the contract says so, even though the course of dealing proves otherwise); (2) that FFA was acting as a "design consultant" (because that's what it decided to call itself after the work was completed, even though FFA provided the direct architectural design work, not merely consulting advice); and (3) that FFA was retained by Steppan as his subprovider (because that's what Steppan now claims, even though no shred of evidence supports this assertion).

The Opposition employs a number of strategies to keep this Court from looking behind the curtain of pretense at the actual facts: raising procedural challenges to the NRCP 60(b) basis of the Motion, as a claimed bar to even reaching its substantive merits; ignoring and declining to even address, let alone refute, most of the Motion's key points; attempting to divert this Court's attention away from this failure by raising and refuting red herring straw man arguments; and by raising other legally and factually inaccurate claims. For the reasons set forth below, the Opposition should be rejected and Defendants' Motion granted.

II. DEFENDANTS' MOTION IS PROCEDURALLY PROPER UNDER NRCP 60(b)

The Motion was based on both NRCP 60(b)(1) (Mot. at p. 2, ll. 4 and 10; and p. 8, ll. 20-23) and also on NRCP 60(b)(3), which are each addressed separately.

A. NRCP 60(b)(1) Is Proper Grounds for Defendants' Motion.

Although invoked on pages 2 and 8 of the Motion, Plaintiff's NRCP 60(b) challenge has declined to address the Motion's procedural propriety thereunder. This subsection is however a proper vehicle both for redressing any defense errors to date, and also to redress the Court's errors in its

Decision.

(i) Any Defense Errors. To the extent, if any, that the Court believes these Defendants did not adequately bring to its attention any of the arguments now emphasized in the Motion, during litigation or trial, the Court has the discretion to treat any such inadequacy as having been based on inadvertence or excusable neglect, allowing relief under NRCP 60(b)(1).

For example, Plaintiff notes that Defendants did not heretofore rely on the time cards for the project, showing that Steppan performed only 4.1 percent of the work comprising the lien. However, after trial, the State Supreme Court issued its decision in *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014), which pointed out that a key question, in determining whether an architectural lien claim may be pursued in the name of a single member of a foreign firm, not 2/3 owned by Nevada licensees, is whether that individual was a "principal" on the project:

> Also, to the extent that DTJ argues that Thorpe [its Nevada licensed employee] should individually be able to foreclose on the lien as a registered architect, we disagree. . . . Thorpe testified that he did not become coprincipal on the project . . . until nearly a year after the development contract was signed.

Thus, to any extent that Defendants should have relied on certain arguments, or exhibits, such as the the time cards, at trial, to demonstrate that Steppan was not a principal on the project, one reason for any inadvertence in not doing so is that the *DTJ Design* decision was not yet available at that time, revealing the importance of principal involvement. *DTJ Design* also clarified the effect on a lien claim of other legal improprieties under Nevada's architectural licensing statute, now emphasized more fully in the Motion. (Of course, it was not up to Defendants to raise these issues at trial. Rather, the Plaintiff had the burden to "plead and prove" the statutorily required elements of his own architectural lien claim "as part of [Plaintiff's] prima facie case seeking compensation for . . . architectural services at trial" --*DTJ Design*, 318 P.3d at 710-- and, as Plaintiff failed to prove he met the statutory elements required, it was not necessary for the Defendants to invoke or plead any such failures as an affirmative defense. *Id.* at 712. Steppan should have presented the time cards, or some other evidence of his supposedly substantive involvement at trial, as part of his own case in chief. He failed to do so because neither the time cards nor any other evidence supported his claims, which should therefore have been rejected. Nevertheless, any inadvertent error to focus during trial on issues which were later clarified by *DTJ Design* can now be remedied under NRCP 60(b)(1)).

(ii) Court Errors. NRCP 60(b)(1) also allows this Court to correct its own errors in its Decision, as were demonstrated in the Motion. As Plaintiff's Opposition concedes, federal case law on FRCP 60(b) may be relevant and provide guidance herein. The rule in an ever increasing majority of the federal circuits, which has long been followed in the Ninth Circuit presiding over Nevada's U.S. District Courts, is that Rule 60(b)(1) may be utilized for a court to correct errors in its own orders and substantive rulings, so long as a motion thereunder is timely brought, and not as a means to overcome failures to meet appellate deadlines (which time limitations have not yet even begun to run herein, no judgment having yet entered). *See, e.g.*, *Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 441 (**9th Cir.** 1982)("the law in this circuit is that errors of law are cognizable under Rule 60(b)" to allow "a district court to reconsider" its own prior rulings); *In re 310 Assocs.*, 346 F.3d 31, 35 (**2nd Cir.** 2003)("Rule 60(b)(1) [is] available for a district court to correct legal errors by the court" if requested before the time for appeal has elapsed); *FDIC v. Castle*, 781 F.2d 1101, 1104 (**5th Cir.** 1986)("[t]he law of this circuit permits a trial judge, in his discretion, to reopen a judgment on the basis of an error of law") *United States v. Reyes*, 307 F.3d 451, 455 (**6th Cir.** 2002)(Rule 60(b)(1) relief is available where "the judge has made a substantive mistake of law or fact in the final judgment or order"); *Mendez v. Republic Bank,* 725 F.3d 651 (**7th Cir.** 2013)(district court acted correctly in *sua sponte* inviting and then granting an NRCP 60(b) motion to correct court's own errors, as FRCP 60(b)(1) may be utilized to correct court's own errors otherwise correctable on appeal); *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 578 (**10th Cir.** 1996)("certain substantive mistakes in a district court's rulings may be challenged by a Rule 60(b)(1) motion"); *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 840 (**11th Cir.** 1982)(Rule 60(b)(1) "encompasses mistakes in the application of the law"); *Federation of Civic Associations v. Volpe*, 520 F.2d 451 (**D.C. Cir.** 1975)(lower court abused its discretion by refusing an NRCP 60(b)(1) request which was based on an intervening appellate court ruling that impacted the law relied upon in the order from which relief was sought).

(iii) Strong Grounds Support This Court's Exercise of Its NRCP 60(b)(1) Discretion. Other methods for raising the issues asserted in the Motion would include NRCP 52 and NRCP 59 motions for a new trial or to alter or amend, which must, however, currently await the entry of judgment. Such motions will be filed hereafter, if a judgment in favor of Steppan is entered despite the instant Motion.

Granting the Motion at this time, under the discretion afforded this Court by NRCP 60(b)(1), would prevent the necessity for these post-judgment motions, and thereby save and appropriately allocate judicial resources.

B. The Motion Is Procedurally Proper Under NRCP 60(b)(3).

If this Court proceeds under NRCP 60(b)(1), then it need not reach Plaintiff's NRCP 60(b)(3) arguments. Otherwise, those arguments can also be independently rejected. Plaintiff contends that NRCP 60(b)(3) may only be invoked based on the *right kind of fraud*, such as "false evidence, concealed evidence, or legal misrepresentations" (Opp. p. 1) during litigation or trial, and that Defendants' Motion is instead based on fraudulent conduct in the underlying transactions, which could have been asserted during trial. These contentions are legally and factually inaccurate.

(i) Plaintiff's NRCP 60(b)(3) Arguments Are Legally Unsound. Plaintiff cites to *Green v. Ancora-Citronelle Corp.*, 577 F.2d 1380, 1384 (9th Cir. 1978) to contend that the relief sought in the Motion may be granted only "where the fraud is extrinsic or collateral" to the underlying matters in dispute. (Am. Opp. at p. 2.) However, the *Green* decision did not involve an FRCP 60(b)(3) motion, but a second lawsuit which was barred by collateral estoppel, as repeating claims which had already been fully adjudicated in an earlier State Court case. The decision's "fraud" discussion dealt with the type of fraud necessary to overcome such res judicata defenses to a second lawsuit, not what type of fraud may be shown to invoke Rule 60(b)(3).

Nevada's current version of NRCP 60(b)(3) specifically notes that a motion may be brought thereunder on grounds of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party . . . ." As the Nevada Supreme Court noted in *NC-DSH, Inc. v. Garner*, 218 P.3d 853, 857, 125 Nev. 647, 651 (2009): "Ever since its 1981 amendment to import the parenthetical phrase— '(whether heretofore denominated intrinsic or extrinsic)' . . . NRCP 60(b)(3) has applied **to both intrinsic and extrinsic fraud**." [Emphasis added.] Extrinsic fraud is "collateral to the issues tried in the case where the judgment is rendered" and intrinsic fraud "pertains to issues involved in original action or where acts constituting fraud were, or could have been, litigated therein." Black's Law Dictionary (6th ed. 1991) at p. 661.

The syllogism arising from the foregoing authorities could not be more clear: NRCP 60(b)(3), may be invoked on the basis of either extrinsic or intrinsic fraud. "Intrinsic fraud" includes "issues involved in original action or where acts constituting fraud were, or could have been, litigated therein." Thus, contrary to Steppan's argument, an NRCP 60(b)(3) motion may be brought on the basis of prior fraudulent acts which were or could have been litigated in the action.[3]

(ii) Plaintiff's NRCP 60(b)(3) Arguments also Fail on the Facts. Even if the Plaintiff were right on the law, and the many shams and false and fraudulent conduct engaged in by FFA and Steppan prior to litigation could not now be relied upon in order to seek NRCP 60(b)(3) relief, Plaintiff's position would still need to be rejected: The Defendants have demonstrated that Plaintiff's fraudulent activities continued during the litigation, thereby misleading this Court in a manner which prevented a full and fair trial herein, as shown by the Decision reached after trial.

For example, Plaintiff's Complaint, initiating Steppan's consolidated complaint *during* the litigation, contained a false allegation that Steppan "did supply" the labor and services for which the lien was claimed, and cited to the lien notices which contained the inaccurate statement of by whom Plaintiff was employed, and reiterated other inaccurate pretrial claims. During trial, the Plaintiff submitted or otherwise relied upon the use of many of the sham documents which had been created prior to litigation, as Trial Exhibits and treated them all as though they should be accepted at face value. Thus, Steppan's letter falsely advising the Architectural Board that he worked as an independent, self-employed architect; the creation and use of "Steppan" letterhead by FFA employees purporting to be Steppan employees; the attachment to the original letter agreement falsely claiming that Steppan was the employer of FFA's employees, were all blithely presented to the Court as though they should be taken at face value, even though they actually evidenced misconduct.

Additionally, as examined more closely below, at Section III(E) hereof, Plaintiff provided trial testimony which is still being cited even today, in the current Opposition, although it is demonstrably

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[3]Thus, the contention that, because Iliescu pursued certain similar issues before the Board before trial, they cannot now be asserted in this Motion, is inaccurate. The circuitous nature of the Plaintiff's reliance on the Board should also be noted. The Board, instead of making any independent ruling, held the matter in abeyance until after the Court's ruling, and then stated it was relying on this "District Court['s] decision" in closing the file. Opp. Exh. 4. The Court is now asked to rely on the Board action, which relied on this Court's Decision, as a basis to not reconsider its own Decision, as though the Board's ruling independently corroborated, instead of relying upon, this Court's Decision. This circular reasoning should be rejected.

false, based on contrary Friedman testimony, contrary prior Steppan deposition testimony, and applicable architectural rules. The Motion should be heard on the merits, being based on proper grounds for NRCP 60(b)(3) relief, including both pre-litigation and litigation conduct.

III. Plaintiff's Substantive Arguments Also Fail

A. The Lien Does Not Secure Payment for Work Furnished "By or Through" the Lien Claimant.

Plaintiff's overview of the Motion, as set forth on pages 7 and 8 of the Amended Opposition, presents a straw man version of its arguments, claiming that it "posits . . . that Steppan could only assert a lien for work he personally performed" or that "Steppan could never" have asserted a lien because of his employment by FFA. Plaintiff then refutes these never raised arguments by discussing the uncontested principle that lien claimants may lien for the work of their subcontractors, and further avers that it is "undisputed" that Steppan contracted to provide services to the underlying customer, BSC/Consolidated, ignoring virtually the entirety of the Motion, which repeatedly and strongly "disputed" that Steppan ever did so in anything but name. Steppan then makes arguments which impliedly assume that FFA was retained as Steppan's subcontractor, ignoring the many challenges to that assumption likewise set forth throughout the Motion.

What the Motion actually argued, which remains unaddressed and unrefuted by the Opposition, is that a lien claimant can lien for the unpaid value of work performed "by or through" the lien claimant, meaning the work that he himself performed, or which was performed by his employees or by or through his retained subcontractors. *See*, NRS 108.222(1)(a) and (b), a statute whose meaning and applicability Plaintiff now admits. A lien claimant **cannot lien**, however, for the value of services provided by another party, who was not retained by the lien claimant, as its employee or subprovider, but who instead worked directly for the underlying customer, or for the work of such other party's employees and subcontractors. The Motion further demonstrated that Steppan's lien should therefore have been rejected, as Steppan was, manifestly, not liening for *his* work, or for *his* employees' work (as he had zero employees), or for the work of *his* retained subproviders, having presented no evidence that he ever retained any such subproviders, including FFA (which worked directly for the customer).

The ineluctable basis of these conclusions was demonstrated by the following facts which were established at pages 9 through 29 of Plaintiff's Motion and the exhibits referenced therein: (a) FFA's

sole owner, Friedman, retained the subject lien claim *from FFA*, upon selling that entity, **not from** Steppan; (b) the original hourly letter agreement listed the contract architect's multiple categories of employees, all of whom were FFA, not Steppan employees, such that this contract was either lying about who was employed by Steppan, or about who the true contract architect was; (c) all of the payments from the customer were made directly to FFA, not to Steppan, who didn't expect to receive the payments as a true contract architect would have; (d) FFA maintained all project files; (e) Steppan did not create the underlying work product; (f) sham Steppan letterhead was fraudulently used by non-Steppan employees, so as to falsely claim the employee-of-a-registered-architect exemption from Nevada's licensing statutes, which use then ceased at about the time the consultant exemption sham was decided upon instead; (g) the invoices to the customer which are in the same amount as the final amended "Steppan" lien notice were sent from FFA, on FFA letterhead, with deductions for prior direct customer payments made to FFA, not to Steppan; (h) Steppan was a full time employee of FFA throughout project performance, and was fully paid his regular salary, expecting no bonus or other participation in the profits on the contract to which he was allegedly a party; (i) the invoices identified Ogle as the project manager, FFA and Ogle were listed as the architectural contact persons on submissions to Nevada governmental entities, and Friedman admitted under oath at trial that he, not Steppan, was the true supervisor, with Steppan to only fill that role if Friedman were ever away from the office (which testimony Steppan perjuriously contradicted)[4]; (j) Steppan produced no documentary evidence of any communications between himself and the customer or Nevada agencies reviewing the FFA submissions; (k) Steppan was not a principal in the actual work, but performed only 4.1 percent thereof, with far more thereof having been performed by other FFA staff, including Ogle, as well as David Tritt and Friedman (who Steppan testified primarily created the work product); (l) FFA, not Steppan, chose and hired the other subproviders of project services.

Significantly, almost every single one of the foregoing facts remains wholly unaddressed (let alone refuted) by Steppan's Opposition. Which is also true of the following:

Steppan also produced no shred of evidence that he had ever retained FFA as his subprovider

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[4]Unless Friedman perjured himself with a lie that hurts his own case, as opposed to having told a truth without realizing its implications, which is far more likely, especially as Steppan's testimony was in response to leading questions, and Friedman's was given shortly after counsel was admonished to stop posing such questions.

"design consultant" (or in any other capacity) to claim that FFA's services were lienable "through" Steppan. Indeed (i) FFA was not mentioned at the location in the AIA contract (§ 1.1.3.5.) where the architect's consultants are to be identified; (ii) the portion of the AIA Contract which, for the first time, did list FFA as "design consultants" was an Addendum, completed and signed after any work liened under the AIA had been completed, such that FFA first performed the work, and then decided in what role it would claim to have done so; (iii) that Addendum does not indicate that the customer has hired Steppan who has in turn retained FFA, but instead identifies the customer as one party to the contract, and Steppan and FFA as the other parties; (iv) a direct FFA relationship with BSC/Consolidated is verified by Steppan's testimony that both he and FFA were working for the customer, rather than he working for the customer and retaining FFA to work under him; (v) no written agreement exists substantiating that Steppan ever retained FFA, either as a design consultant or in any other capacity, nor was any oral agreement ever expressly claimed or described at trial as to the rates, payment terms, or other provisions of any such retention;(vi) no invoices were ever delivered from FFA to its purported customer, Steppan; (vii) no payments were ever made by Steppan to his purported subprovider "design consultant" FFA; (viii) Steppan testified he had no economic interest in this suit, whereas, had he truly retained FFA as his subcontractor, he would (as he admits, Opp. p. 8, ll. 3-4) have been legally liable to FFA for the moneys now claimed as due, giving him a very real economic interest; (ix) despite this payment liability which would exist if Steppan had ever retained FFA, no demands or suits for payment were ever filed by FFA against Steppan, before or after expiration of the applicable four year statute of limitations for suit on an unwritten contract. The pretenses on which this suit is based could not be more farcical, and Plaintiff's insistence that they be taken at face value, to prevent a ruling based on truth, must be rejected.

B. Steppan Was Not Employed by the Developer.

Steppan argues he should be excused (once again) from (yet another) of his failures to abide by Nevada lien laws, with respect to his failure to accurately identify the party by whom he was employed on this project, which, as this Court has ruled, was FFA. Steppan claims that the inaccuracy was referring to a different type of employment relationship than his sole and exclusive employment with FFA, his only W-2 or 1099 employer during all of the time he spent working on the project.

Steppan cites Black's Law Dictionary to argue that an employment relationship may include different types of arrangements. However, all four of the definitions cited from this source ((1) to make use of (2) to hire (3) to use as an agent or substitute in transacting business, or (4) to commission and entrust with the performance of certain acts or functions) describe the Steppan-FFA relationship, not any claimed relationship with the customer. FFA was the party which "ma[d]e use of" Steppan's services on this project, and then billed those services to its client, BSC/Consolidated, in invoices which collectively billed for all FFA work (of Steppan and other FFA employees) under the same combined "Professional Services" heading, rather than showing FFA's fees as separate "consultant" charges (as was done for actual lower-tier consultants: TE 24, at Steppan00759). FFA originally "hire[d]" Steppan, who never received any W2 or 1099 income from any one else (including BSC/Consolidated). FFA, not BSC/Consolidated, was the party who "used" Steppan as its "agent" or "substitute" in transacting business for "FFA" under Steppan's name, and who FFA "commissioned and entrusted with the performance of certain acts or functions" for FFA. For example, pursuant to pages 12-13 of the Opposition, Steppan was to "sign and seal technical submissions **prepared by Fisher Friedman Associates**" including "drawings prepared by" FFA's "unlicensed designers." Meanwhile, FFA, not Steppan, was used by BSC/Consolidated, as its agent to transact business on its behalf, being commissioned and entrusted to do so, as shown by the various submissions to Washoe County on its behalf, listing FFA and its employee Ogle as the architectural contact for the project.

FFA/Steppan cite no authority for their Opposition proposition that, for purposes of the lien statutes, the person who employed the lien claimant should be defined as the person who requested services from the lien claimant. Even if this definition did apply, however, Steppan would not meet that definition, as BSC/Consolidated never requested that Steppan perform the services, having in fact initially negotiated the terms of the deal with FFA, requesting FFA's services, not Steppan's, which FFA services BSC/Consolidated then did in fact receive, for which it thereafter made its payments to FFA directly. Nor does Steppan provide any authority for the proposition that a false employment relationship, which will not involve the employee actually being paid by the employer (such as a real employee or independent contractor would be) qualifies as employment to be listed on a lien notice.

Plaintiff's argument on this point raises another important question: If BSC/Consolidated truly hired Steppan, who in turn retained FFA, then why didn't FFA record its own lien notice as to its work, identifying Steppan as the party by whom FFA "was employed" to perform its services? As pointed out in the Opposition (at fn. 10), a lower-tier subcontractor will protect its own rights by recording its own lien, indicating by what higher tier contractor it was employed, creating overlapping liens. If, as Plaintiff now claims, FFA was (i) a subcontractor of Steppan, and (ii) was not required to be licensed (such that NRS 108.222(2) would have been no barrier to FFA pursuing its own lien) then FFA would have been expected to record its own lien for its services provided to Steppan. Its failure to do so, thus, further undermines the claim that Steppan ever retained FFA.

C. Steppan Has Failed to Address the Many Improprieties in His Pursuit of FFA's Lien, Including as Amended.

At pages 39-45 of the Motion, Defendants identified 14 substantive failures made by the Plaintiff in the pursuit of his lien on behalf of FFA, including an explanation as to the impropriety of this Court's rulings excusing Steppan from his failure to provide proper notice, given that the "actual notice" exemption to that rule only applies where on-site work has commenced. Steppan's Opposition does not even address 12 of the failures set forth in the Motion, such that the Motion should be granted on any or all of those 12 grounds.

The only two failures which are addressed are the arguments concerning the third version of the Steppan lien notice (the second amended lien notice). Steppan contends that the Defendants were benefitted by this amendment as it reduced the amount of the lien. While that may be true, it misses the point of the Defendants' argument, which was that the facts admitted in the Second Amended Lien Notice (regarding when the work was finally completed, prior to the AIA Agreement being executed, at a point in time when the customer would never have been willing to bind itself to the same unless it knew it was not going to be sued thereon, as it wasn't) should have been made available to the Court prior to the Court's decision granting a summary judgment on the question of whether the amount of the lien should be a flat fee AIA lien, or not. This meant the Court's summary judgment decision, which the Court declined to review again at trial, despite the newly provided intervening evidence, was based on inadequate information. These defense arguments still stand as grounds for reversal of this Court's Decision.

Plaintiff also argues that the verification of this third version lien notice by Steppan's counsel was legitimate. While it is true that the lien claimant "or some other person" must verify the lien under oath, the statute requires that the language utilized in the notice be "substantially in the form" set forth in the statute. NRS 108.226(5). Hoy's verification language was clearly something which he wrote himself, rather than closely following the statutory form, to deal with the fact that Hoy was not verifying the information based on personal first-hand knowledge, or even knowledge recently received from witnesses with a fresh recollection, but had received his information both second-hand, and years after the fact. Taken together with Plaintiff's failure to properly verify the lien notice which was in place when the suit was filed, *at all*, this and the other many failings in the procedures employed by Steppan demonstrate that the lien statute was not substantially complied with for purposes of perfecting the "Steppan" lien recorded and prosecuted on behalf of FFA, and tried on behalf of Friedman, who obtained the lien rights from FFA.

D. The *DTJ Design* Case, and the Other Cases Cited in the Motion, Apply Herein.

At pages 12-13 of his brief, Steppan attempts to distinguish two of the primary cases relied on in the Motion.

In footnote 16, he attempts to distinguish *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 563-64 (1992) (partially abrogated on other grounds by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)), which held that a district court erred in doing exactly what this Court did in its Decision: allowing an individual affiliated with a foreign architectural firm to act as the Plaintiff in a lien foreclosure suit for the foreign firm's services. Steppan attempts to distinguish *Snyder* by noting that in that case, the foreign firm was initially listed as the Plaintiff, and only substituted another individual as the lien claimant after the litigation had been filed, whereas FFA has never been named as the Plaintiff in this suit. However, the *Snyder* Court's ruling was not based on any such irrelevant procedural history. Rather, the *Snyder* Court reviewed, on the merits, the substantive question of whether the individual Plaintiff (regardless of when he first became the Plaintiff) was an appropriate lien claimant, and ruled that he was not, on factual and legal grounds which are all equally true herein: (a) the foreign architectural firm, not the individual, had created the work product (also true herein, as admitted in the Opposition at pp. 8, 11-13), (b) the foreign firm

accomplished this task via its employees, who were not the individual's employees but were the employees of the foreign firm (also true herein, Steppan having no employees, with FFA's employees, which the Opposition describes as "unlicensed designers" doing the work), (c) the invoices comprising the lien were sent from the foreign firm, not from the individual (also true herein, especially as to the post AIA-execution invoices, which correspond to the number sought in the final lien, which were not only sent from FFA's address, but on FFA's letterhead – not that the address ever mattered, the customer having always paid FFA directly, even when it was receiving invoices on phonied-up Steppan letterhead), (d) the individual lien claimant did not establish a basis to claim he was authorized to independently do business in Nevada, just as Steppan has no business license to provide any business services as an independent contractor in Washoe County, etc.

There is no basis to distinguish *Snyder*, which could not be more on point, from the instant case, the only real difference between *Snyder* and this case being that, in the present matter, the list of factors which demonstrate why Steppan is not a legitimate lien claimant for FFA's work is much longer than the list set forth in *Snyder*. Until the portion of the *Snyder* decision dealing with this issue is overruled by the Nevada Supreme Court, it must be followed by this Court.

Steppan also attempts to distinguish the *DTJ Design* case, on the grounds that FFA did not, like DTJ Design, seek to pursue a lien in its own name. However, this argument was already anticipated in the Motion, which noted at pages 36-37 that "Steppan will no doubt argue . . . this reasoning does not apply herein because Steppan, unlike [DTJ Design's Nevada licensed employee, Thorpe], signed the architectural contracts." However, this argument, as the Motion noted, does not survive the slightest scrutiny, because the *DTJ Design* decision nevertheless examined and expressly rejected any claim that DTJ's Nevada licensed employee could individually foreclose on the lien: "to the extent that DTJ argues that Thorpe should individually be able to foreclose on the lien as a registered architect, we disagree" including because Thorpe was not truly involved as a co-principal on the project for much of the time it was underway, "until nearly a year after the development contract was signed." *DTJ Design*, 318 P.3d at 711. Clearly, in determining the propriety of an individual acting as the lien claimant for the work of a foreign entity, the Nevada Supreme Court is not interested in form, but in pulling back the curtain to look at the substance.

Steppan's Opposition fulfills the Motion's prediction of his anticipated argument, but fails to address the refutation of that argument, which has already been provided. Instead, the Opposition ignores the relevant language of the case and argues that the "individual architect" in *DTJ Design*, "could have signed contracts, recorded the lien in his own name, and sued to foreclose the lien." Opp. at p. 12, ll. 6-8. This assertion misstates and ignores the actual language of the decision, which said that Thorpe could not have done so.

E. Steppan Could Not Properly Sign and Seal FFA's Work Product.

The Motion also cited other cases which were relevant to the foregoing points, such as *Snodgrass v. Immler*, 194 A.2d 103 (Md. Ct. App. 1963) (refusing to enforce architectural services contract where the "evidence shows that in reality it was [the unlicensed party] that performed the functions of an architect, and [the licensee] was used as a mere strawman to allow [him] to do indirectly what he could not do directly."); *Dalton, Dalton, Little, Inc. v. Mirandi*, 412 F. Supp. 1001, 1004) (D. N.J. 1976) (Maryland architect could not provide architectural plans for a New Jersey building merely by utilizing its New Jersey licensed employee to seal and certify the plans; "subterfuge, pretense, or improper circumvention of the law" warrants "penetration of the form to reach the substance.")

Steppan does not directly address these cases, but does claim that, contrary to the New Jersey case, it would have been proper for him to sign and seal the work product he admits was "prepared by Fisher Friedman Associates" and its "unlicensed designers". Steppan makes this claim under Rule 5.2 of the National Council of Architectural Registration Boards rules, as adopted in Nevada (hereinafter the "Adopted NCARB Rules") because he allegedly established by "uncontroverted" testimony, that he exercised "responsible control" as that term is "used in the architecture profession" over FFA's designs and submissions. (Opp. at pp. 12-13; Exh. 9, p. 10). However, this argument is false in its each and every particular.

The portion of the Adopted NCARB Rule 5.2 relied upon by Steppan provides that an architect "may sign and seal technical submissions only if [the submissions] were . . . (ii) prepared by persons under the architect's responsible control . . . " or meet other criteria not claimed by Steppan. Steppan did not, as he claims, meet this test under the definition of responsible control "used in the architecture

profession." Instead, he testified that his personal definition of responsible control "in my mind" is "supervision of the project **as it's approaching a time for sealing and signing**" (TT 639 at ll. 21-24 emphasis added) a point in time which was never reached on this project (TT 269, ll. 12-15). Adopted NCARB Rule 5.2, by contrast, does not so define responsible control, but expressly and explicitly rejects this definition, indicating that responsible control cannot wait until later in the project, when the technical submissions are "approaching a time for sealing and signing" but must be exercised from the outset, "during . . . preparation" of the work product: "[o]ther review . . . of technical submissions **after they have been prepared** by others **does not constitute the exercise of responsible control** because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions **throughout their preparation.**" Rule 5.2, Opp. Exh. 9, at p. 10. [Emphasis added.] Clearly, the authors of the uniform rule have come across the FFA/Steppan sham before, wherein a licensee is called upon at the end to simply sign and seal work product he had no real hand in preparing, and seek to quash it! (Steppan's personal definition of responsible control as requiring involvement only towards the end of the work, when he would have been about to sign and seal FFA's submissions, is also highly relevant given the *DTJ Design* decision's unwillingness to allow licensee Thorpe to claim a lien on a project in which he did not become principally involved for a year.

Significantly, only *after providing his own personal, extremely narrow, and legally false definition* of "responsible control" did Steppan, in the context of that personal caveat, respond in the affirmative to two leading questions as to whether he had "supervised" and therefore exercised "responsible control" for the work –and even then he couldn't bring himself to simply answer yes, but threw in yet one more caveat (TT 640 at ll. 5-11). Thus, what Steppan meant when he testified that he exercised "responsible control" is not what that term legally means and is not what his Opposition now argues this Court should understand from that testimony.

Steppan's claim that this testimony was "uncontroverted" is also false. The trial record does controvert Steppan's testimony that he supervised the work and may thus claim to have exercised responsible control. No less significant a witness than Rodney Friedman testified directly contrary to Steppan on this point. In response to questioning which, unlike the leading questions to Steppan, was provided directly after Plaintiff's counsel was admonished to stop interposing leading questions – TT

269, ll. 5-11– such that he was unable to coach Friedman along towards the answer being sought, Friedman indicated that Steppan would only have supervised the work at certain "various times". As this was clearly not the answer hoped for, Plaintiff's counsel pressed further, eliciting the explanation that these "various times" would only have arisen when he, Friedman, were away from the office. TT 269-70 at ll. 18-1. ("If I'm absent, I [Friedman] get sick, I break a leg, he's [Steppan's] the guy in charge"). Given that Friedman logged 813 hours on the project, and Steppan logged only 141 (Mot. at p. 22, Exhs. 14 and 15), such "various times" of Steppan supervision, substituting for Friedman, do not appear to have occurred frequently, if ever. Steppan's testimony about being in responsible control of the project is also controverted by Steppan himself, who also provided sworn testimony during the litigation, that FFA "would protect" Steppan from any liability for his work, such that he believed FFA, not he, had liability for the project (Mot. **Exh. 12**, p. 161).

F. FFA's Claim To Be Exempt, as a Consultant, From NRS Chapter 623, Fails.

FFA continues to claim it is exempt from the registration and other requirements of NRS Chapter 623, under NRS 623.330(1)(a) [Opp. p. 15 ll. 2-4]. This is inaccurate. NRS 623.180(1)(a) (which is invoked throughout the Motion, but curiously never addressed in the Opposition) provides that "No person may practice . . . Architecture . . . in this State without having a certificate of registration issued . . . pursuant to the provisions of this Chapter." There is no exemption listed in the statute for those who are acting as a subcontractor. Rather, NRS 623.330(1)(a), the statute now invoked on behalf of FFA provides that "The following persons are exempt from the provisions of this chapter: (a) A person engaging in architectural work **as an employee of a registered architect or residential designer**, if the work does not include responsible charge of design or supervision, or **a consultant retained by a registered architect** . . . ."

This statute is not met, either by FFA or its employees. The exemptions are not met by FFA employees, who were not employed by Steppan, a Nevada licensed or registered architect. Indeed, Steppan/FFA are no longer even trying to aver otherwise, but are instead claiming a retained subcontractor relationship, for which the statute provides no employee-of-the subcontractor exemption. Further, FFA now expressly disclaims that it was "a residential designer" (Opp. p. 18, l. 2), such that FFA's employees were also not employed by a residential designer. Said employees are therefore not

entitled to any exemption.

FFA's claimed exemption also fails. First, as demonstrated in the Motion, FFA was also not retained by a registered architect, as necessary to invoke the claimed "consultant" exemption, there being no shred of evidence to demonstrate any such retention by Steppan of FFA ever occurred. Even if it had, this does not mean that FFA is exempt from the provisions of NRS Chapter 623 merely because it calls itself a type of consultant. The question is not what FFA called itself, but what services it provided. *See*, AGO 19 (4-1-1963) [attached as **Exhibit "1"** hereto] (a party "cannot legally" exempt itself from the requirements of NRS Chapter 623 "merely by refraining from calling [itself] an architect, if [it], in fact, accepts work which falls within the purview" of the practice of architecture.)[5]

NRS 623.023 defines the practice of architecture as "rendering services . . . embracing the scientific, esthetic and orderly coordination" for the "production of a completed structure [for] human habitation or occupancy" including by producing "plans [and] specifications". Chapter 623 does not provide a definition for consultant, but by reference to dictionary definitions, and by analogy to other professionals who require licensure/registration before they can practice, it is clear that being a consultant involves giving advice, and if a professional actually produces the essential work product, then he is acting as more than a consultant. *See, e.g.*, the New Webster's Encyclopedic Dictionary of the English Language (1992) at p. 210 ("con·sult·ant . . . *n* a person (engineer, doctor etc.) giving expert or professional advice."); *Gleeson M.D. v. State Bd. of Medicine*, 900 A.2d 430, 437-38 (Penn. 2006)(unlicensed out-of-state medical doctor did not merely "consult" and, thus, was not statutorily exempt from licensure requirement, where he physically touched patient and performed a surgical procedure); *Bilazzo v. Portfolio Recovery Assoc., LLC,* 876 F.Supp.2d 452, 462-465 (D. N.J. 2012)(unlicensed attorneys from another state were not acting merely as "consulting attorneys" to licensed lead attorney who signed the pleadings, where they billed far more hours than he, worked

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[5]FFA has cleverly made this question more opaque by using the term "design consultant" which phrase is not recognized or employed by NRS Chapter 623. Nevada regulatory law does allow a "design consultant" to be retained by the public works department for green building designs, but that regulation defines"design consultant" for the purposes thereof, as one who engages in the practice of architecture (not mere consulting) under NRS Chapter 623 (which would thus require licensure) and has also entered into an agreement with the public works division, which test is not met by FFA. This is the only context in which the term "design consultant" has any meaning under Nevada law. NAC 341.306.

independently, and had substantial and direct contact with opposing counsel and agency); *Gsell v. Yates*, __ F. Supp. ___ (E.D. Penn 2014) (out-of-state attorney wishing to fulfill a mere "consulting" role must refrain from any direct contact with client, any significant contact with opposing counsel, and must not draft substantial portions of pleadings, but instead engage in advisory activities such as reviewing and editing motions and documents prepared by lead counsel, and record only a modest number of hours compared to the licensed attorneys, etc.). Steppan has provided no contrary authority as to the definition of a consultant in the context of architecture to show that similar tests would not apply therein.

Steppan has now repeatedly admitted, in the Opposition, **that FFA was engaged in the direct production of architectural designs and plans and work product**, and was not merely providing advice! *See, e.g.*, Opposition at p. 8, ll 9-13 (purported Contract Architect "Steppan could not accomplish" the services he was to provide without the help of "other designers" because the scope of the project was "much too large to expect" a "single architect [to] design it" instead requiring more than "3,396 billable hours" recorded, from all of FFA's other architects and designers.) page 11, l. 10 (FFA's work described as "design services") pages 12-13 (Steppan was to "sign and seal technical submissions **prepared by Fisher Friedman Associates**" including "drawings **prepared by unlicensed designers**." [Emphasis added.] Clearly, by Steppan's own admission, FFA and its employees were not acting as mere "consultants" but as designers of architectural designs and work product including technical submissions and drawings, etc. Neither FFA, nor its employees, can claim the exemptions relied upon, to exempt their activities from required registration and licensure.

G. NRS Chapter 623 Was Violated By FFA.

Steppan spends most of pages 13 through 22 of his Opposition restating the Defendants' Motion arguments under NRS 623.349, in a strawman fashion bearing little resemblance to the actual contentions raised therein, and then refuting these strawman arguments, based on counter-arguments which have no relevance to the claims as actually stated. For example, contrary to Steppan's claims, the Motion never argued that "because Steppan did not own FFA stock, he could not assert a lien for design work supplied for a Nevada project" (Opp. at 14). There might be any number of circumstances in which Steppan could have asserted a lien for a Nevada project, and the Motion never argued

otherwise, contending instead that, based on the circumstances of this case, and the arguments applicable thereto, the "Steppan" lien for FFA's services was invalid.

Other misstatements of Motion arguments include: "Steppan somehow violated NRS 623.349 by 'joining' (as an employee) FFA" (Opp. p.15, ll. 5-6); "any Nevada licensee who 'joins'. . . any design firm in any jurisdiction runs afoul of NRS 623.349(1) if [the 2/3 Nevada ownership rule is not met]" (Opp. at 15, ll. 16-18). *See also*, the similar claims at Opp. p. 17, ll. 7-9. These absurd contentions were never raised in the Motion, and Steppan's counter-arguments thereto, citing rules of statutory construction designed to prevent absurd results, are simply irrelevant red herrings provided to distract the Court from the many ways in which FFA violated NRS 623.349, and other statutes, such as NRS 623.180, which Steppan strictly avoids mentioning.

Steppan also claims that movants prefer a statutory construction under which "Steppan's Nevada license would be void because he was employed, out of state, by a firm that was not owned at least two-thirds by Nevada registered design professionals" (Opp. at p.18, ll. 7-12). This last claim sends Steppan into a lengthy and wholly irrelevant discourse on the Constitutionality of NRS 623.349, if interpreted in accordance with the strawman, wasting most of pages 18 through 22 of the brief.

What the Motion actually argued was that the true nature of the work performed by FFA as well as the true nature of the Steppan-FFA relationship, should be reviewed accurately, for what it truly was in substance, and not on the basis of the sham pretenses claimed by FFA/Steppan. If this approach is taken, the Motion argued, it is clear that FFA failed to comply with NRS 623.349 in exactly the same ways that the Supreme Court ruled DTJ Design had done. As these actual arguments have never been addressed by Steppan, they will not again be detailed here.

Any points raised in this section of the Opposition which consist of actually relevant arguments, instead of refutations of strawman restatements, also fail. For example, Plaintiff's contention that certain provisions of NRS 623 do not apply to FFA because it never had an office in Nevada, are based on broadly applying a statutory reference to what must be done by those opening an office here, to provisions to which that reference was not meant to and does not extend. If the relevant provisions of NRS 623 do not apply to FFA, simply because it has no office in Nevada, then the Nevada Supreme Court would not have applied those provisions against DTJ Design, which also

operated from out-of-State. Furthermore, as Steppan admitted, he and FFA considered "making Fisher Friedman of record on this job" but, after consultation with the Board "elected not to do so because it would have required that at a minimum Rodney be licensed in Nevada" (Mot. at Exh. 12, at p. 150). This counsel was clearly due to the implications of Friedman's sole ownership of the company under the 2/3 ownership requirements of NRS 623.349 for certain entities wishing to pursue certain courses. The Nevada Architectural Board would not have told Steppan that FFA's sole owner needed to be licensed in Nevada in order to act as the contract architect on this project if NRS 623.349 did not apply. This Board's advice, it seems fairly certain, was not likely intended to mean that FFA could go ahead and act as the contract architect in all but name, and that would be permissible.

VI. CONCLUSION

A lien claimant may lien for his own work, or that of his employees, or for work performed by or through his retained subcontractors. Steppan is liening for FFA's work, not his own, and he had no employees and retained no subcontractors (including his employer, FFA), such that this lien should have been, and must now be, rejected. The Motion should be granted and the Court's Decision set aside.

DATED this 15th day of December, 2014.

By _____
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AFFIRMATION

The undersigned does hereby affirm this 15th day of December, 2014, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 15th day of December, 2014, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **DEFENDANTS' REPLY POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR NRCP 60(b) RELIEF FROM COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND RELATED ORDERS,** and a copy mailed to the following person:

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An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

1. Attorney General Opinion

F I L E D
Electronically
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Jacqueline Bryant
Clerk of the Court
Transaction # 4737764 : ylloyd

EXHIBIT 1

EXHIBIT 1

19 Construction of NRS 623.330(5); Architects—Draftsman who accepts work which can be defined as the practice of architecture is not protected by NRS 623.330(5).

CARSON CITY, April 1, 1963

MR. RAYMOND HELLMANN, *Secretary-Treasurer, State Board of Architecture, 137 Vassar Street, Reno, Nevada*

DEAR MR. HELLMANN: You have directed to this office a letter asking for a construction of NRS 623.330(5). This section reads as follows:

> 623.330 Exemptions. The following shall be exempted from the provisions of this chapter. * * * (5) A draftsman who does not hold himself out to the public as an architect.

You allege that certain draftsmen, building designers, etc., have construed this provision of the law as permitting a draftsman to engage in the practice of architecture as long as he does not call himself an architect.

ANALYSIS

The purpose of the act (Chapter 623 NRS) is, according to NRS 623.020, "to safeguard life, health and property and to promote the public welfare."

An architect is defined in NRS 623.020 as "a person who is qualified to practice architecture under the provisions of this chapter."

NRS 623.040 defines the practice of architecture as the holding out to the public of service embracing the scientific, aesthetic, and orderly coordination of all the processes which enter into the production of a completed building, performed through the medium of unbiased plans, specifications, supervision of construction, preliminary studies, consultations, evaluations, investigations, contract documents, and oral advice and direction.

A certificate is issued either upon examination or acceptable qualification in lieu thereof.

It can readily be determined from the foregoing that the duties imposed upon an architect are more burdensome, and subject to greater qualifications, than those imposed upon a draftsman. The distinct difference between the two occupations is shown by the variance in the definitions found in Webster's New International Dictionary. A draftsman is defined as one who draws plans and sketches, as a machinery or structures; generally, one who makes drawings. An architect on the other hand is defined as a person skilled in the art of building; a professional student of architecture or one who makes it his occupation to form plans and designs of, and to draw up specifications for, buildings and to superintend their execution.

The meaning of the act can only be divined by reading all sections of the act, and especially those previously cited. Certainly the Legislature did not intend to exempt draftsmen from the provisions of the act merely because they do not call themselves architects. A person may hold himself out to be an architect, within the meaning of the act, without uttering a word, or without any printed material that he is such. He can convey this supposition to the layman and to the general public by accepting work which includes those duties detailed in NRS 623.040.

This, it is the opinion of this office, he cannot do without breaching the directives and procedures set forth by the Legislature in Chapter 623 as qualifying architects.

CONCLUSION

It is the conclusion and opinion of this office that a draftsman cannot legally don the robe of an architect merely by refraining from calling himself an architect, if he, in fact, accepts work which falls within the purview of NRS 623.040, and the board has the authority to retain counsel to protect the rights guaranteed to qualified architects under the act.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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20 County School District Funds—Proceeds from the sale of school bonds are county school district funds and must be paid into the county treasury at the end of each month.

CARSON CITY, April 5, 1963

HON. JOSEPH O. MCDANIEL, *District Attorney, Elko County Court House, Elko, Nevada*

STATEMENT OF FACTS

DEAR MR. MCDANIEL: Proceeds from the sale of Elko County school bonds are not always used immediately due to normal delays attendant to the planning and construction of school facilities. The funds in question are potentially available for interest bearing investment or deposit and the board of school trustees is desirous of placing said funds in interest bearing accounts with state or national banking institutions.

QUESTION

May the Elko County Board of School Trustees deposit the proceeds of bonds which are not immediately needed for school purposes in a state or national banking institution?

CONCLUSION

No.

ANALYSIS

The first determination to be made in the analysis of this problem is whether the proceeds of the sale of bonds issued under the authority of NRS 387.335 are county school district funds within the meaning of NRS 387.170 et seq.

NRS 387.175 states the composition of the county school district fund. Subsection 6 of this statute requires that any receipts, including gifts for the operation and maintenance of the public schools in the county school district, be a part of the county school fund. This subsection does not mention receipts for the construction of public schools; however, the broad wording of NRS 387.180 contemplates the inclusion of moneys received from whatever source and for whatever purpose in the fund. NRS 387.180 reads as follows:

> The board of trustees of each county school district shall pay all moneys from any source whatever collected by it for school purposes into the county treasury at the end of each month to be placed to the credit of the county school district fund.

The conclusion one must reach based on these statutes is that the intent of the Legislature is that county school district fund moneys shall only be deposited in the

Q So there was no change in your role, I guess is what I'm asking, at any stage along that basically --

A Not that I remember.

Q -- twelve month continuum?

How would you describe Mr. Friedman's role during that same period of time?

A The director of design and the owner of the firm, enthusiastic about working on a project of this potential, participating in the design and meetings and review of the project.

Q Would you say that the project was being conducted under his purveyance?

A Every project is conducted under his purveyance to a degree.

Q And that he exercised some role of supervision?

A All of the senior parties exercise some role of supervision. That is typical on any project.

Q Is there some way to distinguish what he did on this project from what you did?

A Being the owner of the firm and the director of design his role is inherently different than mine.

Q Can you be more specific than that?

A It's very hard to define differences on a day-to-day basis. He would participate more in the designing of features of the building and I would

A Let me -- You mean me personally with the new license? With my being licensed in Nevada the answer is no.

Q Had Fisher Friedman done projects in Nevada?

A Yes, many years ago with Robert Fisher being licensed in Nevada. That is why I needed to clarify that.

Q Okay.

Can you tell me about the other projects that the firm did when Mr. Fisher was licensed in Nevada?

A I cannot begin to remember all of them.

Q Do you remember one of them?

A There might have been some when I was not even there.

One of them was Green Ranch.

Q Green Ranch?

A Which is right down here.

Q A residential development?

A Yes.

Q That project involved the design of the subdivision and amenities?

A It included design of the buildings on the site, site plan. I don't remember if there were any other amenities.

Q Was your firm involved in the design of the

meeting.

Q Was there discussion about the schedule as to when construction was -- when the builders wanted to begin building?

A I don't remember.

Q Or any discussion about any entitlement issues that might exist?

A Not at that time that I remember.

Q So when you walked out of that meeting, what was your understanding as to whether there had been any understandings or agreements reached?

A I don't think I could really say what I remember when I left that particular meeting and be accurate about it.

Q Did you understand at that early stage that your firm was being considered for this project along with others?

A I don't remember any others being mentioned.

Q So you don't recall whether or not Mr. Caniglia and Mr. Iamesi thought they would be consulting with other architects?

A I did not get the impression they were going to be consulting with other architects.

Q To your knowledge was there any other firm that bid on the project or were consulted prior to the --

Q So you think that Sam Caniglia was an owner of Consolidated Pacific?

A That is what I understood.

Q Did you understand that Anthony Iamesi was as well or that he was not an owner?

A I didn't really think about it. I just assumed he worked for Sam.

Q Do you remember why this was addressed to Tony rather than Sam?

A No.

Q In the last sentence on page 2, which is Steppan 3051, it identifies a project number, and this is the project number used within Fisher Friedman Associates?

A Correct.

Q I see you give two alternatives. It could be 0515 or 0515-R. I presume the R stands for Reno?

A No.

Q What does it stand for?

A 0515 is the base job number. 0515-R is reimbursables. Reimbursables are tracked separately than base fee.

Q So this became project number 515?

A 0515.

Q There is a difference?

A Sure, 05 is 2005. So it's thought of as 0515. I mean technically we wouldn't reach 5,000 years, but you know.

Q Did Fisher Friedman number its projects sequentially?

A Yes.

Q This proposal is made on behalf of an entity called Mark Steppan, AIA. Did Mark Steppan, you, ever form a business entity or is this just your name being used as an individual?

A It's my name being used as an individual as the licensed architect in Nevada.

Q Did you understand that you were contracting as an individual?

A I don't know if I thought about it specifically.

Q The proposal that you send, and you can take a look at the first page of it, if you would like, which begins on page 3053, is basically the 1997 AIA form, is it not?

A Yes, it looks a B141.

Q It doesn't look like it was filled out.

A No, based on executing a B141. This was just an early copy of it so they could see what it was.

Q You wanted to supply them with the form the

contract, did you understand that?

A I'm not sure how best to answer the question, because there is still technically a relationship between me as an employee and Fisher Friedman Associates.

Q We will talk about that relationship in a minute and whatever side agreements there might have been, but I'm just talking about what you understood was the import of making this proposal on October 25th, 2005, and my question to you again is did you understand that you were the individual who was responsible for performing the architect's obligations with respect to your contracting parties, in this case Consolidated Pacific Construction?

A I suppose so.

Q And this is, as I understand from an earlier discussion, the very first such contract you as an individual had ever entered into?

A No, it's the first contract that has been under my name for Fisher Friedman -- with Fisher Friedman Associates.

You're including the potential of doing work outside of the office at some other time for my own business or anything else. So I don't know that I ever did a contract, but I'm just clarifying you're talking

about Fisher Friedman.

Q Then we do need to do some clarification.

Have you ever worked under your own name as an architect since you became registered as an architect in California?

A I have designed some houses, did not do the construction documents on them.

Q Have you signed a contract where the architect of record was not Fisher Friedman, but Mark Steppan?

A I suppose we didn't have a signed contract to do that particular work.

Q You're saying you may have provided architectural services for friends or associates or even, heaven forbid, family members?

A Yes, I have done some design work.

Q But prior to --

A But this would be the first contract that I signed like this.

Q Had you ever charged fees to an architectural client other than through Fisher Friedman prior to this project?

A Yes.

Q And you had done that on the basis of some unwritten contract?

A There was a written agreement. There wasn't an

Q That wasn't my question.

Did you enter into an agreement or understanding?

A The understanding was that Fisher Friedman would get the monies on the project.

Q And then how would it be distributed after that?

A As part of Fisher Friedman's income.

Q Let's talk, then, about how that would happen if this project had been in California. Under the terms of your employment were you paid a salary or a performance based compensation?

A Salary.

Q So it was a straight salary?

A Yes.

Q With bonuses?

A No.

Q Was that to be the case with this Nevada contract?

A Yes.

Q Did you have any expectation either in your own mind or based upon what you were told by anyone else that you would enjoy some additional financial benefit by virtue of the fact that you were being the architect of record on the Reno job?

A No.

Q There was no revenue sharing arrangement at Fisher Friedman beyond Mr. Friedman?

A Correct.

Q In this case later on in 2006 there were payments that were made under the contract. Did you receive any of those funds beyond what you would have received otherwise from your salary?

A No.

Q Was your salary a fixed amount each year?

A Yes.

Q It wasn't dependent upon the success or lack of success of the business?

A It's not dependent upon the success of the business, but if the business is not doing well there have been times when we have taken salary reductions to compensate for reduced business.

Q But on the really good years there were no bonuses that were paid or salary adjustments up?

A Generally not. I don't think I have had a bonus in fifteen years.

Q And for this project once it was signed in April you had no expectation of any financial benefit to come from this contract, other than the possibility that it might help your firm pay your salary; is that

(Exhibit 5 was marked.)

BY MR. GRUNDY:

Q These documents appeared in this exact order in the materials that were supplied to us. I don't know whether the first page is related or not. So let's set that aside for a minute, turn it over, and talk about the second page first.

Do you recognize the second page, Steppan 4351?

A Looks like a renewal page for Nevada.

Q Well, it says registration/renewal. Do you know whether it's registration or renewal?

A It's renewal because there is also a registration number.

Q 5200.

Does that refresh your recollection as to whether or not you had a registration in Nevada before this project?

A It looks like the answer is yes.

Q What is the date of this registration/renewal?

A I dated it 10/28/05.

Q And take a look at, if you would, the fourth page of this exhibit, the one that says 4353?

A Okay.

Q Do you recognize that document?

A Yeah, it looks like the notice that came from

Nevada reminding me of a license renewal.

Q It was sent out the 12th of October. It looks like it was received by Fisher Friedman on October 19th?

A Yes.

Q Yes?

A Yes.

Q And on October 28th is when you filled out the form?

A Yes.

Q Is the handwriting on this document yours?

A Yes.

Q Both the printing and the signature at the bottom?

A Yes.

Q Take a look at page 3, which is a check dated, it looks like November 2nd, 2005?

A Correct.

Q And this is a check by Fisher Friedman Associates for your renewal?

A Correct.

Q Whose signature is on the check?

A That is Rodney's.

Q We talked about the next page. What is the last page, 4354?

A That looks like a copy of notes taken during a

before making these calls?

A I might have, but I don't remember specifically.

Q Did you ever talk to him about the possibility of making Fisher Friedman of record in this job?

A Yes.

Q And what do you recall about those discussions?

A That we elected not to do that because it would have required, I think, at a minimum Rodney be licensed in Nevada, and I don't remember what else was required.

Q Why was Mr. Friedman not interested in becoming licensed himself?

A I don't know what his ulterior motives were to not be licensed in Nevada.

Q There is no way you would know unless he told you. Did he ever tell you a reason for why he didn't want to do it?

A Not specifically. We probably discussed something like he is already getting up there in age and there was no need to add other licenses to his.

Q Once again it's hard to tell whether that is something you recall doing or --

A Right, it's hard.

Q -- or something you just assume you might have.

A Right, I agree it's hard to know.

Q So one of the things that you wanted to talk about or think about or do was to make a contract between the owner and yourself; right?

A Yes.

Q And another thing you wanted to do was make a contract between MBS and FFA?

A No.

As I said, not necessarily something I wanted to do. It was stuff that was being thought of or discussed or ideas.

Q So did you talk to anybody about doing a contract between MBS and FFA?

A Yes, I talked to Rodney about it and we elected there was not a need to do one.

Q So when did that discussion occur?

A About the same time as all of this stuff, the end of October, beginning of November.

Q This was at the beginning of the Wingfield project?

A Correct.

Q When there was either no actual agreement signed or at the very most what you had was the November 15th one page letter agreement; right?

A I don't recall what was done at the exact same time that this might have been exactly talked about. I

MS. KERN: Objection, calls for a legal conclusion, if you know or understand.

BY MR. GRUNDY:

Q I'm just trying to understand what your recollection was. I don't want you to tell me what the law is. I want to know what you and Rodney Friedman talked about in terms of the liability issues?

A My understanding is that the corporation would protect me.

Q Okay.

Did you feel at all uncomfortable relying upon a verbal assurance of that?

A No, not in this instance.

Q Did you discuss during this conversation your share of the proceeds of this contract?

A No.

Q That was just never an issue?

A Correct.

Q Did you discuss how the money would be taken in and handled?

A Yes, it was a very short discussion.

Q What do you recall was said?

A Just decided that it would come into Fisher Friedman. I elected that the checks could be made out to Fisher Friedman.

Q And I can't find a term in any of the post contracts about that. Is that something that you did separately with regard to your contractee?

A I don't recall how it got discussed with BSC.

Q I guess that is what happened, the invoices were sent out and money was paid payable to Fisher Friedman?

A Correct.

Q There were never any checks that were made payable to you?

A Correct.

Q And you believe that that was because you had an understanding with the developer?

A Yes.

Q There is also the notation business cards.

A That is what it says.

Q What was your purpose for writing that down?

A Because we talked about maybe creating some business cards.

Q We talked about, you and Mr. Friedman did?

A I don't recall the full extent of the individuals participating in that conversation.

Q What do you mean, then, when you said we talked about whether to do business cards?

A Well, it could have been Rodney, Nathan, David,

interested in what you do recall. I'm really not interested, because it's not admissible or otherwise germane for you to tell me what might have happened. That is why I'm trying to keep this on the level of --

A That's fine. I don't recall any specific discussions.

Q -- the type of information that might be admissible in this case.

So you wrote down business cards. You presume that was to remind yourself to think about it?

A Correct.

Q And you have no specific recollection of talking about it with anyone?

A Not that I can pinpoint, correct.

Q Then it says letterhead. What was your purpose in writing that down?

A The same basic issue as with business cards. It's the concept of coming up with letterhead or business cards that say Mark B. Steppan on them, not Fisher Friedman Associates since those were already in existence. This was a reminder to myself as much as anything.

Q And that you did follow-through on and create a file that would generate a letterhead that you could use to send things out on?

A Correct.
Q And other people sent out letters and memoranda and things on that letterhead; correct?
A As far as I know.
Q Nathan Ogle did?
A Yes.
Q Mr. Friedman?
A I don't know if Rodney ever sent stuff out or whether Nathan sent it out or Susie sent it out or I sent it out.
Q So this was available to anyone who was working on this project, this letterhead?
A Yes.
Q Then it says transmittal, pardon me transmittals plural. Is that comp, computer?
A Computer, fax, hand.
Q So you at least gave some thought to creating forms for transmittals by computer, by telefax or by hand?
A Yes.
Q Did you follow-through and generate any of those forms?
A I don't know if we did.
Q You did with the letterhead, but you didn't with business cards; right?

Q What were the criteria that you used to pull these documents?

A Any timecard where I saw the project in question noted on a timecard.

MS. KERN: Just for the record to clarify, it was in response to the e-mail that was received from you I believe on either Wednesday --

THE WITNESS: Wednesday evening.

MS. KERN: I think it was Wednesday evening.

MR. GRUNDY: Of last week.

MS. KERN: Yes.

THE WITNESS: So this took all of Thursday to prepare.

BY MR. GRUNDY:

Q So you went through all of the binders for the time period in which this job took place?

A From the start of the project through the lien date.

Q Okay.

Did you find that the records for that period, the start of the project was sometime in October?

A I believe so.

Q And the lien date, as I recall, was in September?

A November.

Q November of 2006.

Do you believe that the records that you had in front of you that you pulled these documents from comprised all of the timecard records for that period of time?

A To the best of my knowledge.

Q There were no gaps in time or -- Well, there weren't any gaps in the time record?

A No.

Q And I saw that there were records of ten different people whose timecards were produced. Do you believe that that constitutes all of the people who worked on this project from start to finish during the periods that you described?

A That would be true from an architectural staff standpoint, but that does not reflect any time put on the job by administrators, such as Susie or the front desk or any other person. They do not charge time to a job. They charge it to a general overhead.

Q All right.

A So consequently there are many hours put in on this project by other folks that are not attributable to the specific timecards.

Q Let me see if I understand.

What you looked through were timecards from all

A Yes.
Q It's a letter to Calvin Bosma?
A Yes.
Q And do you recognize this as a letter in which Mr. Friedman was writing about nonpayment of some outstanding billings?
A Yes.
Q It makes references to invoices that are three months overdue, which would put them into June or so. I couldn't find in all of the records that were produced by you any invoices in June, July or August. Do you know if these invoices were on the hourly billing part for $573,000 or the percentage part?
A Well, once the contract was signed in April and backdated to October, the only thing that would have gone out on hourly were the added services that were kept on hourly. Everything else was referenced and related and credited back to a percentage of construction cost phase fee amount due, so there was no hourly any more period, other than as I stated any work done on an added service.

So this would be against the base contract which was effectively -- excuse me, which was effective October of '05.

Q Do you recall that there had not been any

payment on that contract from February when that 200 some thousand dollar check that we saw last time that we were together up until September of 2006?

A That sounds right, but I don't remember if we received any payments at all in that time frame.

Q Is that something that you were watching over?

A A little bit. Rodney and Nathan and Susie were more on top of that and I would just check in on occasion.

Q Do you recall some discussion within the firm about having Rodney Friedman write this demand letter as opposed to you or Nathan Ogle or anybody else?

A I'm not aware if there was any discussion about it.

Q Would it be fair to say in light of this letter and the language in it about the carried costs for this amount that this was becoming a significant problem within the firm in September of 2006?

A Yes, and it had been a problem earlier than that, that's correct.

Q Is there some reason why you didn't write this letter?

A Well, as I have stated before, this project was being done as sort of in a standard way where the firm is not licensed in the state, but one of its employees

is, and so the reality is that both of us were doing the project for the client who fully understood the relationship between my being licensed for signing of the drawings and having responsible control, so to speak, and Rodney designing the project and how that all worked. So it was not unreasonable at all for Rodney to be writing this letter.

Q Is it also fair to say that basically the design, the principal source of design output from the firm was coming from Rodney?

A The firm to which I belong, yes. Fisher Friedman was doing the design.

Q But the person within the firm who was providing the vision and the conceptual design of this project was primarily Rodney Friedman?

A Rodney with David.

Q With David Tritt?

A Tritt.

Q Tritt?

A Yes.

Q Is the statement in this letter true that in the meantime as a result of this nonpayment we, in this case it's hard to tell who we means if it's written on Mark B. Steppan's letterhead, have been forced to borrow capital at prime plus two percent to cover the

outstanding invoices. Is that a true statement?

A If Rodney said it then it must be true.

Q Is that something you wouldn't know one way or the other?

A I wouldn't have known exactly about it, no.

Q Do you think the we that he meant in that sentence was not Mark B. Steppan, AIA, architect, but Fisher Friedman?

A That's correct.

Q Do you know what response was made by Calvin Bosma to this letter?

A No, I don't.

Q Were you involved in any discussions with Calvin Bosma after this letter went out?

A I don't really remember after September, no.

Q At the time of this letter in early September 2006 Mr. Ogle was still the project architect?

A He was acting as a project manager, that's correct.

(Exhibit 22 was marked.)

BY MR. GRUNDY:

Q I'm showing you what has been marked as Exhibit 22, which is a letter of September 11, 2006 to Calvin Bosma again by Rodney Friedman on your letterhead.

It makes reference to a September 8th, 2006

the first meeting. Excuse me, of that meeting with John.

Q You mentioned a moment ago that you do your business cards internally or words to that effect. By that did you mean that business cards for Fisher Friedman professionals are done in-house at Fisher Friedman Associates?

A No, what I was saying is the ones for me that were referencing Mark B. Steppan, AIA, NCARB, et cetera that are not Fisher Friedman cards, those were done internally.

Q Now, other than you did any owner or employee of Fisher Friedman have business cards made up after October 2005 that did not reference Fisher Friedman Associates?

A I think we might have made some up for Nathan and Rodney as well.

Q What do you base that memory on?

A Seeing some and approving a proof for those.

Q Were the business cards for Mark Steppan, Nathan Ogle and Rodney Friedman, which cards made no reference to Fisher Friedman Associates, all done at the same time?

A Yes.

Q Did you approve the proofs of those three sets

documents produced each marked Steppan starting with 17 through the 7,000 range. My preliminary question is did you gather up those records for production?

A Did I personally gather them up?

Q That is my question.

A No.

Q Are all of the documents that have been produced with the Steppan, what we call Bates number, 17 through 7,000 period, are those from the files of Fisher Friedman Associates?

A Yes.

Q Do you, Mark Steppan, have any separate file with respect to the Reno project?

A No.

Q To your knowledge does any architectural professional at Fisher Friedman have any separate file regarding the Reno project?

A No, all the files are in that set of boxes.

Q Does any non-architectural professional, someone who is clerical, accounting or other staff functions have any separate files for the Reno project, other than what has been produced?

A No, I believe all the administration files are there.

Q Could you look at Exhibit 4 to your previous

EXHIBIT 15

EXHIBIT 15

ILIESCU/STEPPEN
RECAP OF ARCHITECTURAL HOURS

NAME	TOTAL HOURS	% OF TOTAL
Chu	396.00	11.36
Tendall	9.50	00.27
Kaji	33.00	00.95
Chang	205.50	5.90
Pusey	35.00	1.00
Friedman	808.00	23.19
Steppan	144.00	4.13
Preston	599.00	17.19
Ogle	641.50	18.41
Tritt	613.50	17.60
TOTAL	3,485.00	100.00

EXHIBIT 16

EXHIBIT 16

Nevada State Board of Architecture, Interior Design and Residential Design
2080 E. Flamingo Road, Suite 225, Las Vegas, Nevada 89119
Telephone: (702) 486-7300 Fax: (702) 486-7304
E-mail: nsbaidrd@govmail.state.nv.us Web: nsbaidrd.state.nv.us

Print Form

REGISTRATION / RENEWAL

COPY

NAME (last, first middle) STEPPAN, MARK BAINUM

REGISTRATION NO. 5200 EXPIRATION DATE 12/31/05

(1) HOME ADDRESS (street, city, state, zip) 680 FAIRMOUNT AVENUE, OAKLAND, CA 94611
(P.O. Box not acceptable)

(2) BUSINESS ADDRESS (street, city, state, zip) 1485 PARK AVENUE, SUITE 103, EMERYVILLE, CA 94608

Which address should be used for mailing correspondence : ☐ (1) Home ☒ (2) Business

DAYTIME TELEPHONE 510·420·1666 EVENING TELEPHONE 510·428·0123

E-MAIL ADDRESS mark@fisherfriedman.com FAX NUMBER 510·420·0599

DATE OF BIRTH 8/16/57 SOCIAL SECURITY NO.

Please complete the following: **I will practice in the State of Nevada:**

Type of practice:		*Under my own name, or the Board approved firm name of:*
1. Independently	☑ Yes ☐ No	MARK B. STEPPAN, AIA, CSI, NCARB
2. In a partnership	☐ Yes ☐ No	
3. In a corporation or LCC	☐ Corp ☐ LLC ☐ n/a	
4. Under the NRS 623.349 Board approved registered entity of		
5. Under the Board approved fictitous name of		
6. Employed by		

If you checked "Yes" in response to question 2, 3, or 4 above, you must include on a separate sheet of paper the applicable information including a listing of all officers, directors, stockholders and the number of shares held by each: partners, members, managing members and persons associated with you under the above name; their percentage of ownership of the business entity; their Nevada registration numbers if they are registrants and who "controls" the company within the meaning of NRS 623.349.

PROFESSIONAL STATISTICS REPORT

If you answer "Yes" to any questions, list jurisdictions and reasons on a separate sheet of paper. Failure to answer any of the following questions is grounds for denial of your application for the renewal of your certificate.

1. I have allowed registration to lapse (if yes, answer a-c below).	☐ Yes ☑ No
(a) List jurisdiction(s) and registration(s)	
(b) Was registration your initial (base) registration?	☐ Yes ☐ No
(c) Was disciplinary action pending or threatened?	☐ Yes ☐ No
2. I have been denied registration.	☐ Yes ☑ No
3. My registration has been revoked or suspended.	☐ Yes ☑ No
4. I have been found by a court or registration board to have violated the law in the conduct of my practice (if yes, list dates and provide details on a separate sheet of paper).	☐ Yes ☑ No
5. Are you a defendant in any lawsuit or proceeding?	☐ Yes ☑ No
6. Are you retired? If yes, please note date:	☐ Yes ☑ No
7. Are you currently subject to a court order or a plan approved by a public agency enforcing amounts owed under a court order for the support of a child?	☐ Yes ☑ No
(a) If yes, are you currently in compliance with the court order and/or plan?	☐ Yes ☑ No

I do hereby verify that the preceding information is correct. I further understand and agree that should I have listed that I am in practice with other registrants, or with non-registrants, through a corporation, partnership, limited-liability company or other business organization or association, the business organization or association must separately register and demonstrate that it is in compliance with the provisions of NRS 623.349.

Signature Mark Steppan Date 10/28/05

Rev. 5/05

EXHIBIT 17

EXHIBIT 17

FISHER FRIEDMAN ASSOCIATES
ARCHITECTS AIA
1485 PARK AVENUE, SUITE 103
EMERYVILLE, CA 94608

WELLS FARGO BANK, N.A.
SAN FRANCISCO, CA 94104
11-24/1210

11560

11/ 2'05

PAY TO THE ORDER OF NEVADA STATE BOARD OF ARCHITECTURE $ ******150.00

One Hundred Fifty and 00/100********** DOLLARS

NEVADA STATE BOARD OF ARCHITEC
2080 FLAMINGO ROAD, SUITE 225
LAS VEGAS, NV 89119

MEMO LISCENCE/MS NV

FISHER FRIEDMAN ASSOCIATES ARCHITECTS AIA 11/ 2'05 11560

NEVADA STATE BOARD OF ARCHITECTURE

451300 LIC 150.00

FFA-CHK/WF-corp LISCENCE/MS NV ******150.00

FISHER FRIEDMAN ASSOCIATES ARCHITECTS AIA 11560

11/ 2'05

NEVADA STATE BOARD OF ARCHITECTURE

451300 LIC 150.00

FFA-CHK/WF-corp LISCENCE/MS NV ******150.00

EXHIBIT 18

EXHIBIT 18

NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN

October 12, 2005

RECEIVED

OCT 19 2005

FISHER FRIEDMAN ASSOCIATES

MAIN OFFICE

2080 E. Flamingo Road
Suite 225
Las Vegas, NV 89119
Tel: (702) 486-7300
Fax: (702) 486-7304

RENO INVESTIGATIVE OFFICE
Tel: (775) 688-2544
Fax: (775) 828-4040

E-mail:
nsbaidrd@govmail.state.nv.us
http://nsbaidrd.state.nv.us

Mark Steppan, License #: 5200
Fisher Friedman Associates
1485 Park Avenue, Ste. 103
Emeryville, CA 94608

Re: Notification of License Renewal due 12/31/2005

Dear Registrant:

Your professional registration in the State of Nevada expires December 31, 2005. Please complete the enclosed renewal form and return it to our office prior to your expiration date. Please include the renewal fee of $150.00 with your renewal form, which will renew your license through December 31, 2006. Please provide us with your email address for future correspondence. Also, please indicate on the form which address you wish to be made available to the public.

Nevada has NO grace period for renewal of expired licenses. If your renewal form and fees are not received by December 31, 2005, your name will be dropped from the active list and your name and license number will be forwarded to the Nevada building departments. Any renewal forms/fees received after December 31, 2005 will be assessed a late renewal fee of $220.00 in addition to the annual renewal fee of $150.00.

Please contact our office if you have any questions.

Sincerely,

NEVADA STATE BOARD OF ARCHITECTURE,
INTERIOR DESIGN AND RESIDENTIAL DESIGN

Code: 2645

HOY CHRISSINGER & KIMMEL, PC
Michael D. Hoy (NV Bar 2723)
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000 (operator)
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
And Related cross-claims and third-party claims.	

Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders

Mark B. Steppan ("Steppan") opposes the Defendant's Motion for NRCP 60(b) Relief (the "Motion"). This Opposition is based on the following Memorandum of Points and authorities, the attached exhibits, the entire trial record, all docketed court filings, and all other arguments and evidence offered in opposition to the Motion.

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Table of Authorities

Introduction

NRCP 60(b)(3) is not an invitation to reargue evidence and law presented in pretrial motions or at trial. The rule does not sanction a post-trial motion to apply a new legal theory to evidence that was known before trial. Rule 60(b)(3) relief is limited to those exceptional cases in which the judgment was procured by fraud, such as perjury or concealment of evidence. To prevail, Dr. and Mrs. Iliescu ("Movants") must demonstrate that fraud prevented them from fully and fairly presenting their case. Movants bear the burden to prove the claimed fraud with clear and convincing evidence.

The "Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders" (the "Motion") does not identify false evidence, concealed evidence, or legal misrepresentations. The Motion simply reargues the trial evidence in a brief peppered with phrases like "fraud," "in order to deceive," "scam," "ploy," "shell game," "obscure," "circumvent licensing statutes." Despite the smear campaign, objective application of substantive law to the evidence yields a meritless Motion that must be denied.

Standard of Review and Burden of Proof

Rule 60(b) relief is an extreme remedy to be employed only under exceptional circumstances. *Reynolds v. Reynolds*, 516 So.2d 663, 664 (Ala.App. 1987). "[T]o prevail under a Rule 60(b)(3) claim for fraud it is incumbent upon the movant to establish the fraud complained of by clear and convincing evidence." *Ervin v. Wilkinson*, 701 F.2d 59, 61 (7th Cir. 1983).[1] Nevada courts likewise require proof of each element of fraud by clear

[1] Because the Nevada Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, federal precedents interpreting and applying FRCP "are strong

and convincing evidence. *E.g. J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004); *Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 857, 860 (1969).

The fraud required to set aside a judgment or order is not fraudulent representation or concealment that gives rise to a tort claim:

> [T]he judgment may be set aside only where the fraud is extrinsic or collateral to the matters involved in the action. [] In order to be considered extrinsic fraud, the alleged fraud must be such that it prevents a party from having an opportunity to present his claim or defense in court, [], or deprives a party of his right to a "day in court,"

Green v. Ancora-Citronelle Corp., 577 F.2d 1380, 1384 (9th Cir. 1978).[2] Thus, alleged "fraud" that serves as the basis of a claim or defense is not the species of fraud that justifies Rule 60(b)(3) relief. *DeWit v. Firstar Corp.*, 904 F. Supp. 1476, 1497 note 17 (N.D. Iowa 1995).

Federal decisions universally require the moving party to establish, through clear and convincing evidence, that fraud or other misconduct prevented the losing party from fully and fairly presenting his case or defense. *E.g. Rozier v. Ford Motor Co.*, 573 F.2d 1332,

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persuasive authority." *Vanguard Piping v. Eighth Judicial District Court*, 129 Nev.Adv.Op. 63, 309 P.3d 1017, 1020 (September 19, 2013); *Executive Management, Ltd. v. Ticor Title Insurance Company*, 118 Nev. 46, 51, 38 P.3d 872, 875 (2002). "We may consult the interpretation of a federal counterpart to a Nevada Rule of Civil Procedure as persuasive authority." *Humphries v. Eighth Judicial District Court*, 129 Nev.Adv.Op 85, 312 P.3d 484, footnote 1 (November 7, 2013).

FRCP 60 was amended in 2007. NRCP 60 was not amended to conform to FRCP 60. According to the Advisory Committee Notes, "The language of Rule 60 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only." For that reason, federal authorities interpreting FRCP 60 before and after the 2007 amendment are persuasive.

[2] *See also* e*.g. Moeller v. D'Arrigo*, 163F.R.D. 489 (E.D.Va. 1995).

1339 (5th Cir. 1978).[3] Further, a Rule 60(b)(3) motion is not appropriate to advance arguments that could have been made before the district court rendered a judgment, or to present evidence that was available before the trial. *DeWitt, supra*.[4] Further, the fraud must "not [have been] discoverable by the due diligence before or during the proceeding, and [it must have been] materially related to the submitted issue." *Pacific & Arctic Ry. & Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir.1991).

Argument

A. The Motion only argues evidence known before trial.

1. The Motion rests entirely on evidence disclosed before the trial.

Pretrial discovery and trial testimony fully probed the relationship between Steppan and FFA, the licensing status of Steppan and FFA, and the contract negotiations and documents between Steppan and the developer. At trial, the Court heard the evidence that (1) the parties intended a contract for a fee based on a percentage of the construction cost,[5] and (2) the parties executed a "stop gap" agreement to commence work on an hourly basis while the developer's lawyers (who also represented the owner) prepared the

---

[3] *See also Rubens v. Ellis*, 202 F.2d 415, 416 (5th Cir. 1953)("[I]t must appear that such fraud really prevented the complaining party from making a full and fair defense."); *Keys v. Dunbar*, 405 F.2d 955,958 (9th Cir. 1969)(same), *cert. denied* 90 S.Ct. 158, 396 U.S. 880, 24 L.Ed.2d 138 (1969).

[4] At West Headnote 3, collecting precedents from the Fifth, Seventh, Eighth, and Tenth Circuit Courts of Appeal

[5] The fee was calculated based upon an estimated construction cost of $180 million. Trial Exhibits 6, 7. The final fee was subject to adjustment for the final, actual construction costs. Exhibit 6, section 1.5.1, pages STEPPAN-007506, 7507. The Court and defense counsel acknowledged that if the actual construction cost was more, the percentage fee would be based on the actual construction cost. Trial Transcript Volume 4, pages 955-57 (coliloquy between bench and Mr. Pereos).

ultimate design contract. The Court was made fully aware that (1) Steppan, not FFA, made the contracts with the developer,[6] that FFA provided all of the accounting support to bill and collect for the work done; (2) some invoices were sent on Steppan stationary and some on FFA stationary;[7] (3) FFA received the developer's payments for the design fees;[8] (4) Steppan was an employee of FFA and received wages for his work on the Reno project; and (5) Steppan did not own any of the capital stock of FFA.

During closing arguments, defense counsel specifically argued the evidence and, particularly, Mr. Steppan's status and concluded:

> Now, I am not advancing the proposition that [Steppan] lacks standing to file the lawsuit. I'm not there yet, because I haven't looked into that issue. But that ties to my examination of Mr. Steppan as to what his particular involvement was.

Trial Transcript Volume 4, pp. 944-45.

Most of the evidence discussed in the Motion was presented at trial. The Motion also discusses timecards that Movants elected not to offer at trial. These time cards were produced in discovery on March 1, 2010, **more than three years before trial.**[9]

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6 Trial Exhibits 6, 7. See also the "stop gap" contract documents, Trial Exhibits 9, 14, 15, 16, 17, 19, 20, 21, and 22.

7 Trial Exhibits 24-31.

8 Trial Transcript Volume 3, page 673 (explaining that payments were going to FFA and that the developer understood and approved this)

9 Exhibit 14 to the Motion contains documents marked Steppan 7122-7158. In fact, the Motion failed to include all of the time records, which were produced on March 1, 2010 as Steppan 7122-7363. *See* Exhibit 8, page 6, lines 10-12.

2. Before trial, Movants raised the same licensing arguments with the Architecture Board, which demonstrates the issue could have been raised at trial.

The trial commenced on December 9, 2013. Four months earlier, Dr. and Mrs. Iliescu sent the Architecture Board a "Consumer Complaint Form" along with deposition transcripts and a binder containing 66 exhibits. *See* Exhibit 2, page 10. Movant's regulatory complaint contains a number of factual inaccuracies, but essentially argues the same licensing issues argued to the Court before, during, and after trial:

> The essence of our Consumer Complaint is as follows:
>
> Mark B. Steppan, the son-in-law of Stanley [sic] Friedman, works for Fisher Friedman & Associates in California. Steppan entered into an AIA Agreement with the developer/optionee of the property (See Court Exhibit 13, Binder 1). We had no involvement in the negotiation of the Agreement. As shown by the Steppan depositions (Binder 2), Steppan did not work on the project. All the work was done by other individuals who were employees of Fisher Friedman & Associates. The developer paid Fisher Friedman for the Schematic Design (Permit/Entitlement) phase of the project in the sum of $467,000.
>
> * * * *
>
> Our concern is the behavior and motives of Steppan, Friedman and Fisher Friedman & Associates in seeking FOUR TIMES more than they were paid for the completion of the entitlement work (per itemized hourly billing to the Developer). We are concerned that Mark Steppan did not work on the project. All work was done by non-licensed California architects. We are concerned that the actions taken by Steppan and the unlicensed California architects have cost us over $400,000 in attorneys' fees and costs and now, six (6) years of litigation, to prevent the foreclosure of our property.

Exhibit 2, pp. 10-12. The Architecture Board then investigated Movant's regulatory complaint. Exhibit 3. Following the investigation, the Architecture Board determined that Movants' complaint was unfounded. Exhibit 4.

More than five years before Dr. and Mrs. Iliescu filed their "Consumer Complaint," Steppan raised the licensing issue with the Architecture Board:

> As was mentioned in our conversation, I am currently working on a project in Nevada, under the Nevada licensed firm name of Mark B. Steppan, AIA, CSI, NCARB and I am using Fisher-Friedman Associates as a design consultant. I understand that this is one of the correct ways of performing architectural services in Nevada.

April 25, 2008 letter from Steppan to Laura Bach (Exhibit 5). The Architecture Board responded, and requested a copy of the contract. Steppan provided the contract with the following explanation:

> It was helpful speaking with you over the phone on June 11, 2008 regarding your email in respect to the Notice of Investigation currently in process. As we discussed I am licensed to practice architecture in the State of Nevada under Mark B. Steppan, AIA, CSI, NCARB. This is not the name of a corporation but an individual and thus not registered anywhere other than as an individual licensed to practice architecture in Nevada. I assume this explanation answer you and your supervisor's question on this item.
>
> As requested please find attached a copy of the current in-place agreement for the project I am working on in Nevada. A standard AIA B141 Owner-Architect agreement has been used. This project is currently on hold.

June 11, 2008 letter from Steppan to Laura Bach (Exhibit 6).

Steppan was always transparent with the Architecture Board and this Court in dealing with the licensing issues. The trial testimony disclosed that FFA had designed a number of projects in Nevada. In each case, the licensed individual architect signed the contracts with the client, and supervised the work of FFA to deliver the design. Trial Transcript Volume 1, pages 220-221. The trial testimony disclosed that Steppan and FFA followed this same template with respect to the Wingfield Towers project. Trial Transcript Volume 3, pages 641, et. seq. *See also* Trial Transcript, Volume 3, page 735-36 (defense cross-examination of Steppan.) Movants clearly knew about the license status of Steppan and Fisher Friedman Associates long before the trial. The issue was discussed at length during the trial. Any suggestion that Steppan concealed the licensing issue is wrong.

B. As a matter of law, the mechanics lien secures work performed directly by Steppan, as well as work of design sub-consultants provided under Steppan's contract.

1. The lien secures payment for work furnished by or through the lien claimant.

The Motion posits that (a) Steppan could only assert a lien for work he personally performed or (b) Steppan could never assert a lien at all because he was "employed" by FFA. These arguments are at odds with the relevant statutory language, and unsupported by precedent.

Mechanics liens are creatures of statute, subject to the canons of statutory interpretation. *J.D. Construction v. IBEX International Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1039-1040 (October 7, 2010). The controlling statutes are not ambiguous:

> "Work" means the planning, design, geotechnical and environmental investigations, surveying, labor and services ***provided*** by a lien claimant for the construction, alteration or repair of any improvement, property or work of improvement whether the work is completed or partially completed.

NRS 108.22184 (Emphasis added). If the Legislature intended that each individual worker was required to separately record a lien for his own work, the Legislature could have said so with simple statutory language: the Legislature could have substituted the word "performed" for "provided."

NRS 108.222 provides that the lien claimant has a lien for "work .... ***furnished by or through*** the lien claimant...." Clearly, the lien claimant is not required to personally perform all of the work. A lien claimant is one who organizes and "furnishes" or "provides" work, services, materials, equipment, and tools.

The lien statute permits individual laborers to assert a lien for unpaid wages. However, the lien statute also permits a sole proprietor – including contractors and

designers – to assert a lien for all work, materials, equipment, and labor supplied by the lien claimant personally, as well as by subcontractors, subconsultants, materialmen, and equipment rental agencies. The obvious reason is that the lien claimant is legally liable to the property owner or developer to provide the services, and is legally liable to pay his subcontractors, subconsultants, employees, and suppliers.[10]

It is undisputed that Steppan contracted with the developers to "furnish" or "provide" a design for future construction and for planning services to obtain governmental approvals for the project.[11] Clearly, Steppan could not accomplish this without the help of other designers. The scope of the project was much too large to expect that a single architect design it. As the Motion points out, the recorded time included 3,396 billable hours.[12] As a matter of law, Steppan may assert a lien for all of the work for which he was contractually bound to the developer.

---

[10] In many cases, there can be overlapping liens. For example, an unpaid material supplier to a subcontractor, an unpaid subcontractor, and an unpaid prime contractor may all lien the same property for the unpaid materials invoices.

[11] Trial Exhibits 6, 7, 9, 14, 15, 16, 17, 19, 20, 21, 22.

[12] The time cards did not record all of the time devoted to the project. As the Court heard at trial, the parties always intended that the hourly fee arrangement was merely a "stop gap" to keep the project progressing while lawyers for the developers and owners (the Movants) negotiated the language of the fixed-fee agreement in Trial Exhibit 6. Much of the time devoted to the project was never recorded.

The Court also understood that the hourly contract was a "stop gap." Trial Transcript, Volume 3, page 653-54; Volume 4, page 948-49.

2. As the term is used in the lien statute, Steppan was "employed by" Iliescus' developer, not Fisher Friedman Associates

A notice of mechanics lien must include certain essential elements, including a description of the property encumbered and the owner's name. The notice must also include: "The name of the person by whom the lien claimant was employed ***or to whom the lien claimant furnished the material or equipment***." NRS 108.226(2)(c). Steppan's lien disclosed:

> 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....

Trial Exhibit 1 (¶ 2).[13] The Motion insists that Steppan somehow defrauded the Court because he did not list Fisher Friedman Associates as his "employer."

NRS 108.226(2)(c) is disjunctive, requiring the lien claimant to identify his employer or the person to whom he furnished the work. The term "employ" is not limited to a payroll, employer-employee relationship. "Employ" is a transitive verb that means:

> 1. To make use of. 2. To hire. 3. To use as an agent or substitute in transacting business. 4. To commission and entrust with the performance of certain acts or functions or with the management of one's affairs.

Black's Law Dictionary (9th ed. 2009).[14]

The person who "employed" the lien claimant may be a person who pays the lien claimant's wages or salary. But it may also be somebody who does not. In the context of the lien statute, the person who "employed" the lien claimant is the person who requested

---

[13] *See also* the amended lien notices in Trial Exhibits 2 (¶ 2) and 3 (¶ 6).

[14] *See Douglas v. State*, 130 Nev.Adv.Op. 31, 327 P.3d 492 (May 1, 2014)(use of Black's Law Dictionary). See also Merriam-Webster Online Dictionary.

the services from the lien claimant either as an employee or an independent contractor, like Steppan.

3. Steppan properly amended his lien before trial to provide more detail about the basis of his claim and to correct the accounting, a downward adjustment that favored Iliescu.

"At any time before or during the trial of any action to foreclose a lien, a lien claimant may record an amended notice of lien to correct or clarify the lien claimant's notice of lien." NRS 108.229(1). The Motion insists that, because Steppan received partial summary judgment on some issues, his right to amend the notice of lien under NRS 108.229(1) was somehow cut off, and Movants' right to procedural due process was impaired.[15] The Motion extends the argument to posit that, because partial summary judgment is a "trial," Steppan was required to seek leave of Court to amend the lien notice under NRS 108.229(4). For two reasons, this is nonsense: (1) partial summary judgment is not a "trial;" and (2) NRS 108.229(4) applies only where there was a mistake in the name of the owner of the property encumbered by the lien. The name of the owner (Dr. and Mrs. Iliescu) never changed. See Trial Exhibits 1, 2, and 3.

The Motion nevertheless complains that Steppan's pretrial lien amendments were somehow improper because it was "substantially longer and more complex than the earlier notices." But the Motion does not identify any substantive changes to the lien notice. In the final amendment, the principal amount of the lien was actually revised **downward** from $1,939,347,51 (Trial Exhibit 2) to $1,755,229.99 (Trial Exhibit 3).

The Motion also complains that the final amendment (Trial Exhibit 3) was verified by counsel instead of Mr. Steppan. NRS 108.226(3) provides: "The notice of lien must

[15] Motion, pp. 43-44.

be verified by the oath of the lien claimant ***or some other person***." Undersigned counsel verified the lien based on deposition testimony, a legal review of the pertinent contracts and architectural work product, consultation with independent experts to ensure that the trigger for contract compensation based on completion of the schematic design had been completed, and verification and recapitulation of voluminous accounting records. There was nobody more knowledgeable than counsel about the notice requirements, the factual and legal basis for the lien, or the amount of the lien.

C. Fisher Friedman Associates is not required to register in Nevada in order to provide design services as a sub-consultant to Steppan

1. The *DTJ Design* case invalidated a lien recorded in the name of an unregistered corporation, not an individual registered architect.

Movants contend that Steppan has no lien for work performed by other FFA architects. Their analysis rests entirely on *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv.Op. 5, 318 P.3d 709 (Feb. 13, 2014)("*DTJ Design*"). But that case has no impact on Steppan's lien rights.

DTJ Design, Inc. is a Colorado corporation. One firm principal, Thomas Thorpe, applied to the Nevada Architecture Board for individual registration. The Architecture Board approved his application. Thorpe claimed that he also filed an application for DTJ Design, Inc. to practice as a foreign corporation in Nevada. However, there was no evidence that the Architecture Board ever received or approved the corporate application.

In July 2008, DTJ Design, Inc. recorded a mechanics lien on property that was previously encumbered by a deed of trust securing a loan from First Republic Bank

("Bank"). Bank conducted a non-judicial foreclosure – by trustee's sale – of its deed of trust. DTJ Design then sued Bank to determine that its lien was prior to the deed of trust.

The corporation could not hold or foreclose a lien for several reasons: (1) the corporation did not registered under NRS 80.010(1); (2) the lien claimant was not licensed as required to record a lien as required by NRS 108.222(2); and (3) the plaintiff was not licensed as required by NRS 623.349(2) to commence a civil action. The individual architect could have signed contracts, recorded the lien in his own name, and sued to foreclose the lien. The holding under *DTJ Design* is that the corporation could not do those things. Under *DTJ Design,* FFA could not contract, record a lien, or sue to foreclose the lien. *DTJ Design* has no impact on Steppan's ability to do those things.[16]

2. Steppan may properly sign and seal technical submissions prepared by Fisher Friedman Associates.

The Legislature granted the Architecture Board authority to enact regulations for the interpretation and application of NRS Chapter 623.NRS 623.140(2). As part of its regulation, the Architecture Board adopted the National Council of Architectural Registration Boards ("NCARB") Rules of Conduct. NAC 623.900. The Rules of Conduct

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[16] The Motion also cites *Nevada National Bank v. Snyder*, 108 Nev. 151, 826 P.2d 560 (1992) for the proposition that Steppan could not properly be the individual "front" for FFA in the lien or in the litigation. In *Snyder*, the unlicensed, out-of-state business entity recorded the lien, commenced litigation to foreclose the lien, and even took an appeal in the business name. When questions arose about the business entity's standing, an individual architect moved to substitute himself, as a sole proprietor, for the business. The Supreme Court ruled that the lien claimant had always done business as a corporation, not as a sole proprietor. Therefore substitution of the plaintiff was improper. This ruling has no bearing on this case: FFA has never asserted that it had standing to record a lien or sue to foreclose the lien. Again, because of the regulatory landscape, it was proper for Steppan, as a licensed individual, to make the contract with the developers, record the lien, and sue to foreclose the lien.

permit Steppan to stamp drawings prepared by unlicensed designers if he maintained "responsible control" over the process. Rule 5.2, Exhibit 9, page 10.

At trial, Steppan verified that he had exercised "responsible control" as the term is used in the architecture profession. Trial Transcript, Volume III pp. 639-640. *See also* Trial Transcript, Volume III, p. 785. Movants did not controvert this testimony. Even though Movants offered expert testimony on architectural practices, they offered no evidence that Steppan failed to exert "responsible control."

3. NRS 623.349 only requires registration of business entities which maintain offices in Nevada.

NRS Chapter 623 is no model of statutory clarity. As originally enacted, the statute addressed only licensure and discipline of individual architects. As the statute evolved, the State required registration of business entities practicing architecture in Nevada offices. The business entity registration requirement does not apply to a firm that maintains no Nevada office. Further, an individually licensed architect can utilized unlicensed individuals and firms to complete design work. So, notwithstanding the Movants' constant incantation of "fraud," Steppan's contract, performance of his contract, and lien are all proper within the regulatory framework of NRS Chapter 623.

NRS 623.017 provides: "' Architect' means any person who engages in the practice of architecture and holds a certificate of registration issued by the Board." Chapter 623 does not define "person" to be a natural person or to include business entities.[17] However, professional registration clearly applies only to natural persons:

> Any person who is at least 21 years of age and of good moral character and who meets the requirements for education and practical training established

[17] NRS 0.039 defines "person" to include a natural person or business entity, but no a government agency or political subdivision.

> by the Board by regulation may apply to the Board for registration pursuant to the provisions of this section as an architect.

NRS 623.190. The interpretative regulations prescribe educational requirements, practical experience, passing a written examination, and a personal oath.[18] Individuals (not corporations) must obtain continuing education credits.[19] Only individual licensees can seal drawings.[20]

Chapter 623 separately provides for issuance of a certificate of registration to design firms with offices in Nevada:

> ***Each office or place of business in this State*** of any [business entity] practicing pursuant to the provisions of NRS 623.349, must have an architect... who is a resident of this State and holds a certificate of registration issued pursuant to this chapter regularly working in the office or place of business and having responsible control for the architectural work ... conducted in the office or place of business....

NRS 623.350(1)(emphasis added). In 1997, the Legislature amended NRS 623.350 and added NRS 623.349(1), which permits Nevada individual registrants to "join or form" a business entity that practices architecture in Nevada.[21] For a business entity practicing architecture from Nevada offices, individual registered by the Architecture Board (or the Professional Engineers Board) must own at least two-thirds of the company.

The Motion argues that the two-thirds ownership requirement applies to Steppan and FFA. Movants essentially claim that, because Steppan did not own FFA stock, he cannot assert a lien for design work supplied for a Nevada project. For several reasons, the Court must reject this leap of logic. First, the requirement to register business entities plainly applies only to firms with Nevada offices. Second, the requirement that an individual

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18 NAC 623.400.
19 NAC 623.630, et. seq.
20 NRS 623.185; NAC 623.750.
21 1997 Statutes of Nevada 1406, Chapter 403, A.B. 262.

registrant can only "join" (or be employed by) a design firm if two-thirds of the firm is co-owned by Nevada licensees could only apply to Nevada firms. Third, FFA only worked as a design consultant to Steppan and is therefore exempt from NRS Chapter 623. NRS 623.330(1)(a).

Finally, assuming that Steppan somehow violated NRS 623.349 by "joining" (as an employee) FFA, that might subject him to discipline,[22] but does not mean he was unlicensed and therefore lacked power to assert a lien under NRS 108.222(2). Steppan individually held a professional license. Steppan individually contracted to provide design and planning services. Steppan was the licensed individual with professional responsibility for the design. FFA was not. Nothing in NRS Chapter 623 or NAC Chapter 623 suggests that this supervising architect, who exercised "responsible control" may not engage unlicensed individuals or firms from another state.

4. As interpreted by Movants, NRS 623.349(l) would conflict with the statutory and regulatory grant of reciprocal licensing of out-of-state architects.

The Motion suggests that any Nevada licensee who "joins" – as an employee or part owner – any design firm in any jurisdiction runs afoul of NRS 623.349(1) if less than two-thirds of the firm is owned by individuals who are not licensed design professionals in Nevada. That interpretation would make it impossible for individuals working for firms in other states to become licensed in Nevada. That interpretation would not only render the statute unconstitutional (as discussed below) but is also at odds with the clear statutory mandate to grant reciprocity to architects licensed in other jurisdictions.

[22] NRS 623.270(6)(1).

The National Council of Architectural Registration Boards ("NCARB") was created to standardize educational and testing requirements for the professional registration of architects. The Architecture Board adopted the NCARB test as Nevada's written examination. NAC 623.400(1). Further, Nevada grants reciprocal registration to architects registered in other states and who hold an NCARB certification. NAC 623.410.

The canons of statutory interpretation clip the wings of Movant's argument. The Court must "interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *Southern Nevada Homebuilders Association v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)(footnotes omitted). Movant's interpretation brings conflict, not harmony, to the overall regulatory scheme in NRS Chapter 623.

If NRS 623.349(1) applies to out-of-state firms, no employee of an out-of-state firm could ever receive an individual registration in Nevada. Steppan could never accept employment with FFA or any other firm that is not at least two-thirds owned by Nevada-licensed design professionals. This plainly conflicts with reciprocal registration provisions, and the purpose behind the NCARB certification in Nevada and most other states.

Furthermore, the mere fact that the Architecture Board has granted Steppan a license even though he is employed by a design firm that is not two-thirds owned by Nevada licensees, suggests that Movant's interpretation is faulty:

> We have previously held that "[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action" and that "great deference should be given to the agency's interpretation when it is within the language of the statute." []. While not controlling, an agency's interpretation of a statute is persuasive.

State v. Morros, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988)(citations omitted)(state water engineer).[23] Further, when the Legislature acquiesces in a regulatory interpretation by failing to amend the statute, courts deem that the regulatory interpretation accords with legislative intent. *Silver State Electric Supply Company v. State ex rel. Department of Taxation*, 123 Nev. 80, 85, 157 P.3d 710, 713 (2007).

In other words, the mere fact that Steppan works for FFA, and that firm is not owned two-thirds by Nevada registered architects, Steppan could never be individually registered in Nevada. Yet the Architecture Board, which is knowledgeable about Steppan's employment with FFA, granted Steppan the license.

5. Steppan and Fisher Friedman Associates are not required to contract in writing or provide the Architecture Board with a copy of a subconsulting agreement.

Movants argue that Steppan did not formally "engage" FFA as a consultant. As a matter of law, this is irrelevant. Under the Architecture Board's regulations, Steppan can properly utilize the work of architects who are unlicensed in Nevada, so long as he maintains "responsible control." At trial, Steppan testified at length about his "responsible control" of the project design. This testimony was not contradicted.

The Motion asserts that any agreement between Steppan and FFA related to the project must be in writing and filed with the Architecture Board. As support for this proposition, the Motion cites NRS 623.325. By its plain terms, this statute only applies to contracts between the design professional and the client, not to downstream sub-consulting arrangements. The Motion also cites NRS 623.353. This statute is plainly

[23] *See also Wynn Las Vegas, L.L.C. v. Baldonado*, 129 Nev. Adv. Op. 78, 311 P.3d 1179, 1182 (2013)(labor commissioner).

limited to a licensed residential designer performing "rendering services" under the supervision of an architect. FFA was not a residential designer performing "rendering services." Nothing in NRS Chapter 623 requires that the relationship between Steppan and FFA must be in writing or filed with the Architecture Board.

D. As interpreted by Movants, NRS 623.349 would be unconstitutional.

When possible, courts must reject a statutory interpretation that would render legislation unconstitutional.[24] *Ford v. State*, 127 Nev. Adv. Op. 55, 262 P.3d 1123, 1130 (2011). Movants' preferred interpretation of NRS 623.349(1) would mean that Steppan's Nevada license would be void because he was employed, out-of-state, by a firm that was not owned at least two-thirds by Nevada registered design professionals. Such a construction would render the statute unconstitutional on several different grounds.

1. Movants' preferred construction of NRS 623.349 would violate the Privileges and Immunities Clause.

For many years, Nevada statutes required that insurance policies procured by out-of-state brokers must be "countersigned" by an insurance agent licensed by Nevada. There was no cogent reason for this "countersignature" requirement other than to protect local agents against out-of-state competition. The Ninth Circuit held that the countersignature requirement in NRS 680A.300...

> is unconstitutional under the Privileges and Immunities Clause because it discriminates "against citizens of other States where there is no substantial

[24] Note: Movants did not previously raise the ownership requirements of NRS 623.349(1) as an issue in this case. Consequentially, Steppan has not previously argued the constitutionality of the statute as applied in this case. This section is designed to preserve these issues for the appeal that Dr. and Mrs. Iliescu have been promising for the past year.

> reason for the discrimination beyond the mere fact that they are citizens of other States...."

Council of Insurance Agents & Brokers v. Molasky-Arman, 522 F.3d 925, 936 (9th Cir. 2008).[25] Under Movants' interpretation, NRS 623.349(1) would likewise constitute an improper discrimination against out-of-state firms. Although Steppan was qualified by Nevada as an individual architect, he could never "join" a firm as an employee or otherwise unless two-thirds of the firm ownership was held by Nevada-licensed design professionals.

The legislative history for NRS 623.349(1) contains no mention of any purpose for the ownership requirement. Exhibit 7. Movants have offered no constitutional reason for the ownership requirement.

2. Movants' preferred construction of NRS 623.349 would violate the Commerce Clause.

The Movants' preferred construction and application of NRS 623.349(1) clearly violates the "dormant" Commerce Clause:

> The Commerce Clause of the United States Constitution gives Congress the power to regulate interstate commerce. In addition to granting regulatory power to Congress, the Commerce Clause "has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." This " ' "negative" or "dormant" aspect of the Commerce Clause prohibits States from advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state.' "
>
> A statute or ordinance may be struck down under the dormant aspect of the Commerce Clause if it discriminates "on its face[,] in practical effect," or through its purpose.

Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552, 560-61, 170 P.3d 508, 514-15 (2007)(footnotes omitted).

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[25] Because of the disposition under the Privileges and Immunities Clause, the Ninth Circuit did not reach an Equal Protection analysis.

NRS 80.210(1)(b) requires that foreign corporations register with the Nevada Secretary of State to become eligible to sue in Nevada courts. In *Sierra Glass & Mirror v. Viking Industries, Inc.,* 107 Nev. 119, 808 P.2d 512 (1991), an Oregon window manufacturer sold product to a Nevada company, which refused to pay for windows it received. The Oregon company sued in a Nevada court without first registering under NRS 80.210(1)(b). The Oregon company sold about $3 million per year to Nevadans, and about $20 million in 30 states, including Nevada. The Nevada Supreme Court affirmed a district court rulings that the Oregon company's activities were mostly interstate, so that enforcement of NRS 80.210(b) would violate the Commerce Clause. "A regulatory statute cannot defeat a transaction which, though having intrastate aspects, was in fact a part of interstate commerce." *Id.* at 123, 808 P.2d at 514 (internal quotes and citations omitted). The Court further discussed the analytical framework and concluded:

> Courts must consider factors such as the quantity of business, the permanence and number of employees, and the presence of a company office, but the main question, as explained in *Jensen*, is whether the company has localized its business in the forum state. *Jensen*, 322 U.S. at 210, 64 S.Ct. at 972. In this case, Viking conducted a large volume of interstate transactions with Nevada, but it did not maintain an office here, and it only had one agent soliciting contracts in Reno and in Las Vegas. Therefore, although Viking conducts continuous business here, it has not localized itself into the Nevada community.

Id. at 123, 808 P.2d at 514.

FFA has not "localized itself into the Nevada community." Thus, NRS 623.349(1) could not properly apply to FFA. Any attempt by Nevada to limit FFA's access to employ Nevada-licensed architects (whether resident in Nevada or not) necessarily violates the Commerce Clause. Any attempt by Nevada to force members of an out-of-state design firm to register with the Architecture Board as a condition of employing Nevada architects

necessarily violates the Commerce Clause. The discrimination against interstate commerce is obvious.

3. Movants' preferred construction of NRS 623.349 would violate Equal Protection.

The standard for testing the validity of legislation under the equal protection provision of the Nevada Constitution[26] is the same as the federal standard.[27] *Laakonen v. District Court*, 91 Nev. 506, 538 P.2d 574 (1975). In *State Farm Fire and Casualty Company v. All Electric, Inc.*, 99 Nev. 222, 660 P.2d 995 (1983), the court struck down a statute of repose that insulated architects and contractors from liability, but property owners and material suppliers were not given the same protection.[28] Likewise, the court struck down an ordinance that permit licenses to individuals, but not corporations. *Doubles Ltd. v. Gragson*, 91 Nev. 301, 303, 535 P.2d 677, 679 (1975).

NRS 623.349(1) effectively discriminates between firms owned by Nevada professional licensees and firms whose owners are not individually licensed as design professionals in the state of Nevada. There appears to be no rational basis[29] for that discrimination. The regulatory scheme for architecture and engineering has <u>always</u> focused on the professional responsibilities of the individual licensees, who must complete a course of education, practical experience, written testing, and professional liability for stamping drawings, specifications, calculations, and other "instruments of service." There

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26 Article IV, section 21 requires that all laws be "general and of uniform operation throughout the state."

27 Fourteenth Amendment, section 1.

28 The Legislature then passed a new replacement statute. In *Wise v. Bechtel Corporation*, 104 Nev. 750,766 P.2d 1317 (1988), the court said that it disapproved of *State Farm* to the extent it could be read to hold that the <u>new</u> version of the statute violated equal protection.

29 Because no protected class at issue here, strict scrutiny is not the applicable standard.

is no rational basis for a regulation that bars architects from working in a firm that is not two-thirds owned by Nevada licensees.

Conclusions and Request for Relief

The Motion identifies no litigation fraud; Movants did not meet their burden to prove litigation fraud by clear and convincing evidence. All of the evidence presented in the Motion was presented at trial or discovered before trial. The Motion makes a number of legal assertions that are demonstrably wrong.

For these reasons, Steppan respectfully requests that the Court deny the Motion.

Epilogue

Throughout this case, Dr. and Mrs. Iliescu have taken extraordinary steps to accuse Steppan, FFA, and now counsel of fraud and dilatory tactics. They have likewise impugned plaintiff's character in the "consumer" complaint to the Architects Board. The Motion is full of invective, and bereft of evidence or any attempt to satisfy the standard of review or burden of proof. The only plausible purpose of the Motion is to prolong the District Court's jurisdiction before the appeal that Movants have often promised.

The Court may adjudge the motive behind the Motion by considering the backdrop of Movants' own historical contrivances and conduct:

1. Motion for attorney fees. After prevailing at trial, Steppan moved for $234,000 in attorney fees. Defense argued that the fee request was unreasonably high. But then defense counsel asserted that Iliescus paid more than $500,000 – double the amount

requested by Steppan – before trial.[30] Months before trial, Dr. Iliescu complained to the Architecture Board that he had already incurred $400,000. See Exhibit 2, page 12.

2. Dilatory tactics. Defense counsel argued that it was "cruel" to subject Dr. and Mrs. Iliescu to an uncertain future in the case, adding "Nevada law specifically recognizes that the elderly are entitled to speedy adjudication of pending claims to avoid just such unfortunate dilemmas from cause them worry and concern in their later years."[31] And yet, it was Iliescu who repeatedly delayed this case. Iliescu moved to continue trial three times.[32] Each time, the Court granted the continuance. After trial, Iliescu moved to stay enforcement of any judgment, and to do so without bond.

Iliescu then moved *ex parte* (which was improper) for "leave to file a single consolidated post-trial motion of not more than 45 pages in length."[33] But, having secured the Court's blessing to file a **single "consolidated" brief**, Movants declared that further post-trial motions are forthcoming:

> In the event that this Motion is rejected as insufficient to establish grounds for relief under NRCP 60, no such ruling would have any effect upon the Defendants' right to also seek post-Judgment relief from this Court, once Judgment finally enters, if in favor of Steppan, pursuant to NRCP 52(b) and NRCP 59(e). ... In the event that this Court goes forward with the entry of Judgment in favor of Steppan, notwithstanding the present motion, then nothing stated herein is intended as a waiver of Defendants' rights to move for NKRCP 52(b) and NRCP 59(e) relief, in a separate motion which may include some of the same arguments set forth herein, but presented on the grounds set forth in those rules, together with such additional arguments or elaborations thereon as may then be appropriate.

Motion, page 9, lines 2-13.

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30 July 17, 2014 Ex parte Application for Leave to File Single Consolidated Post Trial Brief Not to Exceed 45 Pages, page 2, line 20.

31 September 29, 2014 Reply in Support of Motion for Relief from Orders, pp. 6-7.

32 August 9, 2011, September 15, 2011, and July 19, 2013.

33 July 17, 2014 Ex Parte Application for Leave to File a Single Consolidated Post Trial Brief Not to Exceed 45 Pages.

From start to end, Iliescu has prolonged this litigation. Iliescu has a motive to delay. Steppan does not. Steppan has not.

3. Allegations of "sham." The Defense is quick to invoke words like "sham" and "fraud." The true "sham" in this case is Dr. Iliescu's insistence that he was a "disinterested" owner under the lien law despite the facts that (1) he received more than $1 million in cash because of the progress of the design, planning, and entitlements created by Steppan (Trial Exhibits 68 – 73); (2) he received the right to a $3 million condominium plus parking and storage for his adjacent commercial building; and (3) contracted with the developer to participate in the design and planning of the project, and to meet with the architects. Trial Exhibit 71. Taking this stance (which several judges of this Court have rejected) is a major reason why this litigation is both prolonged and expensive.

Privacy Certification

Undersigned certifies that the foregoing Opposition and the attached exhibits do not contain any social security numbers.

Dated December 4, 2014.

HOY CHRISSINGER KIMMEL PC

Michael D. Hoy
Counsel to Mark B. Steppan

Certificate of Service

I certify that on December 1, 2014, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following: Gregory Wilson (for John Schleining), G. Mark Albright, D. Chris Albright, Thomas Hall, and Stephen Mollath (for John Iliescu, Jr. and Sonnia Iliescu), Alice Campos Mercado and David Grundy (for Jerry M. Snyder, Hale Lane Peek Dennison Howard, R. Craig Howard, Karen D. Dennison).

I further certify that that on December 4, 2014, I mailed, postage prepaid, a true and correct copy of the foregoing to C. Nicholas Pereos.

Dated December 4, 2014. s/s Shondel Seth

Table of Exhibits

1	Declaration of Michael D. Hoy
2	July 13, 2013 Consumer Complaint from John Iliescu, Jr. and Sonnia Iliescu to Nevada State Board of Architecture, Interior Design & Residential Design ("Architecture Board")
3	August 7, 2013 "Notice of Investigation" letter from Betty Ruark, Chief Investigator, Architecture Board to Mark B. Steppan
4	June 26, 2014 letter from Laura Bach, Investigator, Architecture Board to Mark B. Steppan
5	April 25, 2008 letter from Mark B. Steppan to Laura Bach, Architecture Board
6	June 13, 2008 letter from Mark B. Steppan to Laura Bach, Architecture Board
7	Compiled legislative history, AB 262 (1997)
8	March 1, 2010 Supplemental Response to Iliescu's Request to Steppan for Production of Documents
9	National Council of Architectural Registration Boards ("NCARB") Rules of Conduct

Exhibit 1

Declaration of Michael Hoy

Michael Hoy declares:

1. I am counsel of record for Mark B. Steppan in *Steppan v. Iliescu*, Cons. Case Nos. CV07-00341 and CV07-01021. I am familiar with the discovery record, trial record, and court filings in the case.

2. Exhibit 3 is an August 7, 2013 Notice of Investigation letter from the Nevada State Board of Architecture, Interior Design & Residential Design ("Architecture Board"). I became aware of this Notice of Investigation during August of 2013, about four months before the December 9, 2013 trial in this case. I responded to the Notice of Investigation, supplying the Architecture Board with records and responses to the allegations contained in the Notice of Investigation. The Architecture Board did not provide me or Mr. Steppan with a copy of the underlying complaint referenced in the Notice of Investigation.

3. After reading the Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders ("Motion") it occurred to me that the licensing issues raised in the Motion had previously been raised in the complaint referenced in the Notice of Investigation. I therefore called the Architecture Board to request a copy of the complaint. I was advised that the Architecture Board could provide a copy of the complaint only if Mr. Steppan waived confidentiality of the investigation. I then asked defense counsel for a copy of the complaint. Mr. Albright provided the Consumer Complaint that is Exhibit 2.

4. Exhibit 4 is a true and correct copy of the June 26, 2014 letter from the Architecture Board recommending closure of the investigation against Mr. Steppan.

5. Based on my own investigation of the Architecture Board's investigation and preparation for trial, I learned that Mr. Steppan had previously written to the Architecture Board about the Wingfield project that is the subject of this litigation. Exhibit 5 is a true and correct copy of a letter dated April 25, 2008 that Mr. Steppan sent to the Architecture Board.

6. Exhibit 6 is a true and correct copy of a letter dated June 13, 2008 that Mr. Steppan sent to the Architecture Board.

7. I conducted my own research into the legislative history for NRS 623.349(1). Exhibit 7 is a true and correct copy of the legislative history compilation that I downloaded from the official website of the Legislative Counsel Bureau.

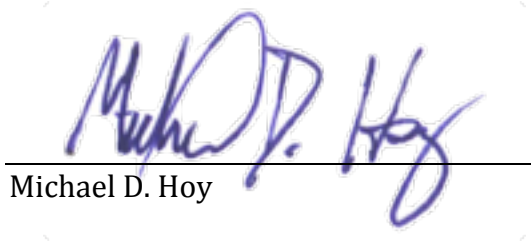
8. I am familiar with the complete discovery file in this case, including discovery disclosures made before I became counsel of record for Mr. Steppan. All of the documents disclosed by Steppan were numbered sequentially for tracking. The time cards attached to the Motion were produced on March 1, 2010. Exhibit 8 is a true and correct copy of the document disclosure transmitting these documents.

9. Exhibit 9 is a true and correct copy of the Rules of Conduct promulgated by the National Council of Architectural Registration Boards ("NCARB") and adopted by the Architecture Board in NAC 623.900. I downloaded the Rules of Conduct from NCARB's official website.

(continues)

I swear under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct to the best of my personal knowledge, information, or belief.

Executed at Reno, Nevada on December 1, 2014.



Michael D. Hoy

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2014-12-04 04:12:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4721927 : melwood

Exhibit 2

NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN & RESIDENTIAL DESIGN

2080 E. Flamingo Rd., Suite 120
Las Vegas, NV 89119
(702) 486-7300 - Phone
(702) 486-7304 - Fax
nsbaidrd@nsbaidrd.nv.gov - E-mail
nsbaidrd.state.nv.us - Internet

CONSUMER COMPLAINT FORM

IMPORTANT: *You MUST sign Page 3 of this form. This form may be submitted via U.S. mail or fax. Please do not forget to enclose supporting information, such as copies of a contract, evidence of payment, copies of drawings and/or any written communication between the subject and complainant. Complaints submitted without back-up information are difficult to investigate and will slow the process considerably. More information about the complaint process can be found on the board's Web site, nsbaldrd.state.nv.us.*

1. Subject (person complaint is against)

Full Name: MARK B. STEPPAN (Nevada registrant) and RODNEY F. FRIEDMAN

Business Name: FISHER FRIEDMAN & ASSOCIATES, merged w/NBBJ (See Attachment 1) (No Nevada license)

Business Address: 88 Kearny Street, Suite 900

City: San Francisco State: California Zip Code: 94108

Business Phone: 415-981-1100 Home Phone: Registrant's License No. (if applicable): 5200

2. Complainant (person making the complaint)

Full Name: JOHN ILIESCU JR. and SONIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA

Address: 200 Court Street

City: Reno State: Nevada Zip Code: 89501

Business Phone: 775-771-6263 Home Phone: 775-721-6263

Best time of day to contact you: Any time

3. Project address

Street No./Street: Vacant Parcels, 223 and 291 Court Street

City: Reno Parcel No. (if known): 011-112-03, -07, -06, and -012

4. Do you have copies of cancelled checks or other evidence of payment to the subject?
(If yes, please provide copies.)

☐ Yes ☒ No

5. Do you have design plans prepared by the subject? (If yes, please provide copies.) ☒ Yes ☐ No

6. Did you and the subject sign a written contract or letter of agreement before any services were rendered? (If yes, please attach a copy.) ☐ Yes ☐ No

If you did not have a written contract or agreement, please provide a detailed description of the scope of services the subject was to provide for this project (attach extra pages if needed).	Developer and Optionee of the property, BSC Financial, LLC and Consolidated Pacific Development, Inc. contracted directly with Mark B. Steppan (See Court Exhibit 13, Binder 1). All architectural work and services, however, were done by Fisher Friedman & Associates.

7. Describe your complaint and specify pertinent dates (attach extra pages if needed).	See Attachment 2.

The filing of this complaint does not prohibit you from filing a civil action. Please read the following statement and sign and date the form where indicated.

I hereby certify under penalty of perjury under the laws of the state of Nevada that to the best of my knowledge all of the above statements are correct. If called upon, I will assist in the investigation or in the prosecution of the subject of this complaint or other involved parties, and will, if necessary, swear to a complaint, attend hearings and testify to facts.

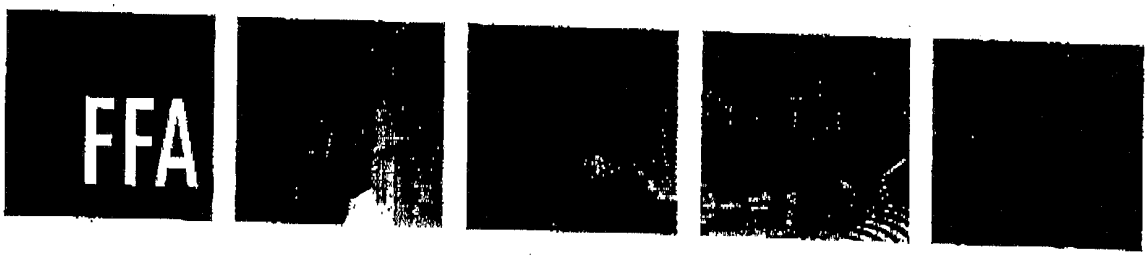
Signature [signature] Date 7-11-13

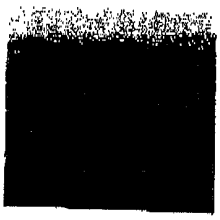
Donnia Illiesca Trustee

ATTACHMENT 1

ATTACHMENT 1

FISHER FRIEDMAN ASSOCIATES, AIA





FISHER-FRIEDMAN ASSOCIATES JOINS NBBJ

We are pleased to announce that Fisher-Friedman Associates has joined NBBJ's San Francisco office. Building upon the strengths of both firms in the housing and higher education markets, we will continue to offer our clients the highest level of service, working with them to design and deliver environments that are performance driven, innovative, and sustainable.

Please visit www.nbbj.com/market-sector/housing for more information or contact Mark Steppan at 415.981.1100.

FFA nbbj

Fisher-Friedman Associates (FFA), San Francisco, California, USA

From Archiplanet

Merged Architecture Firm Fisher-Friedman Associates (FFA)

This firm has merged with another.

Merged with NBBJ, San Francisco, California, USA

Merger Date circa 2010.0531

People Rodney F. Friedman, FAIA; Robert J. Geering, FAIA; Daniel Chung, AIA; Daniel G. Howard, OAA; Mark B. Steppan, AIA CSI

Last Address San Francisco, California, 94107-1421 USA

AW Directory ArchitectureWeek Directory Listing (http://www.ArchitectureWeek.com/directory/firms.cgi?2472)

Add buildings by this firm

Contents

Services

Adaptive Reuse, Architecture, Design, Design/Build, Interior Architecture, Master Planning, Programming, Renovation, Site Analysis, Urban Design

Focus

Classrooms, Clubhouses, Colleges and Universities, Community Centers, Dormitories, Golfing Facilities, Government Buildings, Hotels/Motels, Military Facilities, Mixed-Use Facilities, Multi-Unit Residential, Municipal Facilities, Offices, Resort Hotels, School Laboratories

Projects

References

- In Praise of Pragmatism, by Rodney F. Friedman, ORO Editions 2009, ISBN 0979380138.

External Links

- "Last Word: Rodney Friedman (http://www.builderonline.com/design/last-word-rodney-friedman.aspx) ," by Rich Binsacca, Builder, 2008.1006.
- "NBBJ aquires Fisher-Friedman Associates (http://www.bizjournals.com/sanfrancisco/stories/2010/05/31/daily4.html?page=all) " by J.K. Dineen, San Francisco Business Times, 2010.0601

Discussion

In 2013, the San Francisco office of Fisher-Friedman Associates (FFA) was acquired by the San Francisco office of NBBJ. FFA's Emeryville, California office was closed on May 31, 2010. As part of the merger, several key staff joined NBBJ and firm founder Rodney Friedman became an NBBJ advisor for the six ongoing firm projects that were transferred to NBBJ's office.

Categories: Architecture Firms | Architecture Firms in USA | Architecture Firms in California, USA | Architecture Firms in San Francisco, California, USA

From the San Francisco Business Times
:http://www.bizjournals.com/sanfrancisco/stories/2010/05/31/daily4.html

Jun 1, 2010, 11:25am PDT

NBBJ aquires Fisher-Friedman Associates

J.K. Dineen

The San Francisco office of the architecture firm NBBJ has acquired Fisher-Friedman Associates.

Joining NBBJ are practice leader Mark Steppan, architect David Tritt, designer Stephanie Pusey, and designer Kristoffer Tendall. In addition, six ongoing FFA projects in various stages of development will be completed by NBBJ. They include a learning center, library renovation, and genomics teaching laboratories for the Peralta Community College District; a private residence; and a nine-story, low-income housing project in the South Bay. FFA founder Rodney F. Friedman, will serve of counsel for these projects. FFA's Emeryville office closed May 31.

The addition of the Fisher-Friedman designers and executives builds upon NBBJ's strength in the higher education market, and establishes a student housing practice in the firm's San Francisco office.

"The similarities between our companies' cultures created an ideal situation for both firms," said NBBJ Senior Associate David Bryant. "The addition of these highly talented professionals and their extensive experience with University of California, California State University, and private higher education campuses increases our expertise and furthers our mission of designing innovative environments for academic institutions."

NBBJ's Higher Education portfolio includes projects for the University of California San Diego, Ohio State University, and University of Washington. Locally, the firm has designed Stanford University's Li Ka Shing Center for Learning and Knowledge, UC Berkeley's Hearst Memorial Mining Building, California Maritime Academy's state-of-the-art Simulation Center in Vallejo and The University of San Francisco's forthcoming Center for Science and Innovation.

The announcement comes one month after NBBJ announced their merger with Chan Krieger Sieniewicz, a Boston-based firm that specializes in planning and higher education design.

"While this merger and the recent staff additions are not part of any broad-based acquisition program, the firm is focused on strengthening expertise in active markets such as community colleges—where enrollment is expected to increase and campus expansions are expected," said NBBJ Managing Partner, Steve McConnell FAIA.

J.K. Dineen covers real estate for the San Francisco Business Times.
Contact him at jkdineen@bizjournals.com or (415) 288-4971.
Read his blog postings at Bay Area BizTalk.

ATTACHMENT 2

ATTACHMENT 2

ATTACHMENT 2 TO PARAGRAPH 7
OF
CONSUMER COMPLAINT FORM

As part of our Complaint, we have enclosed the following documents and materials:

1. Binder 1 tabbed Exhibits A, B, C, and D and Court Exhibits 1-62. Exhibits A, B, C and D consist of:

   - Complaint to Foreclose Mechanic's Lien and For Damages filed May 4, 2007, Case No. CV07-01021 by Mark B. Steppan
   - Answer and Third Party Complaint filed September 27, 2007, Case No. CV07-01021, consolidated with Case No. CV07-00341
   - Memorandum of Facts and Law, July 29, 2011, from Thomas J. Hall, Esq.
   - Letter, August 4, 2011, from Michael Springer, Esq. to Thomas J. Hall, Esq.

2. Binder 2 containing deposition transcripts of Mark B. Steppan taken on September 29, 2008, February 16, 2010, and March 3, 2010 in the above-referenced legal action.

The litigation referred to in Binder 1, Exhibits A and B is still pending, with a trial scheduled for October, 2013. The Memorandum of Facts and Law, and letter from Michael Springer (Exhibits C and D) set forth the salient facts, status of the case and, on Pages 3-18 of Exhibit C), the role of the subject architects Mark B. Steppan and Stanley Friedman of Fisher Friedman & Associates.

The essence of our Consumer Complaint is as follows:

Mark B. Steppan, the son-in-law of Stanley Friedman, works for Fisher Friedman & Associates in California. Steppan entered into an AIA Agreement with the developer/optionee of the property (See Court Exhibit 13, Binder 1). We had no involvement in the negotiation of the Agreement. As shown by the Steppan depositions (Binder 2), Steppan did no work on the project. All the work was done by other individuals who were employees of Fisher Friedman & Associates. The developer paid Fisher Friedman for the Schematic Design (Permit/Entitlement) phase of the project in the sum of $467,000.

On April 25, 2007, the developer filed for bankruptcy (See Court Exhibit 51, Binder 1). On May 3, 2007, Steppan recorded an Amended Notice and Claim of Lien in the sum of $1,939,347.51 upon our property (See Court Exhibit 55, Binder 1). On May

4, 2007, Steppan filed a Complaint against us to foreclose the mechanic's lien and for damages (See Exhibit A, Binder 1). On September 27, 2007, we filed our Answer and Third Party Complaint (See Exhibit B, Binder 1). Thereafter, as a result of the developer's bankruptcy and the economic meltdown of the U.S. economy and real estate market, the project became unfeasible and impossible to develop, construct or market.

In the Complaint to Foreclose Mechanic's Lien and For Damages, Steppan maintains he is entitled to the full contractual architect's fee for the 20% Schematic Design (SD) phase in the sum of $1,939,347.51, based upon 5.75% of a hypothetical future construction cost[1], not just the $467,000 paid, and, as a result, seeks to foreclose on our property.

The pertinent portions of the AIA Agreement with the Developer/Optionee (See Court Exhibit 13, Binder 1, Pages 116-117) read as follows:

ARTICLE 1.5 COMPENSATION

§ 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% & 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 Construction Cost of approximately $160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any amount 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. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

[1] The contract with the developer was amended to change the hypothetical construction cost to $180,000,000.

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.

...

Section 1.5 – The abbreviated terms used in the first paragraphs are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of those sections shall be provided upon request.

Construction never commenced in any shape or form. The entitlements on the project have expired (See Court Exhibit 19A, B, and C, Binder 1).

The court litigation will determine whether, as a matter of fact and law, Steppan is entitled to more than the sum of $467,000 Fisher Friedman & Associates were paid for the entitlement portion of the Schematic Design of the project. Steppan has testified he will not receive any proceeds from the lawsuit against us. Any such proceeds will belong to Fisher Friedman & Associates.

Our concern is the behavior and motives of Steppan, Friedman and Fisher Friedman & Associates in seeking FOUR TIMES more than they were paid for the completion of the entitlement work (per itemized hourly billing to the Developer). We are concerned that Mark Steppan did not work on the project. All work was done by non-licensed California architects. We are concerned that the actions taken by Steppan and the unlicensed California architects have cost us over $400,000 in attorneys' fees and costs and now, six (6) years of litigation, to prevent the foreclosure of our property. I am 87 years old and the actions taken by Steppan and Friedman have caused my health to deteriorate. Approximately three years ago, I developed atrial fibrillation of the heart which was treated with surgery and medication at the Cleveland Clinic. Most recently, the fibrillation of the heart has returned. I have been told by my physicians that the continuous stress and worry about the architectural lien, which would take my properties away from me and my family, that took may years to assemble (three (3) parcels) has contributed greatly to this condition.

Fisher Friedman & Associates has now merged with NBBJ, another California architectural firm (See Attachment 1).

NEVADA STATE BOARD

of Architecture, Interior Design and Residential Design

June 30, 2014

John Iliescu Jr
Sonia Iliescu
200 Court Street
Reno, Nevada 89501

Re: Complaint against Mark Steppan
Case Number 14-001R

Dear Mr. and Mrs. Iliescu:

A thorough investigation of the documents received reveals that there is no evidence to support a violation of this Board's statutes and/or rules. At the recommendation of Board Counsel we are closing this case based upon the decision of the District Court of Washoe County.

We thank you for your time and cooperation. This case will be recommended for closure for no apparent violation at the next scheduled Board meeting.

Sincerely,

Nevada State Board of Architecture,
Interior Design and Residential Design

Laura Bach
Investigator
Enforcement Division

Exhibit 3

NEVADA STATE BOARD

of Architecture, Interior Design and Residential Design

MAIN OFFICE
2080 E. Flamingo Road, Suite 120
Las Vegas, Nevada 89119
Tel: (702) 486-7300
Fax: (702) 486-7304

RENO CONTACT NUMBER
Tel: (775) 688-2544
Fax: (775) 828-4040

E-mail: nsbaidrd@nsbaidrd.nv.gov

http://nsbaidrd.state.nv.us

August 7, 2013

CERTIFIED MAIL (7012 0470 0001 0003 6274)

Mark B. Steppan, Architect
680 Fairmount Avenue
Oakland, California 94611

NOTICE OF INVESTIGATION
CASE NUMBER: 14-001R

Dear Mr. Steppan:

You are hereby notified that this office is in receipt of information indicating you may have violated certain provisions of the State of Nevada registration laws (NRS 623.010 et. seq).

A complaint was received from Dr. John Iliescu, Jr. and Mrs. Sonia Iliescu which indicates that you may have violated NRS 623.270.1(d), NRS 623.270.1(e), Rule of Conduct 5.4 and Rule of Conduct 5.5, by permitting the use of your name to assist Fisher Friedman Associates to practice architecture for a project located in the state of Nevada thus aiding and abetting an unlicensed person to practice of architecture; and by making misleading, deceptive, or false statements and claims in placing a lien on the Iliescu property in the amount of $1,783,548.85.

The NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN has the legal authority to impose penalties or refer violations of this nature for enforcement action. Enforcement could involve seeking injunctive relief or refer the matter to the Board for a formal disciplinary hearing.

This is not an injunction or adjudication concerning the alleged violations. The purpose of this letter is to warn you of the violations and provide you with an opportunity to respond to the alleged violations.

You are requested to provide a written response to this agency by August 21, 2013. Your response must include a detailed explanation that shows the legal authority you have to place a lien on the Iliescu's property, and the justification for the amount of the lien. Additionally, you are requested to explain why Fisher Friedman Associates was represented as the architect on the project. Please include the documentation that was produced between April 2006 and November 2006 which supports the labor and materials that was furnished by you and incorporated into the project. You may also provide any additional information that you believe is relevant to the disposition of this matter.

If a satisfactory response is not received by this office within the time requested this matter will be referred for appropriate enforcement action. Your cooperation will assist in expediting the handling of this investigation. If you have any questions, please contact me at (702) 486-7300.

We look forward to receiving your response by August 21, 2013.

Sincerely,

NEVADA STATE BOARD OF ARCHITECTURE,
INTERIOR DESIGN AND RESIDENTIAL DESIGN

Betty J. Ruark

Betty J. Ruark
Chief Investigator
Enforcement Division

Exhibit 4

NEVADA STATE BOARD

of Architecture, Interior Design and Residential Design

MAIN OFFICE
2080 E. Flamingo Road, Suite 120
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Fax: (702) 486-7304

RENO CONTACT NUMBER
Tel: (775) 688-2544
Fax: (775) 828-4040

E-mail: nsbaidrd@nsbaidrd.nv.gov

http://nsbaidrd.state.nv.us

June 26, 2014

Mark B. Steppan, Architect
680 Fairmount Avenue
Oakland, California 94611

Re: Case Number 14-001R

Dear Mr. Steppan:

Thank you for your cooperation during this investigation. After a review of the information received in this office and the Washoe County District Court decision it was determined the allegations set forth in Mr. Iliescu's complaint were unfounded.

This case will be recommended for closure with no disciplinary action at the August 20, 2014 Board meeting based upon no apparent violation, and will remain confidential per NRS 623.131.

Once again, we thank you for your cooperation in this matter.

Sincerely,

NEVADA STATE BOARD OF ARCHITECTURE,
INTERIOR DESIGN AND RESIDENTIAL DESIGN

Laura Bach
Investigator
Enforcement Division

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)

APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME IX

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
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com
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 Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	IV V	AA0736-0979 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 Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	V VI	AA1030-1230 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 DOCUMENTS[1]		
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 Sonnia Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnia 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 IX**, 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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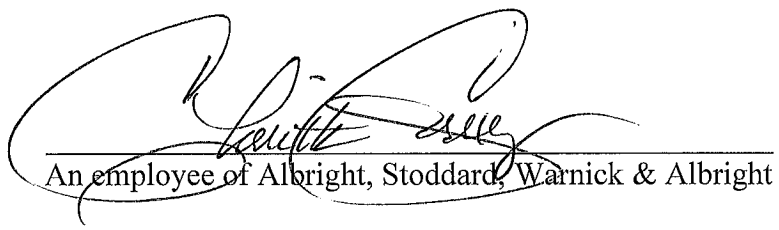

An employee of Albright, Stoddard, Warnick & Albright

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

vs.

MARK B. STEPPAN, Respondent.

MARK B. 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.

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

DEPT NO. 10

DEFENDANTS' MOTION FOR NRCP 60(b) RELIEF FROM COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND RELATED ORDERS

COMES NOW, John Iliescu, Jr., individually, and, together with Sonnia Iliescu, as trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement (sometimes jointly hereinafter the "Iliescu Defendants" or "Movants" or "Iliescu"), as the Defendants in the second of these two consolidated cases, and hereby move, under NRCP 60(b), for relief from this Court's May 28, 2014 Order setting forth its "Findings of Fact, Conclusions of Law and Decision" (hereinafter "Decision"),

and for relief from this Court's June 9, 2009 and May 9, 2013 summary judgment orders which comprised part of the basis of that Decision, and for relief from this Court's September 5, 2014 Costs Order and September 8, 2014 Attorneys' Fees Order, both of which also stem from the Decision.

This Motion is made and based on NRCP 60(b)(3), on the grounds that this Court's Decision (and the Orders on which it was in part based, as well as the subsequent Orders based thereon) was and were entered on the basis of misrepresentation, fraud, and other misconduct committed by Plaintiff in conjunction with and at the direction of his former employer such that the Decision and related Orders must be vacated and set aside, and the Steppan lien upheld by that Decision invalidated on the grounds set forth herein. To the extent, if any, necessary and applicable, this Motion is also based on NRCP 60(b)(1). This Motion is also made and based upon all of the points and authorities set forth herein, the exhibits referenced herein or filed herewith, all papers and pleadings on file herein, and any argument which may be allowed at any hearing on this Motion.

[The Points and Authorities set forth herein are 45 pages in length pursuant to this Court's July 18, 2014 Order allowing a post-trial brief to be filed not to exceed 45 pages.]

DATED this 24th day of October, 2014.

By _____

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POINTS AND AUTHORITIES

I. INTRODUCTION AND OVERVIEW

This Court has ruled, in its Decision, a copy of which is **Exhibit 1** hereto, that a mechanic's lien will be recognized in favor of Plaintiff Mark Steppan ("Steppan") against the "Property" of the Movants as defined in the Decision. Movants are entitled to relief from that Decision pursuant to

NRCP 60(b)(3) on the grounds that said Decision was obtained by Plaintiff through fraud, misrepresentation and misconduct. Indeed, the Decision and the Pre-Decision Orders and Post-Decision Orders also sought to be overturned herein, are the result and culmination of a long series of wrongful and fraudulent acts engaged in by Plaintiff and his former employer beginning long before this suit was initiated and continuing through and until the end of trial. The effect of these fraudulent activities has recently been clarified by the Nevada Supreme Court in a decision entered *after* the trial of this matter, *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 130 Nev. Adv. Op. 5 (February 13, 2014) which forms part of the basis of this post-trial motion.

Based thereon, this Court should now enter new Decision(s) and Orders invalidating the Steppan lien, setting aside all pre-trial orders supporting the Steppan lien, and setting aside all post-trial costs and fees Orders against Defendants and should issue a new Decision, followed by a Judgment thereon, in the Movants' favor.

The present Motion is supported by the following facts and law: Plaintiff Steppan's Complaint initiating this lien foreclosure action (**Exhibit 3** hereto ---- the use of Exhibit Number 2 is intentionally omitted herein) alleged in paragraph 9 that *he* "did supply the services" for which his lien was claimed, which allegation was a necessary element of his claim under NRS 108.222(1)(a) and (b)(lien amount must be based on value of services furnished "by or through the lien claimant"). However, this allegation was false and Steppan did not meet his burden of proving this most fundamental element of his claim and failed to establish an even *prima facie* showing that <u>*his*</u> purported lien was truly for <u>*his*</u> services furnished "by or through" him (*i.e.*, "by" him or "through" his employees or his subproviders which he had hired). Rather, the lien was based on work performed "by" a foreign and unlicensed architectural firm, Fisher Friedman Associates ("FFA"), "through" its employees, including Steppan, and through its subproviders.

Steppan, as the only FFA employee who was licensed in Nevada, was fraudulently treated as the purported lien claimant for FFA's services in order to wrongfully circumvent Nevada statutes requiring in-state licensure/registration to practice architecture or residential design in the State of Nevada. NRS 623.180(1); 623.349; 623.357; 623.360. FFA did not want to pay the registration fees or take the other steps necessary to register itself as a Nevada architectural firm, so it pretended that

Steppan, its sole Nevada-licensed employee, was the contract architect. However, Nevada's lien statutes and architectural licensing statutes, as well as the recent Nevada Supreme Court decision of *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 130 Nev. Adv. Op. 5 (2014), confirm that this blatant ploy should have been rejected, and that Steppan had no ability to lien for services which were not actually provided by him or through his hired employees or subproviders, but which were instead actually provided "by" the unregistered FFA firm,"through" its hired employees and subproviders. Based thereon, this entire case, and the decisions entered to date herein, have been based on the fraudulent activities, the misrepresentations, and the misconduct of FFA and Steppan, including false statements made by Steppan or on his behalf in his lien notices and in his Complaint initiating this action, and other misrepresentations as detailed herein.

II. PROCEDURAL HISTORY AND OVERVIEW OF KEY ARGUMENTS

On November 7, 2006 a mechanic's lien notice was recorded by Plaintiff Steppan against the Property of the Iliescu Defendants. Trial Exhibit ("TE") 1 (TE 1 and 2 and 3, consisting of the Plaintiff's original and two amended lien notices, are **Exhibits 4 and 5 and 6** hereto.) The Property was at that time the subject of a pending purchase agreement with a potential buyer (hereinafter "BSC/Consolidated") who had ostensibly retained Steppan to provide architectural services for a planned mixed use condominium development (Wingfield Towers) at the site. Decision at ¶¶ 5, 9, 10, 19.[1] The Property's owners were not parties to the architectural contract(s). (Decision at ¶ 10). The sale to the prospective purchasers who contracted for these services never closed (Decision at ¶ 7) and no on-site work ever commenced.

Although in Steppan's name, the subject lien was based on work which had been performed and invoiced directly to the purchaser, BSC/Consolidated, in violation of NRS 623.180(1) and NRS 623.349, by California architectural firm, FFA, which was not registered to perform either architectural or design services in Nevada, nor owned by 2/3 Nevada licensees, in order to be so registered. FFA therefore utilized Steppan, its only employee with a Nevada license, to execute the contracts (including an initial hourly fee agreement, and a later flat-fee AIA Agreement, executed after the work was

[1]Unless otherwise noted, all paragraph references to this Court's May 28, 2014 Decision are referring to the Findings of Fact portion of that Decision.

completed, as well as certain alleged add-on work agreements). However, this method for circumventing Nevada's licensing statutes was invalid where Steppan did not own 2/3 of FFA. *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014).

For a time after the work began, FFA's employees pretended to be employees of Steppan. Ultimately, however, FFA decided that a better sham would be to claim to be a "design consultant" for the project, a status it claimed on an AIA Contract Addendum prepared and signed *after* the work was already performed. It is unclear *whose* "design consultant" FFA was claiming, after-the-fact, to be: Steppan's or the customer's. If FFA was claiming to be the customer's alleged design consultant, then Steppan had no right to lien for FFA's work performed directly for FFA's own customer. If FFA was claiming to have been hired by Steppan as *his* design consultant, then this claim should have been backed up by trial evidence, which it most definitively was not.

The Iliescus, as the Property owners, filed an Application for Release of Mechanic's Lien on February 14, 2007, initiating this case, arguing that the lien was invalid due to the lien claimant's failure to provide a 31 day notice of right to lien required by NRS 108.245, or to provide a 15 day intent to lien notice required by NRS 108.226(6). A hearing on this Application led to an order for the parties to conduct further discovery. Steppan's initial lien was then withdrawn at the request of the potential purchasers (Decision at ¶ 16) to then be succeeded by a subsequent "Amended Notice and Claim of Lien" recorded May 3, 2007 (**Exh. 5**). A separate lawsuit was then filed in the name of Steppan, on May 4, 2007, via a complaint (**Exh. 3**) which listed foreclosure of a mechanic's lien as the only cause of action, and named only the Property's owners (the Iliescus), not the architect's customer, as Defendants. This new suit was consolidated into the earlier case, and no final determination was ever issued by this Court on the Iliescu Application. Instead, the Decision was later entered in the second consolidated suit (with Steppan as the Plaintiff, and the Iliescus as the Defendants).

On June 22, 2009 this Court, through Judge Brent Adams, issued an Order of Partial Summary Judgment (**Exhibit 7** hereto), which excused Steppan for his failure to ever serve the Iliescus with a 31-day pre-lien notice, as normally required by NRS 108.245(1), invoking an exception to that statute recognized by *Fondren v. K/L Complex Ltd.*, 106 Nev. 75, 800 P.2d 719 (1990), based on a ruling that

Dr. Iliescu had "actual notice" of architectural work being performed for the site by Steppan and "his firm" even though Steppan had no firm of "his" own, but was the employee of the subject foreign firm, which was not registered in Nevada.

On May 9, 2013, another Order of Partial Summary Judgment entered (**Exhibit 8** hereto) holding that the amount of Steppan's lien would be based on the flat fee percentage-based AIA Contract executed by Steppan and FFA's customer, after the work had been completed, but with a back-dated effective date. After this Order entered, Steppan filed a pre-trial "Second Amended Notice and Claim of Lien" on November 8, 2013 (TE 3; **Exh. 6**), which admitted that the AIA Agreement had been agreed upon long after its purported effective date, and had been utilized to retroactively "change" and dramatically increase the amounts already previously and originally invoiced by FFA under the earlier hourly fee agreement.

Trial was held beginning on December 9, 2013, during which the Court declined to allow a full presentation of evidence on the issues referenced in the two prior partial summary judgment orders. *See, e.g.*, Trial Transcript ("TT") at pp. 35, 722.

To prove up a valid lien at trial, "lien claimant" and Plaintiff Steppan should have demonstrated by a preponderance of evidence that the lien was for unpaid amounts owed *to Steppan* for *his* services (as alleged in his Complaint) "furnished by" him or "through" his employees or subproviders (as required by NRS 108.222(1)(a) and (b)). Steppan failed to do so. Nevertheless, following trial this Court issued its Decision, which upheld the lien, as this Court had apparently been misled into believing that Steppan could be treated as though the services were performed "by" him as the architect, "through" *his* design consultant, FFA. For Steppan to meet his burden of proof under such a theory (*i.e.*, to show (I) that he was the true contract architect, (II) who had retained FFA as *his* design consultant), Steppan should, at minimum, have provided evidence of the following: (I) (a) the existence of a contract between Steppan and the customer, BSC/Consolidated, (b) negotiated by Steppan with the customer, (c) treated as in existence in the parties' course of dealings, such as by having all invoices to the customer thereunder being sent by Steppan, (d) and any payments from the customer being made to Steppan, as they would have been to a real contract architect, (e) such that Steppan was the party owed any past due payments claimed in *his* lien notices; as well as (f) substantial

material involvement by Steppan on the project, (g) including regular communications with "his" customer, and Nevada entities, together with (h) consistent treatment as the Nevada architect of record on Nevada governmental submissions. (II) Further, the evidence which should have been expected regarding Steppan's alleged retention of FFA would have included: (i) FFA being identified as Steppan's hired design consultant at the location in the AIA contract where such designations are to be made (§ 1.1.3.5.); (j) consistent testimony that FFA was Steppan's design consultant, not the customer's, (k) backed up by a written design agreement between FFA and Steppan, on file with Nevada's Architectural Board (as required by NRS 623.325 and NRS 623.353), (l) invoices from FFA to its purported customer, Steppan, (m) payments on these invoices from Steppan to his designer, FFA (with 1099s), (n) or, if no such payments were made, demands or suits by FFA to Steppan regarding the same, and (o) that Steppan had, himself, chosen and hired not only FFA, but also the other subproviders of project services, whose bills were included in FFA's bills and "Steppan's" lien.

Plaintiff failed to meet this burden or even make a *prima facie* showing thereon: Other than (a) Steppan having signed contracts with the customer as the nominal contract architect, *no* evidence whatsoever as to items (b) through (o) was presented at trial! Rather, the trial evidence overwhelmingly showed that FFA was the true contract architect, by and through whose employees the work was performed, which had negotiated the contract, improperly instructed one of its employees to sign it as though he were the contract architect (even though said employee would play no such actual role), invoiced and received payments directly from the customer, with any project work done by Steppan having been nominal and performed as an employee of FFA, with the amount of the lien then being based entirely on amounts claimed as due and owing to *FFA*, based on *its* invoices to the customer, and *its* advances to *its* hired subproviders, and with no evidence showing that FFA ever entered into any design consulting agreement with Steppan for its work or having ever acted as though it had done so.

FFA, not Steppan, was the only potential claimant who could possibly have shown that it was the party "by or through" whom the work was performed, so as to be a valid lien claimant under NRS Chapter 108. FFA could not, however, bring such a lien claim due to the prohibitions of NRS 108.222(2), because FFA had not deigned to get itself licensed/registered in Nevada to provide the

services being liened for, believing itself to be above Nevada's laws (except when it came time to benefit from Nevada's lien laws). Therefore, FFA hid the true nature of its involvement by pretending that "Steppan" was the contract architect, and the lien claimant. However, FFA had no right to engage in this subterfuge and have someone else's name used to pursue a lien on FFA's behalf if that someone else was not the party by or through whom the work was actually performed.

Plaintiff Steppan's failure to demonstrate that the lien was for work *he* performed, rather than being based on services provided by FFA through its employees and subproviders should have been fatal to Plaintiff's case. This is confirmed by *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 710-12, 130 Nev. Adv. Op. (2014), an opinion issued *after* trial, ruling that Nevada work performed by the foreign architectural firm DTJ Design was not lienable, because DTJ was not registered to practice here, and its one Nevada licensed employee owned less than two-thirds of DTJ. This Court's Decision upholding the lien must therefore be corrected and the lien invalidated.

III. NRCP 60(b)

NRCP 60(b)(3) allows relief from an order (or a judgment, which is not yet at issue herein) where the same was obtained via "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party." As this brief will demonstrate, Steppan and his employer FFA entered into a series of sham transactions and made a variety of misrepresentations and engaged in misconduct (including violations of Nevada law) in order to deceive various Washoe County and Reno entities, and this Court, culminating in this Court's Decision, such that this Motion is proper under NRCP 60(b)(3). In order to give this Court full discretion to reach a proper result herein, this Motion is also based on NRCP 60(b)(1), for and to the extent of any excusable inadvertence or neglect by Defendants' counsel in failing to better assist the Court in arriving at the proper outcome in this case, and see through the Plaintiff's fraud, heretofore.

An NRCP 60(b)(1) or (3) Motion should be made within six (6) months of notice of entry of the ruling from which relief is sought. In the present case, this Court's Decision was entered less than six months ago, on May 28, 2014. The pretrial summary judgment orders from which relief is sought herein were filed more than 6 months ago, but will only be rendered final and non-interlocutory by this Court's Decision and this Court's final Judgment, once entered, and the post-Decision costs and

attorneys' fees Orders were entered less than six months ago.

In the event that this Motion is rejected as insufficient to establish grounds for relief under NRCP 60, no such ruling would have any effect upon the Defendants' right to also seek post-Judgment relief from this Court, once Judgment finally enters, if in favor of Steppan, pursuant to NRCP 52(b) and NRCP 59(e). Those rules allow Defendants to request that this Court alter and amend its Judgment, and its Decision, or for a new trial, in order to reject Steppan's mechanic's lien claim and his suit to foreclose thereon as invalid, under standards which are distinct from those set forth in NRCP 60, but such motions may not be pursued until after a judgment has entered. In the event that this Court goes forward with the entry of Judgment in favor of Steppan, notwithstanding the present motion, then nothing stated herein is intended as a waiver of the Defendants' rights to move for NRCP 52(b) and NRCP 59(e) relief, in a separate motion which may include some of the same arguments set forth herein, but presented on the grounds set forth in those rules, together with such additional arguments or elaborations thereon as may then be appropriate.

IV. FACTUAL ANALYSIS

A. The Steppan Lien Was Based On FFA Services and FFA Invoices, *Not* on Steppan's Services and Invoices.

"Iliescu owned" the subject Nevada property at issue herein, as defined in the parties' pre-trial stipulation. (Decision at ¶ 1). A purchase agreement was entered into between the Iliescus as sellers, through their real estate agent Richard Johnson, and an entity known as Consolidated Pacific Development, as purchaser, which purchase rights later came to be held by an entity known as BSC (jointly herein "BSC/Consolidated"). Decision at ¶¶ 2-8. The "sale of the property" however, "never came to pass" as the purchasers "were never able to secure funding for the purchase "or the contemplated development." *Id.* at ¶ 7. Thus, not a single shovel of dirt was ever turned on the entire project.

An "ARCHITECTURAL DESIGN SERVICES AGREEMENT" was executed by Steppan and BSC/Consolidated on November 15, 2005 (TE 14; STEPPAN 4370-71; **Exhibit 9** hereto) which called for services to be performed on an hourly basis and billed monthly (sometimes hereinafter the "original letter agreement"). The invoices which were submitted and paid under this original letter agreement were thereafter unilaterally and retroactively "changed" and replaced with higher invoices from FFA

(**Exh. 6** at page 1, Section (1)(A)), under the purported authority of a later flat fee percentage based AIA Agreement, which Steppan and BSC/Consolidated executed later. "**Iliescu is not a party to the contract**" between the architect and the customer. Decision at ¶ 10. (Emphasis added.)

This Court recognized that, although Plaintiff "Steppan is, and at all times relevant to these proceedings was, an architect licensed to practice in the State of Nevada" he was also "**employed** at all times relevant to these proceedings **by the firm of Fisher Friedman Associates** ('FFA')" whose "offices were in California" and that "Steppan was the only architect at FFA licensed to practice in Nevada." Decision at ¶ 9. (Emphasis added.)[2] This Court also recognized that "the [schematic design] documents were 'prepared' by a firm [FFA] other than Steppan." *Id.* at ¶ 13.

Significantly, the AIA Contract, though allegedly effective October 31, 2005 (**Exhibit 10** at p. Steppan-004116) was not finally agreed upon and signed, as shown by an Addendum included therewith, until April 21, 2006 (**Exh. 10** at Steppan 4127-29), which was *after* all of the work allegedly performed under this AIA Agreement was already complete. *See, e.g.*, **Exhibit 12** hereto (relevant pages from days two through four of Steppan's deposition testimony)[3] at p. 255, lines 14-21.

The after-the-fact Addendum indicated that the after-the-fact AIA contract was "between BSC Financial, LLC and Mark B. Steppan, AIA, and Fisher Friedman Associates, Design Consultants." **Exh. 10** at Steppan 4127. This language is at best ambiguous with respect to *whose* "Design Consultants" FFA allegedly claimed to be, but seems to indicate that the customer had nominally hired Steppan as its architect and also directly hired FFA as its design consultant (as opposed to having retained Steppan, who then, in turn, retained FFA as *his* design consultant). A conclusion that FFA was working directly for the customer is supported by Steppan's deposition testimony that "the reality is that both of us [FFA and Steppan] were doing the project for the client...." *See*, **Exh. 12** at p. 257. This interpretation is also supported by the lack of any evidence (as discussed more fully below) supporting any claim that Steppan retained FFA as *his* subprovider design consultant. Thus, Steppan

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[2]Steppan was first licensed as an architect in California in 1987. He obtained his Nevada license in 2004. TT at p. 632. He started working with FFA before graduating in 1979 and then "started full time in January of 1980 with [FFA], and continued there until the firm closed down in 2010." TT at page 631.

[3]Because of non-sequential/duplicated page numbering in the first and second days of Steppan's Deposition testimony transcripts, the relevant quoted portions of Steppan's Deposition testimony from September 29, 2008 is made **Exhibit 11** hereto; whereas all relevant quoted portions from his February 16, March 2, and March 3, 2010 deposition transcripts are provided as **Exhibit 12** hereto.

cannot pursue a lien for FFA's work on a theory that the work was furnished "by" Steppan acting "through" his hired subprovider, FFA, since FFA was instead working directly for its own direct customer BSC/Consolidated.

FFA presumably hoped to be treated not as the customer's consultant, but as Steppan's consultant, not only to overcome the foregoing problem, but so that FFA could claim the benefits of NRS 623.330(1) for a person acting as "a consultant retained by a registered architect" who is exempt from the licensing provisions of NRS Chapter 623 requiring registration with Nevada's architectural board before providing architectural services in Nevada. However, FFA was clearly engaged in the practice of architecture, as defined by NRS 623.023. Deceptively calling itself something other than an architect does not mean it really was something other than an architect. AGO 19 (4-1-1963)(draftsman may not legally practice architecture merely by calling himself something other than an architect.) Moreover, FFA was clearly working directly for the customer, and had not been "retained" by Steppan as his consultant.

The evidence shows that Steppan's services were not the basis for the lien claimed in his name. Rather, Steppan's signatures on the subject agreements were a sham, used merely to allow the real lienor in interest, FFA, whose owner's and employees' and subproviders' services comprise the basis for the lien, to improperly circumvent several provisions of Nevada law, which prevent FFA, as a foreign architectural firm, not registered with Nevada's licensing Board of Architecture (and which would not be able to be so registered as it was not owned by at least 2/3 Nevada licensees) from performing architectural or design services in Nevada (NRS 623.180; NRS 623.349), such that FFA could not pursue a mechanic's lien for those services. NRS 108.222(2).

The counsel retained by FFA to prosecute this lawsuit in Steppan's name needed to demonstrate that Steppan really was the lien claimant whose services really comprised the basis of the lien. Simply put, Plaintiff "Steppan" was required to show the truth of what was alleged in Paragraph 9 of "his" Complaint: that the lien was being pursued for services which *he* (not his employer) "did supply." This was a required element of Steppan's claim under NRS 108.222(1)(a) and (b) (only the value of work performed "by or through the lien claimant" may form the basis for a lien, for moneys which remain due and owing to the lien claimant, not to someone else). Steppan did not meet his

burden of proving that the work for which he liened was performed "by or through" him (*i.e.*, by him or through his hired employees or his hired subproviders) and Steppan should therefore not have prevailed, having acted merely as a non-owner employee of FFA, which had actually done all the work on which the lien is based.

Because the work which forms the basis of the lien was actually performed by FFA, through its owner and its employees (including Steppan) and its subproviders, as invoiced by FFA directly to its customer, BSC/Consolidated, all of whose payments for the same were paid directly to FFA, not Steppan (TT at 670-71), it was error to allow a mechanic's lien to stand in the name of FFA's sole Nevada-licensed employee. For example, in *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 562-64 (1992) (partially abrogated on other grounds by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)) the Nevada Supreme Court reversed a district court's decision, in a mechanic's lien case, allowing an individual to substitute himself in as the Plaintiff on behalf of a foreign architectural corporation. The Nevada Supreme Court criticized the district court's willingness to allow an individual to lien for a foreign architectural firm's work, based on a number of factors, including: (a) after a relevant point in time, the invoices were submitted on behalf of the corporation, not the individual named as plaintiff (b) the architectural drawings were prepared by the corporation, (c) the individuals who prepared those drawings were employees of the corporation, *not* of the individual acting as plaintiff, and (d) the individual acting as plaintiff never became separately "authorized to do business" in Nevada. *Id.* These factors are also all true here. As will be demonstrated below, Steppan did not prepare the drawings or design output, FFA and its employees did. FFA sent all of those invoices which demonstrate the calculation of the lien amount sought, on FFA letterhead, directly to its underlying customer (not to Steppan). The prior payments from that customer credited in those invoices had been made directly to FFA, not to Steppan. Steppan never showed he held a business license to perform work in Nevada as a sole proprietor; etc. That Steppan did not meet his burden of proving that the lien was based on *his* services, performed "by or through" him, is established by the following facts and analysis:

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(i) FFA Was Solely Owned by Rodney Friedman, and Steppan Did Not Own 2/3 of the Entity, as Required by Nevada Law, but Owned 0%.

Plaintiff Steppan was deposed over the course of four days and the transcripts of those depositions were filed with this Court on December 11, 2013. Relevant portions of those transcripts are attached at **Exhs. 11** and **Exh. 12**, hereto. As Steppan is a party in this case, these transcripts may be utilized for "any purpose" not merely for impeachment, under NRCP 32(a)(2) such that these transcripts are relevant primary evidence, to be considered by this Court in establishing its rulings.

Steppan admitted in his deposition testimony that he (FFA's only Nevada-licensed employee) did not own *any* of FFA (let alone 2/3 as required by NRS 623.349 for FFA to provide its services in Nevada in association with Steppan). Instead, Steppan's father-in-law[4], Rodney Friedman, owned 100% of the corporate stock in FFA (with Mr. Fisher having retired in 1997). **Exh. 12**, at pp. 7-13. Friedman also himself conceded that he was the only owner of FFA during the subject time period, such that Steppan was merely an employee. TT at pp. 266, 346-347.

(ii) FFA Always Owned the Lien Claims, as Demonstrated by Who Provided the Lien Claims to Friedman Prior to Trial.

After "Steppan's" lien was filed, but two years before trial, FFA's sole owner, Friedman, sold the FFA corporation to a third party. As part of that transfer, Friedman testified that he had retained **from FFA**, ownership of the claims in this lawsuit (which contains one sole cause of action: for lien foreclosure) *such that he*, as the only party known to have "a financial interest in the outcome of this lawsuit" was therefore still "financing this lawsuit" at the time of trial. TT at p. 348, ll.12-24. That Friedman retained the lien foreclosure claim at issue herein *from FFA*, upon the sale of FFA, not *from Steppan*, conclusively demonstrates that this claim was always known by Friedman to be FFA's, not Steppan's, to begin with, such that pursuing this claim in the name of Steppan was a fraudulent misrepresentation from the outset. Friedman also knew that the architectural work product (instruments of service) prepared for the project belonged to FFA. TT at page 369.

Thus, the subject lien foreclosure claim at issue herein was always treated and understood as belonging to FFA, *not* Steppan, until, prior to trial, that claim was taken back **from FFA, by FFA's prior sole owner**, in conjunction with a sale of FFA. Accordingly, as of the time of trial, the non-

[4] *See,* **Exh. 12** at pp. 12-13.

Nevada licensed architect, Rodney Friedman, was the real lienor in interest, as a successor to the non-Nevada registered architectural firm of FFA, the original real party in interest, whose services and invoices form the basis of the "Steppan" lien. Steppan's name was utilized as the contract architect and as the lien claimant and as the plaintiff in a manner which was a fraudulent misrepresentation from the outset, engaged in by FFA in order to circumvent Nevada law, which prevented FFA from suing for its invoices, let alone pursuing a lien. NRS 623.180, 623.357, and NRS 108.222(2). There was however no lawful basis for these fraudulent ploys to have been countenanced by this Court.

(iii) The Proposal Letter and Original Letter Agreement Contained FFA's Information, Not Steppan's.

The initial contract proposal letter ostensibly sent from Steppan to BSC/Consolidated on October 25, 2005 (TE 9) together with the November 15, 2005 original letter agreement (**Exh. 9** hereto) signed on the basis thereof indicate that FFA initially planned on carrying out the con that Steppan was the contract architect by pretending that FFA's employees worked for and as employees of Steppan, so as to claim to be exempt from the provisions of NRS Chapter 623 pursuant to NRS 623.330(1)(a), exempting the employees of a licensed architect or registered architectural firm from in-State licensing requirements. Both letters attached a "2005 Master Fee Schedule" setting forth the hourly rates for 21 different types and categories of staff members purportedly employed by Steppan, including a "Principal/Officer" who would charge $220.00 per hour, as well as rates for the "Executive Vice President" the "Senior Vice President" an "Architect III" "Graphic Designer" etc., down to clerical office support. However, Steppan had NO employees, *let alone 21 different categories of employees,* and never produced any W2's at trial showing that anyone was employed by him. Rather, as this Court found, he was himself a paid employee of FFA throughout the time the contract was being performed. **Exh. 1**, at p.3, ¶9. Whose employees and whose rates were then actually being included as an attachment to the letter agreement? FFA's, of course, NOT Steppan's! This demonstrates that FFA was truly the contract architect, not Steppan, although FFA tried to hide that fact via various acts of subterfuge, such as the use of this attachment on a letter and contract purportedly between Steppan and the customer.

It appears that this sham was eventually abandoned in favor of a new subterfuge, that FFA was acting as a design consultant, so as to claim the "consultant" exemption, instead of the employee

exemption, under NRS 623.330(1)(a). The evidence at trial clearly undercut this exemption claim (and even had it applied, this would not mean that Steppan could lien for work performed by FFA through its employees).

(iv) All Payments from the Customer Were Made to FFA, Not to Steppan who Admitted the Limited Nature of His Actual Role.

All payments made by the customer under the original hourly fee agreements were made to FFA, *not* Steppan. TT p. 670 at l. 18 through p. 671 at l. 3, and TT 671 at ll. 21-24.

Furthermore, Steppan provided the following deposition testimony, reviewed at trial: "Q. In distinguishing between required, sir, and what you understood your role to be, was there anything, other than the putting your stamp on documents, that was appropriate to be communicated to you rather than someone else at Fisher-Friedman Associates? A. I'm not sure I can think of anything in specifics, as we sit here. Q. So sitting here today, you understand—your understanding of what was required of you with respect to the Reno project was putting your stamp on documents? A. And signing of the contract. Q. Anything else? A. Probably, but I can't think of anything specifically." TT at page 780. Steppan's counsel attempted to rehabilitate him after introduction of this testimony, by averring that the context of the earlier questions allegedly only had to do with communications with government officials in Washoe County. But even if this were accurate, it would further emphasize the point: that Steppan, the *only* FFA employee who was a *Nevada* licensee, was not even used to interact with local *Nevada* officials, demonstrates that his name and license were invoked merely for convenience, not in substance, and further demonstrates FFA's misconduct in acting as though it had the power to work in Nevada under the guise of Steppan being the contract architect, when he clearly fulfilled no such role.

Steppan never performed the second half of his above-described two-part job (to stamp project plans), since such stamping "would have occurred at submission for the building permit at the end of the construction documents phase only" (TT at p. 785) which never occurred. Steppan also averred that he had no personal liability on the project, but that FFA "would protect me" from such liability (**Exh. 12** at p. 161), whereas an actual contract architect must alone bear "full responsibility for the work performed" by any third party designer, not the other way around, under NRS 623.353.

(v) Steppan Did Not Negotiate the Terms of the Contracts, Nor Maintain His Own Files With Respect Thereto, Nor Create the Work Product.

Steppan did not negotiate the terms of the contract(s) which he signed. Rather, Rodney Friedman negotiated the payment terms, as admitted at trial (TT at pg. 417-418), and as recognized by this Court's Decision, noting that Friedman, not Steppan, had the initial contact with the client, and that the payment terms were negotiated from that inception. **Exh. 1** at Finding 12. This preliminary negotiation by Friedman **violated NRS 623.182** requiring a temporary certificate of registration and a warning letter (that registration may be denied) to the potential Nevada client before any architectural proposal can be provided by a non-Nevada registered architect.

Significantly, this was the first time Steppan's name had ever been used on behalf of FFA while he was employed at FFA. **Exh. 12** at pages 72-73. This was also the first time Steppan had signed *any* architectural contract, other than for one or two spec homes in California (such that he had never signed any previous contracts in Nevada). *Id.* The project number used for this contract was an FFA number, not a Steppan numbering system number. **Exh. 12** at page 67. The fee schedule was based on the hierarchy within the FFA firm. *Id.* at 18.

Steppan maintained no independent files with respect to "his" contracts. **Exh. 12** at p. 304. Rather, the approximately 7,000 exhibits supposedly produced by Plaintiff for this case were all produced by FFA, not Steppan. "Q. Are all of the documents that have been produced with the Steppan, what we call Bates Number, 17 through 7,000 period, are those from the files of Fisher Friedman Associates? A. Yes. Do you, Mark Steppan, have any separate file with respect to the Reno project? A. No." **Exh. 12** at p. 304.

Steppan did not create the contract drawings (**Exh. 12** at pg. 21). Instead, Steppan conceded that Friedman and FFA employee David Tritt were the principal sources of design output. **Exh. 12** at pp. 256-57. Steppan was therefore reduced to claiming that his role was one of "oversight" (*id.* at pp. 21-22) even though FFA already had a project manager, Ogle, and this role would mean Steppan was supposedly overseeing the work of his own boss, FFA owner Friedman.

(vi) The Initial Use of Steppan Letterhead and Cards in Support of the Sham that Steppan Was the Contract Architect Was Eventually Discontinued Given That the Customer Understood Who Was Truly to be Paid for Having Done the Work.

Steppan admitted that letterhead with his name displayed at the top was created solely for this

project (**Exh. 12** at p. 164) which was obviously done to create the appearance that Steppan was acting in some independent role as the project architect even though he actually remained an employee of FFA. This letterhead was available for anyone at FFA to use who was working on the project (**Exh. 12** at p. 165) so they could write letters as though they were Steppan's employees. The use of this letterhead to perpetuate the sham was, however, not very carefully thought through, as the letterhead contained *the FFA California address and phone number at the bottom*, not a separate Steppan number or address, or any Nevada address. TE 6. The email at the bottom of this letterhead was "mark@fisherfriedman.com." Steppan business cards were also created in-house, at FFA (**Exh. 12** at p. 295) including, even, for Rodney Friedman and Nathan Ogle, as though they were supposedly employed by Steppan. *Id.*

The Steppan letterhead was sometimes utilized by even Steppan's father-in-law and boss, sole FFA owner Rodney Friedman, as though *he were working as an employee of Steppan*! *See*, Exh. 12 at p. 255-258; and see **Exhibit 13** hereto (Steppan 3262-63). Plaintiff admits, though, that Friedman was actually writing on behalf of FFA (**Exh. 12** at p.258, ll. 6-9). FFA employee Nathan Ogle, listed on the invoices as the project manager, also sometimes used the bogus Steppan letterhead to communicate with BSC/Consolidated. *See, e.g.*, TE 16, discussed at TT 718. Taken together with the above-referenced letter contract attachment listing all of "Steppan's" purported categories of employees, this letterhead demonstrates that the initial FFA plan for circumventing Nevada laws requiring FFA to be registered here, was to pretend that all of FFA's employees working on this Nevada high-rise residential project were employees of Steppan. However, this was an open and obvious farce. No W2's from Steppan, to his purported employees, Friedman, Ogle, et al., were, for obvious reasons, ever produced. Rather, Steppan, a 0% owner of FFA, which, through *its* owner and *its* employees was truly doing the work for which the lien is claimed, continued to be employed by FFA throughout the project, not the other way around. Exh. 1 at p. 3, ll. 18-19. The idea that Friedman and Ogle would be submitting communications on Steppan letterhead, as though they were somehow employees of Steppan or members of *his* staff, should be seen as an offensive insult to the intelligence of anyone asked to believe therein. Ogle was an employee of FFA. Friedman was its owner. Steppan was an employee of FFA, who had **no** employees or office of his own.

In any event, the ruse of the bogus letterhead soon evaporated (probably when FFA decided to favor the sham of a "design consultant" role, pursuant to which, its employees' use of this letterhead would have made no sense), and FFA and its employees eventually reverted to primarily using the accurate FFA letterhead. For example, FFA initially utilized the Steppan letterhead for both Services Invoices and for Reimbursable Expense Invoices (even though these expenses were incurred by FFA, with the subproviders FFA, not Steppan, had hired) (TT 259-263; **Exh. 12** at p.85) sent to the customer (BSC/Consolidated) in late 2005 and the first month of 2006 (*see, e.g.*, the first four invoices attached to TE 24 and the first four reimbursable expense invoices attached to TE 26). However, beginning in February 2006, and continuing through the final, February 2007, invoices, all of the invoices were sent on FFA letterhead directly to FFA's customer (BSC/Consolidated, not Steppan). *See, e.g.*, the remainder of TE 24, all of TE 25, and the remainder of TE 26. This means that *all* of the invoices which were sent after the April 21, 2006 designation of FFA as someone's design consultant (**Exh. 10** hereto at pp. Steppan 4127 and 4129) were sent directly from FFA, indicating that any such purported designer role was a direct relationship between FFA and BSC/Consolidated.

In summary, none of the invoices were sent from FFA to Steppan, as would be the case if FFA were a subprovider to Steppan, *i.e.*, *his* hired design consultant. Rather, all invoices were sent to BSC/Consolidated, and all of the invoices sent to that customer after the designation of FFA as someone's design consultant were sent on FFA letterhead, and even the initial Steppan letterhead invoices were sent from FFA's address. Thus, FFA was performing work for a Nevada client as to a Nevada project and invoicing and being paid directly by the client for the same, all in violation of NRS 623.180(1), rendering FFA liable for civil penalties for violations of law. NRS 623.365 and 623.370.

Steppan explained that neither FFA nor its customer, BSC/Consolidated, were concerned about the invoices suddenly being accurately sent on FFA letterhead, since they all understood that in fact FFA, NOT Steppan, was to be paid directly for all work. Steppan explained that after the FFA invoices started being sent on FFA letterhead: "[W]e ended up having a phone conversation with, I believe it was Sam [Caniglia, of BSC/Consolidated] . . . to discuss the fact that he had obviously received some Fisher-Friedman invoicing versus keeping it on Mark Steppan letterhead, was that acceptable to him, **since all parties knew the arrangement** of how I was overseeing the project as

architect of record **for the purposes of license requirements in Nevada**, [but] that **the payments were not coming into me directly, they were coming into Fisher-Friedman Associates**. So was it acceptable to retain that way, or did he want us to change back. And it was determined to just keep it the way it was, on Fisher-Friedman letterhead." TT at page 673.

Hence, the sham pretense of acting as if the invoices were coming from Steppan, rather than FFA, ultimately ceased because everyone knew that Steppan's name was being utilized solely because he was licensed in Nevada, but that FFA was truly the party receiving direct payment for its services to Consolidated/BSC, and ***not even Steppan claimed any right to receive the type of direct payments from the customer to which an actual contract architect would be entitled***! Just as no W2's from Steppan to Friedman or Ogle or other FFA employees were ever produced to support the original sham that they were Steppan's employees, there were also never any 1099s presented at trial from Steppan to FFA to support a claimed relationship in which Steppan purportedly hired FFA as *his* design consultant. This is because the work was not performed "by" Steppan "through" *his* employees or through *his* consultant, but *by* FFA *through* its employees, including Steppan, directly for the customer, who was directly paying FFA for its services.

Steppan's testimony that he was "overseeing the project" is also undercut by these invoices, as **all** of the invoices (TE 24, 25, and 26) list Ogle, *not* Steppan, as the Project Manager (demonstrating the clerical error in this Court's Decision at p. 3, lines 21-23, finding that Steppan was the Project Manager, which clerical error is another ground for relief under NRCP 60(b)).

(vii) The Lien Was Ultimately Based Entirely on Invoices From FFA to the Purchaser.

FFA's invoicing system and department generated all invoices sent for this project and maintained copies of the same in FFA's files, and no separate or independent department of Steppan's was utilized for this task. TT 668-669. Internal FFA decisions and directives with respect to allocations of the time spent to various components of the contract work, and the timing of those allocations were made by FFA, *not* Steppan. TT 669 at ll. 13-22 and TT 670 at ll. 8-17.

Significantly, although some initial invoices were sent on sham Steppan letterhead, **all of the invoices in TE 25** are sent on FFA letterhead. These invoices consist of much higher AIA Contract re-billings for previously invoiced work completed under the original hourly letter agreement, such

that these invoices were sent to supersede the earlier invoices. The cover sheet of TE 25 demonstrates that the invoices attached to this exhibit were meant to establish how much of the Schematic Design ("SD") Phase of the project was complete, for purposes of justifying a flat fee percentage amount claimed as owing based upon that completion. The amount of the lien claim pursued at trial was based (i) on a ruling that this SD phase had been completed (Decision at Finding 11 and Conclusion 12) and (ii) the Court's Summary Judgment Order that the AIA Contract controlled the calculation of the lien amount. Thus, the lien amount ultimately sought is based on the TE 25 invoices, which were all sent on FFA letterhead (and, like all prior invoices, from FFA's address, to BSC/Consolidated) based on the AIA Agreement having been finalized before these billings were sent. The correspondence between the TE 25 invoices and the final lien is demonstrated for example by a comparison of (i) the final invoice comprising TE 25, at page Steppan-007614 (showing the total fees for "Professional Services" earned standing at $2,070,000.00 before add-ons or payment deductions), on the one hand, with (ii) TE 3 (the final amended lien upheld in the Court's Decision), on the other hand, which, at the top of page 4, likewise shows the "Fee earned" before deductions for payments received, as $2,070,000.00. (The lien also claimed additional amounts for allegedly separate add-on contracts, and reimbursable expenses paid by FFA to its subproviders.)

This Court itself recognized that "Steppan . . . established the billing system **used by FFA**" in support of his claims. **Exh. 1** at Finding 19. All payments from Steppan's alleged customer for this Nevada project were paid to FFA, not to Steppan. **Exh. 12** at pg. 85. Despite such customer payments being made and credited, **not** a *single check* was written to Steppan by the customer. **Exh. 12** at p. 162. The bookkeeping department at FFA handled the billing and collections for the work of its employees, based on the payment terms Friedman had negotiated. TT at page 417-418. This Court's Finding 16 indicates that "[t]here were numerous emails sent to Caniglia and others detailing the failure to pay the sums due." Notably, however, these emails were sent, not by Steppan, but by FFA's sole owner, Friedman. TT at pg. 381-382.

Thus, the "Steppan" lien was based on FFA's invoices for fees earned and services provided by FFA as shown by FFA invoices, on FFA letterhead (TE 25) sent by FFA, directly to FFA's customer for FFA's employees' work, with deductions for payments previously received by FFA

directly from that customer. Accordingly, the amount of the lien sought was based on amounts invoiced by FFA for the work of FFA and its employees. Using Steppan's name on the lien as the lien claimant was simply fraudulent.

(viii) Steppan Acted Solely as an FFA Employee and Thus Lied In His Lien Notices Regarding By Whom He Was Employed; He Performed Only 4.1% of the Work For Which the Lien Is Asserted, and He Did Not Supervise the Work.

NRS 108.226(2)(c) requires a lien notice to indicate "by whom the lien claimant was employed" in providing the lienable services. This statutory provision supports the same general principle being argued throughout this brief: a lien claimant cannot lien for someone else's services to that other person's client, but may only lien for the value of services which the lien claimant was employed to and did provide to *his* customer or employer, either by providing those services himself or through others he hired. Steppan claimed in each of his three lien notices (Exhs. 4, 5, and 6 hereto) that he was employed by BSC/Consolidated. **This was a fraudulent misrepresentation.**

Rather, as this Court found in its Decision, Exh. 1 at p. 3: "Steppan was employed at all times relevant to these proceedings by the firm of Fisher Friedman Associates ('FFA'))." This finding is absolutely accurate and supported by trial admissions. Steppan produced *no* evidence at trial that any of the payments made by BSC/Consolidated for the project were sent to him, with accompanying 1099s, to back up the statement on his lien notice(s) that BSC/Consolidated employed him to perform this work. All such payments were made to FFA. TT at 670-71.

Further, in his trial testimony, Friedman inaccurately claimed that Nathan Ogle "worked directly under Mark [Steppan]" but admitted: "**and Mark [Steppan] worked for the firm.**" TT at pg. 265-266 [emphasis added]. Steppan received only and solely his normal salary and wages from FFA, with no revenue sharing or expectation of a bonus, for any work he did on this project. **Exh. 12** at pp. 85-86. Thus, Steppan was merely an FFA employee during the time period he worked on this project, which means that Steppan failed to meet his burden of proof that his lien notices were accurate in identifying, as statutorily required, by whom he was employed. Failure to tell the truth with respect to the statutorily required questions, on lien notices constitutes a misdemeanor under NRS 108.226(4).

As the trial testimony clearly revealed, the party who was, in fact, "employed by" customer BSC/Consolidated and expected payment from that customer for its services, was FFA. Steppan had

no economic interest in this contract (Exh. 12 at pp. 85-86) such that he will not share in any recovery in this case, and has no personal economic interest herein. Steppan never testified that he was still owed any salary from FFA and therefore also failed to meet his burden on yet another fundamental element of a lien claim, namely that the *lien claimant* is owed money, which is what *he* is liening for!

Time cards were kept for all ten architectural FFA employees, including Steppan, who worked on the project, which cards were produced by Steppan (**Exh. 12** at pp. 232-233) and are **Exhibit 14** hereto (Steppan 007122-7363). Defendant's counsel has, for the convenience of the Court, reviewed these time cards and created a ledger of certain relevant calculations based thereon, which is **Exhibit 15** hereto. The ten FFA employees generated 3,396 billable hours on this matter, almost all of it prior to the end of April 2006. FFA's sole owner, Rodney Friedman, spent 813 hours, Nathan Ogle, the designated Project Manager spent 642 hours, and designer David Tritt, 610 hours. Quan Chang spent 206 hours and Joe Preston spent 537 hours. Steppan, by contrast, devoted a mere 141 hours to this project, **or just 4.1% of the total hours billed by all FFA employees**, fewer than almost *any other* employee listed! **Exh. 14**; **Exh. 15**.

Steppan claimed that during this minimal hourly investment, he was involved in allegedly supervisory tasks (such as "to walk around and talk to people. It was much easier and simple and fairly consistent with action that I would walk around and talk to Nathan" the actual Project Manager, who billed roughly 5 times as many hours as did Steppan). TT at p.756. However, Friedman let the truth slip out, and conceded that Steppan was not in fact supervising the work, but would only have played a supervisory role on the project if Friedman, FFA's owner and the true supervisor, were to have become unavailable, due to illness or vacation. TT 269-270.

(ix) FFA and Ogle, Not Steppan Were Listed as the Project's Architectural Contact on Nevada Documents, and Steppan's Substantive Involvement, Including in Nevada, Was Minimal.

Steppan has never maintained an office in Nevada. He has never lived in Nevada and has never been a Nevada resident(as contemplated by NRS 623.350(1)). He has lived in California for 26 years. **Exh. 12** at 5-6. He admitted that he prepared no architectural drawings for the project. **Exh. 12** at pg. 21. Rather, the drawings were prepared by FFA's (not his) employees. Designated Project Manager Nathan Ogle (TE 24, 25, 26), who was licensed only in California and was acting on behalf of non-

Nevada registered FFA, attended most of the Nevada meetings, worked with the government engineers and planners, as well as with the client. Steppan did not create or form a Nevada business entity, but just used his name as an individual, as though he were some sort of Nevada sole proprietorship, to perpetuate the sham. **Exh. 12** at p.68.

Steppan's role in the project was so minor that his name is not even mentioned, including as the project's architectural contact person, in the 154 page January 17, 2006 Special Use Permit Application to the City of Reno (TE 35; TT 764, 183-84). Instead, the Application provides the name of the actual architectural firm: "Person to Contact Regarding Application. Name: Fisher Friedman Associates. Contact: Nathan Ogle, AIA." TE 35 at p. Steppan 2371. Similarly, TE 36 (requesting an increase in the condominium unit count) and TE 37 (for a further increase) *also* **list "Nathan Ogle AIA,"** ***with*** **FFA (not Steppan** nor someone who is with Steppan) as the architectural contact regarding the project, and do not even mention Steppan. TT at pp. 763-764. The presence of FFA's and Ogle's names on these documents is shocking: What in the world was a non-Nevada registered architectural firm and a non-Nevada licensed architect doing putting their names as the architects of record to contact for this Nevada project!? This is akin to a California lawyer, not licensed to practice law in Nevada, who doesn't take the steps necessary to be admitted pro hac vice, appearing on Nevada pleadings and in Nevada courtrooms, and then claiming: "Oh, I'm not engaged in the unauthorized practice of law in Nevada without a license, I'm just a 'legal consultant.'" Nevertheless, these submissions demonstrate that FFA, not Steppan, was the true contract architect all along, and that FFA became increasingly sloppy in trying to hide this truth.

Similarly, an application to extend the deadline for final map submission was submitted by the party then handling development approvals, in the name, not of Steppan, but of Rodney Friedman. TE 51 (at Steppan 7404); TT 320-21. The $2,330 payment to the City of Reno for this submission was even made by FFA/Rodney Friedman! TE 52; TT 321-323. This hardly seems like the act of a mere third-party consultant to contract architect Steppan. Rather, as admitted by Friedman under direct examination by this Court, Friedman did this in the hopes that he/FFA (*not* Steppan) could then be paid the full contract value if the work was completed. TT 323-325. This exchange between Friedman and the Court lays bare beyond any doubt that Friedman and his company FFA were the real contract

architect, and lien claimant. "Friedman: **I** would get paid for the schematic design, because in the terms of **our** agreement [*i.e.*, the AIA Contract which was supposedly with Steppan] if you read the abandonment clause, **I** would be entitled to **my** compensation .... under contract.... [p]lus the profit that **I** didn't get had **we**[5] completed the working drawings." TT 325 at ll. 3-14. (Emphasis supplied.)

Steppan admitted that there was no reason for him to have been listed as the architectural contact person for the project on documents submitted to Nevada governmental officials, since (non-Nevada licensed architect) Ogle was the project manager conducting daily operations for non-Nevada registered FFA's architectural work (TT at 764) and Friedman was the designer (TT at 766). Steppan also admitted that he did not participate directly in the requested changes of the condo unit counts (TT at page 765) did not participate in the conversations regarding changes to project parking (*id.*) did not attend any of the hearings before the Reno City Council (TT at 769) and did not personally make any of the revisions to the FFA firm's instruments of service (the ultimate basis of the lien amount referenced by this Court). (TT at 767.)

(x) Steppan Has No Record of Communicating With "His" Purported Client, or with Nevada Officials.

Though there were many emails during the course of this project from various FFA employees to the customer BSC/Consolidated and to interested governmental entities, Steppan could not find a single email that he had generated and sent to *any* person external from FFA relating to this project. TT at 757-758.

(xi) FFA, Not Steppan, Chose and Hired the Subcontractor Professionals.

Steppan had no involvement in hiring other third party subproviders or lower tier professionals to assist in the work. Rather, FFA did so, for example hiring the structural engineers and bringing in Ron Klemencic from Seattle to assist with the structural design, the floor to floor heights, and the column and bay spacing. TT 259-262. The same thing occurred with the mechanical engineering, Mr. Friedman testifying that his firm (*i.e.*, FFA, not Steppan) hired C&B Engineers from San Francisco, who FFA had worked with for decades, to assist with the mechanical, electrical and plumbing. TT at pp. 262 -263. These entities, in turn, billed FFA (not Steppan) for their services **(Exh. 12** at pg. 85)

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[5]When Friedman uses "we" in the context of this project, he means "FFA", see, e.g., Exh. 12 at p. 258, ll 6-9.

the advanced fees for which somehow nevertheless ended up as part of "Steppan's" lien.

(xii) Any Purported Contract Between Steppan and FFA Never Existed and Was Never Treated By Them as Existing and Would Have Violated Nevada Law.

This Court's Decision found that "FFA was a design consultant on the . . . project." (Decision at ¶ 12). This Court did not indicate, however, *whose* design consultant FFA purportedly was, which is a critical question. Nor did any sufficient evidence support this designation.

If this Court meant to find that FFA was hired directly by the customer, BSC/Consolidated, as its design consultant then this Court's Decision upholding the lien must be quickly set aside as a matter of law, as Steppan can no more legally lien for the work of FFA as a direct hire of the customer, than Steppan could lien for any other third-party's work (such as some future grader, for example, had the sale closed and the work gone forward on-site) who was directly hired by the customer. If on the other hand, this Court intended to find that FFA was *Steppan's* design consultant, rather than being hired directly by the customer, in order to justify this Court's ruling upholding Steppan's lien (as though the work was done "by" Steppan "through" Steppan's hired design subprovider, FFA), then this Court's Decision upholding the lien must still be quickly set aside, both as a matter of fact and of law, since any claim that FFA was acting in this capacity was wholly and completely unsupported by any evidence whatsoever, and since FFA could not have so acted without violating Nevada statutes.

First of all, Nevada's architecture and design licensing statutes (NRS Chapter 623) do not even recognize the profession of "design consultant" as an existing category. The State Board may only issue prescribed certificates, not make up its own. AGO 305 (11-24-1953). Presumably, foreign architectural firms also cannot make up their own bogus titles to claim exemption from Nevada laws. The closest analogue to a "design consultant" which Nevada law *does recognize* is a "residential designer" which may normally only provide services as to single-family residences or multifamily construction of no more than two stories (NRS 623.025) and may work on larger residential projects (such as Wingfield Towers) only if under contract with a licensed Nevada architect who is responsible for the work, which contract **must be in writing**, *pursuant to NRS 623.325*, and **must also be on file with the Nevada Board of Architecture**, *pursuant to NRS 623.353*, neither of which were shown here. Even then, however, the residential designer **must also itself be registered** *in Nevada,* as a *Nevada* residential designer, under NRS 623.180(1)(rendering it illegal to perform *either* architecture

or residential design work in Nevada without first being registered in Nevada as an architect or a residential designer), which was also not shown here.

NRS 623.330(1) does allow "a consultant retained by a registered architect" to be exempt from the registration requirements of NRS Chapter 623. However, there is *no* evidence that Steppan "retained" FFA as *his* consultant. He signed no contract with FFA hiring FFA. Rather, although Steppan and FFA discussed drafting such a contract they ultimately "elected there was not a need to do one." **Exh. 12** at p. 158. He also paid FFA no money, and received no invoices from FFA. Indeed, there was also no unwritten verbal agreement reached regarding design consultant fees to be paid by Steppan to his purported "design consultant" FFA. Rather, Steppan admitted that in lieu of such an arrangement, any such alleged relationship was actually "carried out through the nature of the fact that *I'm an employee of FFA*" (***not*** the other way around). **Exh. 11**. at p. 25. In truth, FFA worked directly for and was paid directly by BSC/Consolidated, and the exemption of NRS 623.330(1) does not apply.

Furthermore, it is overwhelmingly clear that FFA's services on this project went far beyond outside consulting, and instead involved the practice of architecture as defined in NRS 623.023. For example, FFA engaged in "rendering services" directly to its customer (with its name as the party rendering those services on invoices and on official submissions to Nevada governmental agencies) "embracing the scientific, esthetic and orderly coordination" for the "production of a completed structure which has as its principal purpose human habitation or occupancy" and which services included producing "plans [and] specifications" together with other architectural "advice and direction." NRS 623.023. A party "cannot legally don the robe of an architect" free from the requirements of NRS Chapter 623 "merely by refraining from calling himself an architect, if he, in fact, accepts work which falls within the purview" of the practice of architecture. AGO 19 (4-1-1963).

Even the AIA Agreement, the first document to assert that FFA played a "design consultant" role, does not list FFA as *Steppan's* design consultant. Section 1.1.3.5 of the agreement, which is where the "consultants retained at Architect's expense" are to be identified "by name" if "known," is left blank and does **not** identify FFA or any other "consultant." Rather, FFA first shows up as somebody's design consultant in the Addendum (**Exh. 10** at p. Steppan4127) under language which, as referenced above, at best indicates a direct relationship between the customer on the one hand, and

both Steppan (as the customer's purported architect) and FFA (as the customer's purported design consultant) on the other (rather than ever stating that Steppan had retained FFA).

But the official FFA story gets even more preposterous when one considers that this AIA Agreement Addendum, first claiming the "design consultant" status for FFA, was not even finalized, and signed as agreed upon until after *all* of the work purportedly performed thereunder had already been completed, and the only event relative to that work which happened thereafter was the issuance of new, retroactive flat fee percentage based bills from FFA thereunder, intended to supercede the original hourly based invoices which FFA had already been paid directly under the original letter agreement. **Exh. 12** at p. 255, lines 14-21. **Exh. 6** at p. 1, ¶1(A). Thus, FFA first did the work, and received direct payments for the same, and only thereafter decided in what role or capacity it should claim to have performed that work! The true relationships, not the sham thought up later, to circumvent Nevada law, is demonstrated by the actual course of dealing, in which Steppan was not billed for FFA's work, and made no payments to FFA for the same, but rather, the underlying BSC/Consolidated customer was billed directly by FFA, since that is the party (not Steppan) who hired FFA and for whom FFA actually directly provided its services, which were clearly architectural services under NRS 623.023, not mere consultant services.

Friedman testified that for projects outside of California, "there is usually **an architect of record *in that state*** and then **they engage us** to do the work. We are the consulting architect." TT at page 275. This testimony however describes an arrangement which was never entered into with Steppan, and which, had it been entered into, would not have been legally valid, both given the true nature of the services provided by and payments made directly to FFA, but also as a matter of law even had these other arrangements been properly performed. Rather, as *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014) recognized, under NRS 623.349, any association between a foreign architectural firm and a Nevada architect to perform work together in Nevada is only legal if the foreign firm is owned by 2/3 Nevada licensees (or some new entity with such ownership is formed), and having a single Nevada licensed firm member is not enough to qualify if he owns less than 2/3 of the firm. Steppan was also *not* an actually independent party with his own Nevada architectural business, who could act as the Nevada architect of record and supposedly "hire"

FFA as an outside consultant, but was himself, throughout the project, a full time employee of FFA (TT at pg. 266, Decision at p. 3, l. 17-18), holding no Washoe County business license to act as a sole proprietorship here.

Therefore, to the extent that this Court's finding was intended to conclude that FFA was *Steppan's* "design consultant" for the project, this finding was erroneously made, and fraudulently induced given the utter and complete failure by Plaintiff to provide any evidence whatsoever to support any such ruling, and given the law on that subject, as recently clarified by the State Supreme Court. Alternatively, if the Court's finding was meant to conclude that FFA was BSC/Consolidated's direct design consultant then the lien must also be set aside under that scenario, since Steppan cannot claim a lien for work done by a party other than Steppan, directly for that other party's customer, who directly hired and directly paid that party to do that work.

B. FFA and Steppan's Misconduct Was Deliberate and Intentional.

FFA and Steppan committed multiple illegal acts in working on this Nevada project under false pretenses, including without limitation (i) FFA's acts in negotiating for this work without a temporary registration or warning letter in violation of NRS 623.182; (ii) FFA's failure to register itself in Nevada as *either* an architect *or* a residential designer, as mandated by NRS 623.180(1), before providing services which clearly constituted the practice of architecture under NRS 623.023, but which were claimed to be "design" services; (iii) FFA's acting as the purported designer on a multi-family residence of more than two stories (skyscraper of 40 floors) in violation of NRS 623.025; (iv) Steppan and FFA's association with each other on this project without first getting Friedman a Nevada license or giving 2/3 of the stock in FFA to Steppan, or forming a new entity for the project in which Steppan or some other Nevada licensee was provided 2/3 of the ownership, in violation of NRS 623.349; etc.

These violations of Nevada law were deliberate and premeditated. Steppan admitted he contacted the Nevada Architectural Board, and discussed "making Fisher Friedman of record on this job" but "**we elected not to do so because it would have required that at a minimum Rodney [Friedman] be licensed in Nevada**" (**Exh. 12** at p. 150) (which was the case because NRS 623.349 requires that at least 2/3 ownership of any foreign firm seeking to register in Nevada be held by

Nevada licensees, whereas Friedman, the sole owner of FFA was not so licensed).[6] Instead of following Nevada's laws by getting Friedman licensed and paying the registration fees to register FFA as an architectural firm qualified to render services in Nevada, FFA decided to provide its services under the sham claim that its employees were Steppan's employees, and then, when it came time to increase the bill for those services after the AIA was signed, under a new sham claim, thought up after-the-fact, that the work which had been performed prior thereto was performed in the role of a design consultant. FFA then set out to benefit from the very Nevada laws which it had flouted, by improperly pursuing a Nevada mechanic's lien against the Property, only available by virtue of Nevada statutes, for services performed *by* FFA *through* its employees, in someone else's name.

The fraud continued when Steppan submitted his application to renew his Nevada license, and, instead of admitting that he was an employee of foreign firm FFA, falsely claimed thereon that he was practicing "independently." *See*, **Exhibit 16** hereto, at Steppan 4351, and **Exh. 12 at** p. 144-145. Ironically, despite this misrepresentation, the $150 renewal fee was not paid by Steppan, but via an FFA check signed by Friedman, based on a form sent to Steppan *at* FFA. *Id. See* **Exhibit 17** hereto, FFA's November 2, 2005 check, and **Exhibit 18** (the Board cover letter).

V. LEGAL ANALYSIS

A. Because "Steppan's" Lien Claim Is Based Entirely on Services Performed By FFA Through Its Employees and Subproviders It Is Invalid Under Nevada Law.

(i) This Court Must Not Countenance Fraudulent Form Over Substance Shams, Designed to Allow Their Perpetrators to Benefit From Nevada Laws With Which They Are Not Willing to Comply.

The foregoing facts are fatal to the validity of the lien erroneously upheld by this Court, as they overwhelmingly demonstrate beyond any doubt that the lien is based entirely on services performed by FFA through its employees (including Steppan) and its subproviders, was recorded for the benefit of FFA, and is in an amount which corresponds to and is solely based upon FFA invoices sent directly by FFA to its direct customer with any payments thereon (as credited on the invoices) from that customer having been sent directly to FFA. However, as FFA is not registered as a Nevada

[6]The former senior owner of FFA, Robert Fisher, had been licensed in Nevada. **Exh. 12** at 33. When Fisher left the company, Friedman apparently wanted to continue doing Nevada work even though the firm was no longer owned by a Nevada licensee, so he decided to just do so dishonestly.

architectural or residential design firm, FFA had no legal right to perform this work (NRS 623.180(1)) or even to bid for this work (NRS 623.182) and now has no right to pursue this lien. NRS 108.222(2).

Rather than complying with Nevada law, FFA deliberately chose to circumvent that law under the false pretense that Steppan, who was licensed in Nevada, was the contract architect. However, in its arrogant determination that it was above Nevada's laws, FFA only supported this fabrication with the thinnest gloss, by having Steppan sign the architectural contracts, and by initially sending some communications on phonied-up Steppan letterhead. FFA did not however bother to actually have Steppan fill the role of a contract architect, but continued to utilize and pay him as FFA's employee, who was not involved to any substantive degree in the project. FFA then decided, after the fact, to call itself the "design consultant" without clarifying for whom or entering into any contract to supposedly fill this role, and without registering as a residential designer as mandated by NRS 623.180(1). FFA, further, directly incurred and billed for its own expenses with its own employees and its own subproviders (now somehow magically included as part of "Steppan's" lien) and directly invoiced and received direct payment from its customer.

This Court should not continue to allow this sham form to triumph over substance. In *Snodgrass v. Immler*, 194 A.2d 103 (Md. Ct. App. 1963) the court rejected and refused to uphold the same exact type of sham arrangement on behalf of a plaintiff, who was not licensed as an architect, but who agreed with an owner to design a building for his property, via the owner contracting with a licensed architect, who, in turn, purportedly employed the plaintiff to design the building. Even though the forms of this arrangement were much more clearly adhered to in that matter (with the purported contract architect actually signing a contract with the "designer" and planning to actually receive direct payment from the customer, with which to then pay the designer), the Court nevertheless *still* refused to uphold any claims based on this bogus sham:

> Considered alone, the contract between Immler [the licensed architect] and Kolstad [the owner], . . . would appear to be perfectly valid since Immler was a duly licensed architect. But when the facts surrounding this contract and its companion contract are examined, it is at once apparent that the contracts were a subterfuge employed in an attempt to circumvent the licensing statute. The evidence shows that in reality it was Snodgrass that performed the functions of an architect, and that Immler was used as a mere strawman to allow Snodgrass to do indirectly what he could not do directly.

Id. at 106 [emphasis added].

Because the licensed architect was "acting as a 'front' for [the unlicensed party's] activities" the Court refused to be gullible enough to go along, and barred any recovery arising under this "sham contract devised in order to allow [the unlicensed party] to perform architectural services without a license." *Id.* This Court should also refuse to be taken in by so obvious a sham, and look beyond the not very persuasively attempted appearance, at the surrounding actual facts of the strawman Steppan, to reach the same conclusion here. Indeed, the correctness of this conclusion is even more obvious in this case, given that the parties hereto did not even execute the contracts or follow the payment chains which would have been expected under their purported relationships, as the *Snodgrass* parties did. *See also, Dalton, Dalton, Little, Inc. v. Mirandi*, 412 F.Supp. 1001, 1004 (D. N.J. 1976) (ruling that contract by Maryland architect to prepare plans for a New Jersey building was illegal, under New Jersey's architect licensure requirements, even though the plans were sealed and certified by the contracting party's New Jersey licensed employee, and noting that if the New Jersey client had contracted with the New Jersey architect directly this arrangement would still be open to attack if there were any "issue of subterfuge, pretense or improper circumvention of the law sufficient to warrant penetration of the form to reach the substance.").

The principle that courts must place substance over sham form, is especially applicable when the sham is created to circumvent the very Nevada laws from which a claimant then seeks to improperly benefit. It is thus especially outrageous in this case that the perpetrator of this sham, who was not willing to comply with Nevada statutes, now wishes to nevertheless take advantage of Nevada mechanic's lien statutes, and the benefits reserved thereunder for those who *have* complied with Nevada law! *See, e.g., John v. Douglas County School Dist.*, 125 Nev. 746, 753, 219 P.3d 1276 (2009) (legal doctrines do not automatically apply to "sham" cases where a person abuses the government process in order to achieve a legal benefit meant for a legitimate claimant.)

(ii) Steppan Failed to Meet His Burden to Prove that *His* Lien in *His* Name Was for *His* Services as "He" Alleged in "His" Complaint.

The burden of proof in a mechanic's lien case is obviously imposed on the Plaintiff/lien claimant. *See, e.g., J.D. Constr. Inc. v. IBEX Int'l Group, LLC*, 126 Nev. Adv. Op. 36, 240 P.3d 1033 (2010) (even where property owner brought the lien expungement suit, lien claimant still had duty to establish amount of his lien by preponderance of the evidence). NRS 623.257 provides that no

architectural or design firm may sue in Nevada if it is not registered with Nevada's Architectural Board. In order to circumvent this requirement, which FFA would not have been able to meet, strawman Steppan was treated as the purported lien claimant and Plaintiff herein, in whose name the lien and the suit to foreclose thereon were filed. "Steppan's" Complaint alleged in Paragraph 9 that "Plaintiff did supply the services" to the customer, for which the lien was asserted, as referenced in Paragraph 11. These allegations were necessary elements of Steppan's claim, since only the value of unpaid work "furnished . . . by or through the lien claimant" may be pursued via a mechanic's lien. NRS 108.222(1)(a) and (b). The Iliescu Defendants denied Steppan's paragraph 9 and the other false allegations and Plaintiff had the burden to prove these allegations, by a preponderance of the evidence.

Steppan's burden of proof to show that the lien was based on services provided by or through him, as the named lien claimant, was not remotely satisfied. Indeed, he failed to even establish a *prima facie* case thereon. Although (a) the contracts with the customer, Consolidated/BSC, were signed by Steppan, Steppan failed to show, (b) that Steppan had negotiated those contracts with the customer, (c) that the post AIA Contract invoices to the customer, equating to the amount of the lien, were sent by Steppan, (d) that the payments from the customer, credited on those invoices, had been made to Steppan, as they would have been to a real contract architect, (e) that Steppan was himself owed any money or had any financial stake in "his" lien claim, (f) that Steppan was actually materially involved in the project, (g) including based on *any* recorded communications with *his* purported customer or with the Nevada governmental entities from which entitlement approvals were sought, even though the whole reason for *his* name being on the contract was to pretend to use *his* Nevada license, or (h) that he was consistently treated as the contract architect of record such as on submissions to Nevada governmental entities. Nor, in order to show that FFA was Steppan's hired design consultant, so as to claim that the work was performed by Steppan, through his hired subprovider, did Steppan present: (i) any indication that FFA was identified at the location required on the AIA Contract form (section 1.1.3.5.) to list known consultants, (j) clear or consistent testimony that FFA was Steppan's design consultant, not the customer's, (k) any written design agreement between FFA and Steppan (as required by NRS 623.325), on file with the Nevada Architectural Board (as required by NRS 623.353), or (l) any other evidence that he had retained FFA as his consultant as required by NRS 623.330(1),

such as invoices from FFA to its purported customer, Steppan, (m) payments on these invoices from Steppan to his alleged designer, FFA (with appropriate 1099s), (n) or, if no payments were made, demands or suits from FFA to Steppan requiring such payments, or (o) that Steppan had, himself, chosen and hired not only FFA, but also any other subproviders whose billings are now included in the "Steppan" lien.

(iii) Nevada Case Law Clearly Demonstrates the Invalidity of Foreign Entity FFA's Attempts to Claim and Prosecute an Architect's Lien By Using One of Its Nevada Licensed Employees as the Ostensible Lien Claimant.

FFA's theory that it could circumvent Nevada law by utilizing its employee Steppan as the strawman lien claimant, to pursue a lien as to work performed by FFA through its employees, in order to benefit FFA as the real lienor and real plaintiff in interest, has already previously been rejected by the Nevada Supreme Court. In *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 563-64 (1992) (partially abrogated by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)), the holder of an option agreement to purchase certain ranch land, entered into a design agreement with an engineering firm to design a planned project thereon, which engineering firm, in turn, retained "Depner Architects & Planners, Inc.," a foreign corporation not qualified or registered to do business in Nevada, to provide architectural services. When Depner Architects (the foreign corporation) sought to pursue a lien claim against the property, and its capacity to do so was challenged, it received district court permission to amend its complaint to name one of the individual firm members (named Depner) as the Plaintiff, to pursue the claim in his individual name, as though he had performed the work as a sole proprietorship. The Nevada Supreme Court reversed the district court, criticized it for having countenanced this ploy, and refused to recognize this sham, including because "(1) after [the foreign corporation] incorporated in Washington, all invoices were submitted . . . on behalf of the corporation; (2) the construction drawings for the proposed project were prepared by the corporation; (3) the individuals who worked on the drawings were employees of the corporation" etc. *Snyder*, 826 P.2d at 562. Thus, "the district court abused its discretion in allowing Depner [the individual] to substitute himself as an individual for the corporate entity . . . ." *Id.*

The initial issue which prevented the foreign architectural firm from having capacity to sue in the *Snyder* case was that it had failed to qualify to do business in Nevada by registering with Nevada's

Secretary of State. The *Snyder* Court did not reach the question of whether Depner's foreign firm was registered with the Nevada Architectural Board, or the issues which would be raised if it were not. The Court's handling of the Secretary of State qualification issue was later abrogated in *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002), which held that the proper method for dealing with that issue is to stay cases until the corporation complies with the requirement. Nevertheless, the Nevada Supreme Court's answer to the more fundamental question, whether a lien may be pursued by an individual for his employer's work has never been abrogated. Nevada's licensing and registration requirements, which disqualify a foreign architectural firm from providing services and pursuing compensation for the same in Nevada if it is not registered with the State *Architectural Board*, are separate and distinct from the process of merely qualifying a foreign corporation to do business with Nevada's *Secretary of State*. Thus, although the barriers to FFA's pursuit of a lien in this case were not the same as those reached and addressed in the *Snyder* decision, it was just as erroneous for this District Court, in this case, as it was for the district court in *Snyder*, to allow a lien claim to be pursued in the name of an individual employee of FFA when all the evidence demonstrated that the foreign architectural firm was the entity whose employees had actually done the work, and which had billed for the work and was the real lienor in interest. The *Snyder* Court's underlying analysis on that underlying question has not ever been altered or abrogated.

For example, on February 13, 2014, the Nevada Supreme Court issued its opinion in *DTJ Design, Inc. v. First Republic Bank, a Nevada Corp.*, 318 P.3d 709, 130 Nev. Adv. Op. 5 (2014) (a copy of which is, for the Court's convenience, attached as **Exhibit 19** hereto) in which the Court addressed *other disqualifying factors*, beyond those referenced in *Snyder*, which prevent foreign architectural firms from liening for services in Nevada if they have not registered with the *Nevada Architectural Board*, which opinion therefore clarifies the limited extent of the abrogation of *Snyder*.

DTJ Design examined, among other provisions, NRS 623.349, which provides the methods which FFA *should have complied with* if it wanted to be eligible to perform architectural and design work in Nevada, with the right to bill and lien for the same, instead of attempting a fraud and sham upon this State and this Court. The statute indicates in pertinent part as follows:

> **NRS 623.349 Formation of business organizations or associations with . . . unregistered or unlicensed persons: Conditions; limitations.**

> 1. **Architects [such as Steppan]**, . . . may join or form a partnership, corporation, limited-liability company or other business organization or association . . . **with persons who are not registered or licensed** [such as the claimed relationship between Steppan and non-licensed entity FFA which was purportedly entered into here], **if control and two-thirds ownership of the business organization or association is held by persons registered or licensed in this State** pursuant to the applicable provisions of this chapter, chapter 623A or 625 of NRS.
> 2. If a partnership, corporation, limited-liability company or other form of business organization or association **[such as FFA** or some joint venture entity or association it wished to form with Steppan] wishes to practice pursuant to the provisions of this section, it must:
> (a) Demonstrate to the Board that it is in compliance with all provisions of this section.
> (b) Pay the fee for a certificate of registration pursuant to NRS 623.310.
> (c) Qualify to do business in this State.
> (d) If it is a corporation, register with the Board and furnish to the Board a complete list of all stockholders when it first files with the Board and annually thereafter within 30 days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each stockholder [*i.e.*, to ensure the 2/3 ownership requirement is met.]
> . . . .

[Emphasis and bracketed explanatory language added.]

The *DTJ Design* decision concluded that regardless of whether a foreign architectural firm employs a licensed Nevada architect, NRS 623.349(2) and NRS 623.357 *still require* that the foreign architectural firm *itself* be registered in Nevada in order for a mechanic's lien action to be pursued on the firm's behalf. *Id.* at 711.

DTJ was a Colorado architectural firm. Thomas Thorpe was a professional architect and one of DTJ's three founding principals (but owned less than 2/3 of the entity, just as Steppan owned 0% of FFA). In 1998, Thorpe sought reciprocity to practice in Nevada and submitted two applications to the state board of architecture, one on his own individual behalf, and another on behalf of the corporate entity, DTJ. Only Thorpe's individual application was received and approved. DTJ later recorded a notice of mechanic's lien against Nevada real property for unpaid architectural services, and sought to establish that this lien had priority over an existing deed of trust recorded by First Republic Bank. After an initial trial ruling had issued, upholding the validity of DTJ's lien, but before the value of the lien had been established, through a planned second trial hearing, First Republic successfully moved for summary judgment, causing the Court to reverse itself before issuing its final judgment. The Court invalidated the lien, under NRS 623.357 which prohibited DTJ Design from maintaining its lien foreclosure action as it had not registered with Nevada's architectural board including under NRS 623.349. On appeal, the Supreme Court upheld this ruling, noting that, under NRS 623.357 no person

may bring or maintain an action for compensation for architectural services without first "alleging and proving that such plaintiff was duly registered under this chapter at all times during the performance of such act or contract." Thus, DTJ was required to *plead and prove* these required elements of a lien claim as its *prima facie* case, to obtain compensation for its Nevada architectural services, regardless of the nature of the affirmative defenses.

In reaching this decision, the *DTJ Design* Court expressly ruled on and rejected many of the same arguments which FFA has (through its surrogate Steppan) made herein. For example, the *DTJ* Court ruled that **NRS 623.349(2) precluded DTJ (as an unlicensed and unregistered firm) from foreclosing on a mechanic's lien for work that was allegedly performed by one of DTJ's individual architects, Thorpe, even though Thorpe *was* licensed in Nevada**. In rejecting DTJ's claim, the *DTJ* Court pointed out that Thorpe (just like Steppan) was not a 2/3 owner of the foreign corporation, as required by Nevada law for that entity to be allowed to register here, in order to provide services here:

> NRS 623.349(1) allows registered architects to partner with unregistered architects and form a business organization to practice in Nevada, **so long as the registered architects satisfy a two-thirds ownership requirement**. In order for a foreign business to operate as a separate entity in Nevada, it must satisfy the requirements found in NRS 623.349 **by demonstrating to the board that registered architects within the firm satisfy the two-thirds ownership provision** under NRS 623.349(1) and that the business is qualified to do business in this state and has paid the requisite registration fee under NRS 623.349(2)(a)-(c).

DTJ at 6. (Emphasis added.)

Thus, even if the Nevada Board had received DTJ's application, it would have denied it "because Thorpe did not satisfy the two-thirds ownership requirement" of NRS 623.349(1). *Id.* Similarly, in the present case, after Steppan contacted the Nevada Board of Architects to discuss "making Fisher Friedman of record on this job" FFA "elected not to do so" because "they learned" this would require that "at a minimum Rodney [Friedman] be licensed in Nevada" (**Exh. 12** at p. 150) for the obvious reason that Friedman, as the sole owner of FFA, would need to be individually licensed to meet the 2/3 ownership requirement.

The *DTJ* Court **also expressly rejected any claim that Thorpe should individually be able to foreclose on the lien as a Nevada registered architect**: "to the extent that DTJ argues that Thorpe should individually be able to foreclose on the lien as a registered architect, we disagree" including

because Thorpe was not truly involved as a co-principal on the project for much of the time the project was undertaken. *Id.* at 6-7. Steppan will no doubt argue that this reasoning does not apply herein because Steppan, unlike Thorpe, signed the architectural contracts. However, this distinction does not survive even the slightest scrutiny. As was repeatedly admitted throughout the trial, the actual course of dealing between the parties overwhelmingly demonstrates that Steppan's execution of the contract was a complete farce, and Steppan was no more the actual contract architect in this case than Thorpe was in the *DTJ* case. Indeed, it would be all but impossible for any reasonable and objective person to read the trial transcript and come to any other conclusion, based on the numerous admissions made by both Steppan and Friedman during the trial, demonstrating again and again that the lien at issue herein was actually pursued "on behalf of" FFA.

Although Steppan, unlike Thorpe, signed the ostensible contracts with the customer, Steppan's true involvement, just like Thorpe's, was also never material, as the *DTJ* court found to be the controlling question. Steppan spent far fewer hours on this project (only 4.1%) than did other FFA employees, including David Tritt who produced most of the product in conjunction with Friedman, and also including the actual project supervisor and project manager, Friedman and Ogle. Steppan had no true material involvement, as any sort of principal, therein. Instead, the facts set forth above clearly establish that, in reality, Steppan was no more a "contract architect" in this case than Thorpe was in the *DTJ* case and any ruling to the contrary would simply sanction FFA's/Steppan's fraudulent conduct.

In the present case, FFA was not owned by any (let alone 2/3) Nevada licensees such that it would not have been allowed to register to perform work in Nevada unless Friedman were licensed. He did not want to do so. FFA therefore did not seek to become registered with Nevada's architectural board (either as an architect or as a residential designer); it did not qualify itself as a foreign corporation in Nevada; it did not execute a written contract with Steppan to provide services as his designer as mandated by NRS 623.325 or have him file any such agreement with the Nevada Board as mandated by NRS 623.353. Instead, it pursued an illegal scheme which has now been twice rejected at Nevada's highest court, treating one of its individual employees as though he were the lien claimant, even though multiple facts clearly demonstrated that this was a sham, and that the foreign

entity actually performed the work, sent out direct invoices and collected fees, and sought to benefit from foreclosing on the mechanic's lien.

Even if the FFA scheme were perfectly valid, it would still be the case that Steppan failed to meet his burden of proof to show that the work which forms the basis of the lien was performed "by or through" him. NRS 108.222(1)(a) and (b). Although his Complaint alleged that this was so, he failed to provide evidence to support this claim. Instead, the evidence overwhelmingly demonstrated just the opposite: that the work was performed "by" FFA, "through" its employees, including Steppan, who, despite his signature on the contract(s), never acted as and was never treated as the true contract architect, never received any of the customer's payments, never entered into a design agreement with FFA or filed that agreement with the Board, never received or paid any invoices from FFA for its services, was minimally involved in the project, and remained throughout the project as no more and no less than FFA's employee.

(iv) FFA Must Not Benefit From Violating Nevada Law.

The strategy employed by FFA in this case is simply a less direct, more illicit and covert, sham version, of the same strategy which DTJ employed and which Depner employed, which the Nevada Supreme Court rejected in those two prior cases. Accordingly, FFA has, to date, succeeded in getting away with violating Nevada's architectural statutes, by being dishonest in its pursuit of its claims, whereas DTJ and Depner were legally prevented from having their lien claims honored, because they pursued the same strategy as FFA, openly and honestly. Thus, the effect of this Court's ruling, if it stands unaltered, will be that dishonesty is the best policy in Nevada, and that a foreign architect who uses a sham to circumvent Nevada's statutes will be rewarded for taking this false approach. This Court must therefore withdraw its Decision, and enter a new order to invalidate the lien, in order to prevent this bizarre policy from being advanced, before an erroneous judgment is entered herein. Doing so would be in keeping with the actions of the lower court in *DTJ*, which initially upheld the validity of the DTJ lien, but then rethought this decision, after a first trial but before subsequent proceedings and before entering final judgment on the amount of the lien, which course reversal, invalidating the lien for a foreign architectural firm's services, was then the decision which was upheld by the Nevada Supreme Court.

Nevada's architectural licensing statutes are aimed at protecting the Nevada public from the risks inherent from allowing foreign architectural firms, who are unwilling or unable to demonstrate their competence in working with local building codes and local site conditions (through the proscribed professional in-State registration process) from designing Nevada buildings, and to thereby "safeguard life, health and property." NRS 623.010. *See, e.g., Harrie v. Kirkham, Michael & Associates*, 179 N.W.2d 413, 415 (N.D. 1970) ("We can find no valid reason for holding that the profession of architecture should be treated any differently from the professions of medicine, dentistry, or law"). This is particularly true in high rise projects.

The Nevada Legislature has stated its intent to only allow firms which are registered in Nevada and are owned by at least 2/3 licensed Nevada architects, to perform architectural services for Nevada projects. Even if a firm claims it is only providing "design" services, and even if that claim were credible, it mut still be registered to do such work. NRS 623.180(1). FFA violated these laws by bidding on, and then performing services for a Nevada project and a Nevada customer and then billing the customer, directly, for that work, and receiving direct payment from that customer. The subject lien is all based on work which FFA performed and invoiced in violation of Nevada law. This Court must therefore set aside its Decision before entry of Judgment and replace the same with rulings which conform with and uphold Nevada law.

B. Steppan Failed to Abide by Nevada's Mechanic's Lien Laws and "His" Lien Would Be Invalid, Even Were it Not a Sham.

This Court should conform with Nevada Supreme Court mandatory precedent, and reject the example of the *Snyder* district court, whose ruling, allowing an individual member of a foreign architectural firm to act as the Plaintiff in a lien foreclosure action for that firm's services was reversed on appeal. This Court should instead follow the example of the district court in the *DTJ Design* case, which, after initially upholding an invalid lien based upon a foreign architectural firm's services, subsequently corrected itself, and, before entry of judgment, invalidated the subject lien, which subsequent decision was upheld on appeal to the Nevada Supreme Court.

However, if this Court ignores these two Nevada Supreme Court precedents, then it should be understood that Plaintiff's lien is *also* invalid due to the many errors which the Plaintiff committed in his attempted pursuit of the same, which errors prevented sufficiently substantial compliance on his

part, with the provisions of NRS Chapter 108, for perfecting a lien, such that his lien must now be invalidated, even if it truly were "his" lien. Because some of Steppan's failures allowed him to perpetuate his and FFA's above-referenced fraudulent conduct (by for example misstating the facts in his mechanic's lien notices, and failing to ever verify the same) these failures are appropriate for review as part of this Motion, just as they will be appropriate for more extensive review in any post-judgment filing. Steppan committed the following errors and failures in the pursuit of "his" lien:

Failure 1. Plaintiff's first error was failing to abide by NRS 108.245 and never sending the Iliescus any 31-day right-to-lien notice, so as to advise the Defendants of his purported potential lien rights. This Court has ruled that no such notice was needed, because the Iliescu Defendants had actual knowledge that an architect was performing work, under *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990). However, the *Fondren* analysis was legally inapplicable herein, given the off-site nature of the architectural work in question.

As footnote 2 of the *Fondren* decision notes, the reason a pre-lien notice is even important, is because, within three days of an owner becoming aware of construction work being performed upon her property, if she does not take steps to protect herself by recording a notice of non-responsibility (under NRS 108.234(2)), then, under NRS 108.234(1) the "improvement **constructed, altered or repaired upon property** shall be deemed to have been constructed, altered or repaired at the instance of each owner having or claiming any interest therein." This, in turn, matters, because work performed "at the instance of the owner" is a prerequisite to lien rights under NRS 108.222(1). However, the work at issue in this case was *off-site* architectural work, which was not performed "upon" the property. (By contrast, in *Fondren*, there was "construction on [owner Fondren's] property" of which she was aware, as it was regularly "inspected" on her behalf. *Id.* at 709, 721.) Based thereon, NRS 108.234(1) does not even apply to the facts of this case, and the *Fondren* rationale collapses, since, even if Iliescu did have notice of architectural services, those services did not involve on-site construction, and therefore did not create a situation in which the services were statutorily deemed to have been performed "at the instance" of Iliescu, unless timely action was taken to avoid that result. Based thereon, Iliescu's property did not suddenly become statutorily subject to a lien upon his alleged awareness of the work being performed *off site*. While it is true that architects are able to lien in

Nevada, that does not mean that they are always treated equally with those whose work is performed on site, where the statutes reference work "upon" the property. *See, e.g., J.E. Dunn Northwest, Inc. v. Corus Constr. Venture*, 49 P.3d 501, 508, 127 Nev. Adv. Op. 5 (2011)(rejecting architect's argument that its lien's priority vested, vis-a-vis a lender's deed of trust, before on-site construction work had occurred, even where, as was found to be the case herein as to the Iliescus, the bank had actual knowledge of the architect's offsite work, and holding instead that such knowledge was irrelevant, given the lien priority statute's requirement that a lien's priority vests upon commencement of visible **on-site** construction.) Accordingly, given that the *Fondren* exception to the pre-lien notice requirement of NRS 108.245, does not apply, NRS 108.245(3) *does* apply, which indicates that "[n]o [mechanic's] lien for . . . services performed . . . may be perfected or enforced pursuant to [the mechanic's lien statutes] unless the [right to lien] notice has been given [by the potential lien claimant]."

Failures 2-4. Plaintiff recorded his mechanic's lien on November 7, 2006 (**Exh. "4"**) which falsely identified by whom Steppan was employed; erroneously asserted that the claimant's off-site work had been "actually used upon the . . . project" and had been "incorporated" therein; and sought money which was not due to Steppan, who had been paid in full by his employer, FFA.

Failure 5. Furthermore, this lien notice was recorded without first sending the 15 day notice of intent to lien, as required by NRS 108.226(6) for a project, like this one, for "multifamily . . . residences." When this error was asserted in the Application for Release of Mechanic's Lien initiating this case, Steppan attempted a correction, sending a late intent-to-lien notice, received on March 8, 2007 before then filing a subsequent "Amended Notice and Claim of Lien" on May 3, 2007. (**Exh. "5"**). However, as a simple matter of logic, failure to provide required *prior* notice, cannot be remedied *after the fact*.

Failure 6. This Amended Lien filed on May 3, 2007 lacked any verification of its contents, under oath, by the lien claimant, or on his behalf, as required by NRS 108.226(3) which provides that the "notice of lien must be verified by the oath of the lien claimant." A comparison of the lien form contained at NRS 108.226, which "must be substantially" followed, with this amended lien, demonstrates this error. The statutory form sets forth the language which is to precede the lien

claimant's (second) verifying signature: "I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge . . . ." which language is no where to be found in the amended lien. The form also provides that the lien claimant's [second, verifying] signature under this language is to be notarized via a "subscribed and sworn" notary jurat (*i.e.*, "sworn" to comply with the "under oath" requirement.) However, the Jurat on Steppan's first amended lien indicates only that the lien was "acknowledged" not "sworn to." Because verification is required precisely in order to prevent the kind of fraud which forms the basis for this motion, this error is appropriate for review under this NRCP 50(b)(3) motion. This mistake is fatal. *See, e.g.*, *Home Plumbing and Contracting Co. v. Pruitt*, 372 P.2d 378 (N.M. 1962) (rejecting lien not containing "any words . . . designed to operate as a verification" or any indication that it "was in any manner sworn to"); *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 563 P.2d 258, 262-264 (Alaska 1977)(invalidating mechanic's lien which, although acknowledged to authenticate the signature, was not verified under oath by a sworn statement of the truth of the facts stated); *Mickelsen v. Craigco*, 767 P.2d 561 (Utah 1989) (for a lien to be properly verified under oath "(1) there must be a correct written oath . . . , and (2) it must be signed by the affiant in the presence of a notary or other person authorized to take oaths, and (3) the latter must affix a proper jurat" such as "subscribed and sworn" not merely an acknowledgment of signature in the notary's presence).

Failure 7. Plaintiff's Complaint to foreclose the lien was filed on May 4, 2007. The first lien notice had been withdrawn before the first amended lien notice was filed. **Exh. 1** at ¶16. Thus this Complaint was to foreclose the first *amended* notice, and was therefore filed prematurely, only one day after that amended lien notice, in violation of NRS 108.244, which requires a lien claimant to wait thirty (30) days *after* a lien notice is recorded *before* filing a lien foreclosure suit.

Failure 8. Although Plaintiff would later try to save his lien from the violation of the 31-day right to lien notice, by alleging that one of the Defendant property owners had knowledge of his lien, Plaintiff failed to allege in his Complaint that either Defendant had this knowledge, which is an "essential allegation" that must be raised in the lien foreclosure Complaint as a prerequisite to asserting such facts, unless the owner later concedes such knowledge. *Milner v. Shuey,* 57 Nev. 159, 60 P.2d 604 (1936).

Failures 9-10. Furthermore, the filing of the Complaint was also not accompanied by the recording of a Lis Pendens, as required by NRS 108.239(2)(a), or by publication, for three weeks, in a local newspaper, of a "notice of foreclosure" as required by NRS 108.239(2)(b).

Failures 11-14. Steppan later filed yet another amendment to his prior, error-ridden, lien notices, via a "Second Amended Notice and Claim of Lien" recorded on the eve of trial, on November 8, 2013, some **6 years** after the Second Lien notice which had been under review in all of the prior summary judgment dispositions. NRS 108.229 does allow liens to be amended, to "correct or clarify the lien" with respect to matters which do not consist of "material" or "intentional" variances, such as the property description, or the proper name of the owner, if no prejudice will result. NRS 108.229(1) and (3). Plaintiff's second amended notice did not involve any such simple clarification, however, but materially and substantially rewrote the entire lien claim notice, utilizing a form which was substantially longer and more complex than the earlier notices, and which substantially varied from the same.

Moreover, this notice repeated several of the errors of the earlier notices. It again inaccurately and fraudulently asserted that Steppan was the lien claimant; and again inaccurately asserted that he was employed by BSC/Consolidated.

Furthermore, although this Second Amended Lien Notice at least attempted to provide a verification, it failed to substantially comply with the statutory requirements for such a verification. Instead, it added unique terms, pursuant to which the signer, who was not Steppan but a new attorney, not even involved years before when Steppan's former attorney had been originally pursuing the filings, "verified" the truthfulness of the lien, not on his own personal knowledge, as required, but on the basis of his review of court pleadings from the many years since the original lien was recorded, during a time period when the person now "verifying" the lien would have had no first-hand knowledge whatsoever of any of the information now supposedly being verified under his oath. This is of obvious concern given how much of that information, as set forth above, turned out to be inaccurate sham information fraudulently presented, which Steppan, or someone who was in a position to know the truth, should have been required to verify under oath, as the statute contemplates.

NRS 108.229 further indicates that a lien may be amended *only* "before or during the trial of

any action to foreclose a lien." That is to say: a party may not succeed at trial, *and then amend its lien, after the fact.* This rule of law and of due process was undercut in this case by the Plaintiff's inappropriate trick of *first* obtaining summary judgment rulings upholding certain aspects of the validity of his lien, ***which were treated by this Court as binding* at trial, such that they were in many ways equivalent to the type of rulings which would normally be obtainable after trial, and were treated as substantive post-trial rulings,** and only *thereafter creating the Second Amended Lien which this Court's Decision then treated as the valid final lien to be enforced under those prior Orders.* In other words, the lien claimant was allowed to have its cake and eat it too, obtaining early court orders which remained binding at trial, as to its earlier error-ridden lien notices, and then amending its lien without prior order or permission (pursuant to NRS 108.229(4)) as though it were still in the pre-trial period in which amendments are allowed without an order, and then going to trial and having its *new* lien upheld, on the basis of Orders issued before it even existed.

This Court's orders, entered on June 22, 2009 (upholding Steppan's lien against the pre-lien notice challenge) and on May 9, 2013 (ruling that the later flat fee AIA Contract would be applicable in determining the amount of the lien), were entered, respectively, four years and six months before the lien claimant's lien notice was ultimately amended to create the version thereof which this Court's Decision upheld at page 11, lines 12-13 thereof. This final version of the lien explained and admitted that the AIA based-billings had "changed" earlier invoices that were already paid, which facts were not clearly brought to the Court's attention as part of the record when the extremely concise summary judgment motion on that question, referencing an earlier, much less detailed lien notice, was filed.

This was unjust, and raises due process concerns. When this matter came to trial, in order to enforce NRS 108.229, *which does not contemplate that liens may be amended after trial decisions have been reached*, either (i) the prior orders should have been set aside as no longer binding and final given the existence of a subsequent version of the lien, or (ii) if those earlier orders were to remain binding, then the Plaintiff's Second Amended Notice of Lien should have been disallowed, such that the error ridden earlier liens needed to be defended at trial. Allowing the lien claimant to have it both ways, and obtain the benefit of prior rulings at trial, as though a final post-trial adjudication had already occurred, and nevertheless be able to file new amendments to the lien, after those

adjudications, violated the amendment timing provisions of NRS 108.229, as well as the Defendants' due process rights to fully adjudicate and defend the lien only in its final form.

VI. CONCLUSION

For the reasons set forth above, in order to comply with Nevada law, this Court's Decision and Judgment must be set aside, to invalidate the so-called "Steppan" lien, which relief is appropriate on the grounds set forth herein.

DATED this 24th day of October, 2014.

By _____

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D. CHRIS ALBRIGHT, ESQ. [NV Bar No. 004904]
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Attorneys for Applicants/Defendants

AFFIRMATION

The undersigned does hereby affirm this ___ day of October, 2014, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

G. MARK ALBRIGHT, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 24th day of October, 2014, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR NRCP 60(b) RELIEF FROM COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND RELATED ORDERS,** and a copy mailed to the following person:

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

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__X__ Electronic Filing/Service
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____ Hand Delivery
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____ Hand Delivery
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An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

1. Findings of Fact, Conclusions of Law and Decision, May 28, 2014
2. Intentionally Omitted
3. Complaint filed in name of Mark Steppan on May 4, 2007
4. Notice and Claim of Lien, Recorded November 7, 2006
5. Amended Notice and Claim of Lien, Recorded May 3, 2007
6. Second Amended Notice and Claim of Lien, Recorded November 8, 2013
7. Order Denying Iliescu's Motion for Partial Summary Judgment and Granting Steppan's Cross-motion, June 22, 2009
8. Order Granting Motion for Partial Summary Judgment, June 9, 2013
9. Architectural Design Services Agreement, November 15, 2005
10. AIA Contract, executed April 21, 2006
11. Relevant quoted portions of Steppan's Deposition Testimony from September 29, 2008
12. Relevant quoted portions of Steppan's Deposition Testimony from February 16, March 2, and March 3, 2010
13. Letter from Rodney Friedman, FAIA (Steppan's father-in-law) to Calvin Bosma of Decal Custom Homes, dated September 1, 2006 (Steppan 3262-63)
14. Time cards of FFA employees (Steppan 007122-7363)
15. Ledger of certain relevant calculations
16. Registration/Renewal (Steppan 4351), dated October 28, 2005
17. FFA Check No. 11560, dated November 2, 2005
18. Letter from Nevada State Board of Architecture, Interior Design and Residential Design to Mark Steppan, regarding Registration, October 12, 2005
19. Nevada Supreme Court Opinion, February 13, 2014

EXHIBIT 9

EXHIBIT 9

MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

November 15, 2005

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, CA 94710

RE: ARCHITECTURAL DESIGN SERVICES AGREEMENT
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Sam,

We are pleased to present this proposal for the above referenced project based on the provided site map, existing site data, zoning information, residential design guidelines, site photos, survey and meetings.

SCOPE

Based on the information received, we will analyze the building and site and make design recommendations for a new high-rise residential building. We shall make one site visit accompanied by the Owner and shall participate in one meeting with the appropriate City officials.

SCHEDULE

Design, documentation and meetings will occur in a timely manner, as required by the approval process and the Owner's schedule.

COMPENSATION

We shall perform the above referenced services on a time and materials basis based on our 2005 hourly billing rate schedule. All Reimbursable expenses (including but not limited to printing, plotting and messenger services) shall be billed at one hundred percent plus a fifteen percent mark-up. See attached **Exhibit A.**

Fees and reimbursable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice. If the Owner disputes any portion of an invoice, Owner agrees to inform us in writing of such dispute within 7 calendar days of receipt of the invoice.

If you have any questions or need more information please do not hesitate to contact me. We will track this work effort under the **project number 0515-01 and 0515-01R.**

Sincerely,

Mark B. Steppan, AIA, CSI, NCARB

ACCEPTED:
BSC Financial, LLC

Sam Caniglia 11/15/05
Date

Cc: Agreement File
Accounting File

1495 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 f:510-420-0599

MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

EXHIBIT A

2005 MASTER FEE SCHEDULE

PRINCIPAL/OFFICER	$220.00 per hour
EXECUTIVE VICE PRESIDENT	$200.00 per hour
SENIOR VICE PRESIDENT	$170.00 per hour
VICE PRESIDENT	$145.00 per hour
ARCHITECT III	$145.00 per hour
PROJECT MANAGER III	$145.00 per hour
ARCHITECT II	$125.00 per hour
PROJECT MANAGER II	$125.00 per hour
CONSTRUCTION ADMINISTRATOR II	$110.00 per hour
ARCHITECT I	$110.00 per hour
PROJECT MANAGER I	$110.00 per hour
JOB CAPTAIN I	$110.00 per hour
CONSTRUCTION ADMINISTRATOR I	$100.00 per hour
SENIOR DESIGNER/DRAFTER	$100.00 per hour
GRAPHIC DESIGNER	$95.00 per hour
INTERMEDIATE DRAFTER/DESIGNER	$90.00 per hour
JUNIOR DRAFTER/DESIGNER	$70.00 per hour
GRAPHIC DESIGN ASSISTANT	$70.00 per hour
ACCOUNTING	$65.00 per hour
SPECIALIZED COMPUTER IMAGING/RENDERING	$200.00 per hour
CLERICAL/WORD PROCESSING/OFFICE SUPPORT	$65.00 per hour

REIMBURSABLE EXPENSES AND CONSULTANT FIRM'S FEE SCHEDULE

Reimbursable Expenses are billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect. These include transportation and living expenses in connection with out-of-town travel, models, perspectives, renderings, reprographics, plotting, postage, delivery messenger services, and telephone and telefax costs. Consultant services will be billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect.

NOTES

1) The above rates also apply to Hourly Basis Services, Additional Services or changes within Lump-Sum or Fixed-Fee Agreements.
2) Rates shall be increased by a factor of 1.50 for hours incurred outside USA.
3) Contract or part-time employees are billed at the category of work performed.
4) These Schedules are part of the letter of agreement.

*This Schedule is subject to annual increases not to exceed 4%.

1485 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 f:510-420-0599

EXHIBIT 11

EXHIBIT 11

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

-oOo-

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)
Plaintiffs,	)	Dept. No. 6
vs.	)	
MARK B. STEPPAN,	)	
Defendant.	)	

DEPOSITION OF MARK STEPPAN

MONDAY, SEPTEMBER 29, 2008

RENO, NEVADA

SUNSHINE REPORTING SERVICES
151 COUNTRY ESTATES CIRCLE RENO NEVADA 89511
REPORTED BY: SUSAN CULP CCR #343

ORIGINAL

In other words, I'm looking to see if there is any document chain that sets forth that relationship. So if the State architectural board would come in and ask, "Well, how was this supervision carried out," they would be able to point to some type of document that says this is what the relationship is. That's what I'm looking for.

A All right. I don't know if there's a document that addresses your question.

It's carried out through the nature of the fact that I'm an employee of Fisher Friedman Associates, I'm a director of the corporation, and we are all in the same office. So the supervision is handled through being in close personal contact to everything, by nature.

I don't know if there's any written delineation of it any further, and per the contract, Fisher Friedman is listed as a design consultant. And as long as they are reviewed by me, per the standard and practice, that generally meets the intent of the regulation, to the best of my knowledge.

Q Where, in the contract which is in front of you, Exhibit 1, is Fisher Friedman outlined as a design consultant?

A It's on Page 130. It's the -- right under the paragraph that's "Addendum," it says, "AIA contract review between BSE Financial," blah, blah, blah -- sorry for the blah, blah, blah -- "Mark Steppan and Fisher Friedman Associates, Design Consultants."

EXHIBIT 12

EXHIBIT 12

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--oOo--

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341
Dept. No. B6

DEPOSITION OF MARK STEPPAN

TUESDAY, FEBRUARY 16, 2010

Reno, Nevada

REPORTED BY: Janet Menges, CCR #206, RPR
Computer-Aided Transcription

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--oOo--

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341
Dept. No. B6

DEPOSITION OF MARK STEPPAN

VOLUME III

WEDNESDAY, MARCH 3, 2010

Reno, Nevada

REPORTED BY: Janet Menges, CCR #206, RPR
Computer-Aided Transcription

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--oOo--

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341
Dept. No. B6

DEPOSITION OF MARK STEPPAN

VOLUME II

TUESDAY, MARCH 2, 2010

Reno, Nevada

REPORTED BY: Janet Menges, CCR #206, RPR
Computer-Aided Transcription

PURSUANT TO NOTICE, and on Tuesday, the 16th day of February, 2010, at the hour of 10:00 a.m. of said day, at 6005 Plumas Street, Reno, Nevada, before me, Janet Menges, a notary public, personally appeared MARK STEPPAN.

--oOo--

MARK STEPPAN

called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GRUNDY:

Q Would you state your name, please, sir?

A Mark Steppan.

Q What is your office address?

A 1485 Park Avenue, suite 103, Emeryville, California, 94608.

Q Where do you reside?

A Oakland, California.

Q How long have you lived in Oakland?

A Since 1984, so that is 26 years, I guess.

Q All right.

Have you ever lived in Nevada?

A No.
Q How old are you, sir?
A I'm 52.
Q Young guy comparatively.
A It's all relative. Everybody is young.
MR. WILSON: Perhaps it reveals more about the questioner than the witness.
MR. GRUNDY: Indeed it does.
BY MR. GRUNDY:
Q Where were you educated?
A UC Berkeley.
Q When did you finish there?
A 1979.
Q What degree or degrees did you attain?
A Bachelor of arts with a major in architecture.
Q You said 1979?
A Correct.
Q And when were you first licensed or registered as an architect?
A I don't remember exactly. I would guess it's around 1987.
Q Why the delay between your graduation and registration?
A It's not a delay. Registration of an architect requires a certain amount of time working in addition to

taking all the licensing exams, and at that time it would generally take anywhere from five to eight years, nine years after graduation depending on your undergraduate or graduate degree.

Q Do you have any other higher education besides the bachelor of arts in architecture?

A No.

Q Can you give me a history of your employment starting from the time of your graduation from college?

A I was already working for Fisher Friedman Associates at the time I was in college. I started full-time with them in January of 1980 and I'm still presently employed by Fisher Friedman Associates.

Q What positions or titles have you held there?

A Well, everything from starting at the bottom doing filing, et cetera, and drafting all the way up to my current position, which is executive vice-president.

Q Can you go through them for me so I can understand the hierarchy?

A Drafter, designer, job captain, project architect, project manager. I don't know if there is any other title between that and executive vice-president. Given the size of the office many of those functions were performed at the same time and we're not structured on pure category.

Q I know from your earlier deposition that there were nine or ten architects in the firm at the time of that deposition. Is that still true?

A No, there are currently nine people in the firm total currently.

Q Okay.

And of those how many are architects?

A Five.

Q Of the hierarchy that just described starting with drafter, designer, job captain, project architect, project manager, and then executive vice-president, how many of those jobs were held before you became a licensed architect?

A Probably just the drafter and job captain and designer.

Q So the first three are the sorts of positions that are held by unlicensed or unregistered architects?

A Incorrect.

Q Incorrect?

A Um-hum.

Just by their nature and by the order of how I have presented them does not make them held by unlicensed architects. Typically a job captain role can be held by a licensed architect, as can a designer. So one of the people I have told you was licensed in the

office is one of the two main designers in the office. He is licensed.

There is no -- There is no distinct correlation. The only one that is typical to be not licensed is the drafter.

Q As I understood your answer, the three jobs that you mentioned, drafter, designer and job captain, are ones that you held before you were an architect?

A I believe so, although I'm sure the job captain morphed over.

Q So it's not necessary within your profession that those particular types of jobs be held by architects, although I understand they may be from time to time?

A Correct.

Q But to be called a project architect, which I think is the next in the order that you gave me, that is a job that must be held by a licensed architect?

A Correct.

Q Now, there are other titles that are held within Fisher Friedman Associates beyond the executive vice-president, or not beyond, but in addition to the executive vice-president that have more corporate sounding names like vice-president, senior vice-president, executive vice-president; correct?

A Yes, there are a couple of those.

Q There were people who held those positions back in 2005 and 2006?

A Yes.

Q Tell me how those particular positions fit into the hierarchy, if in fact they are part of the hierarchy?

A I'm not sure how best to answer your question. Are you talking about people -- Let me rephrase.

Are you asking about people that have worked on this project or just in the office?

Q Well, my question certainly is prompted by the titles that were held by some of the people that worked on this project, but I'm trying to understand how Fisher Friedman works in terms of its titular hierarchy, if there is such a thing, and maybe there isn't?

A There isn't any particular hierarchy. Other people that worked on the project have titles such as senior vice-president, I believe for the other two people of that senior level, but that does not really come into play in the role they might play. They may do designer's work, job captain's work, project architect's work, project manager's work.

Q Let me see if I understand correctly.

The initial names and positions you talked

about were how the profession is arrayed, at least in your firm, with regard to the jobs that they perform.

In addition to that these people may have other positions as corporate officers. Is that an accurate characterization of what you're trying to say?

A I suppose they could, but the corporate officer component is not a necessary component of the office functioning of the projects.

Q I understand that distinction. You define people's roles by their titles within the profession, but they may also have other roles as officers of the corporation?

A They might.

Q So with that in mind, let's go back to 2005 and 2006 and talk about the people that were employed then, the professionals or paraprofessionals, and what their titles or positions were on both sides of the hierarchy?

A Working on this project?

Q Yes.

Let's start at the most senior and go down.

A Well, you would have Rodney Friedman, who is the president, CEO, director of design. You would have me --

Q Just a second.

A Sorry.

Q Rodney Friedman held the position of president of the corporation?

A Correct.

Q Okay.

Did he also hold an architectural type of title?

A You could call it director of design. It's not on a business card.

Q Okay.

So he was the --

A He is the sole proprietor so he oversees everything that goes on.

Q So Mr. Fisher was not engaged in the business back then?

A No, Fisher retired around '97.

Q All right.

And by sole proprietor do you mean the sole owner of Fisher Friedman Associates?

A Correct.

Q And in terms of how long had Mr. Friedman been a licensed or registered architect back in -- Well, it's easier to figure from today, I guess?

A I don't remember when he first got licensed in California.

Q How old is he?

A Seventy-six.
Q Is there a relationship, a family relationship between you and he?
A Yes, I'm his son-in-law.
Q So you're married to his daughter?
A That follows.
Q How long have you been married to Rodney Friedman's daughter?
A Since 1985.
Q Then in terms of seniority within the firm back in 2004, 2005, are you the next most senior?
A Yes.
Q And your corporate title then was executive vice-president?
A Yes, it says that and director of operations on the business card. It's not a corporate title. That is just an architectural functioning title.
Q Can you explain to me what the director of operators does in your firm?
A Oversee the operation of the firm from the standpoint of things such as taking out the garbage, looking at invoicing, running projects, ordering supplies, handling the computer system.
Q All right.
It says --

Q For the purposes of the fee schedule the vice-president and architect III and a project manager III all billed out at the same rate. Would it be fair to assume from that those people were generally of the same level of experience and hierarchy within the firm?

A I suppose that is reasonable.

Q For instance, on a particular job is a project manager III senior to an architect III or are these just interchangeable?

A They are somewhat interchangeable and I don't set how they are used. That is a full list of possible titles and positions, some of which are used, some of which are never used.

Q All right.

Then the next level down is the architect II, project manager II. Would those also be somewhat interchangeable?

A Somewhat.

Q So who filled this basically level below that of senior vice-president on the Reno project in 2005, 2006, do you know, and I'm talking about the vice-president, architect III or project manager III?

A Well, Nathan effectively was acting as the project manager. So that is a point of multi-tasking, if you want to look at it.

was defined other than as executive vice-president?

A I'm not sure I understand the question as it relates.

Q Is there a professional role above that of project manager on a particular project?

A Not that I'm aware of from a title standpoint.

Q Well, how would you define your role on the Reno project as executive vice-president, and if it changes over the course of time, tell me about that as well?

A The project was being performed under my purveyance as the supervising architect. That included involvement from attending of meetings and meeting parties and participating in decision making to looking over people's shoulders and seeing if they were properly drawing items or to telephone calls, whatever it might be. It was an oversight role as is typical of someone in my position.

Q All right.

Was that pretty much how you would define your role from the time it started in late 2005 until the time you stopped doing work in late 2006?

A I don't know how else to define it.

Q I'm sorry?

A I don't know how else to define it.